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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

Monday, 9 November 2015.

2.30 pm

Prayers—read by the Lord Bishop of Southwark.

Introduction: Viscount Hailsham (Lord Hailsham of Kettlethorpe)

2.38 pm

The right honourable Douglas Martin, Viscount Hailsham, QC, having been created Baron Hailsham of Kettlethorpe, of Kettlethorpe in the County of Lincolnshire, was introduced and took the oath, supported by Lord Garel-Jones and Lord Goodlad, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Robathan

2.44 pm

Andrew Robert George Robathan, having been created Baron Robathan, of Poultney in the County of Leicestershire, was introduced and took the oath, supported by Lord Astor of Hever and Lord Spicer, and signed an undertaking to abide by the Code of Conduct.

Dog Breeding

Question

2.49 pm

Asked by ***Baroness Parminter***

To ask Her Majesty's Government whether they have plans to update legislation related to dog breeding and boarding, including the Pet Animals Act 1951.

Lord Gardiner of Kimble (Con): My Lords, the Government are reviewing the legislation relating to the licensing system for dog breeding, animal boarding, riding establishments and pet shops. The intention is to update the legislation, streamline the licensing process and improve animal welfare. Over the summer, we consulted informally with local authorities, business interests and animal welfare charities, which are all largely supportive of change. We are planning a public consultation on this issue shortly.

Baroness Parminter (LD): I thank the Minister for that reply. We need new legislation to tackle the appalling conditions that thousands of puppies suffer in the UK when they are bred for sale. Do the Government agree that no puppies should be sold under eight weeks and that all people selling puppies and dogs should have a licence, which will then give local authorities the resources to tackle puppy farming?

Lord Gardiner of Kimble: My Lords, this is clearly a very important issue. It is already an offence for licensed breeders to sell puppies aged under eight weeks, except to pet shops. Clearly, the current arrangements are that if you are in the business of breeding and selling dogs, you must be licensed. Anyone producing five or more litters at the moment should be licensed, but we are consulting on this. We think that a lowering of the threshold to three litters per annum would be a sensible way forward. But we are consulting on these matters and I would very much welcome an opportunity to discuss them with the noble Baroness.

Lord Trees (CB): My Lords, in recent years we have seen the emergence of major new threats to our pet animal health. We have seen the growth of the internet trade, which can be easily exploited by unscrupulous sellers, to the detriment of the health of the animals; we have seen the growth in the fashion for exotic animals as pets, which for the most part are totally unsuitable; and we have seen the emergence of puppy-smuggling, mainly from eastern Europe, under the guise of the pet travel scheme, which is detrimental to the health of the puppies, and a threat to our biosecurity and, indeed, to public health. Many feel that our current legislation is inadequate to control these threats. What are the Government planning to do to counteract these threats?

Lord Gardiner of Kimble: My Lords, one of the reasons we wish to update the Pet Animals Act 1951, which sets controls on pet animals, is that pets are of course now traded online. We would make it clear that anyone trading pets online as part of a business is indeed operating a pet shop and should be licensed accordingly. On the question of pet imports, there is both the pet travel scheme for dogs, cats and ferrets and the Balai directive, which is about the rules governing the commercial trade and import of animals. We are working on this: the Chief Veterinary Officer has been in dialogue with Lithuania, Romania and Hungary, and we are seeking improvements.

Lord Lexden (Con): Is my noble friend aware that the situation with regard to the breeding of cats is even worse than it is for dogs, because they enjoy no special protection under the law? What has happened to the regulations promised under the Animal Welfare Act which would help deal with this terrible crisis?

Lord Gardiner of Kimble: My Lords, although microchipping of dogs is compulsory, we do not require it for cats. Nevertheless, we strongly advise that owners microchip their cats. The point is that cats often do not represent quite the same challenges as dogs in terms of straying and other matters, but I will bear what my noble friend has said in mind.

Lord Harris of Haringey (Lab): My Lords, the Minister has told us that the regulations may be extended so that more potential vendors of pets will come under the ambit of local authorities. Can he tell us how local authorities will be expected to enforce these regulations, given that the area of enforcement and the regulatory officers concerned have probably suffered cuts of 40% over the last five years, with more to come?

Lord Gardiner of Kimble: My Lords, local authorities are required to enforce dog-breeding legislation and have powers to charge a fee to applicants on a

[Lord Gardiner of Kimble]
cost-recovery basis. Indeed, there have been some very good examples of local authorities and the police working together with animal welfare bodies. There was a case in Manchester, for instance, in which the perpetrators have not only been jailed and fined but banned from keeping animals for life.

Baroness Miller of Chilthorne Domer (LD): My noble friend mentioned the very high volume of trade that takes place over the internet. Do I understand from the Minister that the Government intend to make sure that anyone advertising puppies for sale on the internet will have to have a licence number?

Lord Gardiner of Kimble: There is a Pet Advertising Advisory Group. It is voluntary, and co-ordinated by the Dogs Trust. That is where we think great work can be done. Already, 130,000 inappropriate advertisements have been taken down. We are trying through the consultation to direct all the energies of local authorities at those breeders who are not playing by the rules.

Lord Christopher (Lab): My Lords, I am glad to hear that two issues are being reviewed, but two have not been mentioned. Puppies have been mentioned, yes, but no one has mentioned how many litters a bitch might have in a year. I have seen bitches in a dreadful state because they have produced one litter after another. Secondly, it is not just the condition of the puppies that is important but their age and exactly what is being imported.

Lord Gardiner of Kimble: My Lords, it is absolutely clear and one of our three pieces of advice for prospective owners that they should never buy a puppy that is younger than eight weeks. Indeed, part of the agreements on the importation of pets is precisely a requirement that no animals for commercial sale are imported aged under eight weeks. That is a very important part of the equation.

Baroness Seccombe (Con): My Lords, does my noble friend agree that if you are a lonely person, having a dog can be a great boon, and that responsible caring for a puppy, or even a rescue dog, can bring great happiness to both?

Lord Gardiner of Kimble: My Lords, I am delighted to endorse what my noble friend said. Many of us who have enjoyed the partnership and friendship of dogs will know that they are a vital part of many people's lives. Whether working dogs, guide dogs or pets, they are a great joy. It is very important that we are responsible owners.

Lord Foulkes of Cumnock (Lab): My Lords, will the Minister now answer the question put by my noble friend Lord Harris of Haringey? How will local authorities be able to carry out their duties, given the cuts that the Government have imposed on them?

Lord Gardiner of Kimble: Precisely as I said: they can charge a fee to applicants on a cost-recovery basis.

UK Territorial Space: Spanish Incursions

Question

2.57 pm

Asked by ***Lord Hoyle***

To ask Her Majesty's Government what steps they are taking to prevent incursions by Spanish vessels and aircraft into United Kingdom waters and airspace.

The Earl of Courtown (Con): My Lords, incursions are an unacceptable violation of British sovereignty, and we take them seriously. The Royal Navy challenges all unlawful maritime incursions, and the Government protest to Spain at an appropriate level following all air and maritime incursions.

Lord Hoyle (Lab): I thank the Minister for that reply, but I must tell him that things can change rapidly. For instance, another bone of contention is border controls, with people having to queue at the border. An inspection took place on 27 October which was supposed to be secret but which had been in the Spanish press. Not surprisingly, there was no queue on that day, but the day after, people were waiting for four hours at the border. Can Gibraltarians be present at all times in discussions with the Spanish, and will the Government bear in mind the health, safety and welfare of the people of Gibraltar?

The Earl of Courtown: My Lords, the noble Lord mentions the border issue between Gibraltar and Spain. We noted that delays increased the day after the European Commission visit. The welfare and security of Gibraltarians must come first. The noble Lord also mentioned that any discussion about the future of Gibraltar must include all parties—and when I say all parties, I mean the United Kingdom, Gibraltar and Spain.

Lord Anderson of Swansea (Lab): My Lords, given that the queues increased to three hours after the visit by the EU inspectors, should we not insist that such visits not be announced in advance but be spot checks?

The Earl of Courtown: The noble Lord makes a good point. I noted that there was an increase in time but if we go back to 2013, the Spanish were accused of queues of almost seven hours at the border. It is a little less than that now. The noble Lord is quite right in drawing attention to delays that happened after the visit of the European Commission.

Baroness Smith of Newnham (LD): My Lords, in light of the some 300 or so incursions into British Gibraltan territorial waters in the first nine months of this year, are Her Majesty's Government using all possible methods to liaise with the Spanish Government? Would matters be made better or worse were the United Kingdom not a member of the European Union?

The Earl of Courtown: I do not see the relevance of whether the United Kingdom is a member of the European Union. On the relationships between Spain

and the United Kingdom over these incursions, the Spanish ambassador is summoned frequently. Summoning is a very serious form of diplomatic protest. The extent to which we have employed it is particularly unprecedented when we talk about an EU and NATO partner.

Baroness Butler-Sloss (CB): What will happen when the current two Royal Navy ships finish their work in 2017? Do the Government intend to have some decent ship to deal with the incursions by the Guardia Civil on their much faster boats?

The Earl of Courtown: My Lords, our assessment is that the assets, structure and procedures of the Royal Navy's Gibraltar Squadron are enough for the job but I take very careful note of what the noble Baroness said. We want to make sure that these challenging maritime incursions can be dealt with by our assets there.

Lord West of Spithead (Lab): My Lords—

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, it is the turn of the Labour Benches.

Lord West of Spithead: My Lords, the Minister will be well aware that the ships we have in Gibraltar are in fact very tender, do not have very long range and are not nearly fast enough. Of course, the people manning them are very proud of them and do their best but it is their job to say that they are doing their best and they are good. The reality is that they are not good enough for the job and because of that there will be an incident where someone may be killed or badly injured. The Government of Gibraltar have said that they are willing to pay for faster, bigger craft. That has been done before with other countries we have been responsible for. Could we look at this very closely, so that we can get these new craft and then be able to do things that will not risk injury or death for our people there?

The Earl of Courtown: I listened very carefully to what the noble Lord said concerning our naval assets in Gibraltar. I will ensure that that is drawn to the attention of the department.

Lord Ashdown of Norton-sub-Hamdon: My Lords, since we are discussing preventing people from straying on to territory where they should not be, can anything be done to stop senior serving military officers appearing on television?

The Earl of Courtown: No.

Baroness Morgan of Ely (Lab): My Lords, what consideration have the Government given to the impact on Gibraltar of possible withdrawal from the EU? What guarantees can the Government give to the people of Gibraltar that there will be no border closure and that they will continue having access to the EU single market if the people were to vote to leave the EU?

The Earl of Courtown: My Lords, as I have said before, my right honourable friend is focused on delivering successful renegotiation but I see the United Kingdom and Gibraltar's future as being part of a reformed EU. In my view, it is in the interests of Gibraltar, the UK and the European Union as a whole that our work on improving the competitiveness, fairness and accountability of the EU is successful.

Baroness Wilcox (Con): My Lords, that being the case, I am delighted to think that the Prime Minister will go in and fight for our fishing vessels. The rest of the Question was to do with them. We all know for sure that the Spanish fleet, which is bigger than the rest of the fleets put together in the whole of the European community, abuses at all times its quotas. We have only self-policing in the European community now. No country can report another for cheating. Is it not time that our Prime Minister looked at this and came back with something for the British fisherman?

The Earl of Courtown: My Lords, the fishing policy in the Gibraltar waters is the concern of the Government of Gibraltar. We will take careful note of what my noble friend says.

Syrian Refugees

Question

3.04 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government how many refugees have entered the United Kingdom under the vulnerable persons relocation scheme for Syrian nationals, and what, if any, are the advantages of that scheme as compared to entry under normal immigration regulations.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the last published figures show that, by June 2015, 216 people were resettled in the UK under the Syrian resettlement scheme. Additionally, we have granted 5,000 Syrians protection under the normal asylum procedure since 2011. The Government will resettle 20,000 Syrians this Parliament. Resettlement provides exceptional protection routes for vulnerable cases whom the UNHCR judges are unable to access adequate support in the region, providing help by resettling them to the UK.

Lord Roberts of Llandudno (LD): I thank the Minister for his Answer, but is it not really rather difficult, when the Prime Minister has promised that we shall have 1,000 refugees settled here by Christmas and only 216 were resettled in the summer? Also, how are you going to make sure that the promise of 1,000 refugees is fulfilled? The 20,000 in five years does not compare very well with Canada, which is taking 25,000 by Christmas. How are the people who come going to be accommodated? Have the Government been in touch with local authorities? Even this morning, I had a text message from somebody in my own valley who said, "We want to accommodate Syrian refugees". What are you doing about that?

Lord Bates: Specifically on the last point of the local authorities, Richard Harrington, a Member in the other place, is the Minister with responsibility for the Syrian refugees who are coming to this country, and he is working very closely with the local authorities and devolved Administrations on this important issue. The Prime Minister has repeated his claim that he wants to see 1,000 here by Christmas, and the Home Office and all other groups are working to ensure that that happens. A key part of this is that the resettlement scheme comes through the UNHCR, and we want the UNHCR to identify the people who are most vulnerable to ensure that those who are most at risk get the protection that we want to give them.

The Lord Bishop of Southwark: My Lords, how close are Her Majesty's Government to announcing the details of a third route in addition to the two mentioned in the noble Lord's Question—namely, the introduction of a private sponsorship scheme, in which many faith and community groups have expressed strong interest? This would enable faith communities to work in partnership with the Government and reflects a desire to do this, as expressed by the Bishops in their recent letter to the Prime Minister.

Lord Bates: That is under active consideration at the moment. Of course, many of the people on whom we are focusing at present are the most vulnerable and in need, particularly of medical care and what have you, so they may not be appropriate for the type of generous offer that has been made. But we have talked about creating a register for charities, churches and faith groups to get involved; there is also a page on the government website that tells people how they can get involved. Once the immediate urgency is over and the first group is brought to the UK safely, we will very much want to take up those offers of great generosity by others.

Lord Higgins (Con): My Lords, would my noble friend agree that, with regard to the Answer to this Question and more generally, it would be immensely helpful if the Government had a means of communicating with refugees? Would they therefore consider very carefully setting up an app on the web so that refugees using their phones—which seems to be true across the whole of Europe and beyond—could access this information in a way that would be cost effective and extremely helpful both for them and for the Government?

Lord Bates: That is an intriguing idea. Of course, the key point is that we want to get the message out to people who are thinking of travelling and taking these dangerous routes to the UK that there is now a better chance of their actually achieving the resettlement that they seek by going through the UNHCR and staying where they are. However we can communicate that information to them, we need to do that. The use of technology is one answer. The topic is seriously on the agenda and is the main focus of the summit in Valletta on Wednesday and Thursday this week. I shall follow that up with my noble friend.

Lord Reid of Cardowan (Lab): My Lords, it is obviously right and proper that the Government respond to the terrible plight of the Syrian refugees, but in order that the people of this country who might have any fears that such a system would be misused by those who would wish to damage this country and the people of this country, could the Minister say something about the security screening that accompanies the acceptance of the refugees?

Lord Bates: The noble Lord is absolutely right. That is one of the reasons why we want the application and vetting processes to happen under the auspices of the UNHCR in the refugee camps rather than having a group of people attempting to enter the UK so that we have to make those judgments at the border. We want it to take place in the Middle East so that the right people can be brought to this country and the wrong people cannot.

Baroness Hamwee (LD): My Lords, I heard this morning of an asylum seeker from Syria who has been told by the Home Office at Croydon that he cannot even make an application for asylum for another two months, which means that he cannot access Section 95 benefits and is dependent on the charity sector for clothing, food and so on. Can the Minister assure the House that, even though the vulnerable persons scheme is working in conjunction with the UNHCR, there is not a backlog growing in the Home Office as a result of the work which is being done? The person who told me about this also commented that it would be a pity if a backlog grew up because the Home Office seems to be getting much better at processing applications more quickly.

Lord Bates: As the noble Baroness knows, many of the people arrive at our border without any identification documents. To come back to the previous point, we need to make those checks and be absolutely sure that we are not putting the people of this country at risk by allowing people in. If there is a specific case, I am happy to take it up with the noble Baroness later. It underscores the importance of getting the message out that the way to approach Syrian refugees is through the UNHCR and the Syrian vulnerable persons resettlement scheme.

Baroness Butler-Sloss (CB): Will the Government reconsider taking some of the unaccompanied children who have crossed into Europe? We have had a very good record, particularly at the beginning of the war, in terms of looking after the children. There are some who really do need our help as well as that of other countries.

Lord Bates: I am aware of that; that is Save the Children's proposal, which it has talked about. The UNHCR has cautioned against taking unaccompanied children into the country because they are particularly vulnerable. The scheme we are proposing in Syria would enable not only children but their parents and brothers and sisters to qualify. We think that that is a better route.

Lord Rosser (Lab): Will the Minister clarify the situation a little more? How many councils in the United Kingdom have finalised agreements, including financial arrangements with the Government, to take 1,000 Syrian refugees before the end of the year under the scheme? How many Syrian refugees are covered by agreements that have already been finalised?

Lord Bates: We have issued guidance on this for local authorities. The Prime Minister made the announcement on 7 September and it is up to local authorities to come forward and volunteer to be part of the scheme, and they are coming forward. That is important because they need to make sure that they have the ability, through schools and social care, to do it properly. This is a fast-moving situation. We do not have a number on the specific local authorities, but 140 individuals have arrived since 7 September. The Prime Minister has given a commitment that we will seek to get 1,000 here by Christmas. We will do that, providing we work in partnership with local authorities.

NHS: Costs of Operations

Question

3.13 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government whether the National Health Service will publish the average cost of all operations and procedures undertaken (1) by general practitioners, and (2) in hospitals.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the department has published the average cost of operations and procedures in hospitals for the past 17 financial years. These reference costs are the average unit costs to NHS hospital trusts of providing acute, ambulance, mental health and community services, covering £58 billion, or 55%, of revenue expenditure in 2013-14. Reference costs for 2014-15 will be published this month. There are currently no plans to collect similar information from general practitioners.

Lord Naseby (Con): Does my noble friend recall that one of the features of GP fundholding was that GPs had a budget, the patient could choose what hospital they went to and the hospital to which they were referred then sent a bill to the GP? If we introduced a new system whereby GPs and hospitals actually knew the cost of what they were or should be charging, would that not enable GPs and hospitals to stick to their budgets, and some of the overspend would then disappear?

Lord Prior of Brampton: My Lords, hospitals do know their costs; they know their reference costs and their HRGs. Increasingly, we will want to get patient-level costing into all our hospitals, as is already the case in some hospitals. If you know the actual cost by patient, the hospital management can have a much better discussion with hospital clinicians. Patient-level costing is important going forward in hospitals. For GPs, we have a calculated payment, as my noble friend will know: currently £75.77 per capita on the list, adjusted for various matters. A capitated figure for GPs is probably better than a much more detailed breakdown of costs.

Baroness Walmsley (LD): Do the figures for hospitals discriminate between those that have to service expensive PFI contracts and those that do not? If so, and if the former are more expensive than the latter, is the department funding them appropriately to enable them to pay those costs?

Lord Prior of Brampton: The noble Baroness makes an important point. We have what we call a "market forces factor", which is applied to the tariff to make adjustments for unavoidable differences in costs—for instance, providing care in London compared to providing it in a cheaper place. The way we measure the cost of capital is not entirely satisfactory, though, and if an individual trust has a very expensive PFI, that is not properly compensated for by the market forces factor. We should spend some more time looking at that issue.

Baroness Wall of New Barnet (Lab): My Lords, is the Minister aware of the new system brought in by the department to measure every activity that goes on in a hospital, including the consultant's time and all the extra things that are used? He talks about reference costs and even tariffs, but they are not actually a very good measure of the cost of materials and services that are already used in the health service.

Lord Prior of Brampton: The reference costs try to pick up all the costs attributable to certain procedures. As I was saying earlier, a patient-level costing system would probably be more accurate. I did not catch the first part of the noble Baroness's question, so perhaps we could deal with this outside the Chamber. Hospitals are incredibly complex and picking up all the costs, particularly allocating overhead costs to individual procedures, is difficult. Compared to any other hospital costing system I have seen in the world, though, the NHS reference-cost system is pretty comprehensive.

Lord Ribeiro (Con): My Lords, one category not included in the list is the independent sector treatment centres. Are these proving as cost-effective as we would like? If so, is it not time that NHS consultants have greater access to them to deal with their elective cases, many of which are often cancelled because of the need to bring in emergencies?

Lord Prior of Brampton: My noble friend raises an interesting question about independent treatment centres, which are for elective cases, not emergencies. They are able to plan their case mix more accurately, and are much choosier about the case mix they take. They can be extremely efficient, and if they have the volumes coming through, they are. Because of the case mix they take, they ought to be able to deliver significant cost advantages over providing such surgical care in a normal NHS hospital. The argument for ring-fencing orthopaedic procedures, for example, is overwhelming in terms both of cost and the quality of care delivered.

Baroness Farrington of Ribbleton (Lab): My Lords, I have heard consultants getting very cross not with patients, but with patients with complications being referred from private hospitals when the procedure got too complicated for them to deal with. Could the Minister write to me detailing the available information he has about this? I stress that in both cases, the consultants were genuinely caring of the patients; but both said that in their view, this happened too often.

Lord Prior of Brampton: I will certainly look into this and write to the noble Baroness, as she requests. There is no question but that in complex cases, the NHS is better equipped than most private hospitals to deal with such complexity; and of course, even when a simple case is handled in a private hospital and something goes wrong, that may lead to a referral back to an NHS hospital. However, I will certainly look into this and write to the noble Baroness.

Bank of England and Financial Services Bill [HL]

Committee (1st Day)

3.20 pm

Relevant document: 11th Report from the Delegated Powers Committee

Amendment 1

Moved by ***Lord Eatwell***

1: Before Clause 1, insert the following new Clause—

"The Bank: definition

(1) For the purpose of this Act, "the Bank" has the same meaning as in section 41 of the Bank of England Act 1998 (general interpretation).

(2) In section 41 of the Bank of England Act 1998—

(a) For "In this Act" substitute "For the purposes of this Act"; and

(b) After "England;" insert "for the purpose of this Act, powers delegated to "the Bank" may be exercised by, or be limited to, any or all of—

(i) the staff of the Bank of England,

(ii) The court of directors,

(iii) The committees of the court of directors,

(iv) The Governor,

(v) the Deputy Governors,

(vi) the executive staff; and"."

Lord Eatwell (Non-Afl): My Lords, as was evident in the speeches around the House at Second Reading, there is a feeling in this House that the Bill is a serious retrograde step from the measures taken in 2012 and 2013 following the financial crisis to strengthen the accountability and oversight of the Bank of England. The purpose of my Amendment 1 is to exemplify the argument that I made at Second Reading that the Bill renders the governance structure of the Bank of England opaque and not fit for purpose. Many measures in the Bill that we will come to discuss later on this afternoon serve the cause of making the governance structure opaque. One device for achieving this obscurantist outcome is to use the term "the Bank" in an active sense; that is, where an entity labelled "the Bank" is to act, notably to make policy or policy decisions, without ever defining who might be responsible for those actions since, as my amendment seeks to make clear, "the Bank" could refer to anyone involved in the institution: the governor, deputy governors, various committees, or even the doorkeepers in their pink coats.

I read carefully through the Bank of England Act 1998—the version as amended by subsequent legislation, which the Bill seeks to amend further. In all clauses within that Act that provide the power to make policy, the active entity is clearly identified. So in Section 9A the financial stability strategy must be determined by the court. In Section 9C, the Financial Policy Committee has clearly defined functions and powers. In Section 13 the formulation of monetary policy is clearly defined as the role of the Monetary Policy Committee.

There are a few instances in the existing Act where the vague term "the Bank" is used in an active sense. However, as far as I can tell, in all such instances it is clear from the context which entity within the organisation might perform the relevant function. For example, Section 9Y of the Bank of England Act provides "the Bank" with powers to enable the pursuit of the financial policy objective. These powers are to seek information to enable the Financial Policy Committee to do its job. Clearly, the active entity would be the Financial Policy Committee asking for information. Section 18 of the Bank of England Act requires "the Bank" to produce reports on the activities and objectives of the Monetary Policy Committee. The active entity would presumably be the MPC, although I admit that in this case it is not entirely clear.

Generally, up until now the vague term "the Bank" is used within the Bank of England Act, where the context is such that the active entity can be identified and consequently, and crucially, can be held to account. If this Bill were to be enacted as currently drafted, that would no longer be the case. In new paragraph 13B(2) introduced under Clause 8(6) of the Bill, the Bank is given the power to revise and replace the code of practice to which members of the Monetary Policy Committee must comply. Can the Minister tell us exactly who "the Bank" is in this context? Who can revise and replace the code of practice with which members of the Monetary Policy Committee must comply?

The most extraordinary example of deliberate obfuscation is to be found in Clause 5, where we find amendments to the Bank of England Act that would make "the Bank" responsible for the determination of strategy with respect to the financial policy objective. Indeed, Clause 5(2) amends Section 9A of the Act with the extraordinary statement that "the Bank" must consult the Financial Policy Committee about that strategy. Will the Minister tell us precisely who is doing that consulting?

I remind the Minister that the financial policy objective and the role of the FPC arose out of the experience of the financial crisis, when it was evident that the Bank of England's attention to questions of financial stability was woefully inadequate, yet now this vital piece of policy-making is to be handed over

to—we know not whom. The Treasury has connived in this obscurantism. In its impact assessment of the Bill, it states with respect to Clause 5:

"Making the Bank responsible for setting the strategy",

within the Bank,

"will ensure that Court is responsible for the running of the Bank and that the Bank's policy committees are responsible for making policy".

Really? How does it know? It is not in the Bill. Nothing in the Bill identifies the division of responsibilities with respect to the financial stability objective in the terms set out in the impact assessment. I remind the Minister of the words of the Treasury Select Committee in another place:

"The Bank is a democratically accountable institution and it is inevitable that Parliament will wish to express views and, on occasion, concerns about its decisions".

Does the Minister agree with that view? If he does, will he tell us how it will be possible for Parliament to hold the Bank to account when the Bill sets out to obscure where within the institution responsibility for the exercise of vital powers may actually lie?

My amendment—which is, if you like, a probing amendment—is intended to expose what is being done in the Bill. The amendment makes it clear that the term "the Bank", when used in the active sense, is an empty, amorphous expression and hence is designed to obscure. If the Minister disagrees with my definition of "the Bank", perhaps he would be good enough to provide his own definition. I beg to move.

3.30 pm

Lord Tunnicliffe (Lab): My Lords, I thank my noble friend Lord Eatwell for this amendment, which takes us to the central problem with the Bill. His words are powerful: he calls the Bill opaque and obscure, and he says that it leaves unclear who makes policy. I thank him for his review of the previous legislation and his assurance that, broadly speaking, it works. I thank him for the concept of an "active entity", which I shall adopt. However, he comes back to the point: who is doing what?

Perhaps before I go on, I should explain where the Opposition stand on the Bill. We feel that the role of the Bank of England is quite central to the economy and that it needs to be reviewed and probably reformed. We believe that, to do that, we have to have a period of reflection and study. My noble friend the Shadow Chancellor in another place has announced those reviews. Nevertheless, in respect of this Bill, we have a role to review the Bill, ensure that it makes sense and do all that we can to help the Government bring it back to a more sensible position.

Like my noble friend, having read the Bill, I ended up feeling that I understood less about how the Bank works than I did when we were in the very painful position in 2012—I say painful because it took so long to get there—when we created the legislation that created the present situation. Largely speaking, there is a question around why we are changing it from something that is clear to something that is significantly less clear. I thank the Minister for all his help in trying to help me understand the Bill—I wish that he had had more success. I am very grateful for the consolidated document that his staff have produced, and that has made studying the Bill and the Acts that it affects so much more straightforward. I also thank the Minister for the meetings he arranged, with himself and with the chairman of the court.

Those two meetings had an interesting effect: they produced two letters. One was dated 4 November and the other was dated November; noble Lords will have to take my word for it that it came after 4 November. I will quote selectively from the letters and am very happy to circulate them to anybody who is interested. Under a large paragraph labelled "Court of Directors and Financial Stability Strategy", the Minister says:

"The Court, as the governing body of the Bank, is responsible for managing the Bank's affairs except for the formulation of monetary policy. The Court is also responsible for determining the Bank's objectives and strategy, and, in line with the Court's role overseeing the Bank, the Bill makes the Court responsible for the oversight functions. The Court is therefore ultimately responsible for deciding how power given to 'the Bank' should be exercised, and how duties given to 'the Bank' should be fulfilled. This includes the Bank's recovery and resolution powers".

When I read that, I thought that it was pretty straightforward and sounded like any other company: power rests with the board—we happen to call it "the court"—except for where it is either taken out by statute, which it clearly is in the formation of monetary policy, or where the court has decided to delegate that power.

Unfortunately, after I met the chairman of the court, I got another, shorter letter. Under a paragraph labelled "Powers and duties conferred on the Bank", it said:

"As the governing body of the Bank, the court is responsible for deciding how powers given to the Bank should be exercised and ensuring that the Bank fulfils its duties".

That sounds okay. It then goes on to say that:

"These include powers and duties in relation to note issuance, resolution, and supervision of financial market infrastructures".

It does not quite say that it shall have no other duties, but I put it to noble Lords that they are a pretty thin number of duties, given the tremendous responsibility that the Bank has in our monetary affairs. In the next paragraph, under the heading, "Powers and duties conferred on statutory committees", the letter states:

"Powers and duties conferred on a statutory committee are for that committee to exercise, according to the terms of their legislation. The Court cannot exercise the powers conferred on a statutory committee".

Because there was no legislation passed between 4 November and the something of November, I assume that the two letters say the same thing; I just have a lot of trouble seeing how. If the first letter is right, as I read it, then I am relatively comfortable. Unlike the Bill—and we can clear that up with some amendments—it restates my understanding that the court is in charge, except where responsibility is taken out by legislation. The second letter rather implies that there are four entities in the Bank: the Financial Policy Committee, the Monetary Policy Committee and the Prudential Regulation Committee—I think I have got them roughly right—which have clear powers and lots of authority and are all, incidentally, chaired by the governor; and then there is something called "the Bank", which is left with note issuance, resolution and supervising infrastructure. We all know that no committee is going to have much to do in a resolution situation, since it

[LORD TUNNICLIFFE]
will happen over a weekend in 48 hours We have moved from a position where the court is central to the Bank to one where it seems almost irrelevant.

There are two points here. First, is that move the Government's intention and, secondly, is it clear? We are going to worry elsewhere about the standards for senior management in banks. If a bank came along with its roles and responsibilities as obscurely set out as we now have in the proposed legislation, it would be denied a licence to operate. What are we asking from these organisations? It is absolute clarity of who does what, with what authority. This does not meet those standards and it would not get a licence. I hope the Minister will ponder on what my noble friend, Lord Eatwell, and I have said. If he agrees that the Bill produces more obscurity than light, I hope he will pause and bring forward some amendments on Report, first to make absolutely clear what the Bill does.

Lord Flight (Con): My Lords, when the Bill was published, I wrote to the Economic Secretary to the Treasury on this territory, because I could not really understand how the reorganisation of the Bank was intended to operate, or what it intended to achieve. Part of the reply I got was:

"The Governor has said that: 'Our strategy will be to conduct supervision as an integrated part of the central bank and not as a standalone supervisory agency that happens to be attached to a central bank'. De-subsidiarisation, together with the organisational changes being put in place by the Bank as part of its 'One Bank' strategy, is an important element of this, and will help to break down any remaining barriers that could stand in the way of a unified culture and impede flexible and coordinated working across the Bank".

I thought about this and looked at the structure. In answer to the points raised by the noble Lord, Lord Eatwell, what struck me was that "the Bank" actually means "the Governor".

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): I begin by thanking noble Lords who have spared the time to meet and discuss aspects of the Bill. I am grateful to the noble Lord, Lord Tunnicliffe, for his kind words, but it was clear that some of my epistles have caused more confusion than I would wish. I will try and address that, and the points made by the noble Lord, Lord Eatwell. I am conscious that the noble Lord, Lord Eatwell, like so many others in your Lordships' House, has a lot more experience in this, so bear with me as I set out the Government's case on this specific point.

It is a good point to start with because we are, as a Committee, seeking to answer the question, which the noble Lord posed very eloquently, of "What is the Bank of England?"—which is a good place to start with in a Bank of England Bill. As he rightly said, during Second Reading he worried that this definition might be an amorphous entity and I completely agree that a full answer to his question is overdue. Let me try to answer it.

The noble Lord referred to the 1998 Act. The Bank of England is defined in the Interpretation Act 1978, which tells us:

"Bank of England means, as the context requires, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England".

Acts amended by this Bill either refer to "the Bank" and define that expression as "the Bank of England", or refer initially to "the Bank of England", so that it is clear what the subsequent references to "the Bank" mean.

This is all well and good for making sure that the corpus of legislation functions neatly, but I know that it does not quite get to the nub of the noble Lord's question, which is: what does it mean when legislation such as this Bill names "the Bank", who does the work and, as the noble Lord rightly said, who is responsible? Legislation generally confers powers and duties on the Bank of England in two ways: either directly on the Bank or on a statutory committee of the Bank. Sometimes legislation grants roles directly to court, and we will get on to what that means when we discuss Clause 5.

However, for now I want to focus on the question of what it means when powers and duties are conferred on the Bank. Who is responsible for the Bank in relation to these powers and duties? The answer is: the court is. As the governing body of the Bank, the court is responsible for deciding how powers given to the Bank should be exercised and ensuring that the Bank fulfils its duties. Powers and duties granted to the Bank include, as the noble Lord said, those in relation to note issuance, resolution and supervision of financial infrastructures. As he rightly said, he should take the first letter he received as the position on this.

The court may delegate these powers and duties within the Bank as it deems fit, a situation the noble Lord's amendment would try to replicate. However—this is the heart of the matter—the court remains responsible for that delegation, and where it decides to delegate powers and duties the court still retains ultimate responsibility for the exercise of those powers and duties. I hope that gives some shape to what the Bank is and who is responsible within the Bank for determining how it fulfils the responsibilities conferred on it.

Some powers and duties are not conferred on the Bank but on statutory committees. Powers and duties conferred on a statutory committee are for that committee to exercise according to the terms of its legislation. The court cannot exercise the powers conferred on a statutory committee. That said, even when powers and duties are conferred on a statutory committee, the court still has responsibilities. As the governing body of the Bank, the court is responsible for ensuring that the statutory committees exercise their statutory roles and responsibilities effectively, including that they are adequately resourced and supported to do so.

The Bill reinforces this role of court by making the oversight functions the responsibility of the whole court, a point we will come on to. For example, the oversight functions include keeping under review the Bank's performance in relation to the duty of the FPC.

I am conscious that the noble Lord may have further questions in regard to what I have said. Let me pick up on one point. He asked about the FPC and who is doing the consulting. It is for the court to approve changes to the code of practice for, I think it is, the MPC because it is responsible for managing the affairs of the Bank. I hope that addresses his point.

Lord Eatwell: Why has the court's responsibility been taken out of the Bill and replaced with "the Bank"? The Bill originally said that the court should consult the FPC, but now it says that the Bank must do so. The noble Lord is saying that that means the court, so what is the point of this amendment?

3.45 pm

Lord Bridges of Headley: My Lords, we will come to address that. Responsibility for these functions still rests with the court, and I think that is perfectly clear. I am happy to meet the noble Lord to address these points in more detail, and we will come to the FPC in due course. I hope I have begun to provide further clarity on the Bank's governance, but I can see from the noble Lord's face that I may not have done. Even so, I hope he will withdraw his amendment.

Lord Eatwell: My Lords, I am grateful to those noble Lords who have spoken, and in particular to my noble friend Lord Tunnicliffe for his exposition of yet further confusion in letters from the Bank of England, or from whoever, attempting to explain what the Bill is really about. I must say that I am sympathetic to the suspicion in the mind of the noble Lord, Lord Flight, that "the Bank" means "the governor".

The noble Lord, Lord Bridges, has said that the answer is that the court is responsible for deciding what "the Bank" means, and the court may delegate those purposes how it might wish. This House spent many hours working carefully with the noble Lord, Lord Deighton, who I am delighted to see in his place, to define precisely the roles of different committees within the Bank of England and their responsibilities. It is very striking that in the crucial role of financial stability, this definition is lacking. For the Monetary Policy Committee the definition is clear and, in respect of other activities within the Bank, if one reads the Bank of England Act 1998, one can see that the responsible entity is clear. In respect of the vital role that arose from the financial crisis and the failures of the Bank of England during that crisis, however, there is to be no clarity or clear definition of role.

I think it will be necessary to amend the Bill to make the position clear, because if it is not amended, parliamentary scrutiny has less insight than it requires to perform the role of ensuring that the Bank is democratically accountable. At this time, I will say that unless the noble Lord amends the Bill appropriately on Report—he may be encouraged to do so—I will produce appropriate amendments myself. In the mean time, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 1: Membership of court of directors

Amendment 2

Moved by ***Lord Sharkey***

2: Clause 1, page 1, line 7, at end insert—

"( ) In section 1(2) (court of directors), in paragraph (e) omit "not more than"."

Lord Sharkey (LD): My Lords, I start by thanking the Minister and his officials for meeting us to discuss the provisions in the Bill. It was helpful and I look forward to further meetings between Committee and Report. The purpose of the amendment is to set the number of non-executive directors of the court of the Bank to nine. The helpful Treasury briefing note to the Bill is a little ambiguous in this area. It states on page 1 that, alongside these changes, the number of NEDs on the court will be reduced from nine to seven, although the legislation will leave flexibility for up to nine NEDs. But as far as I can see, there is no measure in the Bill to reduce the number of NEDs from nine to seven. I understand that this reduction is within the gift of the governor, who has simply decided that the number should be seven and not nine. As far as I know, there has been no consultation on this measure.

According to the Bank's website as of this afternoon, the court has four executive members and nine non-executive members. The governor proposes to reduce the number of non-execs to seven, while at the same time the Bill proposes to increase the number of Bank officials on the court from four to five. Together, this would radically change the composition of the court. As I say, at the moment the court consists of four Bank officials and nine NEDs. The new structure would mean that there are five Bank officials and seven NEDs. This seems unsatisfactory and possibly even dangerous. The Bank's tendency to groupthink is well known, and of course the Bank is famous for its intellectual humility and capacity for self-doubt. It is important that the tendency to groupthink and arrogance is resisted. The last two financial services Acts gave much more power to the governor than to the Bank but, at the same time, they provided for more robust oversight. The officials/non-executive director balance on the board is a critical part of that. It is absolutely critical if the court succeeds, later in the Bill, in abolishing the oversight committee and assigning its functions to the court itself, which I hope it will not. We will look at that later.

I pressed the Minister at Second Reading, and in a subsequent meeting, to explain why the number of non-executive directors is to be reduced, and I have had no real answer. I have heard something about administrative convenience and transition arrangements, whatever they may be, but that is certainly not a proper answer. I again ask the Minister why the number of non-executive directors on the court is being reduced.

A lot in the Bill seems to be aimed at reducing the influence of non-executive directors, and we will come to discuss the composition of the various sub-committees. A lot in the Bill seems aimed at reducing external influence on the Bank's processes and deliberations. There is also a lot in the Bill that weakens the supervisory regime that the Bank is charged with enforcing, and we will come to all that. For now, our amendment seeks to maintain the balance of NEDs and officials on the court of the Bank. That is obviously vital if we are to avoid a repetition of groupthink and introspective and arrogant behaviour. The Bank will have five officials on the court—one more than it has now. We need to retain nine non-executive directors to be certain of strong, uncaptured, independent voices on the court. I beg to move.

Lord Flight: My Lords, I support the points made by the noble Lord, Lord Sharkey. If the number of independent directors on the court is reduced to seven, and is not far off being equal to the number of resident directors, I am not sure what role the court has. I also raise the point as to what should independent directors of the court be. What sort of people should be there and how should they be appointed? I was surprised when exploring this to be told that there was now a ruling that a member of the court must not be any NED of any form of bank. It seems that, by and large, NEDs on the boards of banks are, in today's world, almost an extension of regulators. One of their prime governance tasks is to make sure that the banks are run properly, in accordance with regulatory requirements. I would have thought that the independent members of the court ought to be a cross-section of NEDs from banks and other financial institutions, and that to say, "Oh no, you mustn't have anybody who is an NED of a bank because there is a conflict of interest", is a complete misunderstanding of the role of the court.

Obviously, if the bank of the individual NED were being discussed, they could leave the room and behave as in the normal arrangements when any conflict of interest arises. However, I repeat: if the court is to do a useful job, it should have on it independent representatives who have first-hand experience of the banking system in this country.

Lord Davies of Oldham (Lab): My Lords, I am grateful to the noble Lord, Lord Sharkey, not just for his amendment but for the arguments that he put forward, with which we have a great deal of sympathy. I still find it difficult to understand the Government's case for reducing the number of the non-executive directors in the Bill from nine to seven. I am sure that this issue will run like a—I almost said a golden thread, but certainly a constant thread throughout our discussions because we are concerned about the issues of accountability and openness, as well as the effectiveness of the Bank. I know that the Government want to achieve all those objectives. At the moment, I am afraid we have not, despite the assiduous work of the Minister. I pay due regard to that and to the meetings we have had identifying aspects of the Government's case. However, we are still not persuaded of the merits of this argument, although the Minister obviously thought that we would be, and we probably anticipated that we would be.

I am unclear as to why the Government want to reduce the number to seven; they must recognise that that will change the balance of the court. What is the argument for reducing this crucial number of non-executive directors? I hear what the noble Lord, Lord Flight, said about a certain qualification for non-executive directors, but he would be the first to recognise that we need on this body people with a breadth of experience and understanding, not just of banking issues but of the most fundamental aspects of the operation of the economy.

What seems to underpin the Government's position is the view that plenty of academic evidence exists which indicates that smaller boards are preferable to the more extensive boards that obtained in a great deal of City institutions in the past. I am not against that consideration as I hold academics in some regard. I probably ought to, given the well-informed contribution of the noble Lord, Lord Eatwell, who discussed the preceding Bill to which this one obviously relates, so of course I respect academic opinion on size. However, unless the Government make their case with greater clarity than they have done so far, I am not prepared to accept that the Bank of England is exactly like any other City institution. It is not. It has responsibilities and duties that go beyond those of any other institution and because of that we have to look carefully at the balance of forces on the Bank's board. I almost use the word "cavalier" with regard to what the Government are doing, although I am not sure that they are being cavalier. However, they are seeking to reduce the size of the court and are claiming that this is good practice on the basis of some fairly thin arguments. We want to see good practice on the part of the Bank. We are well aware that the present position is the product of the legislation that was taken through after the crisis. We are all well aware of the criticisms and failures that occurred during the 2007-08 financial and economic crisis. However, we do not believe that the Government's proposition for the Bank is based on secure arguments or that it will result in improvements.

We would like to know how the Government reached their decision to reduce the number of executives while increasing the official side of the Bank. We are not sure what consultation was undertaken on these matters, what advice was taken or who the prime mover behind such a striking and significant change was. The Minister is working hard on the Bill. We value that and the expertise he brings to it. This is only a limited aspect of the whole issue of the accountability and effectiveness of the Bank. However, on this point, the Government have thus far not established their case. Therefore, Her Majesty's Opposition broadly support the amendment in the name of the noble Lord, Lord Sharkey.

4 pm

Baroness Kramer (LD): My Lords, I completely support my noble friend Lord Sharkey in this. Although I greatly respect the noble Lord, Lord Flight, I hope that the House will resist his blandishments. I think non-executive directors of banks finding themselves on the Court of the Bank of England would be constantly facing conflicts of interest, and the public perception would be appalling—that the Bank had become the captive of the industry that it is there to regulate. That does not seem to be a sensible principle.

With the changes that are now proposed—for there to be five inside members, if you like, of the court and seven outside—the inside members would need to persuade only one outside member to join them to achieve stalemate. That is an unacceptable balance in any institution which is so important to the economic life of this country. If the argument cannot persuade more than one non-executive director, it cannot have the standing that would allow it to prevail.

Like my noble friend Lord Sharkey, I am still struggling to understand why this change is being made. The only reason that has been presented to me

is the issue of transition. If there are only seven members of the board, for a period of time there could be an incoming and an outgoing member on the board at the same time. Perhaps that is a good practice; it sounds reasonably attractive. But for that to be the reason that the board should be reduced on a normalised basis to seven seems extraordinary. I also suggest that an outgoing member might be very hesitant to exercise their rights, knowing that they were about to depart the board. Transitional arrangements could be put into the Bill, and we would be quite supportive of the idea that there might be a period when an outgoing member of the court could remain on the board in certain roles, or perhaps even in a full role, for a brief transitional period to achieve the goals that the Minister is attempting to achieve.

I hope very much that we can resist this set of issues. The Bank of England is sufficiently important and outsiders are absolutely necessary. This House has made sure over the past several years that that is central to legislation and I think we will continue to hold to that importance.

Baroness Noakes (Con): My Lords, I agree with the noble Baroness, Lady Kramer, that the Bank of England is an important institution but I am not sure that that importance needs to translate itself into how the court is constituted. The important activities of the Bank are carried out in what will be the three major committees: monetary policy, financial stability and prudential regulation. The activities carried out by the court are relatively few in number. The question then is: what size of court is going to be efficient for carrying out the functions it is there for?

The model that well serves both the plc community in this country and much of the public sector that is modelled on corporate lines is to have a majority of non-executives. That is being kept in here. I have never heard it suggested that the number of non-executives is somehow important to the quality of governance in plcs. Many have more than a bare majority of non-executive directors but a lot operate strictly within the rules to have just a bare majority. I have not seen any studies anywhere that the ratios have any correlation with the quality of governance that is capable of being exercised.

The noble Lord, Lord Davies, referred to the academic evidence that smaller boards are effective boards—that is one of the things that came out of Sir David Walker's review into the governance of banks—and that committees should be 4:5 and boards 8:10 or something like that. That is because in a smaller organisation, all members can have a proper voice and there can be a proper discussion, whereas in large boards often it is relatively simple for an inner group to dominate the larger group. That is what the behavioural studies have shown.

Baroness Kramer: I respect the views of the noble Baroness, Lady Noakes, very much but is she saying that the current Court of the Bank of England is ineffective because it is too large, and that the effect has been that many of the non-executive directors are not having their voice heard? That is a very serious comment to lay on the table. If that is the case, we really need that evidence because we will want to effect a cure, if this is an answer to a board that the Government have essentially decided is ineffective.

Baroness Noakes: My Lords, I have absolutely no knowledge of how the Court of the Bank of England works and have not had that knowledge since 2000, when my tenure on the court ceased. At that time I think that we were a court of 16, of whom 13 were non-executives. I will not claim that we were a very effective board at that. All I am trying to say is that what the Government are proposing is perfectly sensible and in line with general corporate practices. It seems to be entirely defensible.

Lord Eatwell: My Lords, the Bill reeks of the feeling that non-executive directors are a nuisance. Everywhere, we find the role of the non-executive directors in the Bank being reduced. This simple numerical reduction is something like arguing about the number of angels who can dance on a pin. None the less, let us remember why legislation was brought to this House and argued for so forcibly by the noble Lord, Lord Deighton. It was because the Bank of England was seen to have significantly failed during the financial crisis: in particular, that the Bank of England had not had sufficient alternative voices or challenge within its decision-making process. That is what underlay the Financial Services Act of, let me remind the Committee, 2012—just three years ago. From its vesting date to today, that Act has been in force for about two and a half years. How, after that period, can it be decided that the experience of the Act and the structures put in place by it were misconceived? This seems to be simply an attempt for the Bank to return to business as usual, ex ante—before the financial crisis. If the size of the court is too large then that should be the subject of a careful review and the evidence should be presented to this House. That has not been done. Where is the evidence?

The noble Baroness, Lady Noakes, said that what the court does is of course not very much. I wonder whether she was listening to the noble Lord, Lord Bridges, just now when he said that the court is responsible for deciding delegation of powers within the Bank. That seems to me to be quite a lot. With respect, perhaps in the day of the noble Baroness the court did not do very much, but the 2012 Act was specifically designed to empower the court and to produce on it a variety of views and the potential for challenge. There is not much of an issue between seven and nine. The issue is: why is this being changed now? What was wrong in 2012 that is now to be righted and what evidence is there that the decisions which this House made in 2012 were misconceived?

Lord McFall of Alcluith (Lab): My Lords, I would like to make a couple of points in support of the views of the noble Lord, Lord Sharkey. The noble Baroness, Lady Noakes, made the case that the court did not do very much; that was precisely the problem. It had the job of oversight and it is a matter of record that it did not do that job well. The feeling was therefore that the Bank was engaged in groupthink. It did not allow the doors of the Bank to be opened and for the outside world to understand what the Bank was doing.

[LORD MCFALL OF ALCLUITH]
That closed community failed. Evidence to the Treasury Committee acknowledged that it had failed; the current governor acknowledged that it had failed in a speech at Mansion House a number of months ago, when he made three detailed points about the areas in which it failed.

This body has failed. It therefore needs to ensure that that groupthink and closed mentality is disposed of, but that cannot be disposed of by shrinking. It has to ensure that there is a wider community looking over the Bank. After all, society depends on the decisions that the Bank makes, and it is extremely important that society has confidence in the Bank. This is not just a matter for the Bank, the directors and the governor or how he feels; this is a matter of democratic accountability to Parliament and societal involvement. As the noble Lord said, two years after a change with no examination is an unacceptable way to go about business. Let us get the doors of the Bank open and ensure that we have a wider engagement and a wider debate. That will do both the Bank and society good.

Lord Ashton of Hyde (Con): My Lords, I thank noble Lords who have participated in this short debate. The general theme has been that the Government have not put forward a sufficient case for reducing the number of non-executives. I hope that by the end of the debate, we will have been able to elaborate on that. The noble Lord, Lord Eatwell, said that there seemed to be a pervasive feeling through the Bill that non-execs are a nuisance. That could not be further from the truth—good ones are essential, but too many non-execs are not effective. It is crucial to have very high-quality non-execs. I will come on to that as far as the court is concerned.

I agree with the noble Lord, Lord Sharkey, that we have got the figures right in terms of what we have at the moment and what we are going to have, but I come to completely the opposite conclusions as a result of that. I will try my best to outline the Government's feeling and will also refer, to a certain extent, to some of the points my noble friend made about the academic evidence and the experience of commercial firms, which show that sometimes reduced numbers are more effective.

As noble Lords are aware, the Bank of England Act 1998 states that the court can contain,

"not more than 9 non-executive directors".

This Bill does not make any alteration to this provision. Before I dive into the detail, it may be helpful to remind the Committee what we are seeking to achieve: a court that is effective in scrutinising the actions of the Bank, holding executives to account, challenging their thinking and exercising its statutory functions. A number of noble Lords have cast this debate in terms of avoiding groupthink, which I agree is very important.

Given that, there are two important factors to bear in mind about the issue we are discussing here, both of which mitigate the risk of groupthink. The first is the number of non-executive directors on the court, which the noble Lord's amendment focuses on. The second, but no less important, factor is the quality of non-execs on the court. Let me first address the issue of numbers. Within the terms of the current legislation as written, the Government plan to reduce the number of non-execs to two. This will not weaken the court; instead, it will strengthen it.

Baroness Kramer: By two.

Lord Ashton of Hyde: Yes—by two, to seven. We think that will strengthen it, because the governance of the Bank will be enhanced by enabling the court to become a smaller, more focused unitary board, as several noble Lords have mentioned.

A smaller court is something the Treasury Select Committee advocated in its 2011 report, *Accountability of the Bank of England*. It recommended that the court's membership be reduced to eight, emphasising that a smaller court would allow a diversity of views and expertise while still being an efficient decision-making body.

Our proposals exceed the size of court recommended by the Treasury Select Committee, but a court of 12 is significantly smaller than both the court's original size of 24 and its size more recently, during the financial crisis, of 19.

4.15 pm

Lord Eatwell: I am intrigued by the Treasury Select Committee's recommendation of eight. Can the Minister tell us what would have been the composition among those eight recommended persons?

Lord Ashton of Hyde: I fear I cannot. Can the noble Lord help us? The answer is, no, I cannot tell noble Lords that.

Baroness Kramer: Perhaps I could be helpful on that point. As the noble Lord will remember, this legislation is adding one more insider, so the balance with eight would have been five insiders versus three outsiders.

Lord Ashton of Hyde: The balance would change if we do what the Chancellor has decided to do—to reduce it to seven—but, as I will come on to, the flexibility is maintained to have nine. The legislation says "up to nine", and nothing in the Bill changes that. We are still operating on the original number of "up to nine". The amendment would make it exactly nine and reduce any flexibility.

My original point was that our suggestion is smaller than the Treasury Select Committee's original number of 12, the court's original size of 24 and its size during the crisis of 19. The size of the court was identified as a barrier to its effective functioning during the financial crisis. We think that a smaller board will better scrutinise the executive. With fewer non-executive directors, each member has greater opportunity to pose questions to executive members and to debate with them. A larger court can encourage a round table of individual speeches, rather than enabling back and forth discussions and challenge to the executive.

As Professor Capie, former official historian of the Bank of England, noted in his evidence to the Treasury Select Committee, historically, larger boards have often consisted of "simply observers or rubber-stampers". This was supported by independent evidence from the

Walker report, which suggested that the ideal size for a board tends towards 10 to 12 people. Our proposal for five executive and seven non-executive members sits within this range. The Walker report notes that boards larger than 12 people become less manageable and less effective.

The Bank itself has highlighted the benefits of reducing the size of the court. In its 2014 report, it said that,

"consistent with best practice in the private sector, the Bank sees the value of continuing to evolve towards a slightly smaller body, with a non-executive chair and majority".

Undoubtedly, board sizes in the private sector are on average relatively small. For example, according to the Spencer Stuart board index, the average sizes of boards in 2014 in the US and UK were 10.8 and 10.5 respectively.

Our proposals therefore align the court with current best practice for a unitary board. However, I accept that best practice can, and often does, evolve over time. Therefore, as I said, the current wording provides flexibility, but no compulsion, to increase the number of non-executives up to nine if future evidence suggests that this would be beneficial. Similarly, and importantly, this flexibility will ensure continuity and transfer of knowledge during periods of flux between departing and joining non-executive directors, as the noble Baroness, Lady Kramer, mentioned. But that is not the only reason for the change. We will retain the flexibility, but the normal number will be seven. Specifying that the court must contain an exact number of non-executives, as the amendment does, would lose those benefits.

Let me now turn to the quality of non-execs on the court, which is critical and was mentioned by several noble Lords, including my noble friend Lord Flight. The court has been transformed over the last three years. The Chancellor sought to appoint the highest quality team with significant experience of running large organisations and expertise in matters relevant to the Bank. All non-execs are appointed by the Queen on the recommendation of the Prime Minister and the Chancellor of the Exchequer. The appointment process is run by the Treasury and regulated by the Office of the Commissioner of Public Appointments. It is in line with best practice, with open competitions held for all positions. The Government look far and wide for the best candidates, with roles advertised in the international press. The result is a board of the highest quality non-execs chaired by Anthony Habgood, one of the most experienced and respected company chairmen in the country.

I was asked by the noble Lord, Lord Davies, what consultation took place on reducing the number of non-executive directors. In its December 2014 publication, *Transparency and Accountability at the Bank of the England*, the Bank made the case for reducing the size of the court. The Government included the proposal to reduce the size of the court to seven in the July consultation paper, with the consultation closing in September. No respondents opposed the proposed reduction in the size of the court.

Baroness Kramer: Would the Minister remind us how many responses there were to that consultation?

Lord Ashton of Hyde: There were not that many, but I cannot tell the noble Baroness the exact number.

Baroness Kramer: I think the number was 14. Most people did not know it was there.

Lord Ashton of Hyde: So clearly it was not a burning issue. As my noble friend Lord Flight said, no member of the court is from a regulated firm—that is absolutely true—which ensures no conflicts of interest. We think that that is the correct way forward. Of course, they bring a wide amount of experience and there are many members of the court whose description is a "former" director of relevant parties, including banks.

Finally, who made the decision to reduce the number from nine to seven? That was made by the Chancellor, on the advice of the non-executive chairman of the Bank. The proposed composition of the court, as recommended by the Treasury Select Committee, was a total of eight: the governor, two deputy governors, an external chair and four other external members.

Lord Sharkey: Does that not make the point that it would give a clear majority to the external members?

Lord Ashton of Hyde: It would also be considerably smaller than what we propose today—which is one of the problems brought up by noble Lords. We are not going with that exact number but we will have a majority of externals with the flexibility to increase those by two—something the noble Lord's amendment would remove.

We agree that the ability for independent scrutiny and challenge should not be compromised. We think that with seven high-quality non-executive directors this will not change. There will still be a majority of external members on the court, well equipped to scrutinise the actions of the Bank and hold the executive to account. My noble friend Lord Bridges and I are happy to meet with the noble Lord, Lord Sharkey, if he would like to discuss this further, but in the mean time I hope that my explanation of the Government's thinking will allow him to withdraw his amendment.

Lord Sharkey: I am afraid we have not heard any kind of compelling explanation as to why this reduction should take place or what its benefits might be. It is simply not enough to pray in aid, as the Minister did, the alleged size and efficiency ratio of commercial company boards. That is simply a category mistake. The Bank is not a commercial company. It has duties that no commercial company has, and it is more important in our national life than any private sector company.

The reduction proposed in the number of non-execs would completely change the culture in the court. But what is worse, as the noble Lord, Lord Eatwell, has said, there is simply no evidence to support the case for the reduction. Evidence may arise out of the consultation, but I am not quite clear about that—and that may need at some later stage a little more explanation. I am happy to take up the Minister's offer to meet, but I am certain, too, that we will want to return to this issue on Report. In the mean time, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3

Moved by ***Lord Davies of Oldham***

3: Clause 1, page 1, line 10, leave out "Treasury" and insert "Chancellor of the Exchequer"

Lord Davies of Oldham: My Lords, in moving Amendment 3, I shall speak also to Amendment 4. Amendment 3 would ensure that any alteration to the Court of Directors, and in particular the role of the deputy governor, would be the Chancellor's responsibility, rather than Treasury's, as stated in the Bill. Amendment 4 would require the Treasury to,

"publish in such a manner as it thinks fit the reasons for any changes to",

the membership of the Court of Directors, and lay it before Parliament.

The House will recognise that these are not the most epoch-making amendments I have ever had occasion to advance, but they are a cunning device to give us the opportunity to explore further the Government's position on guaranteeing that we have the necessary level of accountability, and to gain some real insight into the Bank's decision-making operations and its relationship to the Treasury. The amendments are far from perfect but, as the House will appreciate, in Committee I am undertaking somewhat informally to withdraw any amendments that we table at this stage. I am sure the Minister will respond to them in his usual meticulous way in the context of the issues that arise, rather than the validity of the amendments themselves.

The Bill gives the Treasury the power, after consulting the governor, to add or alter the title of the deputy governor. This, along with the reduction of the number of non-executive directors from nine to seven, which we have just discussed, will alter the structure of the court. Also, under the Bill, alterations to the Court of Directors will be made in secondary rather than primary legislation. The amendments give the Minister an opportunity, which he will seize with enthusiasm, to place on record how this process will work in practice and what the Government consider to be the benefits of these alterations.

It is clear that accountability and transparency must be the cornerstone principles of any public institution, and that applies with great significance to the Bank, while at the same time recognising that the sensitivity of some decisions it has to take require special provision. It is crucial that we get the relationship right. These amendments were tabled in the context of the Government's decision to make future changes in secondary rather than primary legislation. However, we consider, as evidenced by today's discussions, that alterations to the Court of Directors are very significant indeed. The first amendment simply identifies that the Chancellor is the individual responsible for making the change. At least there would then be a clear line of accountability to Parliament, which we are not sure the Bill as drafted safeguards. Has the Minister envisaged who at the Treasury would be making such recommendations, if not the Chancellor? It must be unexceptional that we are stating that a clear line of responsibility runs through to the Chancellor.

We are not satisfied that this provision should come under secondary legislation. Following a meeting between the Minister, my noble friend Lord Tunnicliffe and me, the Minister wrote the following in a letter:

"I think I should start with the reassurance that the Government does not expect that the number or the title of Deputy Governors will be altered frequently".

Nor do we, and we gain some reassurance from that letter. However, if it is an infrequent occurrence marked with some considerable experience, why is it proposed that it be dealt with in secondary legislation? In what circumstances does the Minister imagine such a change would be necessary, and why should it be made through secondary legislation?

4.30 pm

Our related amendment, Amendment 4, would add another opportunity for scrutiny. Ideally, reasons would be published before any legislation was moved, giving Members of both Houses an opportunity to examine the proposal. I hope the Minister will seize this opportunity to clarify that which lacks clarity at present. I assure him that the moment he says these amendments are poorly drafted, I will be the first to concur.

Lord Bridges of Headley: My Lords, the noble Lord does himself a great injustice by saying that these amendments are not epoch-making. I see this process as a form of legislative acupuncture—not that I have ever gone through acupuncture, but I am reliably informed that every needle makes a difference. I am delighted to answer these points.

Clause 1 makes the deputy governor for markets and banking a member of the Court of Directors. Following the expansion of the Bank's responsibilities through the Financial Services Act 2012, a deputy governor for markets and banking was appointed, as noble Lords will know, with responsibility for reshaping the Bank's balance sheet, including ensuring robust risk-management practices. This important position, currently filled by Dame Minouche Shafik, is not a statutory member of court. This clause amends the Bank of England Act 1998 to make this position statutory, ensuring equal status for all the Bank's deputy governors and simplifying the Bank's governance structure.

In addition, Clause 1 provides enhanced flexibility to add or remove a deputy governor or to alter the title of a deputy governor. Correspondingly, it provides the ability to make changes to the composition of the court, the FPC, the MPC or the new PRC where a deputy governor is added or removed. It should be noted that this power will not permit the Treasury to remove a deputy governor or change his or her title while that deputy governor is in office. This is a measure to ensure flexibility for future need. The Government will be able, by order—a point I will return to—to adapt the size and shape of the court to bring in new expertise when necessary. Thus the Bank's senior management team can be easily adjusted to meet future requirements.

The Bill also provides for the continued balance of internal and external members on the FPC, the MPC and the PRC. When a deputy governor is added or removed from a policy committee, the Bill enables a comparable change in the number of appointed members

to that committee. In a little more detail, if one or more deputy governors is added to the FPC or the PRC, there may be an equal increase in the number of members appointed by the Chancellor. Similarly, if one or more deputy governors is removed from the FPC or the PRC, an equal number of members appointed by the Chancellor may be removed. The situation is comparable for the MPC. If one or more deputy governors is added to or removed from the MPC, then there may be an equal increase or decrease in the number of members appointed by the governor of the Bank. External expertise on these committees is important to ensure a range of views are considered. This provision is necessary to facilitate a diversity of opinion and counter the risk of groupthink.

The noble Lord raises a number of issues in the amendments and I will try to address them. The first issue is where the responsibility for adding, removing or altering the title of a deputy governor lies. In the Bill, this power is conferred on the Treasury rather than specifying, as the noble Lord's amendment wishes, the Chancellor of the Exchequer. This does not mean that the Chancellor is not consulted. Obviously the Chancellor would be kept fully informed of anything as important as adding or removing a deputy governor, but where a more minor administrative change is made, such as the title of a deputy governor, it may be more appropriate for a junior Treasury Minister to take the lead. Retaining the existing drafting provides this element of flexibility but—I think this is the key point—the Chancellor remains accountable, whatever the phrasing of the Bill, to the public and to Parliament for the decisions and actions in his department.

Secondly, the noble Lord proposes that the Treasury should publish the reasons for making changes to the composition of the FPC, the MPC or the PRC. This gives me the opportunity to clarify the process of making changes to the membership of these bodies following a change to the deputy governors. If the need to alter, add or remove the position of a deputy governor is identified, the Treasury will discuss this with the governor of the Bank. The need for the change could initially be identified by either the Treasury or the Bank. If, following these discussions, the Treasury believes that the change is required, along with any associated changes to the membership of the MPC, the FPC and the PRC, the Treasury will present secondary legislation to Parliament. It will then be for Parliament, as the noble Lord said, to determine whether the change goes ahead. I therefore hope it is clear that Parliament plays a key role in this process. It is the ultimate decision-maker and, in passing an order on the membership of these committees, the Government will need to outline their reasoning to this House and the other place in order to pass our and their acute scrutiny and debate. It is in this context that the reasoning will inevitably be published.

In short, it seems that the noble Lord's amendments, while worthy of debate, are unnecessary, and I hope that he will feel able to withdraw them.

Lord Davies of Oldham: As I indicated, my Lords, we tabled these amendments in order to clarify the thinking behind these proposals, and I am reassured on the crucial aspect that the answerability to Parliament is contained accurately within the Bill. It therefore gives me great pleasure to beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4 not moved.

Clause 1 agreed.

Clause 2 agreed.

Clause 3: Abolition of Oversight Committee

Debate on whether Clause 3 should stand part of the Bill.

Lord Sharkey: My Lords, I do not believe that Clause 3 should be part of the Bill. Clause 3 abolishes the oversight committee and transfers its functions and responsibilities to the court itself. This is a significant weakening of the oversight of the Bank. The oversight committee consists only of the non-executive directors of the Bank; there are quite deliberately no bank officials on the committee. Parliament arranged this in order to be certain that oversight was truly independent and to avoid the possibility of undue bank influence in assessing the performance of the Bank itself in its various roles.

There is an irony in the proposal to abolish the committee. As the noble Lord, Lord Eatwell, pointed out at Second Reading, the Court of the Bank was opposed to the original proposal to create a supervisory board. It was the Bank itself that proposed an oversight committee composed exclusively of non-executive directors.

The reasons given by the Government for the abolition of the oversight committee are extraordinarily weak. The Minister's letter to me, received last Thursday, says about the oversight committee:

> "The new oversight functions and transparency measures have been successful, but the extra layer of governance imposed by the oversight committee has proved unnecessary".

It goes on to say:

> "There is effectively an oversight committee overseeing the work of an oversight board".

That is emphatically not the case. It was precisely because Parliament found oversight by the board to be unsatisfactory and defective that it introduced the non-executive director-only oversight committee.

In exercising oversight of the Bank there is a completely obvious difference between having that oversight carried out by the Bank itself sitting as five officials and seven NEDs, and having it carried out by an oversight committee composed only of non-executive directors. Anyone with experience of corporate governance in the commercial world would immediately recognise the difference and the danger to independent scrutiny in the current proposal.

The Minister also says:

> "The non-executive chairman of the Court has found the division of responsibilities between the Court and the Oversight Committee difficult to operate and unnecessarily complex since, to ensure that the meetings are effective, the Oversight Committee has often required the presence and engagement of the executive members of the Court".

[LORD SHARKEY]

As a reason for abolishing the oversight committee, this is very feeble. Does the chair of the court imagine that the oversight committee could function without calling on the executive directors? How could any oversight committee function without evidence from the executives it is charged with overseeing? Does the chairman not understand the obvious and critical difference between court executives being called to give account to a committee of nine non-executive directors, and these same court executives giving an account of their actions and decisions to a full court meeting of five bank executives and seven non-executives? When you come right down to it, the main reason advanced by the Government for abolishing the oversight committee seems to be that the chair has diary and scheduling issues.

Perhaps I should remind the Committee—although seeing those present in the Chamber this afternoon, I probably do not need to—that Parliament considered the oversight committee a vital part of the reform of the Bank's structure of governance. It was intended to prevent a recurrence of groupthink and as a check on the tendency to arrogance. It was intended as a means of ensuring a cool, independent view of the Bank's operation, as a means of ensuring proper scrutiny and transparency and, as the Minister says, it has been successful in doing exactly this.

The Government have made no meaningful case for abolition. Abolition would reduce oversight and transparency and reinstate the Bank's influence over oversight itself. It would ignore all the reasons Parliament advanced for the establishment of the oversight committee in the first place and, in common with other measures in the Bill, it would increase the influence of the governor and the Bank in areas where Parliament has taken deliberate steps to decrease it. Abolition is a retrograde and dangerous measure. The Government have given no compelling reasons—in fact, hardly any reason at all—for abolishing the oversight committee. This clause should not stand part of the Bill.

Lord Tunnicliffe: My Lords, I support the noble Lord, Lord Sharkey, in his contention that the clause should not stand part of the Bill. This whole issue is about holding the executive to account. In these situations it is very difficult to make a speech which does not sound as though you are criticising the current executive and governor. Oversight mechanisms are in place for when things go wrong. They are largely irrelevant when things are going right but they are there in case they go wrong. I contend that the Government's proposals significantly reduce the power of the non-executives to hold the executives to account.

Those of us who sat through those long days of Committee on the Financial Services Act 2012 will remember that the Government stated that they,

"fully recognise the importance of strong lines of accountability for the Bank, given its expanded responsibility and powers".—[*Official Report*, 26/6/12; col. 184.]

I am not sure whether the Government took that view immediately in the debate, but it was the consensus in the Chamber at the time, after an enormous amount of discussion.

Anybody doing what you have to do in the modern world to see how the Bank functions and looking it up on the Bank's website will find a very good page—except that we are about to change it all—labelled "How we are governed", which says:

"The Oversight Committee of Court, consisting solely of non-executive directors and supported by an Independent Evaluation Office, reviews and reports on all aspects of the Bank's performance".

That is very convincing for anybody with a proper interest in the banking structure and all the various banking responsibilities. There is a process whereby people who know what is happening can call the executive to account.

4.45 pm

The result of the previous legislation was, very simply, that not only could a majority of non-executives call for a report on virtually anything—or, more accurately, carry out an investigation themselves—but they had the resources to do it. Indeed, the Bank has created—it is referred to on its web page—the Independent Evaluation Office in order to secure the right support for the non-executives. A majority of NEDs is all that is required to call for a report and they have the resources to do it. Let us compare that with the situation proposed by the Bill. If there were a concern among the non-executives, all of them, in a contested vote, would have to vote for a report and an investigation to go ahead. With a strong executive leader, that would be extremely difficult. It would be extremely difficult even to call for a vote in the first place. However, if real concerns were building and if the strong executive leader—the governor—almost always took his executives with him, a considerable confrontation would be needed before a report could be called for. If the Act is left unamended, it merely needs a majority vote by the non-executives to carry forward a report.

Furthermore, the very words "Independent Evaluation Office" suggest that the office has some power to conduct investigations into the Bank. Those of us who were privileged to attend the Treasury Select Committee scrutiny of the Bill heard the chairman, Andrew Tyrie, question Mr Carney on this matter. He confirmed that the IEO cannot independently decide to start an inquiry; instead, it gets its priorities from the court. This is central. In a difficult situation—which we have experienced within living memory—independence is central to the NEDs having the power to hold the executive to account. I hope that the Government can explain why they have decided to so significantly weaken the oversight role of the court's NEDs.

Lord Eatwell: My Lords, I find this a somewhat naive and shocking part of this small Bill, in the sense that the clause under debate has two objectives. The first is to reduce the powers of the NEDs and the second is to reduce the powers of Parliament. Both of those goals I regard as reprehensible. As the noble Lord, Lord Tunnicliffe, set out, these issues were debated extensively in this Chamber with respect to the Financial Services Act 2012. We went through them in great detail and, in particular, we followed the advice of the Treasury Select Committee of another place.

It is obvious that this measure is designed to reduce the powers of the non-executives, but perhaps I may comment on the second point that I made about the

powers of Parliament. That derives from the statement by the Treasury Select Committee of another place, which at that time was referring to a new supervisory board. That, in debate, was transformed into the oversight committee. The Select Committee said:

"Our recommendation that the new Supervisory Board have the authority to conduct retrospective reviews of the macro-prudential performance of the Bank should, if operating successfully, provide",

Parliament,

"with the tools for proper scrutiny".

Those "tools for proper scrutiny" are being removed in this clause. I think that Mr Carney's explanation of the role of the Independent Evaluation Office, which can be summoned into action only by the oversight committee, is particularly revealing.

It has also been argued that, in some sense, the Bank now has two boards—the court and the oversight committee—and that this is causing confusion and reducing the effectiveness of the Bank. That is a very foolish argument. The notion that there should be an independent non-executive committee reviewing the activities of a main board is commonplace, particularly given that the reviews are specifically defined by legislation to be retrospective and not to question the contemporary acts of the court. That process is one that the best unitary boards have embodied in their codes of practice. I am amazed and, as I say, shocked that the Government are attempting to reduce the powers of non-executive directors in this way and, in particular, to reduce the powers of Parliament.

Baroness Kramer: My Lords, I will make just a few comments, if I may. I join my noble friend Lord Sharkey, and the noble Lords, Lord Tunnicliffe and Lord Eatwell, in their concern about the changes being proposed and the implications that would follow from them.

Will the Government confirm that, under the arrangements to reduce the number of non-executive directors to seven and increase the number of officials on the board to five, it would take co-operation from only one non-executive director with those officials to effectively prevent any investigation into any area of Bank activity? That is, I feel, a completely unacceptable balance that is being proposed today. The Government will have to come up with a very great justification for why the hurdle must be so low—four current officials—to prevent investigation of historical activity.

Clause 4 effectively falls if Clause 3 falls. Clause 4 makes the situation yet worse, because it contemplates not that the whole court will act as an oversight committee but that a sub-committee can be created in order to carry out that work, comprised of as few as two non-executive directors. For two non-executive directors to be considered sufficient for the important work of investigation, review and oversight of the Bank of England strikes me as completely extraordinary. It is also noticeable that the number two applies to the sub-committee responsible for the remuneration of officials at the Bank.

We are moving into a "two best friends" provision here, and I find it exceedingly disturbing. The Government will have to come up with some justification for why a sub-committee of two NEDs is sufficient to carry out a crucially important task that was absent during the many years in which the Bank of England essentially failed to meet the necessary standards to prevent a systemic crisis in finance in this country. I would like to hear their justification for the number two.

Lord Bridges of Headley: My Lords, I thank all the noble Lords who have made very powerful contributions and thoughtful points.

I will not detain your Lordships with lots of history; you know it much better than I do. However, to remind the Committee how this came about, I will repeat something that has already been said. The Financial Services Act 2012 gave rise to the Oversight Committee, largely in response to recommendations made in the report *Accountability and the Bank of England* from the Treasury Select Committee in the other place. That report recommended that the court should be reformed into a board, with powers to conduct ex-post reviews of the performance of the Bank; that board members should be authorised to see all the papers submitted to the MPC and FPC; and that the board should be responsible for reviewing the processes of the Bank's policy committees.

The Treasury Select Committee argued that the new board should be called the Supervisory Board of the Bank of England but, despite this name, the structure that was proposed was in fact a unitary board. As has been said, the Financial Services Act 2012 took steps to implement these recommendations, by creating a set of statutory oversight functions. However, instead of conferring powers on the court itself, the powers were conferred upon a new statutory Oversight Committee, made up exclusively of the non-executive directors.

Lord Sharkey: Would the Minister agree that it was the Bank itself that suggested that?

Lord Bridges of Headley: That is my understanding. If I am wrong, I will correct myself.

The noble Lord, Lord Sharkey, made his points very forcefully and I fear we may still have to have further discussions—if he can bear it—but let me restate the Government's position. The problem now faced by the Oversight Committee is simple. As the noble Lord said, for the non-executives to hold the executive to account effectively, they need to meet together, not separately. There needs to be full and frank discussion between the governors and the non-executives on how best to exercise the court's oversight functions. I am sure the noble Lord would agree that the challenge and recommendations of the non-executives need to be informed by in-depth knowledge of the Bank's operations. Effective oversight needs to be carried out by the executive and non-executives in partnership, not in silos.

It bears repeating that the key powers of oversight, which are necessary and working, are not lost as a result of their transfer to the whole court. The court will continue to be able to commission reviews as it sees fit. Moreover, the non-executives will continue to be a majority on the court and will also continue to meet together as a group after each meeting of court,

[Lord Bridges of Headley]
in line with best practice. As was discussed earlier today, court contains a high quality non-executive majority and is therefore well placed to oversee the work of the Bank.

It is entirely appropriate that court, as the governing body of the Bank, should be responsible for exercising these oversight functions.

Baroness Kramer: I hate to stop the noble Lord, Lord Bridges, in his flow, but could he confirm that, under the proposed structure, if the officials of the Bank collectively believe that an area is not appropriate for investigation, they need the support of only one non-executive director?

Lord Bridges of Headley: As the noble Baroness points out, that would obviously be the maths. We will probably have to have further discussion on this, but I would like to come back to the powers.

It is entirely appropriate that court, as the governing body of the Bank, should be responsible for exercising these oversight functions. The Bill is putting in place a model which is widely regarded as best practice in the United Kingdom. It also completes the model that the Treasury Select Committee recommended in 2011, and was subsequently endorsed by the PCBS in 2012. That model is a streamlined unitary board, with express powers to commission performance reviews. Parliament would still see copies of the reports of any performance review published by the court, just as would be the case for reports published by the Oversight Committee. Parliament's powers are not being reduced and the Treasury Select Committee can summon any non-executive director to give evidence.

5 pm

On the point that has consistently been raised about groupthink, I agree that we need to ensure that the Bank is not susceptible to groupthink. The changes that have been made since the financial crisis and the changes we have proposed in this Bill will help to ensure those mistakes are not repeated. Let me run through a few of them. First, the minutes of every court meeting are now published. Secondly, any one non-executive director on court is now able to attend every meeting of the MPC, FPC and PRA boards. Thirdly, the MPC will in future publish transcripts of every meeting. Fourthly, the Bank has established an Independent Evaluation Office, as has been mentioned, to support the non-executive chair in exercising the court's oversight functions. Noble Lords may have seen that the IEO published a detailed report last week into the accuracy of the Bank's economic forecasting. Finally, the Bank's court has been strengthened with a number of new appointments with expertise across a wide range of industries.

Furthermore, we should not assume that groupthink can be avoided in a small group which meets without being able to challenge or be challenged by executive directors. It could equally be argued that a committee of seven people may be just as susceptible to groupthink as a committee of 12. Once again I would argue that it is not only the number of people that matters but their quality and the forum in which they are debating and scrutinising issues.

I strongly believe that there is nothing gained from having an oversight board as well as an oversight committee.

Lord Tunnicliffe: Surely there is a world of difference between the phenomena of groupthink in either one of the policy committees or on the court than the phenomena of the seven NEDs meeting alone. If they do produce a piece of groupthink, the most harm they will do is require a part of the activities of the Bank to be examined. It is very unlikely that they would do that, but it would do no great evil and cause little inconvenience. We are talking about a radical difference in balance when it comes to the powers of the NEDs to question the executives of the Bank.

Lord Bridges of Headley: My Lords, it is clear that I still have some persuading to do. I would argue that those powers have not changed in the sense that they have been transferred from the committee to the court.

Baroness Kramer: The Minister said that the powers have not changed, but would he agree that who exercises the powers has changed significantly? Officials had no opportunity to exercise those powers; they were the powers only of non-executive directors. Now they can be easily exercised by the officials plus one NED.

Lord Bridges of Headley: As the noble Baroness rightly points out, obviously her maths is correct and there would be robust discussion. This comes back again to the quality of those who are on the court and their ability to persuade people that such a review is necessary.

That is all I wish to say on this matter.

Lord Eatwell: The noble Lord, having not been present at our discussions, sadly, three years ago, has not appreciated the loss of confidence in this House in the general accountability of the Bank of England.

Given the structure of the Bank of England and its role in national and international life, the position of the governor is extremely powerful, and quite rightly so. He needs to carry the gravitas and status of his or her office. However, in those circumstances, it is important that an Oversight Committee, charged with retrospective evaluation of the performance of the Bank with respect to its objectives, should not include the governor or the deputy governors. That is a crucial element of our thinking which underpinned the 2012 Act. In repeating that powers have now been simply transferred but still remain, the noble Lord has failed to take that aspect into account and has failed to reflect on the experience of the financial crisis of 2008 and the Bank of England's performance during that crisis.

Lord Bridges of Headley: Once again the noble Lord makes a powerful intervention. I am sorry that I was not here for what were obviously those interesting debates and I heed what he has to say. I would simply repeat that I am more than happy to meet with him if he so wishes to discuss these points in more detail. Clearly the court would continue to be able to delegate and to meet as a sub-group of non-executives to look into matters as they see fit, but I believe that this Bill

will put in place a more transparent, accountable, effective and recognisable board structure for the Bank, and I hope that I have been able to convince noble Lords that this clause should not stand part of the Bill.

Noble Lords: It should stand part.

Lord Bridges of Headley: I am sorry. It should stand part of the Bill.

Clause 3 agreed.

Clause 4 agreed.

House resumed.

Police Funding

Statement

5.05 pm

The Minister of State, Home Office (Lord Bates) (Con): My Lords, with the leave of the House I would like to repeat the Answer to an Urgent Question in another place by my right honourable friend the Minister for Policing, Crime and Criminal Justice and Victims, Mike Penning. The Statement is as follows:

"The Home Secretary regrets that she cannot be here today as she is attending an extraordinary meeting of the Justice and Home Affairs Council in Brussels.

This Government believe that police funding must be allocated on the basis of a modern, transparent and fair funding formula that matches funding with the demands faced by the police. The current arrangements are unclear, out of date and unfair. In recent years, a great many chief constables have called for a new formula. The National Police Chiefs' Council, the Association of Police and Crime Commissioners and Her Majesty's Inspectorate of Constabulary have all called for a revised model. The issues with the current formula are also well known to the House. In 2009, the then Policing Minister, the right honourable Member for Delyn, agreed to review the police funding formula—a review that did not happen. Since then, the Home Affairs Select Committee, the National Audit Office, and the Public Accounts Committee have all argued for new funding arrangements.

The new formula is what we have been doing. During the last Parliament, my predecessor announced that the Government would review the existing formula. In July of this year the Government published a consultation on the principles of a new formula, to achieve one that is fair, robust and transparent. That consultation closed in September, with 1,700 responses. Since then we have been working with forces to understand what those principles mean in practice to force budgets. Within this process, a statistical error was made in some of the data used. While this error does not change the principles that we consulted on, and the allocations provided to forces were always indicative, we recognise that this has caused concern among police forces. The Government regret the mistake and I apologise to the House for it, as well as to the 43 forces that I wrote to when we shared the exemplification data and launched a second, informal consultation period of the police funding formula review.

The Government are therefore minded to delay the funding formula changes for 2016-17, as we had previously intended, in order to give more time to consider their impact. We will seek the views of the Association of Police and Crime Commissioners and the National Police Chiefs' Council before going any further. It is essential that we come to a funding formula that is fair, transparent and matched to demand, but is also one that is supported by policing as a whole. So the Government will continue to listen, and we will consider the next steps in conjunction with police leaders. We will update the House in due course.

Reform of the police funding formula is something we should all support. Police forces and police and crime commissioners have called for it, as have committees of this House. It is especially important now, at a time of savings, that scarce resources go where they are needed most".

5.08 pm

Lord Rosser (Lab): My Lords, the responsibility for the sorry Answer which has just been repeated lies not at the door of officials, but at that of Ministers. The Government's serious mistake came to light only because of work commissioned by individual police forces which had to pay to get access to data used by the Home Office in the new formula proposals because they are owned by a private company. The Home Office sent a letter dated 5 November to Devon and Cornwall Police acknowledging the error. When did Ministers first know about the statistical error referred to by the noble Lord just now? The funding formula changes are being delayed,

"to give more time to consider their impact".

For how long, the Minister did not say, so perhaps he can confirm the situation.

So that there is full transparency in considering the impact of any changes, will the Government ensure that any data on which they are basing funding decisions from next year onwards is fully in the public domain, and will they agree to independent oversight of the review in which there is now a lack of confidence? On what basis will police funding be determined for 2016-17 and when will police forces know how much they have been allocated? Finally, will the Government reimburse the costs that forces have already incurred in arguing against and challenging what the Government now admit is an erroneous formula?

Lord Bates: My Lords, first, the responsibility lies with Ministers. I have repeated an apology, which as Minister in the Lords I make to this House, for the error. Ministerial responsibility is clear on that.

On the specifics, the letter was sent on 5 November to Devon and Cornwall Police and the first the Policing Minister knew of that was when it was drawn to his attention on Friday 6 November and the decision was taken today, on Monday. The proposal put forward to address this error is that the proposed introduction of the new formula, which was to come into effect in the new financial year—April 2016-17—will now be delayed. The initial plan is that it will be delayed for a year, but at this point we are talking about very soon after. We realise that we have shaken a lot of confidence in the

[LORD BATES]
process, and it is very important that we talk to police and crime commissioners, chief constables and others, to make sure that we get this absolutely right.

On the cost issue, that will be looked at as part of the overall review into how this happened, but more importantly, how we move forward with the system that will command the confidence of the police. On the question of when people will know, the comprehensive spending review will report in the Autumn Statement on 27 November, and traditionally the police grant is announced on about 17 December. The specific force allocations will be known on 17 December and the broad envelope will be known on 27 November.

On independent oversight, which is very important, my right honourable friend the Policing Minister has indicated that he will seek independent oversight of the statistical process and the input of data into the system, but again we are genuinely contrite about the error and want to make sure that we get it right.

Lord Paddick (LD): My Lords, does the Minister not agree that at a time when forces have already faced a 19% cut in their budgets, and could face a further 30% cut as a result of the comprehensive spending review, this is not a good time to introduce a new police funding formula that would, by definition, reduce the funding for some forces by even more than potentially 30%? However flawed the existing funding formula is, should it not be a case of better the devil you know?

Lord Bates: With the benefit of hindsight, of course, there is an element of that. Going back to the initial point when we started the review process, before July, most police forces, as the noble Lord will know very well, complained that the existing funding formula was opaque and nobody quite knew how it was put together. It seemed that in terms of funding allocations there was an inbuilt unfairness to certain forces over others, which did not actually mean that scarce resources were being focused on where crime was happening and, therefore, where resources were needed most by the police to respond to it. So everybody is in favour of the review. The consultation went very well, with 1,700 responses. The letter went out on 21 July and was reflected on. Again, in an effort to be transparent, my right honourable friend the Policing Minister then issued a provisional calculation of what the effect might be on police force budgets for the 2016-17 year. The error came to light at the conclusion of that. Therefore, I think there is still a case for looking at a simplified formula but a lesson has been learned. We need to go away, look at it again and come back with broader proposals that address the concerns the police have.

Lord Alton of Liverpool (CB): My Lords, I thank the Minister for the way in which he has spoken to the House. Will he confirm receipt of the letter I sent him last week from the Merseyside police and crime commissioner, the right honourable Jane Kennedy, who talked about the serious repercussions for the Merseyside force? When he considers further the impact that the changes might have, will he bear in mind that they have already cut some £77 million from the Merseyside police budget since 2010, and that if these proposals had gone ahead in their current form, it would have lost 700 community support officers? Given that Ms Kennedy talked in her letter of "the serious repercussions"—to use her words—does not the noble Lord agree that it was unfair and unjust of his colleague, Mike Penning MP, the Minister in another place, to describe her complaint about the original proposals as scaremongering? Is it not indeed the case that these are perfectly legitimate questions for the Merseyside police and crime commissioner to raise? Indeed, some 11,000 people on Merseyside have now signed petitions, which only goes to underline the concern that the public have. Will he take all that into account as he gives this matter further thought?

Lord Bates: I will certainly do that. I am grateful for the letter, which I recall receiving and drafting a response to. Merseyside has done a lot of innovative things in working with other blue light services to decrease response times and reduce costs. I hope that will be taken into account when future responses and changes are made.

Lord McKenzie of Luton (Lab): My Lords, in the recent Peel efficiency inspection, Her Majesty's Inspectorate of Constabulary said of Bedfordshire police that it was concerned that the force's,

"long-term financial position is not sustainable".

Regardless of whether the correct data are being used, it appears that the formula review totally fails to address the viability of Bedfordshire police. What will the Home Secretary and the Minister do to ensure that Bedfordshire police are adequately and properly funded to deal with the many challenges that they face?

Lord Bates: I am conscious that Bedfordshire has a particular case because it covers a large rural area and the centre of Luton. That makes policing and the allocation of the budget particularly difficult. I know that, like Merseyside, it has been innovative and has recently sought to raise the precept through a local referendum. Bedfordshire is a difficult case, which is one of the reasons why we proposed transitional funding arrangements under the old plan, but now we are back to square one and have to look at that again.

Lord Lawson of Blaby (Con): My Lords, does my noble friend understand that many people in this country are rather puzzled by the fact that at a time when the financial resources of the police are evidently so stretched, they are still able to find such substantial resources to devote to following up wholly unsubstantiated allegations of historic sex abuse?

Lord Bates: That obviously is an issue. However, the allocation of time and resources is a matter for local police and crime commissioners. In a broad sense, the fact that crime has fallen by a quarter since 2010 is to the credit of the police, as HMIC found. However, it is also very important that the police allocate their resources in a way that is targeted on reducing crime.

Bank of England and Financial Services Bill [HL]

Committee (1st Day) (Continued)

5.20 pm

Clause 5: Financial stability strategy

Amendment 5

Moved by ***Lord Tunnicliffe***

5: Clause 5, page 4, line 26, leave out subsection (2)

Lord Tunnicliffe (Lab): My Lords, in moving Amendment 5 I will speak also to Amendment 6. Amendment 5 would omit the subsection that transfers the power for the creation of the financial stability strategy from the court to the Bank. Amendment 6 would specify in the Bank of England Act 1998 that the Chancellor of the Exchequer should be consulted in relation to the development and production of the financial stability strategy.

The maintenance of financial stability is arguably the overwhelming role of the Bank of England and its committees. If you look at what has gone wrong in the recent past, it has overwhelmingly been issues of financial stability that have impacted on the financial system and, much more importantly, on society as a whole, both in our country and across the world.

It is interesting to look at what is supposed to happen now. The appropriate part of the Act, which I can read from the consolidated document that the Treasury was kind enough to provide us with, is Section 9A—"Financial stability strategy"—which says:

> "The court of directors must … determine the Bank's strategy in relation to the Financial Stability Objective (its 'financial stability strategy'), and … from time to time review, and if necessary revise, the strategy … Before determining or revising the Bank's financial stability strategy, the court of directors must consult about a draft of the strategy or of the revisions … the Financial Policy Committee, and … the Treasury".

That seems quite straightforward. It seems to put the court at the centre of the creation of the stability strategy, and to invite the right other parties to be involved.

Indeed, the importance of that process is demonstrated by the fact that it gains a place on my favourite piece of paper, which is a print-out of a splendid one-page summary on the Bank's website, called "How we are governed". It says:

> "The FPC is a sub-committee of Court and its objectives are set by reference to the Bank's Financial Stability Objective. The Bank's Court is required by statute to prepare and publish a Financial Stability Strategy, in consultation with the FPC and HM Treasury".

That is all very straightforward. Sadly, it has not been a great event so far. A strategy document was produced in 2013, called *The Strategy for the Bank's Financial Stability Mission 2013/14*. It was five pages long and it was approved by the court on 25 September 2013. The strategy was revised and published in the 2014-15 report, which was signed by the chairman on 4 June 2014. If I read that document correctly, the strategy was reduced to one column and, while asserting a negative is always rather difficult, in the Bank's 2015-16 report I could find no mention of a financial stability strategy in the ownership of the court.

It looks as though the Executive have to some extent pre-empted this part of the Bill by letting the responsibility of the court wither on the vine. My amendments are really simple and probing. What has happened to the financial stability strategy and what will happen under the new arrangements? Who will produce the financial stability strategy or have the Government effectively decided that the role of producing it should be subsumed into the FPC and, if it is being subsumed, where in the Bill or in the subsequent amended Act is that enabled?

My other area of concern about the situation is that, reading through the document, we find increasing references to HM Treasury's input to the strategy. So on the one hand, you have responsibility for the strategy clearly drifting away from the court. As far as I can see, the Bill intends to take it away totally from the court and I would value confirmation of whether that is true. On the other hand, one seems to be having increasing input from Her Majesty's Treasury. I do not wish to comment particularly strongly on whether that is a good or bad thing but I would certainly value the Minister confirming whether the Government intend to take this role away from the court and increase the role of HM Treasury in this important area. I beg to move.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, I thank the noble Lord, Lord Tunnicliffe, for his introduction to his amendments. We discussed the Bill's changes to the arrangements for the financial stability strategy at Second Reading. I hope to address the issues raised during that debate and some of the points that the noble Lord has just raised again. As I said earlier, legislation generally confers powers and duties on the Bank of England in two ways: either directly on the Bank or on a statutory committee of the Bank, such as the Financial Policy Committee. Consistent with this approach, Clause 5 moves responsibility for determining and revising the Bank's financial stability from the court to the Bank. I reassure the noble Lord and the Committee that the court, as the body responsible for managing the Bank's affairs, will retain ultimate responsibility for determining the financial strategy. But by naming the Bank instead of the court, we would grant the court the ability to delegate production of the financial stability strategy to those best placed within the Bank.

I argue that this flexibility is important given the broad range of policy that the financial stability strategy covers, which obviously extends beyond the responsibilities of the Financial Policy Committee. For example, responsibility for resolution policy, regulation of financial market infrastructure, note issuance and macroprudential policy are held within separate parts of the Bank, but the financial stability strategy will need to cover all these areas and others to be truly comprehensive. The clause as drafted does not affect the court's ultimate responsibility for determining the Bank's strategy, while granting the court additional flexibility as to who within the Bank undertakes the work to pull together the actual document. As I have said, the court will be

[Lord Bridges of Headley]
able to delegate production of the strategy within the Bank but, as the noble Lord, Lord Tunnicliffe, asks, who will be left holding the pen? It is for the court to determine who is best placed to produce the strategy, and this may shift over time as the Bank decides to prioritise particular elements of its responsibilities. However, it is clear that a document of this importance will require significant engagement by the Bank's senior management. I expect that the Bank's governors will all be heavily involved when the strategy is determined or revised. I should add that there is no intention to increase the role of the Treasury in the Bank's financial stability strategy. As I have just said, the court will be responsible for the strategy, although it will be required to consult Her Majesty's Treasury, as now.

5.30 pm

Amendment 5, put forward by the noble Lords, Lord Tunnicliffe and Lord Davies, would undo the changes I have outlined. The amendment would limit the court's powers to delegate the production of the strategy elsewhere within the Bank, as the court may not delegate any duty or power expressly conferred on it by statute. As the ultimate responsibility for determining the strategy would rest with the court in both cases, the amendment would have little impact on the governance or accountability of the Bank, but would curtail the flexibility of the court in determining who should produce the strategy. I hope that my remarks have reassured your Lordships that the court—I repeat, the court—will remain ultimately responsible for determining the Bank's financial stability strategy and that all concerns about "amorphous entities" have been purged. For that reason I ask the noble Lord to withdraw the amendment.

The second amendment tabled by noble Lords seeks to ensure that the Chancellor must be consulted before the strategy is set or revised. The existing provision requires the Treasury to be consulted, and this is the more usual provision. This does not mean that the Chancellor is not consulted: the Chancellor would obviously be kept fully informed of anything as important as the adoption of a new financial stability strategy by the Bank. However, where the Bank is proposing a minor revision of the strategy, it may be more appropriate for a junior Treasury Minister to take the lead in considering the Bank's proposals. Retaining the existing drafting provides this element of flexibility. The Bank is required to produce a financial stability strategy not every year but every three years, so the 2013-14 strategy is still current. Given that, the amendment is unnecessary, and I ask that noble Lords do not press it.

Lord Tunnicliffe: I thank the Minister for that response. He says that the court has delegated this to the Bank. The minutes of the court are now published, but when your total staff resource is half of one person, actually finding the information is quite difficult. I am not criticising the Bank, because I am all in favour of producing lots of information, and it is very open and all that sort of thing. However, the Minister has the machinery, while I do not, and I wonder whether he could dig out for me the appropriate minute which shows that transfer of responsibility and whether he can provide evidence that the court is responsible. The wording of the Act, as it stands before amendment, seems to suggest that this is an active responsibility, but I do not get a sense of that active responsibility. I am sure that could be evidenced with the publication of the minutes. I would be grateful for that.

I am sure the Minister is right to say that the 2013-14 statement is the current strategy, but there is a column in the 2014-15 account labelled, I think, "Strategy". It would be good if he could look at these points and produce a letter which, like his first letter, references back into the parent documents to convince me about what he is saying and whether, although I am sure it is accurate, it is actively accurate in the way it involves the court. With those few comments, I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6 not moved.

Clause 5 agreed.

Clause 6: Financial Policy Committee: status and membership

Amendment 7

Moved by ***Lord Sharkey***

7: Clause 6, page 5, line 11, leave out "5" and insert "6"

Lord Sharkey (LD): My Lords, I will be very brief. This amendment would increase the number of non-executive directors of the FPC from the five proposed in the Bill to six. Exactly as with our proposal to preserve the NED balance on the court and our proposal to reject the abolition of the oversight committee, this amendment aims to preserve or strengthen the influence of the non-executive directors.

The Treasury has supplied a very helpful chart showing the current composition of the Bank's governance structures. As things stand, the FPC consists of the governor, three deputy governors, the CEO of the FCA, one governor appointment—the executive director for financial stability—and four appointments by the Chancellor. These four people are the external members, the equivalent of non-executive directors. This means the FPC consists of five Bank officials, the CEO of the FCA and four non-executive directors.

The Bill before us changes this. It adds a deputy governor and one external member. In the words of the Treasury briefing note, it adds the latter to,

"maintain the existing balance between existing executive and non-executive members".

Under the new arrangements, the composition of the FPC will be: six Bank officials, the CEO of the FCA and five NEDs. As the Treasury note says, this preserves the preceding balance, but it also highlights the position of the CEO of the FCA. We do not argue that she should not be a member of the FPC—on the contrary—but we are not convinced that she could be described as an external member, with the same independence of thought and action as the other truly external FPC

members. Indeed, the Treasury note does not describe her as an external member. It simply lists her as "the CEO of the FCA".

In many respects, the CEO is more like a Bank official than an external member. She depends for her job on the confidence of the governor and the Chancellor. What her organisation can or cannot do is in many respects controlled, or can be controlled or constrained, by the Bank or one of its organs. We saw what happened to the current FCA CEO's predecessor: Martin Wheatley was summarily sacked by the Chancellor. I assume the governor, at the very least, did not oppose this. On balance, it would be entirely reasonable to conclude that the CEO of the FCA is not as independent of Bank influence as the truly external members of the FPC. In practice, that means that in the current and proposed FPC compositions, there will be a majority of Bank officials and Bank-dependent officials, and a minority of external members. We believe that that is unhealthy. We believe that accountability and scrutiny will be improved by having a more truly independent member on the FPC. It should also be true for the PRA, incidentally, and I will argue that case in Amendment 19. This amendment would raise the number of independent members of the FPC from the five proposed in the Bill to six. It does that to ensure a sufficiency of truly and unquestionably independent members on the FPC. I beg to move.

Lord Tunnicliffe: My Lords, I will try not to make this a habit, but I find the case persuasive.

Lord Ashton of Hyde (Con): My Lords, this has been a brief debate. I am sorry that it falls to me yet again to argue numbers with the noble Lord, Lord Sharkey, and I am afraid to disagree with his argument.

This is a superficially simple amendment which seeks to change the balance of the membership of the Financial Policy Committee by increasing the number of external members from five to six. The noble Lord, Lord Sharkey, was again correct in outlining the numbers on the FPC as they stand today: namely, the governor, the three deputy governors and the executive director for financial stability strategy and risk, who are the internal members; and the five other members, who I would describe as external, who are the chief executive of the FCA and the four members appointed by the Chancellor. There is also a non-voting member from the Treasury. This gives an equal balance of voting membership between the Bank executives and those from outside the Bank. The Bill adds two new members to the committee—the deputy governor for markets and banking and an additional external member—which preserves the existing balance between the executive and non-executive members of the committee.

We think that that is appropriate: it strikes the right balance between ensuring sufficient input from the Bank of England's executive and internal expertise and supporting the external, non-executive members' role of providing a challenge to members' thinking. Crucially, the committee can draw on the expertise and resources of the Bank, while the non-executive members provide a strong challenge function by bringing outside perspectives and expertise to the committee's discussions and preventing groupthink.

Baroness Kramer (LD): Although this has been a brief debate, it is an important one. Can the Minister describe why he takes the view that the chief executive of the FCA is not inherently different from a fully outside member of the FPC, particularly when prior legislation would indicate that there is a close family relationship?

Lord Ashton of Hyde: I am certainly able to do that; I was just coming to that very point, I assure the noble Baroness.

We think that the balance of membership is appropriate, as the work of the FPC is one of the key elements of the Bank's strategy to meet the financial stability objective. It is therefore essential that the Bank can be held accountable for its performance against that objective. The effect of the amendment would be to place the committee outside the Bank's control.

Baroness Kramer: I am sorry to interrupt the Minister again, but he said that the effect of this would be to place the committee outside the Bank's control, so he is describing the chief executive of the FCA as part of the Bank family. That is the logic of that sentence.

Lord Ashton of Hyde: I am sorry, but I do not think it is. If we say that the CEO of the FCA is one of the external members, that places it outside. I am coming to the question of whether you can describe the non-executive member as also external; I promise that I will come to that in a minute.

We should also consider the overall size of the committee. The noble Lord's amendment would bring the number of voting members on the FPC to 13. Setting aside any superstitious concerns, there is a risk that the committee could become unwieldy and cumbersome. This could be particularly problematic for the FPC, as it is required to seek to make decisions via consensus, which of course becomes more difficult as it grows in size. The amendment would make the FPC the largest of the Bank's policy committees. The MPC has only nine voting members and the PRC is likely to have 12 members. I believe that the additions to the FPC will be a net benefit to the FPC, but further expansion risks tipping the scales toward a detrimental impact on the workings of the committee.

I come to the question of the CEO of the FCA, to which the noble Baroness, Lady Kramer, referred. We are in no doubt that the FCA CEO should be counted as an external member of the FPC. The CEO of the FCA is not an executive of the Bank, and the FCA is entirely separate from the Bank.

There is no doubt that having the FCA CEO on the FPC is of huge value to the committee. It is true that her membership of the FPC brings particular benefits in terms of regulatory co-ordination, but she also has extensive relevant expertise, and, crucially, she brings an independent viewpoint and external challenge from outside Threadneedle Street, because the FCA is a completely independent body with a different set of objectives. It is also worth noting that this reciprocates the arrangement on the FCA board, where the chief executive of the PRA is counted, alongside the Treasury-appointed chair and the other

[Lord Ashton of Hyde]
members, as a non-executive. The CEO of the FCA is therefore eminently qualified to operate as an external, non-executive member of the PRA board.

In summary, the Government believe that it is appropriate to have an equal number of internal and external members, as the committee has today. This will ensure sufficient input from the Bank of England as executive and internal Bank of England expertise, while supporting the external, non-executive members' role of providing a challenge to members' thinking.

With those explanations in mind, I should be grateful if the noble Lord would withdraw his amendment.

5.45 pm

Lord Sharkey: I thank the Minister for that response. There is no argument about the value of the CEO of the FCA being on the FPC. I fear that I was completely unconvinced by the argument that one more external member would make the FPC collapse into chaos and disorder; that seems a bit far-fetched.

The difference between us is whether the independence that the noble Lord maintains that the CEO of the FCA has is true independence. The test he seems to apply is simply that, well, the FCA itself is kind of independent, so she is obviously independent. In fact, the Minister did not mention my major concern, which is the influence that the Bank itself has over the CEO of the FCA. I give way to my former noble friend.

Baroness Noakes (Con): My Lords, can the noble Lord explain why he thinks that the Bank has any influence whatever over the chief executive of the FCA? There are no provisions in statute that give any sense of influence, even, and I struggle to find where in practice you could point to where that influence could be deemed to exist.

Lord Sharkey: There are two partial answers to the noble Baroness's question. The first is, as I mentioned, that the chief executive of the FCA can be summarily dismissed, presumably either at the instigation of the governor or at least with his permission and consultation—

Baroness Noakes: I ought to say two things to that. The chief executive of the FCA was not summarily sacked; as I understand it, he was informed that his contract would not be renewed, and there is a world of difference. As far as I am aware, there is no practical issue of the Governor of the Bank of England or any other senior official of the Bank of England having any locus in the decision whether to renew the chief executive's contract. If the noble Lord has evidence of that, I should be happy to see it.

Lord Sharkey: The fine distinction between being summarily dismissed and not having his contract renewed temporarily escapes me, but I am sure that it will come to me. The point I am trying to make is that I believe that the Bank has influence over the CEO of the FCA. I was asking the Minister—because he did not deal with this—to explain why he clearly believes that it does not have influence over the head of the FCA.

I also point out, as I did in my initial speech, that the PRA itself can act to restrain and constrain the activities of the FCA, as I am sure the noble Baroness knows. The PRA is an organ of the Bank, so the actual independence of the FCA is somewhat compromised by that arrangement. That was the point that I was trying to make.

However, having said all that, and not being terribly convinced by the Minister's arguments—I am sure that we will want to return to this later—in the mean time, I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Clause 6 agreed.

Amendment 8

Moved by ***Baroness Worthington***

8: After Clause 6, insert the following new Clause—

"Long-term systemic risk

After section 9C(3)(c) of the Bank of England Act 1998 (objectives of the Financial Policy Committee) insert—

"(d) systemic risks to the long-term stability of the UK financial system attributable to long-term fundamental change, such as climate change, demographic change, and technological change.""

Baroness Worthington (Lab): My Lords, today we are discussing a Bill that should have the long-term sustainability of the financial system at its heart. To that end, we are discussing provisions that would open up the Bank to further scrutiny, maintain existing scrutiny and guard against the possible repetition of groupthink. Amendment 8 would change the list of risks, as set out in the Bank of England Act 1988, that the Financial Policy Committee must consider in order to include long-term systemic risks to our financial stability.

These risks may arise from fundamental structural changes that have important implications for our financial system and therefore our long-term sustainable economic growth. There are some risks to longer-term financial stability that do not emerge within the typical time horizons of financial markets or the monitoring of the Bank. The time horizon of the Financial Policy Committee's stability activities is not set in statute but according to the governor; it typically extends a little further than that of the Monetary Policy Committee, which is one to three years, but certainly no further than the outer boundaries of the credit cycle—around five to seven years. The danger is that, by the time fundamental structural changes that have been developing in the background are acknowledged by markets and regulators as an important issue for financial stability, it may be already too late. Unsustainable investments may have become embedded in institutions' balance sheets, with capital locked into enterprises and business models that may have been rendered uneconomic as a result of long-term changes.

I will touch on three areas where risks are apparent over longer-term time horizons. The rise of new technology, which has already radically and permanently reshaped both the real economy and the financial industry, and future innovations such as machine learning, artificial intelligence and the rise of digital currencies, will have important implications for the wider economy and the robustness of our financial sector. Demographic

change around the world is also reshaping economies, and with them their financial services industries. The increasingly ageing populations in developed economies will have implications for the pensions and the insurance industries. An IMF report found that if people live just three years longer than expected, in line with past underestimations, such an increase in longevity would add 9% to pension liabilities for private pension plans in the United States. These demographic changes have important implications and we must not be caught in just short-term thinking.

Lastly, we face the profound challenge of long-term changes in our natural environment, including the overarching risk of global climate change. This challenge has two elements: the implications of physical changes in the environment for the real economy, and the responses to that change from governments and other key actors as impacts become more apparent and policies are introduced. The financial services industry, like every other industry, will have to respond and adapt to climate change. The risk it presents, though relatively long term, should be integrated into prudential regulation now.

In recognition of these risks, Defra invited the Bank of England in 2013 to take part in an adaptation reporting cycle under the Climate Change Act. The Bank took part on a voluntary basis, and that is welcome. However, it was the PRA that undertook to respond to Defra's request. The Financial Policy Committee's response to the invitation was recorded in its minutes of the meeting of March this year:

"The committee's central expectation was that the risks to financial stability were likely to be beyond the FPC's typical policy horizon".

That is precisely the problem that governor Mark Carney highlighted when he referred to the "tragedy of the horizon". It is the problem I wish to raise by moving this amendment.

Of course, it is to be welcomed that the Bank is looking into the implications for the insurance industry, but as I said, this goes far beyond just insurance. Researchers from Oxford and Cambridge universities estimate that between 5% and 20% of the average diversified equity investment portfolio is at risk of re-evaluation as a result of climate change. The UK, although home to only 0.2% of the world's coal, oil and gas reserves according to Carbon Tracker in 2013, listed in London alone reserves equivalent to 18.7% of the remaining global carbon budget. The over-representation of fossil fuels in our markets is a subject that I hope we can return to on Wednesday, as I have tabled another amendment on this theme.

To sustain economic development regulators must take into account long-term trends and changes that markets may fail to see. That means allowing time horizons to be determined not by the credit cycle, market behaviour or the Bank's price stability objectives, but by the unknown future risks our financial stability regulators must be equipped to guard against. As global leaders will meet less than a month from now in Paris to discuss the long-term sustainability of the planet and climate change, it is right that, across all areas of policy, we ask what the implications are of this historic meeting. Making our financial sector more attuned to the risks of climate change and other long-term threats is something the UK can and should show global leadership on. Our current governor is already making the case. The Government can and should do more. I look forward to hearing the Minister's response. I beg to move.

Baroness Kramer: My Lords, I added my name to this amendment because this is a crucial discussion and an important opportunity to draw the Government's attention to these issues. This Government, like many others and almost every speaker on financial issues in this House, have expressed their frustration with the short-termism that dominates the British financial services industry: a search for short-term profits rather than understanding the longer term perspective. Indeed, the Chancellor has often voiced frustration at the fact that UK pension funds are very unlikely to invest in the kind of long-term infrastructure projects he sees as essential for our country. Canadian pension funds will gladly invest, but not UK ones. We suffer from this ongoing blight. Of course, the ultimate frustration is that many of those who put their money into such pension funds would be absolutely delighted to see it invested in infrastructure, renewable energy and sustainable projects, because they are often looking for a 30 to 40-year horizon regarding the return on the money they invest. However, that is not the way the system works.

When the Bank of England was given responsibility for financial stability, there was an assumption that part of the thinking would then extend into that long-term arena, and that the Bank would be freed from the narrow and short-term issues of stability. In fact, I think the Chancellor talked about avoiding the stability of the graveyard and looking at the much longer term horizon. So far, the Bank has not used its wide range of powers or its influence to enter into that territory. Whether it is sustainability as defined by projects such as renewable energy, rail infrastructure or broadband, a wide range of projects need a response from the UK's financial services. That surely requires the Bank to take some role, and to take cognisance of this issue. I hope that debates such as this will persuade the Treasury and Government to engage much more extensively in those conversations with the Bank in its various and many parts, and to consider whether the relevant committees should at least have regard to those priorities, and potentially see them as obligations and duties, given the important role that long-term investment plays in the future of the UK.

Baroness Wheatcroft (Con): My Lords, listening to the debate this afternoon, it is clear that many have concerns about the power and influence of the Bank of England. However, I cannot help but feel that this amendment takes that concern a step too far. Much as I have great admiration for Mark Carney, I cannot imagine how he is expected to predict the effect of artificial intelligence. The duties we are putting on the Bank are already extremely far-reaching. The responsibilities now placed on the Financial Policy Committee are deep and will have a huge impact, but to ask it to range as far as this amendment is surely to demand something beyond common sense.

The role of ensuring financial stability is crucial. It means keeping our financial institutions on the straight

[Baroness Wheatcroft]
and narrow, and watching out for problems. However, to ask for those decisions to be taken in the light of what may be happening 20 or 25 years from now is surely a step too far. The role of Government in thinking about such issues is clear, but we would be in very dangerous territory if we thought of the FPC as the arm of government to influence such decisions.

Lord Davies of Oldham (Lab): My Lords, I would like to join in this debate because, although I respect the expertise of the noble Baroness who has just contributed, I am rather more in sympathy with the arguments of my noble friend Lady Worthington and the noble Baroness, Lady Kramer. I hear what was said about placing obligations on the Bank, but we should also appreciate that we have the benefit of the present governor—on whom I have not lavished many plaudits this afternoon as I was rather concerned about the future structure of the Bank, for which he will be responsible. Nevertheless, we all recognise the governor's merits in taking a wider perspective on aspects of the economy than has perhaps been the case heretofore. Certainly, the speech that he made not so very long ago, in September, to Lloyd's of London, in which he said that climate change is the "tragedy of the horizon", ought to wake all of us with alarm, but also make us ask how we can adjust and make responsive our institutions to the anxieties that obviously flow from the developing and clearly established dangers of climate change.

6 pm

I realise that I may not be pressing at an open door when I deal with the Minister in his area. After all, he belongs to an Administration who have been presenting a series of closed doors to green policies in recent months, with the end of subsidies for offshore wind production; the granting of the right for fracking to be conducted in our national parks; the end of the Green Deal insulation for our homes; and the end of the zero-carbon standard for housebuilding. All those may look like small beer against the general perspective, but they are an indication that the Government are still far from persuaded of the significance of climate change, which stands somewhat in contradistinction to what the Governor of the Bank of England said in September. On this occasion, my support is with the governor.

Although the Financial Policy Committee will take into consideration systemic risks attributable to structural features, those attributable to the distribution of risk within the financial sector, and unsustainable levels of leverage, debt or credit growth—and I would not in any way, shape or form detract from the significance of those cardinal objectives that the committee is obliged to consider, which are well within the rubric that it has had for some time—I hope that, just as we seek to establish a somewhat longer-term perspective for our financial institutions on investment and the development of the economy, in that longer term we will also look at systemic risk which is some distance away but which, unless we take action now, will have calamitous implications for the economy and, of course, the wider world. While the Minister stresses the committee's significance in its work of managing financial risks in the shorter term, as I am sure he will, I hope he will also accept that it would be nothing but advantageous for the committee to accept the signal from the governor himself that everyone concerned with the future welfare of our country needs to take into account the issues of climate change and how we can moderate it, because a failure to do so will render a great deal of our short-term measures wholly and totally inappropriate.

Lord Bridges of Headley: My Lords, I begin by thanking the noble Baroness, Lady Worthington, for sparing the time to meet me to discuss this amendment before today and repeat my offer that, should she wish to have further meetings with me or the Bank of England I am sure that I can happily facilitate it. I thank the noble Baroness, Lady Kramer, for once again making a very eloquent contribution to this debate.

I am sympathetic to the motives behind this amendment. Climate change, demographic change and technological change are important structural issues, as the noble Lord has just said, which could indeed have a very significant impact on financial stability. It is right that the macroprudential authority should be alert to these, and other, long-term systemic risks. However, as I hope other noble Lords will agree, in the light of what I am about to say, the amendment is unnecessary, so I do not feel able to accept it.

I start by stressing one point. The current legislation places no limit on the time horizon of the systemic risks that the FPC must consider in its assessment of the risks to the resilience of the UK financial sector. Therefore, the current legislation already provides for the consideration of long-term systemic risks such as those listed in the amendment. Indeed, at its meeting of March 2015, the FPC discussed precisely one of those risks: the risks to financial stability from climate change. This is evidence that the FPC has previously considered longer-term systemic risks, and may do so again in future, should it see fit. Although the FPC concluded that the risks from climate change would not materialise within its typical policy horizon, the Bank is also taking action on longer-term systemic risks through other channels, given the importance of these issues. I shall draw noble Lords' attention to just three, although I am happy to meet to discuss the issue further.

First, the issue of climate change has been added to the Bank's *One Bank Research Agenda*. I would be very happy to arrange for the noble Baronesses, Lady Worthington and Lady Kramer, to meet with Bank officials to discuss this issue in more detail. Secondly, the governor of the Bank is using his chairmanship of the Financial Stability Board to consider the risks that climate change poses for financial stability and the steps that could be taken to mitigate them, including through improved disclosure. I remind your Lordships of what the governor said in the speech to which the noble Lord referred. He said:

> "With better information as a foundation, we can build a virtuous circle of better understanding of tomorrow's risks, better pricing for investors, better decisions by policymakers, and a smoother transition to a lower-carbon economy".

He set out in quite a lot of detail what he considered the most effective disclosures are—they are,

"consistent, comparable, reliable and clear",

and "efficient".

Thirdly, the Bank's open forum will host a public discussion of some of the types of risks raised in this amendment, such as how financial innovation and technology can support the economy and how financial markets can regain their social licence. Those are just three of the steps that I would like to highlight. I would be more than happy to meet the noble Baroness again. I hope that what I have said addresses some of her points and that she will withdraw her amendment.

Baroness Worthington: My Lords, I am genuinely grateful for how the Minister has responded to this amendment. It was intended to stimulate debate and elicit a reassuring response and, indeed, the Minister's words have been reassuring. It is clear that the stakes are very high when it comes to climate change, and every aspect of government policy needs to think through the implications so that we do what we can in the time that we have to avert and limit the risk. It has been a significant new intervention from the governor to make this part of the Bank's *One Bank Research Agenda*, and we hope that that will bear fruit.

I know that the governor is pursuing initiatives with the FSB that are international in nature. My point was to try to stress the fact that the UK sits at the global table when it comes to financial services, and the City of London makes such a valuable contribution, not only to our economy but globally, that we can show leadership here. We should not simply say that this can be sorted out by an international process. There are things that we can do as the UK Government and as we sit here now, with the legislation in front of us, to send a strong signal. But as I say, I am reassured.

On the issue of disclosure, more can be done now for us to start to think through what those standardised reporting requirements might be. I have tabled an amendment today that will enable us to have a further, more detailed discussion on that point.

Although there is no limit on the time horizons considered by the committee, I hope that over time the culture of the Bank will change through as many efforts as we can make and that in future, if there is a need for legal change, we might revisit this. Changing culture is a difficult thing. As the Minister said, every needle makes a difference, and I hope this needle will hit the mark and cause this debate to continue because this needs to be thought through now because it is incumbent upon us to act. I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Clauses 7 and 8 agreed.

Clause 9: Audit

Amendment 9

Moved by ***Lord Davies of Oldham***

9: Clause 9, page 7, line 12, leave out "reasonable"

Lord Davies of Oldham: My Lords, I shall speak also to the other amendments in this group. I will be brief. If ever I were cast before the Lord Mayor's Show, it is in moving this rather marginal amendment when a huge, significant debate on the relationship of the Audit Commission to this legislation will take place as soon as we finish debating these rather minor amendments. I shall keep my remarks necessarily brief on this because I want to hear the more weighty contributions that are likely to be made on more fundamental aspects of the relationship of the Audit Commission to this Bill.

I think I can anticipate the Minister's response to these amendments, particularly when he is at his most constructive, as he has been today. He will say that "reasonably" is used to limit excess, that it is a common legislative tool and that I have been at Westminster long enough to recognise that. I do, but I make no apology for the fact that I have introduced these amendments centred on "reasonably" merely to get some locus with regard to the important consideration of the National Audit Office. The Bill will allow the National Audit Office to initiate value-for-money studies across the entire Bank, other than for the financial audit of the prudential regulation functions of the Bank. It ought to be compatible with the—I hesitate on this word—desubsidiarisation of the PRA. The National Audit Office will be able to conduct any value-for-money study and is not to be concerned with the merits of the Bank's general policy. It will consult the Bank of England regarding any proposed study.

Our amendments deal only with the practical arrangements between the National Audit Office and the Bank. They do not try to deal with conflicts that may present themselves between the Court of Directors and the National Audit Office or the proposed means by which various resolutions could be achieved. Nor am I seeking in any way, shape or form to pre-empt the much more substantial debate which is to take place in a few moments. However, we had a harbinger of that debate in the contributions by the noble Lord, Lord Bichard, at Second Reading, and the chair of the National Audit Office, Sir Amyas Morse, has also spoken publicly about his concerns. The issue is made more sensitive because of the Bill's general approach to oversight and scrutiny, which we have covered in a series of discussions today. The National Audit Office's concern with regard to its work mirrors many of the worries that we have already expressed about the Bill in its current form.

I hope it will be recognised that I am not going to press these amendments today. I am not even going to ask the Minister to give much more than a cursory reply to them. They were tabled against the background that at Second Reading we had an expression of real concern about the role of the National Audit Office as conceived in the Bill, and I cannot wait for that debate to take place. I promise the Committee I will play, if any, a small, supportive role. I beg to move.

6.15 pm

Baroness Noakes: My Lords, the noble Lord, Lord Davies of Oldham, is being rather modest about these amendments. I think they are rather good. However, I

[Baroness Noakes]
do not understand why he has proposed amendments to Clauses 9 and 10 but not to new Section 7G introduced by Clause 11, which relates to the main value-for-money study power. Not being limited in the way that these amendments imply would be at least as important to the new powers introduced by Clause 11.

I hope the Minister's reply is not cursory because this is quite an important point. We do not very often legislate on public audit matters. I can remember doing the Public Audit (Wales) Bill, and there was no restriction on the Comptroller and Auditor-General for Wales reasonably requiring certain information. Reasonable time was in the Bill, but not a requirement to demonstrate that he reasonably required the information. It seems to me that the more you try to constrain an auditor, the more you allow an organisation which is being audited to run rings around that auditor. Having been in the auditing profession, I feel rather strongly that we should not try to restrict auditors but should make it as easy as possible for them to get whatever information they want.

Lord Higgins (Con): My Lords, the noble Lord, Lord Davies of Oldham, is always modest, but on this occasion he is excessively so. I agree with my noble friend because the implication of putting the words "reasonable" and "reasonably" in these clauses is that somehow the National Audit Office would act unreasonably, and I do not believe that that is the case. Perhaps the Minister will tell us where else in the legislation governing the National Audit Office such clauses are applied. These are quite unnecessary words. It may well be that, given the more formal auditing functions of the National Audit Office, as against the value-for-money provisions, there might be some occasion when it is necessary to get hold of documents at an unreasonable time. I hope the Minister will respond to this and agree to delete the words which appear in the amendments.

Lord McFall of Alcluith: My Lords, I support the noble Lord, Lord Higgins, and the noble Baroness, Lady Noakes. I was a member of the Parliamentary Commission on Banking Standards which looked at the word "reasonable" and concluded that it is a lawyer's word. If it is a lawyer's word, it costs a lot of money, and if it costs a lot of money, it can obscure the truth. Let us get rid of it and invest the authority in the Comptroller and Auditor-General which will save everyone time and money.

Lord Bridges of Headley: My Lords, as my noble friend Lady Noakes said, the noble Lord, Lord Davies, is once again being incredibly modest and reasonable about his reasonableness amendment. I think the amendments merit a full response, so I hope he will forgive me. I will try my best, and I will pick up on the point made by the noble Lord, Lord McFall. I heed what he said about this in the past.

I shall set out the Government's position. Clause 9 gives the Comptroller and Auditor-General a new role in the financial audit process of the Bank. The Comptroller and Auditor-General will be consulted on the appointment of the financial auditor and on the work programme that that auditor sets out to deliver. The Comptroller and Auditor-General will have the right to attend the relevant parts of the meetings of the Bank's audit and risk committee. This is intended to assist the NAO in conducting value-for-money examinations of the Bank under Clause 11.

Clause 10 provides for increased public scrutiny in circumstances where a Treasury indemnity has been granted to the Bank, or to a company of the Bank. Fortunately, times when a Treasury indemnity is deemed necessary are rare, but it is right that where there is a direct risk to public funds the Treasury can require the Bank to prepare a financial report on any activities that have been indemnified, so that the extent of the risk to public funds can be assessed, and that this report is subject to review by the Comptroller and Auditor-General. I agree that in both of these contexts the question of access to information is critical. It is central to the ability of the Comptroller and Auditor-General, assisted by the National Audit Office, to carry out effectively the roles defined for him in the Bill. So I am pleased that the noble Lord, Lord Davies, has tabled the amendments and that the issue has been raised, but I am unable to accept them.

To address my noble friend Lord Higgins's point, the language used in the Bill regarding the Comptroller and Auditor-General's access to information mirrors the relevant wording from the National Audit Act 1983, which provides in Section 8 that,

"the Comptroller and Auditor General shall have a right of access at all reasonable times to all such documents as he may reasonably require, for carrying out any examination under section 6 or 7",

in the National Audit Act,

"and shall be entitled to require from any person holding or accountable for any such document such information and explanation as are reasonably necessary for that purpose".

As far as I am aware, the inclusion of requirements of "reasonableness" in this section has not created difficulties for the Comptroller and Auditor-General in the context of value-for-money examinations carried out in relation to other public bodies, and I see no reason why it should cause a problem now.

Some may argue that the Bank would be able to use this reasonableness requirement to delay examinations, but if the Bank did not comply with its obligations under this clause then the Comptroller and Auditor-General would be able to seek an injunction from the courts to enforce his rights. As such, it seems to me that the amendment is unnecessary, and I ask the noble Lord to withdraw it.

Lord Davies of Oldham: My Lords, I am not going to withdraw it without first expressing my enormous appreciation for the support from the government Benches for what I had regarded as modest amendments. The noble Baroness, Lady Noakes, often expressed herself with great vigour against any proposals that I put forward when we were in government, but today I have found some favour with her when I did not quite anticipate it. Obviously the noble Lord, Lord Higgins, is always reasonableness itself, so I knew that he would speak very well on this matter.

The issue was not so much that I did not think it was worth airing the question of reasonableness. I accept very much the Minister's coherent and proper

response to this very short debate, and I think that we very much appreciated the tone that he adopted. The reason why I was concerned about these amendments at this stage was against the background that they are immediately before what we all recognise is a pretty substantial issue regarding the Bill, and I know that others are going to present that argument with considerable force. It seemed only reasonable if on this occasion I couched my expressions in modest terms. I promise not to make a habit of that, and beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10 not moved.

Clause 9 agreed.

Clause 10: Activities indemnified by Treasury

Amendments 11 to 13 not moved.

Clause 10 agreed.

Clause 11: Examinations and reviews

Amendment 14

Tabled by ***Lord Bichard***

14: Clause 11, page 9, line 27, leave out from "section" to end of line 28 and insert "shall not be construed as entitling the Comptroller to question the merits of the policy objectives of the Bank, including in relation to monetary policy."

Lord Bichard (CB): My Lords, if I might be allowed a moment of personal explanation, I was advised earlier today by the clerks that the Addison rules of 1951, of which I have to admit I was not previously closely informed, might be argued to preclude someone who holds the position that I do of chair of the board of the National Audit Office from speaking on these issues or indeed from moving the amendment. I do not wish to put myself in the position of appearing in any way to act inappropriately or against the rules of the House so I readily, albeit reluctantly, agreed not to speak further in this debate. I hope, however, that the House will allow others who have supported the amendments that I tabled in good faith to move them.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I take that as a kind of personal statement.

Lord McFall of Alcluith: My Lords, I shall move Amendment 14, which is in the group Amendments 14 to 18, concerning Clause 11 and the proposed audit arrangements for the Bank of England. As it stands, the Bill provides for the NAO to carry out value-for-money studies at the Bank, but it also imposes a number of constraints on this. First, before carrying out a study, the Comptroller and Auditor-General would have to consult the Court of Directors at the Bank. Secondly, if the court is of the opinion that an examination is concerned with the merits of the Bank's general policy in pursuing the Bank's objectives, then it can ultimately prevent the Comptroller from proceeding with an examination.

These provisions contrast sharply with the terms under which the NAO undertakes value-for-money studies in every other public body under the National Audit Act. That legislation gives the Comptroller and Auditor-General,

"complete discretion in the discharge of his functions … in determining whether to carry out any examination … and as to the manner in which any such examination is carried out".

The National Audit Act prohibits the NAO from questioning the merits of policy objectives. As I will mention later, the NAO has never sought to cross that line. However, the Bill extends this prohibition to cover the Bank's general policy in pursuing the Bank's objectives, as well as giving the Bank an effective veto over which studies are undertaken.

That presents the NAO with several major problems. First, as the Comptroller and Auditor-General has said, it therefore gives an impression of greater accountability on the part of the Bank that is at odds with reality. Secondly, it undermines the independence of the NAO to decide what should be examined, and that independence is key to holding public bodies to account. Thirdly, if these provisions are agreed for the Bank, it will encourage others to challenge the independence of the office; perhaps every new body and many existing ones wish for the same ability to veto or limit the NAO's work—to the great disadvantage of Parliament and the taxpayer, for both of which the NAO has long performed an invaluable function. This is not an issue, therefore, that can be limited to the particular circumstances of the Bank of England.

Why would anyone wish to impose these kinds of constraints on the NAO? Perhaps there is a concern that the Bank should not have its policy decisions examined. That would be entirely understandable, but the fact is that the NAO has had decades of experience of operating without questioning the merits of policy objectives. It has done so without any difficulty in the Ministry of Defence, including the security services, or indeed the Foreign Office, where it has recently been looking at how crises in Tunisia, Libya and Yemen have been handled. It is difficult to argue that if the NAO is capable of dealing satisfactorily with this level of sensitivity, it could not be trusted to steer clear of questioning policy objectives at the Bank.

I know it has been argued that there are no precedents for the equivalent of the NAO being involved with a national bank, but the Government Accountability Office in the US audits the Federal Reserve Board and the Federal Reserve Banks, with exceptions to the scope of their audits being made explicit, and including transactions for and with a foreign central bank; deliberations, decisions or actions on monetary policy matters; and transactions made under the direction of the Federal Markets Committee. The Comptroller and Auditor-General has made clear from the outset that he would be content it agree similar such exceptions in this country. These amendments seek in the case of Amendments 14 and 16 to bring the definition of "policy" into line with that used in the National Audit Act, Amendment 15 would delete the need for the Comptroller to consult the court before undertaking an examination, and Amendment 17 would remove the veto of the Bank's Court of Directors over examinations.

6.30 pm

Lord Higgins: I am having a slight problem with Amendment 14. It seems, effectively, simply to put back again the lines which the noble Lord seeks to leave out. That is to say, in each case it seems to say that the Comptroller will not question the merits of the policy objectives of the Bank.

Lord McFall of Alcluith: I did not quite pick up on the noble Lord's point.

Lord Higgins: I will try again. Amendment 14 says,

"leave out from 'section' to end of line 28",

which is concerned with the question of whether the Comptroller can question the merits of the policy objectives of the Bank, and which effectively says, "No; the NAO can't". However, Amendment 14, which I may have totally misunderstood, seems effectively to put it back in the same way, except with the addition of the words,

"including in relation to monetary policy".

Lord McFall of Alcluith: In fact, the Comptroller and Auditor-General made it clear to me that he does not want to question the merits of the policy of the Bank, so if there is a misunderstanding there, we should sort it out, particularly when it comes to Report. However, that is certainly not the case, and he would not want to do that.

Amendment 18 deletes a provision which would apply Section 353A of the Financial Services and Markets Act 2000, which would restrict the ability of the Comptroller and Auditor-General fully and openly. As the Government have said on many other occasions, transparency is an essential ingredient of accountability. These amendments seek to ensure that the Bank is subject to a level of transparency necessary to ensure its proper management of its resources. Parliament and the taxpayers have the right to expect nothing less.

An article in the *Financial Times* at the weekend said that, globally today, central banks exercise unparalleled power and independence. Willem Buiter used to come before the Select Committee quite regularly and was a former member of the policy committee. He is now the chief economist at Citi and stated that presently, central banks,

"are punching well above their weight … This could lead to a backlash and to central banks losing their operational independence, even where this independence makes sense—in the design and conduct of monetary policy".

When the former Governor King came before the Treasury Select Committee, which I chaired, he was very clear both in formal and informal settings that the integrity and credibility of the bank is essential if society is to have confidence in its monetary policy decisions. That being the case, the Bank should not be marking its own exam paper. It should be honest in its intentions and transparent in its actions, and it cannot tie the hands of the Comptroller and Auditor-General with the court holding a power of veto. In the short and even the long term, that does not serve the best intentions of the Bank or society. In that spirit, I beg to move.

Lord Young of Cookham (Con): My Lords, I will make a brief intervention in this debate as a former Treasury Minister and ex officio member of the PAC. As we have heard, Clause 11 sets up a new interface between two public institutions, both of which are independent: on the one hand the Bank of England, independent since 1997, and on the other the Comptroller and Auditor-General, who has been independent for a lot longer. In establishing this new interface, clearly one has to get the balance right.

From the exchange before the Treasury Select Committee last month, it is quite clear that the original drafting caused difficulties for the Bank of England and was amended. If one looks at Mr Roxburgh's answer to a question posed by Helen Goodman, it is clear that there was an agreement that there had been a change in the drafting because of the reservations of the Bank of England. However, it is quite clear that the clause as now drafted causes difficulties for the other partner, namely the Comptroller and Auditor-General. The briefing note says that it "greatly limits" the Comptroller and Auditor-General's freedom of action and that it does not provide him with,

"the independence that is essential to accountability".

If one looks back at the C&AG, there is no history of him looking at policy issues in his investigations. There is of course concern that if the Bank of England is given an exemption of this nature, other institutions subject to audit by the C&AG might seek a similar exemption—the BBC is a possible example. At Second Reading my noble friend who wound up the debate said that the concerns that were ventilated then were,

"well argued and should be taken very seriously".—[*Official Report*, 26/10/15; col. 1082.]

Obviously, it is important to avoid a public spat between two important independent institutions. The sensible way forward is for the Minister to promote bilateral discussions between the NAO and the Bank of England to see if they can come up with a memorandum of understanding, which, if necessary, might then be incorporated into the Bill if an amendment is necessary. However, there should be some discussions before Report so that there can be an agreement on the appropriate terms of trade between these two public bodies.

Baroness Kramer: My Lords, I will briefly join in the debate. We have two very highly regarded independent organisations—the Bank of England and the NAO. I say to the Government that it is unfortunate that legislation has come forward without resolving the relationship between the two of them. This House should not be in this position today, and neither should either of those two institutions. I very much hope that the Government will take the advice proffered and bring these various parties together to get a resolution here. Both are key institutions that need to have their independence appropriately protected.

In answer to the question asked by the noble Lord, Lord Higgins, the two lines about which he was concerned a moment ago, which are taken out and replaced by what he read as almost two identical lines, almost get to the crux of this matter. The amendment strengthens that assurance that the NAO and the Comptroller and Auditor-General do not in any way seek to question

the merits of policy objectives. It is trying to make that absolutely clear by putting in a stronger statement to that extent. The problem the NAO has, as the noble Lord, Lord McFall, said, is that due to the way in which the language is now drafted, the Bank effectively now has a veto over which studies are undertaken. Frankly, that is, I think, unacceptable to every party.

We in Parliament depend very much on the NAO and the reports it provides to us. It is very important for us to be able to receive that information, knowing that it is impartial and independent, for us to be able to perform the role we play. All the discussions today have talked of the importance of oversight. While we very much respect the Bank of England, we are all incredibly conscious that it has made very serious mistakes in the past which have cost us dear, and that we all need to play a role in interacting and making sure that we understand and are appropriately taking on our responsibilities toward that institution. Frankly, it is very hard to see how we in this House or in the other place can do that without effective reporting from the NAO.

I hope that the Government will take this matter away for reconsideration because these are significant concerns. I take great heart in hearing from the noble Lord, Lord McFall, that the Federal Reserve board in the United States is one of the bodies on this globe that most asserts its independence and integrity. The Federal Reserve accepts a similar kind of oversight from the US Government Accountability Office, and it seems to me that we have a template there. If it works for the Federal Reserve, surely it can work for the Bank of England.

I hope that these amendments will be taken exceedingly seriously. While the noble Lord, Lord Bichard, is not in a position to speak himself, there are many in this House, including the noble Lord, Lord Higgins, and the noble Baroness, Lady Noakes, who will be able to appreciate the importance of the points that he would have made had he had the opportunity.

Baroness Noakes: My Lords, I support the amendments. I was deeply shocked to see that the Government proposed to give the Bank of England a veto over whether the Comptroller and Auditor-General could undertake a particular value-for-money study. I have believed for a long time that it has been an anomaly that the Bank of England has not been within the remit of the Comptroller and Auditor-General. I do not believe that any public body, however great and however independent, should be able to stand on that greatness and independence and say, "I do not want the National Audit Office or the Comptroller and Auditor-General to examine what I have been doing". Public audit can be effective only when it is unfettered, and the concept of fettering the Comptroller and Auditor-General is, frankly, unacceptable.

Lord Higgins: My Lords, first, I express regret that I was not able to speak at Second Reading. I was preoccupied with the European Union Referendum Bill and other matters. However, I am certainly deeply concerned, as are other noble Lords, about the situation that now seems to have developed in the relationship between the Bank of England and the National Audit Office. I am sure that my noble friend was right in saying a moment or two ago that this ought to be resolved on Report. If necessary, that is what we will need to do.

I have a long history of involvement in this matter. I was much involved—this shows how long ago it was—when it was first suggested that the National Audit Office should carry out value-for-money investigations. However, it is very important to ensure that the NAO remains completely independent. I share the view expressed a moment ago that it would be wholly wrong for the NAO to have to get the permission of the people being investigated to carry out a review. I am extremely grateful to the noble Baroness, Lady Kramer, for explaining what I did not previously understand about the relationship between the amendment and the words being left out. I now understand the point that she made, which was extremely subtle, if I may say so.

Having said that, I am a little puzzled. I chaired the Treasury Select Committee for a decade or so and was succeeded by the noble Lord, Lord McFall. I was also a long-standing member of the Public Accounts Commission, which I chaired for some time. It is extremely important that we preserve the position of the NAO, and, as I said, I agree with those who say that it ought not to have to seek permission to carry out reviews.

I am just a little doubtful about what is meant by "policy". This may turn out to be a rather fine line. For example, at the moment it seems to be the policy of the Bank, and indeed the governor, to give forward guidance on interest rates. That certainly needs inquiry as far as value for money is concerned, because the forecasts have been extraordinarily wrong on a number of occasions and a lot of people—for example, those renewing their mortgages—may have suffered considerably. In passing, I hope that the governor will reconsider whether that is an appropriate policy and perhaps no longer give forward guidance on interest rates.

The other points in relation to this matter have been made at Second Reading and in today's debate. This is something that we have to resolve. We have to make sure that the relationship between the two bodies is maintained, otherwise the Comptroller and Auditor-General, very understandably, will have to think personally—the office of Comptroller and Auditor-General has always been a very personal one—about whether he can really operate in a situation where his independence is being questioned.

6.45 pm

Lord Davies of Oldham: My Lords, I do not enjoy the role of opposition a great deal but, just for once, in the light of this debate I am glad that I am here this evening and not where the Minister is sitting. He has been presented with a very difficult situation. I assure him that it is not often that in this House we have not just the Official Opposition presenting a strong case on an issue but two very experienced Members on his own Benches—on this occasion, the noble Baroness, Lady Noakes, and the noble Lord, Lord Higgins—pressing the need for change in a Bill. The equally

[Lord Davies of Oldham]
experienced—although more so in the other place than here—noble Lord, Lord Young, indicated that there has to be some way out and that it is time the Government pursued it. It certainly is.

What a mess the Government are in and what great difficulty, I am sure, the Minister will have in defending how they arrived at this ridiculous situation. Time is of the essence. Even if the Government stagger through this House without too much challenge—I am still not convinced about how sharp that challenge should be—the other place will consider this matter shortly and there will certainly be a great deal of difficulty down there unless change is effected. I accept what the noble Baroness, Lady Noakes, suggested: it is best to get it right in this House before Report, so the Minister does not have too much time.

Lord Bridges of Headley: My Lords, it is always nice to start off with some sympathy for my position from the noble Lord, Lord Davies. I thank all noble Lords who have spoken and made some very thoughtful contributions. I start by letting your Lordships know that detailed discussions are ongoing between the Bank, the NAO and the Treasury to find a way forward on this issue that all sides find acceptable. These discussions have not yet concluded but I hope to be able to update the Committee before Report.

I should like to set out the Government's position and will address the amendments and the stand part debate relating to Clause 11 in one fell swoop. However, before I continue, I thank the noble Lord, Lord Bichard. He met me last week and talked me through the amendments that he had hoped to table for today. I thank him for engaging so constructively and I very much hope that that dialogue with me can continue, even if he is unable to contribute to this debate in Committee.

I begin by emphasising that by extending, for the first time, the NAO's ability to conduct value-for-money reviews of the Bank, the Bill will deliver a significant increase in the transparency and accountability of the Bank to the public and Parliament. The Government are strongly of the view that enhancing the accountability of the Bank of England is in the public interest but it is also in the Bank's interest—strengthening public trust in the Bank will only add to its credibility.

The issue of how the Bank uses public resources is long running, as my noble friend Lord Higgins said. There has been debate on it ever since the Bank was nationalised in 1946. While researching this debate, I came across correspondence on this issue from my grandfather, who happened to be a Permanent Secretary at the Treasury in 1946 and during the 1950s. So something in the Bridges genes means that we have to deal with these things, although I do not know quite know what that is.

Since the 1950s, the relationship between the Bank and the Government has clearly evolved. Now, we regard the independence of the central bank as critical to our economic security and prosperity. As the noble Lord, Lord McFall, said, independence has been an issue of debate not just here but elsewhere. As Ben Bernanke, a previous chair of the Board of Governors of the Federal Reserve System, said:

> "A broad consensus has emerged among policymakers, academics, and other informed observers around the world that the goals of monetary policy should be established by the political authorities, but that the conduct of monetary policy in pursuit of those goals should be free from political control".

As a number of your Lordships have said, today the Bank of England occupies unique territory in the foundation of the UK economy, and policy decisions by the Bank are of vital importance to everyone. To deliver its mandate effectively, it is essential that the Bank's independent status is preserved.

The NAO also plays a vital role as Parliament's auditor. Its own independence is crucial to ensuring that there is effective review of the effectiveness and efficiency of the public sector and for maximising public accountability. Parliament, and in particular the Public Accounts Committee, relies on the work of the NAO to scrutinise properly the value for money of taxpayer-funded activities. It is therefore important that the NAO be allowed to do its work in as unfettered a way as possible.

Lord Higgins: The Minister referred to the PAC. On the whole, we seem to be rather short of any input from the PAC, although it is, crucially, using the results of the NAO studies. Would the Minister at least consult them as to whether they have any views on the debate that we are considering now? The PAC has a very definite interest.

Lord Bridges of Headley: My noble friend makes a good point and I will be happy to mull it over.

Turing to the Bill, a number of your Lordships expressed concern that the provisions in Clause 11 fetter the independence of the Comptroller and Auditor-General. As your Lordships know, this view is shared by the NAO. Others, including the Bank, have been concerned to ensure that the proposals do not undermine the role of court and infringe upon the vital independence of our central bank. The position put forward in this Bill is therefore one of compromise, as my noble friend Lord Young of Cookham eloquently pointed out. It is a unique arrangement that seeks to strike a balance and protect the independence of two vital public bodies that, unsurprisingly, approach this issue from very different vantage points.

There are two main areas where the arrangements set out in the Bill are different from those that are typically put in place between the NAO and its counterparties. In both cases, the purpose of these special arrangements is to protect the operational independence of the Bank's policy-making.

First, a bespoke carve-out has been designed to ensure that the Bank's policy functions are out of the scope of the NAO's value-for-money reviews. This reflects the differences between the policy objectives of the central bank versus those of a government department. I will turn to this issue in more detail when we come to specific amendments.

Secondly, we have designed the process to unlock disagreements between the Bank and the NAO over what constitutes policy. This is particularly important given the complexity of the Bank's functions, which makes drawing this distinction especially challenging. To be clear, the process is this: if the court is of the

opinion that an NAO review is seeking to examine policy, the court must notify the Comptroller and Auditor-General of its concerns. If, following consultation, the court is still of this opinion, the Comptroller must not proceed with the examination of that area. The Bill also requires that any such disagreement be made public to ensure transparency and to facilitate public and parliamentary scrutiny.

The arrangements set out in Clause 11 seek to increase the accountability of the Bank, while protecting its independent status and recognising the complex nature of its activities. I believe that the proposals are effective and transparent, but this is, as we know, a complicated area. This is why discussions between the Bank, the NAO and the Treasury are ongoing.

I will now turn to the tabled amendments. Amendments 14 and 16 seek to replicate the language of the National Audit Act 1983. It is well understood that the NAO is bound not to consider the merits of the policy objectives of any body with which it engages, but the Government believe this language to be difficult to apply in this specific instance. This is because, as a number your Lordships have said, the Bank of England has a unique role in the United Kingdom economy. The intent of the Bill is to convey the same meaning as set out in the National Audit Act 1983 but phrased in a way that is more applicable in the context of the Bank. Indeed, the policy carve-out is very similar to that which currently applies in the case of NAO oversight of the PRA. The Government do not believe, therefore, that this confuses or obfuscates the boundaries of the Comptroller and Auditor-General's oversight.

Amendment 15 seeks to remove the requirement that the Comptroller and Auditor-General consult with the court of the Bank before the NAO initiates a value-for-money study. I understand that such consultation is standard practice and consistent with the normal manner in which the NAO goes about its work. The reason why it is particularly important here is due to the role that this Bill establishes for the court of the Bank in determining what constitutes policy. New section 7E in Clause 11 provides that the court may inform the Comptroller and Auditor-General if it considers that a proposed value-for-money study is concerned with the merits of the Bank's general policy in pursuing its objectives. Consistent with this, the Bill provides that the court must be consulted prior to the initiation of any value-for-money study that the NAO wishes to carry out.

Amendment 17 is concerned with what happens when there is disagreement between the Comptroller and Auditor-General and the court. Clause 11 provides that, should the court continue to be of the opinion that an element of the Comptroller and Auditor-General's review constitutes policy, the Comptroller and Auditor-General will be unable to proceed with the examination in relation to that policy, and will be unable to include the results of the examination which relate to that policy in any report produced. However, in order to provide the appropriate balance and to protect the role of the Comptroller and Auditor-General, where there is an unresolved disagreement, the nature of this disagreement must be published. This again will open up any disagreements to full parliamentary scrutiny.

A number of your Lordships referred to precedent. I do not believe that this sets a precedent for the NAO. The Bank of England is truly unique, in that no other organisation can claim to be the central bank of the UK or to play such a critical role in our economic prosperity and security.

Finally, I turn to new Section 7H. This does not place any restriction on the Comptroller and Auditor-General's access to information. Therefore, I do not agree with those who argue that it would restrict the ability of the Comptroller and Auditor-General to examine the Bank fully and openly. This section would be relevant only in narrow circumstances in which the disclosure of certain types of information would be of serious detriment; this includes sensitive information on monetary policy and financial stability, for instance. Both these roles of the Bank are obviously highly market sensitive, and it is straightforward to imagine circumstances in which disclosure of information, even in aggregated form, would undermine financial or economic stability. Section 7H is included in this Bill to protect against such eventualities, while ensuring that the Comptroller and Auditor-General has full access to information held by the Bank. These same limitations apply to the regulators and, indeed, to the external auditors of the Bank. For these reasons, I reject the amendments to Clause 11 and beg that they should not be pressed.

The noble Lord, Lord McFall, raised the issue of the Federal Reserve and its audit. I would like to say briefly that it is important to note that, in the US, the debate is, as I mentioned, far from closed. Indeed, legislators, policymakers and commentators in the US have been engaging for a long while in similar discussions to those that we are having today. Just as in this debate, there are those who want a greater sense of accountability for the central bank and there are those who argue that the sufficient protection of central bank independence is important. Of course, there may be valuable insights to gain through inspecting the accountability frameworks of international central banks. That is something that the Government have done in drafting the legislation, and will continue to do as the Bill develops. But to suggest that there is an easy solution that we can transplant into this system from elsewhere is wrong.

To summarise, the provisions in this clause have rightly attracted a great level of debate. This level of debate is only proper because the provisions concern two incredibly important public bodies, and I expect that we will continue this debate as the Bill progresses. These clauses are an important step in increasing the accountability of the Bank. I ask that this clause stand part of the Bill.

7 pm

Lord McFall of Alcluith: My Lords, I thank the Minister for his reply. He made a point about the Federal Reserve, in respect of which there is a huge amount of engagement in the United States at the moment. Congressional members are knocking it about like mad. The status of the Federal Reserve is more in question than that of the Bank of England—that is accepted here. The point of these amendments is to ensure that the status of the Bank is maintained and

[Lord McFall of Alcluith]
that its independence is not questioned. The analogy with the Federal Reserve is a bit off the mark on that issue.

As my noble friend Lord Davies said, the Government are in a pickle. There has to be a lot of consideration before Report. The noble Lord, Lord Young, made a point about facilitating engagement between the Comptroller and Auditor-General and the Bank of England. According to my information, they have met but there is still a gap. To give an example from my own experience, when I was chairman of the Treasury Committee I was approached by the Treasury to ensure that the Bank of England was audited. I said to them, "Do your own business: I am not doing it for you. Engage in it". I notice that three distinguished former Permanent Secretaries are sat on the Benches. I do not know what you call a trio of Permanent Secretaries, but the noble Lords should not worry: it would have to be something complimentary. My question to the Minister is: are the Treasury the fly in the ointment at this stage?

The noble Baroness, Lady Noakes, said that the Bank of England should be audited and that it can be effective only if it is. We are here to ensure that that effectiveness is maintained. The noble Lord, Lord Higgins, talked about value for money and the NAO being independent. This arrangement could end up in a public squabble between the Bank and the NAO, and that is not going to serve anyone's interest, particularly when it comes to parliamentary scrutiny. That does not serve the Bill. A lot of thinking needs to be done on this issue. The noble Lord also made a quite radical point about the value for money of forward guidance. The Comptroller and Auditor-General does not want to go near that. He has been very reasonable—I have used that word before—in his ambitions and it is important to see where he comes from on this issue.

The Minister talked about increasing transparency, but where will it increase?

Lord Higgins: The Minister has suggested that there was a compromise. It would not appear to be a compromise as far as the release of information is concerned. The Comptroller and Auditor-General appears to take the view that the Government's position on that issue is unacceptable. Can we be sure that that is not taken as settled? We also need to consider the question of releasing information.

Lord McFall of Alcluith: There cannot be a compromise when the court has the veto at the end of the day and this has been public. We do not know where this is going to lead. I do not think there is a compromise at this stage.

Thinking off the top of my head—and I am in good company, because the Government are doing the same—given the need to bring people even further together, why can the Comptroller and Auditor-General not engage with the Governor of the Bank of England? Perhaps there could also be some third parties: wise heads such as the noble Lord, Lord Higgins, who has tremendous experience, and the former Permanent Secretaries. Why can they not sit down and say which areas the Comptroller and Auditor-General should have an opportunity to go over? Can we get that wise counsel before Report, so that we do not end up with a squabble? At the moment, there is a big gap between the governor and the Comptroller and Auditor-General that should be narrowed before Report. There is an opportunity to introduce a bit of common sense so that, on Report, we can all agree that the independence of the NAO and the Bank of England are important. Both institutions have a job to do in the best interests of the country, and the authority and integrity of both would thereby be increased. I seek the co-operation of the Minister in achieving a compromise before Report. I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendments 15 to 18 not moved.

Clause 11 agreed.

House resumed.

House of Lords: Questions

Question for Short Debate

7.06 pm

Asked by ***Lord Hunt of Chesterton***

To ask the Leader of the House what plans she has to change the arrangements for the tabling of parliamentary questions to give priority to those who ask few questions, so that more members of the House can ask questions.

Lord Hunt of Chesterton (Lab): Parliamentary Questions are an essential and valuable part of parliamentary procedure. They probe the Government and hold them to account. However, what is not in the official version is that these Questions have a much broader role in this House and in the other place. They also enable the Government to respond by querying the possible policies of the Opposition, as we have been seeing recently, although this is generally done politely and discreetly. I have also found that parliamentary Questions enable Peers to learn about the concerns, experiences and knowledge of other noble Lords. It is not clear whether they can be asked about constitutional or procedural issues. I was not allowed to ask one for clarification on the Pepper v Hart rule, which is an arcane but important part of our procedure. However, Questions are part of the glue which binds our Chamber together.

This is now a topical issue: with the House expanding as rapidly as it is, we need to think about PQs. If we accept this broader point of view, we could look at the procedures of the House for selecting Questions. We should review our procedures to encourage more noble Lords to ask Oral and Written Questions. I am grateful to the House of Lords Library research services for some statistics. During 2014-15, the 444 lead oral Questions were asked by only 181 noble Lords, who asked at least one each. Given that there are 760 to 790 eligible Members, nearly 600 therefore did not ask a Question. However, about 314 asked Written Questions, so some 100 asked Written Questions but not oral ones. The media criticism of the House of Lords, which is justified only to a limited extent, is that many

Members are not sufficiently visible. Since it is a great honour to be in this House, the view from the outside is that people should be seen. When I joined this House, some people said they looked forward to watching television and seeing a person they knew perform. Even my colleagues in the United States asked what I was doing and why I was not performing more often. That is a slightly trivial remark but it is part of what is being discussed.

The procedure for Oral Questions is that they are tabled up to four weeks before they are asked. They have to be accepted by the Table Office and improved. I do not make any criticism of the Table Office—it is helpful and often makes good suggestions about how Questions should be written—but we need to find a way in which more Questions can be asked by the non-askers. One way, perhaps, is that the non-askers and the people who ask very seldom, should be given priority. That is not the case at the moment.

Members, of course, can ask one Oral PQ and a Topical Question if chosen. The staff of the Opposition and the Government offices help their Members to promote questions. This facility is not as available to Peers from other parts of the House. The maximum number of questions is up to seven Oral Questions/PQs per year. It is a theoretical maximum because few people get up to that level. When Questions are asked, priority is given to Members who apply in person, which is reasonable, but they can also be asked by phone and email. That needs to be well understood.

Topical Questions are an important part of our procedures and are normally the fourth Question asked on Tuesdays, Wednesdays and Thursdays. From my experience, the Table Office operates some selectivity in suggesting what constitutes a Topical Question. There is a tendency to see Topical Questions as the kind liked by the more popular parts of the media—questions not necessarily about boring, serious events such as critical meetings of international bodies, which may well be rather more important.

What is the result of the procedure that we have? I will not go through the whole list, but 85 Peers asked one question per year; 21 asked three questions; and five asked seven questions.

It is interesting to note whether there is any correlation with the number of years that someone has been in the House. The total number of lead Parliamentary Questions from people who have been here from nought to 10 years, and 10 to 20 years, is about the same, so there is no dropping off. That is rather encouraging. However, beyond 20 years and up to 50 years, the statistics, not surprisingly, show some falling away. Nevertheless, there are finite numbers even after so many years.

The few points I have made need to be considered. I suggest that the arrangements be reviewed in order to enable greater involvement of Peers and more issues to be covered. One way to perhaps do that is to have a survey of Peers, something I have not seen since I have been here.

Baroness Chisholm of Owlpen (Con): My Lords, as this is last business, each Back-Bench Peer has up to 10 minutes to speak rather than seven—except for the noble Lord, Lord Tyler, who is speaking in the gap, who has only four minutes.

7.13 pm

Lord Trefgarne (Con): My Lords, I am glad to have an opportunity to contribute to this debate and I thank the noble Lord, Lord Hunt, for raising the issue this evening.

I come to this topic with a degree of expertise—or a degree of experience, at least, if not expertise—as I think I am entitled to say that I am still the Minister who has answered more Questions from the Dispatch Box than any other. I answered more than 1,000 between 1979 and 1990. Since then, of course, I have not been able to ask anything like as many.

I want first to touch on Private Notice Questions, which are very rare. This is unfortunate because there are often issues which ought to be—and could be—raised by Private Notice Questions. We are allowed one additional Question by private notice each day but the criteria under which Private Notice Questions are allowed are very strict and often when they are submitted to the Lord Speaker they are disallowed—no doubt entirely correctly—because they do not meet the criteria. I understand that the Lord Speaker inquires of officials in the House, including the Government Whips, as to whether she should allow the question. It is unfortunate that the Government Whips should have a say on whether a Private Notice Question is allowed because they would say no, would they not, given the circumstances that often prevail if the question is of a sensitive nature. The criteria by which Private Notice Questions are allowed or disallowed ought to be reviewed. I have made that proposition to the Lord Chairman of Committees and I hope he will take it to the appropriate committee when he has an opportunity to do so.

As for Oral Questions, I suggest that we have five instead of four a day. We tried that experiment in the past but it did not work out then. The problem is that when asking their supplementary questions, noble Lords and noble Baronesses go on for too long; and, I am sorry to say, Ministers sometimes go on for too long, not only with the original Answer but with their supplementary answers too. If all noble Lords and noble Baronesses could be persuaded to keep their answers shorter, there might be more scope to have a fifth Question, which would be a good innovation.

I also suggest that when we sit on Fridays we could perhaps allow two Oral Questions—at present we have none on Fridays—which would provide a few more spaces in the year for that purpose.

On Questions for Short Debate, we now have Grand Committees in which those questions can be asked. This is an excellent innovation because more Questions for Short Debate can now be asked in the Grand Committee, although I am told that the list is not full. There are still plenty of gaps in that arrangement and not enough such questions are tabled. Again casting back on my memory, I recall answering what we used to call Unstarred Questions, which are now Questions for Short Debate. I remember having the privilege of answering one in white tie and tails many years ago before we went off to a diplomatic reception or some such event. I have not seen that recently from noble Lords and noble Baronesses speaking from the Government Front Bench, but perhaps that will happen in the future.

[Lord Trefgarne]

Finally, I do not have too much to say about Questions for Written Answer. They work well. Ministers might try to answer them more quickly occasionally but the arrangement is basically sound. I hope that it will continue and that noble Lords will continue to use that facility.

7.17 pm

The Earl of Clancarty (CB): My Lords, I thank the noble Lord, Lord Hunt of Chesterton, for the opportunity to speak in this debate.

The beauty of the system as it stands is that if you have a burning question you know you will get to ask it if you are willing to put in a little effort. People say, "I do not have time to queue", but it is a privilege to ask Oral Questions in this House. It is a service we perform on behalf of the public. If we feel the question we wish to ask is important, then, quite honestly, we should make time to queue. All of us should be humble enough to do that.

The current system is simple and open. Those first in the queue get their questions asked. The problem with the method of the ballot, if it were adopted for regular Oral Questions, is that it could introduce the temptation to game the system because it would become less transparent and more complicated. What worries me particularly is the possibility that Peers might get together to submit the same Question or a variation on it to increase its chance of winning the ballot. I am not saying that Members would do that but it is a temptation that would then exist which was not there before. Would we be getting a daily list of every entry into every ballot for every Question to ensure that this could not happen? Frankly, that sounds like an administrative nightmare and a waste of public money, if the ballot system were to be introduced. In the end, the system would be frustrating for those who continually have to resubmit their Question and might never get to ask it or have any control over the day on which they do get to ask it.

The same problems do not exist for the excellent balloted topical Questions element, because at any one time there is a limit to the number of topical Questions, and there is a small window of time in which to ask them. The Table Office, as we know from experience, takes seriously the decision of whether a Question is topical or not, so with topicals you either win or lose without the worry of continually having to resubmit your Question more than perhaps once or twice. There is of course a way of dealing with the problem, as the noble Lord sees it, without changing the system. If we feel that too many of the same people are asking Oral Questions, we should limit further the number of regular Questions an individual can ask from the current seven to perhaps five a year. It might be helpful if that would significantly increase the number of questioners. From the stats kindly provided by the Table Office for last year, by my calculation that would have freed up 25 regular Questions—a week and a half's-worth, so not that many—but perhaps having some taken up by new questioners. The fact remains, however, that there will always be some people who want to ask Oral Questions more than others. Although Oral Questions are important, they are still only one way to participate in the business of the House.

If there is some tweaking to be done, it is regarding supplementary questions. I think that the House is correctly tolerant about the use of notes for asking supplementaries. The ability to ask a good Question is not the same as the ability to learn lines, and if there is one thing that would markedly reduce the number of people participating at Question Time, it would be to enforce the non-reading guidance. The House is also correctly intolerant of overly long supplementaries, of which we have too many, and often asked by those without notes in hand. Many of us have on occasion pushed it to the limit, but there is some unspoken boundary that does get crossed, and it sometimes feels as though we could have got in another two or even more speakers during a Question if we had not had those especially long supplementaries. Does the Minister think that enough guidance, either formal or informal, is given on this, particularly to new Members?

The popularity of Oral Questions for Members is one valid measure of their success. At four, we have the right number of Questions, and here I disagree with the noble Lord, Lord Trefgarne. There is a good balance between regular and topical and they last for the right length of time. Only a minority of Members leave before the end, but if they lasted for more than 30 minutes, that would not be the case.

Lord Trefgarne: My suggestion was that we keep Question Time to 30 minutes, but have five Questions instead of four.

The Earl of Clancarty: That may be slightly different, but we have tried five Questions in the past and I do not think it worked. I believe that, as it stands, we have the right system for generating questions. We should not tamper with a system unless we are confident that it can be improved.

7.22 pm

Lord Sherbourne of Didsbury (Con): First, I thank the noble Lord, Lord Hunt, for initiating this debate. I am grateful to him because Question Time is clearly one of the most important events in the House. The Chamber is always packed and it is one of the best ways of holding the Government to account. It also gives people a chance to jump in with questions, and there is much more opportunity for spontaneity than is perhaps the case in other debates, so it is important that a debate is taking place on the issue of Question Time.

I come to the debate with an initial thought. Many odd things struck me when I came into this House two years ago, but I have got used to most of them. However, the oddest thing I found was the fact that to table an Oral Question, you have to queue for two or sometimes three hours in a very dark corridor. Initially I was attracted to the idea of having a ballot. People should table Questions, put them into a ballot and have them picked out. But the more I looked into this, the less persuaded I became. It is true that the present system disadvantages those Peers who are not full time

in the House. Many of the Cross-Benchers, for example, have important outside interests and therefore they do not have the chance to queue. That is a problem.

I think that a ballot was tried out for a short time in the past, but the danger is that the ballot will be flooded with lots of Questions, and it may just be that the business managers encourage their colleagues to do exactly that. But the most important reason I am opposed to a ballot is this. When one tables a Question in the present system, whereby you have to write it out and take it to the Table Office, you take some care over the Question. You make sure that it is reasonably drafted and the clerk will also look at it carefully. With a ballot, people will become much more casual about their Questions and the quality would not be as good. I have a suggestion which perhaps the Minister could respond to favourably by saying that it could go up before the Procedure Committee at some stage. Could there be a ballot, at least for the first three Questions under the present system, which would give a noble Lord the right to table a Question? You would not have to queue because you would not be submitting a Question at that point. The system would work like this: you would put your name in to ask a Question on a particular date, and you are then told by the Table Office that you have won the right to table one. You would then take the Question in person to the Table Office, as you do now, perhaps up to two weeks in advance of the Question being answered. I think that that could be a way of dealing with the problem of having to queue.

I have two other thoughts which take the subject a little wider, one of which I am not sure will meet with the approval of the noble Lord, Lord Hunt of Kings Heath. It is whether there should be a self-denying ordinance that supplementaries should not come from the Front Benches, thereby giving all Back-Benchers more opportunity to speak. That is a thought which I put forward in a very tentative way indeed.

My other thought about keeping Questions and indeed Ministers' responses crisper is this. I suggest that the digital clocks in the Chamber should run down rather than run up. I would like to move to a policy of having eight minutes for each Question, so we do not have any query about when the time has come to an end. A Question would start at eight and you would see the clock running down to zero. When people who are asking questions, and indeed Ministers, see the clock reaching four or three minutes, they would realise that they have to be a bit crisper. Indeed, I would have the same system for people making speeches in debates so that they know that their time is running down.

I have looked at some of the debates on Questions that we have had in the past. There are a million opinions about them, so I will end by saying simply that any thoughts which are taken forward to the Procedure Committee would also involve, I hope, a great deal of consultation with noble Lords.

7.28 pm

Lord Berkeley of Knighton (CB): My Lords, just on that last point, if we had a count-down, noble Lords might be like football match attenders counting down, "Five! Four! Three! Two! One!". I am not sure that we want to go down that path.

I must make a confession before I say anything else. When I saw that the noble Lord, Lord Hunt, had tabled this Question, for which I am very grateful, I thought to myself, "I must be here this evening because I might at last begin to learn about one or two things I have totally failed to comprehend". Unlike the noble Lord, Lord Trefgarne, I am completely inexperienced in this field, having been a Member of your Lordships' House for only a couple of years, but having managed to speak in debates for which I am deeply grateful. I agree with my noble friend Lord Clancarty that it is a great privilege.

However, I am confused. The *Companion*, which often is very companionable, is very uncompanionable on this subject of Oral Questions. Let me give an example. A few months ago I wanted to ask a Question and went into the Table Office. As usual the clerks were incredibly helpful. I gave them my Question which they put down, and a week or so later I asked it. Last week I went to the Table Office—I know this shows my ignorance—and said, "I have a Question, but I am not sure whether I can just give it to you". She said, "No, you will have to join the queue on Monday". That had not happened last time—hence my failure to understand. Fair enough I went along. She then asked, "Is it a topical question?". This is probably a good example, especially for the noble Earl, Lord Howe, who is very well versed in this subject. I wanted to ask whether the Government had any opinion on the recent national health statistics about female genital mutilation, which over a three-month period had been rather shocking. However, these figures came out during the recess, so was this topical or not? We had quite a long debate about it.

I suppose where I would love a bit of clarity as a new boy is: what exactly is the procedure on putting a Question down and when you have to queue and when you do not? While I accept my noble friend's strictures about being prepared to queue because it is an honour, I cannot help feeling slightly that, with today's technology, it is a rather archaic way of doing it. I found it slightly awkward. I was sent away by a noble Lord who was at the back of the queue, but just in the right place. He had a slightly soured, wistful air about him but also a note of triumphalism because in fact his Question would get in.

I ask these questions because I would like to learn a bit more about this process. The *Companion* could be a little clearer. After all, what we want, and what the noble Lord, Lord Hunt, wishes to achieve, is to tap the wider experience of the House. I am not sure, as the noble Lord, Lord Sherbourne, has just said, that getting into the queue is necessarily the best way of doing that.

7.33 pm

Lord Tyler (LD): My Lords, I am delighted to have an opportunity to contribute in the gap, very briefly, and particularly to at least half support the noble Lord, Lord Trefgarne. I hope that this will not surprise him. The real demand in the House is not for more Questions but more opportunities to contribute to Question Time. That is what we should be thinking

[Lord Tyler]
about. I think that the noble Lord, Lord Trefgarne, will regard it as a compliment if I regard him as a traditional Tory. I hope that the noble Earl may take the same view. That is where it seems to me the demand is. It is a traditional Tory approach that supply should meet and reflect demand.

I am in favour of five tabled Questions, whether it is within 40 minutes, 30 minutes or 45 minutes. That can be a matter of discussion. Clearly, the real demand in the House is to contribute to those very useful mini-debates that we have. I am probably the only Member in your Lordships' House this evening who has experienced Questions at the other end of the building, where there are no real discussions, no dialogue and no proper debate. There is a bit of a row from behind the Minister to egg him on, like a football crowd, and there is the opposite from the Opposition Benches. It is not the same quality of real discussion or real exchange and follow-up that we have in your Lordships' House. The original Question is often followed by a question that is absolutely spot on because the Minister's reply has not developed the discussion in any positive way.

An interesting point was made earlier tonight. I think that reading the Question often means a shorter supplementary rather than a rather wordy one from some of our more experienced Members who tend to be more loquacious. I also think that it would be useful if we got away from this absurdity of referring to this lucky dip, this raffle, as a ballot. In my view, a ballot is something you vote in. Every time I am asked, "How did you manage to get that Question?" I say, "It was a lucky dip, you know". They say, "But it was a ballot". The origins of the word ballot as I understand it from the *Oxford English Dictionary* is that people actually express a preference for something. That is what a ballot is for. It would be helpful if we got away from that.

The contrast with the Commons means that we have something rather special in those 30—or 35, or 40, or even 50—minutes. We have an opportunity for a real exchange across the House. That is what I am in favour of. That is where people seem to want to be. I did not read the brief from the Lords Library in quite the same way as the noble Lord, Lord Hunt of Chesterton, who made an excellent opening speech. I thought that he was underrating the extent to which Members are involved. When we had a big Division in your Lordships' House a fortnight ago, about 500 people voted. If a third to a half of our Members are regularly putting down an Oral Question each Session, that is not bad. That does not seem to be the issue. The issue is that we do not have enough time for that exchange across the House. That is why I think there should be more attention to the time that is given to those supplementary questions.

It is time for a more comprehensive review. Everything that has been said in your Lordships' House this evening, and which I suspect may well be said by the noble Lord, Lord Hunt Kings Heath, in a moment suggests that the increasingly active participation of Members—it is not so much the total number but the fact that we have more active Members on all sides of the House—means that they want to contribute in a meaningful, positive way. I hope, therefore, that the noble Earl, Lord Howe, will be able to say that it will be the policy of those who have influence in the usual channels to look again at this issue.

7.37 pm

Earl Attlee (Con): My Lords, I agree that we have a problem. About 10 years ago, if I had got fed up with a Minister regarding his Written Answers, I would roll into the Minute Room and say: "Starred Question—next available slot to ask Her Majesty's Government about it". We cannot do that now, so we have a problem.

I think that the Opposition Front Bench should be able to ask supplementary questions at Question Time on behalf of Her Majesty's Opposition, but not necessarily all the time. We did try five Questions in 35 minutes a few years ago but it was a failure because your Lordships got bored with it. I think that four Questions in 30 minutes is right. It is long enough to expose the Minister's difficulty, or for the Minister to convince the House.

I have two observations. The first one is that asking an Oral Question is perhaps the most challenging procedure in your Lordships' House, especially when you are on the opposition Benches, because the Minister holds all the cards. The Minister knows what his response will be but the person asking the Question does not know what he will say and has only milliseconds to decide which supplementary to use. It is a very difficult procedure. That may be why some noble Lords are reluctant to table Oral Questions.

My second observation is in answer to my noble friend Lord Trefgarne, and I would like to boast a little bit, because I am told that I hold the record for the number of supplementary questions answered by a Minister—I think it is at least 12 and may even be 13. I told my officials that I would answer very briefly because noble Lords want to be able to say at a dinner party, "I asked the supplementary question about that"; they do not want to say, "I listened to a long Answer from the Minister".

7.39 pm

Lord Hunt of Kings Heath (Lab): My Lords, it is a great pleasure for me to congratulate my noble friend on initiating this debate. Although I do not agree with everything that he said, I very much agree with his final words when he asked for a general review of Oral Questions. I think that there is a general view in your Lordships' House that that would be a very good thing. I hope that the noble Earl, and indeed the Chairman of Committees, will be sympathetic. Certainly from the Opposition's point of view, we would be very sympathetic to a more general discussion which allows Members of the House to give their views.

I think that this is the first opportunity I have had to welcome the noble Earl, Lord Howe, to his new role as Deputy Leader of the House. I very much look forward to our further debates.

My noble friend was absolutely right to talk about the importance of Oral Questions. We start the day with them and the House is full, unlike the other place. At their best, Oral Questions are excellent, with very sharp questions posed to Ministers on key issues of the day. We are not always at our best at Oral Questions,

but when we are, we should be very proud of them. We should do everything we can to protect the best aspects of them and try to eradicate the worst.

I must confess to being a serial offender as regards the number of Oral Questions that I try to table. However, I say to the noble Earl that I think my role as an opposition spokesman on health is to try to put the Opposition's point of view across, and Oral Questions are one of the best ways I can do it. Although I think we should come in on supplementaries, we should not come in on every supplementary. As I have discussed with my noble friend, in the main we try to wait, allow noble Lords to ask questions and come in later on. I think that is the best way of doing it. The noble Earl, Lord Howe, was a role model in that regard in that he did not come in on every Question when in opposition. It was all the more telling when he did come in because of that, so we have some good role models in this respect.

I know some noble Lords feel that queuing is not the best way to tackle this issue. But the fact is you know that if you want to table an Oral Question, you turn up early and that if three noble Lords are there, you go away. It seems to me that is a rough and ready system but at least it is fair, except in recesses. I will come back to that point. One can also have the most delightful conversations. On such an occasion, the noble Earl, Lord Clancarty, and I talked about the merits of Birmingham Opera, which is having a reception here tonight at this very time. I am sure that the noble Lord, Lord Berkeley of Knighton, would also be at that reception if we were not debating this issue.

The problem with a ballot is essentially that it can be manipulated. Not only would it be a lottery but we would risk getting either Questions that are not very topical or such a system would be manipulated one way or another through slates or the usual channels. We need to avoid that at all costs.

However, other issues around this are very relevant. I totally agree with the noble Lord, Lord Trefgarne, about Private Notice Questions. The *Companion* is pretty ambiguous about the advice that the Lord Speaker is given on whether or not to accept a Private Notice Question. It is clear that the advice is very conservative, if I can use that word to the noble Lord, Lord Trefgarne. Essentially, the Lord Speaker rarely allows Private Notice Questions. We are much more dependent on Mr Speaker in the other place, who is much more generous in allowing Urgent Questions, which are then repeated as 10-minute Questions here. I do not think that is right. Surely, if we really want to make Oral Statements here as effective as possible, we should be anxious to allow topical Questions to be tabled. I hope that any review will look at what the *Companion* says about issuing advice to the Lord Speaker.

As regards the clock running down, I think what has been proposed is a good idea but the risk is that Ministers will play to the clock and, if they simply look at the clock, will spin out their remarks so that another supplementary cannot be asked. That brings me to the big question of long-winded questions and answers. I was a Minister for 10 years and what I most enjoyed were long-winded supplementaries. First, it gave you time to think of an answer or to find it in your file. Secondly, you could choose which bit of that long-winded question to answer. However, I dreaded the noble Baroness, Lady Sharples, getting up because she asked questions that lasted about 10 seconds. Usually, they were factual questions and there was no time to find out the answer. My noble friend Lady Farrington has developed her own capacity to do that and it is very telling. Why on earth do noble Lords feel the need to ask such long-winded questions? I just do not understand it. It is as if they have come here, seen what goes on, then almost ignore it as, willy-nilly, they are going to make a speech. I say to the noble Lords on the Government Front Bench that they are also somewhat guilty of this. Instead of giving a 70-word first Answer, why not make it 30 words? That would get the House in a better frame of mind. Of course, the reason why government Ministers do not do that is because they know that if they gave a short Answer, it would encourage a lot more questions. I am afraid I have to inform the House that Ministers do not like lots of questions. They love long-winded questions but if we were to sharpen up our practice we would sort this out.

As regards whether we should have more Oral Questions, the noble Lord, Lord Strathclyde, very much supported the move to five Oral Questions, which I think lasted 40 minutes. However, that did not work and lots of noble Lords left after 30 minutes. There was a feeling that somehow we had lost the sharpness, so we went back to having four Oral Questions. I like the idea of having five Oral Questions in 30 minutes, but the deal has to be that we completely rule out long-winded questions and answers. It would be interesting to try that out for a few weeks to see whether we could make it work.

There is a problem as regards what happens during Oral Questions. Apart from the issue of Front Bench opposition interventions, I am concerned by some noble Lords' behaviour during Oral Questions. When noble Lords who may not be very experienced attempt to get up and ask a supplementary question, they can be drowned out by more experienced and assertive noble Lords. When I first came to your Lordships' House in 1997, noble Lords rather quaintly tended to give way to other noble Lords. I am afraid that that does not happen very often now. It also counts against female Members of this House. There are, of course, some feisty Members who do not have any problems at all but, frankly, some of the behaviour is tantamount to bullying. We have not been able to agree to give authority to the Lord Speaker to intervene. We rely on the Leader and the Deputy Leader to do so. I held that role for two years and know that is not always an easy one. If we will not give the Lord Speaker the authority to intervene, as a self-regulating House we are entitled to ask noble Lords to behave rather more appropriately. I encourage the Leader and the Deputy Leader to be somewhat more assertive in intervening on bad behaviour and long-winded questions and answers. I think they would find that the House would generally support them.

Overall, this has been an absolutely splendid debate. I hope the noble Earl will say that, like us, he is sympathetic to a more general review. I am sure that many noble Lords would be willing to take part in discussions.

7.48 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I am very pleased to be the Minister responding to what has undoubtedly been an extremely worthwhile short debate on a topic that we all care about very much. I think all noble Lords will agree that Question Time is a valued opportunity for noble Lords from across the House to hold the Government to account, often in a very immediate way when we think of topical Questions in particular. That is why I begin by saying that I am right behind the noble Lord, Lord Hunt of Chesterton, in wanting to encourage a broad range of contributions at Question Time, and indeed in our work more generally.

I think, too, that this House sets itself apart from other legislative Chambers with its range of expertise and range of experience in numerous fields. It is through that expertise and experience that we best complement the work of the other place. It is undoubtedly important that we should always encourage as broad a range of contributions as we can to inform and guide our business. I think that is common ground.

Certainly, that is something that the previous coalition Government and we as the current Government have sought to do over the past few years. For example, we have expanded the opportunities available for Peers to ask Questions for Short Debate by introducing a slot for topical QSDs, which provides a fresh opportunity for a timely debate on the Floor of the House each Thursday, and by committing to set aside regularly a day in the Moses Room for five Back-Bench Members to ask QSDs. I am pleased to say that from where we sit that has been a success: no fewer than 104 Members of the House were able to ask QSDs in the last Session. We have also increased opportunities to serve on Select Committees, having supported the establishment of two net additional units of committee activity since 2012, four of which are devoted to ad hoc committees.

Turning to Question Time itself, I should perhaps start by making the point that we already hear from a broad range of contributors. Indeed, in the last Session more than 430 Members asked one or more Questions or supplementary questions. That is nearly 90% of our average daily attendance. Limiting Members to no more than seven Questions in a calendar year is another way in which we have sought to foster even greater diversity; indeed, 10 Members were caught by that limit last year.

Naturally, that does not mean that we should not look at what more might be done and I well appreciate the concerns that have been raised this evening. In particular, there is no doubt that we hear from some voices around the House considerably more often than others. There has been unanimity this evening that we should try to do something about that, and I will say more on that topic in a moment. Looking at the last Session, for instance, 16 Members made more than 25 contributions each at Question Time. Of the total number of questions asked, one in five were asked by the 20 most frequent contributors. I would just add that with three-quarters of the 20 most frequent contributors coming from the opposition side, there is certainly no danger that the Government are not being held to account. We certainly feel that we are. I also know, as we have heard in this debate, not least from my noble friend Lord Sherbourne, that some Members find it hard to succeed in tabling an Oral Question; others find it hard to intervene with supplementaries.

Some speakers this evening, including my noble friend Lord Sherbourne, were concerned that Front-Benchers tend to dominate at Question Time. I sympathise with that point—after all, 30% of the 25 most frequent contributors in the last Session sat on the Opposition Front Bench, and more than 10% of all questions were asked by the Opposition Front Bench. If we are to continue the practice of the Opposition Front Bench having a supplementary on nearly every Question—and I welcomed the comments of the noble Lord, Lord Hunt of Kings Heath, on that point—it is worth considering whether Questions themselves should only or usually be tabled by Back-Bench Members. For what it is worth, that was generally the rule when my party was last in opposition. The Front Bench was under standing instructions to defer to Back-Benchers other than in the most burning circumstances.

What changes might ensue from this? If we can make changes for the better, of course it is worth finding a way to consider those ideas. Several ideas have been raised today, which I will come on to. Before I do, I emphasise one thing, which is that noble Lords who want to change the way that things are done should feel empowered to propose it, and indeed it is open to any Member with a proposal to write to the Chairman of Committees, as chairman of the Procedure Committee, to look to take it forward, whatever it may be. I know that my noble friend Lord Trefgarne would welcome that process.

Lord Trefgarne: My Lords, I have already written to the Lord Chairman, and he has referred me to the noble Earl, Lord Howe.

Earl Howe: Well, clearly a conversation needs to ensue from that. I am grateful to my noble friend. I can tell him and other noble Lords that my noble friend the Leader of the House is always keen to facilitate the consideration of any new ideas. Some noble Lords this evening raised the idea of a ballot for Oral Question slots. If I understood him correctly, my noble friend Lord Sherbourne was against a ballot of Questions but in favour of a ballot of Peers. The noble Earl, Lord Clancarty, raised some cogent objections to the whole proposition.

The idea of a ballot has been raised frequently before, and my noble friend the Leader of the House facilitated a suggestion to this end from the noble Lord, Lord Avebury, at a Procedure Committee meeting earlier this year. However, there was no consensus within the committee at that point, as there appeared not to be in 2013 when, despite the agreement of the Procedure Committee and government support, the Procedure Committee's proposal to allocate Questions by ballot was withdrawn by the then Chairman of Committees when it became clear that there was no support on the Opposition Benches for the change.

We see merit in the idea of a ballot for the allocation of Oral Questions if we can avoid the pitfalls highlighted by the noble Earl, Lord Clancarty, and the noble Lord, Lord Hunt of Kings Heath.

Lord Hunt of Kings Heath: I welcome what the noble Earl has been saying. I have a suggestion to make. There is a problem in recess where clearly the queuing is always stacked in favour of people who live in London. If one wanted to pilot a different approach, why not pilot it during recess periods so that we could see how it worked and whether there were some more general lessons to be learned? It is just a suggestion.

Earl Howe: I think that is a very creative idea. Worries have been expressed this evening about what rules apply during recess and what counts as a topical Question, as the noble Lord, Lord Berkeley, pointed out. However, I do not think that we are likely to find total unanimity on the idea of a ballot—as the contributions this evening have demonstrated—but if there is one message that has come through it is that we should think through this idea rather more carefully, as there might be some underlying balloting system that would work.

The benefit of the present system is that it gives the House four weeks' notice of upcoming Questions. The one thing we do not want to do is add complexity to the system or reduce the notice period to, say, two weeks, as I think my noble friend Lord Sherbourne suggested. However, I am in favour of the principle of what my noble friend wants to achieve and I would not wish to discourage him from putting his ideas to the noble Lord, Lord Laming, as chairman of the Procedure Committee.

The pros and cons of the queuing system have been referred to. For clarity, I say that if there is a slot available, noble Lords do not have to queue; they can take that slot on the spot. But if no slot is available and one is to become available, as they do four weeks ahead of the period being considered, it is allocated on a first-come, first-served basis, hence the queue that tends to form. I fear that the noble Lord, Lord Berkeley, was lucky in the first instance that he referred to and slightly unlucky in the latter instance.

Lord Berkeley of Knighton: I thank the noble Earl as that has explained something which I have been trying to fathom. As I suggested, the *Companion* could be a little clearer about this, because if you are a new Member of this House, it is quite difficult to work these things out.

Earl Howe: I am quite sure that that is a very good general point to make. I am not at all sure that new Members of the House receive enough guidance when they arrive—on a variety of issues, this being one of them.

My noble friend Lord Trefgarne favoured introducing a slot for a fifth Oral Question. As other noble Lords pointed out, that was trialled in the past—I think it was in 2002 to 2004—but not taken forward after that. It was also not supported in the Procedure Committee when its revival was proposed in the last Parliament. I agree with my noble friend Lord Attlee that, rather than adding to our proceedings, the perception was that a fifth Question tended to switch people off, and that the energy and momentum of Question Time, which I think we all appreciate, rather dwindled as a result.

Another point to be made here is that we now often have Urgent Question repeats taken in the slot immediately after Questions. I would be surprised if the House wanted effectively to take six Questions before starting on the day's business. For similar reasons—and I agree with the noble Lord, Lord Hunt of Kings Heath, on this—I would not support extending Question Time to 40 minutes.

My noble friend Lord Trefgarne raised some issues about Private Notice Questions. As my noble friend knows, the system for PNQs has been considered several times without any changes being agreed. I certainly believe that there is a case for bringing forward the deadline by which decisions about PNQs are made. However, I am not sure that there is wide-ranging support for changing the decision-making approach as such, although I know that my noble friend is trying to put this forward for the Procedure Committee's consideration. The key point here is that the decision on whether to grant a PNQ is one for the Lord Speaker. The Government provide the policy background to assist the Lord Speaker but do not have a say as to whether the PNQ is allowed—and that presupposes that the PNQ relates to a matter of government responsibility. The *Companion* states:

"The decision … rests with the Lord Speaker, after consultation".

My noble friend Lord Trefgarne also raised the possibility of having Oral Questions on a Friday. We sit for only around five hours on a Friday if we are to rise at 3 pm, which is generally the time when noble Lords are keen to make tracks homeward. Fridays are a particularly valuable time for noble Lords to discuss Private Members' Bills and, although it is worth a discussion, I am not convinced that people would want the time to be taken up by Oral Questions.

My noble friend Lord Sherbourne came up with the interesting idea of a countdown approach, with eight minutes per Question. Maybe it should be seven and a half minutes, if we are not to exceed the 30 minutes in total. I was very struck by that idea. The Clock already indicates the time taken during Oral Questions and the current system allows some flexibility in the lengths of those Questions, some of which run short of eight minutes as well as running over the seven minutes. My personal view is that there are some merit in the existing system over the one that my noble friend suggested, because it has flexibility built into it. We have to allow some measure of flexibility. It is always difficult for the Clerk of the Parliaments to judge this but in general he does it very well indeed.

The noble Lord, Lord Hunt of Kings Heath, proposed a general review. I am not personally averse to that idea, although we have reviewed the whole system of Oral Questions in a series of forums, including the Leader's Group at the start of the last Parliament and in the Procedure Committee on repeated occasions in the course of that Parliament. We have also had several votes on aspects of Questions: for example the issue around reading out Questions in full. I would very much welcome a general conversation about this. I am not sure we need to go as far as having a formal, full review. We have had a number of good ideas put forward this evening and we could encapsulate those in a general conversation of the kind that I am proposing.

[Earl Howe]

My noble friend Lord Trefgarne, the noble Earl, Lord Clancarty, and the noble Lord, Lord Hunt of Kings Heath, with whose points I very much agreed on this subject, bemoaned the tendency for supplementary questions to be over-lengthy. The *Companion* is very clear about this, stating:

"Supplementary questions … should be short and confined to not more than two points",

and where they are not, the House should make its views heard. Again, I received with sympathy the suggestion of the noble Lord, Lord Hunt, that the Leader and Deputy Leader should perhaps be more proactive in the way that we guide the House on this issue. We can only urge noble Lords to respect the guidance in the *Companion* but, again, there may well be greater scope for new Peers to have this point impressed more firmly upon them. For that matter, Ministers' replies to supplementaries should also be short and crisp.

Lord Hunt of Chesterton: Does the Minister not think that some survey of all the many tens of new Peers who have come would be a good idea? How else is he going to find out this information? There is a small group of people here. People may write in or read *Hansard*, but some signal needs to be given that we really want to hear what all the new people joining the House of Lords think about this.

Earl Howe: Yes, I am sure that that idea deserves full consideration. I think we would all agree that it is getting to a stage where we must impress on all Members of the House, not just the new arrivals, that we have rules which are here for a purpose and have been carefully thought through over the years—and that it is in all our interests to adhere to them.

Lord Tyler: I wonder if I am alone in observing that the shouting at Members—and new Members, too—who are reading notes tends to lengthen the whole process rather than shorten it. If somebody has a good note and refers to it in a short, sharp question, that is surely preferable to those who waffle on without notes to guide them.

Earl Howe: I totally agree with the point that the noble Lord makes.

What this useful debate has shown is that there are some changes which we could helpfully consider. But I would add that, regardless of what procedural changes we might wish to consider, we also need to look at how we can work together to enable more voices to be heard at Question Time. One of the concerns raised with me is that the Chamber of the House can feel an intimidating place in which to intervene at Question Time and that the louder voices are heard more often. That is something we all can change, if we are minded to do so.

Self-regulation is a cherished feature of this House and one that we should guard jealously. It means that we are in control of our own affairs and can work together to make our business work. That is a responsibility on us all. It is not just for the Leader, incidentally, or for that matter the party and group leaders; it is for each and every Member of the House. If we want to hear from a broader range of people—and from the debate today, I clearly sense that we all do—we need to encourage those who speak less to speak up. That means making sure that we allow those with particular expertise to get in when they seek to do so and look for ways of helping those from whom we hear less to take part.

One way would be to keep supplementary questions brief, to allow other noble Lords to get in, but more generally it is about making sure that being self-effacing does not mean not being heard. Fostering that culture could be the single biggest step that we could take to hear from more noble Lords and to make our Question Time an even better forum for us to showcase the contribution that this House can make to the world outside.

Although I welcome any further discussion with those who want to consider procedural changes, we should remember also that cultural change must follow in step if we are to really make the best use of the talent around the House. I look forward to working with those here today to make progress in that regard.

Draft Investigatory Powers Bill

Message from the Commons

A message was brought from the Commons that they have come to the following resolution to which they desire the agreement of the Lords:

That it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on the draft Investigatory Powers Bill;

That a Select Committee of seven Members be appointed to join with any committee to be appointed by the Lords for this purpose;

That the Committee shall have power:

(i) to send for persons, papers and records;

(ii) to sit notwithstanding any adjournment of the House;

(iii) to report from time to time;

(iv) to appoint specialist advisers; and

(v) to adjourn from place to place within the United Kingdom; and

That the quorum of the Committee shall be two.

House adjourned at 8.10 pm.

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