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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Tuesday, 7 July 2015.

2.30 pm

Prayers—read by the Lord Bishop of Chester.

Oaths and Affirmations

2.35 pm

Lord Myners took the oath, and signed an undertaking to abide by the Code of Conduct.

Railways: Regional Passenger Trains
Question

2.36 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government whether they will take steps to reduce overcrowding on regional passenger trains by allowing councils to have more control over the allocation of rolling stock.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, the Government are taking steps to meet rail demand across the country through the rail investment strategy and the franchising programme. The Government also support further devolution of responsibilities for rail services to local authorities. The Government are working in partnership with Rail North Ltd on the next Northern and TransPennine Express franchises, and have agreed a collaborative approach with West Midlands Rail on the development of the next West Midlands franchise.

Lord Berkeley (Lab): I am grateful to the Minister for that Answer. I also congratulate the Government on issuing today a passenger rolling stock perspective—which, unfortunately, does not answer the question that I am about to ask. However, given that passenger numbers will double in 15 years; given that there is already severe overcrowding in the regions on trains; given that delay in electrification means cascading the diesels will be a bit delayed; and given the Secretary of State's commitment to phasing out the much-loved Pacers, what are the Government doing to meet the demand of the regions for these trains? Did the Minister say that he is leaving it to the northern powerhouse—or to a Midlands engine room; and I believe that there will be a Cornwall digital growth area tomorrow—to order them? In either case, who will pay?

Lord Ahmad of Wimbledon: My Lords, the Government are taking steps to meet the demand of the franchising programme to which the noble Lord alluded. We have required bidders for the northern franchise, for example, through the invitation to tender, to put in a specific requirement for 120 additional self-powered vehicles for the franchise. That kind of approach will continue. We also support further devolution, and should further services be fully devolved—as has happened, for example, in London and Merseyside—we would expect to reach agreement with the relevant local authorities for appropriate funding settlements in those areas.

Baroness Wilcox (Con): Will the noble Lord address himself to a question that I have been asking for more than 10 years? Why are we still dumping raw sewage on to the lines into the West Country? Not only is it unseemly in this day and age; I should think it is awfully bad for the men working on the lines. The last time I asked this question I was told that it was perfectly all right because, after 60 mph, it became just a fine spray.

Lord Ahmad of Wimbledon: My noble friend raises an obviously long-standing problem. In terms of meeting that challenge, she is quite right, on a serious note, to raise this issue. In the franchises we specify—indeed, including the South West Trains franchise—it is appropriate to specify a requirement in the invitation to tender to make sure that the issue of waste on tracks is addressed directly. It is important to ensure, particularly for the workers involved, that the issue which my noble friend raised is addressed directly.

Lord Bradshaw (LD): The Government have so far not devolved any responsibility for rolling stock to the train operators—even down to the last vehicle, they are allocated over there at Marsham Street. Will the Minister devolve real responsibility, and the resources, to the local authorities so that they can match their services to the demand that is already there?

Lord Ahmad of Wimbledon: The Government welcome propositions from local authorities, for example in the south-west, to take greater responsibility for local rail services. However, as I am sure the noble Lord will appreciate, such propositions need to take account of all the financial and other associated risks that go with them.

Lord Elton (Con): My Lords, I look forward to reading my noble friend's answer to my noble friend Lady Wilcox, but I could not quite decipher it on delivery. Does it mean that future tenders must all involve vehicles that do not deposit sewage on the line, or does it mean something else?

Lord Ahmad of Wimbledon: My noble friend is correct. Just to be clear, we put that down as a specific requirement on the invitation to tender for South West Trains that I alluded to. That is demonstrably good practice and will continue in the Government's approach.

Lord Davies of Oldham (Lab): My Lords, if the noble Lord and the Government had made any progress at all in devolving power to local authorities with regard to the development of new trains in their areas, they would know of the unpopularity of Pacer trains with everyone in the northern region, in Wales and in the western region. Everyone is fed up with having to

[Lord Davies of Oldham]
put up with crowded Pacer trains that are inadequate to meet present passenger need. Given the fact that his Permanent Secretary has indicated some doubt about whether the resources will be available to get rid of Pacers in the northern region, what progress does the Minister anticipate?

Lord Ahmad of Wimbledon: The Government are committed to replace the trains by 2020.

Lord Alton of Liverpool (CB): My Lords, has the Minister noted the request of a number of local authorities in the north of England asking for some railway lines—some of which were closed as long ago as the Beeching era—to be reopened, especially those linking parts of Lancashire with Yorkshire? What powers will be given to local authorities to negotiate such decisions?

Lord Ahmad of Wimbledon: I will certainly take back the particular lines that the noble Lord mentioned. On authorities that are collaborating, TransNorth, for example, is a great collaboration of local authorities. We hope that such collaborations, by bringing local authorities together, demonstrate what the acute need is for given regions across the country.

Lord Wallace of Saltaire (LD): My Lords, is the noble Lord aware that one evening last year I watched on the London evening news the announcement that the "clapped-out trains" from Thameslink were going to be replaced by brand new stock? The next evening, watching the Yorkshire evening news, I learned that the northern electricals, which may or may not be introduced on the TransPennine line, will be supplied by "refurbished Thameslink stock". Is the northern powerhouse to be built on hand-me-downs from London, or on something rather better than that?

Lord Ahmad of Wimbledon: I think the noble Lord is being a bit disingenuous: he was part of the Government when elements of the northern powerhouse were addressed. He knows full well that the northern powerhouse is alive and well. Indeed, apart from the £38 billion the Government will invest in rail, we are getting HS2.

Lord Berkeley: My Lords, could the Minister expand on the question asked by the noble Baroness, Lady Wilcox? The rolling stock for South West Trains does in fact not discharge on the track and never will; it is the Great Western ones that go to Penzance, Swansea and Bristol that still discharge on the track. Can he give the House some answer as to when they will be phased out?

Lord Ahmad of Wimbledon: I must admit, I have not seen all the different companies and which trains discharge or do not, but I take the noble Lord's expertise on rail. We are seeking to ensure that all new rolling stock applies to the new standards. I will write to him specifically on the area that he mentioned.

Taxation: Capital Gains Tax

Question

2.44 pm

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government what is their estimate of how many taxpayers will pay capital gains tax in this financial year, and how much this will contribute to the public purse.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, the latest published estimate of the number of taxpayers liable to capital gains tax is for 2012-13, when there were 169,000 such taxpayers. CGT receipts amounted to £5.6 billion in 2014-15, the latest year for which figures are available. Forecasts of receipts published by the Office for Budget Responsibility amount to £6.5 billion for 2015-16.

Lord Lee of Trafford (LD): My Lords, in reply to the Oral Question yesterday from the noble Baroness, Lady Wheatcroft, the Minister said:

"The Government are considering what steps are appropriate to make further progress in shifting the culture of equity markets towards long-termism".—[*Official Report*, 6/7/15; col. 5.]

May I suggest that one obvious step for a blue budget—or, indeed, a budget of any colour—would be to bring in a differential between short-term and long-term gains, taxing short-term gains at an individual's top rate but with tapering rates for longer-term gains? Would not this approach, as supported by most genuine investors and the Quoted Companies Alliance, be more equitable, likely to deliver greater revenues for the Exchequer and, above all, in the national interest as well?

Lord Bridges of Headley: My Lords, I hear what the noble Lord is saying and I tread with some trepidation here as we are on the eve of the Budget. However, what I will say is that while previous CGT has had a taper or been indexed to favour long-term holdings, such an approach would lead to the reintroduction of significant administrative burdens for many CGT payers. It would bring significant complexity into the tax system and the wider economic impacts would have to be assessed.

Lord Forsyth of Drumlean (Con): My Lords, given that when the coalition Government increased the rate of capital gains tax by 10%, the revenues went down, and when they cut the top rate of income tax by 5%, the revenues went up, what conclusions does my noble friend draw about opposition tax policy?

Lord Bridges of Headley: I draw a number of conclusions, my Lords. Overall, the Government believe that the current top rate of CGT at 28% is a good balance between raising revenue, reducing the incentives to substitute income for capital gains and retaining incentives to save and invest.

Lord Foulkes of Cumnock (Lab): My Lords, further to the question of the noble Lord, Lord Forsyth, what are the Government doing to make sure that people liable for capital gains tax are paying it?

Lord Bridges of Headley: My Lords, as your Lordships will know, during the last Parliament this Government took a number of steps to tackle avoidance and evasion. Indeed, they were relentless in their crackdown on tax avoidance. HMRC will have secured £100 billion in compliance yield. This includes more than £31 billion from big business and £1.2 billion extra from the UK's richest people.

Baroness Kramer (LD): May I press the Minister? If the Government are seeking to provide support to working people, will it not be appropriate to begin to align capital gains tax rates with income tax rates, especially for these large, short-term capital gains?

Lord Bridges of Headley: The noble Baroness makes an interesting point. As noble Lords know, this Government are intent on helping working people. Last year, we cut income tax for more than 26 million people, took more than 3 million out of income tax altogether and created more than 1,000 jobs every single day. This Government intend to do better still.

Lord Flight (Con): My Lords, I recollect that, for an asset which has been held for a long time, the base value can be uprated to that which applied in, I think, 1983. However, inflation has made a nonsense of that. Will the Government look at changing the date at which long-held assets are rebased for cost purposes?

Lord Bridges of Headley: I hear what my noble friend is saying. However, I tread with extreme trepidation and say that decisions on that matter are for the Chancellor to announce at the Budget.

Lord Davies of Oldham (Lab): My Lords, the House will have noted the Minister's sensitivity about making comments on tomorrow's Budget. That is not the kind of thing which inhibits the Chancellor, and therefore I am not inhibited either. I think he has made clear that he is not going to increase income tax or national insurance contributions. As the Minister said, it is unlikely that capital gains tax will be greatly affected, although he is not quite sure about that. Is it not quite clear that the Government's strategy is in fact not to be fair about taxation but to be brutally unfair about welfare expenditure?

Lord Bridges of Headley: No, I reject that utterly, I am sorry to say, my Lords. As the noble Lord will know if he has read the Conservative Party manifesto, the Government are committed to cutting income tax for 30 million people, taking everyone who earns less than £12,500 out of income tax altogether. As I alluded to, we intend to surpass what we did in the previous Government and help businesses create more than 2 million new jobs. That is the best way to tackle poverty and disadvantage in this country.

Lord Brabazon of Tara (Con): Does my noble friend recall that, when capital gains tax was first introduced many years ago, there was a rate for exactly one year that you had to pay on income tax rates and after that it became 30%, which is the sort of suggestion that the noble Lord, Lord Lee, was making. That was a disaster, actually, and resulted in significant distortions in the market. It would be a disaster to move back to that idea.

Lord Bridges of Headley: My Lords, the Government believe that the current structure of CGT balances the need for simplicity alongside fairness by having three effective rates, which provide a lower rate for basic-rate taxpayers and support for entrepreneurs, alongside the main rate. At that, I am going to stop.

Lord Brooke of Sutton Mandeville (Con): My Lords, I declare an interest as somebody who paid capital gains tax last year, having already made it. I am prepared to volunteer through my noble friend to teach the noble Lord, Lord Foulkes, first, how to make a capital gain and, secondly, how he declares it for tax.

Lord Bridges of Headley: I look forward to that great contribution, my Lords.

Lord Berkeley (Lab): My Lords, given my noble friend's question on tax avoidance and the Minister's answer, how can he link this with the fact that the Inland Revenue has just lost 20% of its staff?

Lord Bridges of Headley: My Lords, I know that my right honourable friend the Chancellor will continue to ensure that HMRC has the assets and resources at its disposal to do what is required.

Universal Credit

Question

2.51 pm

Asked by ***Lord Leigh of Hurley***

To ask Her Majesty's Government what is their assessment of the experience of those claiming Universal Credit.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): For those who are now claiming universal credit, the experience is a positive one. Work is clearly incentivised and as a result claimants look for work more actively, find work more quickly, stay in work longer and earn more. The system is simpler and easier to understand for claimants, those who advise them and departmental staff.

Lord Leigh of Hurley (Con): I thank my noble friend the Minister for that Answer. What steps has he taken to protect the most vulnerable people encompassed by the system and those people who will be encompassed by it in the rollout?

Lord Freud: Clearly, as we roll out universal credit in the years to come, we will be pulling in people who are more vulnerable than the groups we are currently

[Lord Freud]
pulling in. We are looking to support them in a number of ways. That is one of the reasons why we are doing this careful rollout with a test-and-learn strategy. But the specific things we are looking at in this area are help with personal budgeting support and the development of universal support delivered locally, where we are in partnership with local authorities throughout the country. We are trialling that and the results will inform the future rollout.

Lord Rooker (Lab): Is it not also true that the system is simpler to understand for cybercriminals? Given the fact that universal credit is going to be such a large percentage of government spending, what preparations are the Government taking to make sure that this system is clear and safe from cyberatttack?

Lord Freud: The noble Lord is absolutely right that this is potentially a major target for cybercriminals. We have made an enormous effort in developing the digital system, which is a two-way system, unlike the live system that we are currently rolling out across the country. We are making sure that that is safe from cybercriminals, and the first group of people are looking at security operations, because it is not a question of just building a system; you have to maintain it with a big team to make sure that nothing of that nature is going on.

Lord Kirkwood of Kirkhope (LD): Will the Minister confirm that when this House enacted the Welfare Reform Act 2012, the planning assumption was that up to 1 million households would now be receiving universal credit? Will he acknowledge that actually the number of households receiving universal credit is just over 50,000? Will he also accept that that means that lots of families are being denied useful help month by month and the delay is therefore important? Will he undertake to talk to his business manager friends on the Government Front Bench to try to find ways of regularly updating the House over the next 18 months? The delays in the introduction of universal credit are now causing real grief within low-income households.

Lord Freud: One of my purposes today is to find a forum where I can update noble Lords in this Chamber about what is happening in a somewhat more sensible atmosphere than is perhaps seen elsewhere in the Palace of Westminster. On the point about timing we have reset this programme, as I am sure all noble Lords here well remember, and will not be going on to the rather sharp upgrades in the volumes that we were initially looking at. We are now designing it in such a way that we will test different groups and make sure that we roll it out sensibly. That was what the reset was about and, interestingly, it is exactly what the NAO and MPA are saying is the way to roll out big programmes.

The Lord Bishop of Chester: My Lords, in his Answer the Minister referred to universal credit as incentivising people to work. Can he give a bit more detail on just what that incentivisation involves? What is the typical marginal effective tax rate for someone who is on universal credit, given that I read recently that it can be more than 70%?

Lord Freud: The marginal rate—the rate at which one withdraws benefit—is 65%. In practice, among the incentive effects are that all the constraints about taking temporary jobs or trying part-time jobs have disappeared, as have some of the constraints against people who may be disabled with fluctuating conditions. They would not normally dare take on a job because if their condition came back, they would have to restart the process of getting on benefits. Because universal credit is both an out-of-work and in-work benefit, it means that there is no risk element to being in work.

The Countess of Mar (CB): My Lords, the Minister will no doubt have seen and heard increasing criticism of tax credits as a way of supporting profit-making companies which should be paying proper wages to their staff but are bad employers. What are Her Majesty's Government doing to reduce the number of people claiming tax credits and incentivise employers to pay proper wages to their staff, so that they do not need to claim tax credits?

Lord Freud: My Lords, it is a bad day to answer that question. The real point is that as we move from the combination of the benefit and tax credit systems into one universal credit system, the incentives will be restructured to encourage people to work their way down the taper.

Baroness Sherlock (Lab): My Lords, I am grateful to the Minister for wanting to update us—in fact, he sent me a lovely letter last week telling me how well universal credit was going—but the point made by the noble Lord, Lord Kirkwood, was that we were expecting 1 million people to be on it by last year. In fact, in two years' time there should be 7 million people on it. So if the Minister wants to update us, given that there are currently just 65,000 people getting universal credit, will he not follow the advice of the National Audit Office and tackle the secrecy surrounding the programme? In particular, will he agree to publish the full business case for universal credit and a proper plan with milestones, so that we can judge it and reassure people how their money has been spent and when universal credit will be rolled out? He will know that his good friend the Prime Minister has said that sunlight is the best disinfectant. Is it not time to throw open the windows of DWP and let some light in?

Lord Freud: We have completed the strategic outline business case and will be doing the outline business case this summer. We have actually put out quite a lot of figures, in particular on the amount that this programme is costing, which is down from the original £2.4 billion to £1.8 billion. The letter which I sent to the noble Baroness and various others, and which is available in the Library, tries to deal with the main changes going on in this programme. It reflects my

determination that this House will be kept informed of developments as they come up. I have made a commitment to do that and I will do that.

Fracking
Question

2.59 pm

Asked by ***Lord Truscott***

To ask Her Majesty's Government what assessment they have made of the decision by Lancashire County Council to reject a planning application by Cuadrilla to frack in that county; and, in the light of that decision, whether they plan to conduct a study into the possible impacts of hydraulic fracturing in the United Kingdom.

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, it would be inappropriate for the Government to comment on the specifics of any local planning decisions, which are a matter for the local planning authority. However, I make it clear that the Government continue to support the development of the shale industry in the United Kingdom. A number of independent reports have shown that any risk can be managed very effectively.

Lord Truscott (Non-Afl): I thank the Minister for that reply. In illustrating the need for a study of the environmental and economic impact of fracking, would the Minister comment on a report on the experience of Oklahoma in the *Financial Times* on 7 May, which pointed out that, although earthquakes are rare in that state, there were some 2,000 last year—308 of them above 3.0 on the Richter scale? Could he give further thought to a study by the Government into the impact of fracking in the UK?

Lord Bourne of Aberystwyth: My Lords, as independent experts have indicated, the geology of the United Kingdom is very different from the geology of Oklahoma. There, of course, it is about oil, while here in the north of England it is gas. An expert from the University of Glasgow, Dr Rob Westaway, said that if you are talking about seismic danger, you might as well talk about the danger of slamming a wooden door.

Lord Palmer (CB): My Lords, would the Minister not agree that fracking is perfectly safe as long it adheres to a very strict code of conduct when carrying out the actual fracking?

Lord Bourne of Aberystwyth: My Lords, the code of conduct followed and the procedure in the United Kingdom, with the HSE and the Environment Agency, are among the best in the world. We have every reason to believe that fracking is totally safe and that any risks can be effectively managed.

Baroness Armstrong of Hill Top (Lab): My Lords, will the Minister recognise that the Government have given considerable comfort to local residents who object to wind farms? Are the Government going to give the same comfort to residents who object to fracking?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness will be aware that there is a strong local element to the decision that has just been taken. The Government are of the view that a strong local element is important.

Lord Wigley (PC): My Lords, does the Minister accept that, irrespective of the fact that he cannot go into detail about Lancashire, it is vital for the communities potentially affected by fracking, for local authority employees and councillors, and indeed for the companies that may be interested in fracking, to know exactly where responsibility lies on these matters? In that context, and given the statement made by his right honourable friend the Secretary of State for Wales in March about transferring powers to the National Assembly for Wales, can he now tell us from what date that will be effective?

Lord Bourne of Aberystwyth: The noble Lord will be aware that the Wales Bill will be subject to pre-legislative scrutiny this autumn. The Bill should become law at the end of next year or early in 2017.

Lord Purvis of Tweed (LD): My Lords, in February, correspondence from the Committee on Climate Change to the Environmental Audit Committee in another place said that,

"UK shale gas production can be consistent with meeting UK carbon budgets but only if … it is accompanied by a strong commitment to reduce all greenhouse gas emissions (and therefore gas consumption), for example by setting a power sector decarbonisation target".

Will the Minister be clear about the Government's decarbonisation target for the UK power-generation sector and what proportion they see shale gas being of that overall target?

Lord Bourne of Aberystwyth: My Lords, the noble Lord will be aware that most renewables are intermittent and we need a back-up. MacKay and Stone have said that the gas carbon footprint of shale gas is comparable to that of imported gas, lower than that of LNG and much lower than that of coal. We need it in our transition to our zero-carbon economy. That is why it is so important.

Baroness Blackstone (Lab): My Lords, is the Minister aware that the House of Lords Economic Affairs Committee took evidence last year from the Environment Agency and the Royal Society, and from scientists outside those organisations, all of whom were extremely reassuring about the environmental effects of shale gas and oil exploration? In the light of that reassuring evidence, what further steps are the Government taking to encourage exploration?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Baroness for that contribution. I was aware of the encouraging sounds made by those bodies. It is

[Lord Bourne of Aberystwyth]
absolutely right that such exploration is safe. It is also important to note that it will generate 60,000 British jobs. The other important point is that it provides secure energy. It will mean that in 2030, rather than having 75% of our gas imported, that figure will be down to 40%. That is a massive contribution.

Baroness Jones of Moulsecoomb (GP): My Lords, I am sure the Minister is aware that DECC has just had its 14th licensing round for onshore drilling. For some reason, the area around the Prime Minister's constituency of Witney appears to have been omitted in spite of being densely covered with quite promising seismic profiles. I am curious about why that has happened if the Prime Minister is such a fan of fracking.

Lord Bourne of Aberystwyth: My Lords, I am not quite sure—perhaps I am—what the noble Baroness is suggesting. Let me reassure her that the process is quite independent. She will be aware that most of the area for fracking gas is in Lancashire, Yorkshire and Nottinghamshire and, of course, the Prime Minister's constituency is well south of that.

Lord Purvis of Tweed: My Lords, what is the Government's decarbonisation target and over what timeframe?

Noble Lords: Order!

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister give the same assurance about the pursuit of oil? I declare an interest as a Lancashire resident and a former Lancashire county councillor. I would like a cast-iron guarantee with regard to oil and gas that the south of England will not be protected more than the north.

Lord Bourne of Aberystwyth: My Lords, I am happy to give that guarantee. The noble Baroness will be aware that in relation to the north, a wealth asset fund will be created from any exploitation of shale gas, but any treatment will be totally equitable throughout the United Kingdom.

Lord Geddes (Con): My Lords, not for the first time, I ask my noble friend: what are the prospects for tidal power?

Lord Bourne of Aberystwyth: My Lords, I am aware of my noble friend's interest in that. He will be aware that the Swansea lagoon project has planning permission and there are many other promising tidal lagoon projects waiting in the wings. Tidal power is a matter to which the Government are giving close attention. It is a very exciting prospect.

Hereditary Peers By-Election

Announcement

3.06 pm

The Clerk of the Parliaments announced the result of the by-election to elect a Cross-Bench hereditary Peer in the place of Viscount Tenby in accordance with Standing Order 10.

Twenty-five Lords completed valid ballot papers. A paper setting out the complete results is available in the Printed Paper Office and online. That paper gives the number of votes cast for each candidate. The successful candidate was Lord Mountevans.

Arrangement of Business

3.07 pm

Lord Foulkes of Cumnock (Lab): My Lords, before we move on to the next business, I have been sitting in the Lords Gallery in the other place in the debate on English votes for English laws, which has serious consequences for constitutional issues of interest to this House. Will the Leader of the House or the Chief Whip give an assurance that, before any changes are made, this House will have an opportunity to debate the matter?

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, it is rather unconventional for the noble Lord to stand up to ask a question when a Motion or Question has not been tabled. However, I can tell the House that somebody was successful today in the ballot for a topical QSD on this topic, so there will be a debate under those terms a week on Thursday.

Office of Lord Chancellor (Constitution Committee Report)

Motion to Take Note

3.08 pm

Moved by ***Lord Lang of Monkton***

That this House takes note of the Report of the Constitution Committee on *The Office of Lord Chancellor* (6th Report, Session 2014–15, HL Paper 75).

Lord Lang of Monkton (Con): My Lords, I welcome the proposed participation in the debate of a number of members, past and present, of the Constitution Committee—and, with some diffidence, I also welcome some very distinguished members of the judiciary and the legal profession who plan to take part.

I should stress at the outset that our inquiry was focused on the office of Lord Chancellor and not on its individual occupants. We were driven by the evidence that emerged to two central conclusions: first, on the importance of the rule of law in government, and, secondly, on the need within government to have clearly defined responsibility for the upholding of the constitution. In this of all years, when we celebrate the 800th anniversary of the sealing of the Great Charter, it seems timely to reassert the primacy of the rule of law in our democratic heritage, which is still central today to the workings of our constitution and our courts.

The office of Lord Chancellor has evolved substantially over nine centuries, but our report focused on the reforms between 2003 and 2005. We sought to understand the constitutional position of modern Lord Chancellors. In 2003, as your Lordships will know, the Lord Chancellor

was an important parliamentarian, Cabinet Minister and judge. He was Speaker of this House, he was entitled to preside as chairman of the Law Lords and he was head of the judiciary. In government he was head of a department, with a wide range of responsibilities, including constitutional affairs.

The Lord Chancellor was a figure at the heart of government who brought together the three pillars of the state: the Executive, the legislature and the judiciary. As a system, it worked quite well and fully justified his high status in the order of precedence. However, as a recent Lord Chancellor, my right honourable friend Kenneth Clarke, told us, such a "bizarre combination of roles" is,

"something you could not defend to the outside world".

The reforms made in the last decade removed the Lord Chancellor's role in your Lordships' Chamber; the Lord Chief Justice replaced the Lord Chancellor as head of the judiciary in England and Wales; and the creation of the Supreme Court replaced the Law Lords without the Lord Chancellor as a member. Within government, the now much-reduced office of Lord Chancellor was eventually given additional responsibilities by being merged with those of the Secretary of State for Justice, and in 2010 the post was stripped of its responsibility for constitutional affairs, which was transferred to the new Deputy Prime Minister, Mr Clegg.

Against that background, the modern Lord Chancellor's relationship with the legislature and the judiciary may now be substantially different and more remote, but some of the role's essential duties remain. The Constitution Committee noted in a 2007 report that,

"the role of Lord Chancellor is of central importance to the maintenance of judicial independence and the rule of law".

The rule of law may not be, as a former president of the Supreme Court told us, readily defined or readily understood. It remains, as the committee has previously stated, a complex and in some respects uncertain concept. Yet it is also perhaps the single most important characteristic of a democratic nation.

I suggest that the rule of law requires an independent justice system, free from corruption and outside interference. It requires those in power to comply with the law to ensure a stable and predictable exercise of power, rather than an arbitrary one. But these two elements alone are insufficient. Surely the rule of law goes beyond judicial independence and simple compliance with law, particularly as regards the Government, who can, through Parliament, change the law. We concluded that in the context of government, the rule of law must include the tenet that the Government should seek to govern in accordance with constitutional principles as well as with the letter of the law. We did not attempt to define these principles in their entirety, although we noted, with respect, Lord Bingham's eight principles of the rule of law as a valuable articulation of such core constitutional principles, including, as they did, access to justice, equality before the law and the protection of fundamental human rights. We were pleased that the Government agreed with this conclusion. Acting in accordance with this wider conception of the rule of law places a constitutional constraint on their power, through Parliament, to change the law in any ways that they see fit.

The Lord Chancellor's responsibilities in relation to judicial independence, a core aspect of the rule of law, are clear. His unique oath of office, set out in the Constitutional Reform Act 2005, calls on the post-holder to defend the independence of the judiciary, yet his responsibilities in respect of the rule of law beyond judicial independence are ill-defined. The last Lord Chancellor, my right honourable friend Chris Grayling, felt that the duty to uphold the rule of law resided with every Minister and parliamentarian, not simply with the Lord Chancellor. While this is undeniably true, it ignores the special role that most of our witnesses, including other former Lord Chancellors and Attorneys-General, felt that the Lord Chancellor should play.

We concluded that the Lord Chancellor has additional responsibilities to the rule of law beyond those of other Ministers. This duty extends beyond the day-to-day responsibilities of the Lord Chancellor in respect of the judiciary and the Ministry of Justice. It requires the Lord Chancellor to seek to ensure that the rule of law is upheld both within Cabinet and across government. One could describe him or her as playing the role of the Government's conscience, ensuring that the Government follow not only the letter but the spirit of the law, and indeed of the constitution.

I am grateful to the noble Lord, Lord Pannick, who I think is not in his place today—no, he is in his place, so I am all the more grateful—for drawing attention in a recent article in the *Times* to an important speech by the new Lord Chancellor, my right honourable friend Michael Gove, who said that his role was,

"different from other Cabinet posts. The most important thing I need to defend in this job—at all costs—is not a specific political position—but the rule of law".

That is a most encouraging departure from the disappointing response we had on this point from the coalition Government, and I hope that it augurs well for the future.

To reflect this important duty, we recommended that the Lord Chancellor's oath of office be amended, not just to respect the rule of law but to respect and uphold it. This is not mere semantics. The 2005 Act makes it clear that the Lord Chancellor's duty towards the rule of law remains unchanged. We believe that that special duty should be reflected in his oath of office. We were disappointed that the coalition Government also rejected this recommendation and that they felt that there was no need for a specific requirement on the Lord Chancellor in this respect. We believe that this stance ignores both the traditional role of the Lord Chancellor as guardian of the constitution and the need for a senior Cabinet member to represent the importance of constitutional principles in those difficult situations when political needs and constitutional principles come into conflict. Perhaps we may yet hope for a change of heart from the new Government.

Our report also considered the value of appointing only Lord Chancellors with a legal or constitutional background. While it is not essential, we drew attention to the benefits of doing so. However, it is more important to ensure that the Lord Chancellor is a senior member of Cabinet, with sufficient authority to speak up for the principle of the rule of law in dealing with ministerial

[Lord Lang of Monkton]
colleagues and the Prime Minister, and with a clear understanding of his or her duties in relation to the rule of law. However, in the event that the Lord Chancellor is not legally qualified, we felt it appropriate that either the Permanent Secretary at the Ministry of Justice be legally qualified or the top legal adviser in that department be appointed at Permanent Secretary level. We welcome the recent announcement that the newly appointed Permanent Secretary at the department is a lawyer.

The Lord Chancellor is not the only individual to have a special responsibility to uphold the rule of law. In this duty he will of course be aided by others, both within and without Government. The role of the Attorney-General in particular has become more important. While the Government's response recognised that importance with regard to upholding the rule of law, it made no reference to the impact of the changes to the office of Lord Chancellor on the role of the Attorney-General. That ignores the very real impact of those changes since the reforms of the last decade and leaves uncertain the distribution of responsibilities that relate to the rule of law.

In our report we recommended that the Government,

"should ensure that the responsibilities of those charged with upholding the rule of law are clear and widely understood".

The Government did not respond to that recommendation, and I would be grateful if the Minister could clarify the Government's view of the respective roles of the Attorney-General and Lord Chancellor in upholding and representing the rule of law, in Cabinet and across the work of government more generally.

The traditional role of the Lord Chancellor included what might be described as a guardianship or stewardship role with regard to the constitution more generally. Once again we found a disturbing lack of clarity as to where responsibility for the constitution lies. Mr Grayling felt that,

"the constitutional role that the Lord Chancellor once performed … is not currently there".

He stated that the then Deputy Prime Minister had taken over that responsibility. Yet Mr Clegg was responsible for political and constitutional reform only, and we heard no evidence to suggest that he had a wider constitutional oversight role. Indeed, surprisingly, neither Mr Clegg nor the Lord Chancellor was a member of the Devolution Cabinet Committee, which was formed to look into matters relating to devolution. This lack of a focal point for constitutional oversight may explain why there appears to have been no central co-ordination and oversight of the devolution settlements, and minimal consideration given to the effect of devolution in one area of the United Kingdom, on other areas and on the union as a whole.

This is a serious issue. Demand-led devolution can undermine seriously the integrity of the nation state. We recommended that a senior Cabinet Minister, preferably the Lord Chancellor, should have responsibility for oversight of the constitution as a whole, even if other Ministers have responsibility for specific constitutional reforms. I fear that the Government's response to this recommendation suggests a lack of understanding in government of the reasons for our concern. After noting that the Deputy Prime Minister was Secretary of State for constitutional policy, the response stated:

"Senior ministerial oversight reflects the importance of the constitutional changes outlined in the Programme for Government. This arrangement gives a clear focus for the delivery of reforms".

That response fails to address the central part of our argument: that there needs to be consistent, high-level oversight of the constitution as a whole, beyond transient proposals for change. The unwritten nature of the United Kingdom's constitution requires careful oversight if political whims are not to unbalance or damage its fabric. There is no evidence of any such oversight at present.

I urge the Minister to think carefully about this recommendation. As recent reforms to the devolution settlement and, potentially, to our relationship with the European Convention on Human Rights move forward, it is essential that the constitution be protected by the consistent and coherent oversight that has to date been lacking. I hope that the new Government will think again. I beg to move.

3.21 pm

Lord Beecham (Lab): My Lords, Newcastle, in its time, has contributed significantly to our judicial system. Two of its sons have recently held the position of Lord Chief Justice: the late and much lamented Peter Taylor, and the noble and learned Lord, Lord Woolf, whose distinguished career was marked in the recent Birthday Honours by the conferment upon him of the status of a Companion of Honour. I am sure that your Lordships will join me in congratulating him on this significant honour.

Noble Lords: Hear, hear.

Lord Beecham: However, it was Lord Eldon who could perhaps have laid claim to holding the highest position in our jurisprudence, having served as Lord Chancellor for some 27 years in the 19th century. He was an unrelenting reactionary, whose portrait has followed me like a mobile version of Dorian Gray through my school years in Newcastle, my studies at University College, Oxford and now in your Lordships' House. I thus have a more personal, if historical, interest in the subject of this debate than would otherwise be the case, and I welcome the opportunity that the noble Lord, Lord Lang, and his Committee have created to discuss the Constitution Committee's report and what passes for the Government's response to it.

One of the many reasons for welcoming the timing of this debate is that we no longer have as Lord Chancellor Mr Grayling, whose period of office betrayed not only reactionary tendencies of a kind of which Lord Eldon would no doubt have heartily approved, but also exemplified the problems the Committee sought to address. The new Lord Chancellor, Mr Gove, has the opportunity not only to instruct his department in the use of grammar, but to review the approach to the position and duties which he has inherited. As I said last week in the debate on human rights, Mr Gove's Legatum lecture has raised hopes in that respect, although he did not address the specific issue of the

wider aspects of the Lord Chancellor's role. I understand, however, that he has already proved more willing than his predecessor to engage on a personal level with key players in the legal world. Provided that he does not lapse into the kind of language he deployed while Secretary of State for Education, this certainly augurs well. After all, we would not wish to read of the legal, still less the judicial, "Blob".

The committee's report seem to me to be a balanced, not to say judicious, review of and response to the changes wrought between 2003 and 2007. This is of course to be expected of a committee comprising eminent lawyers, former Ministers and distinguished—if I might be forgiven for putting it this way—ordinary Members of your Lordships' House. I very much look forward to hearing the contributions to come, not least from those who have held high judicial office. Although we do not have with us the noble and learned Lord, Lord Mackay of Clashfern, we do have my noble and learned friend Lord Irvine, himself a distinguished occupier of the post. Of course, we have my noble and learned friend Lord Falconer, whose presence I cannot omit to mention and who will be winding up for the Opposition at the end of the debate. Many Members will have read my noble and learned friend's lecture to the Bentham Association. His presence in that body no doubt relegates me to the position of only a second, or perhaps superfluous, Jeremy in his life.

I found the Government's response to the committee report, as expressed in Mr Grayling's letter of 26 February, disappointing. The broad welcome it purported to accord to the report does not really seem to be reflected in his response to the most significant of the committee's recommendations. The committee made 19 statements, observations and recommendations, some of which the noble Lord, Lord Lang, has referred to today. The Government responded to 10 of them and some of their replies, frankly, give cause for concern. Thus, importantly, the Government reject the invitation in paragraph 25 of the committee's report,

"to agree that the rule of law extends beyond judicial independence and compliance with domestic and international law",

and that it,

"includes the tenet that the Government should seek to govern in accordance with constitutional principles, as well as the letter of the law".

Moreover, it rebuts the dictum of the noble and learned Lord, Lord Hope of Craighead, that,

"the rule of law requires that judges must retain the power to insist that legislation of that extreme kind is not law which the courts will recognise".

Similarly, it rejects the recommendation at paragraph 51 of the report that the Lord Chancellor's oath should include a promise to respect and uphold the law—a point made by the noble Lord, Lord Lang. At paragraph 79 it asserts in relation to the proposition that the Attorney-General should attend all Cabinet meetings and be adequately resourced that the law officers are so resourced, which in the light of the experience of the Serious Fraud Office, the Director of Public Prosecutions and the courts service would make them almost unique in the judicial system in this context, if it were true.

The fact that there is no longer a Deputy Prime Minister with responsibility for constitutional matters might allow the Government to change their opposition to the committee's recommendation at paragraph 101, to which, again, the noble Lord referred, that this responsibility should lie with the Lord Chancellor. Perhaps the Minister could indicate whether this is now under consideration and, if it is not yet, perhaps he would be good enough to raise the matter with the current Lord Chancellor.

Given the committee's acceptance that the Lord Chancellor need not be a lawyer, it is disappointing that the suggestion, at paragraph 113, that in such an event the Permanent Secretary of the Ministry of Justice should be legally qualified is dismissed, although I welcome the news that in fact the appointment has been made of somebody who is legally qualified. The Government's response simply indicated that the Lord Chancellor could rely on the Treasury Solicitor's Department for counsel. That might be thought to be somewhat less than desirable.

Strikingly, the noble and learned Lords, Lord Judge and Lord Woolf, and Sir Hayden Phillips raised concerns, reported at paragraph 68 of the committee's report, about the level and legal expertise of support for the Lord Chancellor, with Sir Hayden Phillips, as a former Permanent Secretary, referring to the loss of staff to other parts of the justice system. At the very least one might have hoped that the department would have a highly qualified lawyer at, or very near, the top of its structure as a matter of course, it not being determined on the occasion of each separate appointment.

Paragraph 110 noted the concern of Sir Hayden Phillips, echoed by the Bar Council, that the expectation of the 2005 Act was that,

"'the Lord Chancellor would be a lawyer but his principal official adviser would not'".

He stressed the need for a balance of experience and expertise, which he affirmed, "has now gone", and "is potentially damaging". He went on to propose that the position of legal adviser should be at Second Permanent Secretary level. The Government rejected the committee's proposal that the Permanent Secretary be legally qualified or, in the alternative, that the top legal adviser should be at Permanent Secretary level. I think that the report may have slightly erred there and that that should have been a reference to Second Permanent Secretary level. However, as I said and as the noble Lord pointed out, for the moment that is not a problem.

Worryingly, the Government airily dismiss concerns, reflected in paragraph 125 of the report, that the person appointed to the position of Lord Chancellor should have,

"a clear understanding of his or her duties in relation to the rule of law and a willingness to speak up for that principle in dealings with",

other colleagues "including the Prime Minister". Such, as I understand it, was very much the role, for example, played by the noble and learned Lord, Lord Mackay of Clashfern, and no doubt other recent Lord Chancellors under the former regime. What is the evidence that Mr Grayling, as opposed to his predecessor, Mr Clarke, was even remotely interested in so doing? What was

[Lord Beecham]

the nature of the evidence that Mr Grayling was qualified by experience, as prescribed by the Constitutional Reform Act? The Government responded to that by saying:

"There is a range of evidence that the Prime Minister can take into account when reaching such a conclusion"—

that is to say, that the person is qualified. I remind your Lordships that the letter to the noble Lord, Lord Lang, was signed by Mr Grayling himself—I am tempted to add, QED.

What is striking in reading the committee's report is the very limited perspective of the former Lord Chancellor in respect of his role—the noble Lord has touched on that, perhaps rather more gently than I am doing. Paragraph 44 of the report states:

"the current Lord Chancellor does not believe that he has a wider guardianship role in Government beyond upholding the independence of the judiciary and the integrity of the justice system".

Paragraph 49 states:

"It is regrettable that the Ministerial Code and the Cabinet Manual do not address the Lord Chancellor's role in respect of the rule of law, beyond judicial independence".

Paragraph 55 reveals that,

"Lord Chancellors since 2010 … have not been members of the Parliamentary Business and Legislation Committee",

which clears all legislation. The committee noted that this,

"represented an important route through which Lord Chancellors were kept informed about the Government's legislative and policy agenda".

To none of these points did the Government condescend to reply, a reprehensible omission, particularly in relation to the reference by the committee to the Lord Chancellor's role in respect of the rule of law.

Some 60 years ago, Bayard Rustin, one of the leaders of the American civil rights movement, coined the phrase, "speaking truth to power". It is surely the duty of the Lord Chancellor to speak justice to power, even if—especially if—he is himself an integral component of the system of power. I trust that the new Lord Chancellor will listen further to the representations of the committee, and perhaps what is said in your Lordships' House today, and seek to emulate the record of some of his most distinguished predecessors in this respect.

3.32 pm

Lord Lester of Herne Hill (LD): My Lords, like others who will speak after me, I have the privilege of being a member of the Constitution Committee that produced this report. The House of Lords frequently hears a great deal of flattery across the House and mutual admiration, but what I am about to say is not flattery: I have never served on any committee, of this House or otherwise, under a better chair than the noble Lord, Lord Lang. I am very grateful to him for the service that he gives that committee. He summarised the report so fully that it is unnecessary for me to repeat what he has said.

The report was published on 11 December. The then Lord Chancellor, Chris Grayling, gave the Government's response in a letter of 26 February 2015. As the noble Lord, Lord Beecham, has just observed, he rejected most of the committee's key recommendations. This debate gives the House the opportunity to review that response. I hope that the luckless Minister, who has to do many difficult things, will be able in his reply to give the new Government's response to the committee's key conclusions and recommendations, which are summarised in chapter 5.

If I may, I will ask a few questions that have not necessarily been covered by the speech of the noble Lord, Lord Beecham. Do the Government agree that, as paragraph 32 states, the Lord Chancellor must ensure that the judiciary must be,

"free to act without undue pressure from the executive, that the executive respects the outcome of court judgments, and that the legal system is adequately resourced"?

Chris Grayling's letter did not refer to that at all.

The committee found it regrettable, in paragraph 49, that,

"the Ministerial Code and the Cabinet Manual do not address the Lord Chancellor's role in respect of the rule of law, beyond judicial independence. The *Cabinet Manual* refers to the Law Officers' role in 'helping ministers to act lawfully and in accordance with the rule of law', … but makes no mention of the Lord Chancellor's duty in this respect. The only mention of the Lord Chancellor in the Ministerial Code relates to the appointment of judges and legal officers to Royal Commissions and inquiries".

We referred to Jack Straw's evidence that the two documents,

"'have not caught up with' the changed role of the Lord Chancellor".

Chris Grayling's letter did not refer to this. Why do the Government disagree with the committee's recommendation in paragraph 50 that there should be a specific requirement on the Lord Chancellor to respect and uphold the rule of law, and that the *Ministerial Code*, *Cabinet Manual* and oath of office should be amended accordingly?

The committee recommended, in paragraph 101, that the Lord Chancellor is best placed to have responsibility for oversight of the constitution as a whole, in light of his responsibility for the rule of law. As your Lordships have heard, Chris Grayling responded that the then Deputy Prime Minister, Nick Clegg, had that responsibility. The Chancellor of the Duchy of Lancaster, Oliver Letwin, is now responsible for advising the Prime Minister on how to implement government policy co-ordinating constitutional reform. Why has Mr Letwin, rather than the Lord Chancellor, been given this responsibility?

Mr Grayling rejected the committee's recommendation, in paragraph 113, that the Government should,

"either ensure that the Permanent Secretary supporting the Lord Chancellor at the Ministry of Justice is legally qualified, or appoint the top legal adviser in that department at permanent secretary level".

Chris Grayling disagreed because he said that the Lord Chancellor and the Permanent Secretary have access to high-quality legal services. We received evidence, referred to in paragraph 68, from former Lord Chief Justices and the noble and learned Lords, Lord Judge and Lord Woolf, both of whom I am delighted are in their place for this debate, about the level and expertise of legal support for the Lord Chancellor inside the Ministry of Justice.

Mr Grayling's response failed to deal with the concern, expressed by the noble and learned Lord, Lord Woolf, to us that,

"whereas a [pre-reform] Lord Chancellor could position himself outside the normal ministerial role in relation to political issues that are deeply contested, it is much more difficult for someone who is both Lord Chancellor and Minister of Justice".

Mr Grayling was the first Lord Chancellor in modern times not to have a legal qualification. He introduced deep cuts to the provision of legal aid and made inroads on judicial review. I much regret that I had to support a coalition Government in those measures. Mr Gove is in charge of government policy now to tear up the Human Rights Act and decouple our system from the European Convention on Human Rights. They are not constrained by any other Cabinet Minister or by Dominic Grieve, who was sacked as Attorney-General for disagreeing with government policy on human rights. The challenges to access to justice and the rule of law are clear and dangerous, and will have to be dealt with politically.

It would, I think, be possible to be a fine Lord Chancellor without being a lawyer. My old boss, Roy Jenkins, would have been, because the rule of law was part of his DNA—indeed, he would have been a better Lord Chancellor than some who have been lawyers. Although the noble Lord, Lord Pannick, has rightly welcomed the recent speech made by Mr Gove, Mr Grayling does not have the rule of law in his DNA nor, I regret to say, do the rest of the Cabinet. It will be for the judiciary and Parliament to call them to account.

3.40 pm

Lord Woolf (CB): My Lords, it is very difficult to follow three such distinguished speeches on this subject. I listened to what the noble Lord, Lord Lang, had to say, followed by my fellow Geordie, the noble Lord, Lord Beecham, who showed huge generosity to a rather more junior Geordie in the matters we are talking about in the political area. Finally, we heard from the noble Lord, Lord Lester, who sometimes describes himself as my kinsman. I am very glad that he feels that relationship with me. I am not sure that it is fully justified, but there we go.

I should declare an interest not only in my capacity as a former judge but because for five years before I became a judge I was the holder of the strange office, which I am glad to say still exists, known as the Treasury Devil. The Treasury Devil has the unique responsibility, under the guidance and on the direction of the Attorney-General, of appearing across the board for government departments in the courts and giving advice to the Government on difficult issues—such advice being traditionally regarded as of considerable importance.

I mention that interest because it gave me a unique opportunity to observe how the lawyers in government work to uphold the rule of law. My experience was that they were quite exceptional in their skills and in their knowledge of many of the issues on which I had to depend on them. They had the advantage, particularly if they were in what was the Lord Chancellor's Department, of normally holding their position for much longer than the majority of civil servants do today. One of the matters I mentioned in my evidence to the committee was my concern, to which reference has already been made, that we have lost something because of the frequency with which officials are moved around within the system so that they do not acquire the benefits of considerable experience in their work. Such experience meant that, perhaps uniquely in the European Community, where I was also required to appear from time to time, our civil servants would take this attitude, "If in doubt, don't". Elsewhere, the approach appeared to be, "If in doubt, do, and see if somebody stops you". This was very significant in relation to questions of the rule of law and in my view reflects the culture that had grown up within government, which was of great benefit to our constitution.

As we heard in the previous speeches, there are differences of emphasis, some of them significant, between the response of the Government and what the committee recommended. I will say two things with regard to that. First, I agree entirely with what was recommended by the committee and with what has been said in prior speeches today. I mention that because in this area it is important to see that we are concerned with a topic that not only is difficult but about which there is really no certainty as to its limits. It is a topic where an understanding of the subject is critical. There is concern about that because, historically, and I would say even today, the Lord Chancellor plays a critical role in maintaining the rule of law—or perhaps I should say, bearing in mind certain criticisms that the House has heard, should play a critical role with regard to the rule of law.

It is an area where appearances are important. We have to remember that it is not only in this country that those appearances are considered but in many other countries—most importantly of all, within the Commonwealth, where this country still has a leadership role. What the committee said, which will strengthen the situation, is something to which the greatest attention should be paid.

In particular, I go to a matter that has already been referred to: the splitting up of responsibilities in respect of the constitution. The differences brought about by the constitutional changes of 2005 contained in the Constitutional Reform Act mean that already the ability of the Lord Chancellor to perform what has historically been his role is made at least more difficult. If that be the situation, why is it important to give two members of the Cabinet the responsibility of dealing with an area? Are we not going to obtain a better, comprehensive approach to the important constitutional issues at stake if it rests clearly in the hands of one member of the Government? I ask the Government to think again about that particular difficulty.

Clearly, the concern has been appreciated about the position of the senior civil servants in what was the Lord Chancellor's Department and in the Ministry of Justice. I certainly welcome the fact that we now have a Permanent Secretary in that department who has a legal background. If the Lord Chancellor has no practical experience of the working of the courts and the justice system, it is a hugely difficult task for him to adjust to the responsibilities of his office. He really will be dependent, at least initially, on what he is told by his advisers. In that situation, it is most important that the advisers should be aware of the culture that exists.

[Lord Woolf]

I know that it can be said that there is a terrible danger of conservatism with a small "c" if you get lawyers to appear in that role. My contention is that if one looks at what happened in the past, Lord Chancellors who were lawyers and who were advised by Permanent Secretaries who were lawyers were not slow in introducing reforms that they were satisfied were necessary. That is one of the most important recommendations of the committee that should be looked at again. There are other matters that I could speak about, but in comparison to the one on which I have focused, they are of lesser importance, so I shall say no more.

3.49 pm

Lord Crickhowell (Con): My Lords, it is an honour for a non-lawyer to follow a most distinguished lawyer. It is a situation that I frequently found myself in during my time as a member of the Constitution Committee, where I used to play what I called the "Pooh Bear role" of admitting that I was, perhaps, not very well informed so could an explanation be given clearly? That often produced a degree of clarity that had not previously existed.

A great deal has happened in the nearly seven months since this Constitution Committee report was published. The membership of the committee has substantially changed; I am one of those who is no longer a member. There is a new Government and a new Lord Chancellor. I intend to concentrate on reinforcing what my noble friend Lord Lang and the noble Lord, Lord Beecham, said about the response that the then Lord Chancellor, my right honourable friend Chris Grayling, finally gave the committee on behalf of the Government. I emphasise "finally", because it was not until the end of February that a response was received to a report published well over two months earlier. When it was received, and then only after a good deal of pressure from our admirable clerks, it fell lamentably short of the standards that I believe Parliament is entitled to expect of ministerial responses to important Select Committees.

I say to the noble Lord, Lord Lester, many of whose remarks I agreed with, that I thought he was a little unwise to refer to the lack of the appropriate DNA in the Cabinet for these matters. We are talking about a previous Cabinet of an Administration of which a good many of his noble friends and others were Ministers and members. We are not talking now, in this report and the criticisms that we make, of the present Government. I hope that the new Lord Chancellor and the new Government will do better than was done previously. I am delighted that the new Lord Chancellor has started by emphasising the importance that he attaches to the rule of law and his determination to improve the all too obvious shortcomings and inefficiencies of the present court system.

My complaint is that too many of the individual responses were superficial and failed adequately to deal with the points that we made, all of which were based on the evidence that we received. My first example is the response to paragraph 25 of the report. The Government—I emphasise again that I speak of the former Government—responded to our recommendation that they should,

"agree that the rule of law extends beyond judicial independence and compliance with domestic and international law",

and that they,

"should seek to govern in accordance with constitutional principles, as well as the letter of the law",

by agreeing that they,

"should govern in accordance with constitutional principles",

while dismissing the argument that we advanced about what that might imply. Without giving reasons, they simply rejected the view put forward in paragraphs 23 and 25,

"in so far as it suggests that judges have power to insist that primary legislation passed by the UK Parliament 'is not law which the courts will recognise'".

We had advanced the case that there must be some constraint on a Government's power, through Parliament, to change laws in any way that they see fit. We had cited evidence given by the noble and learned Lord, Lord Falconer, who I am glad to see in his place today and who will take part in the debate, during an earlier inquiry, when he said:

"To take an extreme example simply to demonstrate the point, if Parliament sought to abolish all elections that would be so contrary to our constitutional principles that that would seem … to be contrary to the rule of law".

We referred also to the judgment of the noble and learned Lord, Lord Hope of Craighead, in the case of Axa General Insurance Ltd and Others v The Lord Advocate—a case involving the Scottish Government—when he declared:

"The rule of law requires that the judges must retain the power to insist that legislation of that extreme kind is not law which the courts will recognise".

These are serious issues. I believe, as did the committee, that there must be a constitutional constraint on a Government's power, through Parliament, to change laws in any way they see fit. What those constraints should be is arguable, but it is much too important a matter to be dismissed in a single sentence. An acknowledgement that the question is important, and perhaps a statement that the Government would always seek to act in a manner that was compatible with the wider definitions of the rule of law, might have gone some way to meeting the point we were making.

The noble Lord, Lord Lester of Herne Hill, referred to paragraphs 49 and 50. In paragraph 49, the committee said:

"It is regrettable that the Ministerial Code and the *Cabinet Manual* do not address the Lord Chancellor's role in respect of the rule of law, beyond judicial independence. The *Cabinet Manual* refers to the Law Officers' role in 'helping ministers to act lawfully and in accordance with the rule of law' … but makes no mention of the Lord Chancellor's duty in this respect".

In paragraph 50, the report argued:

"The Lord Chancellor's duty to respect of the rule of law extends beyond the policy remit of his or her department",

to which the last Lord Chancellor seemed to think it was confined. We had concluded that,

"it requires him or her to seek to ensure that the rule of law is upheld within Cabinet and across Government".

The recommendation was that,

"the Ministerial Code and the *Cabinet Manual* be revised accordingly".

This important recommendation is casually dismissed, without an attempt to rebut the reasons given, but simply on the basis that the Government do not agree.

Perhaps it is because duties of this kind are not referred to in the *Ministerial Code* and *Cabinet Manual* that the Constitution Committee so frequently has to draw to the attention of the House breaches of constitutional good practice in government Bills. I would add at this point that, as it is clearly the Government's intention that the legislative programme in the early part of this Parliament is to be tightly confined to manifesto commitments, with departments refused permission to clutter up Bills with other bits and pieces, there is a real opportunity for the Business and Legislation Committee, I hope prompted and encouraged by the Lord Chancellor, to reject as well all those breaches of good constitutional practice that the Constitution Committee has repeatedly criticised.

Turning again to the response, in paragraph 101 we said that,

"there was no clear focus within Government for oversight of the constitution".

We suggested that the Lord Chancellor was best placed to carry out this duty, as has already been pointed out. We were told that the Deputy Prime Minister was the relevant Secretary of State for constitutional policy, despite the fact that he did not appear to have been carrying out the wider responsibilities we had in mind. It is extraordinary that he was not a member of the devolution committee or of the Business and Legislation Committee. Today there is no Deputy Prime Minister; I hope my noble friend the Minister will be able to clarify who now holds those wider responsibilities.

In Paragraph 117, we suggested:

"Given the importance of the Lord Chancellor's duty to uphold the rule of law, the Lord Chancellor should have a high rank in Cabinet and sufficient authority and seniority … to carry out this duty effectively and impartially".

The response was that it is for the Prime Minister to determine the order of precedence of Cabinet Ministers. It was acknowledged that the Lord Chancellor is currently and traditionally one of the highest offices of state. Having served for eight years in Cabinet with Margaret Thatcher, I am fairly confident that that was a response that she would not have authorised. She understood the importance of the Lord Chancellor's role very well and showed great respect for the office and its holders. It is really not an adequate response to say that it is all up to the Prime Minister. The Prime Minister, like other Ministers, is answerable to Parliament and Parliament is entitled to know where he stands on a matter recommended by one of its committees.

A similar point arises from the response to the recommendation in paragraph 79 that,

"the Attorney General continues to attend all Cabinet meetings".

Here the response is:

"Though the expectation is that the Attorney General will continue to attend all Cabinet meetings, this is ultimately a matter for the Prime Minister".

I am tempted to inquire: whose expectation? Surely we could have been told what the view of the Prime Minister was about this recommendation.

In the previous Parliament, the too-frequent delays in providing responses to Select Committee reports may have been due in part to the difficulty of reconciling the views of Conservative and Liberal Democrat Ministers, and it may be that that problem lies behind the shortcomings of the response. Be that as it may, I hope that with that difficulty removed, the responses will be delivered promptly. I also hope that the business managers will make a big effort to allocate time for debates to take place very soon after the responses have been published—something that does not happen very often.

4.01 pm

Lord Phillips of Worth Matravers (CB): My Lords, I gave evidence to the Constitution Committee when it was considering the role of the Lord Chancellor, and I am grateful to the noble Lord, Lord Lang of Monkton, for the opportunity to comment on his committee's report and on the response of the Government, as set out in the letter of Chris Grayling.

The Government broadly welcomed the report but did not accept that any of its specific recommendations required action or a change of attitude on the part of the Government. I am going to suggest that this response showed an unwarranted complacency, and I propose to do so by reference to the evidence given by the then Lord Chancellor to the Joint Committee on the Draft Voting Eligibility (Prisoners) Bill on which I served.

Section 1 of the Constitutional Reform Act provides that:

"This Act does not adversely affect … the existing constitutional principle of the rule of law, or … the Lord Chancellor's existing … role in relation to that principle".

That role is underlined by Section 17, which requires the Lord Chancellor, on taking office, to swear an oath, which begins with this undertaking:

"I will respect the rule of law".

As we have heard, the Constitution Committee concluded that,

"The Lord Chancellor's duty to respect of the rule of law extends beyond the policy remit of his or her department; it requires him or her to seek to ensure that the rule of law is upheld within Cabinet and across Government",

that this oversight role,

"is not adequately reflected in the current oath which requires him or her simply to 'respect the rule of law'",

and that the oath should be amended,

"to a promise to 'respect and uphold the rule of law'".

The committee also recommended that the *Ministerial Code* and the *Cabinet Manual* should be revised to reflect this oversight role. The Government disagreed with the desirability of effecting these changes.

Section 2 of the Constitutional Reform Act sets out the matters that the Prime Minister may take into account when appointing a Lord Chancellor. These include experience as a practising lawyer or as a teacher of law in a university. It is not, however, mandatory that the Lord Chancellor should have any previous legal experience. Some expressed concern about this. Witnesses emphasised the importance of the Lord Chancellor understanding the rule of law. The committee itself commented that,

"the rule of law remains a complex and in some respects uncertain concept".

The committee stated:

"We recognise the advantages to appointing a Lord Chancellor with a legal or constitutional background. We do not consider that it is essential but, given the importance of the Lord Chancellor's duties to the rule of law, these benefits should be given due consideration".

[Lord Phillips of Worth Matravers]

In the Government's response, Chris Grayling commented dismissively:

"The Government welcomes the Committee's acknowledgement that it is not essential for the Lord Chancellor to have a legal background".

In the same vein, the committee drew attention to the fact that,

"neither the Lord Chancellor nor the Permanent Secretary are required to be legally qualified. In a department responsible for the legal system and … the maintenance of the rule of law, this is undesirable. We recommend that the Government either ensure that the Permanent Secretary supporting the Lord Chancellor at the Ministry of Justice is legally qualified, or appoint the top legal adviser in that department at permanent secretary level".

The Government did not agree, contending that access to legal services provided by the Treasury Solicitor's Department was sufficient. Happily, that recommendation has now been implemented in practice.

I suggested that these responses show complacency. For a lawyer, respect for the rule of law goes beyond an intellectual appreciation of its importance. It is, or should be, a passionate belief in and understanding of the concept, for it is the critical foundation of a democratic society. If the Lord Chancellor is not a lawyer, it is surely desirable that he should have at his right hand a lawyer steeped in a belief in and understanding of the rule of law.

I now turn to explain why I believe that the Government's complacency is unjustified. In 2004, in the case of Hirst v United Kingdom, the Grand Chamber of the European Court of Human Rights held that the blanket ban on any convicted prisoner being allowed to vote, imposed by the Representation of the People Act 1983, was incompatible with Article 3 of the first Protocol to the European Convention on Human Rights. In the subsequent appeals to the Supreme Court in the cases of Chester and McGeoch, Lord Sumption gave a lucid judgment that was critical of the reasoning of the Strasbourg court, but he observed:

"It is an international obligation of the United Kingdom under article 46.1 of the Convention to abide by the decisions of the European Court of Human Rights in any case to which it is a party. This obligation is in terms absolute".

In his wonderful book *The Rule of Law*, the late Lord Bingham stated that,

"The rule of law requires compliance by the state with its obligations in international law as in national law".

I suggest that it is beyond doubt that the rule of law requires this country to alter our law so as to afford the vote to at least some category of convicted prisoners so as to comply with the judgment in Hirst.

The response of the Government to this situation was to publish the Voting Eligibility (Prisoners) Draft Bill, which offered Parliament three options. The first was to give prisoners serving less than four years the vote. The second was to give prisoners serving less than six months the vote, and the third was to restate the blanket ban on prisoners voting. The first two options were designed to make our law Strasbourg-compliant. The third option would have involved Parliament deliberately flouting the decision of the Strasbourg court. There have been cases of countries failing to amend their laws to comply with Strasbourg judgments but none, of which I am aware, where a country has legislated expressly to defy a judgment of the Strasbourg court.

When the draft Bill was published, the Government announced that a Joint Committee of both Houses would be set up to give it pre-legislative scrutiny. Our remit was to advise which of the three options should be adopted or to propose an alternative option of our own. Had our remit been simply to advise whether or not any prisoners should be permitted to vote, untrammelled by the decision of the Strasbourg court, a majority might well have said no. But we concluded that it would not be right for Parliament to place the United Kingdom in breach of its international obligations. Agreeing with evidence given by the noble and learned Lord, Lord Mackay of Clashfern, we stated that,

"the principle of parliamentary sovereignty is not an argument against giving effect to the judgment of the European Court of Human Rights. … A refusal to implement the Court's judgment would not only undermine the international standing of the UK; it would also give succour to those states in the Council of Europe who have a poor record of protecting human rights".

We recommended that the right to vote should be conferred on all prisoners serving less than 12 months.

I suggest that respect for the rule of law should have led the Executive, and in particular the Lord Chancellor, to do their best to promote legislation that would bring this country into compliance with the convention. They should have promoted legislation that achieved this and done their best to get it through Parliament. Parliament might well have proved unwilling to follow the Government's lead, but that is a consequence of the separation of powers. At least the Executive would have done their best to comply with the rule of law. I suggest that a Bill that put before Parliament an option to defy Strasbourg would not be appropriate.

When Chris Grayling came to give evidence to our committee, it became plain that he did not agree. He said that,

"my job is to offer Parliament the option. As you know, the job of the Lord Chancellor is to uphold the law. I have sought, in delivering a multiple-choice Bill, to fulfil my obligations to the law and, I believe, to Parliament as well. As to my own position, I intend to take advice at the time of the voting as to what my own particular situation is. I do not think there is any secret about what my opinion is in terms of this … I have an obligation as Lord Chancellor to uphold a decision of the courts. I take that responsibility very seriously. Equally, I have a responsibility to Parliament, which has already expressed a strong view on this matter. Therefore I have to exercise my judgment in thinking how best to address the issue, particularly given the legal advice from the Attorney-General, and indeed the legal view expressed by Lord Hoffmann … about these matters from, I think, 13 years ago … which said clearly that Parliament is sovereign in these matters … I formed the view that it was better to offer Parliament the option … but as to my own position, that is something I will take advice on at the time as to whether my oath of office or my obligations under the *Ministerial Code* constrain my actions".

Could the Lord Chancellor have taken this laissez-faire approach had his oath included a promise to uphold as well as to respect the rule of law? I suggest not. Was it not for him to take advice as to how he should react to the Strasbourg court's judgment in Hirst from the very outset rather than deferring the step until the time came for him to vote? He referred to the advice from the Attorney-General that Parliament was sovereign but, as the noble and learned Lord, Lord Mackay, stated, that is not the point.

I have explained why I do not find the Government's response to the Select Committee's report satisfactory. We now have a new Government and a new Lord Chancellor, and I hope that the Minister will convey to him a request that he give renewed consideration to the views and recommendations of the committee.

4.12 pm

Lord Lexden (Con): My Lords, this occasion is, for me, tinged with a little sadness. The report before us today was one of the last produced by the Constitution Committee before my three-year term as a member expired with the Dissolution of the last Parliament. Participation in its work brought me immense profit and pleasure. It was very good indeed to be united as a colleague with noble Lords drawn from all parts of the House, and even the occasional tendency of one or two members towards slight prolixity could not diminish the enjoyment. The committee is brilliantly served by its officials, who combine a passion for detailed research with a gift for clear, precise drafting. The discussions in which I took part were chaired very skilfully, first by the noble Baroness, Lady Jay of Paddington, and latterly by my noble friend Lord Lang of Monkton. I am grateful, above all, to them, and follow my noble friend Lord Lester of Herne Hill in emphasising that I make these remarks in no spirit of idle flattery.

Turning to the subject of the report before us, it is surely important to be clear about the reasons why the ancient office of Lord Chancellor, hallowed by time, matters in today's world. Only tiresome ultra-Tories—the noble Lord, Lord Beecham, made reference to one of them: Lord Eldon—think that institutions are justified simply by longevity. The rest of us believe that a test should be applied for long-standing arrangements, based on whether they discharge functions that continue to be needed.

On that point, we can draw on the testimony of the late Lord Hailsham, who held the office of Lord Chancellor for 12 years. He had no doubt that his office passed the test of practical utility. Exactly 40 years ago, he wrote that,

"where the constitution does not limit the powers of Parliament, and Parliament itself is largely under the influence of the executive, the preservation of the integrity of the rule of law has to be entrusted to a man and not a legal instrument. In Britain that man is the Lord Chancellor".

With him, Hailsham added, lay the vital duty of ensuring that,

"the independence of the judiciary and the rule of law should be defended within the cabinet as well as parliament".

There can be little doubt—this debate has reinforced it—that the same views were held by Lord Hailsham's predecessors in the office of Lord Chancellor and by his successors, including those who held it in the immediate aftermath of the far-reaching changes, not all of them wise, introduced under the Constitutional Reform Act 2005.

This is not to say that all past Lord Chancellors were held in the same high regard by the Prime Ministers under whom they served. In July 1962, Harold Macmillan summarily dismissed his Lord Chancellor, Lord Kilmuir, as part of his extraordinary Cabinet purge known as "the night of the long knives". Kilmuir protested that even a cook would have been given more notice. Macmillan replied that it was easier to find Lord Chancellors than cooks. Lord Kilmuir perhaps should have learned from the experience of Lord Eldon, to whom the noble Lord, Lord Beecham, referred. Lord Eldon held so tenaciously to his post that he slept with the Great Seal under his pillow.

It rapidly became apparent at the outset of the Constitution Committee's inquiry that its most important element would be an examination of current attitudes, particularly those within government, to the two crucial responsibilities of the Lord Chancellor: the preservation of the rule of law and the defence of judicial independence. The Lord Chancellor has other significant responsibilities —they are listed in paragraph 12 of the report—but no one, I think, would make the case for retaining this ancient office by reference to them. If the post matters in today's world, it is because of the two core duties, as the report describes them in paragraph 12, in relation to the rule of law and judicial independence. They naturally became the chief focus of the committee's work.

The second—the maintenance of the independence of the judiciary—was readily endorsed by all our witnesses, but the first—upholding the rule of law—was the subject of differing views. Some of our witnesses argued that this vital duty was now widely diffused among Ministers as a whole and no longer resided principally and overridingly in the office of Lord Chancellor. This, indeed, was the view of the then Lord Chancellor, Mr Grayling, whose opinion is cited in paragraph 34. Frequent references have been made to it, not altogether in an amiable spirit, by noble Lords who have contributed to this debate. The committee agreed that this crucial legal and constitutional duty did not lie exclusively with the Lord Chancellor, but we saw absolutely no reason to set aside a powerful argument put to us by former Ministers, both Labour and Conservative, with long experience of politics and the law, by distinguished officials who have worked in the Lord Chancellor's department and by other experts that, as paragraph 42 of the report puts it:

"The Lord Chancellor continues to have an additional responsibility in this regard".

We put forward recommendations to make that clear, but they were rejected, as we have heard.

It would seem to follow from that rejection that the Government believe, or at that point believed, that the Lord Chancellor should no longer exercise the particular duty to uphold the rule of law on the wide basis on which the holder of the office has until now undertaken it. If so, that is surely a new constitutional tenet which significantly diminishes the Lord Chancellor's role. If Lord Hailsham's ghost should walk abroad, Ministers must expect their repose to be disturbed, unless the new position outlined by Mr Gove now holds the field. Like so many other noble Lords, I look forward to my noble friend Lord Faulks's comments at the end of the debate.

The role of the Lord Chancellor has been attenuated in another especially important respect, about which grave concern has quite rightly been expressed in this debate: he is now excluded from any serious participation in the processes by which constitutional affairs are considered. Mr Grayling told the committee:

"The truth is today the constitutional role that the Lord Chancellor once performed, in a very practical sense, is not currently there".

[LORD LEXDEN]

Those words appear in paragraph 94 of the report. Is this not, in a very practical sense, unfortunate? Major constitutional reforms proceed in endless succession, unco-ordinated with each other. To give just one example, Scotland is to receive major new powers in relation to income tax while Northern Ireland is to be given significant responsibilities in relation to corporation tax. The Government give the impression that a new coherent constitutional settlement will somehow emerge of its own accord from a series of far-reaching changes, separately conceived and executed.

Do we not need what Enoch Powell once called a constitutional invigilator, someone who can watch over the fundamental changes that are bringing us almost inexorably to a quasi federal-state? His presence could be particularly valuable since the Government have ruled out a constitutional convention, which is the other obvious means by which coherence could be brought to sets of separate initiatives and the framework created for a new constitutional settlement that would stand the test of time. I submit that the recommendation in paragraph 101 of the committee's report that the Lord Chancellor should exercise oversight of the constitution is the more significant in the circumstances in which we now find ourselves.

A report that runs to over 35 pages, excluding summaries and appendices, secured from the Government a response that comprises just 10 paragraphs, two of which consist of a single sentence. The one disappointing feature of my otherwise deeply rewarding period on the Constitution Committee was the Government's reluctance to take part in a substantial two-way process for the discussion of the ideas and proposals that emanated from it. I hope that that will change under this new Government at a time when we are at a major constitutional crossroads.

4.22 pm

Lord Cullen of Whitekirk (CB): My Lords, like the noble Lord, Lord Lexden, I was a member of the committee that produced the report. With regard to the duty of the Lord Chancellor in respect of the rule of law, the committee concluded that that duty extends beyond his or her dealings with the justice system and, in its words in paragraph 50,

"requires him or her to seek to ensure that the rule of law is upheld within Cabinet and across Government. We recommend that the Ministerial Code and the *Cabinet Manual* be revised accordingly".

That conclusion took account of Section 1 of the Constitutional Reform Act 2005. It states that the Act does not adversely affect the existing constitutional principle of the rule of law, or the Lord Chancellor's existing constitutional role in relation to that principle. That section may be rather unspecific but the committee's conclusion was built on evidence given by the majority of its witnesses, including robust contributions from the noble and learned Lord, Lord Falconer of Thoroton, and others. The committee also noted that, in commenting on the Bill that led to the 2005 Act, the Constitutional Affairs Committee in the other place considered that in future the Lord Chancellor would continue to be the "constitutional conscience of Government".

A number of remarks have been made about the quality of the Government's response in the letter from the then Lord Chancellor on 26 February, and I must add another. With regard to the conclusion to which I have referred, the letter reads as if all that the committee had done was recommend changes to the code and the *Cabinet Manual*. It said that these documents, and the Lord Chancellor's oath of office,

"already accurately reflect ministerial responsibilities in relation to the rule of law".

Whether by design or by misadventure, the letter failed to address the scope of the duty of the Lord Chancellor, whatever may or may not be stated in such documents. It also failed to take account of the basis on which the committee had reached its conclusion and recommendation. In view of the evasion in the Government's response, I invite the noble Lord, Lord Faulks, to state whether the Government now accept that the Lord Chancellor has a duty in regard to the rule of law that is more than a mere appendage to his or her responsibilities for the Ministry of Justice and extends to the upholding of the rule of law within Cabinet and across government, and if they do not agree, why not.

I will briefly refer to one other matter. In their response, the Government placed particular reliance on what is said in the *Ministerial Code* and the *Cabinet Manual* about the role of the law officers. It does not seem in doubt that they are guardians of the rule of law. However, as the committee observed, their role should not be seen as other than complementing or supporting that of the Lord Chancellor. They cannot simply take the place of the Lord Chancellor. For example, Mr Dominic Grieve, the former Attorney-General, stressed that the limited staff in the Attorney-General's Office would not enable the law officers to be overseers of the rule of law. Moreover, he pointed out that the Attorney-General may not be privy to policy discussions to which rule of law issues might apply. The noble and learned Lord, Lord Mackay of Clashfern, referred in his evidence to the Lord Chancellor's role as being,

"to ensure that, if there is a legal and constitutional issue on which it is necessary to take the Attorney General's advice, that is done".

Thus, the Government's reliance on the law officers is superficial and short-sighted.

4.26 pm

Lord Norton of Louth (Con): My Lords, I very much welcome this report from the Constitution Committee. It is a serious report and deserves to be taken seriously. The response before us, produced by the coalition Government, fails to respond adequately to the committee's recommendations. Even more importantly, it reflects a failure to grasp the fundamentals that underpin our constitutional arrangements.

A constitution requires not only formal rules but a culture that appreciates and upholds the principles that give rise to those rules. Dicey identified the twin pillars of the British constitution as parliamentary sovereignty and the rule of law, pillars that are not necessarily compatible with one another. The stability of our constitutional arrangements derives from an acceptance that Parliament will not act in such a perverse way as to encroach on the fundamentals of the rule of law. As the report of the Constitution Committee notes, the rule of law is not formally defined. The Constitutional Reform Act 2005 refers to,

"the existing constitutional principle of the rule of law",

but without defining the term.

Prior to the passage of that Act, the role of the Lord Chancellor was recognised as distinctive—indeed unique—the holder being a senior and somewhat detached figure within government. That detachment was enhanced by the fact that some occupants followed a quasi-judicial route of serving as Attorney-General or Solicitor-General before becoming Lord Chancellor, or a wholly judicial route, being appointed straight from the Bench or the Bar. SA de Smith observed:

"The Lord Chancellor's duties are multifarious, demanding the utmost delicacy and an extensive familiarity with lawyers and the law".

However, the office was more than the individual holding the post. The status of the office was important. The Lord Chancellor was senior in the order of precedence. For centuries, until the treason laws were reformed, it was high treason to slay the Lord Chancellor. The status of the office provided some reassurance that the holder would serve to uphold the rule of law, including the independence of the judiciary. As Diana Woodhouse noted in her book, *The Office of Lord Chancellor*:

"In the absence of a written constitution, the responsibility for judicial independence places the Lord Chancellor at the heart of Britain's constitutional arrangements".

In effect, this is acknowledged in the 2005 Act, but the failure to define terms, and the freeing of the person appointed from the previous requirements to hold post, creates problems. The Lord Chancellor, by his oath of office, is sworn to defend the independence of the judiciary, but he is no longer a detached or necessarily senior figure within government. He is different but not that much different from other Cabinet Ministers.

The reform of the office of Lord Chancellor was basically botched, the product of a lack of understanding of the Lord Chancellor's crucial and embedded constitutional role. The 2005 Act, by its own declaration, does not affect that role, but it is clear from the evidence of the noble and learned Lord, Lord Irvine of Lairg, in the Constitution Committee's fourth report of 2009-10, that Prime Minister Tony Blair did not fully comprehend that role, viewing changes to the office of Lord Chancellor in the same light as any other change in the machinery of government.

The report before us makes recommendations that clarify some of the uncertainties that are consequent to the 2005 Act in terms of upholding the rule of law and, as we have heard, having an oversight role in relation to the constitution as a whole. These encompass changes to the *Ministerial Code* and the Lord Chancellor's oath, as well as ensuring adequate support for those charged with upholding the rule of law.

These are important and weighty recommendations made to government. In essence, the Government's response—the noble and learned Lord, Lord Phillips of Worth Matravers, touched on this—says, "We broadly agree with the report, except where it makes any substantive recommendation, in which case we don't agree with it, but we can't be bothered to engage with the report and provide reasoned arguments for our stance". My noble friend Lord Lexden has touched on the brevity of the Government's response. It consists of 115 lines, excluding headings, of which 58 comprise direct quotes from the committee's report. In other words, half the Minister's letter simply reproduces the committee's recommendations. The Government's actual response occupies 57 lines, constituting fewer than 800 words. Not only does it not engage with the committee's recommendations; it also appears not to grasp the points being made.

Some of the responses are vacuous. Paragraph 126 of the report recommends that the Prime Minister, in appointing the Lord Chancellor, give weight to qualities outlined in the report and, above all, consider the importance of the Lord Chancellor's duty to uphold the rule of law. This recommendation follows this observation in paragraph 124:

"There is general agreement that the statutory criteria for appointing a Lord Chancellor are ineffective".

What is the Government's response? It states:

"The Constitutional Reform Act 2005 provides that the Prime Minister may not recommend an individual for appointment as Lord Chancellor unless he or she is satisfied that the individual is qualified by experience. There is a range of evidence that the Prime Minister can take into account when reaching such a conclusion".

That merely summarises Section 2 of the Act as reproduced in paragraph 102 of the committee's report. Section 2 is the starting point of chapter 4 of the report. To merely restate what is in Section 2 is to ignore what is in the chapter. There is no engagement with its content. Nothing in the response addresses the concerns or the recommendations. This is a government response that, as we have heard, took more than two months to produce, but one that says essentially nothing.

I have two questions for my noble friend Lord Faulks. One derives from a particular recommendation made in the report, and the other, more general question derives from the criticisms of the Government's response. First, as a number of noble Lords have mentioned, paragraph 101 of the report records:

"There is no clear focus within Government for oversight of the constitution".

It recommends that a senior Cabinet Minister have responsibility for such oversight and, as we have heard, observes that,

"the Lord Chancellor is best placed to carry out this duty".

In this Parliament, the Prime Minister has appointed Oliver Letwin, the Chancellor of the Duchy of Lancaster, to fulfil this role. It will be helpful to know from my noble friend what protocol, if any, has been established between the Lord Chancellor and the Chancellor of the Duchy of Lancaster to ensure that there is coherence in addressing constitutional issues.

Secondly, given that there is a need to recreate the culture within government of appreciating the significance of our constitutional arrangements and the principles underpinning them, what are the Government doing to inculcate those principles in Ministers and senior officials? From the Government's response to the Constitution Committee report there is no evidence of such an awareness, and indeed nothing in the response suggests a clear grasp of what the rule of law entails, despite the committee report discussing it in some detail.

[Lord Norton of Louth]

In the light of this debate, my noble friend the Minister may wish to consider going back to his department to think about producing a fresh response to the Constitution Committee's report. What is before us falls well short of the standard we are entitled to expect.

4.35 pm

Baroness Kennedy of The Shaws (Lab): My Lords, I beg the indulgence of the House that I might speak briefly in the gap. I missed the deadline for putting my name on the speakers list.

I, too, want to remind the House why the Lord Chancellor's role was such a triumph in our constitution. I still believe very strongly in the importance of that role being in the hands of a lawyer of distinction with a lifetime's experience in the law. Of course, it was sometimes held by someone who had also been a practising elected politician in their past, but the thing that distinguished previous Lord Chancellors was that they had an understanding of the law, the importance of law in constitutional matters coursed through their veins and their commitment to the rule of law was visceral. In the end, at the point when they came to be Lord Chancellor, they would feel that the law was their master and not of any strategic political advantage.

The sadness that I feel about all this is that reform took place in such an abandoned way back in 2005. Until then, we had somebody who sat in this House with no further political ambition, who was at the apex of their career and who no longer harboured any secret passion to become Prime Minister or Chancellor of the Exchequer or to hold any other kind of office. Because of that, they were able to take the long view, they were able to argue in Cabinet against some of their ministerial colleagues who were seeking to respond to populist demands, and they were able to argue for the importance of law as against, sometimes, the appeal of order. In that balancing of law and order, there was this voice speaking for justice. That person, sitting in this House, did not have to look to constituents or face the vicissitudes of regular elections, and so did not fall prey to the populist pressures of, for example, the *Daily Mail*—they did not fear what the next day's headlines might be. That was why the role was such a success.

That does not mean that there was not a need for reform, and I was one of the people who argued that the time had come for there to be a judicial appointments commission and that there might be a review of whether any judicial role could be held by the Lord Chancellor. The Lord Chancellor could sometimes sit as a judge but that had more or less been abandoned and could easily have been reformed. The issue of the role of Speaker being part of the Lord Chancellor's responsibilities could also easily have been reconsidered.

I am afraid that the folly of the reforms undertaken by Labour in government came as a bolt from the blue. They were ill considered and constitutional madness. In my view, it was the act of a capricious Prime Minister abetted by a determined Home Secretary, and this House has often had the opportunity of expressing its regret that that happened.

Of course what Labour at that time was saying was that there should be a Minister of Justice—somebody speaking for justice in the House of Commons. And that may make perfect sense. Labour also argued that it might often be difficult to make sure that that person was a lawyer and therefore it could be somebody who was committed to those issues but was not a lawyer, if no MP who was a lawyer was suitable for the role. But what Labour did at that time was to abolish the Lord Chancellor role—that was the announcement. Then, of course, it had to revisit that, because it is a role that is deeply embedded in so much legislation that it could not possibly be dealt with in that fleeting way. So the idea of the Minister of Justice became coupled with the Lord Chancellor's role, and into it went the notion that it could be a non-lawyer. That should remain a source of regret and should be looked at, I hope, at some suitable point, because I believe that we should still have a Minister of Justice in the House of Commons but a separate Lord Chancellor's role. I regret that the committee did not make such a recommendation.

We have seen the consequences of the botched reforms in the performance of Mr Grayling, who seemed to have no appreciation of what the role really entailed and what his constitutional commitments ought to be. In Mr Gove I hope that we have someone who draws on a deeper well of constitutional understanding and wish him well in the role.

The idea that the Government have not listened to the careful report from this committee is a source of disappointment. I hope that the Minister will respond to the concern expressed by everyone.

4.41 pm

Lord Falconer of Thoroton (Lab): I join everybody in congratulating the committee of the noble Lord, Lord Lang of Monkton, on the excellent report that has been produced. I also join those who said that it is a very serious report. I believe it to be a serious report because it expresses incredibly clearly and well what the reforms in 2005 were seeking to achieve in relation to the continuing role of the Lord Chancellor.

I compliment all who have spoken in the debate. I will mention my noble friend Lord Beecham, who emphasised the importance of Newcastle to this and, in addition to his point about the Geordies' role, the importance of speaking justice to power.

I ask the Minister to answer specifically the three incredibly important questions that the noble Lord, Lord Lester of Herne Hill, enunciated with enormous clarity.

I agree with the noble and learned Lord, Lord Woolf, that the Lord Chancellor now should—he emphasised the word "should"; he was not saying that he necessarily did—play a critical role in the defence of the rule of law.

The noble Lord, Lord Crickhowell, did not appear to me to be Pooh Bear in the questions that he asked. Like many noble Lords, he said that the response of the Government fell well short of what was expected in relation to a report of the significance of this one. He hoped—this view was widely shared around the Chamber—that the new Lord Chancellor would do a lot better than his immediate predecessor in fulfilling his role.

The noble and learned Lord, Lord Phillips of Worth Matravers, said that the Government's response showed unwarranted complacency—I took that to mean that

he thought that the way that Mr Grayling had answered the questions indicated that he thought the rule of law was safe under the current arrangements. If Mr Grayling thought that his attitude as Lord Chancellor indicated that it was safe, I took the noble and learned Lord, Lord Phillips of Worth Matravers, to mean that it most certainly was not.

I share the grief of the noble Lord, Lord Lexden, at being off the committee after three years. I particularly enjoyed his reference to Lord Kilmuir, who, upon being fired, was told that it was easier to find cooks than Lord Chancellors. I can think of no Lord Chancellor who more deserved that remark than Lord Kilmuir. Many of you will recall that Lord Kilmuir was Winston Churchill's second Lord Chancellor. His first was Viscount Simonds. When Winston Churchill became Prime Minister for the second time, he said that he wanted Asquith's son to be the Lord Chancellor. He summoned Asquith's son, as the repayment of a political debt to his father, and asked him if he would like to be Lord Chancellor—to which Asquith replied, "Not on your nelly, it is much too much hard work—why don't you try my friend Simonds?". So Winston Churchill did, not knowing the man. He appointed him Lord Chancellor and then came a political difficulty; he wanted Maxwell Fyfe, who was Home Secretary, to become Lord Chancellor. He summoned Maxwell Fyfe and said, "I don't want you to be Home Secretary any more, I want you to be Lord Chancellor—would you mind telling Simonds that his time has come to an end, I don't really know the man?". So for Kilmuir to complain about the comment that it was easier to find cooks and to complain about the way that Macmillan treated him was a little bit rich in light of what happened to Viscount Simonds.

I agree with the noble and learned Lord, Lord Cullen of Whitekirk, that the duty to defend the rule of law imposed on the Lord Chancellor extends well beyond simply defending the justice system. The noble and learned Lord did the House a service in indicating the three parts of the Constitutional Reform Act that imposed the duty on the Lord Chancellor: Section 1, Section 2 and the oath.

The noble Lord, Lord Norton of Louth, is right that the constitution works not just in relation to its specific terms but in relation to its culture. I can indeed confirm to the noble Baroness, Lady Kennedy of The Shaws, that I did not have a secret passion to be the Prime Minister or the Chancellor of the Exchequer—which, as she said, all Lord Chancellors before the change indicated.

The scope of the duty of the Lord Chancellor is the key point in the report, along with the Lord Chancellor's role in relation to constitutional affairs. The reforms in 2005, which were criticised by the noble Lords, Lord Lexden and Lord Norton, and the noble Baroness, Lady Kennedy, were necessary because it was no longer maintainable for the chief judge in the final court of appeal also to be a Cabinet Minister—because the final court of appeal in our country habitually was dealing by 2005 with issues about the conduct of the Government. You could not have a leading member of the Executive also being chief of the final court of appeal determining whether the Executive had gone beyond the limits of legality. The reforms were necessary. As the noble Baroness, Lady Kennedy, acknowledged, it was right that there should be a Judicial Appointments Commission, that a Supreme Court should be created and that the Lord Chancellor should cease to be the head of the judiciary.

The consequence—which was expressed repeatedly in the course of the Bill through this House—of removing this very big judicial figure from the centre of government would be a potential vacuum where the protector of the rule of the law and the constitution had previously been. The Constitutional Reform Act 2005 faced those fears head on and addressed them—the noble and learned Lord, Lord Cullen of Whitekirk, mentioned the way in which it did. The office of Lord Chancellor remained after the passage of the Act. The Act expressly provides that the office retain its role in relation to the rule of law within the Executive. Noble Lords have identified what that role was, and it was preserved. There was an inevitable uncertainty, because you could never be precise about it, but it was specifically preserved. The Constitutional Reform Act places a solemn burden of respecting the rule of law and ensuring a properly functioning and resourced justice system. Finally, the Act imposes on the Prime Minister a duty to appoint only someone who is up to the job of discharging those functions. That is what Section 2 amounts to.

Section 17, which sets out the Lord Chancellor's oath, states that the Lord Chancellor has to swear an oath to,

"respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible".

It was agreed at the time that the Act went through in 2005 that the oath imposes a higher duty than day-to-day political advantage. Parliament envisaged the Lord Chancellor being a departmental Minister, with all the political clout that that brings but with special added responsibilities and special qualities. It also expressly envisaged that, as and when necessary—and it would be exceptional—the Lord Chancellor would not be bound by collective responsibility when upholding his duty to protect the rule of law. The Act specifically envisages that there will be times when he is in effect freed from the obligation of collective responsibility.

What is the content of his protector role? It has three elements. First of all, it means making sure that judges are properly protected in their independence. That means, as the noble Lord, Lord Lester, indicated, that they are not put under any undue pressure and are properly resourced in fulfilling their role. Secondly, it means that the Lord Chancellor has an especial role to ensure that the Government of the day comply with the rule of law and with constitutional principle. That means that where the Lord Chancellor is aware that the Government either are engaged in something that is an habitual breach of the law or are going to fail to comply with the law in the future, he has a role to use his authority to stop that occurring.

One of Lord Bingham's eight principles of the rule of law is that the law must afford adequate protection of fundamental human rights. The current Lord Chancellor, in a speech he made in the Commons on the proposals that are being made in relation to

[Lord Falconer of Thoroton]
human rights, in my respectful submission, failed in two respects to comply with his duty in relation to the rule of law. First, he appeared to suggest that it was possible to not give effect to the whole of the European Convention on Human Rights and yet remain within the convention. Secondly, he appeared to be suggesting that it was possible to change some of the elements of the human rights protection currently provided—he did not indicate how—on the basis of what the Government, in effect the Executive, thought it appropriate to call human rights. If you have a situation where the Government themselves define human rights, there is inadequate protection of fundamental human rights.

The third obligation—the first being to protect the independence of the judiciary and the second to procure the protection of the rule of law—is that the Lord Chancellor must ensure that there is a functioning justice system that includes people having the right to have their legal rights vindicated. That means that there must truly be access to justice. Access to justice requires ensuring that all who need it have access to the courts and to legal advice where it is necessary to ensure that there is a level playing field. It also requires a usable means of challenging the actions of the Executive, including in particular proper access to the remedy of judicial review.

Clearly, a delicate balance must be struck for every Lord Chancellor. He or she cannot act merely as a lobbyist for the legal sector. In these straitened times, public policy requires cuts and efficiencies in spending on the courts and on legal aid, and the courts cannot simply stand back and watch the rest of the public service tighten its belt without some sacrifice themselves. But in attempting to strike a balance, it is critical that the Lord Chancellor accepts and understands his especial responsibility in ensuring that there genuinely is access to justice.

In the first speech made a couple of weeks ago by the Lord Chancellor and Justice Secretary in respect of access to justice, he spoke warm words but failed to address the problem that has been repeatedly identified in the justice system now, which is that there is no level playing field when it comes to access to justice.

So I submit that there are three elements to the rule of law which the Lord Chancellor has to protect: defending the independence of the judiciary; ensuring that the rule of law is complied with, and ensuring that there is proper access to justice.

Finally, I turn to the constitution. Under the previous Government, responsibility for the constitution moved from the Lord Chancellor's Department to the Deputy Prime Minister. When the great constitutional drama of the last Parliament occurred—the defence of the union in the face of what was happening in Scotland—the Government were lamentably unprepared for what happened. Their response was very second rate. I do not know the extent to which that was caused by the fact that there was an attenuated constitutional department in the Cabinet Office that had been wound down quite dramatically after the Deputy Prime Minister's initial range of constitutional reforms had run into the sand. It is the consequence of there not being a permanent home for the constitution in government.

If in the Lord Chancellor's Department there had been expertise stretching back over a long period, we would not have had the situation that led to the way in which the Prime Minister responded on the morning after the referendum. We would not have the situation that is going on in the other place now where a fundamental change to the constitution is taking place apparently on the basis of a vote on amendments to Standing Orders in the Commons. I note that this very afternoon the Government have abstained, and so the House of Commons has just voted that the process by which English votes for English laws is being introduced is not acceptable.

I very much hope that the consequence of that will be that the Government will pause and think again rather than having English votes for English laws introduced on the basis of 11 days' notice with no White Paper, Green Paper or any other prior consultation. The importance of keeping constitutional affairs in one place—under the tutelage of the Lord Chancellor—is that that sort of thing would not have happened in the past. I invite the noble Lord, Lord Faulks, to indicate what the Government's response will be to a situation where there is no collective memory, no permanence and no accepted home where constitutional affairs are dealt with.

4.57 pm

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, I thank my noble friend Lord Lang for securing this debate and providing the opportunity for the House to consider and discuss the Constitution Committee's report on the office of the Lord Chancellor. I fear that I may disappoint noble Lords, who have all provided great-quality speeches in the debate, in the sense that my response will contain rather few surprises.

However, what I can say, consistent with what my noble friend would say, is that the new Lord Chancellor is very much in listening mode. There is no question of complacency on the part of the Lord Chancellor or in the Ministry of Justice, as the noble and learned Lord, Lord Phillips, suggested. I know that the Lord Chancellor will read the debate with considerable interest. I cannot guarantee what his response will be but I know that great heed will be taken of what has been said. Indeed, the committee's report will be considered more carefully than it already has been. It is a comprehensive report and the Government recognise that the committee has assimilated a great deal of material collected from written submissions and oral evidence from a wide range of experts and practitioners, including Lord Chief Justices and Lord Chancellors.

The Government welcome the committee's report, particularly its reaffirmation of the important constitutional role of the Lord Chancellor. However, we recognise that the committee has expressed disappointment at the brevity of the previous Government's response to this report, and with two aspects of it in particular. I will endeavour to deal with those points. I fear that I will not be able to answer all the different points raised in the debate, including the EVEL debate, mentioned by the noble and learned Lord, Lord Falconer, or prisoner voting, which deserves a debate of its own. Of course, the comments are very much borne in mind by the Government.

First, I shall reflect on the current Lord Chancellor's position on the rule of law. Noble Lords will, I am sure, be aware of his recent speech at the Legatum Institute, where he began to outline what he sees as a "one-nation justice policy". He said:

"The rule of law is the most precious asset of any civilised society. It is the rule of law which protects the weak from the assault of the strong; which safeguards the private property on which all prosperity depends; which makes sure that when those who hold power abuse it, they can be checked; which protects family life and personal relations from coercion and aggression; which underpins the free speech on which all progress—scientific and cultural—depends; and which guarantees the essential liberty that allows us all as individuals to flourish".

Noble Lords may think that those statements embody the core purpose of the justice system and indicate that he does not regard the law, as the noble and learned Lord, Lord Cullen, said, as "a mere appendage". They bear careful consideration. No definition of the rule of law is likely to attract complete consensus, although Lord Bingham's in *The Rule of Law* has quite rightly attracted widespread approval. Many countries boast of their adherence to the rule of law. In Russia there is a book that extols its virtues. China, which I recently visited, speaks consistently about its adherence to the rule of law.

The committee's report comes at a time of considerable interest in the office of the Lord Chancellor. Among others, a recent publication by University College, London, on the politics of judicial independence concerned itself with the issue. That study reached a number of conclusions, including the fact that the judiciary and judicial independence emerged stronger from the 2005 changes with the inclusion of tribunals in the courts system, a more independent and visible Supreme Court, and greater autonomy of the Lord Chief Justice as the head of a more professional judiciary. The report recognised the change in the role of the Lord Chancellor and saw it as providing a political guardian of judicial independence with sufficient channels of communication to allow a new relationship to evolve between judges and politicians.

As to the role of the Executive, it is worth noting that the Lord Chancellor has specific duties under the Constitutional Reform Act 2005 to respect the rule of law and to have regard to the need to defend judicial independence. The noble and learned Lord, Lord Falconer, told the House about the nature of the obligations, which were of course considered by Parliament not all that long ago. It is worth mentioning that all Ministers of the Crown with responsibility for matters relating to the judiciary or the administration of justice have a legal obligation to uphold the continued independence of the judiciary.

Upholding the rule of law and defending judicial independence is a shared responsibility. The rule of law plays an integral part in the policy and the operations that we develop, particularly through the administration of the courts and tribunals system. The Government believe in, and will fervently support, the independence of the judiciary. That independence has two facets: the institutional independence of the judiciary as a branch of the state; and the independence of an individual judge, who has the discretion to make the decisions they do in court according to law. We defend their right to take those decisions.

I know that the committee expressed disappointment that the Government do not agree with its suggestion that the Lord Chancellor is required, above all other Ministers, to ensure that the rule of law is upheld within Cabinet and across government, or that the *Ministerial Code*, *Cabinet Manual* and oath of office should be amended to reflect that requirement. The *Ministerial Code* and the *Cabinet Manual* already set out the way the Government comply with the rule of law. As I have already said, all Ministers have a duty to respect the rule of law, and of course the Prime Minister ultimately has responsibility for overseeing the constitution.

The *Cabinet Manual*, in particular, notes the role of the law officers in,

"helping ministers to act lawfully and in accordance with the rule of law".

The Government agree with the committee on the important role played by the law officers in upholding the rule of law. This view has been shared by successive Governments. The law officers play this role in particular by advising on some of the most significant legal issues being dealt with by government through their significant public interest functions, such as bringing contempt proceedings, and through participating in the work of the Government as Ministers of the Crown. This includes the Attorney-General participating in Cabinet meetings. I know that the noble Lord, Lord Lang, and others concluded that the Attorney-General should as a right attend all Cabinet meetings. I understand that the expectation is that he will continue to attend all Cabinet meetings but, ultimately, his attendance is a matter for the Prime Minister. Despite the comments of the noble Lord, Lord Beecham, the Government consider that the law officers are adequately resourced to fulfil their functions as they relate to the rule of law. An important function of those officers is keeping all ministerial colleagues informed of significant legal issues. The relationship between the Lord Chancellor and the Attorney-General is an important one; they meet regularly to discuss matters of common concern, including those that relate to the rule of law, and the expectation is that this will continue.

I know that the committee also expressed disappointment that the Government do not agree with its assertion that the Permanent Secretary at the Ministry of Justice needs to be legally qualified, or that the department's top legal adviser needs to be appointed at Permanent Secretary level. It is a matter of some serendipity that the recent appointment of Richard Heaton as the Permanent Secretary has arrived in time for this debate. He is also First Parliamentary Counsel and undoubtedly has weighty legal experience. However, both the Lord Chancellor and Permanent Secretary, whether legally qualified or not, have access to high-quality legal services provided by the Government Legal Department, including direct access to the Treasury Solicitor and one of his deputies at director-general level, should it be needed. Advice can be sought from Treasury counsel, external counsel and the law officers, where needed. This provides the right level of legal support. Importantly, in addition to this, the Lord Chancellor is supported by, and has access to, a wealth of experience and expertise from civil servants, many of whom have

[Lord Faulks]
long experience of courts and the administration of justice. I can give some evidence of this in response to the—

Lord Lester of Herne Hill: It must be my own problem, for which I apologise, but is the Minister speaking for the old Government or the new Government in what he has just said?

Lord Faulks: I am speaking for the present Government.

On the question of whether the Lord Chancellor is adequately advised by lawyers, I say that the quality of the lawyers remains extremely high. I take the point made by the noble and learned Lord, Lord Woolf, with his experience of the old Lord Chancellor's Department and the quality of the lawyers there, but there is a great deal of continuity within the Ministry of Justice now.

I return to the role of the Lord Chancellor and deal briefly with the point of whether combining the role with another Cabinet position helps strengthen his or her position in government. Experience shows that both can be successfully carried out by the same person. I echo the views of the previous Government: we welcome the committee's agreement that combining the role of Lord Chancellor with that of Secretary of State for Justice does, indeed, strengthen the office. I also welcome the committee's view that it is not essential for the Lord Chancellor to have a legal background. The last two Lord Chancellors did not, but I suppose I hope that it does not become a disqualification for office if you happen to be legally qualified. The committee instead focuses on the necessary gravitas and status that the incumbent who undertakes the role must have, which does not require specific legal experience.

It may be useful to the House if I set out the current policy remit of the Lord Chancellor and Secretary of State for Justice, which I think helps illustrate the benefits of combining the two roles. The Lord Chancellor has responsibility for matters relating to the judiciary, courts and tribunals, coroners, civil, family and administrative law, legal aid, legal services and the legal professions, public records and the Crown Dependencies. The Secretary of State for Justice's policy responsibilities include prisons and probation, criminal law, sentencing policy, human rights, data protection and freedom of information. It is evident that having one person who is responsible for the effective and efficient delivery of that system combining the functions is of great benefit. It helps give him the necessary clout in Cabinet—or, as the noble and learned Lord, Lord Hope, said in evidence before the committee, makes sure that he is not at the,

"far end of the table".

I touched on the Lord Chancellor's responsibility for ensuring the proper administration of HM Courts & Tribunals Service. I want to say a little more about this as it is an important example of how upholding judicial independence is critical to the successful delivery of that service. The Lord Chancellor discharges his responsibility for the courts and tribunals in partnership with the Lord Chief Justice and the Senior President of Tribunals. He has a statutory duty to provide the support necessary for the judiciary to perform its functions and to ensure that there is an efficient and effective system to support the business of the courts. This duty is discharged in conjunction with the senior judiciary, as laid out in the *HM Courts & Tribunals Service Framework Document* of 2014, which reflects the partnership arrangement between the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals in relation to the effective governance, financing and operation of HM Courts & Tribunals Service. It is very much a joint venture.

The final point I want to address—and it is a very important point—is the committee's concern that:

"There is no clear focus within Government for oversight of the constitution".

Lord Falconer of Thoroton: Before the Minister moves on to that, can he identify whether he accepts the central recommendation of the Constitution Committee that the Lord Chancellor has an especial role in protecting the rule of law, or does he, like Mr Grayling, think that the Lord Chancellor has no special role that is any way different from that of the Secretary of State for Health or the Secretary of State for Education?

Lord Faulks: The Lord Chancellor's role and his oath, as the noble and learned Lord said, is defined by the Constitutional Reform Act 2005. Clearly, his role is the same as other Ministers' but must be larger than theirs. Its precise ambit may be a question of some debate but clearly he would regard, as indeed he said in the Legatum Institute talk, that he has a greater and particularly specific role in relation to the rule of law.

I was dealing with the oversight of the constitution. The committee recommended that, "a senior Cabinet minister"—in its view, most appropriately the Lord Chancellor—should have responsibility,

"for oversight of the constitution as a whole, even if other ministers have responsibility for specific constitutional reforms".

The Prime Minister, of course, has overall responsibility for the constitution. The Cabinet Office has oversight of constitutional policy and has done since 2010. The Chancellor of the Duchy of Lancaster, Oliver Letwin, oversees co-ordination of the Government's constitutional reform programme and is supported by two Ministers and officials from the Cabinet Office constitution group. The Chancellor of the Duchy of Lancaster works in close collaboration with the Prime Minister and other relevant Cabinet Ministers, including the Lord Chancellor, the Attorney-General, the Leaders of the House of Commons and the House of Lords, and the Secretaries of State for Scotland, Wales and Northern Ireland. This senior ministerial oversight reflects the importance that the Government attach to their constitutional reform programme.

In answer to the noble and learned Lord, I am not aware of any precise protocol, but it is clear that there is a great concentration within the Cabinet Office, in close collaboration with the other offices.

Lord Crickhowell: My noble friend has again repeated the phrase that was used in the Government's response with regard to who is responsible for constitutional

reform. But the point that was made in the report, and has been made repeatedly this afternoon, is that the constitutional responsibility goes much wider than reform. Our concern, as expressed in the report, that the previous Deputy Prime Minister appeared to think he was responsible only for reform was one of the centrepieces of the criticism that we were making. I therefore hope that my noble friend will at least go back to his colleagues and point out that we are concerned about not just reform but the overall constitutional responsibility.

Lord Faulks: I am grateful to my noble friend. He makes a very fair point, which I entirely take: the constitution needs to be considered at a moment of any prospective reform but, none the less, the Government have a continuing duty to maintain constitutional integrity.

The Chancellor of the Duchy of Lancaster and other Cabinet Office constitution Ministers are currently dealing with some difficult constitutional policies, including English votes for English laws, devolution, English decentralisation, the EU referendum and the British Bill of Rights. There is a significant area of potential reform but I absolutely accept that the role those who are charged with looking after our constitution have goes beyond reform.

We could spend quite a lot of time dealing with the definition of "rule of law". I am of course aware of the comments made in speeches by the noble and learned Lords, Lord Hope and Lord Steyn, and the discussion in Lord Bingham's book *The Rule of Law* of whether parliamentary sovereignty really is the governing principle. At the moment, however, the supremacy of Parliament is generally considered to be the predominant constitutional principle and the capacity of judges in certain circumstances to strike down, as it were, an Act of Parliament is one that has not yet been taken advantage of.

In conclusion, we recognise that the office of the Lord Chancellor is an ancient one. During its time, the role has been occupied by individuals of varying skills and experience, reflecting the contemporary demands of the office and the somewhat quixotic choices made by Prime Ministers, which have sometimes haunted the noble Lord, Lord Beecham, and others. Some have been colourful characters, some have attracted criticism and some have even met an untimely end. The changes introduced in the Constitutional Reform Act 2005 were significant, albeit that they came about in rather an unusual way. They emphasised the independence of the judiciary and defined the new nature of the relationship with the Executive and Parliament.

The Lord Chief Justice said in his speech of the week before last:

> "What appears clear is that over the first ten years since the reforms of 2005, the judiciary has evolved a new way of working. It has developed a capacity and a will to lead reform. It has forged a new method of engagement with the Executive and Parliament in this task so that all can work together to bring about an overhaul of the administration of justice".

The House is very clear that the office of the Lord Chancellor will continue to be a key office of state, with very real and important duties that have a constitutional importance and underpin judicial independence and the rule of law. This Government are very grateful to the Constitution Committee for its clear and thorough report. I am sorry that there has been so much criticism of the inadequate response. I reassure the House that what has been said in that report, and what has been brought to the House's attention in this debate, will be considered very carefully by the new Lord Chancellor. I thank all noble Lords who have taken part in this excellent debate.

5.19 pm

Lord Lang of Monkton: My Lords, such has been the high quality of every speech in this debate, and so close to uniformity has been the range of comment, that my task is mercifully brief. Indeed, the noble and learned Lord, Lord Falconer, and my noble friend Lord Faulks have responded specifically to a large number of points, for which I thank them both. I thank the noble Lord, Lord Lester, somewhat blushingly for his personal compliment, which was reprised by my noble friend Lord Lexden, but I demur. I am happy to regard myself as an ordinary member of the committee, as the noble Lord, Lord Beecham, figured some of us were because we are non-lawyers. In this distinguished company today, it has been a privilege to hear the legal views that have come into the debate, to great advantage.

Kind things have been said about the committee. I welcome that and thank colleagues who have complimented it. However, the fact is that the committee is only as good as the witnesses who appear before it and the evidence submitted to it, and we have had a very high quality of evidence, both verbal and written, in preparing this report. I am very pleased that the report has been recognised as a useful contribution on the subject that it addressed.

Virtually every speaker complained, some robustly, about the Government's response. A number of new points were made. In particular, the noble and learned Lord, Lord Woolf, made reference to the fact that splitting responsibility for constitutional matters could undermine what we are seeking to achieve, and possibly achieve the exact opposite. That is a point that had not otherwise been made and should be considered further. We also enjoyed a similarly authoritative speech from the noble and learned Lord, Lord Phillips of Worth Matravers. We are not in a happy situation at the moment—the noble and learned Lord drew attention to this—when the Government can welcome a report as they did and then reject almost everything that it recommended. That suggests not careful consideration but rather indifference, which worries me. I believe it takes us into a dangerous place.

The debate's near unanimity in reaction to the report, together with the criticism of the Government's response, suggests that they really should take the report away again and have another look at it. After all, the Government of the moment are not the same as the coalition Government to whom we submitted the report and from whom we got the original reply. I thank my noble friend Lord Faulks for his thorough and courteous response and for the way he treated seriously all the points that were made—even though he did live up to his promise at the outset and was largely disappointing on the detail. Nevertheless, he

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came very close to saying that he would take it away and have another look, and I would urge him to do that. He also quoted with approbation the mellifluous words of my right honourable friend Michael Gove, the new Lord Chancellor, on the merits and importance of the rule of law. However, one swallow does not make a summer—not that a swallow is the first bird I would think of in alluding to my right honourable friend Michael Gove.

The debate has been extremely useful but I still get the feeling that the Government have not understood and have not adequately considered the specific points that we made. They were made after very careful research and, as I said, on the basis of very high-quality evidence. I conclude by returning to the two issues that I raised myself—which go wider than just the role of the Lord Chancellor, although they flow from it—in saying that the rule of law and the protection of our constitution are to democracy, justice and order as the air we breathe is to life. They are indispensable and we neglect and spoil them at our peril.

Motion agreed.

EU: Financial Regulation (EUC Report)

Motion to Take Note

5.23 pm

Moved by ***Lord Harrison***

That this House takes note of the Report of the European Union Committee on *The post-crisis EU financial regulatory framework: do the pieces fit?* (5th Report, Session 2014–15, HL Paper 103)

Lord Harrison (Lab): My Lords, in the welcome presence of the noble Lord, Lord Boswell, I am delighted to introduce the EU Committee report, *The Post-crisis EU Financial Regulatory Framework: Do the Pieces Fit.* The report was the product of the work of the EU Economic and Financial Affairs Sub-Committee, which I had the honour of chairing for five years, up until the general election. I now speak as a former chair, having been succeeded by the noble Baroness, Lady Falkner of Margravine, who I am also very pleased to see here today. I wish her every success in her new role, in particular given the interesting times we continue to live in.

Indeed, it was precisely those interesting times that prompted the sub-committee to undertake this inquiry. Following the outbreak of the financial crisis, the European Commission introduced no fewer than 41 legislative proposals—and the alphabet soup of acronyms that followed—resulting in a radical transformation of the European Union financial sector regulatory framework. Rules, supervision and institutional structures have all been affected and EU law has significantly increased, both in breadth and depth. The sub-committee decided to launch an overview of these significant reforms. Were they necessary and proportionate? What went right and wrong in responding to the crisis? How did the European Union institutions perform and did the reforms have the desired effect?

We took evidence over a period of several months from key witnesses, including: our own Government; Michel Barnier, the then Commission vice-president responsible for the internal market and services; two deputy governors of the Bank of England; the Financial Conduct Authority and the PRA; and two of the new European supervisory bodies, known as ESAs—the European Banking Authority and the European Securities and Markets Authority, or ESMA. We were ably assisted in our work by Professor Niamh Moloney, Professor of Law at the London School of Economics, who acted as specialist adviser for the inquiry. We are grateful to Professor Moloney and to all our witnesses. I am also personally grateful to Katie Kochmann, our policy adviser, and Stuart Stoner, our clerk whose sharp intelligence and unstinting industry have been rewarded with a deserved promotion to the Select Committee.

We began by assessing the objectives behind the proposals. These included: restoring and deepening the single market in financial services; establishing a banking union; building a more resilient and stable financial system; enhancing transparency, responsibility and consumer protection; and improving the efficiency of the European Union financial system.

We assessed the performance of the European Union institutions. We found that they were placed under considerable strain by the crisis. However, given the magnitude of the task they faced in responding to a once-in-a-generation crisis, we found that they performed well. Nevertheless, the sheer scale of the legislative reforms inevitably meant that the resulting framework contained passing weaknesses. In particular, the expected high standards of consultation and impact assessments were not always maintained. Can the Minister ensure that these will be restored to the premier position they deserve when discussing any of the new financial changes that will happen?

A principal focus of our work was an assessment of the new European supervisory authorities. They have endured a baptism of fire since their inception in 2011. I was very pleased that, six months later, we produced our first report—I think we were the first institution to do any analysis of their role. They have been responsible for much good work yet they are hampered by several fundamental weaknesses, including a lack of authority, insufficient independence, marginal influence over the shaping of primary legislation and insufficient flexibility in the correction and tidying up of the legislative errors that inevitably happen. Above all, they suffer from inadequate funding and resources—something we found in our 2011 report. In our view, the powers and authority of these agencies needed to be enhanced. I would be interested in the Minister's view on how that can be achieved.

There are some oft-cited cases of flawed legislative reforms, including the alternative investment fund managers directive—the AIFMD—and the bank remuneration provisions in the capital requirements directive IV as well as the contentious plans for a financial transaction tax. The sub-committee expressed grave concerns about the latter proposal throughout my time in the chair, which included two sharp and critical reports, yet discussions continue on this doubtful

project. They rumble on. Will the Minister update the House on what is happening with the financial transaction tax?

Yet these cases were exceptions. We found that the bulk of the new regulatory framework was necessary and proportionate and, significantly, would have been introduced and implemented by the United Kingdom in some form, even if action had not been taken at European Union level. This was particularly so because so much legislation derived from G20-driven international standards on financial sector regulation, where the then Prime Minister Mr Brown must be given his proper credit.

That being said, we found that not enough consideration was given to the general, overall effect on the financial sector of such a huge programme of reform. In short, the cumulative impact of the reforms was not always fully calibrated or appreciated. Many of the reforms were understandably designed to strengthen the resilience and transparency of the financial sector, yet a by-product of this focus was a belated recognition of the importance of the growth agenda. In this important discussion, I hope the Minister will fully take on board the importance not just of completing the financial services single market agenda but of the single market as a whole. Will he update us on President Juncker's €300 billion financial injection, much of it private money, in order to get the economy of the European Union going again?

In the light of our concerns, I am pleased at the approach taken by the new Commission. First Vice-President Frans Timmermans has placed great store by the Commission's better regulation agenda, including enhanced impact assessments, better stakeholder consultation and a recognition that the Commission should be judged by the quality of its output, not its sheer quantity. Likewise, the new Commissioner for Financial Stability, Financial Services and Capital Markets Union, the noble Lord, Lord Hill of Oareford, has made a commitment to review the cumulative effect of these various reforms. In addition, his commitment to such proposals as capital markets union as a tool for growth and investment also bodes well. We were very pleased to complete our capital markets union report before the end of my chairmanship. I hope that it will be discussed in this Chamber at a later date.

Our report was entitled *The Post-Crisis EU Financial Regulatory Framework* but, as noble Lords are well aware, the crisis continues to deepen in Greece. The robustness of the new framework, including key measures such as the single supervisory mechanism and the single resolution mechanism for EU credit institutions, is likely to be tested like never before, and the first few weeks seem to have done so.

Meanwhile, we have our own concerns here in the United Kingdom. Our report stressed that the implications of these reforms for the United Kingdom are immense, given that we have the largest financial sector in the European Union. We expressed concern that the UK's influence over the European Union financial services agenda had diminished, despite the appointment of the noble Lord, Lord Hill, and stressed that the Government and other UK authorities, including the City of London, needed to take urgent steps to correct this, and to enhance the UK's engagement with our European partners.

We also stressed the need to convey the message to all in Europe that the prosperity of the City of London, and the financial services industry that it hosts, is in the interests not only of the United Kingdom but of the European Union as a whole. Again, I hope that the Minister can give us an assurance that these points will be borne in mind as negotiations on the question of UK membership of the EU progress in the coming months.

I was very pleased to attend, again with our clerk Stuart Stoner, the parliamentary conference of the IMF in April, and Madame Lagarde was very pleased to receive from my hot sweaty hands a copy of this report, which she promised to read. This again demonstrates that we can have an influence by doing the studied work that is typical of this House, and I thank colleagues not just of the committee that I have left but those over the five years that I sat on it and had the pleasure of chairing it. I thank them for all their help and hope that the noble Baroness, Lady Falkner of Margravine, will enjoy her period in the chair in the coming five years, which will be testing indeed.

5.36 pm

The Earl of Caithness (Con): My Lords, the noble Lord, Lord Harrison, paid a fitting tribute to the staff of the committee, to the participants and to the quality of our witnesses, and I can do no more than say amen to what he said. I pay particular tribute to the noble Lord himself. He chaired the committee wonderfully well for the two years that I have so far sat on it. It is a very diverse committee—on the one hand there were some very strong Europhiles while on the other there were people who wanted to get out of the EU, and still do—yet, thanks to his guidance, we always managed to produce a unanimous report. That is a tribute to his skill. We will miss him but are also delighted that the noble Baroness, Lady Falkner, has taken on a pretty warm seat.

The EU has done a formidable amount of work since the crisis of 2008, with a large number of directives and regulations in a short time. It is probably unique in the EU's history. Our report poses the question: do the pieces fit? Yes, they fit pretty roughly, but you would expect that from western European countries and the Commission. A more pertinent question is: do they solve the problem? That is more difficult to answer, because obviously a lot of stuff is yet to be implemented and the jury is still out. Still, I shall offer my initial opinions, which I have to tell your Lordships have hardened quite considerably since we produced the report.

Sovereign debt is not mentioned in our report but the European Systemic Risk Board has just reported after three years' work on the question of sovereign debt. It has said that the favourable regulatory treatment of institutions that buy the debt leads to a continued high-risk strategy. Its recommendation is to do nothing.

The worldwide banking system remains flawed. Unlike companies, banks rely almost entirely on borrowed funds, including money from depositors. That allows

[The Earl of Caithness]
them to take bigger risks, and they will crash the economy again—it is only a question of when. It is a greater risk for us in Europe because of the euro, which has a systemic hole in the middle of its heart: member states do not control the currency in which they issue debt.

On banking union, as we mention in paragraph 22 of our report, it was a big mistake that the third leg of the stool, the deposit guarantee mechanism, was dropped. That three-legged stool, which had a bit of strength and balance, is now a wobbly two-legged stool.

It is also interesting to note that some of the Governments that helped solve the 2008 crisis are now in deep trouble themselves and need helping out of the mess that they have got into. Looking back, like many people I was rightly angry at the way that some of the bankers had behaved—but they were a small minority. They took us right to the brink, and caused and are still causing a huge amount of pain. Undoubtedly, however, there has been more regulation than was necessary in those areas that needed attention. The solution to the crisis, which rightly started out at an international level, was expanded considerably at the EU level. Some politicians fed the flames of the anger I have described. Doubtless we all recall the words of President Sarkozy of France at Davos in 2011, and what he said pleased the press and the anti-bank movement a lot.

Bankers were blamed for everything, and when the witch-hunt has started, it is very dangerous to behave or even look like a witch. The result was that the repercussions went way beyond the banks, and most financial service industry and even non-financial firms were caught up in the "Barnier Bible", Commissioner Barnier's 41 pieces of legislation. As the noble Lord, Lord Harrison, said, some of the resulting legislation was ill-conceived and due to political pressure; we mention that in paragraph 5 of our summary.

Once the ball was rolling, there was no stopping it. However, I find some comfort in noticing the difference between Commissioner Barnier's approach and that of the Commissioner my noble friend Lord Hill, whose stated objective is to have the minimum amount of regulation. Let us remind ourselves that 400 of Commissioner Barnier's regulations have yet to pass into law. Let us also not forget that prior to the financial crisis and the introduction of all these heavy regulations, the City of London was a big contributor to the tax receipts of HM Treasury and the Government. The new rules have substantially reduced the profit of the financial institutions and hence their ability to pay tax.

In the committee we discussed an ongoing concern: namely, what is the UK's input into all of this? It is hard to judge, but we are reassured by the Government that HMT was fully involved. My experience is that it tends to be more involved than it is given credit for, but I remain sceptical. Even this morning, evidence was taken from the Financial Secretary, David Gauke. It was on a different subject, but he said that there is no Government involvement at all—and that is with the own resources of the European budget. That is a serious concern, and it shocked all of us in the committee that he was so blunt about it.

However, if the UK had serious input into regulations and directives such as MiFID and AIFMD, why are they so burdensome on the industry with no good effect? In our recommendation in paragraph 164 we deal with proportionality for smaller firms, some financial service providers and non-financial firms. While it is perfectly true that having one regulator for the whole of European business is of huge benefit for our global investment firms, the smaller national firms are being severely compromised by the increase in regulation and the cost involved.

I gave an example of a firm in the debate on the Queen's Speech when I spoke on 4 June in col. 612. I now add that that firm has had a fourfold increase in compliance administration personnel in the last four years and that its annual spend on insurance and regulation this year is up 40% on 2013. With all the extra regulations to come, there is a continued state of change, challenge and fear for small companies.

Were the Government aware of the consequences of these regulations? Does my noble friend Lord Ashton agree that that business could not set up today because of the costs and extra regulatory burden, and that we are already witnessing an amalgamation of firms into even larger companies in order to stay in business? The consequent lack of choice and diversity is bad for the market and for Europe in general. The implications are more severe for the UK than for other member states—as the noble Lord, Lord Harrison, rightly reminded us, we are the financial centre of Europe, and if we suffer, so does the rest of Europe. What discussions have Her Majesty's Government had with the Commission to correct these excessive burdens?

I, too, must touch on chapter 3 of our report, which deals with the European supervisory authorities. In response to our report, the Government stated that the ESAs will need to continue to ensure that their rules are proportionate and do not overburden industry and regulators with unnecessary guidelines and standards. Who is doing that? Who is keeping a check on the regulators at European level? There is also concern at national level that our regulators are vying with each other to show their virility. Issuing the biggest ever fine is undoubtedly good news for their reputation and pleases those who are against the financial services industry. We need to keep a very careful eye on this. How is my noble friend controlling our national regulators?

Misconduct can be handled in a number of ways, and we have seen some horrific displays of misconduct in financial services. My noble friend will be aware that the Fair and Effective Markets Review, launched by my right honourable friend the Chancellor of the Exchequer and the Governor of the Bank of England in June 2014, has just reported. This is an important area. An effective market and an effective form of behaviour can reduce the amount of regulation. What are the Government doing to encourage the Bank of England and the FCA to promote their report globally, so that there is an international agreement? When are the report's recommendations for the UK going to be implemented?

I was very fortunate to serve on the committee at a time of such an interesting revolution in the way the financial services industry in both Europe and the

world has changed. As I said at the beginning of my speech, my thoughts have hardened: too much has happened in too big an area, and although the consequent fallout has yet to be fully felt, when it is, we will be all the poorer for it.

5.48 pm

Lord Flight (Con): My Lords, I have much enjoyed the four years I have spent on the committee. As the noble Earl, Lord Caithness, pointed out, there was a wide range of views but we never had any problem in reaching compromise and agreement. The quality of the reports we produced and the use to which they were put were significant: they have had an impact not just in this country but throughout the EU. I thank the noble Lord, Lord Harrison, for the civilised, human and excellent way he chaired the committee, and our excellent clerk, Stuart Stoner, and the rest of the staff.

The committee was really one of the only places where European law and directives got any sort of scrutiny at all in this country. It was hard work grinding through it all—nearly every week, yet another provision had to be addressed and the Government advised about it. It was indeed a never-ending stream.

I learned a lot from my membership of the committee. In particular, I well remember a visit to Frankfurt and Berlin. I was very keen to ascertain Germany's position on the basic argument that if the euro is not to fall apart, Europe needs to come together politically and economically, and it needs a system of transfer payments from the more successful and more competitive economies to the less successful economies. However, the universal answer that came from Germany was "Not a pfennig". There was an absolute "no" to any form of transfer payments to the less successful parts of the EU. I am afraid that, to me, that means that the euro will not be able to succeed as a currency and will go the way of the last European currency, which was in place from 1863 to 1893.

A second point about Germany that I found quite extraordinary was the failure to understand that if you take austerity measures which grind an economy into the dirt—leading, for example, to a collapse of 25% of GNP, as in the case of Greece—you are likely to get a nasty political reaction. Of course, the Treaty of Versailles after the First World War did just that to Germany, and Germany had a most unfortunate political reaction in its turn. However, the Germans seemed not to understand that point at all.

Turning to the report, I think we can say that it is a very professional, thorough and useful chronicle of EU regulatory initiatives and policy since 2008. As the noble Lord, Lord Harrison, pointed out, there was what I would call some polite criticism of a fair amount of what we felt to be overkill and perhaps wrong, but the report certainly refers to the main flawed items at that time. The great objection to AIFMD was that it was introduced to attack hedge funds but ended up embracing perfectly straightforward investment trusts and virtually anything other than a UCITS, imposing a huge and expensive body of work and reports that nobody reads. The bank remuneration arrangements simply serve to raise fixed salary costs to banks, which is hardly desirable, and we have not yet lost the threat of a financial transaction tax.

Although I agree with the report that much of the regulation would have been enacted in the UK anyway and that it was not specifically an EU initiative, I do not really agree that all the new regulations that have been introduced are needed or proportionate or that they achieve anything very much. I think that there has been a misguided and often wrong reaction to the financial crisis, particularly in Europe, where most of the problems have been about the euro, in contrast to the specific banking problems that this country experienced.

I like to try to step back and look at the enormous increase in regulation in recent years and to ask what it is contributing. We have gone down a route of extraordinary micromanagement and prescriptive regulation, the costs of which—ultimately passed on to ordinary savers and companies—are enormous. We have three layers of initiative: the international and US layer and the EU layer, and our own UK gold-plating of much that comes from both those sources.

Professor Gower would turn in his grave if he could see what has happened to the very sensible regulation which he introduced. His basic principle was about principle and about encouraging integrity. The plethora of overprescriptive regulation serves almost to remove the whole fundamental issue of requiring principled conduct and integrity. It is all about thousands of different rules and asking whether they have been complied with correctly. We now have a plethora of new bodies, with people not understanding what most of them are about. We have the FATF, FATCA, the FSB, the FSE, the ESAs, ESMA, MONEYVAL, the EBA and the JMLSG, to mention just a few. In 2001, the FSA had a staff of just 600; today, the FCA has 4,000 staff and the PRA more than 1,000. Coming down the pipeline are 420 pieces of EU level 2 legislation to be introduced. Within the financial services industry there are about an extra 100,000 people working as compliance employees. The FCA now has 16 handbooks of rules with 4 million words and, as I have said, huge costs are imposed, ultimately on the customers of the industry and often to little point.

To my mind, it was a mistake for the UK to surrender sovereignty in financial services to the EU. Of the 20 main measures of the last decade, I think that approximately half would have happened anyway and half very much reflect specific EU policies and objectives. There is a big issue that, although 28 EU countries—maybe it is more than that now—control the legislation, 22 of those countries have no skin in the game.

I have talked about the problems of the AIFMD. Another area that needs to be mentioned is MiFID II, which is now imposing upon what we used to call stockbroker private client activities some, I think, quite ridiculous requirements. Just yesterday, I heard of a case where an individual went along wanting a significant amount of wealth to be managed and was given 120 pages to digest and six different forms to sign—he ended up walking away saying, "You must be mad if you want me to try to digest all this and sign anything". Also, unless older clients specifically say that they require a bold investment approach, they are put under what is viewed as a more cautious approach for older people, and that means a significant amount

[LORD FLIGHT]
of government bonds—arguably government bonds are about the highest risk investment category for the next five years, as and when interest rates return to normal.

The latest issue, and since our report, is the EU fourth AML directive. I wonder whether Members of this House are aware that everybody now will become a politically exposed person. If you are a PEP, your bank has to monitor every transaction over your account and, if anything looks to be slightly out of the normal, report it as a potential source of corruption. The cost of doing this sort of thing is absolutely enormous. That is why banks are increasingly sacking their PEP clients. But PEPs are not just Members of the other place and of the House of Lords—they are their spouses, their children and their parents, if alive. It is a completely and utterly ridiculous system that has been brought in, particularly when I think that the power of Back-Bench Members of Parliament and working Peers to engage in corruption is virtually non-existent anyway —so watch out.

It is now also very difficult to do business with many emerging economies. If those emerging economies do not meet the required FATF standards, the bank of an exporter cannot accept payment from the bank of the company in the emerging economy to which they are exporting without an enormous process of assessment as to whether that bank is a proper institution. It is becoming more difficult as a result to export to many emerging economies.

I wish my noble friend Lord Hill success with his capital markets directive. That has been one of the really positive initiatives in recent times. But even with that there is a problem, in that the principle of the EU is that financial products and investment funds should not be marketed to ordinary citizens, because it does not think that they can understand them adequately, other than USIT funds. For example, it is making it very difficult to promote debt funds to attract investors, where SMEs in particular very much need additional finance. ESMA is trying to regulate 95% of market-making activities, which will purely clutter up the market.

However, there are even bigger, wider issues. The single market is in many ways about protection; it is about keeping out of the EU market other than EU-based products and institutions. It is no wonder that a lot of large players rather like the system, because if you are part of a cartel in a protected market, what could be better? You certainly do not want the competition of institutions from America or Hong Kong.

Those who like a command economy, having failed to achieve that in government, have moved to the regulatory sector, where they have had a heyday in introducing command economy measures. It is not just in financial services; there are now more people working in DfID than there are farmers left in this country.

I understand that part of the Government's renegotiation agenda is to seek to acquire for the UK a veto over directives relating to the financial services industry, just as France has such a veto in relation to its biggest industry, agriculture, and Germany in relation to engineering.

Lord Liddle (Lab): It is not the case that France has a veto in relation to the common agricultural policy, as I think the noble Lord well knows. All the decisions on the reform of the common agricultural policy have been taken by majority voting in the Council of Ministers. Of course, the council tries to take into account the views of member states which have particular interests. Surely he would acknowledge that, in the case of financial services, that is what has happened with Britain: our interests have been taken into account by the council.

Lord Flight: I would have thought that what I have just said demonstrates that what I call sensible interests, including our interests, have often been overridden. With regard to agriculture, while I am well aware that the overall reforms of the system have been pan-EU, I think that France still has some protective vetoes. We will see whether this is correct, and what the negotiations are able to achieve.

I am critical also of the UK. There has been a lot UK gold-plating of what has come to the UK both internationally and from Europe. The introduction of RDR has simply removed financial advice being available to 70% of the country's population, as a result of which the Government are struggling with providing guidance on pension fund services and leaving people hanging in mid-air as to who they might approach to manage their pension assets.

There is the need for an independent new appraisal of what regulation in the EU and even internationally is good and useful for markets and for clients, and what is unnecessary, harmful, and incurs a cost and adds no benefit. I would like to think that the UK will give an EU lead to reform of regulatory overkill and I wish the noble Lord, Lord Hill, enormous good fortune in his commitment to review the cumulative effects of the various regulatory reforms.

Lord Liddle: Does the noble Lord accept that the Commission has just produced precisely what he is asking for? Commissioner Timmermans has put forward a whole set of propositions on regulatory reform and on reviewing existing legislation to make sure that unnecessary regulation is cut back. The noble Lord, Lord Flight, appears to be making statements without full regard to what is happening currently in Brussels.

Lord Flight: I am aware of what is happening in Brussels but I specifically said that I wanted to see the UK more active in terms of a programme of regulatory rationalisation and review. The key point I am seeking to make is that when I stand back, I perceive what I believe to have been enormous overkill, often not addressing the right areas, since the 2008 financial crisis.

6.05 pm

Lord Davies of Oldham (Lab): My Lords, the House has long appreciated the chairmanship by my noble friend Lord Harrison of this committee and the series of reports which have been of great use to noble Lords in informing us on crucial economic issues. I thought that I had a straightforward job this evening, which

was to welcome certain parts of the full report—I have some reservations, of course—and to congratulate my noble friend on his chairmanship and on producing it. Now I am absolutely astounded as to how on earth he manages to sustain calmness in a committee which it seems has at least one representative, and probably two, who ought to have written a minority report saying that they would never have started from here and they largely do not agree with anything to do with regulation. In fact, they do not even think that the financial crisis was caused in this manner and therefore a totally different subject ought to have been tackled. I am afraid that the House can scarcely be expected to indulge in such a wide-ranging debate, and indeed I have not come armed to tackle that position—except to say to the noble Lord, Lord Flight, and to a certain extent the noble Earl, Lord Caithness, that they must recognise that this report is on the post-crisis EU regulatory framework. What crisis do they think the report is referring to?

Surely we are dealing with the financial crisis which affected the whole of the western world and caused repercussions much wider than that. It is only right that the European Community, in the same way as successive British Governments, should have set about the task of bringing in regulation against circumstances which the noble Lord, Lord Flight, must recognise. The morality that he thinks is held in a handshake of agreement between gentlemen in the City just does not hold in the present day. In fact, the attitude where such trust was held at the time clearly led to circumstances in which people could betray it in such a way that whole economies in Europe and, I might add, most of the western world and the United States, crashed in the face of banks going down. That is the measure of the crisis, so it is not surprising that my noble friend Lord Harrison chaired a committee report on financial regulation. I do not think that the Minister should be asked to respond to a widespread debate on whether regulation is needed at all. I would have thought that we have enough evidence in that respect.

That is why the committee has examined the European supervisory agencies which oversee the regulatory framework and has found a great deal of their work to be satisfactory, but has also made it clear—not just on this occasion but in the past as well—that these bodies will need considerable resources to carry out their tasks properly. That is a recommendation in the report. I do not know whether the two noble Lords have dissented from that position, but the nature of their contributions to the debate suggest that they actually have. However, the report from the committee addresses itself to that issue, and that is what is before the House today.

We know, as my noble friend Lord Harrison said, that there are areas of proper disagreement. We recognise that the financial transaction tax is an issue of considerable disagreement both in our economic, financial and political circles and, of course, in certain parts of Europe. Certainly, the current proposal is not acceptable to many. As my noble friend Lord Harrison indicated, the committee wondered what progress had been made on the financial transaction tax. We are not quite sure where the discussions on that very significant issue are. There is clearly a considerable body of opinion, not just in Europe or in the United Kingdom. My own party has a real interest in a financial transaction tax. The United States, too, is interested in the way in which Governments can receive necessary resources from a very wealthy section of their economy which, of course, looks as if it could afford further levels of taxation.

We have a real interest in these European issues. If one thing stands out from the crisis facing Greece at present it is the question of financial regulation. That has an impact on the UK, too. We cannot shy away from the issue. We had a Statement earlier this week showing the Government's proper concern about the situation in Greece. Why was that Statement made? It was because the UK has a very real interest in the success or failure of economies in Europe. If the Greek crisis goes to its worst position, we are conscious of the fact that there will be an impact on the British economy. As for our citizens, it must be recognised that we are effectively sending out emergency messages to so many of our people who either live in Greece or may be travelling to Greece on holiday. They are at risk because of the crisis. That is why we need to look at these issues, and why we should be grateful to my noble friend Lord Harrison and his committee.

We do not need to get sidetracked today into whether there needs to be regulation from Europe on the financial sector. The report also emphasised the fact that we have a prominent figure who is central to the success of European initiatives in this respect. I am referring to the noble Lord, Lord Hill, whom we all valued for his contribution here as Leader of the House. He is in the Commission, involved in the crucial area of financial and economic matters. Of course, therefore, we hope that he will be able to use influence to give guidance in circumstances where we all recognise that a great deal needs to be traded.

There is a whole other dimension to the report on which there may be some disagreement, but I hope that the Minister will address himself to it. The report says:

> "One of the overriding concerns of our witnesses was that the legislative framework had been focused too much on stability rather than growth".

I am not surprised that there is an emphasis on stability when absolute chaos descended upon us all for a number of months during the financial crisis. It is also clear that we will need action and regulation that promote growth, too. That was put to the committee. I hope that the Minister will address that matter as well. In addition, there was the issue of the capital markets union. We hope that there will be a constructive response to the ideas implicit in that.

The wider issue is quite clear: in the coming months and years we need to ensure that the United Kingdom's voice is used essentially to help to create a post-crisis framework that guarantees, as far as we are able, that nothing like the circumstances that we went through in the last decade affects our country, Europe and the wider world again. We have to be a constructive and active member of negotiations.

I recognise that the Minister will not accept every point in the report. Nevertheless, the Government's response to the report is extraordinarily welcoming.

[Lord Davies of Oldham]
In fact, I have great difficulty recalling a report where so many commendations were made on the salient conclusions reached by it. Yet, here we are being sidetracked into a debate as if the report has no real credibility at all. I think that it does and that the Government recognise that it does. I therefore hope that the Minister will respond to the salient and constructive points in the report, rather than being sidetracked into what I regard as a minority viewpoint expressed by noble Lords. They certainly have every entitlement to their views, but this is not the occasion on which they should have been expressed in quite that manner.

6.16 pm

Lord Ashton of Hyde (Con): My Lords, I thank the noble Lord, Lord Harrison, for his five years chairing the committee and for producing the report. I also thank the other committee members for their preparation of this comprehensive report. Of course, I thank all noble Lords for their contributions.

The UK is home to some of the world's most successful and competitive financial firms, benefiting businesses and working people across the country. It is therefore right that we remain focused on the legislation that provides the framework within which businesses and customers operate. It must provide the foundations to ensure that the financial services industry plays a leading role in creating jobs and generating growth, delivering for customers at every stage of their lives, but it must also provide the foundations to ensure that the sector remains strong and stable.

We are emerging from the worst economic crisis in living memory—a point well made by the noble Lord, Lord Davies of Oldham. It is important to remember that context when considering the significant volume of EU financial services legislation since the crisis. I particularly draw the attention of my noble friends Lord Caithness and Lord Flight to this. In making their criticisms they have to bear in mind the situation pertaining and which we are addressing, and the chaos and misery that it caused to many people in the European Union. It was crucial that we acted quickly and decisively to shore up the financial system and then put in place measures that aim to ensure that we never face such a situation again.

There have been benefits: an increase in transparency; a more level playing field across the EU for financial actors; the tools to end the adverse relationship between sovereign countries and bank, to ensure that taxpayers are never again in line to bail out banks; and a more stable financial system. However, the speed of action and complexity of issues means that there will be some unintended consequences.

I shall now address some of the points that the noble Lord, Lord Harrison, made. He asked for the latest on the so-called Juncker plan, also known as the European fund for strategic investments. I can report that the 25-26 June European Council approved the fund and called for its rapid implementation.

The noble Lord, Lord Harrison, also mentioned the committee's finding that the UK's influence in Europe was diminishing. We continue to be an active and influential member of the EU and have many examples to prove that from building a coalition to deliver the first ever reduction in the EU's budget to delivering fundamental reform of the common fisheries policy. We are at the heart of the debate on interests that matter most to the UK but I accept what the report said. The Government will definitely consider those views addressed in it.

Both the noble Lord, Lord Harrison, and the noble Lord, Lord Davies of Oldham, asked for an update on the financial transaction tax, which has many problems as far as the UK is concerned. The UK believes that the Commission's proposal is unlawfully extraterritorial. We also believe that the proposal is technically flawed. Following this lack of agreement, the 11 participating member states have committed to finalising a watered-down first stage of the tax covering shares and some derivatives by the end of this year. The Chancellor will not hesitate to challenge in court the final FTT directive if our legal concerns are not addressed.

My noble friend Lord Flight talked about gold-plating. I draw his attention to the bit in the report which said that arguments about gold-plating in the UK are "finely balanced". He also mentioned the fourth anti-money laundering directive. We have been in regular discussions with the private sector to take its concerns into account both throughout the year and prior to making any amendments to the regulations. This directive has been agreed by all EU member states and was published in the EU *Official Journal* in June 2015. The Government are required to transpose this directive into UK law and we intend to run a full consultation prior to the next set of amendments that are due to come into force by June 2017 at the latest.

Finally, my noble friend Lord Flight mentioned politically exposed persons for UK purposes. The revised global standards, to which the UK is fully committed, require that they be treated as politically exposed persons on a risk-sensitive basis. The revised standards require that for all foreign PEPs enhanced due diligence is required. Domestic PEPs will be subject to enhanced due diligence and ongoing monitoring when the business relationship is assessed as high-risk. The Government seek a risk-based approach to the application of this requirement in negotiating the fourth anti-money laundering directive.

I turn to the report and again thank the noble Lord, Lord Harrison, and the committee for their work, which I believe constitutes a useful and valuable contribution to the debate on financial services regulation within the EU. The Government agree with the committee's recommendations on the need for reviewing the financial regulatory framework following the upheaval in recent years. Under First Vice-President Timmermans' Better Regulation Package, as mentioned by my noble friend Lord Caithness, the Commission has moved to strengthen its programme that assesses the existing stock of EU legislation to make it more effective and efficient. The Government also strongly welcome the plans of the noble Lord, Lord Hill, to undertake an assessment of the cumulative impact of financial services legislation.

The Government also agree with the committee's calls for improvements to the Commission's approach to impact assessments, which was the first question of the noble Lord, Lord Harrison. We particularly welcome

Vice-President Timmermans' proposals to lighten the regulatory burdens for small and medium-sized enterprises. I say to my noble friend Lord Caithness that the Government acknowledge the important role that small businesses have in supporting the economic recovery. We are committed to creating the best possible environment for a sustainable private sector. This includes our approach to EU legislative proposals, where there is a commitment to the "Think Small First" principle when preparing initiatives, including lighter regimes for SMEs in new legislation and exemptions for microenterprises. Vice-President Timmermans' proposals on better regulation include guidelines for mandatory SME and competitiveness tests in all impact assessments, and we particularly welcome these proposals. These are welcome steps in the right direction. The Commission must now deliver on its proposals to improve the process of EU lawmaking.

My noble friend Lord Flight mentioned the alternative investment fund managers directive. The Government recognise that this has imposed new costs on the alternatives sector, particularly managers above the AIFMD threshold. This underlines the need for better impact assessments and improvements to the better regulation agenda.

Turning to the European supervisory authorities—ESAs—it is clear that they are an important part of the European regulatory framework. They have been tasked with a significant workload and they have performed well under difficult circumstances. We fully agree with the report in these respects. Given the large amount of secondary legislation the ESAs have had to deliver since their inception, it is understandable that they have been focused on the creation of the single rulebook, but we believe that, as the flow of post-crisis legislation slows, they should focus on delivering other parts of their mandate, such as pushing for greater convergence in supervision, ensuring consistency and raising standards. They have a crucial role to play as system managers and in improving supervisory standards across the single market.

However, one area where the Government disagree with the conclusions of the report is on additional funding for the European supervisory authorities. The report recommends that additional funding should be given to the ESAs to fulfil their mandate. The Government believe that, at a time when Governments across the Union are tightening their belts, it is not appropriate for the ESAs to seek large increases in their funding. The Government are convinced that, through proper prioritisation of their work, the ESAs can deliver against their existing mandate with their existing funding.

The Government join the committee in welcoming the work of the Financial Stability Board on tackling "too big to fail". It is clear there have been positive developments in the EU and internationally. The stabilisation of the banks through the implementation of capital requirements under Basel III through the EU's fourth capital requirements directive is one good example.

I also ask noble Lords to note the publication of the final report of the Fair and Effective Markets Review, which was mentioned by my noble friend Lord Caithness. The review, established by the Chancellor, made far-reaching recommendations to improve the fairness and effectiveness of wholesale fixed-income, currency and commodity markets. Given the global nature of these markets, we will be taking forward several of these recommendations internationally, including with the Financial Stability Board and the International Organization of Securities Commissions. The review warmly welcomes the Bank for International Settlements' work to create a single global FX code. The review has worked with colleagues from other central banks to develop a work programme that will deliver a robust set of standards. It has recommended that once the global standards are in place, the UK backs these standards with a new regulatory regime for FX spot markets. Given that the same standards should be upheld in all jurisdictions, this should not affect the UK's competitiveness.

Indeed, ensuring global regulatory consistency is essential in stopping the build-up of risk from the variation of reform, regulatory arbitrage and market fragmentation, and the UK continues to play a significant role in the international push for a stable, safe and globally regulated financial system. But we also need a smart regulatory approach which also recognises that in some cases member states can be best placed to determine what regulation is appropriate for their markets.

The Government understand that the euro area is moving towards greater integration, and that this has implications for the UK. The committee's report rightly notes the risks to the UK of further eurozone integration. We have consistently recognised the wish of euro area member states to achieve closer economic and fiscal integration to strengthen the single currency. The crisis unfolding in Greece has underlined the desire—and, indeed, the need—for collective action across the euro area in times of difficulty.

A stable and growing eurozone is in the interests of all EU member states, including the UK. At the same time, the Government have been clear that we will not be part of this closer integration. We have, however, been closely involved in the negotiations, particularly over banking union, to protect UK interests. The UK continues to be an active and influential member of the EU and the Government continue to be at the heart of the debate, working closely with other member states, including euro area member states, on the key issues of the day—improving Europe's competitiveness, the single market and trade.

The report states that while the UK's expertise in financial services is respected, the UK's influence over the legislative process is diminishing. While I appreciate that there is always more that can be done and welcome the constructive recommendations in this area from the committee, the Government have secured positive outcomes for the UK, at times having to fight hard for them. For example, the Government have successfully worked with our European partners to introduce tools for resolving EU banks that are credible, workable and closely aligned with existing UK legislation, through the bank resolution and recovery directive. We have also secured flexibility for the UK to implement its macroprudential regime, within the scope of the capital requirements directive IV proposal, and exempted British pensions from new rules on disclosure for investment

[Lord Ashton of Hyde]
products. Where the Government thought that EU legislation was at odds with the treaties, we have challenged it in the courts as we have on short-selling, the financial transaction tax, location policy and the bonus cap.

There are some questions I am afraid I did not manage to get hold of but I remember one in particular from my noble friend Lord Caithness. He asked: what am I doing to control the regulators? The answer is that the European supervisory authorities are held to account through their respective boards of supervisors, where the FCA and the Bank of England are represented. Domestically, the FCA and the Bank are held to account by the Treasury Select Committee, Her Majesty's Treasury and Parliament. Regulators need to be independent to serve as a second pair of eyes for the single market.

As the Prime Minister has set out, and as the noble Lord, Lord Davies, mentioned, we need to make the EU a source of growth, jobs, innovation and success, rather than stagnation. We strongly support Mr Juncker's vision of a well-regulated and integrated capital markets union of all 28 member states which maximises the benefits of capital markets and non-bank financing for the real economy. We fully agree with the committee that the concept of capital markets union should be welcomed. It is a project to which the UK is fully committed. But if the single market is to continue to be a driver of growth, European legislation must focus on finding the right balance between enhancing the EU's competitiveness in an increasingly global environment, promoting growth, maintaining stability and protecting consumers. We need strong regulatory standards applied internationally but this also means proportionate and consistent legislation that continues to decrease barriers between member states and recognises that, in some cases, the responsibility for regulating markets best falls to member states themselves.

I therefore repeat my thanks for noble Lords' comments and the committee's review of the regulatory framework since the financial crisis. The Government can safely say that by far the majority of its recommendations were accepted. I counted at least 23 out of 33 recommendations that were accepted without any qualification; even some of the others were accepted with some qualification. Generally speaking, the Government accept the review and warmly welcome it, as I warmly welcome the insights of noble Lords this afternoon.

6.33 pm

Lord Harrison: My Lords, in concluding the debate I remind my colleague the noble Earl, Lord Caithness, of something he said to us when we embarked upon this report: that he hoped it would become a textbook for those who seek to discuss these matters in future. I believe that we have achieved that. I thank my noble friend Lord Flight for his comments and for the PEP talk that he gave us in the midst of them.

I thank my own Front-Bencher, my noble friend Lord Davies of Oldham, who has wielded this responsibility over many years, for sympathising with me over the sometimes choppy waters that we on the committee experienced in dealing with financial affairs. However, we were always united in having the proper and right approach. I hope the noble Baroness, Lady Falkner, during her reign of the tricky committee that is the financial services committee, also experiences the calm that has been displayed here this evening in helping the UK resolve some of the really challenging and important points that are being made to us about the future.

Motion agreed.

Health: Children and Young People

Question for Short Debate

6.35 pm

Asked by ***Baroness Hollins***

To ask Her Majesty's Government what steps they are taking to safeguard the physical and mental health of children and young people.

Baroness Hollins (CB): My Lords, this is the first debate that I have spoken in with the noble Lord, Lord Prior, and I welcome him, rather belatedly. I refer to my interests in the register. I am also grateful to other noble Lords for agreeing to speak in this debate, given the lateness of its timetabling only last Thursday.

I begin by reminding noble Lords that most factors that influence child and adolescent physical and mental health lie outside the health sector and that a preventive approach is essential to secure the best outcomes. Health outcomes, social achievement and resilience in adult life are largely set during the developmental period: in the first 18 years of life and particularly in the first 1,001 critical days from conception to age two. Even before conception, maternal behaviour can have long-term consequences for a child's health and well-being. I am thinking here, for example, of foetal alcohol syndrome, which is the leading preventable cause of disability in children, and the need for women to be better informed and to discontinue drinking alcohol before conception. At the moment, government advice on the matter of alcohol in pregnancy is less than clear.

I would like assurances from the Minister about three key issues, which interweave with the other issues that I will go on to discuss. First, will the Minister assure the House that the Government intend to improve the collection of outcome data, including a child-led outcomes framework such as that requested by the Coram Foundation? This would enable us to better understand the scale of the problem, to plan services and to monitor progress. It would also allow children, young people and carers to express the outcomes that matter to them, because they are the recipients of care.

Secondly, will the Minister commit to focusing on preventive measures in all policy relating to children and young people? This should be targeted both at high-risk individuals and families and at a public health level, because this matters to all children and young people.

Thirdly, will the Government invest in early intervention systems and strategies in both physical and mental health? When things start to go wrong, there is less distance to travel back to wellness and health than once

a chronic condition has set in. We see this all too frequently in child and adolescent mental health services—CAMHS—and with childhood obesity.

The BMA has called on the UK Government to adopt a "health in all policies" approach, whereby health is incorporated into all their decision-making areas. I ask for this to always include a particular focus on the 25% of the population who are children and young people, even where a policy may, on the surface, seem to relate only to adults. The BMA has highlighted that austerity measures and welfare reform disproportionately affect families and children. Disabled children feel the effects even more. Is it not time that the impact of austerity and funding cuts on the availability of children's health services should be objectively monitored?

We know that childhood poverty has a significant negative impact on children's longer-term mental and physical health life path. We also know that at least half of all mental illness starts by the age of 14 and probably more than three-quarters by the age of 24. The total economic and social cost of mental health problems in England alone is estimated to be £105 billion, and mental health problems are the leading cause of sickness absence in the UK. With such a clear link, it seems unfathomable that 3.5 million children live in poverty in the UK, according to Barnardo's.

The BMA Board of Science report, *Growing Up in the UK*, published two years ago, advocated a life-course approach to child health where health and well-being are integrated on a continuum. As I said, this begins prior to conception, by ensuring the optimum health for the mother, and runs through to adolescence. The report made a wide range of recommendations that remain relevant, including that there should be an annual report on the health of the nation's children with accountability at ministerial level for children's health and well-being. Are the Government planning to develop a national children and young people's health strategy, as recommended even more recently in the 2014-15 report of the Children and Young People's Health Outcomes Forum? I should express a little disappointment that the *Five Year Forward View* hardly mentions children in any of the areas identified as a priority.

Secondly, the BMA report stressed that children's services should be family centred, with a focus on the importance of parenting and treating the child and family as a unit. The Department of Health's own report, *Future in Mind*, advised evidence-based programmes of intervention and support to strengthen attachment between parent and child, avoid trauma, build resilience and improve behaviour. I am pleased that there is increasing recognition from Government on this issue of early years intervention. The cross-party manifesto *The 1001 Critical Days* places an emphasis on pre-conception until the second birthday as a period to dramatically improve outcomes in childhood. I hope the Minister will support its recommendations.

Prevention is always better than cure, but it also worth noting that infants, children and young people regularly use NHS services and account for about two-fifths of a typical GP's workload. I will use mental health and obesity as two examples where early intervention should be prioritised once things start to go wrong.

Parity of esteem with respect to mental and physical health should be aimed for with children and adolescents just as much as with adults. Remember, there is no health without mental health and separating the two just does not work and is not cost effective. Considerable investment in child and adolescent mental health services will be needed to ensure sufficient specialist counsellors are available locally. Freedom of information requests by the charity Young Minds found that more than half of councils in England cut or froze budgets for CAMHS between 2010 and 2015. That had a detrimental effect on the early intervention and prevention capacity of child and adolescent mental health services. Cutting their budgets means that the threshold for treatment has become much higher and many CAMHS must now concentrate on acute crises in adolescents and have little capacity for family interventions with younger children with severe emotional and behavioural disturbance. That goes against all the advice coming from the professional bodies and the Department of Health.

Despite having one of the most advanced health systems in the world, child physical health outcomes in the UK are among the poorest in western Europe. If we compare ourselves with Sweden, the country with the lowest mortality for children and young people after controlling for population size among other variables, we find in the UK that every day five children under the age of 14 die who would not die in Sweden. That equates to the alarming figure of 132,874 person years of life lost each year in the UK, the majority of which would be as healthy adults contributing to the country's social and economic strength.

Childhood obesity is another key area where preventive work in physical health needs to take priority, as it also causes diabetes and heart disease. The BMA and the Royal College of Paediatrics and Child Health have expressed serious concern about the rapid rise in rates of obesity. A new BMA report to be called "Food for Thought: Promoting Healthy Diets among Children and Young People" will be published later this month. The report will call for the appointment by government of one person to drive a co-ordinated obesity prevention strategy. I urge the Minister to give serious consideration to widely supported recommendations that a strong regulatory framework should be central to the approach to reducing the burden of diet-related ill-health in the UK.

The Prime Minister publicly expressed his concerns over the commercialisation of childhood and commissioned the Mothers' Union to report on it. The report by Reg Bailey *Bye Buy Childhood* generated considerable media coverage, with many commentators expressing serious concern over the targeting of children for commercial benefit. Children and young people, as well as adults with learning disabilities, are particularly exposed and vulnerable to a range of food and drink marketing tactics.

While there have been some notable improvements in measured health outcomes for children and young people over recent years, the evidence is telling us that the rate of improvement is slower than it should be. The infrastructure for the delivery of clinical research in the UK is unparalleled internationally. However,

[Baroness Hollins]
the RCPCH report *Turning the Tide* identifies a continuing imbalance between research that targets adults and research that addresses the needs of infants, children and young people and calls for an increase in the number of child health research posts in the UK and a designated fund for child health research which must address mental and physical health.

Safeguarding has two meanings in this debate, one being the need to safeguard health outcomes, but it would be strange for me not to mention child protection concerns. So many children in the UK have been sexually abused. It is shocking that the scale of child abuse of all forms led to the need for the introduction of the Modern Slavery Act 2015. This issue requires a debate all of its own to cover it adequately, but given the Prime Minister's launch of a child protection task force, will the Minister commit to commissioning and introducing a standardised, compulsory multiprofessional safeguarding training programme for all professionals working with children and families across health and social care? This would need to have a centralised government point of accountability to prevent the fragmentation of responsibility caused by mandated responsibility written into the Modern Slavery Act 2015.

In closing, I will summarise my key areas of concern: outcome data relevant to children and young people are needed to allow us to assess the scale of the problem and track progress; preventive measures, beginning before conception, are needed in all policy decisions that affect children and young people, regardless of government department; and we need a commitment to early intervention strategies where there is evidence things are going wrong. While healthcare professionals clearly have a key role to play in improving child health, it also requires political will and leadership. With concerted action from government, we could make health outcomes for children and young people comparable to the best in the world.

6.47 pm

Baroness Stedman-Scott (Con): My Lords, I congratulate the noble Baroness on securing this important debate about children and young people's physical and mental health. I hope I am not at risk of repeating some of the things that she said, but I hope she will take it as significant endorsement. I am not an expert on physical or mental health, but I have a lifelong interest in these issues, not least because I am a fellow of the Centre for Social Justice, which has spent more than 10 years researching the root causes of poverty and disadvantage.

These overlap to a very large extent with the root causes and effects of poor mental health. The National Audit Office has documented how young people who should be poised to make their mark on the labour market yet struggle with pronounced depression and anxiety are much more likely instead to be unemployed. Conversely, early episodes of unemployment can have lifelong effects not just on wages but on mental health. Working with Graham Allen MP, the Centre for Social Justice blazed an important trail in social policy by emphasising prevention rather than cure. The concept of early intervention when it is clear that deep and potentially intractable problems are brewing in a child or young person's life is not rocket science but common sense, yet much government spending has been focused in the past on late intervention.

I am encouraged that there is cross-party consensus that that needs to change. Take the troubled families programme, for example, which built on Labour's family intervention project pilots. The coalition Government estimated that £9 billion was spent per annum on disruptive and highly distressed families, but only £1 billion of that spend was helping them to turn their lives around and prevent further harm. The other £8 billion was used to mop up the mess: over three-quarters of a billion pounds was spent on health, for example, over £2.5 million on criminal justice and almost £4 million on safeguarding children and behavioural interventions in schools. And that was a conservative estimate: for example, the health spend did not take into account domestic violence and other A&E admissions, yet violence is a factor in around three-quarters of so-called troubled families.

While families in that category are in a small minority, the Government have recognised that many of the problems affect a large number of families, hence they have expanded the programme significantly. Surely they were influenced in doing so by the Riots, Communities and Victims Panel's estimate that at least half a million families were teetering on the brink of considerable difficulties that were not simply financial.

All this is a preamble to my main point that if any Government are to safeguard the health and well-being of children and young people, they would do well to start with parents, strengthening and stabilising families and helping to prevent the relationships within them from breaking down. Government research shows that the poor outcomes of many children who experience family breakdown include poor mental and physical health, particularly depression, smoking, drinking and drug use in teenagers.

We know that a high number of under-18s cannot get local help when they experience a mental health crisis, further compounding their loneliness and difficulties. Either they are treated on adult psychiatric wards or they have to travel hundreds of miles across the country to receive hospital treatment. The Government and local health commissioners simply have to address this, but they also need to do far more to prevent mental health problems from arising in the first place.

Addressing our epidemic levels of family breakdown is vital. This is not an argument for families to stay together however abusive or conflictual the relationships within them, but it is a plea for recognition that adverse childhood experiences, many of which could have been prevented by working early with families, are like a child's footprint in wet cement—they last a lifetime.

Standing back for a moment, it is important to acknowledge that families can greatly benefit society and boost a nation's economic competitiveness, and to acknowledge the profound social and financial consequences when, for whatever reason, families fail. Family breakdown costs £48 billion per annum and disproportionately affects people in the poorest communities, where two-thirds of children do not grow up with both their parents, compared with two-fifths of children in more affluent areas, although that is still a high proportion.

So while I applaud the Government's launch of a task force to improve the mental health and well-being of children and young people, I also want them to develop a robust and comprehensive range of family policies, and to appoint a family champion who will drive and sustain this agenda—a Secretary of State with clear accountability for families who has the resource and clout to drive through a programme to strengthen families, boost stability and uphold fatherhood and its importance. This range of family policies must support all the main functions of families: family formation, and separation when that is inevitable; relationships between parents; and economic support for child-rearing and caring for older people. The family test introduced in 2014 is a great start but, while this views all departments' policies through a family impact lens, it reacts to what other departments propose rather than being proactive in strengthening families.

A lot is being done already in terms of childcare: the CANparent programme; the troubled families programme; 4,200 extra health visitors and the doubling of family nurse partnerships; shared parental leave; family-based arrangements in child maintenance; an additional 10,000 family mediations; the marriage allowance, which recognises interdependence within couples; and funding for relationship support. Coming down the tracks, this Government have promised to increase income tax thresholds, provide better mental health support in pregnancy and introduce better measures to eliminate child poverty by recognising the root causes of poverty, including family breakdown.

However, a truly comprehensive approach to strengthen the family and prevent relationship breakdown requires ensuring that a family strand runs though practically every area of government. For example, the MoJ should encourage parenting and relationship support in prisons. Robust research shows that when offenders leave prison and are in a good relationship, that can help them turn away from crime, and their children are less likely to suffer bereavement and loss if they come back into their lives with a better idea of how to be good parents. BIS needs to look closely at what Lloyds and other employers are doing with regard to employee webinars on parenting and couple relationships. Helping employees cope with family worries reduces absenteeism, so the Government should be encouraging employers to help pick up the tab for relationship support.

There are many other examples across government, hence the family champion need not be someone heading up a department for families but could be like the Cabinet Minister for Women and Equalities. Alongside their main departmental role they would spend time on this responsibility, with the necessary governmental structures in place to ensure that adequate attention was given to it. For example, there should be a statutory duty to report on the extent to which family stability has improved or worsened on their watch.

Adequate and appropriate healthcare services are essential, but the welfare society begins in the home, and in children's earliest years. It is essential that we focus our efforts on families and take a preventive approach to reduce demand—and deep human misery.

6.56 pm

Baroness Walmsley (LD): My Lords, I thank the noble Baroness, Lady Hollins, for introducing this debate. I hope she will forgive me, but given the other recent debates on children's mental health, I feel that I have said all I need to say on that subject for the moment, so I will concentrate on children's physical health, although I am of course well aware that there is a major link between the two.

There is good news and bad news about the health of our children in the UK. On the good side, according to research from the King's Fund and the LGA, some damaging health behaviours among children have halved over the past 10 years, with fewer children taking drugs, smoking and drinking alcohol. This is particularly good news, because we know that half of the big adult health-risk factors are initiated in adolescence, so if we can nip it in the bud at that age, we will save lives and money. Smoking is still a big killer in this country and is a particularly large factor in health inequality. Alcohol, too, is particularly harmful to immature livers, and abuse of alcohol also leads to other risky behaviours, so a reduction there is also very good news. The finding about drugs may or may not take into account the so-called legal highs, because the finding was up to the year 2013, but any improvement is good. The paper does not postulate a reason for these improvements but it could have been caused by an improvement in the standard of PSHE in schools. I still regret the fact that this life-skills learning is not mandatory in all schools but I concede that the last Government put a great deal more emphasis on it and took some of the good advice offered by the PSHE Association.

On the other side of the balance we have rising childhood obesity, many children who do not take enough exercise—for various reasons, including lack of facilities—one of the poorest records on child mortality in Europe, far too many unwanted teenage pregnancies, abortions and sexually transmitted diseases among young people, and poor children who can have up to seven years' shorter lifespan than their well-off counterparts down the road.

Let us talk about obesity. I will not repeat the many and varied serious disease risks that result from obesity. We need to invest in prevention. I am a firm believer that good health begins at home—as does poor health—and that it can be reinforced by schools. Indeed, it is wise for schools to care about their children's mental and physical health, because they affect academic achievement. Therefore, if we are to have a long-term effect on the health of the population, we need to start, as many noble Lords have said, with the parents, before birth if possible. Again, there are considerable inequalities here. The percentage of premature and low birth-weight babies among deprived communities is much higher than among the higher demographic groups. Some of this, as we were told by Simon Stevens this morning at a seminar, is due to the higher incidence of smoking in pregnant women, but not all of it. Poor nutrition, stress and poor antenatal care are contributors. Stress is a killer and is particularly damaging to the brain development of young babies and children, especially if it is caused by domestic violence.

[Baroness Walmsley]

It is appalling that in this highly developed country, there are pregnant women who do not have access to good fresh food. There are food deserts: places where people cannot get to shops that sell good fresh food because there are none; moreover, they do not have the means of transport to get to one. The main problems, however, are the lack of cooking skills, and poverty. Cheap food tends to be highly calorific and low in nutrition. As we know, overweight mothers more often have overweight children—and so the cycle continues. I would like to see compulsory cooking lessons in schools and good-quality health education, through which children are taught how to eat well. Many schools have done really well on this. They have school meals staff who are passionate about providing fresh and nutritious food; in some places, they even grow it.

Of course, this requires leadership from head teachers, who have a lot of other things to worry about, but as I said, it pays dividends, because well-fed children learn better. That is why the Liberal Democrats in the last Government were keen to bring in free school meals for key stage 1 children. School meals in local authority schools have to be up to certain nutritional standards, which is why I want to ask the Minister why the Government do not insist that academy schools abide by these standards. Currently, they do not have to.

School food is particularly important for very poor families who may be in houses with poor cooking facilities, who may have had the electricity or gas cut off, who may be in bed-and-breakfast accommodation with no cooking facilities at all, and who may have chaotic lifestyles, meaning that the children do not have regular mealtimes. School food is therefore particularly important to poor children. We really need to pay attention to this issue for the sake of their future health.

You may ask why I am concentrating so much on food—apart from the fact that I like it. The reason is that if we instil healthy eating in children, we are carrying out a major preventive programme against heart disease, diabetes, strokes, musculoskeletal diseases and the rest. Given that resources are scarce and the population is both growing in number and ageing, this strikes me as common sense.

Let me turn from prevention to care. As the noble Baroness, Lady Hollins, said, 40% of GP visits are made by children, so those who suffer most when it is hard to get a GP appointment are children. The Government have a commendable ambition to reduce weekend mortality by making primary care services available seven days a week, but if this is done without more resources, by spreading out what is already there, the result could be disastrous. I have already mentioned our poor child mortality figures. Like the noble Baroness, I was horrified to learn that every day in the UK, five children die who would not have died if we had the same child mortality figures as Sweden. Will the Minister look into this? That is five family tragedies every single day that could have been prevented. If they can do it in Sweden, why can we not do it here?

I am also concerned about services for children with physical and learning disabilities. In the last Parliament, Sarah Teather, as Children's Minister, initiated education, health and care plans in an attempt to co-ordinate all those services around children. But many of these services are delivered by local government, and there have been many cuts to local government funding. I am therefore concerned that the thresholds above which children become entitled to such services may not be appropriate. Will the Minister say something about that?

Health inequality is worse in this country than in many other developed countries, so we need to focus on child poverty and scrutinise every statement from the Chancellor about taxes and benefits, asking what effect they have on the health of our children. Will the Families Minister be doing this tomorrow, when the Chancellor announces his Budget? I doubt it but I shall be pleasantly surprised if the Minister assures me in a few minutes that she will.

7.05 pm

The Earl of Listowel (CB): My Lords, it is a pleasure to follow the noble Baroness, Lady Walmsley, and particularly her words on the physical health of children. She reminded me of the importance of my parents to my physical health—and not only genetically. My mother used to take us for two-hour walks across Hampstead Heath. I also remember my father's hand on my back when I learned how to cycle, pushing me forward and helping me to balance. He taught me to swim and we would go swimming together. He taught me to play tennis and we would play tennis together. So I think that we need to reach the parents, as they probably have the most influence on our children's physical health—which may be one of the most difficult things to influence. Of course we need to try in schools but we also need to begin at the beginning with parents.

I went ice-skating over the weekend and asked whether there were any family concessions. The answer was no. Part of this strategy, which I hope the Minister will talk about and perhaps write to us about, is asking how to get fathers-for-free passes for leisure activities so that they can engage in them with young people. It would strengthen their relationship with their children and also be a good model for healthy activity. So I was grateful for what the noble Baroness said about that.

I will speak a little more about the importance of strong families in terms of the mental and physical health of children. In particular, I want to talk about father-daughter relationships. I think that the noble Baroness, Lady Stedman-Scott, covered this, but I would be grateful to hear the Government's strategy for families, and particularly for engaging fathers in families. Perhaps the Minister would write to me about that.

I want to say a few words about the mental health of looked-after children. I remind your Lordships of a report produced last month by the Alliance for Children in Care and Care Leavers. There have been a couple of recent reports on the mental health of looked-after children and the key themes are the importance of stable relationships with these children when they come into care and the importance of recognising their need to recover from early trauma. Enver Solomon, one of the co-directors of the alliance, is quoted as saying:

> "Ultimately, the care system should help children overcome their past experience and forge the lasting and positive relationships that we know are vital",

to their future well-being.

The NSPCC produced a report yesterday on the emotional well-being of children in care. In the executive summary are five key points, the first of which is to:

"Embed an emphasis on emotional wellbeing throughout the system".

The report goes on to develop that idea, saying that a key part of the job of foster carers and residential childcare workers should be helping young people to recover from their earlier trauma.

The fourth of the five key points is that we should support and sustain children's relationships. A key means by which these children can recover from early trauma is by having strong relationships with their foster carers, their residential childcare workers and their teachers. Today I met a few young people in care. I heard from Ethan, who is a 10 year-old. He was complaining about the number of different social workers that he has experienced, and which other young people are still experiencing. I also heard from a 10 year-old girl who expressed concern about the number of changes of foster placements for young people in care. When we mentioned to her the very welcome introduction of the Staying Put scheme, she wanted to be reassured that many young people would now be able to stay with their foster carer from the beginning of their time in care to the age of 21, as Staying Put allows. So young people in care also believe that this is the right thing.

The *Future in Mind* report on child and adolescent mental health support services looks at the care of the most vulnerable children. I want to highlight to the Minister and your Lordships a key passage in the report. Paragraph 6.9, "A consultation and liaison mental health model", is a bit jargony, I am afraid, but I will quote a little from it:

"Applying an approach whereby specialist services are available to provide advice, rather than to see those who need help directly to advise on concerns about mental health … is already best practice in some areas … Consultation and liaison teams can be used to help staff working with those with highly complex needs".

Let me give an example of that. Kent, for instance, offers that kind of support to groups of its foster carers. A very experienced clinician will work with groups of foster carers. They may present a particular child and talk about them, share that experience with the group and then the clinician will facilitate the group.

Another example is my experience of 11 or 12 years ago, when I was told that there was a very effective hostel for young people in Olympia—effective in terms of keeping young people off the streets. I went along to visit Lydia Beckler, the manager of that hostel. She said that a clinician—a child and adolescent psychotherapist—visited the home every two weeks and the staff had a couple of hours with them to present a child to the group and get the clinician's input. She said that the secret of their success was that kind of support.

It was a Centrepoint organisation—a large organisation for vulnerable young people—and these staff were working with perhaps the most challenging young people in the whole of the organisation. Miraculously—perhaps not so miraculously—they had the lowest sickness absence rates in the organisation. It supports the staff and helps them to be resilient in the face of very challenging young people. One young woman there had an unmentionable number of scars on her wrists from self-harm. These were really troubled, difficult young people, supported well.

Unfortunately, that kind of approach is so vulnerable, and it was lost to that particular institution after a couple of years because of financial worries. It seems costly to have staff spend time away from clients to sit with the clinician and think about what needs to be done. In fact, it is very efficient. In terms of making the best use of scarce CAMHS resources, having a clinician supporting the staff in that way enables them to make the right choices about when to refer children to more intensive services. I commend that to the Minister and to your Lordships as an approach.

Moving on—I am aware of the shortage of time—I would like to talk again about families. We have spoken about the importance of perinatal support, but I draw the attention of the Minister to a report from the OECD from 2011 entitled *Doing Better for Families*, which highlights that, in 2011, the percentage of children in this country growing up without a father in the home was approximately 21.5%, in the United States it was somewhere in the region of 25%, in Germany it was, I think, 15% and in Italy it was 10%. The report also projects that, by 2025 or 2030, we will have overtaken the United States considerably, when beyond 35% of children will grow up in households with just one parent. That really means without a father—nine out of 10 of those absent parents will be a father. That poses some challenges for us. President Obama, when he was Senator Obama, spoke very movingly and powerfully about his experience growing up without a father and the experiences of other young men growing up without fathers.

However, I think that girls are less talked about, and we really should think about the relationship girls have with their fathers, which may also have a strong influence on the future relationships that they make with men. We may be setting up a very perverse cycle of failed partnerships leading to further failed partnerships down the line. I want to quote from a book on father-daughter relationships that quotes an American journalist—I need to find my glasses before I do so—although it is a bit alarming. I have not looked at the research that this is based on; it is quite personal, as it is about her experience, but she is a well-respected journalist. I wanted to quote from Linda Nielsen's book, *Father-Daughter Relationships: Contemporary Research and Issues*, but I see that my time is up. However, I hope that we will have another opportunity to discuss these matters very soon. I look forward to the Minister's reply.

7.15 pm

Lord Northbourne (CB): My Lords, I want to delay your Lordships for about three minutes. I did not think that anybody was going to talk about schools. I want to do so because they have a major part to play in both the mental health and the physical health of parents. It is a kind of religion that schools are only about academia; they are not, and we have to use them as we can to solve the problems of our society.

[Lord Northbourne]

All schools, particularly those teaching pupils of secondary school age, should focus more on building self-confidence and interpersonal skills in all their pupils, especially in those who are likely to miss out on high academic achievement. My experience in working with disadvantaged children has led me to believe that fear of failure often blights the life of the disadvantaged child. All schools, especially all secondary schools, should give their pupils opportunities—somewhere, somehow—to succeed.

This is not a pipe dream. The best schools are doing it already, through a range of extracurricular activities—through involvement in running the school where appropriate, and in activities and adventures and sport and commitments of many different kinds. All are potential opportunities for children's involvement and success. I admit that to do these things costs money, but it does not cost as much money as does having the number of disengaged children that we have in our society today.

7.17 pm

Lord Hunt of Kings Heath (Lab): My Lords, we have had a very good debate, and I am pleased that the noble Baroness, Lady Hollins, has enabled us to do it. Rather like the noble Baroness, Lady Walmsley, I want to start by focusing on physical health issues. As she said, the frightening obesity rates among young people are associated to a certain extent with lack of exercise, but I agree with her on what she said about food, eating and poverty.

We have heard the noble Lord, Lord Prior, speak at a number of seminars recently. He has stressed the *Five Year Forward View*, which the Government have endorsed. One of the encouraging things about that report is that I see—I think for the first time—some passion coming from NHS management about the need to deal with public health issues. That document points out the issue of obesity among young people and the problems that it is going to store up for the future. It also recognises the role of government in terms of legislation. Does the Minister accept the need for legislation when it comes to basic issues of the amount of salt, sugar and fat in foodstuffs, particularly those marketed at young people? He will know that in this country young people drink more of those super-sugary drinks than in any other country within Europe. Of course there is always a balance to be struck between the emphasis on individuals, the parental role and schools, but in the end legislation is sometimes required. I urge the noble Lord that his department ought to be battling in Whitehall to get some legislation around the protection of young people.

I hope that the noble Lord will respond to the point made by the noble Baroness, Lady Walmsley, about academy schools and their ability to go outwith much of what is sensible in relation to the teaching of young people in this area. Also, alongside the issues of food and healthy eating, there is a real concern about where exercise for young people has gone within our schools.

Frankly, we have now reached a point of hysterical obsession with testing young people, and that is crowding out the agenda and the focus. When I talk to year 6 teachers about the SATS testing that now has to be undertaken, I realise that in many schools they are doing nothing else but preparing for the tests for six months, mostly all the wretched testing around maths and English to the exclusion of almost anything else. We are reducing children's education to a miserable exercise, one in which teachers do not believe, but they are being forced to do it. This is the Government's obsession, and of course Ofsted has lost any notion of independence in terms of its own role.

The noble Lord may ask what all this has to do with him. It has plenty to do with the health department now that it is no longer concerned with NHS performance—or at least we are being told that, because the 2012 legislation promised it. The department has the space in which to argue in Whitehall for some of the measures that now need to be taken.

I agree with the noble Earl, Lord Listowel, about the whole issue of access to leisure facilities and the impact of local government reductions on many of them. Many local authorities have decimated their leisure service provision, which has a devastating impact on the ability—particularly of those who do not have access to resources—to use such facilities. This will become a very serious problem for the future.

I do not want to spoil the noble Baroness's Question for Oral Answer on Thursday, and she might have mentioned it, but the Government and certainly the Chancellor have rather undermined NHS England when he swiped £200 million from the public health budget of local authorities in-year. There is a sense in which the Government are saying that of course prevention is important, but their first action after the election was to reduce the amount of money available to local authorities to act in this area. The noble Baroness, Lady Stedman-Scott, made some important points about families, which I hope the noble Lord will respond to.

We have debated the issue of mental health some four times, I think, over the past few weeks. That is important because it is an important subject, but we know from the Royal College of Psychiatrists, which is one source of information for this debate, that one in 10 children and young people suffers from a diagnosable mental health disorder. Half of all diagnosable mental health conditions start before the age of 14, and 75% by 21. We also know that the figures are even more worrying for young people from BME backgrounds. The Health Select Committee report published in November 2014 talked about,

"serious and deeply ingrained problems with the commissioning and provision of children's and adolescents' mental health services".

I know that the Government are going to talk about the task force, and that is welcome, but perhaps I may put four questions to the Minister. First, why is the funding for children's mental health services still so low in view of all the problems that have been identified? Secondly, I understand that, of the joint strategic needs assessments that are written by each public health director for their local authority, very few mention children's mental health services. I also suspect that even fewer pick up the point made by the noble Earl, Lord Listowel, about the health concerns around looked-after children. Why is that? Does the Minister believe that directors of public health need to

have their attention drawn in their annual report to the importance on the state of the health of their local authority, and that this is an important area for them to be concerned about?

Finally, I want to ask about the introduction of waiting time standards for mental health services. The Minister will know that this was introduced in April 2015 and people are guaranteed talking therapy treatment within six weeks, with a maximum wait of 18 weeks. For individuals experiencing a first episode of psychosis, access to early intervention services will be available within two weeks. I recognise that it is early days; we are only four months away from the start of these new standards, but I wonder whether the Minister can say something about how he thinks the service is progressing.

7.25 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, first, I congratulate the noble Baroness, Lady Hollins, on securing this debate. One advantage of the debate having quite a broad title is that one does not quite know where noble Lords will be coming from.

I shall start with schools, and I declare an interest. I was a founder of two free schools and, until recently, I was chairman of a free school and an academy group of schools in Norwich. It is good that they have freedom to decide on things such as school meals; it is right that academies should have that freedom. I spent last week talking about a sports strategy for our schools. Competitive sports and physical exercise are extremely important, and I do not agree with the noble Lord, Lord Hunt, that the curriculum crowds out those activities. One can make room for them. I agree very much with the noble Lord, Lord Northbourne, that not just in secondary schools but in primary schools such activities are essential in building up young people's self-esteem, self-worth and a sense of purpose, whether they are doing competitive sports, the Duke of Edinburgh's gold award or any schemes of that kind. They are hugely important.

The thing that ran through the speech of the noble Baroness, Lady Hollins, and many other speeches, was early prevention. We have had four debates on this subject in the last few weeks. What I have learnt most is the importance of early prevention, right through to early pregnancy—and indeed before.

I also draw attention to the comments of the noble Baroness, Lady Stedman-Scott, on the importance of the family. Other noble Lords have also stressed that. There is no substitute for family; the state can never be a substitute for the family. The noble Baroness put a figure of £48 billion on the cost of family breakdown but that does not do justice to, or begin to reflect, the family misery that that encompasses. The noble Earl, Lord Listowel, drew our attention to the number of families growing up without a father. He mentioned that the figure will be 35% by 2030, according to an OECD report, which is truly frightening.

I hope that I can pick up a number of other points made by noble Lords. I was shocked by the comparison between our performance and that of Sweden. I have not seen that figure before. Infant child and adolescent death rates in the UK have declined substantially, but the overall UK child mortality rate is higher than that of some other European countries. I had not realised that as many as five more people under the age of 14 die each day in our country compared with Sweden. I think that that is what the noble Baroness, Lady Hollins, said. Sometimes numbers can detract from an argument; that number certainly adds to this one. The *Why Children Die* report by the Royal College of Paediatrics and Child Health stated that there is no single cause for the disparity between countries and, equally, there are no simple solutions. I have no doubt that inequalities of health and of life contribute more than most to that rather startling statistic.

If I have time, I shall talk about three broad areas: ensuring that children are properly supported by health services; steps to ensure that children can live healthier lives; and those services that ensure that we can protect our children. I will leave the issue of child slavery, raised by the noble Baroness, Lady Hollins, for another day. Perhaps I may write to her on that?

Starting with maternity, what happens in pregnancy and in the early years of life has a long-term impact. There can be no doubt about that. We have made some achievements over recent years. Again, I am not sure that the numbers add much to the argument, but I have a list of the additional midwives and midwifery-led units, and of the extra money that we have spent in this area. I do not think that that adds much to the argument because we know that much more can be achieved.

Noble Lords are probably aware that my noble friend Lady Cumberlege is leading a major review of maternity services and that the Government will provide an additional £75 million over the next five years for services to support women with mental health issues in the perinatal period. We heard in an earlier debate from, I think, the noble Baroness, Lady Walmsley, who said that one in five children whose mother suffers from mental illness—postnatal depression—will, in turn, suffer from mental health problems. That was another point that the noble Earl, Lord Listowel, made: there is a cycle to these things. If a child is brought up in a family that has suffered a breakdown, there is more chance that, in turn, that child's family will also suffer. I know from personal experience how mental health, whether for genetic or other environmental reasons, can dog families through the generations.

Support in the community in early years is provided through the Healthy Child Programme, led by health visitors and their teams. Over the last four years, a major programme to revitalise the health visiting workforce has taken place, with 4,000 new health visitors now in post and a further 9,000 completing training. I ought to mention, although it is not an easy question, the £200 million that has come off the public health budget, as raised by the noble Lord, Lord Hunt. I hope that the noble Lord will allow me to defer an answer to that until the Question that will be asked on it early next week. From September 2015, health visitors and early education practitioners will deliver integrated reviews with the aim of giving families and health and education professionals a more complete picture of child development.

A number of noble Lords raised obesity. Childhood obesity is clearly a huge issue. The latest estimate of the cost to the NHS of overweight or obesity-related

[Lord Prior of Brampton]
conditions is £5.1 billion, but of course obese children are more likely to become obese adults, with all the health conditions that go with that. The noble Lord, Lord Hunt, said that he detected signs of passion in NHS England, reflected in the *NHS Five Year Forward View*, about this subject and about prevention more generally.

There is a wider debate to be had about the role of government, how much legislation we want in this area and how much we rely upon personal responsibility. If we bring tax into these areas, for example, does that fall disproportionately on the very people who can least afford it? These are big issues and I do not think there is a right or a wrong answer.

It is not acceptable that one in five children leaves primary school clinically obese—that is, obese children aged 10 and 11. Obese children are more likely to be ill, absent from school, and suffer psychological problems than children with normal weight. While some progress has been made, we know that we must go much further. We have invested £222 million in programmes such as the PE and sport premium for primary schools, School Games, and Change4Life Sports Clubs. Last week we launched this year's Change4Life 10-minute shake-up campaign with Disney, which encourages children to do 10-minute bursts of moderate to vigorous activity, inspired by Disney characters. I guess it is a fact that we cannot do enough in this area and there is a lot more that we, schools, families, parents and society could do. Clearly, there is a role for government but it is easy to say always that government should do more.

I should touch on preventing domestic abuse and child sexual abuse. As part of our strategy to prevent violence and abuse towards women and girls, we are providing tools and guidance for health and care professionals to enable them to better identify cases of violence and enable the young people affected to access the right therapeutic support. Routine inquiry into domestic abuse is expected to be undertaken in maternity and adult mental health services. Following publication on 3 March of the Government's report, *Tackling Child Sexual Exploitation*, this will be expanded to settings used by children at risk of sexual abuse, including mental health services for people over 16 years old.

Last week, the Care Quality Commission published the results of its children's in-patient and day case survey. I was going to talk about this but as no noble Lord raised it I will leave that for another day and move on to children's mental health. It is an issue that we have discussed before but it is important to say that the Government are committed to spending an additional £1.25 billion over the next five years. That is a huge increase in the budget. This is on top of the £150 million for children and young people with eating disorders. That has to be one of the most shocking and ghastly illnesses that any child or family has to cope with.

This Government have also introduced the first ever waiting time standards for mental health. I think it is too early for me to report back to the noble Lord, Lord Hunt, on how that is going. Parts of these standards will apply to children and young people, including the target of treatment within two weeks for more than 50% of people of all ages.

I am afraid that my time is up. This has been a very quick whistlestop tour of some very important issues. I thank the noble Baroness, Lady Hollins, for bringing this debate to the House.

House adjourned at 7.38 pm.

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