



HOUSE OF LORDS

Select Committee on the Constitution

15th Report of Session 2009–10

**Meeting with the
Chairman of the
House of Lords
Appointments
Commission**

Report with evidence

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Select Committee on the Constitution

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To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

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Lord Goodlad (Chairman)
Lord Hart of Chilton
Lord Irvine of Lairg
Baroness Jay of Paddington
Lord Lyell of Markyate
Lord Norton of Louth
Lord Pannick
Baroness Quin
Lord Rodgers of Quarry Bank
Lord Shaw of Northstead
Lord Wallace of Tankerness
Lord Woolf

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Meeting with the Chairman of the House of Lords Appointments Commission

1. On 10 March we held an evidence session with the Chairman of the House of Lords Appointments Commission, Lord Jay of Ewelme. On 17 March Lord Jay wrote to the Chairman providing further information requested by the Committee. The transcript of the evidence session and the supplementary evidence is reproduced here for the information of the House.

Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON CONSTITUTION

WEDNESDAY 10 MARCH 2010

Present	Goodlad, L (Chairman)	Pannick, L
	Hart of Chilton, L	Quin, B
	Irvine of Lairg, L	Rodgers of Quarry Bank, L
	Jay of Paddington, B	Shaw of Northstead, L
	Lyell of Markyate, L	Wallace of Tankerness, L
	Norton of Louth, L	Woolf, L

Examination of Witness

Witness: LORD JAY OF EWELME, a Member of the House, Chairman, House of Lords Appointments Commission, examined.

Q1 Chairman: Lord Jay, may I welcome you most warmly to the Committee and thank you very much indeed for joining us? We are being televised so I have to ask you—as if it were necessary—to formally identify yourself for the record, and thereafter if you would like to make a brief opening statement.

Lord Jay of Ewelme: Thank you very much, Lord Chairman. I am Lord Jay of Ewelme, Chair of the House of Lords Appointments Commission. Let me just say to start with that I am genuinely very pleased indeed to be appearing before your Committee. I had thought for some time that in my capacity as Chairman of the House of Lords Appointments Commission it was important that I should be accountable to this House as well as to the other House, and much as I have enjoyed and do enjoy my regular appearances before PASC I thought it also important that I should give an account of myself and the work of the Commission before this House. I am also conscious that many of the issues with which we deal are issues of considerable concern to this Committee and to this House and I hope therefore that my future appearances will be as much a dialogue as question and answer. If I could for the record say that the Commission is an advisory non-departmental public body established by the then Prime Minister in 2000. I am the second Chair and I took over that role in 2008. There are seven members of the Commission; four, including the Chair, are politically independent, which I think is important, appointed under the rules of the Commissioner for Public Appointments, and three are senior politicians, members of this House, nominated by the leaders of the three main political parties. Let me say straight away that I think we are extremely fortunate to have three very experienced political members in Baroness Dean, Lord Dholakia and Lord Hurd as

Members of the Commission. I was appointed, as I say, some 18 months ago, as were Baroness Campbell, a crossbench Member of this House, Professor Dame Joan Higgins and Dr John Low, and I believe that they have already made a major impact on the way in which we go about our work. That is what I wanted to say by way of introduction, Lord Chairman.

Q2 Chairman: Thank you very much. How would you describe your role as Chairman and that of the Commission in the present era?

Lord Jay of Ewelme: If I could start the other way around by talking about the role of the Commission first? The Commission, it seems to me, has two quite distinct but related roles. The first is to recommend independent Members of the House of Lords for appointment to the crossbenches. We look to recommend people based on their merit, on their ability and their commitment also to contribute to the work of the House of Lords. That is an increasingly important factor, I think, as we move along the curve, as I have put it in the past, from honour to job; that one of the things we look for is the ability to play an important part in the House of Lords. Formally speaking, the Prime Minister decides the numbers of people that we should appoint. In practice we have settled on a rhythm of around five to six appointments each year, and that seems to be acceptable to the Prime Minister.

Q3 Chairman: Can I interrupt to ask, when you say “We have decided”, who is “we”?

Lord Jay of Ewelme: The Commission and the Prime Minister between them have agreed that about five to six appointments—which is what there has been over the years on average since the Commission came into being—is about the right number of people to appoint to the crossbenches.

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Q4 Chairman: Lord Jay, can you say how does your accountability relationship with the Prime Minister actually work in practice?

Lord Jay of Ewelme: I am formally accountable to the Prime Minister. That means if, for example, we are making appointments to the House of Lords then I make recommendations on behalf of the Commission to the Prime Minister. The Prime Minister will himself then put the recommendations to the Queen. The Prime Minister has said, as has the last Prime Minister, that only in very exceptional circumstances would he not act on the advice of the Commission, and there has not been any occasion so far when the advice of the Commission has not been taken. That, I think, is one of the main avenues of accountability. The second important role of the Commission, is the vetting for propriety of the party political appointments which we are asked to do by the Prime Minister. Once we have vetted a party nominee, we report to the Prime Minister on the outcome of our deliberations and again he will take that into account in his decision.

Q5 Chairman: You have said that you think it more appropriate for the Commission to be accountable to Parliament rather than the Prime Minister. How do you think that relationship would work in practice?

Lord Jay of Ewelme: Let me say first of all that the role of the Commission in appointing crossbench Members of this House and vetting nominees as party political appointees to this House is something which is of direct importance and direct relevance to this House. It seems to me therefore that we should be accountable to the House rather than to the Prime Minister of the day. Exactly how that would work is something which would need to be decided. If it were to happen, I hope it would be a matter of consultation between the Commission and Members of this House.

Q6 Lord Woolf: Lord Jay, have you been working in the period immediately post a General Election as yet?

Lord Jay of Ewelme: I have not, no; I took over this role in 2008.

Q7 Lord Woolf: The Commission obviously has been.

Lord Jay of Ewelme: The Commission has been, yes.

Q8 Lord Woolf: I am surprised that if you are talking about keeping the numbers you have indicated that that would apply to the post-election period when there would be obviously a lot of movement, first of all in the Commons and especially possibly this time in the Lords.

Lord Jay of Ewelme: I think one needs to distinguish between the appointment of crossbench peers which are made by the Commission, which I think should be roughly five to six a year. The rhythm of appointments of party political peers, which are in the gift of the party leaders and of course of the Prime Minister, will vary very much according to what stage of the political cycle we are at, and one would expect there to be a rise in the number of appointments around an election.

Q9 Lord Woolf: I am grateful for that; I think I was paying insufficient attention to the fact that crossbenchers are included in the numbers you are talking about.

Lord Jay of Ewelme: Yes.

Q10 Lord Lyell of Markyate: I have a slight worry about your preferring to be accountable to this House rather than to the Prime Minister. My concern is that supposing your system started to go awry and got, for example, what was thought to be an unhealthy political balance—which is a risk which obviously you will try very hard to avoid—then at least the Prime Minister through the party and Government is accountable to the country, whereas this House is not really accountable.

Lord Jay of Ewelme: At the moment the party political appointees are put forward by the party leader to the Prime Minister and by the Prime Minister to us, so we do not at the moment have any say over what the proportion should be—that is a decision which is made by the Prime Minister of the day in consultation with the party leaders. So, as far as things are at now, we do not have any influence over the proportion of nominees from political parties that come forward.

Q11 Lord Lyell of Markyate: We shall go on, but in your appointment of crossbench peers obviously crossbenchers are by definition non-party?

Lord Jay of Ewelme: Yes.

Q12 Lord Lyell of Markyate: But in reality you must be aware that some tend to be of one cast of mind and some tend to be of a slightly different cast of mind, and I suspect that you try to keep a balance in that?

Lord Jay of Ewelme: When we are interviewing potential crossbench peers, first of all when they apply and then at interview they have to say what their links with political parties have been. To have been a member of a political party more than, say, two years ago, is not in itself a barrier, provided that we are satisfied that they will act as independent Members of the House of Lords once they are Members of the House of Lords. I think that is how it works at the moment and that seems to me to be satisfactory.

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Q13 Lord Pannick: Under the current system in relation to your appointment of crossbench peers is your accountability to the Prime Minister purely nominal or does he and his office ever make representations to you as to the type of person you should be looking to appoint?

Lord Jay of Ewelme: No, to my knowledge he has not made any such representations. Hitherto the representations have been rather the other way; the Commission has said to each of the party leaders that we hope when they are putting forward the party political appointees they will take into account the need for their appointees to be representative of the country as a whole. That is something which I think we ourselves are obliged to and want to take into account and we would hope that that would be the case also for political appointees.

Q14 Lord Rodgers of Quarry Bank: Not to be too unkind, it seems to me that your role is a creature of the Prime Minister. The Prime Minister decides the numbers, the balance and there is a dialogue and on the question of dialogue do you have an exchange of names? For example, you mentioned a name in your lecture—you mentioned Jonathan Sacks as the Chief Rabbi, and might the Prime Minister say to you, “What a good idea, Michael”? Or would you put forward a name and the Prime Minister says, “I am not quite sure, Michael; could you possibly think again?” So is there a dialogue? And related to that, we remember vividly many years ago Harold Wilson’s Lavender List. Can you avoid a Lavender List on some future occasion?

Lord Jay of Ewelme: On the first point, we do not have a dialogue with the Prime Minister about individual names appointed to the crossbenches; we have our own process in which we receive nominations and we decide amongst those nominations we receive which ones we should interview. Of those that we interview we decide as a Commission as a whole which to put forward to the Prime Minister; that is our decision. We then put names forward to the Prime Minister, and the Prime Minister has said that he would only in very rare circumstances question any of the names that we put forward and he has not done so in my time and, as far as I am aware, did not do so in the time of my predecessor. So the dialogue is not about individual names. I am very sorry, Lord Rodgers, I have forgotten the second question.

Q15 Lord Rodgers of Quarry Bank: It was about the Lavender List, and as a result of that famous occasion can that be avoided completely next time around?

Lord Jay of Ewelme: What we have done is we have written to all the political parties drawing their attention—and I have mentioned this in my contacts with the political parties—to the need to ensure that in the party political nominations that come forward

they are taking account of the need to play a part in the life of the House of Lords and also to meet certain basic criteria, which I think are commonly regarded as being necessary to be a Member of the House of Lords. Ultimately, the names that are put forward we will consider at the Commission to ensure that they meet the criteria for propriety. We would hope that the parties themselves would look very carefully at the names that they put forward, rather than, as it were, asking us to do so for them. So there would be two bites at that cherry; there would be the party leaders looking at issues of propriety, then there would be the Commission looking at issues of propriety.

Q16 Baroness Jay of Paddington: You seem—very rightly, I am sure—to draw a clear distinction between the role of the Commission in relation to crossbenchers and in relation to party political nominees, but when you come to the party political nominees are you expecting therefore that the criteria which you use, as you have described, to look at the suitability, for example, of a crossbench nominee do not apply to your remit; so that you are only concerned with this, if I may say so, slightly vague concept of propriety? And I think we might want to pursue how you see propriety and how you can actually assess it.

Lord Jay of Ewelme: There is a difference clearly between the appointments we make to the crossbenches and the work we do in looking at party political nominees. As far as the party political nominees are concerned, our task is to ensure that they meet the criteria which we set for propriety. Our duty is not to look at the suitability; that, we believe, is something which is for the party political leaders themselves to look at. Our job, as I say, is to focus on propriety rather than suitability. Of course, the line between the two can get blurred; we try to keep it clear.

Q17 Lord Irvine of Lairg: Do you need to be aware of some specific allegation of impropriety on the part of a political nominee before you would investigate propriety?

Lord Jay of Ewelme: Any nominee that comes to us we look at in the same way: we ask the regulatory authorities; we ask the HMRC; we ask the police; we will ask any government department that has had contact with the person concerned whether there is any reason why we should have doubts about propriety. I think we would look at each one in the same way.

Q18 Lord Irvine of Lairg: If there was some allegation of impropriety, which you thought merited further enquiry, what means are available to the Commission to make such an enquiry?

Lord Jay of Ewelme: The means we have available are to consult those whom I have mentioned. We would look at the public records on the internet and so on.

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If there were concerns we would draw these to the Prime Minister's attention. If there is no concern at all then that might be a fairly straightforward appraisal by the Commission. If there are concerns then the Commission would wish to discuss the particular case and these would be drawn to the attention of the Prime Minister as appropriate.

Q19 Baroness Jay of Paddington: I am not quite sure if I am entirely clear from your response to Lord Irvine. You are suggesting therefore that there is what in another context one might call positive vetting? Or are you relying on the political parties in what I think you described in your lecture to the Constitution Unit as their due diligence role to look at that?

Lord Jay of Ewelme: We would hope that they would look at that first and would only put to us people that they were comfortable with and we would then carry out our checks.

Q20 Lord Norton of Louth: You said that you would welcome a proposal to put the Commission on a statutory basis. What benefits do you think that that would bring and what form do you think the legislation ought to take—how encompassing?

Lord Jay of Ewelme: I think there is merit in our being on a statutory basis. We would want to discuss with this Committee and with other committees exactly what form that should take. There clearly are questions which arise as to the form of the legislation and what remit would be put upon us if we were on a statutory basis. It seems to me and it seems to the Commission as a whole—this is something that we have discussed—that we would be better if we were on a statutory basis than if we were just accountable to the Prime Minister of the day. If I may say so, I think that that becomes more important and the wider the remit which we are put under the stronger the case for the Commission being put on a statutory basis. There has been some discussion—there have been, for example, proposals put forward in the context of discussions in the House of Commons on the Constitutional Reform and Governance Bill (CRAG) that we should have some role in the selection of party political peers. It seems to me inconceivable that we should have such a sensitive role unless we are on a statutory basis; unless there has been laid down by statute in both Houses what the basis is on which we would make judgments.

Q21 Lord Norton of Louth: So you would envisage that as a minimum it would protect the independence of the Commission by giving you a statutory basis as a Commission?

Lord Jay of Ewelme: Yes.

Q22 Lord Norton of Louth: But you seem to be envisaging going beyond that in terms of putting in legislation as to the criteria you may employ.

Lord Jay of Ewelme: I am content with the way in which the Commission now operates. The Commission as a whole believes that because the work it does is important to the House it would be better if it were accountable to the House directly rather than to the Prime Minister. That, I know, is a view which is not shared by everybody. If our remit were to be broader then it seems to me that the case for our being on a statutory basis would be stronger.

Q23 Lord Norton of Louth: Even on a statutory basis would you still see your role as making recommendations to the Prime Minister rather than having a statutory power to block a nomination?

Lord Jay of Ewelme: I think that is one of the issues which we would need to discuss. I could imagine that any Prime Minister might, for example, as at present, say that he would wish to have reserved powers on the grounds of national security. They have never been used and I find it difficult to imagine how they might be, but I can understand why the Prime Minister of the day might decide he would wish to reserve those powers. But I would have thought that as of now the recommendations of the Commission would normally be accepted.

Q24 Lord Lyell of Markyate: The balance between party and non-party members and the balance between Members of the House of Lords and others on your Committee, at the moment it is three party and four non-party, I think, and five Members of the House of Lords and two non-Members of the House of Lords. Do you think that that balance is about right?

Lord Jay of Ewelme: I think the balance between members of the political parties and non-members of the political parties is about right. It seems to me that it is right that there should be three of each and an independent Chairman—that seems to me to be a sensible balance within the Commission. I know that this is not a question you have asked but it comes up sometimes; I also think it is important that the Commission is small enough to be able to act comparatively nimbly and to make decisions relatively quickly. The larger the Commission the harder it is to achieve that. It seems to me that seven is quite a good number actually and in fact it works, I believe, rather well at present and the atmosphere within the Commission is good and constructive. The balance between Members of the House of Lords and non-Members of the House of Lords depends in part on the appointments; it depends on who applies, it depends on the selection procedure for Members of the Commission. My predecessor was a Member of this House; I am a Member of this House but it does

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not seem to me evident that there will always be a Member of this House as Chairman of the Commission—that will depend on the process. There is at the moment one Member of the House of Lords, Baroness Campbell, who is one of the non-political members. Again, that is because that is how the selection process worked. I think at the moment it works extremely well; I think it is well-balanced and I believe the Commission as a whole also reflects the diversity of the United Kingdom, which is an important part also of our work.

Q25 Lord Lyell of Markyate: You have mentioned, quite rightly if I may say so, the high quality service which is being given by the present political members, by Baroness Brenda Dean and Lord Dholakia and Lord Hurd. They are stepping down. Have their successors been appointed as yet and, if so, by what process have they been or will they be chosen?

Lord Jay of Ewelme: They have not been chosen yet. We have in fact asked the three political members to stay on for an extra few months, until the autumn, in order that there should be a properly constituted Commission during what is likely to be quite a busy period over the election of vetting of party political appointees and I did not want to find that the Commission suddenly was devoid of its party political members at that point. We have also discussed that with the Commissioner of Public Appointments, just to check that it is satisfactory with her; it is, and my understanding is that the Cabinet Secretary will be writing around shortly seeking formal agreement to that. So that means that the present political appointees will remain for another few months. To my knowledge there has certainly been no proposal so far to me as to who might replace them. I would hope to discuss that informally with the leaders of the parties to ensure that the replacement of the present three is balanced and relatively diverse. That is something which I think would be good for me just to make clear to the party leaders, that would be good if there were continuing balance and diversity among those put forward to represent the political parties on the Commission.

Q26 Lord Woolf: How do you promulgate information about the work of the Appointments Commission?

Lord Jay of Ewelme: There are formal and informal mechanisms for doing that. The formal mechanism is the Annual Report which we produce and which we expect to publish shortly in the next two or three weeks, which will look at the work we have done over the last year; and since this report will in fact be looking back over ten years, and will be appearing

shortly before the House is dissolved before the election, then we will have a little more of a look back than we have done in the past; and we would also expect to have some contributions from crossbenchers in order to show the diversity of crossbench activities in the House of Lords over the period of the Commission.

Q27 Lord Woolf: Are you getting sufficient candidates or do you think that you are getting an excessive amount of candidates for appointment, or what is the position?

Lord Jay of Ewelme: We are at the moment getting a sufficient number of candidates applying to be Members of the House of Lords. I think I am right in saying that there have been some 5,000 since the Commission started, of which we have chosen, since the Commission came into being, 53, if you include the four that have been appointed and announced but not yet taken their seats. The problem that the Commission faces is not looking for people of quality to join the House of Lords; it is having to say no to people who we are confident would make a good contribution to the House of Lords, but with only five or six a year and the need to ensure relative diversity as well, we cannot have them all. So that is the problem we face. I think there was a second question you asked, Lord Woolf, which I did not answer.

Q28 Lord Woolf: I think you have given the general perspective of what I was asking about. You obviously do not feel any incentive to have promotional nominations?

Lord Jay of Ewelme: I think there is an issue about which we are conscious on the Commission and that is whether we are getting a broad enough range of nominees. I am not convinced that we are. I think there is always a risk that the Commission is going to have as its members people in its own image and is therefore going to receive nominations from people in its own image and is going to appoint, if it is not careful, people in its own image. This is something I would like the Commission to give some thought to over the weeks and months ahead to see whether we need to do more in terms of making the Commission's role known to under-represented groups, and to make certain that we are getting a proper balance of nominations from which to choose. It is something that as a Commission we need to be conscious of constantly as we carry out our work.

Q29 Lord Woolf: Can I ask a supplementary to what you have just answered, with regard to a particular group? The position of former Law Lords is obviously one close to my heart and what I was going to ask is: once they have retired from the Supreme

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Court they are obviously eligible for appointment and during the debates on the Constitutional Reform Act, if my memory is correct, it was certainly voiced that they would have some preferential route to the House of Lords, so that if the House of Lords has been deprived of them during the time that they are a judge that would not mean that they are permanently deprived of them. Have you any thoughts of providing a different standard for them, taking that into account, than the standard you apply generally?

Lord Jay of Ewelme: No. That is not an issue which the Commission has specifically discussed. I think we would want to look at all nominations on the same basis from wherever they came rather than to give, as it were, a preferential basis to some applicants rather than to others. Our remit is to ensure that there is broad representation in the House of Lords of the diversity of Britain. It is clear to me that there needs to be proper representation from the legal fraternity in the House of Lords but that needs to be balanced also against the need to ensure that other groups are properly represented as well. I might say that we have asked University College London (UCL) to do some work on the existing composition of the House of Lords and whether there are areas that appear to be under-represented, which would then be one factor which we would take into account in deciding on our nominees, and we will be publishing their report at the same time as we publish our Annual Review in a few weeks' time.

Q30 Lord Rodgers of Quarry Bank: As I recall, ten years ago when your predecessor was talking to the then leaders of their parties I remember he asked me about how much they should attend and I assumed, as I gave such advice to Members at such time, I would expect two or three or even four days a week; and he was very surprised and said, "Perhaps they might only come once or twice a year and they would only come for their own area of speciality", and I think that was, with great respect, reflected in his own conduct as Chairman because he very rarely came to the House of Lords himself. You come very frequently. But in giving advice what advice do you give about the frequency of attendance? Do you see them as experts talking about experts or part of a community which contributes in every way? And as an element of that we have military people and we have civil servants, all of whom are appointed, as I understand it, by the Prime Minister. Would you be prepared, say, to have no more military people and no more civil servants as we have too many already?

Lord Jay of Ewelme: There has been an agreement hitherto that there will be what is called the Prime Minister's List, which is to allow, I think, ten appointments over a period of Parliament—for the Prime Minister himself to appoint distinguished retired public servants, whether they are civil servants

or whether they are military, et cetera. I think myself that the time for that may have passed but that is going to be a matter for the Prime Minister of the day. On the first question you asked, when I am asked how frequently people who are nominated should attend, I tend to say that I think they should be there for two or three days a week. What we are looking for are people very often who also have other important things to do in life and who bring to the House of Lords the expertise which they still have in other walks of life. So I think it would be a pity if they were not to have the time to do the other things which matter to them and benefit this House. Equally, as one moves along the curve, if I can put it that way again, from honour to job, people should, if they are nominated to the House of Lords, see that as a principal or the principal thing they do; should come two to three days a week and should also think hard about how they can best bring their expertise to bear on the House—whether that is through debate, through membership of select committees, or through ensuring they take part in legislation for which they are particularly well suited.

Q31 Chairman: Lord Jay, following what Lord Rodgers asked, should the people you put forward, as with a very large number of Members of both Houses of Parliament, put themselves to the inconvenience of acquainting themselves with the details behind other pieces of legislation, outwith their own expertise?

Lord Jay of Ewelme: It seems to me that the important thing is that they focus on the areas which are within their expertise. One of the things of which we are conscious and test when interviewing potential Members of the House of Lords is the breadth of their expertise, and we would certainly expect people to be able to contribute to more than one area of expertise. We would ask "what is it, apart from your chosen career, that you would be able to contribute to the House of Lords?"

Q32 Chairman: But do you think, Lord Jay, that the people you put forward should engage more broadly with the legislative and deliberative work of the House outside their own expertise? For example, in the last session 50 crossbench peers voted only four times; do you think that is satisfactory?

Lord Jay of Ewelme: I do not know what proportion of those crossbenchers came through the House of Lords Appointments Commission. No, that does not seem to me to be enough. We would hope that crossbench peers would have expertise which goes beyond just their chosen career; that they will be taking a role in two, three or four different areas and they will be doing that by following the legislative process, by speaking in debates and by taking part in select committees. However, I would not expect

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crossbench peers to be as assiduous as some of the party political peers in attending regularly. There is no whipping system; to that extent there is less of an obligation to vote than there is for party political peers. But we would certainly, when interviewing people for appointment to the crossbenches, want to be clear that they were going to attend often enough and have a broad enough range to make an active contribution to the work of the House.

Q33 Lord Wallace of Tankerness: Let us just go back to your earlier answer about 5,000 nominees that you have had to look at. Also, you were saying about trying to broaden out by perhaps approaching organisations. Just as a matter of interest, what is the proportion of self-nomination as opposed perhaps to bodies or other people nominating, obviously with the consent of the nominee? Is it always self-nomination?

Lord Jay of Ewelme: No. I do not have the figures in front of me on that but they are certainly not all self-nominated. Quite a number of people are nominated by others with their consent.

Q34 Lord Norton of Louth: I really want to come back to the point about, as you indicated, not just relying on those whose names are put before you but the Commission itself identifying others who may not have been included in the nominations and actually being more proactive and identifying any gaps, of which I am very much in support. However, of course if you pursue that line there is an issue of resources.

Lord Jay of Ewelme: Yes.

Q35 Lord Norton of Louth: And I wondered whether you felt that your present resources were adequate for the task in the number of applications and whether you think you would have the resources to actually be more proactive?

Lord Jay of Ewelme: Let me say first of all that in the present climate I am not in the business of asking for more resources, so I think we act within the resources that we have. We are quite tightly funded and we have an excellent small staff, with whom I am entirely happy; so I would not want to be asking for more resources. We need to discuss this as a Commission; I think there is more we can do within the resources we have by making use of members of the Commission and making use also of the work which the Lord President does and Members of the House who go and speak about the work of the House. I think there are ways within existing resources in which we can do more to get a wider range of people applying to us; that is something to which we need to give some further thought.

Q36 Lord Woolf: Can I go back a few steps, I am afraid on the same subject that I raised before about the very senior judiciary? One of the strengths of the House of Lords in the past was that they have a body of people who are there, who know about the special needs of administration of justice and who also can provide input, for example, into European law where the Chairman of Sub-Committee E tends to be a senior and former Law Lord. I am rather concerned that if that body of expertise is put into the general pool of 5,000 there will be a loss. I noticed the position with regard to the Prime Minister and civil servants, of which I was not aware before, and Army Generals, and could it not be said that the Law Lords come into the same category?

Lord Jay of Ewelme: If there continues to be a Prime Minister's List, as it is at the moment, of ten names, then it would be for the Prime Minister to decide whether he wished some of those names to be senior members of the judiciary, rather as I think he decided on one former Bishop to be appointed in the last few years. So that would be a matter, I think, for him. I am not saying that the Commission will not appoint such people; what I am saying is that there needs to be a balance drawn between the different interests and different professions.

Q37 Lord Hart of Chilton: You say that there are 5,000. Are those 5,000 current in your pool of resource from which you will pick only five or six a year?

Lord Jay of Ewelme: No; that is the number of people who have applied since the Commission came into being.

Q38 Lord Hart of Chilton: At what point then do you send out a reject slip?

Lord Jay of Ewelme: Under the last Commission, as it got going, it felt the need to keep quite a large number of names current in case there was a need to summon one of them. This Commission has thought that some ten years on we should reduce the pool, as it were, so what we try to do now is to work on the basis that there will at any one time be some 20 to 25 people whom we believe to be good names for us to consider, and then other names will come in as well. We try to keep it at about 20 to 25 at any one time, from which to choose five or six each year to recommend to the Prime Minister.

Q39 Lord Hart of Chilton: So through the letter box each day comes another batch. Do you then weed those out and will you be issuing reject slips for some of those so that they do not remain in the waiting room for ten years?

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Lord Jay of Ewelme: Yes. What happens is that there is a constant stream of names. They are considered first of all by the Secretariat; then by the sub-Committee and then by the Commission as a whole—and every name that comes forward will be considered by the Commission, as a whole. There will be, clearly, a large number of names which will be rejected as part of the ordinary work of the Commission. A smallish number will then be selected for interview; they will then be interviewed by a sub-Committee, which I chair. The results of those interviews are then considered by the Commission as a whole; some of those will get rejections; some of them will be recommended and to some we will say, “We would like to keep your name on the list for another year or so”, so that there is, as I say, a list of 20 to 25 against which we can make judgments in the future.

Q40 Lord Hart of Chilton: As to the process itself, how much professional help do you have in making the selection? Do you do it all yourselves, without professional help; or do you, as it were, see the curve moving from honour to job? In a big recruiting industry of course you would have a lot of professional help. Obviously I would not assume that you would be doing psychological profiling of the candidates, but what is the method by which you make your selection?

Lord Jay of Ewelme: First of all there is the application. People will apply or somebody will apply on their behalf with their agreement. We would then look at the application form, which will set out what they believe they will be bringing to the House of Lords. There will then be a meeting of the sub-Committee which I chair, with two other members of the Commission. We would then have an interview; we would interview them for 40, 50 minutes or so, asking them again a series of questions on their background, on what they would bring to the House of Lords, on their knowledge of the constitutional framework. We would then make judgments which would be considered by the Commission as a whole and the Commission would then decide which names to recommend to the Prime Minister. We do not at present consult others. Psychological profiling, we do not do.

Q41 Chairman: It is a question of whether or not you assess their likely commitment?

Lord Jay of Ewelme: Yes, we do assess their likely commitment. I would say that that is something of growing importance to the work. At the Committee stage, when we are interviewing people, one of the key questions is: “Do you have the time? Will you make the time? To what areas of the work of the House do you see yourself committing?” Those who do not satisfy the sub-Committee and then the

Commission that they would give a sufficient amount of time will not be recommended.

Q42 Lord Hart of Chilton: Are you normally unanimous?

Lord Jay of Ewelme: Every decision which is made is made with the Commission as a whole, yes.

Q43 Lord Hart of Chilton: What improvements do you think that you would like to make to the system?

Lord Jay of Ewelme: One of the important issues is one I have already discussed, which is the concern I have that we may be choosing people in our own image. I think it is very important that we should be able to look more widely than we do at present. When I am looking ahead at the changes that we need to make, that is one of the changes we need to make.

Q44 Lord Norton of Louth: I was slightly concerned by your response to Lord Woolf because I understood it in relation to former Justices of the Supreme Court when they retired who were not Law Lords. You seem to be implying that some may possibly be offered peerages and others not. Would you not agree that there ought to be a convention that either all are or all are not, otherwise it appears to create a dangerous situation if a Prime Minister can say, “I am going to elevate this former Justice and not that former Justice”?

Lord Jay of Ewelme: As far as we are concerned we would receive applications and we would make judgments on the basis of the individuals who apply.

Q45 Baroness Quin: You have mentioned the issue of not wanting to appoint people necessarily in your own current image and also the question of the need to try and promote diversity in terms of membership of the House, so perhaps I could ask my question on that? How do you define diversity; what is the Commission’s understanding of it?

Lord Jay of Ewelme: The remit given to us is to ensure that the broad diversity of the United Kingdom is represented in the House and we would look, therefore, at ethnic diversity; we would look at disability; we would look at gender; we would look at representation from within the United Kingdom. We would want to be able to look back and say, taking one thing and another into account, if you look back over the last few years there is a reasonable representation of Britain’s diversity in the House of Lords, always, of course, subject to the individuals concerned being of very considerable quality and calibre and being able and willing to make a contribution to the work of the House. When you make five or six appointments a year it is going to take quite a long time for this to become apparent, but that is the basis on which we would try to do our job; and I think if you look at the figures of

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appointees by the Commission on terms of gender and disability and ethnic minorities then it is higher than it might otherwise have been. I think, therefore, that that is working reasonably well.

Q46 Baroness Quin: I also wondered about aspects such as the age profile of the House, and also you mentioned the importance of getting representation from across the United Kingdom in terms of people coming from the different regions. There have been a number of studies which have been done, I think by the Local Government Information Network and one or two other organisations, which do suggest that there is actually quite a strong regional imbalance. I perfectly take your point that if you are only talking about a small number of people that these things take a long time to address, but which are the most urgent aspects of the diversity issue that you would like to see addressed?

Lord Jay of Ewelme: They are all urgent but one which is of concern is representation within the United Kingdom. The proportion of people who come from London or the South-East, or appear to come from London or the South-East is higher than it should be and some of the studies that have been done suggest that in particular the North-East of England, the North-West of England are under-represented by comparison with some others, and that is one of the areas I think we need to look at. It is one of the areas which we are conscious of now of the need to try to ensure that there is some redress. It is not completely straightforward of course because you have people who are now living in London who will say, "Actually we come from and regard ourselves as in some ways a representative of the North East or the North West." It is not straightforward, but I think there is an issue there which we would want to discuss. I did not answer the question on age, Baroness Quin. There is no sense in the Commission that there is an age beyond which you are not a suitable Member of the House of Lords; but we would at the same time want to try to ensure that there are people who are less than the average age who are being appointed in order that one can get diversity in terms of age as well.

Q47 Lord Pannick: One of your tasks is to look for crossbench nominees who will broaden the experience and the expertise of the House. You mentioned earlier work being done by UCL in relation to this matter, but how do you currently assess the respects in which the experience and expertise of the House needs to be broadened?

Lord Jay of Ewelme: One of the reasons why we asked UCL to do the work was because we did not feel we had a sufficient grip or handle on the extent to which there might be skills which were unrepresented in the House, and the work that they have done I think has been helpful, at which we are looking at the moment,

in suggesting that there are some areas, there are some skills which are well represented and there are some others which are less well represented. One of the advantages that I personally find in being fairly regularly myself in the House of Lords is that people come up to me and say, "Look, I represent such and such a group and there are not enough of us"; so to some extent we are getting a certain amount of information. That, I know, is anecdotal but that plus the work which has been done by UCL, which as I say will be published, does give us a better handle I believe now than we had a couple of years ago on areas of skills which are under-represented in the House.

Q48 Lord Pannick: If and when you identify these areas, lawyers for example, do you think there might be a case for advertising for vacancies for appointments specifically in contexts where that would attract potential nominees who have that expertise?

Lord Jay of Ewelme: If we were to identify a particular region of the United Kingdom or a particular skill which was under-represented we would want to consider how we ensure that it was better represented. I am not sure whether advertising would be the right way; I think that is something we should perhaps look at. I think there are questions on would we approach representative groups; would we say, "We would like to talk to you about whether you could think of two or three people that you might like to consider nominating to ensure that there is proper representation"? That is the sort of area that I think we need to get into. I am conscious that there are risks in this because we do not want particular groups to feel that they have some kind of lean on the House of Lords because that is not how the system works. But there is a real issue there; it is an issue, to be honest, where I think it would be very helpful to have the views of this Committee as well as ourselves because it is something which is wider than just the work of the Committee. But it is something which I think we will be discussing over the next few weeks.

Q49 Lord Wallace of Tankerness: Lord Jay, you have indicated some of the things you do to try and gauge how much of a contribution a potential peer is likely to make. Does the Commission do any work in assessing after appointment whether in fact a Member is contributing to the work of the House along the lines they said they would when you interviewed them?

Lord Jay of Ewelme: Yes, to an extent. If we felt that a Member of the House of Lords was not attending as often and taking as important a role in the House of Lords as they had given us to believe they would, then that is something which I think it would be reasonable to take up with them.

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Q50 Lord Wallace of Tankerness: There is no formal mechanism for it?

Lord Jay of Ewelme: There is no formal mechanism, no.

Q51 Lord Wallace of Tankerness: How do you monitor?

Lord Jay of Ewelme: There are various mechanisms and the Convenor of the crossbench peers, Baroness D’Souza, is quite active in producing statistics of the work done by crossbench peers. If there are some crossbench peers who we have nominated who are not turning up then either I or she would have a word with them and say, “Look, we do not think you are turning up quite as often as perhaps you should.”

Q52 Lord Wallace of Tankerness: Do you think there is a case for the Commission possessing sanction powers if it is judged that an appointee is not making the kind of contribution that was anticipated?

Lord Jay of Ewelme: I do not myself feel that that would be going with the way in which the House operates, to have formal sanction powers. I think that letting it be known to people that they are not turning up quite as often as they said they would is probably as effective as formal sanction powers. I should say that there are occasions when a Member is appointed as a crossbencher who may then get a very demanding job and may not turn up as often as he or she had intended to. I personally believe that that is understandable and that is acceptable, on the assumption that when that particular period is over the person would then come and bring his or her expertise again to the House of Lords, and I think that would be in the interests of the House of Lords.

Q53 Lord Wallace of Tankerness: On a number of occasions in the course of your evidence you have talked about moving along the curve from honour to job. Can you give us an assessment as to just how far along the curve you feel we have moved?

Lord Jay of Ewelme: I think we have moved quite a bit further over the last few years. This is a constant process and a constant evolution. In a way, a question I was asked earlier suggests that there is now a greater expectation on the part of people that they are coming to the House of Lords in order to do a job and not as a reward for their past experience. That is the basis on which we increasingly assess people now. I think we are moving along that curve reasonably well, but it is work in progress.

Q54 Baroness Jay of Paddington: May I go back for a moment to your role in the issue of the propriety of political appointments and the specific issue about

ministerial appointments to the Government within the House of Lords, where I think you said that you would like to see what you describe as the “anomaly” of not having the capacity to vet those appointments change. How is that process developing? Are you having constructive conversations with the Cabinet Office about that, for example, because it does seem to me that looking at it from outside you cannot possibly hope in the context of a swift reshuffle to have a kind of due diligence process in propriety that you have described that you want.

Lord Jay of Ewelme: The process is going reasonably well and I would hope and expect that in future we would be asked to vet Government appointments, ministerial appointments which were, as it were, outside a major reshuffle. If there are appointments during the course of the year which are not particularly time sensitive then my understanding is that we will in future be asked to carry out a vetting for propriety.

Q55 Baroness Jay of Paddington: May I just interrupt you: do you have that understanding, for example, about post General Election appointments within this year?

Lord Jay of Ewelme: No, it is not at the moment specific but I would expect, if, for example, there are appointments during the course of a government then we would be asked to vet. If it is an appointment which comes in the course of a major government reshuffle then, as you said, there are genuine difficulties because quite often decisions have to be made quickly and there will not be time to carry out the sorts of checks we need to carry out. So I think there is still an issue. The discussions are going well with the Cabinet Office and we think there will be some movement.

Q56 Lord Shaw of Northstead: Arising out of that, in general—because this applies, I suppose when new governments take over and probably a number of backbenchers come in as well—what powers do you have for vetting proposed political appointees and does your system work as well as you would wish? Would any advice that you give to the Prime Minister, for example, be published or would it be entirely private? Finally, do you have the power to veto in any way a political appointee?

Lord Jay of Ewelme: The way the system works is that we are asked to vet and we make judgments and then we give our advice to the Prime Minister and that advice is given in private to the Prime Minister. The Prime Minister then either does or does not take our advice. Hitherto, there has not been a case in which our advice has not been taken. I cannot say that that will always be the case but that has been the case up

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until now. I think that position works reasonably well. As I said earlier on, I think that the system will work better if political parties also see the need to ensure that names which come forward are likely to be acceptable to us because that then avoids the clash which tends to get—because that is the way things work these days—into the press, which I do not think is good for the political parties.

Q57 Lord Shaw of Northstead: Do you feel that things should change at all or that it should stay exactly the same, because there have been leaks and there will always continue to be leaks from time to time?

Lord Jay of Ewelme: Yes, there have been leaks and there will continue to be leaks. I think that is one of the reasons why it is important that this is not regarded by the political parties as just for us; this is regarded as a joint endeavour to ensure that people whose names are put forward for membership of this House will meet the test of propriety.

Q58 Lord Hart of Chilton: One of the issues, the hot topic of the day, has been about assurances given—and not to you because this was your predecessor, but there have been similar cases which have been in your time—where assurances have been obtained, commitments given, presumably in writing; for how long do you keep these papers? Are they matters of record that you keep or are they shredded?

Lord Jay of Ewelme: I do not know the answer to that question. Normally speaking, certainly any papers of people who are not appointed are shredded because that is a requirement, as I understand it, under the Data Protection Act. I think we keep papers of those who are appointed and there has been at least one occasion—the case of Lord Laidlaw—in which assurances which the Chairman of the Commission at the time felt had not been honoured. They were taken up with Lord Laidlaw and then a report was issued in the Annual Report about that. So if there are undertakings given which are not honoured I would expect the Commission to take those up with the person concerned.

Q59 Lord Hart of Chilton: It seems to me that any understanding or assurance that is given, whereby a peerage is then granted, should remain on the record

with you, even if not publicly available, and should be kept.

Lord Jay of Ewelme: I think it should and it may well be that it is. Perhaps I can write to you, Chairman, to give a proper account of that. I am afraid I do not have the information available at the moment.

Q60 Lord Rodgers of Quarry Bank: I may have missed it, but you referred to the possibility of five or six appointments a year. Why five or six? What is the number? Is it to balance the number of leaving crossbench peers? You have so many names coming forward and it is very difficult; why should it be limited in that way when the quality is perhaps higher than of the political parties?

Lord Jay of Ewelme: It is an informal agreement. On average that is roughly the number since the Commission came into being that has been appointed to the crossbenches. It is a number which the Commission believes to be sensible and it is one which the last two—

Q61 Lord Rodgers of Quarry Bank: What does “sensible” mean? How sensible?

Lord Jay of Ewelme: I certainly find that there are more people who come up to me and say, “Yet more crossbenchers joining the House of Lords” than there are people who come up to me and say, “There are not enough crossbenchers joining the House of Lords.” I think a rhythm of five to six a year, which allows a degree of rejuvenation of crossbenchers, is about right. There is no science in this but it seems to me to be about right.

Q62 Baroness Jay of Paddington: There was a very small point, Lord Chairman, following on from Lord Rodgers. I was not quite sure what the annual cycle is because you have said that there are four people whom you have appointed who have not yet taken their seats. Does that mean that there are one or two more vacancies in 2010, or is it more like a financial year or some other cycle that you work to?

Lord Jay of Ewelme: We have our own rhythm, if I can put it that way. We would see five or six during the course of the calendar year as being about the right number.

Chairman: Lord Jay, you have been extremely generous with your time. May I thank you very much on behalf of the Committee for the evidence you have given.

**Supplementary Letter from Lord Jay of Ewelme, Chairman,
House of Lords Appointments Commission**

Further to my appearance before your committee last week I am writing, as promised, in response to a question from Lord Hart of Chilton about record keeping.

Papers relating to those vetted by the Commission are not destroyed by the Commission as they form part of the formal record. Similarly papers relating to those appointed to the peerage are retained. All such papers are retained in line with the legal and regulatory requirements affecting the management of public records.

As I said during the evidence session the Commission does not retain papers for those nominees unsuccessful in their application to be a crossbench peer. These papers are destroyed in line with the provisions of the Data Protection Act.

Once again may I thank you for the opportunity to meet and discuss with the Committee the work of the House of Lords Appointments Commission.

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