



# House of Commons

## Political and Constitutional Reform Committee

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# Recall of MPs

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## First Report of Session 2012–13

*Report, together with formal minutes, oral and  
written evidence*

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## The Political and Constitutional Reform Committee

The Political and Constitutional Reform Committee is appointed by the House of Commons to consider political and constitutional reform.

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

### Committee staff

The current staff of the Committee are Joanna Dodd (Clerk), Hannah Stewart, Helen Kinghorn (Legal Specialists), Lorna Horton (Inquiry Manager), Louise Glen (Senior Committee Assistant), Jim Lawford (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

### Contacts

All correspondence should be addressed to the Clerk of the Political and Constitutional Reform Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6287; the Committee's email address is [pcrc@parliament.uk](mailto:pcrc@parliament.uk).

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## Summary

The Government has published a White Paper and draft Bill on the Recall of MPs, with the aim of restoring faith in the political process after the expenses scandal.

We are not convinced that the proposals will increase public confidence in politics. Indeed, we fear that the restricted form of recall proposed could even reduce confidence by creating expectations that are not fulfilled. Under the Government's proposals, constituents themselves would not be able to initiate a recall petition. The circumstances that the Government proposes would trigger a recall petition—if an MP received a custodial sentence of 12 months or less, or if the House of Commons resolved that there should be a recall petition following a case of “serious wrongdoing”—are so narrow that recall petitions would seldom, if ever, take place. Moreover, time has shown that the existing democratic and legal processes worked in removing the MPs who were shown to have been guilty of serious wrongdoing during the expenses scandal.

In addition, we do not believe that there is a gap in the existing disciplinary procedures of the House of Commons which needs to be filled by the introduction of recall. The new House of Commons Committee on Standards, which will include lay members, already has the sanctions it needs to deal with MPs who are guilty of misconduct, including recommending the ultimate sanction of expulsion in cases of serious wrongdoing. The Committee must actively consider this option, and if it does make this recommendation, the House must be prepared to act. Given that the House has confirmed the recommendations of the Standards and Privileges Committee in the past, we are confident that it will continue to do so.

We recommend that the Government abandon its plans to introduce a power of recall and use the parliamentary time this would free up to better effect.

However, we recognise that the Government may be unwilling to discard a pledge made in the Coalition Agreement. We have therefore made some specific recommendations for improving the recall process if the Government decides to proceed with its proposals. In particular, we recommend that the Government replace the requirement for a single designated location for signing the recall petition with a requirement for multiple locations, to make signing the petition in person as convenient as possible for everyone in the constituency. We further recommend that people who have an existing postal vote should automatically be sent a postal signature sheet in the event of a recall petition.

We urge the Government to ensure that constituents in Northern Ireland have the same options for signing a recall petition as constituents elsewhere in the UK, rather than being restricted to signing by post.

Finally, although we understand why the Government has avoided defining “serious wrongdoing” in the draft Bill, we consider that there is a need for an indication of what constitutes such behaviour. We suggest that wrongdoing in the context of recall constitutes a breach of the code of conduct for MPs, while serious implies a breach of sufficient gravity that it would merit more than a period of suspension.



# 1 Introduction

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1. Recall describes a mechanism designed to allow the removal of elected representatives following a special election that takes place between scheduled elections. All three of the main political parties in the UK promised in their manifestos for the 2010 general election to introduce some form of recall for Members of Parliament.<sup>1</sup> *The Coalition: our programme for government*, published by the incoming Government in May 2010, included the following commitment:

We will bring forward early legislation to introduce a power of recall, allowing voters to force a by-election where an MP is found to have engaged in serious wrongdoing and having had a petition calling for a by-election signed by 10% of his or her constituents.<sup>2</sup>

2. The Government published a White Paper and draft Bill on *Recall of MPs* on 13 December 2011. On 15 December, we agreed to undertake the pre-legislative scrutiny of the Bill and published a call for evidence. Our witnesses included academic experts, campaign groups, MPs, House of Commons officials, a representative of the electoral administrators who would be required to implement the proposals, and Ministers. We are grateful, as ever, to all who contributed to our inquiry. We are also grateful to YouGov who undertook a survey about recall on a pro bono basis.

3. This report scrutinises the detail of the Government's proposals, examines the Government's rationale for introducing recall, and asks whether its proposals are necessary and likely to achieve their intended benefits.

## Overview of the Government's proposals

4. The Government proposes that constituents would be able to sign a petition to recall their MP in one of two situations:

- a) if the MP were convicted in the UK and received a custodial sentence of 12 months or less (MPs who receive custodial sentences of more than 12 months are already disqualified under the Representation of the People Act 1981); or,
- b) if the House of Commons resolved that the MP should face recall.

5. Once one of these two conditions had been met, the Speaker would give notice to the relevant returning officer that a petition should be opened. In the case of an MP subject to a custodial sentence, a petition would be initiated only once his or her right to appeal had been exhausted. Constituents would be able to sign the petition for eight weeks, either by post or at a single designated location in the constituency. If at least 10% of eligible voters on the electoral register for the constituency signed the petition, the MP's seat would

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1 Conservative Party manifesto- Invitation to join the Government of Britain, 2010, pp 65-6; Liberal Democrat Party manifesto, 2010, p 89; Labour Party manifesto, 2010, p 9:2.

2 *The Coalition: our programme for government*, May 2010, p 27

automatically be vacated and a by-election would ensue, in which the recalled MP would be eligible to stand.

## International comparisons

6. The Government states that it has “drawn on the experiences of other countries” but proposes a new model of recall “which is suitable for our system of representative democracy” and will “work within our unique constitutional framework.”<sup>3</sup> It is worthwhile, therefore, briefly to consider the international context, before discussing the detail of the Government’s proposals.

7. Recall mechanisms are comparatively unusual throughout the world, and particularly rare at national level. The first examples of recall mechanisms were introduced in the United States during the late nineteenth and early twentieth centuries, as part of reforms intended to increase levels of civic participation.<sup>4</sup> By the beginning of the 21<sup>st</sup> century a form of recall was in use at some level of government in around 24 countries worldwide, including six of the 26 Swiss cantons, the Canadian Province of British Columbia, Venezuela, the Philippines, South Korea, Argentina and Taiwan.<sup>5</sup>

8. Recall as a mechanism is now relatively widespread in the United States, where there are currently recall provisions for state-level politicians in 19 states, and for individuals elected at a local level in 29 states. However, although the mechanisms exist in the United States, recall has seldom been used successfully and is deployed less frequently than other forms of direct democracy such as citizen’s initiatives or legislative referendums which were often introduced as alongside it.<sup>6</sup> At state level, only two attempted recalls of Governors have been successful: the first in North Dakota in 1921 and the second in California in 2003 when, in a single election, voters decided by a majority of 55% to remove the Democratic Governor Gray Davis and by a majority of 49% to replace him with the actor Arnold Schwarzenegger.

9. Recall is particularly rare in “Westminster style” democracies. The International Institute for Democracy and Electoral Assistance (International IDEA) suggests that “recall procedure is more coherent with a presidential style of government (with a directly elected executive official) than with a parliamentary system of government.”<sup>7</sup> Professor David Judge, of the University of Strathclyde, told us:

Recalls serve as a powerful accountability mechanism in a context of: i) often personalised, low-intensity, or non-partisan elections, ii) low voter turnout, iii) occasionally maverick incumbents, and iv) the absence, or ineffectiveness, of alternative formal mechanisms of control, such as monitoring agencies, or informal accountability mechanisms, such as intra-party discipline. In these circumstances, inter-election direct accountability through recall – of representatives performing

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3 HM Government, *Recall of MPs Draft Bill*, December 2011, p 5

4 Alan Renwick, *A Citizen’s Guide to Electoral Reform*, (London, 2011), p 151

5 House of Commons Library Standard Note, *Recall Elections*, Charley Coleman and Oonagh Gay, January 2012, p 4; International IDEA, *Direct Democracy: the International IDEA Handbook*, 2008, p 115

6 International IDEA, *Direct Democracy: The International IDEA Handbook*, 2008, p 112; Ev 96

7 IDEA, *Direct Democracy*, p 110



functionally specific tasks, for example school board members, sheriffs, soil and water conservation supervisors, etc – has an immediate logic.<sup>8</sup>

Professor Judge’s description of the circumstances in which recall is most useful does not reflect the typical characteristics of parliamentary elections in the United Kingdom. General elections are based on parties, as well as personalities, there are effective alternative formal and informal mechanisms of control—in the form of party discipline and the disciplinary mechanisms of the House of Commons—and MPs do not perform functionally specific roles.

10. Recall is often identified as a mechanism of “direct democracy”, distinguishing it from other methods of removing elected officials from office, such as impeachment, where voters are not involved in the process. However, not all forms of recall are equally participatory. The International IDEA states that there are two main models of recall:

- a) the partially participatory “mixed recall” where citizens are involved either in initiating a request that a recall take place, which is then approved by an authoritative body (as in Uganda), or in making a decision by voting on a resolution reached by an authoritative body (as in Austria, Iceland and Taiwan); and
- b) the fully participatory “full recall” where both the initiative for and approval of a recall require the involvement of voters (as in Belarus, Ecuador and Venezuela).<sup>9</sup>

11. The precise mechanism of recall varies in different jurisdictions, but it usually involves at least two stages. The first stage, which is often a petition, determines whether a recall election should be held. In some countries and states, including the United States, this first stage is entirely in the hands of the electorate: if a specified proportion of the electorate sign a petition, which can be initiated by any voter, then a recall election is triggered. The threshold for the number of signatures required varies. In some places a petition can be initiated for any reason at all, while in others, particular circumstances are required. In other countries and states, it is up to politicians to decide whether a recall election should take place. Only eight of the 19 US states that permit recall for state-level politicians require specific grounds for a recall petition. In the other 11, voters can initiate a recall petition for any reason.<sup>10</sup> Recall petitions can also be initiated for any reason in the Canadian province of British Columbia.<sup>11</sup>

12. If the first stage is “successful” (a petition reaches a certain threshold of signatures or politicians decide to initiate recall proceedings), then a second stage, a recall election, takes place. In some places, the ballot to decide whether a representative should be recalled is combined with a vote for their successor (effectively a by-election), while in others the two votes are separated. There are a number of further variations on this model, including that used in British Columbia, where a recall petition is in itself sufficient to remove an elected representative. Some countries and states place a limit on the point in an elected official’s term at which a recall can be initiated.

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8 Ev 96

9 International IDEA *Direct Democracy: The International IDEA Handbook*, 2008, p 114

10 *Recall of MPs*, p 44

11 *Recall of MPs*, p 45

13. Seen in an international context, it is clear that the Government's proposals for recall are relatively tightly drawn. According to the International IDEA's definition, they are a form of "mixed recall". Voters themselves would not be able to initiate a recall petition, and the circumstances in which a petition would be triggered are limited. This reduces the risk of vexatious attempts to remove MPs, but leads us to question whether such a narrow form of recall is worth introducing at all.

## 2 The “triggers” for recall

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### Custodial sentence of 12 months or less

14. The first trigger proposed by the Government is a custodial sentence of 12 months or less. MPs who receive custodial sentences of more than 12 months are already disqualified under the Representation of the People Act 1981. Those who took part in the YouGov survey on recall were strongly in favour of the idea that MPs who had committed a crime serious enough to receive a prison sentence should face a recall petition: 91% agreed with this proposition. Nick Cowen, a policy researcher, argued that this trigger should be extended to apply if an MP was convicted of any indictable offence. An indictable offence is an offence which can be tried in a Crown Court. He commented: “Indictable offences tend to be serious breaches of the law, and they are an objective measure that can establish an MP’s eligibility for recall.”<sup>12</sup> The Government’s White Paper comments: “Whilst it is possible that an MP may receive a non-custodial sentence for behaviour which brings the House of Commons into disrepute, the Government believes that it would be a disproportionate response to commence a recall petition in all such cases.”<sup>13</sup>

15. Others were concerned that the first trigger was already too broad. Several witnesses raised the issue of the MP’s motivation in committing the offence. The Government’s White Paper acknowledges that “an MP may commit a crime for the purpose of making a wider political point”, but states that the draft Bill does not take any account of motivation because: “If an MP were convicted of an offence and received a custodial sentence in those circumstances, it would be up to their constituents to judge in the recall petition process whether the MP should retain their seat.”<sup>14</sup>

16. Democratic Audit commented: “We are wary of the automatic opening of the recall process in cases of any sentence involving imprisonment. Imprisonment can occur for other reasons, including those with a political dimension.”<sup>15</sup> They were particularly concerned about imprisonment resulting from “acts of protest without any element of violence or dishonesty”, such as the imprisonment of several Unionist MPs in the 1980s for failure to pay car tax as a protest against the 1985 Anglo-Irish agreement. They were also concerned about imprisonment resulting from “conduct like non-payment of fines and charges which are sometimes part of civil disobedience, and as a result of contempt of court where imprisonment can be decided summarily.”<sup>16</sup> They commented: “The law as proposed could lead to a ridiculous situation where an MP could say something in the House under parliamentary privilege which would expose him or her to imprisonment for contempt of court (and therefore recall) if the statement were repeated outside the House.”<sup>17</sup>

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12 Ev 89

13 *Recall of MPs*, p 18

14 *Ibid.*

15 Ev 78

16 *Ibid.*

17 *Ibid.*

17. The Clerk of the House of Commons, Robert Rogers, commented: “The issue of civil disobedience is, I think, likely to attract interest if the Bill is brought before Parliament.”<sup>18</sup> He noted that most recent cases involving the imprisonment of MPs for criminal offences have been linked to civil disobedience, citing the examples of the Unionist MPs mentioned, above;<sup>19</sup> Bernadette Devlin and Frank McManus, Nationalist MPs who were imprisoned for offences of organising and taking part in processions contrary to law in Northern Ireland; and Terry Fields, a Labour MP who was imprisoned for refusing to pay a poll tax bill. The Clerk of the House stated:

While one might speculate that their electorates would have stood by the imprisoned Members (and there is good evidence for this in the case of the Unionists in Northern Ireland), the success threshold in a recall petition of only 10 per cent might be regarded as readily achievable; no successful candidate, after all, ever secures as much as 90% of the vote.<sup>20</sup>

18. One way of addressing this problem might be to raise the threshold for the number of signatures required to make the petition successful. However, this would have the effect of making recall more difficult regardless of the nature of the offence the MP had committed. **We recognise the difficulty of defining what constitutes a political crime or a crime of conscience. However, we recommend that, for the purposes of the first trigger of a custodial sentence of 12 months or less, the Government change its decision not to take account of the motivation of the MP in committing the offence. One possibility would be to enable the House itself to decide whether there should be an exemption from a recall petition in a particular instance because of the political nature of the crime.**

## A resolution of the House of Commons

19. The first trigger would not cover everything for which, arguably, an MP should face recall. An MP may not have received a prison sentence, but still be guilty of what the Government describes in its White Paper as “serious wrongdoing”. Professor Anne Twomey, of the University of Sydney, commented:

It is arguable, however, that the primary types of actions for which voters would like the opportunity to recall Members are those that involve the misuse or abuse of a Member’s position and do not usually involve prison terms—such as breaches of entitlements, acts of dishonesty, misuse of parliamentary privilege, nepotism, making decisions that favour family members or business associates, and the like.<sup>21</sup>

20. This is where the Government’s second trigger comes in. The White Paper states that the Government believes that “the House should have the power to initiate a recall petition where it is found that an MP has engaged in serious wrongdoing which does not warrant immediate expulsion but may lead constituents to lose faith in their MP.”<sup>22</sup> The mention of

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18 Ev 58

19 See Ev 58 for full details.

20 Ev 58

21 Ev 102

22 *Recall of MPs*, p 20

“immediate expulsion” is a reference to one of the existing sanctions that are open to the House of Commons when an MP has been guilty of misconduct. We consider these sanctions in more detail in Chapter 4.

21. The Government notes that it expects that the Committee on Standards and Privileges “will inevitably play an important role” in the process of initiating a recall petition in the event of serious wrongdoing.<sup>23</sup> The Committee on Standards and Privileges is a parliamentary committee of MPs that considers reports from the independent Parliamentary Commissioner for Standards, makes recommendations to the House about appropriate sanctions for MPs who have broken the code of conduct, or the associated rules, and recommends any changes to the code or rules.

22. The Minister for Political and Constitutional Reform, Mark Harper MP, told us that the second trigger was “more complex” than the first.<sup>24</sup> Witnesses raised two main objections to this trigger.

### *The role of MPs in the process*

23. First, some witnesses thought that it was inappropriate for MPs to have a role in deciding whether their colleagues should face a recall petition. Dr Alan Renwick, of the University of Reading, argued: “The notion of giving a committee of MPs the power to decide when a recall should happen is unacceptable. That would not carry public confidence.”<sup>25</sup> Nick Cowen commented that it was not appropriate for MPs to be involved in deciding whether an individual colleague should face a recall petition. He stated:

There is a risk that a recall petition will be wielded (or avoided) on the basis of political considerations rather than individual MP behaviour...This is in a context where the agents responsible for the decision will feel significant, perhaps overwhelming, pressure to be partial to allies or potential allies in Parliament, especially those who might be able to help or harm their career progression.<sup>26</sup>

24. Some witnesses, however, argued that it was important that the House of Commons had a role in disciplining its own Members. Professor Joseph Zimmerman, of the University at Albany, State University of New York, commented: “It is most important that Members of the House of Commons be involved in deciding whether an individual Member should face a recall petition as Members have an institutional responsibility to police the behaviour of colleagues.”<sup>27</sup> Democratic Audit stated: “we do not believe that the interests of restoring public faith in the political process would be well served by Parliament abdicating ever more responsibility for making important decisions and keeping its own house in order.”<sup>28</sup>

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23 *Recall of MPs*, p 21

24 Q 184

25 Q 15 [Dr Renwick]

26 Ev 89

27 Ev 105

28 Ev 79

25. There is also the fact that the members of the Committee on Standards and Privileges already make recommendations about the conduct of their colleagues and would continue to have such a role in relation to the House's internal disciplinary procedures regardless of whether they had a role in the recall process. Democratic Audit noted the inconsistency of allowing the House to play a role in deciding on the appropriate sanctions in some cases of wrongdoing, but not in others: "It would be excessive to prevent MPs from being involved in the investigation and punishment of lesser transgressions, and inconsistent to bar them from involvement in the more severe cases."<sup>29</sup>

26. On 12 March 2012, the House of Commons decided that the Committee on Standards and Privileges would in future be split into two Committees: the Committee on Standards, which would deal with all matters relating to the conduct of MPs, and the Committee on Privileges. Following a recommendation made by the independent advisory Committee on Standards in Public Life, the membership of the new Standards Committee will comprise 10 MPs and at least two, and no more than three, lay members. Lay members will not have the same voting rights as the MPs, but will have the right to have their opinion recorded in the final report. The Committee on Standards in Public Life commented that the inclusion of lay members would "both...demonstrate that MPs are accountable to the people they serve and ...enhance public acceptance of the robustness of the process, whether in the consideration of recall, expulsion or the range of less serious sanctions available to the House."<sup>30</sup> **We welcome the inclusion of lay members on the new Standards Committee and consider that this change strengthens it, and arguably further legitimises it, as an arbiter of MPs' conduct.**

27. The Chair of the Committee on Standards and Privileges, Rt Hon Kevin Barron MP, explained how his Committee operates: "The art of it all...is to effectively leave your party politics at the door on the way into the Committee room and pick them up on the way out. We adjudicate on that basis."<sup>31</sup> **It is not easy objectively to judge the conduct of one's colleagues, but, overall, we consider that the Committee on Standards and Privileges has done so successfully. We are confident that it would continue to be able to do so were one of the sanctions that it could recommend a recall petition. This is particularly the case given that in future lay members will be included on the Committee.**

### ***What is serious wrongdoing?***

28. The second objection that witnesses raised in relation to the trigger of a resolution of the House was the difficulty of defining what constitutes serious wrongdoing. Among those who expressed concern about this difficulty was the Chair of the Committee on Standards and Privileges himself, who commented: "the Committee on Standards and Privileges has discussed this and we have some grave concerns about exactly what serious wrongdoing means, outwith the criminal code."<sup>32</sup>

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29 Ev 79

30 Ev 88

31 Q 65

32 Q 56

29. The YouGov survey on the recall of MPs provides some indication of what the public might consider to be the type of behaviour that merits recall. Respondents were asked to say whether MPs should face recall in a number of different circumstances. The cases in the survey are listed in below in order, from the highest percentage of respondents who thought MPs should face recall to the lowest:

	Percentage who think MPs should face recall in this situation
Committing a crime serious enough to receive a prison sentence	91
Taking bribes	91
Being caught claiming expenses that they are not entitled to	87
Being caught lying in Parliament	80
Making racist or offensive comments	70
Not holding surgeries or responding to constituents' letters	60
Committing a less serious crime, that does not receive a prison sentence	56
Switching to a different political party	52
Breaking a promise made in their election leaflets	50
Having an affair/cheating on their spouse	22
Supporting a policy with which you disagree	10

30. The Government has deliberately avoided defining how the House of Commons should come to a resolution that serious wrongdoing has taken place. The White Paper comments: “Any statutory definition of ‘serious wrongdoing’ would be limited in scope and open to interpretation by the courts. It is also likely that such a definition would need updating on a regular basis.”<sup>33</sup> The Clerk of the House agreed that it was wise not to define serious wrongdoing in the Bill:

To make such provision on the face of the Bill might have the perverse effect of making the process less effective; and it would certainly open the way for the Courts to take a role in a way which I would expect the House to find unacceptable and which would in all probability breach Article IX of the Bill of Rights.<sup>34</sup>

We agree that it would be undesirable to define “serious wrongdoing” in the Bill. However, we are also conscious that there is a pressing need, not for a statutory definition, but for an indication of what constitutes serious wrongdoing, to facilitate the work of the Committee on Standards and Privileges.

31. The Parliamentary Commissioner for Standards, John Lyon, was of the opinion that serious wrongdoing in the context of the Government’s recall proposals related to breaches of the code of conduct for MPs and its associated rules. This is not explicitly stated in the draft Bill or White Paper. However, it is a reasonable assumption, given that the current internal disciplinary procedure in relation to standards is focused on breaches of the code

<sup>33</sup> *Recall of MPs*, p 17

<sup>34</sup> Ev 60



of conduct. The Commissioner commented that, at present, when he receives an allegation of misconduct he has to decide whether there has been a breach of the code. Speaking in January 2012, he noted that “the current scope of the code encompasses all aspects of a Member’s public life—their parliamentary and their public duties—but it does not apply to what a Member does in their purely private and personal life.”<sup>35</sup> He stated that, in his judgment, the code and rules “do not seek to control a Member’s freedom of expression—their views, opinions or policy stance—nor do they seek to regulate how a Member deals with or responds to his or her constituents.” He added: “It follows that, as currently drafted, the disciplinary process that could lead to recall would be engaged only for conduct that comes within the code.”<sup>36</sup> This would have meant, as he pointed out, that several areas of conduct that the public might consider to be wrongdoing—including a situation in which a Member was given a custodial sentence by a court outside the United Kingdom—would not fall under the recall process at all.<sup>37</sup>

32. The Commissioner suggested that one way of broadening the scope of the process would be to accept the recommendation made by the Committee on Standards in Public Life that the code of conduct for MPs should be extended to “allow the House to apply the code and its disciplinary processes where any conduct could be shown to have caused significant damage to the reputation and integrity of the House.” He commented that this would capture wrongdoing such as committing a serious offence in another country, but “the focus would remain on conduct affecting the reputation of Parliament, and not on any other misdemeanour that did not have that effect.”<sup>38</sup>

33. On 12 March 2012, the House of Commons agreed a revised code of conduct. Paragraph 16 of the revised code states: “Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its Members generally.”<sup>39</sup> The revisions mean that conduct that would previously not have fallen under the scope of the code—including the situation mentioned above in which a Member committed a serious offence in another country—would now do so. However, the House also agreed an amendment to insert a new paragraph into the code to state: “The Commissioner may not investigate a specific matter under paragraph 16 which relates only to the conduct of a Member in their private and personal lives.”<sup>40</sup> This means that although the scope of the code has been extended, the Commissioner does not have the power to investigate breaches that relate only to Members’ private and personal lives.

34. Finally, the Commissioner commented that he did not believe that “serious wrongdoing” was a description of “any particular conduct”, but “a description of the gravity of any breach of that conduct”.<sup>41</sup>

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35 Q 55

36 *Ibid.*

37 *Ibid.*

38 *Ibid.*

39 House of Commons, *The Code of Conduct*, paragraph 16

40 HC Deb, 12 March 2012, cols 85-102

41 Q 55



35. It is worth noting that even the extended code still does not cover all the behaviour that the members of the public who took part in the YouGov survey considered to be conduct meriting recall. For example, 60% of respondents thought that not holding surgeries or responding to constituents' letters merited recall. This would not be a breach of the code of conduct. When we asked the Minister whether he thought such conduct should fall under the definition of serious wrongdoing, he was clear that it should not, commenting: "those things are a matter of judgment for constituents to exercise at an election."<sup>42</sup>

**36. We understand why the Government does not want to define "serious wrongdoing". However, it is not clear from the draft Bill and White Paper whether the Government intends serious wrongdoing to be restricted specifically to breaches of the code of conduct for MPs and its associated rules, as the Parliamentary Commissioner for Standards suggested to us.**

**37. Restricting wrongdoing to breaches of the code of conduct for MPs and its associated rules would certainly not cover everything that the public might consider to be conduct meriting recall. However, it would provide a rational and comprehensible basis for making a judgement about conduct. Members of the public who felt that their MP had behaved improperly, but who found that such behaviour did not fall within the scope of the code of conduct, would have the opportunity to express their views at the next general election. Recall should not be a substitute for elections.**

**38. We consider that wrongdoing in the context of recall constitutes a breach of the code of conduct for MPs, while "serious" implies a breach of sufficient gravity that the Committee on Standards and Privileges would currently consider it merited more than a period of suspension.**

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42 Q184 [Mark Harper]

### 3 Conduct of the recall petition

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39. Once one of the two triggers had been met, the recall petition process itself would begin. In the White Paper, the Government states: “Our general approach is that the provisions for the conduct of the recall petition should mirror, as far as possible, those in place for the conduct of parliamentary elections.”<sup>43</sup> Under the Government’s proposals, the formal start of the recall process would be when the Speaker gave notice of the petition to the relevant returning officer, who would then be responsible for conducting the process. The petition would be opened two weeks after receipt of the notice and would remain open for eight weeks. Constituents would be eligible to sign the petition if they were on the electoral register for the constituency. They could sign by post, or in person or by proxy by visiting a single specified location in the constituency. There would be individual signature sheets in an attempt to preserve anonymity. If 10% of those on the electoral register for the constituency signed the petition, the MP’s seat would be vacated and there would be a by-election.

40. Democratic Audit told us: “The procedure proposed by the Government for administering the petition process seems to be a reasonable one.”<sup>44</sup> Other witnesses, however, were critical of the Government’s proposals. Peter Facey, Director of Unlock Democracy, commented: “It is one of the most restrictive forms of recall I have seen, not only in terms of the issues you can be recalled for...but in the way in which you can sign the petition.”<sup>45</sup> Nick Cowen, a policy researcher, stated: “I can think of few other processes that would make a petition less likely to be signed than the one proposed in the consultation document.”<sup>46</sup> We discuss the main issues raised by witnesses who were critical of the process in more detail below.

#### *Single designated location*

41. The Government proposes that returning officers must provide a single designated location within the constituency at which people eligible to sign the petition may do so. Professor Zimmerman, of the University at Albany, State University of New York, commented: “The designation of a single location for signing the petition contained in the Government’s proposals for the conduct of the recall petition process will inhibit to a degree voter participation in a geographically large constituency.”<sup>47</sup> The Association of Electoral Administrators stated: “A single location would be more straightforward to administer but would not be convenient or accessible for all electors particularly in large rural constituencies.”<sup>48</sup>

42. The Association proposed an alternative whereby there would be multiple designated locations and “each of the returning officers with responsibility for the parts of the

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43 *Recall of MPs*, p 25

44 Ev 79

45 Q 4

46 Ev 90

47 Ev 105

48 Ev 82

constituency within their respective local authority areas would take responsibility for the administration of the process in those areas under the general direction and control of the lead returning officer.”<sup>49</sup> **Even a small increase in the number of designated locations would be likely to increase participation. The Government should replace the requirement for a single designated location for signing the petition with a requirement for at least two and no more than four designated locations. The locations should be selected with regard to making signing the petition in person as convenient as possible for everyone in the constituency. Provision must be made to ensure that duplicate signatures are discounted.**

43. Scope raised the issue of the accessibility of the designated location for disabled people. They commented: “We recognise that the White Paper sets an expectation that Returning Officers will be required to take accessibility into account when deciding which location to choose. However, this expectation is not reflected in the draft legislation.”<sup>50</sup> They suggested that the final Bill contain wording similar to that used in section 16 of the Electoral Administration Act 2006, which puts a duty on local authorities to “ensure that so far as is reasonable and practicable every polling place for which it is responsible is accessible to electors who are disabled.” In the case of recall, the duty would be on returning officers, rather than local authorities. **The Government should include in the final Bill a specific duty on returning officers to ensure, as far as is reasonable and practicable, the designated locations for signing the petition are accessible to constituents who are disabled.**

### **Postal voting**

44. As an alternative to signing the petition in person, constituents may choose to sign by post. The Government comments: “This will ensure that those who are unable, or would prefer not, to attend and sign the petition in person will still be able to participate.” It adds: “Absent signing will also allow electors who wish to sign the petition a means to do so privately, without the concern that they may be observed.”<sup>51</sup> The Association of Electoral Administrators were concerned about the arrangement for distributing postal votes. In the White Paper, the Government states: “In contrast to the position at elections, it is envisaged that constituents who have an extant postal vote will not be sent a postal signature sheet automatically but will be sent one only upon request.”<sup>52</sup> The Association of Electoral Administrators said that they were “unclear as to the reasons for this policy decision” and commented that “it could have significant practical implications.”<sup>53</sup> They stated that the arrangement could be “confusing” to people who were used to receiving their ballot papers automatically and added: “It will be necessary to widely disseminate public information to explain this key difference.”<sup>54</sup>

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49 Ev 82

50 Ev 100

51 *Recall of MPs*, p 28

52 *Ibid.*

53 Ev 83

54 *Ibid.*

45. When we asked the Minister why the arrangements for signing a recall petition by post were different from those for voting by post, he replied:

The recall process must maintain political impartiality at all times. Automatically sending out a petition signature sheet to registered postal voters could be seen as soliciting petition signatures. There is also a risk that some constituents may feel compelled to sign something without the full understanding of what it is they are signing due to its authoritative appearance.<sup>55</sup>

**46. We believe that constituents who have an existing postal vote should be sent a postal signature sheet automatically if there is a recall petition. The risk of being seen to solicit signatures, or of constituents feeling compelled to sign, should be minimised by clear accompanying instructions and information about the purpose of the petition.**

### *Secrecy and intimidation*

47. The Government acknowledges in the White Paper that, whereas anyone voting in an election is protected not only by the secrecy of the polling booth, but by the fact that there are multiple options on the ballot paper, the level of secrecy that can be guaranteed is different in the case of a recall petition:

in a recall petition a constituent can only sign the petition to say that they would like their MP to lose their seat; therefore any observer seeing constituents sign the petition, seeing returned petition sheets, or even the issue of incomplete petition sheets to constituents can deduce their views.<sup>56</sup>

48. Keith Archer, the Chief Electoral Officer in British Columbia, commented: “When asked by stakeholders about how the privacy of individuals who sign a recall petition is protected, Elections British Columbia advises that due to the nature of the recall model established in the legislation, signing a petition is a public act.”<sup>57</sup>

49. Professor Zimmerman, of the University at Albany, State University of New York, argued: “To protect the secrecy of signers, the petition form should contain two options: (1) ‘Retain the Member in Office’ and (2) ‘Initiate a Recall Election of the Member.’”<sup>58</sup> When we asked the Minister for his response to this argument, he replied: “Under the proposals, those who disagreed with the petition would have a chance to express that view at any resulting by-election where they have the option of re-electing their Member should they stand.”<sup>59</sup> We agree that offering people the chance to vote for or against recalling their MP would effectively anticipate the process that would take place anyway if the recall petition were to be successful.

50. The UK Government proposes a number of measures to maintain secrecy, including “secondary legislation...[to] strictly limit access to documents relating to a recall petition

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55 Ev 106

56 *Recall of MPs*, p 27

57 Ev 87

58 Ev 105

59 Ev 107

after its conclusion.”<sup>60</sup> The Electoral Commission asked Government and Parliament to consider “whether it is appropriate that the levels of privacy and secrecy found currently in polling stations should be applied to petitions which are, by their nature, public statements which require transparency and verification to support trust in the process and the result.”<sup>61</sup> We share the unease of the Electoral Commission about the measures proposed in the White Paper to maintain secrecy. **A petition is a public document and, given that the Government itself admits that it would be possible to observe people signing it or taking steps to sign it, it may be more likely to inspire public confidence in the long run if the Government were to acknowledge that it is not possible to protect the privacy of people who sign the petition and to be open about its public nature.**

### **Northern Ireland**

51. In the case of Northern Ireland, the Government has gone one step further in an attempt to avoid the intimidation of constituents who want to sign a recall petition. Here, the petition could be signed only by post. The Alliance Party of Northern Ireland expressed “very strong reservations” about this proposal.<sup>62</sup> Naomi Long MP, writing on behalf of the party, outlined three main objections. First, she noted that “the reason for the restriction on absent voting in Northern Ireland elections, namely the risk of voter intimidation and fraud, would equally apply in this case.” She commented: “The risk that people could fraudulently either apply for or use the postal vote of another individual or apply coercion to an individual to sign the petition against their will is of serious concern and the use of postal voting provides no protection whatsoever against this.”<sup>63</sup> Secondly, she stated: “the difference in the method of collecting the petition in different parts of the UK could lead to differential turnouts in different regions, a fact which is not reflected in threshold set for triggering a by-election.”<sup>64</sup> Thirdly, she commented: “whilst the particular circumstances in Northern Ireland give rise to specific concerns regarding the issue of intimidation, it is perfectly conceivable that intimidation of voters could also take place in other parts of the UK”.<sup>65</sup>

52. The Electoral Commission also expressed concerns about the different arrangements for signing the petition in Northern Ireland:

We do not believe it is appropriate to provide significantly different arrangements for electors in Northern Ireland to sign a recall petition than those in Great Britain, given the drive towards greater alignment in electoral law and practice between Northern Ireland and Great Britain.<sup>66</sup>

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60 *Recall of MPs*, p 28

61 Ev 91

62 Ev 89

63 *Ibid.*

64 *Ibid.*

65 *Ibid.*

66 Ev 91

53. Naomi Long MP suggested that one solution would be to have “a recall plebiscite/referendum” instead of a petition.<sup>67</sup> As we noted above, enabling people to vote for or against recall would indeed increase the secrecy of the process, but it would in effect be duplicating the by-election process itself. We are not convinced that this is a satisfactory solution. However, we are uncomfortable with a different process applying in Northern Ireland to the rest of the United Kingdom. **The Government’s proposal to restrict the methods of signing the petition in Northern Ireland to postal signing is not a proportionate response to concerns about intimidation. Everyone who is eligible to sign will be able to do so by post if they wish, so nobody in Northern Ireland would have to sign the petition in person unless they actively chose to do so. We recommend that constituents in Northern Ireland should be able to sign the petition in person if that is what they wish to do.**

### *Signatures*

54. Scope raised concerns about the requirement to provide a signature in order to support the petition: “This would create considerable difficulties for disabled people who may be unable to sign as a result of the nature of their impairment.” Scope added: “We would be concerned if the expectation is for Returning Officers to assist in such cases by signing on behalf of the disabled person, as this would both undermine the secrecy of the process, and potentially lead to allegations of multiple signing and undermine the legitimacy of the process.”<sup>68</sup>

55. **The requirement for eligible constituents to sign the petition in order to show they support it seems to us reasonable. However, the Government must ensure that suitable alternative arrangements are made for disabled people who are unable to sign the petition.**

### *Wording of petition*

56. The Electoral Commission asked whether “there should be any independent user testing of the wording for the proposed recall petitions, in the same way that the intelligibility of referendum questions are assessed by the Commission against published principles.”<sup>69</sup> The Association of Electoral Administrators also suggested that the wording in clause 8 of the draft Bill, which is the text that would appear on the petition, should be tested for plain language.<sup>70</sup> **The clarity of the wording of the petition, and of the accompanying information about the process, should be tested by the Electoral Commission before it is agreed.**

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67 Ev 86

68 Ev 101

69 Ev 91

70 Ev 82

## Henry VIII powers

57. The Clerk of the House of Commons, Robert Rogers, drew attention to “the sweeping ‘Henry VIII’ powers in Clause 19 of the draft Bill”.<sup>71</sup> A Henry VIII clause confers on Ministers the power to amend primary legislation by means of secondary or delegated legislation. In the case of the draft Recall of MPs Bill, the Henry VIII powers are in clause 19(2), and the power to amend primary legislation includes the power to amend the Recall of MPs Act itself. When we asked the Minister why these powers had been included in the Bill, he commented:

In order to ensure that the regulations interact appropriately with the relevant primary legislation, the broad power to amend primary legislation has been included in clause 19. This is particularly necessary in view of the proposed introduction of a system of individual electoral registration.<sup>72</sup>

**We are uncomfortable with sweeping powers to amend primary legislation by means of secondary legislation in a Bill of a constitutional nature and we recommend that the Government remove these powers from the final Bill.**

## Campaigning

58. Once a recall petition has been initiated, people will be able to campaign to have their MP recalled. The Government proposes that there will be two categories of campaigners: accredited campaigners, who must register with the returning officer and who will be able to spend up to £10,000 and non-accredited campaigners, who will be able to spend up to £500 campaigning without having to make any declaration concerning spending. Both the Association of Electoral Administrators and the Electoral Commission raised concerns about the role of the returning officer in this context. The Association commented:

Whilst it is usual for returning officers to receive and hold the returns and receipts relating to candidates’ expenses, it is a significant departure for returning officers to be responsible for registering campaigners, and to have ‘oversight’ of campaign expenditure and donations as suggested in the White Paper.<sup>73</sup>

59. The Electoral Commission noted that “returning officers do not have experience of regulating campaigning, and are likely to need support in order to be able to carry out this role.” They added: “The White Paper proposes that the Commission would have a power, but not a duty, to provide guidance to Returning Officers, but that guidance would not be binding and the Commission would have no role in policing compliance with the rules.”<sup>74</sup> They also stated: “the Electoral Commission does not routinely produce guidance on the regulation of campaigning in respect of electoral events which we do not regulate, and

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71 Ev 61

72 Ev 107

73 Ev 84

74 Ev 92



...taking on this role for a new regulatory regime, applying to a process which is not an election or referendum, would have potentially significant resource implications.”<sup>75</sup>

**60. We recommend that the Government reconsider whether returning officers are the best people to be responsible for the regulation of petition expenditure and donations, or whether the Electoral Commission might be better placed to undertake this role.**

### ***The 10% threshold for signatures***

61. The Government proposes that the threshold required to trigger a by-election would be 10% of those on the parliamentary electoral register for the constituency in question. Our witnesses differed on whether 10% was the appropriate threshold. Nick Cowen suggested lowering the threshold to “10% of total votes cast in the constituency at the previous general election, rather than the total number of voters on the parliamentary electoral register.” He commented: “This would lower the bar to recall in areas of low turn-out, while making it a bit harder for MPs previously elected on a more popular mandate to be recalled.”<sup>76</sup>

62. Other witnesses, however, thought that the threshold of 10% of the electoral register was already low. Naomi Long MP, writing on behalf of the Alliance Party of Northern Ireland, commented: “Ten percent of the registered electorate is a relatively low proportion of the electorate to trigger what is an expensive process of recall and by-election.” She stated: “A more reasonable threshold may be between one fifth and one quarter of the registered electorate, which is achievable, would represent a significant level of discontent with the MP, and which would be less susceptible to abuse.”<sup>77</sup> The Committee on Standards in Public Life noted: “The appropriate trigger level is clearly a matter of judgement, but the relatively low level required could leave the process open to abuse through manipulation of postal or proxy votes.”<sup>78</sup>

**63. If the Government takes the steps we have recommended to make signing the petition easier—having several designated locations and those who have an extant postal vote automatically being sent a postal signature sheet—it should raise the threshold from 10% to at least 20%. We believe this would represent a significant level of dissatisfaction with the sitting MP.**

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75 Ev 92

76 Ev 90

77 Ev 85

78 Ev 88



## 4 The rationale for introducing recall

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### Increasing public confidence in the political process

64. The Government's reason for introducing recall is to provide an additional disciplinary mechanism to increase the accountability of MPs to their constituents in the wake of the expenses scandal. The White Paper suggests that recall will be a means of "restoring faith in the political process" and argues: "It was the behaviour of individual MPs which rocked confidence in Parliament over the expenses scandal and it is right that constituents should be able to express their view on their MP when they have committed serious wrongdoing."<sup>79</sup> This comment emphasises the participatory nature of recall as an accountability mechanism, suggesting that making provision for voters to express their opinion on whether their MP should be recalled is likely to increase their confidence in the political system.

65. Proponents of recall attribute a number of benefits to its use. These include the improvements in accountability and in engagement of voters which the Government wants to achieve. For example, Professor Zimmerman, of the University at Albany, State University of New York, asserts: "The availability and use of the recall in the United States of America reduced voter alienation... and thereby helped to restore public confidence in state government elective representatives".<sup>80</sup>

66. Polling carried out by YouGov provides some support for the idea that a system of recall in the United Kingdom would be likely to increase people's confidence in politics. The survey involved a sample of 1,723 adults and was held between 6 and 7 March 2012. It should be noted that the survey was conducted using an online panel of people who agreed to take part and therefore may over-represent people who are particularly interested in the issue. There is no reason to think that this would bias the survey in one direction more than the other, but it is worth bearing in mind that the views of the general public may be less strong than those indicated in the survey results. The full results are included in Appendix A.

67. A large majority of respondents—79%—thought that the Government's proposal to allow constituents to vote on whether to recall their MP was a good idea. This contrasted with 10% who thought it was a bad idea and 11% who did not know. Respondents were also asked to say how the proposals, if introduced, would affect their confidence in MPs and Parliament. A total of 64% said that it would increase their confidence, of whom 15% said that the proposals would increase their confidence a lot and 49% said that it would increase their confidence a little. This compared to 24% who said it would neither increase nor decrease their confidence, 3% who said it would decrease their confidence a little and 1% who said that it would decrease their confidence a lot.

68. A significant majority of those who gave evidence to us, however, said that the proposals, as they stood, were unlikely to achieve the Government's aim of restoring faith

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79 *Recall of MPs*, p 5

80 *Ev* 105

in the political process. There were three main reasons given for this view of the proposals: first, because they were not genuinely participatory; secondly, because they would rarely, if ever, be used; and thirdly, because, even if they were used, they would be unlikely to have a significant impact on the political landscape. We shall consider each of these propositions in turn.

### How participatory are the proposals?

69. First, a number of witnesses told us that the Government's proposals were not as participatory as they might at first appear. Professor Twomey, of the University of Sydney, said that the proposals created "illusory promises of empowerment".<sup>81</sup> She stated: "It is a proposal that is intended to make it look like the people will be directly empowered to recall their member of parliament, while ensuring that this will probably never occur."<sup>82</sup>

70. We were told that voters might feel disillusioned when they discovered that they were not able to initiate recall petitions themselves<sup>83</sup> and that their confidence in politics would not be increased if the use of recall was controlled by the courts and by politicians.<sup>84</sup> Professor Judge, of the University of Strathclyde, argued that "the restricted nature of the Bill...would do little to assuage public perceptions of a 'unique constitutional framework' that is consciously (and in the case of the draft Bill deliberately) exclusionary."<sup>85</sup> In other words, it might make people feel less involved in the political process, rather than more involved. Zac Goldsmith MP suggested that the promises which the coalition parties had made about introducing recall while in opposition had been reformulated to become less participatory now that they were in power because it "was possible that people might actually make a decision for themselves, and that is a terrifying thing for a government."<sup>86</sup>

### How often would recall be used?

71. The second reason given for the view that the Government's proposals were unlikely to increase public confidence in politics was that recall, if introduced, would rarely be used. Democratic Audit said: "We...doubt that the government's proposals will ever result in a recall election taking place"<sup>87</sup> and argued that the window of conduct which would open an MP to recall was "very narrow and possibly non-existent".<sup>88</sup> Opinions differed as to whether it would matter if a recall mechanism was introduced but rarely used. Democratic Audit suggested that this could undermine public confidence in the recall system.<sup>89</sup> On the other hand, Dr Renwick, of the University of Reading, told us that, based on the evidence

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81 Ev 101

82 *Ibid.*

83 Q 4 [Peter Facey], Q 25 [Zac Goldsmith]

84 Ev 101

85 Ev 98

86 Q 6 [Zac Goldsmith]

87 Ev 76

88 Ev 77

89 Ev 76

of recall elsewhere, he thought that the effect on public confidence of a rarely used recall system would not be “particularly strong”.<sup>90</sup>

## What impact would the proposals have on the political landscape?

72. Thirdly, several witnesses told us that even if the Government’s recall mechanism was used, it would make little difference to the UK’s political landscape. It could be argued that the new expenses regime and other changes introduced in the wake of the expenses scandal have already improved the rigour of MPs’ expense claims and the robustness of the disciplinary procedures, with a corresponding increase in public confidence in the system.<sup>91</sup> Changes have included: the creation of the Independent Parliamentary Standards Authority (IPSA); a new scheme for MPs’ allowances; a review of the code of conduct; and the inclusion of lay members on the House’s Standards Committee.

73. The Clerk of the House of Commons, Robert Rogers, noted that since *The Coalition: our programme for government* had been formulated, the attempt by three former MPs to avoid prosecution for charges relating to expenses, by virtue of parliamentary privilege, had failed, demonstrating that MPs guilty of serious wrongdoing could not escape punishment.<sup>92</sup> Nick Cowen, a policy researcher, commented that the eventual conviction of the MPs guilty of theft and fraud offences relating to their expenses demonstrated that “the system already worked at removing MPs democratically, albeit slowly.”<sup>93</sup> He argued that if it was to add anything, the recall process would need to operate more rapidly than existing procedures. This seems unlikely, particularly in the case of the first trigger of a custodial sentence of 12 months or less, because all legal avenues for appeal would need to be exhausted before a petition was even initiated. Professor Twomey suggested that the length of time it would take for a recall petition to be initiated, which she estimated would be at least two years, would mean it was “likely to be regarded as too little, too late.”<sup>94</sup> She, and others, observed that an MP might well choose to stand down prior to the completion of a prolonged recall process, rendering that process void.<sup>95</sup>

74. The Minister also agreed that the existing system had worked in removing “those people who committed the worst excesses” during the expenses scandal. He commented: “They either did not stand at the election or they were not re-elected, or, in the most serious cases, the criminal law took effect and people have gone to prison...People have seen that the existing processes we had actually did work”.<sup>96</sup> This again raises the question of whether the recall mechanism is necessary.

75. Dr Renwick, of the University of Reading, told us that there was a lack of evidence about recall because it was not used in many places and few political scientists had chosen

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90 Q 17

91 Ev 93; Ev 98; Q 133 [Lewis Baston]

92 Ev 56

93 Ev 89

94 Ev 102

95 Ev 102; Ev 77. This has been the case elsewhere. Of 24 recall petitions filed in British Columbia since 1997, only one resulted in the removal of the politician in question, and he resigned before the process to verify the petition had concluded (Ev 87).

96 Q 185 [Mark Harper]

to investigate the subject. In a comparative analysis of the use of recall, Dr Matt Qvortrup of Cranfield University says that “there is little solid evidence that the recall fundamentally changes the political landscape” and “there is only limited evidence to suggest that the recall has increased the accountability and responsiveness of elected representatives”.<sup>97</sup> Dr Renwick stated that “such evidence as we have suggests that the introduction of recall, either in the restricted form that the Government propose, or in the more extensive form proposed by...other witnesses...would not transform anything significantly in any direction.”<sup>98</sup>

**76. The Government has not made the case for introducing recall. We have not seen enough evidence to support the suggestion that it will increase public confidence in politics, and fear that the restricted form of recall proposed could even reduce confidence by creating expectations that are not fulfilled. The aftermath of the expenses scandal has shown that MPs can be, and are, removed by current processes as quickly as they would be by recall.**

### What are the alternatives?

77. The majority of those who gave evidence to us rejected the model of recall proposed by the Government. Several witnesses put forward alternative ideas, which, they argued, would have the positive effects on accountability and engagement that the Government was seeking. These fell into two main camps: those who argued that the Government should introduce a much more participatory form of “full recall” in which petitions could be initiated by voters, and those who suggested that an additional mechanism for the discipline of MPs was unnecessary, and that it would be preferable for the House of Commons to make better use of its existing disciplinary powers.

### Full Recall

78. The Government argues that it would be inappropriate for an MP to be recalled for “purely political reasons”.<sup>99</sup> In some other jurisdictions, recall is allowed for any reason, including “political” reasons. Arguments for allowing full recall—also known as real or true recall—include claims that it: ensures that officials remain accountable throughout their term and must be responsive to the wishes of their electorate; increases the power of voters over their elected representatives; diminishes the hold of donors and political parties; and increases voter engagement because voters know they have the power to recall their representative if his or her behaviour proves unsatisfactory.

79. Several witnesses told us it would be better to allow voters to initiate petitions at any time and for any reason. For example, Douglas Carswell MP told us that the Government’s proposal was

...deeply and deliberately flawed. Instead of doing what recall should do, which is to make all of us as Members of this legislature outwardly accountable to the people, the

97 Qvortrup, M, *Hasta la vista: a comparative institutionalist analysis of the recall*, *Representation*, 2011, 47:2 p168

98 Q 15

99 *Recall of MPs*, p 17

proposal, I think, will make us more inwardly accountable to Westminster grandees. It will lead, possibly, to the very thing that it's designed to prevent—being judged by what you might call the wrath of the mob, rather than assessed deliberately, calmly and measuredly through a renewed and enhanced system of local democracy.<sup>100</sup>

He proposed an alternative model of recall, which would involve three stages. MPs would face a recall ballot if 20% of their constituents signed a petition, which could be initiated by any voter. MPs would be recalled if a majority of those voting in the recall ballot called for them to lose their seat, and a by-election would then be held.<sup>101</sup> Zac Goldsmith MP introduced a Private Members' Bill which provided for a recall petition to be triggered in a number of different circumstances, including if an MP broke a promise made in an election address.<sup>102</sup> Unlock Democracy proposed that a recall referendum should be held if 10% of constituents signed a petition calling for one within an eight week period and that constituents should be able to initiate the process based “on any issue of their choosing”.<sup>103</sup>

80. A system of full recall, initiated by an MP's constituents, has some drawbacks. Almost inevitably, MPs would be more likely to face recall, and to face it more often, under the full system than under a system with the double lock that the Government proposes. Professor Judge, of the University of Strathclyde, commented on the effect that being subject to recall had on those involved. He quoted Tom Cochran, Chief Executive Officer of the United States Conference of Mayors, who noted: “Most mayors survive recall elections, but the effort drains them of time and energy better focused on problems facing their cities”.<sup>104</sup> The problem of the negative impact of repeated recall attempts is not insurmountable. There could, for example, be a limit of one recall attempt per term in office, which would ensure that MPs were not subject repeatedly to the process. Other drawbacks are, however, more intractable.

81. Dr Renwick, of the University of Reading, drew attention to one such drawback. He noted that some MPs have a dual role: “They are not just MPs for a particular constituency; they also have national offices, in which they ought to be concerned about the national interest.”<sup>105</sup> He continued: “It would be rather undemocratic for the constituents of one small part of the country to be able to recall someone on the basis of what they did in national office, denying the wider public any participation in that process.”<sup>106</sup> Ministers are also local MPs and should be held accountable as such. However, there is a danger that Ministers might be less willing to make decisions in the long-term national interest if they feared that they could face a recall petition because their decision would be unpopular in the short term or unpopular locally.

82. Lewis Baston, Senior Research Fellow at Democratic Audit, commented: “The risk of a more generalised power of recall is people will use it against persons whereas it is actually

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100 Q 1

101 Q 2

102 Recall of Elected Representatives Bill

103 Ev 52

104 Ev 97

105 Q 15

106 *Ibid.*

the party and their policies that are responsible.”<sup>107</sup> He also noted that getting enough signatures to trigger a recall petition “is not just a matter of members of the public coming individually to a decision to do something”, but “a matter for campaigning” and a way in which “powerful interests can take people out who are opponents of theirs”.<sup>108</sup> He pointed to the concomitant danger that a system of full recall may deter MPs from speaking their minds and taking on these powerful interests. It may also deter them from tackling controversial issues.

83. Professor Judge, of the University of Strathclyde, also stated that a system of full recall would ensure that “the ambivalences and ambiguities of representation in the UK would rapidly manifest themselves.”<sup>109</sup> He commented on the complexity of defining what MPs do, and what their constituents expect them to do. The existence of what he describes as “multiple theories of representation prescribing what an MP should do” makes it difficult to see how a system of full recall could work fairly and consistently in practice. **There is not a single, clear job description for an MP and everyone will have their own idea about what behaviour constitutes being a “good MP”. To an extent, individual MPs must decide for themselves what their job entails. If their constituents disagree, they have an opportunity to vote for someone else at the next general election. Differences of opinion about what constitutes the proper role of an MP should not be allowed to trigger recall petitions.**

84. **We believe that a system of full recall may deter MPs from taking decisions that are unpopular locally or unpopular in the short-term, but which are in the long-term national interest. It may also discourage them from taking on powerful interests, or expressing controversial or unusual opinions. The Government argues that a recall mechanism should not leave MPs vulnerable to attack from those who simply disagree with them. We agree. For these reasons, we cannot support a system of full recall.**

### ***The existing disciplinary powers of the House of Commons***

85. The House of Commons already has a range of disciplinary powers at its disposal when it considers that the conduct of an MP merits some sanction. It is open to the House to reprimand or admonish MPs, to withhold their salary for a specified period, to suspend them from the service of the House for a fixed period (during which time their salary would be withheld), or to expel them. Expulsion results in the MP vacating their seat and a writ immediately being issued for a by-election. It does not, however, prevent the person concerned from serving again in the House of Commons, if re-elected.

86. In the past, MPs were expelled for a wide variety of reasons, but recently this power has been little used. As the Government’s White Paper notes, only three MPs were expelled by the House in the last century:

- August 1922, Horatio Bottomley (Independent, South Hackney) following conviction for fraud and a sentence of seven years imprisonment;

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107 Q 138

108 Q 129

109 *Ibid.*



- October 1947, Garry Allighan (Labour, Gravesend) after lying to a Committee and for gross contempt of the House after the publication of an article accusing MPs of insobriety and of taking bribes for the supply of information;
- December 1954, Peter Baker (Conservative, South Norfolk) after receiving a custodial sentence of seven years following a conviction for forgery.

87. Some witnesses argued that it would be preferable for the House to make better use of its existing powers—and particularly the stronger sanctions open to it, such as expulsion—than to be given a new statutory power of recall. Democratic Audit stated:

The House has probably not used its powers of expulsion and discipline sufficiently in recent decades, with relatively minor suspensions being the punishment for even quite severe transgressions such as the cases of Conway (2008), Riddick and Tredinnick (1994) and Browne (1990). We wonder whether exposure to recall petition might be regarded as an alternative to the House of Commons exercising adequate internal discipline in the most serious cases; that a recall petition and election would merely drag out an inevitable process, at cost to Parliament's reputation, where a clean expulsion may be justified.<sup>110</sup>

88. Professor Judge argued: “An alternative to recall...would be for the House to revisit the use of the expulsion procedure.” He went on:

Working from an investigation by the Parliamentary Commissioner for Standards, and after consideration by a reconstituted Standards Committee (if proposals for the inclusion of lay members is accepted), a motion to expel a Member would be moved. Depending upon the circumstances, and in accordance with established custom, a Member would be ordered to attend the House to offer an explanation. If the House accepts the motion the Member would be expelled and a writ moved for a by-election. An expelled Member would be able to seek re-election to the House.<sup>111</sup>

He commented that the advantage of this option was that it simply updated the historic disciplinary powers already possessed by the House of Commons.

**89. We do not believe that there is a gap in the House's disciplinary procedures which needs to be filled by the introduction of recall. The House already has the power to expel Members who are guilty of serious wrongdoing. This should be regarded as an active option; rather than a theoretical possibility. We note that expulsion would not prevent the person concerned standing in the resulting by-election. We recommend that the Government abandon its plans to introduce a power of recall and use the parliamentary time this would free up to better effect.**

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110 Ev 77

111 Ev 94

## Conclusions and recommendations

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1. We recognise the difficulty of defining what constitutes a political crime or a crime of conscience. However, we recommend that, for the purposes of the first trigger of a custodial sentence of 12 months or less, the Government change its decision not to take account of the motivation of the MP in committing the offence. One possibility would be to enable the House itself to decide whether there should be an exemption from a recall petition in a particular instance because of the political nature of the crime. (Paragraph 18)
2. We welcome the inclusion of lay members on the new Standards Committee and consider that this change strengthens it, and arguably further legitimises it, as an arbiter of MPs' conduct. (Paragraph 26)
3. It is not easy objectively to judge the conduct of one's colleagues, but, overall, we consider that the Committee on Standards and Privileges has done so successfully. We are confident that it would continue to be able to do so were one of the sanctions that it could recommend a recall **petition**. This is particularly the case given that in future lay members will be included on the Committee. (Paragraph 27)
4. We understand why the Government does not want to define "serious wrongdoing". However, it is not clear from the draft Bill and White Paper whether the Government intends serious wrongdoing to be restricted specifically to breaches of the code of conduct for MPs and its associated rules, as the Parliamentary Commissioner for Standards suggested to us. (Paragraph 36)
5. Restricting wrongdoing to breaches of the code of conduct for MPs and its associated rules would certainly not cover everything that the public might consider to be conduct meriting recall. However, it would provide a rational and comprehensible basis for making a judgement about conduct. Members of the public who felt that their MP had behaved improperly, but who found that such behaviour did not fall within the scope of the code of conduct, would have the opportunity to express their views at the next general election. Recall should not be a substitute for elections. (Paragraph 37)
6. We consider that wrongdoing in the context of recall constitutes a breach of the code of conduct for MPs, while "serious" implies a breach of sufficient gravity that the Committee on Standards and Privileges would currently consider it merited more than a period of suspension. (Paragraph 38)
7. Even a small increase in the number of designated locations would be likely to increase participation. The Government should replace the requirement for a single designated location for signing the petition with a requirement for at least two and no more than four designated locations. The locations should be selected with regard to making signing the petition in person as convenient as possible for everyone in the constituency. Provision must be made to ensure that duplicate signatures are discounted. (Paragraph 42)



8. The Government should include in the final Bill a specific duty on returning officers to ensure, as far as is reasonable and practicable, the designated locations for signing the petition are accessible to constituents who are disabled. (Paragraph 43)
9. We believe that constituents who have an existing postal vote should be sent a postal signature sheet automatically if there is a recall petition. The risk of being seen to solicit signatures, or of constituents feeling compelled to sign, should be minimised by clear accompanying instructions and information about the purpose of the petition. (Paragraph 46)
10. A petition is a public document and, given that the Government itself admits that it would be possible to observe people signing it or taking steps to sign it, it may be more likely to inspire public confidence in the long run if the Government were to acknowledge that it is not possible to protect the privacy of people who sign the petition and to be open about its public nature. (Paragraph 50)
11. The Government's proposal to restrict the methods of signing the petition in Northern Ireland to postal signing is not a proportionate response to concerns about intimidation. Everyone who is eligible to sign will be able to do so by post if they wish, so nobody in Northern Ireland would have to sign the petition in person unless they actively chose to do so. We recommend that constituents in Northern Ireland should be able to sign the petition in person if that is what they wish to do. (Paragraph 53)
12. The requirement for eligible constituents to sign the petition in order to show they support it seems to us reasonable. However, the Government must ensure that suitable alternative arrangements are made for disabled people who are unable to sign the petition. (Paragraph 55)
13. The clarity of the wording of the petition, and of the accompanying information about the process, should be tested by the Electoral Commission before it is agreed. (Paragraph 56)
14. We are uncomfortable with sweeping powers to amend primary legislation by means of secondary legislation in a Bill of a constitutional nature and we recommend that the Government remove these powers from the final Bill. (Paragraph 57)
15. We recommend that the Government reconsider whether returning officers are the best people to be responsible for the regulation of petition expenditure and donations, or whether the Electoral Commission might be better placed to undertake this role. (Paragraph 60)
16. If the Government takes the steps we have recommended to make signing the petition easier—having several designated locations and those who have an extant postal vote automatically being sent a postal signature sheet—it should raise the threshold from 10% to at least 20%. We believe this would represent a significant level of dissatisfaction with the sitting MP. (Paragraph 63)
17. The Government has not made the case for introducing recall. We have not seen enough evidence to support the suggestion that it will increase public confidence in

politics, and fear that the restricted form of recall proposed could even reduce confidence by creating expectations that are not fulfilled. The aftermath of the expenses scandal has shown that MPs can be, and are, removed by current processes as quickly as they would be by recall. (Paragraph 76)

18. There is not a single, clear job description for an MP and everyone will have their own idea about what behaviour constitutes being a “good MP”. To an extent, individual MPs must decide for themselves what their job entails. If their constituents disagree, they have an opportunity to vote for someone else at the next general election. Differences of opinion about what constitutes the proper role of an MP should not be allowed to trigger recall petitions. (Paragraph 83)
19. We believe that a system of full recall may deter MPs from taking decisions that are unpopular locally or unpopular in the short-term, but which are in the long-term national interest. It may also discourage them from taking on powerful interests, or expressing controversial or unusual opinions. The Government argues that a recall mechanism should not leave MPs vulnerable to attack from those who simply disagree with them. We agree. For these reasons, we cannot support a system of full recall. (Paragraph 84)
20. We do not believe that there is a gap in the House’s disciplinary procedures which needs to be filled by the introduction of recall. The House already has the power to expel Members who are guilty of serious wrongdoing. This should be regarded as an active option; rather than a theoretical possibility. We note that expulsion would not prevent the person concerned standing in the resulting by-election. We recommend that the Government abandon its plans to introduce a power of recall and use the parliamentary time this would free up to better effect. (Paragraph 89)

# Appendix A: YouGov polling results on recall

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## BACKGROUND

This spreadsheet contains survey data collected and analysed by YouGov plc. No information contained within this spreadsheet may be published without the consent of YouGov Plc and the client named on the front cover.

**Methodology:** This survey has been conducted using an online interview administered members of the YouGov Plc GB panel of 185,000+ individuals who have agreed to take part in surveys. An email was sent to panellists selected at random from the base sample according to the sample definition, inviting them to take part in the survey and providing a link to the survey. (The sample definition could be "GB adult population" or a subset such as "GB adult females"). YouGov Plc normally achieves a response rate of between 35% and 50% to surveys however this does vary dependent upon the subject matter, complexity and length of the questionnaire. The responding sample is weighted to the profile of the sample definition to provide a representative reporting sample. The profile is normally derived from census data or, if not available from the census from industry accepted data.

YouGov plc make every effort to provide representative information. All results are based on a sample and are therefore subject to statistical errors normally associated with sample-based information.

For further information about the results in this spreadsheet, please contact YouGov Plc (+44)(0)20 7 012 6000 or email [enquiries@yougov.com](mailto:enquiries@yougov.com) quoting the survey details

## EDITOR'S NOTES - all press releases should contain the following information

All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1,723 adults. Fieldwork was undertaken between 6th - 7th March 2012. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

**NOTE:** All press releases or other publications must be checked by YouGov Plc before use. YouGov requires 48 hours to check a press release unless otherwise agreed. Please note, multiple press releases will require longer.

- YouGov is registered with the Information Commissioner
- YouGov is a member of the British Polling Council

Any percentages calculated on bases fewer than 50 respondents must not be reported as they do not represent a wide enough cross-section of the target population to be considered statistically reliable. These figures will be italicised.

## YouGov Survey Results

Sample Size: 1723 GB Adults  
Fieldwork: 6th - 7th March 2012

[illegible]

The government has said that voters should have a means to 'sack' MPs who are guilty of 'serious wrongdoing'. It proposes to allow voters in individual constituencies to vote on whether to recall their MP – that is, to hold a by-election - if more than 10% of voters sign a petition calling for one to take place.

**In principle, do you think this is a good idea or a bad idea?**

Good idea  
Bad idea  
Don't know

Below are a list of things that people have suggested MPs should be able to be recalled for. In each case please say whether or not you think MPs should or should not face a recall petition if they behave in that way.

### Switching to a different political party

Should face recall  
Should not face recall  
Don't know

Committing a crime serious enough to receive a prison sentence

Should face recall  
Should not face recall  
Don't know

Committing a less serious crime, that does not receive a prison sentence

Should face recall  
Should not face recall  
Don't know

**Not holding surgeries or responding to constituents' letters**

Should face recall  
Should not face recall  
Don't know

79	81	78	81	83	78	82	79	80	67	75	81	85	79	79	83	80	80	78	72
10	11	12	10	9	12	8	13	7	18	9	10	7	11	8	6	11	7	10	16
11	7	10	8	7	11	10	8	14	15	16	9	8	10	13	11	9	12	12	12
52	62	49	62	60	50	51	56	49	39	45	54	62	56	47	49	56	49	51	54
34	29	34	32	29	33	38	32	35	39	37	33	29	34	33	39	33	32	34	31
14	9	16	7	10	17	11	13	16	22	18	13	9	11	19	12	12	19	15	15
91	93	91	95	95	91	94	89	93	79	86	95	97	92	91	88	91	90	94	92
3	1	4	3	1	4	1	3	2	4	3	3	1	3	2	6	2	3	1	1
6	5	5	2	4	6	5	7	5	16	11	3	2	5	7	6	6	8	4	7
56	54	56	55	55	58	57	52	60	44	55	60	59	57	56	57	57	52	59	58
24	28	25	26	26	24	21	30	19	29	23	24	24	24	24	26	25	22	23	25
19	18	19	20	19	18	21	18	21	27	22	16	17	19	20	17	18	25	18	17
60	53	66	62	60	65	64	61	60	38	55	67	68	58	63	56	59	60	63	67
26	34	20	29	27	22	24	26	26	38	28	22	23	29	21	32	27	27	23	17
14	13	14	8	13	13	12	13	15	24	17	12	9	13	15	12	15	14	14	16

Fieldwork: 6th - 7th March 2012

	Voting intention				2010 Vote			Gender		Age				Social grade		Region				
	Con	Lab	Lib Dem		Con	Lab	Lib Dem	Male	Female	18-24	25-39	40-59	60+	ABC1	C2DE	London	Rest of South	Midlands / Wales	North	Scotland
	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Weighted Sample																				
Unweighted Sample																				
Supporting a policy with which you disagree																				
Should face recall																				
Should not face recall																				
Don't know																				
Breaking a promise made in their election leaflets																				
Should face recall																				
Should not face recall																				
Don't know																				
Being caught lying in Parliament																				
Should face recall																				
Should not face recall																				
Don't know																				
Taking bribes																				
Should face recall																				
Should not face recall																				
Don't know																				
Being caught claiming expenses that they are not entitled too																				
Should face recall																				
Should not face recall																				
Don't know																				
Making racist or offensive comments																				
Should face recall																				
Should not face recall																				
Don't know																				
Having an affair/cheating on their spouse																				
Should face recall																				
Should not face recall																				
Don't know																				
Under the Government's proposals a petition for a recall could only be started if there was proof that an MP had committed 'serious wrongdoing', in order to avoid petitions being started for party political reasons.																				
Which statement do you agree with most?																				
Voters should only have the chance to recall their MP if they have committed 'serious wrongdoing'																				
Voters should have the chance to recall their MP for any reason they wish																				
Neither																				
Don't know																				

Fieldwork: 6th - 7th March 2012

	Voting intention			2010 Vote			Gender		Age				Social grade		Region				
	Con	Lab	Lib Dem	Con	Lab	Lib Dem	Male	Female	18-24	25-39	40-59	60+	ABC1	C2DE	London	Rest of South	Midlands / Wales	North	Scotland
Total																			
1723				536	454	388	837	886	208	439	589	486	982	741	221	560	369	424	150
1723	512	495	128	546	412	406	820	903	101	420	714	488	1074	649	222	609	335	414	143
%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%

Under the proposals there would be two triggers for deciding if an MP has committed 'serious wrongdoing'.

Voters could start a recall petition if an MP had committed a crime for which they receive a prison sentence of if the House of Commons passed a vote saying they had committed serious wrongdoing and could face a recall petition.

Do you approve or disapprove of these triggers for allowing voters to start a recall petition?

Strongly approve	38	48	36	35	47	36	34	41	35	23	35	37	48	38	38	42	39	37	38	30
Tend to approve	48	43	49	57	42	50	54	45	50	56	45	50	44	49	47	44	48	50	46	51
<b>TOTAL APPROVE</b>	<b>86</b>	<b>91</b>	<b>85</b>	<b>92</b>	<b>89</b>	<b>86</b>	<b>88</b>	<b>86</b>	<b>85</b>	<b>79</b>	<b>80</b>	<b>87</b>	<b>92</b>	<b>87</b>	<b>85</b>	<b>86</b>	<b>87</b>	<b>87</b>	<b>84</b>	<b>81</b>
Tend to disapprove	5	5	6	4	4	6	5	5	5	7	6	6	3	5	5	6	4	5	7	3
Strongly disapprove	2	1	2	4	1	2	1	2	1	0	2	3	1	1	2	2	2	1	1	2
<b>TOTAL DISAPPROVE</b>	<b>7</b>	<b>6</b>	<b>8</b>	<b>8</b>	<b>5</b>	<b>8</b>	<b>6</b>	<b>7</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>4</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>6</b>	<b>6</b>	<b>8</b>	<b>5</b>
Don't know	7	4	7	1	5	6	6	7	8	14	12	5	4	7	8	6	7	7	8	14

And do you think these triggers would make it too easy for MPs to face recall, too difficult, or would they get the balance about right?

Would be too easy for MPs to face recall	9	12	10	4	11	8	5	9	9	10	6	10	9	9	8	7	9	9	10	4
Would be too difficult for MPs to face recall	17	14	19	20	12	18	21	21	14	22	27	17	7	17	17	22	16	16	16	24
would get the balance about right	55	63	52	61	64	53	55	55	56	42	45	56	70	57	53	54	58	53	55	52
Don't know	19	11	19	15	12	21	18	15	22	26	22	17	14	16	21	17	16	21	19	20

From what you have heard about the proposals to allow recall of MPs, how would their introduction affect your level of confidence in MPs and Parliament?

Would increase my confidence a lot	15	21	13	19	21	14	13	15	15	9	13	15	19	15	14	15	15	13	18	10
Would increase my confidence a little	49	53	45	57	52	43	55	48	49	42	53	47	49	52	45	56	50	47	45	49
<b>TOTAL INCREASE CONFIDENCE</b>	<b>64</b>	<b>74</b>	<b>58</b>	<b>76</b>	<b>73</b>	<b>57</b>	<b>68</b>	<b>63</b>	<b>64</b>	<b>51</b>	<b>66</b>	<b>62</b>	<b>68</b>	<b>67</b>	<b>59</b>	<b>71</b>	<b>65</b>	<b>60</b>	<b>63</b>	<b>59</b>
Would neither increase nor decrease my confidence	24	20	27	20	20	27	24	26	21	21	19	27	24	23	25	18	26	25	23	22
Would decrease my confidence a little	3	1	4	1	2	4	2	3	3	8	2	2	3	3	2	1	1	5	4	2
Would decrease my confidence a lot	1	0	2	1	0	2	0	1	1	1	1	2	1	1	2	1	1	1	2	1
<b>TOTAL DECREASE CONFIDENCE</b>	<b>4</b>	<b>1</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>6</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>9</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>6</b>	<b>6</b>	<b>3</b>
Don't know	9	4	9	3	4	10	7	7	11	20	13	7	3	7	12	9	7	10	9	15

# Formal Minutes

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**Thursday 21 June 2012**

Members present:

Mr Graham Allen, in the Chair

Paul Flynn  
Mrs Eleanor Laing

Mr Andrew Turner

Draft Report (*Recall of MPs*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 89 read and agreed to.

Summary agreed to.

A Paper was appended to the Report as Appendix A.

*Resolved*, That the Report be the First Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (previously reported and ordered to be published on 12 and 26 January, 2 and 23 February, 8 March and 17 May 2012).

[Adjourned till Thursday 28 June at 9.45 am]

## Witnesses

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### Thursday 19 January 2012

Page

**Mr Douglas Carswell MP, Zac Goldsmith MP, Peter Facey**, Unlock Democracy and **Dr Alan Renwick**, University of Reading

Ev 1

### Thursday 26 January 2012

**Rt Hon Kevin Barron MP**, Chair, Standards and Privileges Committee and **John Lyon CB**, Parliamentary Commissioner for Standards

Ev 18

**Robert Rogers**, Clerk of the House, **Liam Laurence Smyth**, Clerk of the Journals and **Michael Carpenter**, Speaker's Counsel

Ev 26

### Thursday 8 March 2012

**Lewis Baston**, Democratic Audit

Ev 33

**John Turner**, Association of Electoral Administrators (AEA)

Ev 40

### Thursday 19 April 2012

**Rt Hon Nick Clegg MP**, Deputy Prime Minister, and **Mark Harper MP**, Minister for Political and Constitutional Reform

Ev 47

## List of printed written evidence

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1	Unlock Democracy	Ev 52
2	Robert Rogers, Clerk of the House of Commons	Ev 55
3	Lewis Baston, Democratic Audit	Ev 76
4	Association of Electoral Administrators (AEA)	Ev 81
5	Naomi Long MP, Alliance Party for Northern Ireland	Ev 84
6	Keith Archer, Chief Electoral Officer, British Columbia	Ev 86
7	Committee on Standards in Public Life	Ev 88
8	Nick Cowen, Civitas	Ev 89
9	The Electoral Commission	Ev 91
10	Professor David Judge, University of Strathclyde	Ev 93
11	SCOPE	Ev 100
12	Professor Anne Twomey, University of Sydney	Ev 101
13	Professor Joseph F. Zimmerman, University at Albany—SUNY	Ev 105
14	Mark Harper MP, Minister for Political and Constitutional Reform	Ev 106



# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2010–12

First Report	Parliamentary Voting System and Constituencies Bill	HC 422
Second Report	Fixed-term Parliaments Bill	HC 436 (Cm 7951)
Third Report	Parliamentary Voting System and Constituencies Bill	HC 437 (Cm 7997)
Fourth Report	Lessons from the process of Government formation after the 2010 General Election	HC 528 (HC 866)
Fifth Report	Voting by convicted prisoners: Summary of evidence	HC 776
Sixth Report	Constitutional implications of the Cabinet Manual	HC 734 (Cm 8213)
Seventh Report	Seminar on the House of Lords: Outcomes	HC 961
Eighth Report	Parliament's role in conflict decisions	HC 923 (HC 1477)
Ninth Report	Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12	HC 1477 (HC 1673)
Tenth Report	Individual Electoral Registration and Electoral Administration	HC 1463
Eleventh Report	Rules of Royal Succession	HC 1615
Twelfth Report	Parliament's role in conflict decisions—further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12	HC 1673
Thirteenth Report	Political party finance	HC 1763

# Oral evidence

## Taken before the Political and Constitutional Reform Committee on Thursday 19 January 2012

Members present:

Mr Graham Allen (Chair)

Mr Christopher Chope  
Paul Flynn  
Sheila Gilmore  
Zac Goldsmith  
Andrew Griffiths

Fabian Hamilton  
Simon Hart  
Tristram Hunt  
Mr Andrew Turner  
Stephen Williams

### Examination of Witnesses

*Witnesses:* **Mr Douglas Carswell MP, Peter Facey**, Unlock Democracy, **Zac Goldsmith MP**, and **Dr Alan Renwick**, University of Reading, gave evidence.

**Q1 Chair:** Welcome, colleagues. It is very good to see you. It is an innovative and interesting experiment that we are considering. There are a number of proposals for the recall of MPs. We now have before us some of the experts and we intend to pick their brains ruthlessly. I hope that parliamentary colleagues will not take the chance to even any scores that they have held against Douglas or Zac over the years. We intend this session to be very informal and conversational and to set our witnesses at ease. Perhaps you would each like to say a few words about your position and how you came to this topic, and give us some general background on your views. Douglas, would you like to kick off?

**Mr Carswell:** I am very much in favour of the idea of recall. I think that it's absolutely essential and one of the few reforms that could genuinely reconnect the remote, aloof political class with the people whom it purports to represent. I've long championed recall. I've published pamphlets. When I was working for the Conservative party policy unit, I wrote papers advocating it.

However, I think that the proposal that has been put in front of us is 180° wrong. I think that it is deeply and deliberately flawed. Instead of doing what recall should do, which is to make all of us as Members of this legislature outwardly accountable to the people, the proposal, I think, will make us more inwardly accountable to Westminster grandees. It will lead, possibly, to the very thing that it's designed to prevent—being judged by what you might call the wrath of the mob, rather than assessed deliberately, calmly and measuredly through a renewed and enhanced system of local democracy. It's a deeply flawed proposal. It's deeply regrettable. One of the things that is key to re-establishing confidence in the political system has been messed up by the people in charge.

**Q2 Chair:** Tell us briefly, Douglas, how your system would work.

**Mr Carswell:** I call the proposal for recall that I advocate real recall. Let me first say what it is not. It is absolutely not about allowing one in 10 or 15% or 20% of people to sign a petition and that's it—you are

then hung out to dry. That is pretty much what the proposal before us is about. Under the real recall proposal, it's a three-stage process. A petition is initiated locally; the complaint is initiated locally. If a certain number of people—I would say one in five voters—sign that petition, you face stage B, which is the recall ballot. It's a yes/no vote. The petition asks the local returning officer to arrange a ballot. Should Douglas Carswell, Stephen Williams, Andrew Turner or any of us face a recall election—yes or no? If more than half the people taking part in that vote said yes, you should be recalled, you would face a by-election. In other words, the hurdle is quite high. It is half your local voters—people who've known you, people who can genuinely assess your performance in the round.

Under the system before us, you're basically thrown to the wolves by a committee of grandees. The key hurdle is 10% signing a petition. In the age of the internet, that could be organised and done in a week. This system is not about outward accountability to the voters. It is about empowering committees of grandees to treat very unjustly MPs like, perhaps, George Galloway, who have slightly contrarian views. It's not democratic. John Wilkes would have been thrown to the wolves by this system. Under real recall, you could trust the confidence of the people whom you are here to serve. I personally would rather face their judgment than those of the commissioners and the Westminster grandees.

**Zac Goldsmith:** I agree with absolutely everything that Douglas has said. I've been advocating true recall for some time. One of the first things that I did as an MP was introduce a Bill on recall of representatives. An early-day motion that reflects that Bill has been signed by 53 MPs. There are many others who do not sign early-day motions, but who would, they tell me, have signed that early-day motion. I have written articles and pamphlets and lobbied the minister relentlessly.

This is potentially a hugely important legislative change. I think that it would genuinely electrify politics. It's fundamentally about boosting democracy—empowering the people. Let me explain the principal reason for that. I'll give an example. If voters in a constituency are unhappy with their MP, if

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19 January 2012 Douglas Carswell MP, Peter Facey, Zac Goldsmith MP and Dr Alan Renwick

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they think that they are represented by the wrong person, they really have only one option—to wait until the general election, which could be up to five years away. They can then either not vote, which is not satisfactory at all, or vote for a different party. In theory, that may be okay. In practice, there are a lot of areas in this country where people are comfortable only with one party. There are safe Labour seats that aren't going to be Tory and there are safe Tory seats that aren't going to be Labour—I'm not sure how many safe Lib Dem seats there are at the moment. However, the reality is that the choice is just not there. Under recall, you would be able to replace your MP with someone from the same party, which means that you could continue to support the party that you've always supported while knowing that you had an MP who was responsive. If an MP has systematically broken every promise made before an election, if they are negligent in the extreme—they decide to go on a series of six-month holidays, one after the other—or if they switch from one party to an extremist party, making their constituents very uncomfortable, there is currently nothing that voters can do except wait for the next general election. Obviously, under recall, that would change.

However, the most important reason for advocating true recall, as opposed to what is in the document before us, is a point that Douglas has made: it would make MPs more responsive. Our principal job as backbench MPs is to hold the Government to account, but after an election, the greater pressure on MPs is not from voters—constituents—but from the party hierarchy. We all know that that's the case. With recall, it would become immediately obvious to all MPs of all parties that the only three-line Whip that really matters, to quote Douglas in a different context, is the three-line Whip imposed by constituents. Again, that would be really important.

What the Government have put forward, in my view, is a pretence at recall. Instead of handing power down to voters, which is what recall is meant to do, it hands power up to a parliamentary committee. I would not want to be one of the members of that parliamentary committee. I suspect that if you ask them when they give evidence next week, they will tell you themselves that they do not want the responsibilities that come with this Bill because they don't think that it's possible for them to act fairly, neutrally, objectively and genuinely in the interests of constituents. It will be an interesting discussion that you have next week. Unless it is amended, the draft Bill, in my view, needs to be rejected by those people who believe in true recall. I certainly would not support the Bill in its current form.

**Q3 Chair:** One quick question. Only so many Members of Parliament would fall foul of this and, having gone through the process, be in the position of losing their seats. Wouldn't there be many others who would not have passed all those thresholds, and would not be in a position of losing their seats, but would have gone through this process and been incredibly damaged by it? They would have to spend a lot of time watching their backs in the constituency—I am putting views that I have heard from other people—

and those who, in effect, were found innocent in the court of public opinion, would none the less be severely damaged, and would have dented media reputations and local reputations. How do we get over that particular difficulty?

**Zac Goldsmith:** I take your point. That is exactly why this Bill is wrong. Under this mechanism, it takes one complaint from anyone, who might be another MP—it does not have to be a constituent—to trigger an investigation. If, for the sake of pacifying, for example, a media campaign against a particular MP, the Committee decides it is easier just to qualify that person for recall and let the voters decide, the MP then faces the challenge of persuading more than 90% of their constituents not to sign a petition. I don't think anyone can do that. The simple fact that you have been qualified for recall would tell many people that you are probably not the right sort of person. So you would lose that first campaign. You would then find yourself in an immediate by-election where the issue would not be the reason for the recall, whatever that reason happens to be. You would be fighting an election against other Members from other parties within the context of national politics at the time. So you would never have the opportunity properly to defend yourself.

Under true recall, the decision is made entirely by local people, not by one person with a bee in their bonnet. We will all upset one or two constituents, and if we don't we are probably not doing our job. You'd have to upset many people under true recall, and my view is that the threshold should be around 20%. That is a major thing. If 20% of constituents sign a petition saying they think this person should be recalled, you would then have a two or three-month period during which you could argue about the issue that led to your recall petition. At the end of that, you either survive or fail, but the decision is taken by local people. That would prevent the kind of vexatious campaigns that I think you were alluding to earlier.

**Q4 Chair:** Peter, do you have any views?

**Peter Facey:** We support recall as a means to improve accountability of elected officials and representatives, not just MPs. We believe it is a way potentially to close the gap between those who are elected by voters and those who actually make our laws and take decisions for us. This Bill in its current form is a disciplinary code for MPs. It is not recall in the sense that it is used anywhere else in the world. It is one of the most restrictive forms of recall I have seen, not only in terms of the issues you can be recalled for—I agree with all the comments that have been made—but in the way in which you can sign the petition. We are talking here about having to get 10% of people to go to a town hall or another official building and sign in a location, or ring up and ask for, effectively, a postal vote equivalent. The likelihood of their doing that within an eight-week period, even if you get through all the other restrictions, is extremely unlikely.

If this Bill stays in its current form, my recommendation would be that the Government do not introduce it, because it would be a waste of parliamentary time and, if anything, would increase

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the disconnect between voters and politicians, rather than closing that gap. What will happen is that there will be a case when someone has done something that the public think is serious wrongdoing, they will think they have the right to recall them, and then they will find that they have absolutely no right to do that under this Bill. Instead, they will feel even more disillusioned.

There is also a strong argument that as well as looking at MPs, this should be about other position holders. One strong example is mayors. We imported a north American model of elected mayors, but we did not import the accountability to go alongside it. What we are doing here is, rather than introducing recall for mayors when we created them, taking the step of going where no national Parliament has gone and introducing recall directly for MPs first, rather than for directly elected positions. I am in favour of it for MPs, but there is a stronger case for MEPs, who have less accountability, and for mayors and police commissioners. In this form, the Bill is not even worth the paper it is printed on—or photocopied on as it is in my case.

**Q5 Chair:** One question to you, Peter, to get Members thinking. For the elected people in our constitution—the Members of Parliament—the proposal is for them to be subject to a further constraint, inhibition or level of accountability. Do you agree with those who say that it is something of a red herring to chase Members of Parliament when the people who really run the politics in this country are those around No. 10 Downing Street, many of whom are not elected, the Prime Minister, who is not directly elected, the media and the senior civil service? All the people who really are the power brokers in our society are completely left aside in consideration of Members of Parliament, who are often there just to make up the numbers.

**Peter Facey:** I have sympathy, but I would not want to go to the extent of therefore dropping recall. Recall is an important connection. There is a serious argument which is that, constitutionally, MPs have all the power, but they exercise only a small fraction of it. The people who limit MPs—I hate to say it—are actually MPs. Constitutionally, you are the most powerful creatures on the planet, but, politically, you neuter yourselves. One of the big revolutions, and perhaps recall can play a part in that, is strengthening MPs. Alongside all the constraints of the political system that we presently have, you will have another balance in that you will be able to go to the Whip and say, “I stood on a manifesto that said we were in favour of this. If I do this, I am likely to be recalled. Therefore, I will not.” In some ways, therefore, we should not look at recall as a stick to beat MPs. It may actually turn out to be a great shield for the independent MP when dealing with a powerful party machine.

**Q6 Mr Turner:** Could you explain by going through the process what has led the proposals in this Bill to be before us rather than your Bill?

**Mr Carswell:** At the time of the Milton Keynes speech given by David Cameron in opposition, at the

height of the election expenses scandal, there was a general acceptance of the idea of recall on the centre right—I am not making a partisan point—which was subsequently followed up by the centre left agreeing with the idea. I know from some of the suggestions that I put forward, and some of the responses to them, that there was a lot of sympathy with the idea of genuine local recall, just as at the same time there was a lot of support for the idea of genuine open primaries, and indeed we had three of them. However, at some point between that Milton Keynes speech and the nine-point proposal that my party put forward during the general election to clean up politics, something got muddled.

I suspect it got muddled because the urgent sometimes squeezes out the important and people who had reflected and understood the detail weren’t involved. Somehow the true nature of recall, which is to make us genuinely outwardly accountable, was lost sight of. Once in government members of the legislature feared that somehow if you went too far down this road, you would have all sorts of vexatious attempts at unseating you. That meant that the confusion and misunderstanding, which perhaps started off accidentally, was never cleared up and Sir Humphrey Appleby came up with a system that he would perhaps like, which is to keep the people at bay, and ministers seem to have gone along with it.

**Zac Goldsmith:** I absolutely agree with that. When you are fighting an election campaign, decentralisation, democracy, localism and so on are attractive things to offer, but when it comes to the crunch, most governments, and ours unfortunately fall into this category, reach a point where they fear the impact of democracy. We had that in relation to the Localism Bill, where the proposed local referendums were first watered down so that they would be advisory and then finally dropped altogether. It was possible that people might actually make a decision for themselves, and that is a terrifying thing for a government. In relation to recall, it is the same thing. Pure recall, which is where the conversation began, has become something that is not recall at all. The reality is that the committee whose job it would be to decide whether an MP qualified for recall would probably look at the code that we all sign up to. You could be the world’s worst ever MP without breaking a single thing in that code because it relates to financial things or, vice versa, you could by accident break the code—for example, by not registering a bottle of wine given to you by a friendly constituent—and it could be a genuine error. That might be an excuse for the committee to qualify you for recall because you are an unpleasant character and not popular in the House. The process that has been put forward by the Government is just not logical, and neither is it an extension of democracy. It is not actually recall, other than in name.

**Q7 Mr Turner:** May I ask you a further question? What would be your alternative to the trivial applications? But you can answer the first question first.

**Peter Facey:** The root of this goes back to the expenses scandal. What the politicians and the parties

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were doing was looking for a way of signalling to people that they would be given more power to clean up politics and of saying, "This won't happen again; we'll find a way of doing it." The problem is that the rhetoric is all about empowering, but the words are "serious wrongdoing." The problem is that it is Parliament and the politicians deciding what the serious wrongdoing is, and not the electorate. That is the root of this. As soon as you try to legislate for serious wrongdoing and you try to find where it is, you get into the difficulty that this Bill is in. Effectively, you try to come up with a quasi-judicial process, rather than a political process, and you end up here, which is unlike any form of recall anywhere else in the world.

You asked how vexatious recall proceedings could be prevented. The standard way of doing it would be to lodge a petition and have a stage before the petition was started, so that you had to have a qualification. So if you allow people to do it, you could say that, if they have to raise 7,000 signatures in eight weeks, which is what the Government are proposing on average would happen under the Bill, in the first stage they would have to raise 1,000 signatures in a very short time. The Government have gone around the world of direct democracy, taking bits from here and there, but they have not looked at some of the other things you could do to enable it. The only other place I know that uses the "going to a place" to sign a petition is Austria, which uses it for agenda initiatives. We have gone that restrictive.

What normally happens in direct democracy is that you have two lots of restrictions—one that limits the scope of what you can do, and the other that makes it difficult to do it. We have gone for both. We have gone for making it extremely difficult to do and saying, "You can only do it for these limited situations." I do not think that a parliamentary committee will ever hang an MP out to dry, in which case you are legislating for something that basically I do not think will ever happen, so why spend time on it?

**Q8 Mr Turner:** May I ask Douglas about what Members are supposed to do when they are, for instance, the Foreign Secretary, who spends half his time going around the world and a quarter of his time in Parliament? There really is not time to deal with it.

**Mr Carswell:** Sometimes, unfortunately, democracy can be very inconvenient to the career ambitions of politicians. I think we would all like to be able to disregard the need to be re-elected and perhaps focus on politics, but, unfortunately, we accept that, in this day and age, you are sent here by the people. Your constituents, wherever they may be, are not some sort of added-on extra that you can think about at the end of the day; they are the reason why you are here. If I also wished to be the Foreign Secretary—I have no such desire—I would make jolly sure that my constituents were happy before I focused on fulfilling my duties as a Minister of the Crown. It is in the nature of democracy that the people who put you here should come first.

Can I deal with the point about vexatious attempts? All of us as elected Members are going to be

concerned about vexatious attempts to use recall to unseat good MPs, and you are right to be concerned. There will be vexatious attempts to get rid of you; it is in the nature of democracy. But the question is how best to prevent vexatious attempts from bringing down good Foreign Secretaries or getting rid of people who, in the national interest, have to make decisions that perhaps local constituents do not like. There are basically two methods. You can have a committee of grantees, as per this paper, which filters out the supposedly vexatious attempts. That is flawed for two reasons. First, grantees are capable of being pretty vexatious themselves—see John Wilkes, who was repeatedly prevented from taking his seat in this House precisely because the elite did not want him to. You can trump up vexatious charges against people with unfashionable views, and I suspect that this will allow the grantees to do that.

Secondly, as a filter, grantees are not good at withstanding media storms. Do you really imagine that at the height of the expenses scandal the Committee on Standards and Privileges would have given Ian Gibson, who I think was treated abominably, a fair hearing? Of course they wouldn't. This proposal would not protect against vexatious attempts at the height of a media storm. On the contrary, good people would be thrown to the wolves. If you really want to make sure that vexatious attempts do not get through, trust the good judgment of the people. If you have real recall, your local voters who have got to know you over many years and can see the good work you will do can make a judgment. It will require 50% of them to vote in the recall ballot that, yes, you should be recalled.

We have some evidence about what people think of vexatious attempts to remove good MPs. Look at the 1997 result in Winchester—the closest we have ever come in this country to having a recall election. It was not a genuine recall; it was, in effect, a judicially sanctioned one. The Tory candidate lost the seat by two votes, cried foul, went to the courts and got a rerun. What did the people of Winchester make of that? They rejected the Tory candidate by 20,000 votes. People who had voted for him only a few weeks before, said, "No, I think you are being vexatious and trying to unseat and overturn a legitimate result." We have nothing to fear from trusting the people; we have everything to fear from trusting the judgment of the elite.

**Q9 Fabian Hamilton:** Thank you, Douglas, for elucidating your views. I have a lot more sympathy with your view, and Zac's and Peter's, on what real recall should be, than with the rather fake attempt before us. I agree with you on both those points. Certainly, you have put a very good case for what real recall is, but isn't the problem the multiple role of Members of Parliament under our unwritten constitution? You just pointed out the problem in your example of the Foreign Secretary, which was something that I was going to raise, and Andrew raised it. If the public do not like a particular Government's policy, will they not take it out on that minister—I know that you have tried to answer that—

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who simply cannot devote the time that he or she would like to constituents?

It seems that the real issue is that we do not have separation of powers. We have a multiple role: holding the Government to account if we are backbenchers or trying to be ministers if we want to pursue a career in the Executive. At the same time, we are representing the very real day-to-day problems of our constituents, which are often brought to us quite wrongly. How many housing cases do you get? I do not know how many council houses you have in your constituencies, but I get a lot of social housing cases—half of them now—that are really nothing to do with me. I should send them to the councils, but I never turn anyone away—no good MP ever does; they say they would like to help. How do you answer the view that recall is tinkering with the problem when the real problem is constitutional—the role of MPs?

**Peter Facey:** I don't think people would recall ministers. The reality is that most people like having a minister as their MP. The higher the profile you have as a politician—party leaders tend not to be defeated in elections. There may be exceptions in future, but at the moment, if you are the Foreign Secretary, it is unlikely that you will face recall. Although I agree with you on separation of powers, the root of this is: is the person who is elected accountable to the constituents? If you accept that constituents can, effectively, hire you, the logic goes that they should also have a mechanism to fire you. There must be restrictions—it must be a sober process and be difficult, but possible, to do. I have seen no evidence that high-profile politicians who take a policy role are likely to face recall. There may have been situations in which someone has stood on a manifesto and said, "I am fundamentally against this," and has been elected but does the complete opposite. I am not sure whether that is because they were a minister; it is because that was their manifesto. If that is the worry here, it is one that really should not be there. This is not the problem of recall.

**Zac Goldsmith:** I take a slightly different view in that there are plenty of examples of decisions that the Government could take that would almost certainly lead to resignations from some ministers. Take the example of an MP, like me, who represents people living under the Heathrow flight path. If I were a Government minister—God forbid—and I was required to vote for a third runway at Heathrow, I know, as a matter of fact, that I would not be the MP at the following election. If I was a minister, I would be sensible to stand down, so you cannot pretend that that link does not exist. I suspect that High Speed 2, as a present example, could have that impact. There are other examples as well. The proposed sale of the forests could have very seriously damaged the author of this report. I may be wrong, but I believe that he represents the Forest of Dean. Is that right?

**Mr Carswell:** Yes.

**Zac Goldsmith:** So there is a link there, and it is unavoidable, but I do not think that that is a bad thing. What it might do is require the Government to apply a little more scrutiny to their own policies. Occasionally, they come up with mad ideas that could do with a little extra scrutiny.

Where I think I differ from Douglas is that I think there are probably a few jobs in Government—not least the Prime Minister, but perhaps one or two others as well—where they are so required to speak for the entire country, even at the expense of their constituents, that you would probably have to insulate them. I would minimise it, but certainly the Prime Minister would be—for as long as he remains the Prime Minister—insulated from potential recall, because it is just too destabilising.

**Mr Carswell:** Very briefly. Fabian, by extension of your argument, we would not ask these poor, put-upon ministers to stand in general elections in a constituency in the far corners of the country and get a mandate. All we are asking for is the right to trigger an election before the five-year term is up. To be a Minister of the Crown, you first have to be elected by constituents.

**Fabian Hamilton:** Under the current system.

**Mr Carswell:** Yes. I will also add that, until 1915—I think I am right in saying—in this country, if you were a member of the legislature and not the Executive and you were invited to join a government, you had to resign your seat and stand in a by-election. That was, like many measures, suspended during the first world war and never reinstated. That ensured that there was, in effect, a separation of powers in this country, and it also meant that every single person who served as a minister in the House of Commons had gone through, in effect, a confirmation hearing among their constituents in order to hold the job. I am not suggesting that we go back that far, but there is something to be said—

**Q10 Fabian Hamilton:** Maybe you should suggest it. My final question is this: is it not your desire and the desire of those who wish to see this recall mechanism put in place really a desire if not to abandon, then certainly to weaken the power of political parties? Is it not fundamentally anti-political parties?

**Mr Carswell:** It is anti-fiefdoms. Seven out of 10 constituencies in this country are in effect rotten boroughs. Seven out of 10 constituencies will not change hands during a general election. In four out of the past five general elections, fewer than three in 10 seats changed hands. You have more chance of losing your job in the House of Commons by falling foul of the party machine than by being rejected by the voters in seven out of 10 seats. I do not think that that is healthy. I want people to have choice and competition as to who represents them. If you can have choice and competition in where you shop, what cinema you go to or where you send your child to school, why should seven out of 10 voters live in one-party fiefdoms where you have no say over who is your MP?

**Fabian Hamilton:** Then change the boundaries.

**Q11 Stephen Williams:** May I first address a question directly to Zac? You said that this would electrify politics, and I internally raised my eyebrows. On the great hierarchy of issues that this Committee considers, where would you place recall as opposed to electoral reform, which I think you were opposed to?

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**Zac Goldsmith:** Recall is probably the single biggest thing that could be done to reconnect or repair the bridge between people and power, because I think it would automatically ensure that every MP, no matter how safe or big their majority, is kept on their toes. If an MP decides to change their position on a significant issue—you could describe it as breaking a promise—they would be required to go around their constituency, hold public meetings and explain why they have changed their position. They could not simply hide in the bunker that Parliament provides.

On that basis, it would absolutely restore the link between people and power, and it would remove for ever, in my view, the complaint that so many people have that their MP simply does not listen to them, because if that were true and if enough people agreed with that, the MP would no longer be their MP. This is huge. I opposed AV because the argument for AV—I know that this is not what we are here to discuss, but it is what you are alluding to—described it as a mechanism that would break the safe seat. I cannot see any evidence that it would do that. The recall would absolutely break the safe seat. There would be no such thing as a safe seat. My marginal seat in Richmond, which, according to the new changes, is becoming Lib Dem, would be no less safe than a 20,000 majority in the shires. It would be my job to perform as an MP just as it would be their job to perform as an MP. I think this is profound and fundamental.

**Q12 Stephen Williams:** But following what Fabian said earlier, is not the real problem that, no matter how well known we would like to think we are in each of our constituencies, in some constituencies that is easier to establish than others? A stable population or an easily recognisable name, for instance, can help, but is it not really the case that the vast majority of people when they go along to vote are actually voting for our parties and not for us? It is often our party leaders who lead us astray and, perhaps, break promises, rather than the individual MP. We all say things in our leaflets that we would like to do, but they may not always correspond with the party manifesto. Trying to establish who has broken what mandate is not quite as straightforward as you are both implying, is it?

**Zac Goldsmith:** One point before you come in, Douglas. That is exactly why you need true recall, as opposed to this nonsense. It enables the electorate to ensure that the person they elected, who represents a party on a series of promises, holds their party to those promises, rather than having to go through the pain of explaining to them at electoral and public meetings why they have broken a promise. That would require much more scrutiny of the Executive and, regardless of whether you vote for the individual or the party, it is equally important.

**Q13 Stephen Williams:** A final question on that, which is directly to Zac, because it is in your Bill. I am sorry that I will not be there to discuss it tomorrow.

**Zac Goldsmith:** Sadly, it will not be discussed.

**Q14 Stephen Williams:** That is another absurdity about how this place works, which needs changing. Clause 1(2)(b)(iii) discusses any Member of Parliament who has “broken any promises made by him or her in an election address”. That comes back to what I was saying earlier about how what we might say locally and what our party says in our manifesto are not always the same, but I presume that you stood on a promise that inheritance tax would be cut for the richest in society. Richmond Park is a wealthy constituency. Will you be submitting yourself for recall because that promise has been broken?

**Zac Goldsmith:** I don’t think MPs submit themselves to recall. They submit themselves to public scrutiny. If enough people in my constituency felt strongly enough about that issue, and if they believed that, even though we are in a coalition, we should have fulfilled that promise, then, yes, I would qualify for recall.

On the point about my Bill, these are suggestions. If you read the Bill, the key thing—the catch-all—is that if people lose confidence in their MP, which can be for any reason at all, and enough people agree that their MP is the wrong MP, they can trigger a recall. There are no conditions applied. It is entirely at the discretion of the local voter.

One final point about the Bill is that I recommended a 10% threshold. Having discussed this ad nauseam with countless colleagues and with experts outside Parliament, my view is that it should be closer to 20%. If I had to amend my own Bill, I would bump it up to 20%.

**Q15 Chair:** Before we go any further, Alan, will you come to the table please? I will keep my three witnesses in place, because the debate will benefit from your observations, gentlemen, unless you have other places to go.

Dr Alan Renwick, from the University of Reading, I will give you the courtesy that I extended to the other witnesses: do you want to make an opening statement?

**Dr Renwick:** First, thank you for inviting me. Generally when I come to events like this, I like to speak as much as possible on the basis of evidence. Alas, this is a case where we do not have terribly much evidence. There are not many places that use recall. For some reason, political scientists have not spent much time investigating those cases that exist. However, such evidence as we have suggests that the introduction of recall, either in the restricted form that the Government propose, or in the more extensive form proposed by the other witnesses here, would not transform anything significantly in any direction. It would not be likely to have disastrous effects, but nor would it “electrify politics”—I, too, wrote down that phrase that Zac Goldsmith used. There is no evidence to suggest that it has a big effect in any way.

However, I have a number of views on the Government’s proposals. First, the restriction of recall to cases of proven wrongdoing is a reasonable one, on balance. The main reason why I think that is the sort of reason that Fabian Hamilton alluded to—that some MPs have a dual role in a parliamentary system. They are not just MPs for a particular constituency; they

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also have national offices, in which they ought to be concerned about the national interest. It would be rather undemocratic for the constituents of one small part of the country to be able to recall someone on the basis of what they did in national office, denying the wider public any participation in that process. It may well be, as I have previously written, that the people of Witney, for example, are very splendid people, but they do not necessarily reflect the views of the country as a whole.

With regard to the concern about vexatious attempts, if you look back to the recall of Gray Davis, the California Governor, in 2003, I have not found a single voice in the UK suggesting that this was a good thing that we ought to introduce in this country. It was uniformly criticised in the media, including by those newspapers—*The Guardian*, *The Independent*—that tend to be very much in favour of opening up the political system. We should just remember that that process looked to these people very undemocratic at the time. There are particular problems with the process in California, and there are features of it that it would be stupid to introduce here and which I am sure we would not introduce, but we should be aware of that.

I, however, agree with the other witnesses on certain points. The notion of giving a committee of MPs the power to decide when a recall should happen is unacceptable. That would not carry public confidence. I think there should be an independent committee making those decisions.

**Mr Carswell:** Voters.

**Dr Renwick:** I also think that, as Peter was suggesting, the restricted nature of the signature-gathering process is not justified by the Government. They have concerns about the secrecy of the ballot and the avoidance of fraud, but they have not, at least yet, justified the claim that those concerns require the very restricted process of signature gathering that they have proposed.

**Q16 Paul Flynn:** In the last Parliament, one MP was so riled by criticism of his expenses, that he calculated that he cost each constituent £4.78. He went to the local press and said, “I will give a fiver to anyone who writes to me to say that he’s not satisfied with my service and not getting value for money”—a very rash thing to do. Instead of its costing him a quarter of million pounds, it cost him £30, because only six actually wrote in. The point I am making is that you would imagine that the electorate, particularly his opponents, would have been electrified by this offer of a free fiver. They were not; they remained inert. Is there not a chance that we are overstating—particularly with your 50%, Douglas—the reaction of the electorate on this and their desire to move?

**Peter Facey:** The reality is that recall, if introduced, even in the form that we advocate, would be rarely used—should be rarely used. You would not want recall to be the norm, with every MP facing a recall election. That would not happen. We are talking about the amount of public anger needed to get through the 10% threshold in the way that the Government have set it. Even if you opened up the cause and you basically said that the public can decide, the numbers

would have to be very high actually to trigger a recall ballot. If you put the recall ballot in between and just took the Government’s proposal for very restrictive signature gathering, the amount of anger you would have to have to mobilise, in your constituency, people to go to one central location. In mine—I live in rural Cambridgeshire—you are talking about people driving probably for half an hour or 40 minutes to get to the place, standing in a queue, signing and going away. To get 10% of the electorate in eight weeks to do that, or to ring up and request a postal ballot and have it sent to them and then sign it etc, would be quite a large demand. This is not something that you can trigger easily. That is why I am surprised the Government have gone for such a restrictive signature-gathering process and then limited the causes you can do it on as well, to the point where it will become meaningless.

**Mr Carswell:** Real recall’s requirement of having 50% of people vote for you to be recalled almost by definition means that, in the locality you represent, there has to be a groundswell of opinion that whatever it is you are accused of doing, you have done something wrong. This proposal, by definition, requires only one in 10 people to object. The only requirement to throw you to the wolves is that people, perhaps a committee of grandees in Westminster or an independent panel—perhaps you could call it the Guardian Council, like they have in Iran—regard you as not being fit to serve in the legislature. Since the times of Charles I—I find extraordinary the idea that we should have an independent panel sitting in judgment of members of the legislature. We do have an independent panel: it is called the voters and they should be the ones who make that decision, not a committee of experts.

**Zac Goldsmith:** I don’t think it’s possible to come up with the definitive definition of wrongdoing. I don’t think that’s possible. The Parliamentary Commissioner for Standards has made that point. I won’t quote him as we haven’t got time but the point has been made repeatedly. I don’t think it is possible to do it. What constituents might regard as intolerable negligence or rudeness, or a failure even to set foot in the constituency from the day of the election—none of those things are against the code, so how is it possible for a parliamentary committee or a committee of other very noble experts to make those judgments? I simply do not think it is possible, which is why I don’t think this will happen, except perhaps under media pressure in the odd circumstance, or perhaps where there is a maverick or lively MP who hasn’t found many friends in this place.

**Paul Flynn:** It was a pleasure to hear you refer to Ian Gibson, who was part of the collateral damage of the expenses scandal, quite unjustly. It is fine to see Tory MPs who Jacob Rees-Mogg would refer to as tigers, rather than Bagpusses. Unfortunately, I think you are in a minority on this.

**Chair:** Keep to the point, Paul.

**Q17 Paul Flynn:** The suggestion is that we might introduce a reform that will create more disillusionment and disappointment, and we all agree that we have at least a decade’s task of trying to



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rebuild confidence in Members of Parliament. If you take e-petitions, which I think you might have supported a while ago, there was a great deal of support and they were going to be the voice of the people. There is now some criticism that, rather than being the voice of the people, they have actually increased the power of the tabloid press, because the successful e-petitions are the ones that have had the support of the tabloid press, rather than ones that might have enjoyed popular support. Do you see a sense of disillusionment on e-petitions that is likely to be repeated if we have a poor recall Bill?

**Dr Renwick:** It is always the case with the introduction of a new mechanism that you start off with a blaze of interest and that pretty rapidly dies. There is a concern, which Peter in particular has raised, that, if you have a recall mechanism that is not possible to use in many circumstances, that adds to disillusionment with the political system. That is a legitimate concern, but I do not think that the effect would be particularly strong here. We already had calls for the recall of Lib Dem MPs last year from students who were concerned about tuition fees before any legislation had been introduced, simply because the idea of recall is now on the agenda. Once you have the idea of recall on the agenda, you may get that kind of concern whatever the legislation might be. Similarly, if you look at those American States that had recall for many decades—in the 1940s, 1950s and 1960s, they had the legislation on the books—it was never or very rarely used and it simply died out of public consciousness. So I don't think you can really form very strong expectations for what is going to happen there. Sometimes it will be used, sometimes it won't be used. Sometimes it will be a matter of public concern and sometimes it won't be.

**Q18 Chair:** Is this a treat for the media?

**Mr Carswell:** E-petitions tell us something very positive about the mood of people if you trust them. Critics of the e-petition system said it would lead to mob rule and mob proposals. As a small-state liberal who dislikes authoritarian government, I am very pleased to see that the 10 proposals with the highest number of signatories—yes, they are supported by tabloid newspapers, perhaps because their readers support them and they feel they have to get behind them—are asking for good, decent, sensible, liberal things such as the disclosure of information about the Hillsborough tragedy. Maintaining the ban on capital punishment is beating the proposal to restore it by a margin of three to one. It shows that if you trust the people with direct democracy, they are sensible and they are not a mob.

**Zac Goldsmith:** Arguments against genuine recall, arguments against direct democracy are actually arguments against democracy itself. You either believe in letting people decide or you don't. I think the proposals as they are set out will lead to disappointment. The only thing worse than not handing power back to people is pretending you are handing power back to people, which is what is happening here. I forget the final point, I'm sorry. I wouldn't mind commenting on the Gray Davis result. I think it is astonishing to describe that as

unfair. We might all find it unfair when we are booted out eventually. Most of us will be booted out of office unless we are lucky enough to do it on our own terms but we might regard that as being horribly unfair. We might think that we have been misread by the electorate. But that is democracy. Clearly a majority of people in California, under fair conditions, regarded him as being a representative in whom they no longer had confidence. Whether we like it or not, that is democracy. I just don't see any arguments against that. Incidentally, it is the only example in California's history, I believe, where there has been a successful recall. There have been endless attempts. Ronald Reagan—they tried it twice against him; Jerry Brown: twice. This is the only successful attempt. So you have to imagine there was good reason to depose him. That said, there are problems with the rules in California in relation to money. It is far too weighted in favour of those who are able to raise extraordinary sums of money. But that is a detail and that is something that you can deal with through the legislative process.

**Chair:** There are two questions here. One is winning a campaign to get recall and the second is getting the Government to put a sensible proposal before the House for discussion.

**Q19 Simon Hart:** One question with two parts, which I hope is fairly straightforward. I start from the position of being pretty sympathetic to the real recall proposals and pretty mesmerised by the Government proposal. Going back to a comment that Stephen made earlier about what constitutes a broken promise, is not changing parties halfway through perhaps a broken promise and would that automatically trigger recall under your proposals? If it did, I think that would attract attention. Historically, that is probably one of the few things which really does generate significant anger in a constituency. That is one point.

Connected to that, there may be circumstances, going back to the vexatious point, where a particularly vicious media campaign in somebody's region or a particularly vicious pressure group could stir up sufficient interest to result in recall. In those circumstances, what are your proposals on the right to appeal against a recall decision that might go wrong for an incumbent? You may say there is none and that's tough; it's democracy, live with it. You may be right, but I just wondered if there is any provision for cases whereby somebody might have deliberately misled a constituency, leading to somebody's unfair dismissal.

**Mr Carswell:** Taking the last point first, if more than half the voters in a ballot that says, "Should Douglas Carswell be recalled? Yes or no?" say yes, by definition they are right in a democracy. I may well find that I am subject to vexatious and vicious campaigns. So far that has not happened, mercifully, but it may well be the case that that happens. If I have been doing anything right over the past seven years I hope that the 70,000 people I have tried to represent will be the best possible body to judge whether I am up to doing the job. It goes back to this idea of who decides whether you are doing a good job.

You asked whether you should have a recall if you change party. No, I don't think you should have to

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face a recall if you change party. Parties would perhaps be able to throw one or two slightly rebellious, troublesome characters out of their ranks if that were the case. It would perhaps empower the party hierarchies to help them whip people through the right lobbies. Part of the problem with democracy in this country is that it is a two-and-a-half brand, generic game. People want a re-personalisation of the political process. The internet allows that re-personalisation process to happen. These sorts of reforms—open primaries and recall—are a way to give people that re-personalisation of politics that they crave.

**Peter Facey:** You are right: there's a large amount of anger in a constituency when an MP crosses the Floor, particularly if they do that at the beginning of a Parliament. There's an argument that the MP could say that his party left him—he stood on a manifesto and his party has completely changed. However, it's very difficult to say that when you cross the Floor within months of an election.

I agree with Douglas. It shouldn't be a requirement written in that if you cross the Floor, you face recall. The voters should be able to recall you because of it, but that should be because they've lost confidence in you—because you promised them one thing and you've delivered a different thing. I have with me the list of all MPs who have crossed the Floor. In lots of cases, it's for reasons that I think their electorate would understand, but I think that, in some cases, people would say that they had been conned at an election.

**Q20 Simon Hart:** I absolutely agree with that, but why should the MP in question, the party that they represent or, indeed, anyone else be the slightest bit concerned about an automatic by-election in those circumstances? If we're confident that they are confident in our ability and that it's simply that everyone else has changed and we haven't, put it to the test. I have no problem with that.

**Peter Facey:** Yes, but I would prefer to leave it to the voters to decide to recall you themselves, rather than there being a mechanism written into the law. If you go with the slightly insane mechanism of trying to define all the wrongdoing and you turn it into a quasi-judicial process rather than a political process, then why you can't recall someone for in effect being elected on false promises, I don't understand. I think that the better way of doing it would be to go to a completely open process that you accept is a political process, not a judicial, disciplinary one, and to leave it to the electorate to decide whether they want to recall you, rather than a Chief Whip being able to use it as one of the disciplinary things that they do in relation to a recalcitrant MP.

**Dr Renwick:** I agree with most of that. If you have triggering conditions, it would be sensible to add some triggering conditions to those that have been specified already. It would be perfectly reasonable for one of those to be Floor crossing. Another would be failure to attend the House beyond a certain minimum. You could add further points to what the Government have specified.

**Zac Goldsmith:** Under true recall, if there was demand for a by-election, it would happen, so you wouldn't be wasting people's time by automatically having one. If there was demand, it would happen. I don't think that there should be any automatic triggers at all, except perhaps—this is included—if you're sentenced to more than 12 months, but even that I'd be happy to remove. There are examples of MPs having stood up against a policy as martyrs. Terry Fields is an example of someone who refused to pay the poll tax and he was jailed for 60 days. Should that lead to an automatic recall? I don't think so. He probably commanded the support of his constituency. That is what I am told; I don't know. But under true recall, it would have been for constituents to decide. Does he command their confidence or not? Should he be recalled or not? I think that in the case of Terry Fields, the implication is that he probably would have been, and it would have increased his majority. That is the test. However, I wouldn't have any automatic conditions at all.

**Q21 Chair:** Shall we call this total recall? We mentioned Schwarzenegger in another context earlier. If we had had the full recall package that I think three of you are proposing, how would that have played out during the expenses era, when MPs' personal, private financial records were stolen and put out by the media? Would there have been a feeding frenzy throughout the land? Would such a system have helped with the view of whether Members of Parliament and politics were honourable and an honourable profession?

**Mr Carswell:** I don't think that the expenses scandal would have occurred if we had had recall. MPs would have constantly been aware of who sent them here, which would have moderated their behaviour. MPs who did wrong were found out by the media and by digital technology that allowed evidence of their wrongdoing to come to light. Let's say that we had had recall from the beginning. I shouldn't think that there would have been a single Member of Parliament who wouldn't voluntarily have published their expense claims online from day one anyway. Recall allows openness, transparency and accountability. It's precisely because we don't have that sort of mechanism that we're in this mess.

Some people have found evidence of a correlation between wrongdoing on the part of MPs and the size of their majorities and the safeness of their seats. I have not seen the evidence myself, but it would not surprise me if there is a correlation. If you are in a safe seat, which you regard as a fiefdom and a sinecure, you are not as responsive, responsible and moderate in your behaviour as if you are not.

**Q22 Chair:** So completely innocent Members of Parliament, in those circumstances, would not get caught up in a media-led feeding frenzy of "throw the rascals out".

**Mr Carswell:** I think Ian Gibson would not have been treated the way he was, if there was real recall.

**Zac Goldsmith:** I think it would have improved the situation. You had a witch hunt conducted by people in this place who were terrified of the backlash—

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rightly so; it was a legitimate backlash. I think decisions were made in an irrational manner, and I think in those circumstances, had I been caught up in that, and had I been accused of fiddling the expenses system and buying things I should not have bought and charging it to the taxpayer, the very best and most dependable and reliable jury that I would have wanted to turn to would have been the people in my constituency. I know that if I made the case, were I innocent, I would trust them to make the right decision, but I do not trust, necessarily, all my colleagues, wonderful though many of them are.

**Peter Facey:** If the expenses scandal happened then I think you have to accept there would be a degree of feeding frenzy. I agree with Douglas; I think if you had recall in the first place it is less likely the scandal would have happened.

**Zac Goldsmith:** But that is not a bad thing.

**Peter Facey:** No, I agree. I think that those MPs who found themselves being pilloried for buying a Mars bar or other things, on Tesco receipts when it turned out that they had not claimed it on expenses, but the item just happened to be on the same receipt, would have very quickly been effectively found innocent in that process, because the difficulty of getting the number of signatures we are talking about, even under true recall, would have meant that it would not have happened in reality.

Now, there would have been MPs, under those circumstances, who were recalled. I happen to think that is a good thing. If you believe in recall, you cannot say that in one of the biggest scandals to hit a western Parliament, nothing would have happened; because if nothing would have happened then we should not have recall—what would be the point? Those MPs who found themselves effectively smeared, without any ability to talk to their constituents or actually defend themselves, would have been able to go out and say, “Look, these are the facts.” Ultimately, I trust the electorate as a better court or judge of MPs than I do editors of newspapers or, for that matter, parliamentary Committees or other forms of discipline. Ultimately, I think it would have increased the sense of respect for MPs, rather than decreased it.

**Dr Renwick:** I agree that total recall would have worked fine in the circumstances of 2009. I think the problems with that system are not associated with that kind of circumstance; but I do not agree that total recall would have prevented the expenses scandal. I have looked at the correlation between expenses claims and the safeness of majorities, and there simply is not one. There is no evidence of greater probity among office holders in those jurisdictions that already have recall. I think we should not imagine that introducing any form of recall mechanism is going to have a transformative effect on the nature of behaviour in public life.

**Q23 Mr Chope:** Do you know of anybody who supports this Government draft Bill, other than the Government?

**Mr Carswell:** No.

**Q24 Mr Chope:** So really this is just a gesture by the Government, using the word “recall” to give the impression that they are doing something, when actually they are probably undermining the current system, even to a greater extent than they have already?

**Peter Facey:** I would call this tick-box consultation, in the sense that it is the sort of thing that sometimes companies do with employment policies. It is, “I’ve got a list of things, and I’ve ticked them.” Effectively, the Government have met a manifesto commitment by saying, “We will bring forward proposals on recall. Oh—we have done it.” The fact that they are completely—sorry—panting and do not do anything at all still means they tick the box. I would not normally, when somebody comes forward with a mechanism to increase accountability, tell a Committee like yourselves that there is no point in bringing it forward in this form. If somebody who believes in this stuff, as I do, is telling you, “In this current form, don’t bother”, I don’t know why you would, because effectively this Bill will not do what the Government want it to do. I agree with Alan; I am not saying that, even in a full recall, it will have a completely transformative effect on everything, but I believe such a reform would be helpful.

This would not be a helpful reform; it will just be a waste of time and money and would make Parliament even more of a laughing stock than it already is, in some people’s view.

**Mr Carswell:** Just like open primaries, it seemed like a compelling, attractive idea to pick at, at the height of the election expenses scandal. The problem is that, when its implications were fully understood—the world looks very different when you have a ministerial Red Box in the back of your car—there was a realisation that if you are in Government, these things may not be, to use the terminology, helpful to you.

If MPs suddenly start treating every Government-sanctioned Whip as an advisory, but treat the only three-line Whip that counts as the one from the people, suddenly people will start to behave as members of an independent sovereign legislature and may say, “Actually, I don’t want my money misspent this way. I don’t want these grand schemes to go ahead.”

If you had proper open primaries and proper recall, politics would be a very messy, mucky business and it would be a complete nightmare getting the Government’s business through the House. That would be good for the rest of us who are not in the Government, but there are implications in respect of what this would do to enliven and restore the legislature. The people would once again control Parliament and once the people controlled Parliament again, Parliament would insist on controlling the Government—and guess who doesn’t want that to happen.

**Q25 Mr Chope:** Am I correct in saying that you tried to ensure that there was a power of recall in relation to police and crime commissioners? You made the point earlier that they will be directly elected and, once they are elected, if they turn out to be lazy and useless—

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just taking their salary and nothing else—nobody will be able to do anything about it until the end of their term of office, which will create a lot of disillusionment.

Why didn't the Government use the recall mechanism and incorporate that into the Bill so that it could be used against police and crime commissioners? In my view, that should apply to failure to carry out your activities—not necessarily only illegality. I recall that one of our Conservative colleagues got fed up with the Whips during a Parliament and gave up being a Member of Parliament: he drew the salary but did not attend or ask any questions, and that went on for three or four years, so his constituents were effectively not represented. He did not do anything illegal. We could get police and crime commissioners who are equally useless, but against whom there is no sanction.

**Mr Carswell:** My preference is that all elected public officials, in a Goldsmith utopia, would be subject to recall and that unelected public officials would be subject to confirmation hearings, but we are some way away from that.

**Zac Goldsmith:** I agree with the premise of your question 100%. Can you imagine the disappointment, then, if this thing goes through as it stands and people are led to believe that we have a recall mechanism, only to find that, in respect of the things that they think are wrong—for example, not being represented for three years in Parliament—the parliamentary Committee that is established does not agree with them and they can't recall their MP unless he or she breaks a technicality or a code or breaks the law in, perhaps, a minor way? This will lead to real disillusionment and will do so much more harm than good. It has to be rejected. But as you hinted at the beginning, I have not met anyone yet who is enthusiastic about supporting it, which is good news.

**Q26 Chair:** And if 49% of people have that view about that MP who has not attended for three or four years, that is a definition of his doing a reasonable job—if he gets away with it.

**Zac Goldsmith:** Yes, absolutely.

**Q27 Tristram Hunt:** I still fail to see—if the international example is that, actually, the use of recall is not particularly strong—how this is going to suddenly revive the sovereignty of Parliament and MPs, when we know from our comparative analysis that it does not happen. So even if we have the full recall, how will this give us the results that we want?

**Mr Carswell:** First, the knowledge that you can be fired by your boss tends to moderate behaviour. If you know that you face recall and that the possibility of recall is there, it moderates politicians' behaviour. Often people look at states in America that have recall and comment that it is very rare that recall is even initiated, let alone triggered, but it is the fact that it could happen that means that people are responsive—they have surgeries, they attend constituency events.

**Q28 Tristram Hunt:** On that point, is it a state-by-state law in the US? And has any political science work been carried out on the relative nature of Congress or Senators where there is recall in the US?

**Peter Facey:** There is only recall at a state level. So, congressmen and senators are not applicable in that sense. It tends to be governors, and a few places have recall for members of the state legislature. Most places have it for figures like mayors and directly elected officials.

**Mr Carswell:** Tristram, if I may say so, in the United States, even in rock-solid Republican or Democrat areas, the open primary process means that there is choice and competition as to who gets to be your representative. In this country, there is simply not that choice and competition. In seven out of 10 seats in this country, a few dozen people—usually in party hierarchies in London—get to decide who gets to be the next MP. So, this process could be transformative, because it could allow accountability, choice and competition in seats where there simply isn't any.

**Q29 Tristram Hunt:** Okay. I have just a couple of brief questions. I don't know if you both voted for the Fixed-term Parliaments Act 2011, but now that we have potentially the longest parliamentary system outside Rwanda—five years, three months—do you regard the power of recall as being of extra worth and value, given that the capacity of the electorate to check their representatives has been markedly diminished by this Government?

**Zac Goldsmith:** Absolutely. I think that it was important, regardless of fixed-term Parliaments, but I take your point; it increases the importance of recall. And regarding your previous question, if you don't mind my jumping in, you are right—everywhere that recall is used, it is minimally used. I think that British Columbia in Canada has had 24 attempts, but only two have reached the correct number of signatures and only one of those was successful. I think that in California there were 111 attempts—unless my maths is wrong—with four of them reaching the correct number of signatures and only one of those went through.

However, as Douglas suggested earlier, I think that the existence of recall would improve the performance of MPs—for sure. Take the tuition fees example. I think that it would have been a requirement under recall for Lib Dem MPs to travel around their constituencies explaining to each and every person why they took the decision they did. And I happen to believe that in the constituencies that I know—my neighbouring constituencies—they would have survived. Ed Davey in Kingston actually did this; he undertook this process, regardless of recall. I believe that if there had been a recall attempt on that issue in Kingston, he would have sailed through it. So I think that recall would have improved people's performance, and that is perhaps why there are so few successful attempts.

**Mr Carswell:** Can I come in with one point? Perhaps one thing that recall might change is something that is intangible; it cannot be measured. I often hear complaints on the doorstep when I am out canvassing, both in my own constituency and in others, that, "All you politicians are the same—you don't say what you mean and mean what you say. You say anything to get elected." Perhaps if we had recall, it might encourage people like you and me who are standing for office

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not to over-promise, to say what we really believe and to say what we think, rather than regurgitating the party manifesto, and to have a certain sense that we can't promise the earth—we can only do what we can do. I think that if politicians started to do that, perhaps we might trust them a little bit more and have greater respect for them, and we would recognise that there were limitations to what politicians could do, but we would have more faith in what they said when they said they would do something.

**Q30 Tristram Hunt:** On the issue of democratic accountability, Zac, in your Bill—in paragraph (3)(b) of clause 2, “Recall elections”—you suggest that “under a system of proportional representation, the next candidate on the relevant party list shall take the seat.” You suggest that that should happen rather than an election. Why is that?

**Zac Goldsmith:** It is complicated with PR; it is one of the reasons why I don't favour PR in any system, because I think that you lose that local and direct accountability. However, my view is that recall should apply to anyone in a position who has been elected: mayors; particularly councillors; MPs; and so on. But I think that it should also apply to MEPs. How you apply it to MEPs is more complicated and I think that it is open to a broader discussion. In my Bill, I suggest a mechanism, but there are other mechanisms out there. My principal interest is in relation to directly elected representatives, such as MPs and councillors, where the system is so simple that it is extraordinary that they've managed to muddle it up. With MEPs, however, I accept that there is a discussion to be had. But that mechanism in my Bill is one mechanism that has been put forward. If you can suggest alternatives, I will notionally amend the Bill, because it is a genuinely difficult issue.

**Q31 Tristram Hunt:** And why the move from 10% to 20%?

**Zac Goldsmith:** Because I think recall needs to be possible, but I don't think it should be easy. I think there needs to be real support for recall, or real disillusionment with an MP before the process begins. I think that 10% is possible, but if 17,000 of my constituents signed a petition saying that they had lost confidence in me, I could not say, “It's a political game—it's shenanigans and I'm the victim of a Lib Dem smear.” I would have to accept that that is a significant number of people and I would have to respond. Ten per cent allows a little more scope for vexatious campaigns—the time-wasting campaigns. Twenty per cent feels right to me, but, again, I think that is a decision we should take in this House—15%, 10%, 25%. In Canada, British Columbia goes for 40%, which I think is far too high, but I think that 10% is on the low side.

**Peter Facey:** If you look at the mechanism in the Government Bill, you will see that 10% is actually quite high in the context of the Bill. If you opened it up, but kept the 10% and all the things in it, you would not be talking about a petition in the sense that we normally think about it. You are talking not about me going around and you signing your name on a normal petition, but about making it very difficult for

you to sign, having to effectively go to a place to do it, and having to effectively apply for the equivalent of a postal vote to come to your house. To get 10% in the way that the Government propose will, I think, be a sufficient hurdle, because it is on the most restrictive end of direct democracy. They have basically modelled it on Austria, which has an extremely conservative mechanism.

**Dr Renwick:** I agree. I encourage the Committee to try to get an answer from the Government about why they have introduced this mechanism. If they tell you it is because we don't have a record of people's signatures so you can't have a process whereby people sign a petition and then you check the signatures afterwards, don't believe them, because you can perfectly well have a process of looking at a selection of the signatures that have been submitted and contacting those people to check that they did indeed sign the thing. That process is used in a number of US states, so they haven't justified their proposed very complex signature collection process, as far as I can see.

**Q32 Tristram Hunt:** As scholars of recent political history, can you lay out, without libelling anyone, where, in the past five or seven years, you think a recall ballot and election would have been most likely to take place? If Zac's Bill were in place, can you, in a sort of counterfactual history, give a sense of where that might have happened, just as an example?

**Mr Carswell:** I am not going to name names, but I think it is most likely to have happened where MPs treat their constituencies as a sinecure—a fiefdom—and as what they need to do in order to be part of this club in London. Perhaps there are some MPs who do not hold surgeries, who do not respond to letters, and who promise things at election time and then do not deliver on them. Those are probably quite local and specific things. If you don't show an interest in your constituents, I imagine you will fall victim to real recall, but I doubt that a committee of grandees in Westminster could ever devise a code of practice where you would fall foul of wanting to be part of the grandees in Westminster.

**Zac Goldsmith:** That is exactly the point. We can't do it, because all those things that Douglas just cited are things that ordinary voters would cite if they were upset with their MP—broken promises, didn't answer a letter and so on. None of those things would come close to breaking the code that Christopher was talking about earlier, which is why it is impossible to encapsulate this.

The expenses scandal was a different thing. There were specific cases there that triggered real alarm and there were MPs who, had they not been booted out, would subsequently have been recalled, and MPs who were jailed who probably would have been recalled. I think there is another thing. If an MP tricks the electorate into voting for them by peddling a particular image of themselves that is not true and is not a reflection of the truth, I suspect they would be subject to recall. There have been examples of highly homophobic campaigns being waged by people who are themselves secretly gay. As a voter, I would take exception to that. I would never judge anyone on the

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basis of their private life—I would try not to—but I would judge a representative who spun a yarn about their private life. There are examples, but I will resist the temptation to name names, although I would love to do so.

**Q33 Chair:** Just to follow on from that, in the Derek Conway case, would he perhaps have been one of those people where only 49% of those in the constituency felt that he had behaved badly, and therefore, he was endorsed in his behaviour?

**Mr Carswell:** I do not want to say something against a former colleague, but I imagine, with the sort of people that I represent in Clacton, that if I had behaved like that, I would be on thin ice and more than half would want me out. There is no question about that. I wasn't going to name names but if I had behaved like that, I think I would have a career outside politics.

**Peter Facey:** You can certainly say that in those circumstances, it is likely that a recall petition would be triggered. I do not have a crystal ball to say whether the electorate would recall them in the event of a referendum; having just fought a referendum and been on the losing side, I am not a very good predictor of these things. I think you can certainly say that it would probably be triggered in that circumstance.

Another example, to give you a European one, would be the UK Independence party MEPs who were found guilty of effectively abusing their expenses, but kept their seats. In those cases, UKIP would probably have brought the recall petition. That would be an example of the mechanism you were talking about whereby somebody was elected and effectively did an action, but was left there for a full four years, with no ability of the electorate to actually change it.

Personally, I would change the electoral system for the European Parliament. Unlike Zac, I am in favour of PR. I would change it to a more open system, but if we are going to have closed lists, we should at least have a mechanism like recall, which would have a degree of accountability for somebody, which at the moment, there is no accountability for at all.

**Q34 Chair:** If the process were triggered before all the facts were out—hindsight is a wonderful thing—at the very beginning, and people said, “There is really not enough evidence at the moment and we will let this person carry on”, presumably, double jeopardy would mean that that person got off on the first occasion, and when further evidence became available, they would not have to go through that whole process again.

**Mr Carswell:** Do you imagine in Winchester that if subsequent information had come to light that the Tory griping was actually justified, there would have been an appetite for a third election? I doubt it. Trusting the people means that if there is an appetite for this process to be triggered, generally it will be right. I can think of several cases—if I did not hold a surgery in my constituency for a prolonged period of time, or if I gave the impression that I lived in my constituency, but did not. Those are the sort of trust issues that I think would probably lead to a recall. Trusting the people means—who knows?—that there

could be people who do not live in their constituency but are seen to do such a good job that it is not an issue. It would be for people to decide.

**Chair:** Alan?

**Dr Renwick:** Sorry, I have forgotten what the question was.

**Q35 Chair:** Double jeopardy, that you go through the process when there is insufficient evidence and get off free.

**Dr Renwick:** Well, if you have a process whereby you must first determine whether wrongdoing has taken place, that ensures—or makes it more likely—that that kind of danger does not exist. You do not have a pre-emptive starting of a petition process, in response to the initial allegations. Rather, you have a process of investigating the issue first.

**Q36 Chair:** Oh, really. I did not realise there was an investigatory level in this and that evidence was taken.

**Dr Renwick:** Under the Government's proposals, either the MP would have been convicted of a crime and sent to prison for a period—

**Chair:** I am going for total recall, though.

**Dr Renwick:** Oh, under total recall, yes. Your point seems to be an argument in favour of not having total recall, in that you want to have a process of deciding first whether there has been wrongdoing, and once that decision has taken place, you can see whether there is public desire for recall. Unless further allegations are substantiated thereafter, if the first opportunity for recall is not taken up, that opportunity—

**Q37 Chair:** In the case that I raised, the Standards and Privileges Committee looked at this and made a decision. Then, later, a little more information emerged that might have coloured their judgment, had they known that information at the time.

**Peter Facey:** People are under the misapprehension that direct democracy is instant democracy. This is a tool in some ways of the voters deliberating. This should not be quick. We are not talking about a process. If you are going through the petition process and then having to have a recall referendum on somebody, and then a by-election, you are not talking about instantaneous. The reality is that if you have a referendum I don't think you should have to face another referendum. If somebody has a petition and it does not get anywhere, I do not think that stops you from bringing another petition. It is quite right that if you have actually gone through effectively asking your electorate whether you should stay and 50% say you should, you deserve to stay.

You emphasise a potential problem, which, in comparison with the rest, is very small. The reality, because of the length of the process, is that the information would come out and the public anger would not be there at the beginning to trigger this process. There has to be a large degree of anger in the constituency to do this. It is not passive: a lot of work would have to be there to recall somebody. Therefore, the level of anger in a constituency would have to be quite large for it to get to the stage of it happening.

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**Q38 Stephen Williams:** I want to ask the three advocates of recall where they see the relative importance of it. It seems to me there is a consensus that you want the power of the voter to be enhanced—and therefore the power of somebody else must be diminished. Douglas is fairly clear that the Executive power should be diminished. I am not sure that any of you have said the power of parties should be diminished, or that of the people who influence parties.

If I could ask you a multiple-choice question: A, B, C. Which do you think should be done in order of preference? We will assume that all three should be done. I think that all three of the things I am about to ask you should be done. A: electoral reform; B: taking big money out of politics; C: total recall—not the Government's proposals, but what you are advocating. Which is the most and which the least important?

**Mr Carswell:** Number one, sorry to be a politician and answer with my own answer, D is my preference, which is for open primaries. I believe every MP should be subject to an open primary.

**Stephen Williams:** Okay, you can have D; that is fine.

**Mr Carswell:** Secondly, I think it should be recall. I think open primaries and recall go together. I have looked admiringly at some features of the Irish multi-Member system and would not rule that out. However, if you had open primaries and recall, there would be less of a case for the idea of adopting multi-Member seats. I am open-minded. Not all my base support share this view, but I think if it could extend choice and competition it would be a good thing.

Getting big money out of politics? I think the internet is going to revolutionise politics in a way that means the old party structures are torn down. Parties are going to have to become open-sourced; they are going to have to open up their processes and become platforms and facilitators for democracy, rather than monopolisers of it. Part of that process will see the democratisation of party funding. You are going to see something like the Obama campaign and the Deaniacs in the campaign before that, and the Ron Paul campaign. A great deal of money will be raised by £20, £30, £40 donations on line. When that starts to happen, I think we can chuck the big corporate interests, including the taxpayer-funded interests, out of politics and the funding of politics altogether, and that would be a good thing.

**Zac Goldsmith:** My D would be direct democracy generally, unless I can use that in place of electoral reform. The priority for me would be recall, closely followed by open primaries, although they do go together. Then electoral reform in the form of direct democracy. I will not try to repeat it, but I agree with Douglas's answer in relation to big money in politics.

**Q39 Stephen Williams:** You don't think big money in politics is a problem?

**Zac Goldsmith:** I think it is a problem, but I think the solution is emerging. The problem is much more profound in other countries. I would hate to see us move to that. We have an \$11 billion US election campaign coming up—an estimated \$11 billion to \$13 billion. That is clearly wrong. There are remedies for

that; none of them are talking about that, but it is clearly very wrong.

**Q40 Stephen Williams:** A lot of that money is spent at primary level, though, isn't it?

**Mr Carswell:** Increasingly by small donors. Instead of a millionaire giving a £1 million, you get a million people giving a quid. That is the way it is going and that is a good thing.

**Zac Goldsmith:** The problem is where people make donations that are big enough that they can expect to be repaid in one way or another. That is where it is about the size of the donation.

**Q41 Chair:** We will come back to that very important issue. Peter, you are allowed your selection.

**Peter Facey:** A, B, C and D. Effectively, you are asking the campaigner which one they would choose. In reality, I would choose the one that has an opportunity of getting through. There is a Bill for recall, so we are concentrating on that. If you ask me whether I would prefer proper electoral reform to recall, and which I think would transform politics more, I would say that changing the overall electoral system would have a more transformational effect than recall. Does that mean, given that the Government are committed to bringing forward a Bill, that there should not be a good Bill on recall? Although it may not transform politics, it would certainly help reform politics and is a sensible reform. You can get people who disagree on other matters to agree that this would be a sensible reform. It may not transform politics, but it would increase accountability to voters if it is done in the correct way, and I think that is a reason for doing it. It would get support across a whole range of people, increase the power of the electorate, and hopefully make them hold their MPs and elected officials in higher regard. As I mentioned at the beginning, it would also give MPs a degree of shield to say, "My electorate believe this and therefore I cannot do that. If I do, I face potentially alienating my electorate and being recalled." I would go for lots of other things, but this is a very sensible reform if we do it in the right way and not the way that the Government propose.

**Q42 Chair:** I assumed, Alan, that, as neither a campaigner nor a Member of Parliament, you would want to keep your academic reputation unsullied by not entering this quiz, but you are indicating that you would like to say something.

**Dr Renwick:** I am perfectly happy to comment on which of the various measures that you and others have mentioned would have most effect. All the evidence we have—which of course may not be entirely reliable for the UK—firmly points to the answer that recall would have the least effect of all the reforms under discussion.

**Q43 Sheila Gilmore:** I wanted to challenge slightly some of the assumptions that have been made about electoral reform as a means of making an impact. Our experience in Scotland, which is admittedly very brief, especially with STV, is that it can create safe positions for people as long as there is a party system. On the

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whole, there is a proportion of the vote below which we probably won't fall. On that basis, people could do very little and be re-elected.

People have mentioned the party list system. If, when people retire or resign or whatever, we simply get the next person on the list, that has some rather odd effects. In the scheme of things, that is not necessarily a way of making people very accountable.

**Mr Carswell:** I think the aim should be choice and competition in politics. We accept the virtues of choice and competition in other aspects of our lives, so why do we have a political system where we don't have choice and competition? Yes, you are right that electoral reform is not the be-all and end-all of doing that. I am genuinely open-minded; I used to be in favour of the status quo, but I think that aspects of it are so rotten that we need reform. I think the key reforms we need are recall and open primaries—real recall and real open primaries—but I am open to multi-Member seats as well. It is not a panacea and I think that open primaries are the single biggest change that we need to make.

**Chair:** If I may, unless any of the witnesses are burning to comment, I will ask Andrew to speak because he has not had a chance so far.

**Q44 Andrew Griffiths:** We heard earlier about big money in politics. First, on the funding of this process, from the taxpayers' perspective there is a great deal of investment in a recall. Do we feel able to demonstrate that that is good value for money for the taxpayer? Secondly, in relation to funding these campaigns, does some sort of provision need to be in place in terms of caps and limits on who can fund a recall campaign or not?

**Peter Facey:** In the Bill, there is a limit to how much a recall campaign can spend—I think that it is £10,000. That is a reasonable amount. You can look at whether you want to reduce it or not. The answer on the question of recall and whether the mechanism is worth the money is that, ultimately, democracy costs. I happen to think that the mechanism would be very rarely used and therefore it would not cost the overall electorate.

Actually, the alternative cost of having somebody in office, either a directly elected office or, in this case, an elected representative who has lost the confidence of their electorate is huge. It may not be as easily definable in terms of pounds and pence, but it undermines the whole political system, and it would then cost even more to rectify. Yes, having a recall referendum will cost money. If you want to save money, scrap the next general election. That will save you £40 million. You could scrap other things. In fact, just have life peers.

**Zac Goldsmith:** It is even more simple. To have a recall in my constituency, 17,000 or so people would have to sign a petition saying they want a recall. They are saying that they willing to spend £1 each—it is about £1 per voter; in fact, it is slightly less at about 80p per voter—to have a recall. If they think that that is too much and my crimes do not merit that, they will not sign the petition. If they do, then we will have a recall. But the decision is theirs.

**Mr Carswell:** Under the bogus system of recall, the Speaker sends the instruction to the returning officer to organise the ballot. Under real recall, as you are signing the petition, you are instructing your local returning officer to spend money organising it so that would be very much part of the debate. Should we recall Carswell? Is it worth the £40,000 or £50,000? That would be a factor. You should pay for what you sign for.

**Dr Renwick:** I agree with that. Just one point, you could easily design a signature collection mechanism that is both more open and cheaper, so you could reduce the cost there for a start.

**Q45 Andrew Griffiths:** In what way? Can you give us an example?

**Dr Renwick:** Well, I suggest that, rather than having this absurd system where you have somewhere that people have to go in order to sign the petition, and it's open for eight weeks—as someone who grew up in the constituency of Caithness and Sutherland, as it then was, this is just bonkers from my point of view—you simply have forms that people can get off the internet. You can have a stash available at the local council office, and then you post it in.

The Government have decided essentially that the validity of signatures needs to be tested before people sign. This is why they have set up all this process, but rather than doing all of that, you simply take a random selection of the signed papers that have been submitted and call up those people—use other mechanisms for contacting them—and ask them, "Did you really sign this? Was it really you?" It is much cheaper than the system recommended by the Government. It is used in several US states. It was recommended by the chief electoral officer in British Columbia, though not introduced. It is more open and cheaper, and altogether sensible.

**Q46 Simon Hart:** Can we return for a moment to thresholds? Zac's proposal of 10% or 20%, whatever it might be, is quite clear. Douglas, on yours, you referred to 50%. What is that 50% of?

**Mr Carswell:** It is 20% required to sign a petition—step A.

**Q47 Simon Hart:** Sorry, 20% of the registered voters.

**Mr Carswell:** 20% of the registered voters must sign a petition to trigger the recall election. The recall election is then a ballot paper, which would say, "Should Simon Hart be recalled? Yes. No." More than half of the people voting would have to vote "Yes" for you then to face a by-election.

**Q48 Simon Hart:** In the case of, for example, extending it to police commissioners, there is a chance that the turnout for that may be pretty low. Those kind of elections are perhaps different from what the Government propose. Should the threshold reflect the uniqueness of the Police Commissioner's constituency as opposed to a parliamentary constituency?

**Mr Carswell:** I do not want to get drawn too much into the question of police commissioners because there are one or two imperfections in the proposal.



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Having said that, I am a strong fan of directly elected police commissioners. I prefer to call them sheriffs. It is a great idea.

There are different methods of recall that could be applied to those, but the principle should be the same: if you hold elected office and you are no good—

**Q49 Simon Hart:** I was getting to that. It is a principle and we would work out the detail differently with each one, which I think makes sense. I have one last question. You mentioned defining what a broken promise was when it comes to looking an elector in the face, and this is a bit of advice really. We all made promises in opposition as Conservatives about what we thought or hoped might happen once we were in Government. Of course, when our good friends the Liberal Democrats joined us, we had to adjust our promises accordingly. How do we get over that?

**Mr Carswell:** Do you know that thing called the electoral address that you write and I write? I have to be honest, there are elements in my party in the centre who tried to write bits of it for me, and I was not having it. I think that that should be, and that is in effect, your contract with the voter. If you, as Simon Hart, and I, as Douglas Carswell, feel that we need to be a little more judicious in the promises we make, the time to do it is in that publicly funded election address that is sent out. That is, if you like, our prospectus and contract with the voter. I would take great care, if there was recall, to make certain that what I personally put in that election address did not overpromise.

**Q50 Simon Hart:** Of course, the danger with that is that we will all be incredibly bland, because we do not know what the heck the result will be and we might be in bed with any one of our political partners, so in the end we end up saying nothing, which is a danger.

**Zac Goldsmith:** Can I just jump in quickly?

**Chair:** May I just squeeze all my colleagues in? I am conscious of the time. There will be a little time at the end.

**Q51 Fabian Hamilton:** I want to come back on two points: first, some Members will remember the period in 2003 in the run-up to the crucial vote on the possibility of joining the war in Iraq—the invasion. A huge number of Labour and other MPs, including Lib Dems and Conservatives, were very, very anxious about it. At the time, the Whips came up to all of us—our Whips certainly did—and said, “You do realise that if the majority of Labour MPs”, not Conservatives, because they were supporting us, “vote against the resolution, the Prime Minister will dissolve Parliament and call a general election?” My response to that, because I voted against the war, was, “Please do that, because I will win.” How do you think that that would have affected the outcome? If we had had total recall along the lines that you have expounded this morning, would we have had a different result on the Iraq war?

Secondly, I think Zac mentioned recall at the time of the election expenses scandal nearly three years ago. It was very difficult for a lot of MPs—I am not

speaking for myself particularly—who were the subject of really biased, almost inaccurate, front-page headlines in their local newspapers, to give any kind of balance. Some of that balance was given on the doorstep, but as we all know, you cannot knock on the doors of 68,000 or 70,000 electors. You knock on as many as you can and speak to as many people as you can, but if they have concerns, it is unlikely that they will personally be able to put them to you, whereas they will read on the front page and in the paper that this person did this, this and this and is it absolutely appalling. Is there not a real imbalance there and would that not be reflected in any recall ballot?

**Zac Goldsmith:** On the first point, I think that there could well have been a different outcome on Iraq. I think that it was the wrong decision, and I think that subsequently, most people here now accept that it was the wrong decision—I guess that that is the case—in which case, democracy would have been thoroughly positive. There would have been a different outcome, more deliberation, more information and more transparency—probably a different outcome. I think that that is a good argument in favour of recall. If we had recall now, would we go rushing into war with Iran, as Douglas was about to say? The answer is that we would certainly think about it a lot more than we would otherwise. We certainly would not simply listen to the Whip.

In relation to the difficulty that some MPs had over expenses, you are right to say that there were people on the front page who should not have been there, but I think that you are wrong to say that we cannot talk to each and every voter in our constituency if we need to. Before the general election, I had a very marginal seat. I was accused on the front page of every newspaper of avoiding paying tax. The reality is that I have never avoided tax—I am not going into that argument here—but I knew that I had a lot of persuading to do and there were a lot of arguments to be had with my constituents, otherwise I would not be elected. I called public meeting after public meeting until there were no more questions to be asked. I believe that as a result of that, people were willing to take my word for it. They were willing to believe, at short notice without much time before the election, that what I was saying was true, and I have subsequently been vindicated. Nevertheless, I had that opportunity. I spoke to a lot of people, and, as a result, my standing was higher than before the scandal erupted.

**Q52 Fabian Hamilton:** Were your public meetings well attended?

**Zac Goldsmith:** They were very well attended. Packed. There was standing room only—buns at the beginning. Absolutely. There was a real interest, but then there would be in expenses. I have colleagues who had to stand and face their constituents over expenses. In some cases, they were instructed to do so by the party. It was very awkward and they probably had done something wrong. There were loads of people wanting to get in. If they were good MPs, they would have had a subsequent meeting to allow those people who could not attend the first to

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attend the second, and it's a matter of survive or fall. Once you have had that direct conversation and you have had a chance to put your side of the story across, you can't then complain. It is possible to do that now. Our constituencies are not that big yet. I would not want our constituencies to grow much bigger because then it would no longer be possible to have those conversations.

**Peter Facey:** I cannot say that if you had recall you would change the result of the vote on the Iraq war. I don't think that we can make that claim for recall. What you can say is that it would enable an MP who did not want to vote for the Iraq war but was feeling pressured to have a bit of a shield on their side to say, "Actually, my electorate here expect me to do this." You cannot go back in hindsight and say, "Would we have gone to war if we had had this mechanism?" Would it have made the MP slightly more independent from the pressures of the Whips? Yes, I think it would have done. Hopefully, that would have had the effect of making the war less likely. At the very least it would have strengthened the MP as opposed to the party Whips or the Government.

In the case of the recall ballot, the reality is that some local newspapers did things that were reprehensible. The reality is that when you get to the stage of having a recall petition, and you are called in to the local radio station and everywhere else, the issue would go away very quickly and the anger would not be there anymore. The recalls that would go through are those where there was strong evidence and a genuine sense of anger. You can see it with those MPs who did face criticism and who were subsequently re-elected. Ultimately, their electorate said, "Okay, we don't like this, but this is not a sacking matter."

**Mr Carswell:** Fabian, you are absolutely right. Under a recall system, it would be vital that you, as a member of the legislature or as an MP, could have a direct conversation with the voter. In the old days, 20 or 30 years ago, that conversation had to be conducted through the prism of the editor of the local newspaper or the local radio. E-mail, Twitter and the internet allow that conversation between each one of us and our voters to be carried out far more directly without the distorting effect of the mainstream media. This proposal is suited to the sorts of changes that are

taking place that allow us as individuals to be held directly to account by the people we represent and not through the prism of the media.

Real recall is an innovative change for the world as it is becoming, not the world as it was 20 or 30 years ago.

**Q53 Chair:** Alan? May I say that since you have put up with two very vocal parliamentarians and a vocal campaigner, I will call you back if you have any remarks at the end? Please answer Fabian's questions.

**Dr Renwick:** I just wanted to agree with Peter that there is no way of knowing what would have happened in 2003, so I will leave that. With regard to unfairnesses towards certain MPs in 2009, yes there may well have been some, but those are the sorts of unfairnesses that one has to put up with if one is an MP. Those are not the sorts of problems that I am concerned with in the total recall model, which are much more about the skewing of democracy that would be brought about if people who should be caring for the national interest are excessively focused all the time on their constituency interest.

**Q54 Chair:** Andrew, did you want to come back on anything?

**Mr Turner:** No.

**Chair:** Okay. Alan, I will give you the opportunity to say a few final remarks. I am very conscious that in order to keep this fascinating debate going and bottom out some of these issues, we used up a bit of your time. Are there any final remarks that you would like to make?

**Dr Renwick:** No, the final points that I have just made illustrate the two main points that I would want to make. First, claims about huge transformative effects are based on no evidence. Secondly, we should be concerned about that issue of the gap between national and local accountability.

**Chair:** Colleagues, thank you very much. Witnesses, thank you for a fascinating session this morning. There was very good exchange and development of argument as we went along—not just the taking of positions. We appreciate the way in which you have interacted with us this morning. Thank you.

Thursday 26 January 2012

Members present:

Mr Graham Allen (Chair)

Sheila Gilmore  
Mrs Eleanor Laing

Mr Andrew Turner  
Stephen Williams

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**Examination of Witnesses**

*Witnesses:* **Rt Hon Kevin Barron MP**, Chair, Standards and Privileges Committee, **John Lyon CB**, Parliamentary Commissioner for Standards, gave evidence.

**Q55 Chair:** Welcome back. It is very good to see you. Thank you for sparing the time to come and speak to us this morning. We are, as you know, the Select Committee on Political and Constitutional Reform. We are the baby of the Select Committee structure. We are finding our way and we are talking to eminent and expert people, particularly, today, on recall of Members of Parliament, to help us to pull together a sensible and helpful report on this. I try to make these occasions conversational and not harrowing. Hopefully you will feel relaxed enough to give us your full opinions, and we will engage you in that exercise. Would it be helpful, Kevin and John, for you each to say something as an opening statement?

**John Lyon:** Thank you, Mr Chairman, for this opportunity. My interest in recall is in the role that the White Paper envisages for the Parliamentary Commissioner for Standards—myself—in respect of the second recall condition. The White Paper envisages this condition forming an additional disciplinary power for the House, so let me say something about how my disciplinary role would fit into that proposal.

The starting point of the House's disciplinary process is when an allegation comes to the Commissioner. When I receive an allegation, usually by way of a complaint, I have two decisions to make. First, I have to decide whether the allegation relates to conduct that comes within my remit. If the answer to that question is yes, I have to decide whether the evidence accompanying the allegation is sufficient to justify instigating an inquiry. That inquiry is into whether there has been a breach of the code of conduct for Members of Parliament and its associated rules, so the rules and the code are central to whether there is to be a disciplinary investigation. They establish the parameters within which I could make an inquiry, so the scope of the code is all important.

The current scope of the code encompasses all aspects of a Member's public life—their parliamentary and their public duties—but it does not apply to what a Member does in their purely private and personal life. The rules contained in the code are, in fact, principally rules in relation to financial probity: the registration and declaration of financial interests, lobbying for reward or consideration, and the use of expenses and such like. There is a catch-all provision, which requires Members not to bring the House into disrepute, but that can apply only within the scope of the code, namely the exercise of the Member's parliamentary and public duties—what they do in their public life. The rules and the code therefore, in my

judgment, apply principally to the House's expectations of a Member as they relate to their duties in Westminster or in Westminster-style work. They do not seek to control a Member's freedom of expression—their views, opinions or policy stance—nor do they seek to regulate how a Member deals with or responds to his or her constituents. That has long been seen as a matter for the electorate and not for the Commissioner, or indeed for the House.

It follows that, as currently drafted, the disciplinary process that could lead to recall would be engaged only for conduct that comes within the code. It could not, for example, lead to an investigation into an alleged failure to meet an election promise to constituents, or into the services the Member provides or does not provide in his or her constituency. It would not cover some scandal in the Member's private life. It would not cover what a Member may have got up to on holiday, even if that conduct ended up in imprisonment abroad. So, the proposal in paragraph 69 of the White Paper suggests that a Member given a custodial sentence by a court outside the United Kingdom could be subject to recall if the House so decided. But if the Member were to be subject in such a case to the normal disciplinary procedures of the House, as in fairness there is a strong argument that he or she should be, such conduct would be considered for disciplinary sanctions only if it related to a Member's parliamentary or public duties—their public life.

The position would be made easier if the House were to accept the proposal in the report of the Committee on Standards and Privileges on revising the code, which it published on 8 November last year. That recommended confining the code only to conduct relating in any way to membership of the House, but at the same time it proposed extending the scope to allow the House to apply the code and its disciplinary processes where any conduct could be shown to have caused significant damage to the reputation and integrity of the House. That could, in principle, apply to serious offences determined by foreign courts, but the focus would remain on conduct affecting the reputation of Parliament, and not on any other misdemeanour that did not have that effect. My simple point is that the reach of the Commissioner in initiating action that could lead to recall should not be overestimated.

Finally, may I just say that I do not believe that “a serious wrongdoing” is in itself a description of any particular conduct? It is a description of the gravity of any breach of that conduct, which in this case, is a

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breach of the rules set out in the code. To establish serious wrongdoing in these circumstances would, in my judgment, require a three-stage process. Briefly, the first stage is to establish what wrongdoing is, and that is, or should be, clearly set out in the law or the relevant code. To say in the code that Members should not engage in serious wrongdoing would not, in my judgment, be sufficient. The second stage is deciding in any particular case if such wrongdoing set out in the code or the law has indeed taken place. The third stage is deciding if any such wrongdoing is serious—so serious as to merit triggering the recall process.

In my view, the first stage—establishing in a code what is right, as well as what is wrong—is a matter for the House. The second stage—establishing wrongdoing in any particular case—is initially for the Commissioner. The third stage—deciding on seriousness—is for the House. Now, I have a role in the first two stages: in advising on a code and investigating an alleged breach; but in my view I should have no role in deciding on or advising on any disciplinary sanctions, be it recall for serious wrongdoing or anything else.

**Q56 Chair:** John, that was very helpful. Kevin, did you want to add anything?

**Mr Barron:** Just briefly to add that obviously the Committee on Standards and Privileges has discussed this and we have some grave concerns about exactly what serious wrongdoing means, outwith the criminal code. Indeed, you will know that on the Committee there are two leading lawyers—one of them, I think, still practising, on a Tuesday morning; he said that really serious wrongdoing is effectively a breach of the criminal law. It seems to me that getting beyond that is very difficult under the circumstances laid in front of us at the moment. I think that that would be the view of the Committee.

I think, and I am sure from what the Commissioner has said that he would agree, that it would be difficult to turn round and say that we could accept, in a sense, where somebody may be reported to us as in serious breach of the code—and from time to time John does use such language in his memorandums that are independent of the Committee; we only adjudicate on that—a read-over that a serious breach of the code is serious wrongdoing in the circumstances of this White Paper. I would be highly uncomfortable with that, as a member of that Committee, and I suspect the rest of the Committee would be as well. I think under those circumstances the Government need to explain exactly what serious wrongdoing means, and in what context. You will be aware that the House—not the Standards and Privileges Committee, but the House—has the power to expel, but it is rarely used. In actual fact it could be used only under the Representation of the People Act 1981 for someone who was found guilty of a criminal offence and given a prison sentence of over 12 months, according to my understanding. That is the only time that anybody would be expelled from the House at the moment, and it seems to me that the House has been reluctant to go beyond that, because we have always felt—and I say this as a Member of Parliament, not as a Member of the Committee—that it is up to the electorate to decide. If the electorate

put somebody in here, outwith a serious breach of the criminal law, they remain there until the next election. Clearly, this would be a change, and it would need to be explained under what criteria serious wrongdoing would trigger such recall. I just feel that the Committee would feel uncomfortable without such an explanation either in law or, certainly, laid down in terms of exactly how we would operate. I see a situation where a Committee that operates in a non-party political way—and has to operate in a non-party political way—could be compromised by such a thing coming in front of us, although, in the end, it would be a decision of the House, and not a decision of the Committee. We would only recommend, presumably, as we do in cases that we adjudicate on now.

I will leave it at that, Chair, and if anybody has got further questions, I will be more than happy to answer them.

**Q57 Chair:** Do you think your predecessors on the Committee bear some responsibility for this reaction around recall, because of their failure to address one or two very high-profile earlier cases effectively, ahead of the expenses difficulties?

**Mr Barron:** Let me put my hand up and say that I am one of my predecessors. I sat as a winger in the last Parliament, so I have been on the Standards and Privileges Committee since 2005. I know that one of the cases was mentioned last week. Without going into great detail—I hope that I am not breaching anything—I think that you asked, Chairman, whether, on reflection of knowing more about that case, it should have gone to law or not. If my memory serves me, we did ask that question of the authorities in the House. The answer we got was, “No, it shouldn’t go to law.” We did not send it to the Crown Prosecution Service. We did not have the machinery nor, at that time, were we empowered to do so.

However, we did ask the question about that case because it was quite clear, in my view, before the rest that followed in terms of *The Daily Telegraph*, that we were all uncomfortable with it. On reflection, maybe we should have studied it a little bit more in terms of what we should have done, not just looking at the individual case, but looking at the machinery that there was at that time, to question the action of that individual Member. But there was no arbiter for anybody to go to. On reflection, we got that wrong, but we sought to do everything we could at the time and that was the answer that we got.

**Q58 Chair:** John, you are responsible in a sense to the Standards and Privileges Committee. Does your remit extend beyond Members of Parliament in the first Chamber?

**John Lyon:** No. It covers only Members of Parliament in the House of Commons.

**Q59 Chair:** So the second Chamber has other and different arrangements?

**John Lyon:** It has its own Commissioner, Paul Kernaghan.

**Q60 Chair:** Does your remit extend to those Members of Parliament who happen, at a given

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moment, to be serving as Ministers? Or are breaches of etiquette, protocol or the law when they are ministerial dealt with by the Cabinet Secretary?

**John Lyon:** If the breach is an alleged breach of the ministerial code, that is not for me. That is organised through the Government and, as you said, the Cabinet Office. If it is a breach of the law—you used the word “law” in your question—that is a matter for the courts and the prosecuting and investigating authorities that report to the courts. It would not be a matter for me. However, Ministers are still subject to the code of conduct for Members of Parliament in the same way as any other Member.

To give an obvious example, questions about registration and the failure of a Minister to register would come to me, as they did in the last Parliament.

**Q61 Chair:** I welcome the fact that the Government have involved us, as a Select Committee, this early in the process. Wherever that has happened, we have always unfailingly come up with constructive proposals for improvement. So I genuinely welcome what the Government have done. Would it be true to say that, in your own position, you are necessarily having to react to a proposal that has come from the Government? Perhaps in an ideal world, rather than reacting to this proposal, would you have chosen to have gone a slightly different route in terms of strengthening the possibilities for the electorate and the House to bring to book those who have offended in some way?

**John Lyon:** Let me see if I can deal with that.

**Q62 Chair:** That is not designed to be a leading question because this is an opportunity to make that point at this moment because, thankfully, we are very early in the process. If there is a different avenue to be pursued, with your expertise and experience, the Committee would be able to look at that, too.

**John Lyon:** I am conscious, as the whole Committee will be, that the Government have made a commitment in various manifestos and it was in the coalition agreement, so there it is. It is not my role to criticise or comment on government policy or to say, “Hey, I’ve got a better one than that.”

**Q63 Chair:** But the Government are asking all of us whether there is a better way.

**John Lyon:** I haven’t got a better way to bring to you this morning. But from where I am, there is a difficulty in working on the interface. Parliament has an interest in retaining, maintaining and building—we have seen that clearly in recent years—its reputation with the electorate as a whole and, indeed, internationally. A lot of work that I do is focused on the reputation of Members of Parliament as parliamentarians and the effect that any failure in their conduct has on that and on Parliament as a whole. That is distinct, in many ways, from a system that says that the electorate should have a more frequent say in what they think their Member is getting up to. The first of those is properly a matter for Parliament; the second is for the electorate. When you try to put the two together, there is a tension. That is the comment that I would make on this particular

proposal. It is trying to put together a disciplinary process with an electoral one, and they do not always fit comfortably.

**Q64 Chair:** The same question, Kevin. In a sense, what John has identified as a problem that we need to solve is building the reputation of parliamentarians. It could be argued that the proposal is almost fighting the last war—the problem of difficulties that Members got into, the high water mark of disdain for Members of Parliament. We are trying to look at what the future might hold rather than fighting that battle—which, to some extent, is fading into history—and getting it right for the next time.

**Mr Barron:** I hope that’s true. There is a genuine need for us to do that. Indeed, the Committee that I happen to chair at the moment is doing it. You will know that in the next few weeks we will debate a proposal on the Floor of the House to add two lay members to the Standards and Privileges Committee. I hope that the House will decide that they will have equal weight to all other members round the table. I hope that it will give the public some confidence that Parliament does not want to have the situation that we have had in the past, particularly in terms of adjudication on people who have done wrong.

In my view, looking back over the past five years—I’m not going to go over any of the cases—people will say, “Some cases were managed and handled in different ways from others. Where was the fairness in that?” I suspect that the reaction to the expenses scandal was what brought recall on to the agenda. My problem is: who sets the bar that says whether it is a recall matter or not? That is the issue in front of us now.

If serious wrongdoing sets the bar, we need to know what it is. I would be more than happy, as an individual, to say, “Maybe we should look at the criminal law.” In the current situation, under the 1981 Act, it has to be a sentence of over 12 months. Maybe that bar could be looked at. At least the public would have confidence that the judgment on what the Member of Parliament might have done was independent in that it was made by the judicial system and not by a parliamentary Committee.

I hinted in my opening statement that I fear our having to set the bar on an issue of recall. It would be very difficult—not just for the Committee. It works hard to be non-party political so that it can do its job properly and, hopefully, it gives the public confidence that we are doing that now. It would be very difficult for that to happen if a Member of Parliament might, effectively, be up for re-election, but also might, effectively, be being thrown out. As I said in my earlier statement, that is not something that Parliament has done lightly, and it has never wanted to do so beyond the suspensions that my Committee gives to Members who have gone against the code from time to time.

Looking at those who have been suspended—this came up to some extent in last week’s evidence session, although not as clearly—Terry Fields, the Member for Liverpool, Broadgreen, breached the law, effectively, by refusing to pay council tax, or poll tax, and was sentenced to 60 days. It seems to me that that

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was probably more civil disobedience than a breach of the criminal code, although the courts said it was a breach, and that was it. That is why he got the sentence, but it was making a political issue of something that the Government were doing. In that situation, where it is decided that on the basis of that, this person is not going to stand for the party that they were elected for if there is a by-election—the recall election or whatever you want to call it—it causes all sorts of problems.

None the less, looking at the issue of criminal proceedings and Members of Parliament being found guilty of a crime, it is a lot easier to set the bar if somebody else does it and not a Committee of parliamentarians, even with the lay members who are hopefully going to be on my Committee later this year. That causes a problem. In this Parliament, it would not add up to much of a jot if one seat went one way or the other. Look at the Wilson Parliaments of the 1970s when sometimes there was not a majority in the House, never mind a majority of one. For quite a while, there was a majority of one or two. There are major implications for the Floor of the House.

Even if a Committee that had to set the bar did it in a non-party political way, what would happen when it went to the Floor of the House to be accepted if there were circumstances such as that? I am not saying that that is likely, but it is something that both Government and Parliament ought to set their minds to if this White Paper is going to become an Act of Parliament.

**Q65 Stephen Williams:** There are quite a lot of interesting things in what Kevin has just said. He has made me think of lots more questions than I had already scribbled down. I wonder if you could start by giving us a little insight into how the Committee works, obviously without betraying any confidences. If you saw the evidence that we got last week from Zac Goldsmith and Douglas Carswell, there was heavy scepticism—indeed, sarcasm—about whether Members of Parliament could fairly adjudicate on their peers, brethren or sisterhood objectively, and whether that would inspire public confidence. How easy is it for you and your colleagues to have before you a parliamentary colleague and to treat them objectively?

**Mr Barron:** First, we rarely do. Investigations are done by John. Parliamentarians have a right to come in front of the Committee on the basis of John's findings. We read his memorandum and then decide. We could reject it, but rarely do. On that basis, Members of Parliament can come directly to us. Normally, Members of Parliament will just accept it. They can sometimes write to us prior to our adjudicating on their case. My experience is that when they do come, they normally bring quite a big spade with them and dig the hole a little bit deeper. I will not go into that at this stage, but that is what tends to happen.

There is an art in having a Committee that, I hope, has public confidence. Some members of the public and the media are confident that we do a reasonable job in the circumstances. The art of it all—I will use a phrase that I used on the Health Committee in the previous Parliament—is to effectively leave your

party politics at the door on the way into the Committee room and pick them up on the way out. We adjudicate on that basis. It is difficult to do that in departmental Committees, given that some members of the Committee will be supporting the Government as Ministers.

It is crucial that we operate in a non-party political way. That is my personal view, having spent more than six years on the Committee. It is fair to say that on one of them, when I was a winger many years ago, John's memorandum was not accepted in its entirety. There was a deep suspicion—John and I did not discuss this for years—that there were party-political shenanigans taking place over the findings against one Member. I was uncomfortable with that at the time. I know John was uncomfortable. We referred to it indirectly in future proceedings of the Committee.

In my view, if we are being asked to set this bar of serious wrongdoing, it is essential that everybody understands—not just Members of Parliament but the public—exactly what “serious wrongdoing” means. If it becomes a serious breach of the code, I have great fears that the Committee, and potentially Parliament, would implode on that basis.

**Q66 Stephen Williams:** In terms of how the Committee works as it is currently constituted, is it fair for me to surmise from what you have just said that the Commissioner, Mr Lyon, essentially weighs up the evidence and, by the sound of it, gives you a verdict, but that the Committee pronounces sentence?

**Mr Barron:** Yes.

**Q67 Stephen Williams:** And is the sentence also on the advice of the Commissioner or do the members of the Committee decide that independently?

**Mr Barron:** Absolutely independently. John is independent of us. He is effectively an Officer of the House, and he is appointed by the House. He reports to us and sits in when we are adjudicating. He does not offer anything to do with sentencing; he may answer questions from time to time, if somebody does not quite understand what it says in his memorandum before we come to our judgment. I also ought to say that of course, when we are looking at issues around privilege, John leaves the room altogether. There is the odd occasion—we are currently doing an investigation into a leak from a Select Committee—when we take evidence. But by and large, in terms of the code of conduct, we have to decide whether to accept John's memorandum or not. It is our independent decision.

I have a list of the tariffs that we have. I cannot remember, but I think that in the last Parliament it would probably have been George Galloway whom we suspended for the most days. That is the most that we have done in terms of suspension. Of course, recall has a completely different meaning to suspending somebody effectively for a few parliamentary sittings. We would normally say a week is four days. If we suspended somebody for eight days, it would be on the basis that they were suspended for two weeks and they would lose their salary for those two weeks. Obviously, there would be a debate on the Floor of the House. John's memorandum in its entirety,

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including all interviews with individuals and everything else—any letters, e-mails—is published at the back of our report. That is there for the general public to look at, at any stage. Quite frankly, I could not see a more transparent system than what we currently have, and I would hate to think that that would be disturbed by something that really is not as clear in terms of where the bar is set.

**Q68 Stephen Williams:** Given that you are acting in a quasi-judicial sense, do you take any sort of oath to leave aside all political considerations, to weigh up what the Commissioner presents to you objectively and to pronounce your sentence fairly? Is there any sort of procedure that requires you to leave your party politics at the door?

**Mr Barron:** No, it is just something that we accept—that that is how it works. I actually thought—

**Q69 Stephen Williams:** Because with the question of George Galloway, it must be sorely tempting not to leave your politics aside.

**Mr Barron:** It is indeed. I used to chair the Health Committee in this room on a Thursday morning in the last Parliament, and I constantly used to tell the members to leave them at the door, and for the most part they did; on just one or two reports that did not happen, but that happens in politics.

Let me say that other than that one occasion when I was uncomfortable, in nearly seven years now on the Standards and Privileges Committee I have been comfortable that these decisions are not based on party politics; nor are they based on supporting Members of Parliament, although currently we are an adjudication Committee that is wholly made up of Members of Parliament. I hope, later this year, that that will change as well, and I am very happy to see that that does change.

**Q70 Stephen Williams:** That was going to be my next question, until you mentioned the proposal for lay members. I must admit that I was not aware that that was going to come forward. Where has that initiative, to expand the membership of the Committee outside Members of Parliament, come from—the Committee or outside the House?

**Mr Barron:** If you read some of the press, it comes from the Committee on Standards in Public Life, and I pulled one of them up—this happened a few years ago now—before the election. It was a recommendation from the Standards and Privileges Committee that we should have lay members on it, and I will tell you why; I was one of the advocates of it.

I was appointed by Parliament at the time—in 1999—to sit on the General Medical Council. Three Members of Parliament used to be appointed at that time to sit on the governing body of the GMC. I stayed on it for quite a number of years. I was appointed through the normal process of having interviews with the NHS Panel, but initially Parliament appointed people on to these regulatory bodies—on the big ones, anyway. I always felt that that was quite a healthy thing to do. I knew little about clinical matters, but my judgment was not there for that; I was there because, at one

level, if you look at the history of the GMC, people used to say that it was doctors looking after the interests of doctors, in terms of patients who felt that they had been badly treated by doctors at any one time.

That is what Parliament used to do, and I thought that it was a very relevant thing for us to do. We are not quite a regulatory body and we are not a statutory body, but none the less we sit in judgment over our peers, and it seems to me that lay members will, I hope, give the public more confidence than they have now. I have to say, and will repeatedly say, that the deliberations of our Committee are there for all to see. It is one of the most transparent ways of doing things that I have seen. Other than our private discussions on a memorandum, everything is published.

**Q71 Stephen Williams:** Can I ask about the tariff of sentences the Committee has passed? You mentioned the 1981 Act, which introduced the, I suppose, automatic expulsion from the House if the Member is sentenced to 12 months or more.

**Mr Barron:** Over 12 months.

**Q72 Stephen Williams:** Over 12 months' imprisonment. You do not have any role in that situation—is that right?

**Mr Barron:** None whatsoever.

**Q73 Stephen Williams:** Right, so if it is anything less than that in criminal sanctions—fines or whatever—what do you weigh up in deciding how to treat a Member if they have been found guilty of an offence on which someone external to the House has adjudicated? Do you give that more weight than someone who has breached parliamentary privilege, which is a matter for us?

**Mr Barron:** Privilege is a bit different. I think that there is an issue here, if you were going to have a test of serious wrongdoing in Parliament that could potentially put somebody into a recall situation, yet could not get them charged under criminal law for doing something wrong. Those are very much separate issues.

I talk about criminal law because the 1981 Act recognises the fact that if an MP was found guilty and sentenced to 15 months in prison, the House would then, I assume, pass a motion that they be expelled—I do not know; I am unsure of that, so perhaps the other witnesses can tell you—and presumably a by-election would ensue on the grounds that by-elections do if an MP passes away. That is probably how it operates. That is after a criminal conviction and a sentence of more than 12 months, and that would not happen at the moment at 12 months or under. Under those circumstances, while that is in existence, for whatever reason—it was not my decision; it was taken in the 1981 Act, before I became an MP—if we were to turn round and say internally that we would expand our code of conduct to cover areas that fall short of that, I think that there would be an issue about whether that was proportionate and, in many senses, whether it would be fair.

Don't get me wrong; I do not want to be fair to MPs who breach the code of conduct or bring the House

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into disrepute. The job that I and other Committee members do is not a very nice job—not as many people talk to me when I pass them in the corridor in this Parliament as used to in the previous Parliament—but none the less it has to be done. In my view, it is being done by the Committee in a good, professional way to overcome some of the nightmare scenarios that we had a couple of years ago.

I would not want to put something on the statute book, like a recall Bill, that is not used. That, in itself, could be highly criticised by people outside. I have no doubt that you will be looking at that issue, and I hope that other people and the Government will be looking at it as well. If we are going to pass any form of legislation, it must have a definite role to play and be seen to be playing a role. Those are not matters for me, but for yourselves and others, but they should be taken into account.

**Q74 Stephen Williams:** Mr Lyon, when you look at the sort of cases that are presented to you by a member of the public or by another authority, how many, in your experience, have you judged to be vexatious or politically motivated? As a proportion of all the cases that come to you, where does the balance lie?

**John Lyon:** It depends on what you mean by politically motivated. I get quite a high proportion of complaints that come from people who oppose the Member's party. Some of those, of course, are other Members of Parliament. On that, my view is that I look at the evidence; I do not look at the motivation of those who are providing the evidence. I have generally taken a complaint from somebody who opposes the Member, either in the local constituency or in Parliament, only if there is evidence that they could give me that there may have been a breach of the code. I am not affected by motivation.

On vexatious, if you define, as I do, a vexatious complaint as one that comes without adequate evidence—that is the dictionary definition of vexatious—I get quite a lot of those. The majority are ones that simply fall outside my remit. It will not surprise you to learn that I get an awful lot from constituents who feel that their Member has not served them well in a particular case. You will be aware of that, as I am. They are not vexatious complaints, in my view, but they fall outside the remit. I get others where there simply is not the evidence. I would not call that vexatious, because there is a slight tone of criticism in that word. I get probably about 10%, at a guess, of complaints in a year that will not provide sufficient evidence to justify my making an inquiry.

**Q75 Stephen Williams:** So 90% of the complaints that come to you fall within the code—within your ambit of power—and are not vexatious?

**John Lyon:** It varies over the years in my annual report, but something between 70% and 85% of formal complaints that I get, I do not take on. The majority of those fall outside my remit, and the majority of those are complaints about constituency service by the Member.

**Q76 Stephen Williams:** Do you therefore feel, when you have looked at those cases and decided that they are not within the strict ambit of the code to which you work, that there is unmet demand from the public for the code to be widened?

**John Lyon:** I reviewed this, of course, in the last year, when I reviewed the code of conduct. I was helped by some Members, who sent me their views on that. I reported it to the Committee on Standards and Privileges, and that is the report that I referred to, which the Committee published in early November. My answer would be yes, if the House wanted, and if it was thought that a commissioner should investigate what I call service issues. That would mean, in other words, how far the Member has met the needs of a constituent; whether they have replied to letters; whether they have replied in time; and whether they have done what the constituent has asked, or come up with a feasible alternative to help them. Yes, quite a number of people who write to me would find some satisfaction in the fact that I would then start an inquiry.

It would be a very different sort of commissioner. In my view, which I may have set out in the report, I do not believe that that is a role for a commissioner, because I think it is for the electorate to decide how the Member serves them. It is for the Member to decide how they want to serve their constituents between elections, and it ought not to be a commissioner—who, as we are reminded, is an unelected official—telling a Member how he or she should serve their constituents.

**Q77 Stephen Williams:** A further question flows from that. Does the code, as it is currently constituted, effectively define a Member's parliamentary duties as discharged in the House of Commons, while being silent or deficient on their duties to their constituents in their constituency? For instance, if you do not reply to letters, presumably that is not a breach of the code but it would probably seriously hack off a constituent. Because we do not have a contract of employment, whenever anyone asks me in a school visit, "What are you going to be doing tomorrow? What is your job?" I say, "It is completely different." It is the only job I have ever had where there is no contract. There is no written expectation of what I do. I define it myself and I do it differently from others. Do you think that there is perhaps a role for the code, without being too much of a straitjacket, to define more clearly for the public what their expectations of their Member of Parliament should be?

**John Lyon:** Frankly, I don't see that as coming within a code. I do not think that it is helpful in a code to seek to define and list and codify what a parliamentary duty is, partly for the reason that you have given, Mr Williams. Parliamentary duty is interpreted in different ways by different Members. As long as it is a reasonable interpretation, that seems to be the right thing. The other thing is that a code of conduct ought to set out clear principles. It should not be trying to tie them down into detailed and slightly legalistic definitions. The code is not a statute. It sets out what the expectation is of Members.



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It also needs to be, in my interpretation, a readable length, so that your constituents can see the general principle. Then they can say, "Well, hang on, you are not doing that." If it comes within the code, that is something that I would look at. This really is not my territory, but as a person who votes, I would be uncomfortable if I thought that my Member of Parliament had a list of the things that they had to do or were expected to do. I happen to agree with you that it is for each Member of Parliament to decide how they want to serve their constituents and then face them at the election if they put themselves forward.

**Chair:** Kevin, do you have a quick comment?

**Mr Barron:** Yes, a couple of things about that. My brief says that, in 2010–11, the Commissioner received, but did not inquire into, 82 complaints, because they fell outside his remit. Seventeen did not involve a breach of the rules and six had insufficient supporting evidence. It would not be unusual for John to say that he has had 14 or 15 complaints since we last met. That could be within a fortnight. Maybe one or two of them may make the cut, as it were. I often get letters that are sent to John saying, "Why did my MP not do this?" Of course, it is John's independent judgment on all this.

In relation to motivation, you hit on a point, Stephen. It can never be a case for the defence, but it often is political opponents who do the complaining to John. John makes his independent judgment on the basis of the facts and the evidence that are sent in, as opposed to where that motivation comes from. I remember having a debate—I think it was last year—on issues around the Commissioner's duties on the Floor of the House. I was intervened on, on several occasions, by people saying, "Well, could we not do something in the run-up to elections?" I said, "I am sure that this debate will be read at some stage, but the answer to that is, 'Absolutely not.'" The House cannot direct what the Commissioner does or does not look at. The Commissioner is independent and remains an Officer of the House. They should use their judgment in that independent way. If things come to the Committee, they come to the Committee.

I want to say a couple of things, because the issue of whether my constituents are satisfied with me has been mentioned. One or two things were said last week in your evidence session about not having surgeries. Every August, I am guilty of letting my constituents down, because I do not hold surgeries in August. I have a month off. I have two a month, other than in August. Another issue was the MP not living in the constituency but saying that they did. I do not know where we get to in what that means. Another was breaking promises in personal manifestos. For goodness sake, if politicians breaking promises—I don't know who would interpret that—meant that they would be recalled, I think that many of us after the 1997 election would have been recalled over student finance given what our parties were saying in their national manifesto, which we fought an election on.

Crossing the Floor is an interesting concept. Some people could be quite hurt if they elected a Member of Parliament for that party, as they normally do, and the MP moved to the other side. Maybe those are

grounds, if people could justify that. What about somebody who just resigns the Whip and becomes independent? We often have that in Parliament; that does happen. There seem to be a lot of areas you need to look at in terms of that. John would not go near that with a bargepole, I wouldn't think, although he can if he wants, he is independent enough.

It opens up something. You do not end up with a code of conduct and rules that you must stick to as an MP. It is some sort of civil code that you are trying to draw up. Quite frankly, I wouldn't want the job to do that. What I would want from this Committee and others is a good interpretation of what "serious wrongdoing" means.

**Q78 Stephen Williams:** As a former accountant, I am obsessed with ensuring that the data are correctly reported. Were the statistics you read out from this parliamentary Session?

**Mr Barron:** 2010–11. Those are the secretariat of the Committee's figures, not John's.

**Q79 Stephen Williams:** Were they for individual MPs, or were they the volume of complaints? Of course, there could have been lots of complaints about the same MP. They sounded quite a lot and I would not want the wrong impression to be given.

**John Lyon:** First, 2010–11 is past, so it is not the story so far. They are, as I think was said, actually the statistics published in my annual report. They relate to formal complaints—written complaints that have the address and the signature. The Chairman referred to some others—I guess e-mail—complaints. I let the Committee have a running idea of those coming in, because the person sending them sees them as complaints. Only if I think they have the evidence and come within the remit would I then invite the person who sent the e-mail to send a formal complaint.

**Q80 Stephen Williams:** The point I was trying to get at was whether 82 MPs were complained about, or 82 complaints were made about a smaller number of MPs.

**John Lyon:** Each complaint is a complaint against a Member. It could be 82 complaints against the same Member. I don't think it was.

**Q81 Mr Turner:** May I say where we are? It seems that almost everyone has agreed, for example, with Zac Goldsmith that things that are nothing to do with Parliament could be looked after by Zac Goldsmith's recall or, alternatively, that we do not deal with them. Those are clear. Which view do you take? Would you stick with that, the current position? Or would you introduce a new system that looked after people at home through the local position of the local voters? Could they, for instance, bring people to vote earlier?

**Mr Barron:** I am quite open-minded about recall. It may have sounded in earlier sessions as if I don't think we should. I am quite open-minded. I am concerned about having a recall system in place in the UK, with the active involvement of a parliamentary Committee that is not clear, understood or transparent, and that people might not have faith in. That takes us from where we were four years ago, with what the

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general public thought about us as a Parliament and the parliamentarians in it, and where we need to be in four years. The work is hopefully going ahead to give the public a lot more confidence.

What I say, Andrew, is that I need to know what the mechanisms are. I am not sure what total recall is; it is a bit like recall lite. I am concerned first about MPs who fall below expectations that their peers and others—and the supposed general public—have of them. At the moment, that is concerned with what you do in and around your public life, not what you do in your private life. It is not based around that. We have to be very careful about how we decide what serious wrongdoing is, and in what context. I am not against recall. All I would like to know—certainly from the point of view of the Committee that I currently sit on—is that there is a clear understanding of who is above and below the bar in terms of recall, not just among parliamentarians and not just among members of the Standards and Privileges Committee who would then recommend to the House. The general public as well would completely understand where we are at. At this stage, I don't have a clear view at all in the White Paper exactly where you would set the bar. The law sets the bar—wrongly, some people might argue. I may think that the law sets the bar wrongly and it should be a criminal conviction of over 12 months before Parliament could take a decision. Parliament could look at that.

**Q82 Mr Turner:** Would it help if what was being proposed were not a recall? It seems that we are doing all these things anyway, and they haven't been called "recall" until now. Suddenly, it is called a "recall".

**Mr Barron:** The major issue is simply put. There have been three Members of Parliament suspended, probably in my lifetime or it may not be three in my lifetime. The House has taken decisions like that, but the House is reluctant and does not take decisions about effective exclusion of Members of Parliament, unless the matter is deeply serious. The current one would be a conviction of over 12 months in a criminal court. That would be the situation.

If you want to change that, that is fine. But we need to make sure that everybody understands the rule that is going to change it. I just fear at this stage that we will end up having some legislation on the book because of a lack of understanding by all parties concerned—including the public—about exactly what the phrase "serious wrongdoing" means beyond the law. A lawyer would tell you that "serious wrongdoing" is a breach of the law.

I see a situation where you end up with something on the statute that is inoperable, that nobody wants to operate or cannot operate because it is unclear exactly what it means, and the British public say, "You are still not responsible." No one has ever been recalled in the UK system, yet there are still people doing things wrong. Sad to say, as much as we are tidying up Parliament, some people will do wrong on occasions—either deliberately or otherwise, unfortunately.

**Q83 Mr Turner:** We have to use examples on occasions like this. Can you explain, for instance, why

Mr Conway was suspended for 10 days and repaid £1,200, £1,400—no, £14,000? Why was that amount the right amount?

**Mr Barron:** That is a memory test. It is because of the money that had been claimed by his son or had been paid to his son.

I have a long list of tariffs. If we find that a Member has had money that they should not have had, we ask them to pay that money back. Sometimes, it will be a percentage of that money, depending on what is in John's memorandum and what we feel about the seriousness of what is in front of us. We will often get somebody who has breached the code of conduct, but unintentionally. So clearly, we would look at that differently than we would obvious intent to breach the code of conduct. In that particular case, Mr Conway was found against on two occasions and asked to pay money back on both occasions and was suspended from the House, which is about as far as the House has ever gone in terms of suspending a Member.

**Q84 Mr Turner:** That's the issue. Why did he only get 10 days' suspension? Why didn't he get 20 days, 40 days or 100 days?

**Mr Barron:** That would be unprecedented. As you know, most Committees work on precedent. The Standards and Privileges Committee works on the precedent of what has gone before, so we would look at a judgment of the seriousness. It does not go down to the hour, but we look at the seriousness of what is in front of us, as opposed to tariffs that we have applied in the past, and we take a judgment on that. Some people might say it is right and some people might say it is wrong, but the House has presumably accepted that. In the years that I have been on the Committee, I cannot remember that the House has challenged the decisions of the Standards and Privileges Committee. It does debate them on occasion, as you well know, and they sometimes go through on the nod, but that would depend on the seriousness of what is in front of the House.

**Q85 Mr Turner:** I take it that we—Parliament; somebody—could raise the level on a general basis before future errors are found with an individual.

**Mr Barron:** That would be a matter for the House. If the House felt that one of our reports did not pass the tariff that was sufficient under the circumstances, the House could reject it.

**Q86 Mr Turner:** I'm rather thinking that it would be possible for the House to take a view before you are asked to look at anything or to ask you to make a report to the House without an individual's—

**Mr Barron:** Case being involved. That would be a matter for the House. We operate on the basis of not only the memorandums that we receive from the Commissioner but whether the House asks us to look at something. A couple of years ago, it asked us to look at the issue of whether hacking Members' phones was contempt of Parliament, and we looked at that independent of the Commissioner. We are currently looking, independent of the Commissioner, at a leak from a Select Committee. If the House wanted us to

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look at tariffs for people who have breached the code of conduct, we would quite clearly do exactly that.

**Q87 Mr Turner:** The problem then would be what was happening in the 1970s—the balance may be one, may be fewer than one—and there would be a reluctance to impose the new tariff.

**Mr Barron:** Things have to be proportionate. That is a very important thing. I am not going into detail. It is not statute. We operate as a parliamentary Committee, so we are not bound by statute. The law does not necessarily influence us, but it would be wrong if it was not proportionate in terms of what findings we were coming to against a Member and what they had done. Again, I echo the possible situation where you could take action—potentially even under some recall legislation—because of what a Member had done, although the courts had decided not to. There are issues about proportionality and fairness and many other things as well. I am not thinking it through here. I am just posing the question. I am not a lawyer, but it is something that needs to be genuinely looked at if you are going to look into bringing in a statute about recall and how that sits and how we currently sit in terms of criminal law.

**Chair:** Thank you, Andrew. Sheila, I can only give you one question, but I will call you when we get the Clerk to the table, which I am keen to do.

**Q88 Sheila Gilmore:** Suspension from Parliament always strikes me as being a bit like suspending a pupil from school. Some people say that it is like giving them a holiday, so it not really a punishment. There is a problem with the public perception. There

is a financial penalty, but most people think MPs are so fabulously wealthy that that would actually just feel like nothing. Suspension means that you go home or maybe you go and have a holiday—who knows? Is the public perception that the disciplinary measures that Parliament itself uses are just not particularly effective driving the calls for recall?

**Mr Barron:** I accept that entirely. The case that has been talked about, which was probably one of the more serious cases, is the Conway case. There were two occasions, but he was suspended for 10 days. He is not now an MP. We recognise the fact that, when we draw up a memorandum, even the use of language could potentially affect somebody's future career. That is not what we are there to do exactly, and presumably Zac Goldsmith and Douglas Carswell are saying that recall is about that and that you people can be challenged a bit quicker than at the next general election. However, nobody should think for one minute that anyone who had been suspended, even for 10 days, would be a very comfortable candidate at the next general election. With the way that party politics works, I suspect that if they wanted, the major opposition party in that constituency might be rubbing their hands at the thought of it as well. So, there are wider issues that our remit has for individual Members of Parliament that are not apparent when we put the report on the Floor of the House and it is carried. Those issues become apparent in years to come.

**Chair:** Kevin and John, it has been a very helpful, informative and sobering session for us. Thank you for your time this morning.

### Examination of Witnesses

*Witnesses:* **Robert Rogers**, Clerk of the House, **Liam Laurence Smyth**, Clerk of the Journals, and **Michael Carpenter**, Speaker's Counsel, gave evidence.

**Chair:** Robert and Liam, welcome. No disrespect was intended in overrunning there, but I think we needed to keep our teeth into a couple of lines of inquiry. I hope you found that helpful, too.

**Robert Rogers:** Indeed, Chair, yes.

**Q89 Chair:** Robert, do you want to say something to open up?

**Robert Rogers:** No, I think my colleagues are known to you and your colleagues, so let's crack on with your questions.

**Q90 Sheila Gilmore:** One question that has obviously been raised a lot is the issue of what serious wrongdoing is, and its relationship to the triggers. If one trigger is a criminal conviction of less than 12 months, presumably, serious wrongdoing is a qualifier on that. I welcome your comments on who would be making such a qualification, because there is probably a general view that it should not necessarily be an automatic trigger.

**Robert Rogers:** I take that point entirely. The issue came up in your discussions with your previous witnesses, about the equivalence of serious

wrongdoing and something that might fall under the first recall condition. Of course, serious wrongdoing is a crime or an offence only if it includes conduct that is specifically defined in statute as being an offence, and so falls within the first recall condition. In terms of what serious wrongdoing is for the purposes of the second recall condition, although I would certainly not attempt to describe what sort of conduct might amount to serious wrongdoing, I would make the point to you that I earnestly discourage you from suggesting that it should be put in statute—first, because that hands the definitional issues over to the courts, and that might take the process in a direction that is perhaps not welcome. Secondly, I think you have the problem that specifying excludes. In other words, if you have a list of serious wrongdoing and something does not appear in that list, the whole process is open to argument. Thirdly, and this relates to my first point about not putting it in statute, were you to put something in statute, it would encourage the courts to examine parliamentary materials in terms of debates and proceedings—perhaps in a Committee such as this—which would drive a coach and horses through Article 9 of the Bill of Rights.

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**Q91 Sheila Gilmore:** In relation to the first trigger, do you see it as being very much a matter, if it is in this set-up, for the Committee initially and then the House itself to treat the criminal conviction as just the starting point upon which you then exercise judgment on whether it is sufficiently serious to proceed, or do you think it is envisaged as more or less an automatic trigger?

**Robert Rogers:** The draft Bill makes it automatic and, in a sense, the due process for that purpose has been transferred outside the House to the courts. When the result of that process is reported to the Speaker, the first recall condition is met, so there is no question of discretion being exercised by a parliamentary process.

**Q92 Sheila Gilmore:** So the issue about definition comes under the second trigger. If you think it should not be in statute, should it be codified as a code of practice?

**Robert Rogers:** I certainly do not think it should be in statute. If you codify it and it is, let us say, a document approved by the House, as is the present code of conduct, you may have the “specifying excludes” problem. It depends how canny you are about devising the list of what would be guidance for the Commissioner and particularly for the Committee on Standards and Privileges, which would be making its recommendation to the House.

Alternatively, you could make it a tariff related to, let us say, the number of days suspension recommended. If it were more than five days, that could fulfil a condition that it was seen as serious wrongdoing. If you were to do that, you would also need to take into account how the disciplinary powers of the Chair were exercised, because under Standing Order No. 44, if a Member is named, it is an automatic suspension for five days on the first occasion; 20 days on the second; and for the remainder of the Session on the third. If force is used to execute the Speaker’s order that a Member named must leave the Chamber, it is an automatic suspension for the entire Session. You would have to work that rather separate tariff into what you did.

**Q93 Chair:** That is the long holiday option. I should put on record that Michael Carpenter, Speaker’s Counsel, is with us. Out of curiosity, how long have you been in post?

**Michael Carpenter:** In my present post, since 2008, but I have been in the House service since 2000.

**Q94 Chair:** Did the post exist before 2008?

**Michael Carpenter:** Yes, it came into existence in 1838.

**Q95 Chair:** I sought legal advice on the rights of Members of Parliament, in terms of whether they could be hauled before the international courts for supporting an illegal war. I found great difficulty in getting advice inside Parliament. Mr Bill McKay must have had a memory lapse when I was asking for internal advice. I am glad to know that you exist.

**Michael Carpenter:** Happily, I can say that I think that was before my time.

**Robert Rogers:** Chair, that would be the only lapse of memory that I am aware of Sir William succumbing to. For completeness, may I say that Liam Laurence Smyth, Clerk of the Journals, is my principal adviser on privilege, but he has also taken very much the lion’s share of putting together the memorandum that I have put before you?

**Q96 Mr Turner:** It is interesting to find out what the Speaker’s powers are. One feels that he has quite a strong power to suspend someone for five days for the first offence, even though it does not happen often, thank goodness, yet 10 days are not as significant for those such as Mr Conway. Do you agree that it may be appropriate for our Committee, the Standards and Privileges Committee or the House of Commons to look again at this part of the rules?

**Robert Rogers:** It is not the Speaker’s power directly. The Speaker names a Member who is guilty of a gross breach of order or who disregards the instruction of the Chair. The normal procedure is then that a motion is moved by the senior Minister present, “That Mr X be suspended from the service of the House”, and the House decides that. It would be a serious matter for the Chair if the House were to negative a motion like that or if there were a significant number of Members voting against it, because it really would reflect on the authority of the Chair.

This is about keeping order in proceedings, and those powers are also available to all the Deputy Speakers. They are not available in a Committee of the whole House—you have to resume the House—and they are not available to a temporary Chairman in a Committee of the whole House, but otherwise they are powers exercised by the Chair with the subsequent immediate—because the question has to be put forthwith—approval of the House.

The origin of those powers was in a rather more turbulent and tempestuous period of the House’s history, but they are a necessary weapon. Of course, the Chair has the power to suspend or even adjourn the House without putting any question in a case of grave disorder, but the House is very well behaved, collectively, by comparison with past years. As to the equivalence between a punishment which is available for what may be extremely disruptive behaviour or a demo in proceedings in the House and the other sort of punishment tariff, that is a matter of judgment. It may be one that your Committee will want to think about carefully.

**Q97 Mr Turner:** Do you recognise—I assume you do—the difference between things that are the responsibility of Parliament and things that are generally viewed as political activities that may quite significantly affect the views of local electors but have no equivalence in the responsibility of Parliament? Presumably, you understand that. It seems to me that this proposal that there should be a recall would be much more effective at local level, with decisions made by local people and with the responsibility being of political activity, not necessarily parliamentary activity.

**Robert Rogers:** I entirely understand that argument, and I understand the distinction that you are making.

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If we take Zac Goldsmith's Bill which, for the purposes of this discussion, we might call recall max, of course that is much wider. I would have some concerns about the way it is drafted because, for example, one of the offences—I use that word in its most general sense—is to have “intentionally misled the body to which he or she was elected”. If that were in the statute, parliamentary materials—what a Member said in debate—would again become the subject of judicial notice, of proceedings in the courts. That is what Article 9 is there to prevent. I may be straining at a gnat, given that this is a Private Member's Bill and we have no more Private Members' Bill days in this Session, but nevertheless the issue of principle is there.

**Q98 Mr Turner:** Do you understand the proposals of both Zac Goldsmith and Douglas Carswell, who said it is an abuse of the term “recall” with this sort of power pushed up; a recall is a power passed down. Is there a better way?

**Robert Rogers:** That is a political judgment. I do not think we would offer you an opinion on that.

**Q99 Chair:** Are you accepting that, Andrew? That is not like you.

**Mr Turner:** No, it is not.

**Robert Rogers:** I certainly note the distinction, but I do not think it is for the Clerk of the House to express an opinion on it.

**Q100 Chair:** Robert, you talk about Article 9, but of course Article 9 is to stop the courts interfering in the proceedings of the House. It is not *carte blanche* for Members to break laws external to the House and not have them taken into consideration, is it?

**Robert Rogers:** No, and that is an extremely important point to make. It is one that I raise in the opening paragraphs of my memorandum, because it is extremely important to set these recall proposals in a broader context. When they were put in the coalition programme for government, and at that time, as I say in the memorandum, there was a fairly widespread impression—because the Chaytor case had not been decided—that, in some way, the operation of some arcane privilege protection could do what you described a second ago. That is not what Article 9 protection is there for. This place is not a haven for criminal wrongdoing. That is absolutely clear. Article 9 is there to protect free speech in proceedings in Parliament, in a Member discharging the duty that a Member has in this place. Also, it extends to officers who are in the same position and to witnesses before Select Committees.

**Michael Carpenter:** I was going to add, as the Clerk rightly said, it protects proceedings. It is possible in proceedings in the House that a Member might say something that would otherwise be unlawful if said outside: breaking an injunction, making an inflammatory remark or possibly even a racially insensitive remark, or something like that. That is protected for very good reason: speech must be free in the House of Commons.

**Robert Rogers:** I absolutely endorse that.

**Q101 Chair:** This is probably not part of our discussion today, Robert, but perhaps you could take away the thought that the word “privilege” has connotations for ordinary people which it does not have for us. When we talk about parliamentary privilege, it sounds as though we are getting away with something and having something that other people might be jealous of.

**Robert Rogers:** You are preaching to the converted on that, Chair. Indeed, in a textbook that I wrote on this place, I made that suggestion very strongly. Whether it is called something like “public interest immunity”, of course, means something different in other circumstances.

**Q102 Chair:** Or the rights of Members of Parliament to free speech, or whatever. Members of Parliament should not have privileges in the sense that people externally understand the word, but they should have rights and they should have the ability to speak freely. The public would understand the latter, not the former, but I am rather taking advantage of my position in putting that on your radar again.

**Robert Rogers:** I am grateful to you for doing so. It is important that we rebrand it, so that people understand that actually it is of as much importance to them that their Member of Parliament can raise their case or raise issues without any fear at all of being proceeded against by some big or, indeed, well-resourced battalions outside this place. Electors really do need to understand that it is there for their benefit, not some personal advantage of which Members are availed.

**Q103 Chair:** We love our jargon, but this can be a dangerous piece of jargon when people outside misunderstand.

**Robert Rogers:** I agree.

**Michael Carpenter:** When I have discussed this matter with academics, I have pointed out to them that the origin is, in Roman law, *privata lex*—in other words, a special code imposing rights and duties on a particular class of people. I know in common usage that it has the wrong connotation, but the origin of it is the special rules that apply to Members.

**Q104 Mrs Laing:** I am so glad that Mr Carpenter made that clear, because I was just trying to remember the Latin derivation. I didn't want to ask the question. It is so right. Sometimes, it occurs to me that, if we went back to the strict Latin phrases that meant what they were meant to mean, rather than the way in which language has developed since they were first used, we would be a lot clearer. But, alas, this is the 21st century and language has developed. Thank you for answering the question that I didn't ask.

Going back to the main issue, have you considered the aspect of recall and recall procedures, which depend on the principle that justice has to be done and has to be seen to be done, and that Members of Parliament are entitled to justice in the same way as any other citizen? Given that, have you considered that political judgment and party political considerations might come into the argument? If there were not sufficient safeguards, a Member of

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Parliament who had become unpopular in his or her constituency because of the particular political stance that he or she had taken, could be subject to recall under—I use for the sake of brevity—trumped-up charges of wrongdoing?

**Robert Rogers:** I should recall that this is the second time that Mrs Laing and I have faced each other across a witness table this week.

**Mrs Laing:** It has been a busy and productive week.

**Robert Rogers:** It is extremely important, given that the first recall condition is met after due process in a properly constituted tribunal, a court, that meeting the second recall condition is seen to be exacting and rigidly fair and impartial. How one achieves that—there are many ways, and you discussed some of the issues with the Chair of the Standards and Privileges Committee earlier—is a very important matter. I will ask Michael to say a word about this in a moment.

In my memorandum, I set out what the stages might be to make the process Human Rights Act-compliant and to ensure that the process did indeed give the sort of fairness that Mrs Laing is after. Michael might like to say a word about that. Clearly, as it is set out in my memorandum, it does appear to be almost an unwieldy process. It may be that, if you have the involvement of lay members in the Committee on Standards and Privileges, the number of members who can be deployed at any time—not, as it were, re-using members who had been used at an earlier stage in the process—might be an issue to be addressed, but I think the central question of fairness is a very important one.

**Michael Carpenter:** It is a general proposition that, although the proceedings of the House are not subject to examination by the domestic courts—because of Article 9 of the Bill of Rights—we do have international obligations as a country, and it is quite possible for the proceedings of the legislature to engage those responsibilities such as under the European convention on human rights. I know that the Government have dealt with this in their memorandum and given a degree of assurance, although I am always nervous when people say that there are good arguments for such a proposition. I know from my experience that there are also arguments against.

I think there is a risk—I would not put it more highly than that. If an unfair procedure were followed that involved a Member being subject to a recall petition under the second condition, there is a risk. Although it is true that the right to be a Member of a legislature is a political right and not a civil right under Article 6, there are certain consequences, and, of course, the procedure will lead to a finding against the Member of serious wrongdoing. However it is defined by the House, a moral stigma will be attached to the Member. If that has been done by an unfair procedure, and if you have a system that leads to a recall petition with such a low threshold as 10%, I think there is a risk that an international court might say, “Actually, what really determined this was the determination by the House of serious wrongdoing by this Member, and it led to the recall petition almost as a foregone conclusion, because the threshold is so low.” So I think there is a risk.

It is always good practice to have a fair procedure and hear the other side, because it leads to better decision making of this kind when you are deciding whether somebody has engaged in conduct of which you, as it were, morally disapproved.

**Robert Rogers:** That situation, I think, could be exacerbated depending on the political circumstances of the time. If you had a constituency where Mr X, the sitting Member, had a majority of 250 and if Mr X’s party were doing extremely badly in the opinion polls, a finding of serious wrongdoing might be tantamount to expulsion.

**Q105 Mrs Laing:** Exactly. Alarm bells are ringing, thinking about what Mr Carpenter has just said. First, on the possibility that this procedure could lead to a case in the European Court of Human Rights, am I right in thinking that that is the possibility to which you are alluding?

**Michael Carpenter:** It is definitely a possibility. There are arguments against it, of course, but it is possible.

**Q106 Mrs Laing:** And therefore a very long procedure. If somebody was found guilty, let’s say for the sake of brevity, under the procedure before us, they would have the opportunity to say that their human rights had been breached and so on. A case could then be pending for years and years, spanning the next general election.

**Michael Carpenter:** That is right. Because the United Kingdom’s international obligations would be in question, there would not be a way of getting any kind of domestic suspension of the measure, which you often have. If something is subject to appeal, it is sometimes suspended in its effect until the appeal is determined. That could not really happen here. The recall petition would take place for the person subject to it. If there were a finding two or three years down the line or whatever that the whole procedure was unfair, you are left with a rather ‘limping’ situation.

**Q107 Mrs Laing:** Or you are left with something tantamount to applying a death penalty. Once he is gone, he is gone. There is no chance, in reality, of recovery. That could lead to a serious injustice.

**Robert Rogers:** That simply emphasises the need to ensure that the process is as fair and as transparent as possible.

**Q108 Chair:** Just before you go there on that, this reminds me a little of the Fiona Jones case. I know that that was an external case to the House, but a Member was found guilty and she certainly did not participate in debates or the life of the House and, on appeal, if my memory serves me correctly, she was cleared. She came back, but with all that baggage attached to her as an innocent person. She then lost the subsequent election.

**Robert Rogers:** Indeed, Chair. That is covered in paragraph 13 of my memorandum. It was 1999, and the conviction was quashed on appeal.

**Chair:** And subsequently, one could argue, she lost her life because of that set of decisions. She is no longer with us. Perhaps I do not want to go too far into that.

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**Q109 Mrs Laing:** It certainly is a case of perceived miscarriage of justice, which had disastrous results. I speak from the other side of the political divide. We are talking about someone who was known to us as a colleague, whose life was literally destroyed by going through this procedure. That is exactly what I am getting at. Recently, in the debacles of 2009, a lot of people who were known to us did not have their lives destroyed to the extent that Fiona Jones suffered, but certainly suffered enormously as a result of campaigns that were run against them in the media and by their political opponents. In the end, those particular people were found to have done nothing wrong, or possibly something which was de minimis wrong, yet they suffered proportionately far greater effects than would otherwise have been the case.

**Q110 Chair:** Do you agree?

**Robert Rogers:** It is important, in referring to the Fiona Jones case, to note that that was for an election offence, so it was not within a parliamentary jurisdiction; it was within the jurisdiction of the courts. I absolutely accept what Mrs Laing says. If you have a controversial case, it is likely to be played out as it were by megaphone in the constituency and elsewhere. That may well affect the outcome of the recall petition, because more people may sign it. It may, if the recall petition is successful, affect the outcome of the subsequent by-election.

Returning to the point that I made earlier, it is all the more important, therefore, that any process that decides whether the second recall condition has been met is limpidly clear and impartial, and that it is not, so far as human ingenuity can devise, subject to being subverted by the perhaps quite hysterical comment that there may be in a very controversial case.

**Mrs Laing:** Yes, indeed. May I continue this line?

**Chair:** Yes.

**Q111 Mrs Laing:** Mr Rogers, on exactly that subject, several questions back you made the point that there was a need for both sides to be heard, so that justice was seen to be done. Of course, before any kind of tribunal that is quasi-legal in any way, both sides will be heard, because the atmosphere and practical set-up will be similar to how we are sitting at the moment. If that part of the process is removed, however, and the process is carried out only in a constituency in which large numbers of people are being persuaded either to sign or not to sign a petition, is it possible to ensure that both sides are heard?

**Robert Rogers:** I do not think I can follow you into the constituency, as you invite me to, because my concentration must be on the parliamentary aspect. I accept what you say and that those things may happen, but that is not really about the parliamentary dimension of assessing whether the second recall condition has been met. Paragraph 34 of my memorandum—I will ask Michael Carpenter to come in on this again in a moment—attempts to show what might be a robust and resilient process, which would meet some of the concerns that you were expressing a moment ago.

**Michael Carpenter:** The point about fairness relates to a finding against somebody that they have done

something wrong. In the more broad recall petition where the local electorate think that they ought to recall their Member, that is essentially a political matter and it is not necessarily triggered by a finding against a person. I am concerned about fairness of procedure where findings are made that somebody has committed serious wrongdoing—that they have done something that has a degree of moral turpitude to it. If you are making a finding like that, you need a fair procedure, because that is more quasi-judicial and not political.

**Chair:** Liam, did you want to come in?

**Liam Laurence Smyth:** The House has the power at the moment to expel its Members. We do not prescribe in any detail how that decision would be taken, and, thank goodness, it has not been taken for very, very many years, but it is a power the House has now. The Government's Bill would offer a kind of special case of expulsion, where the House had passed a resolution that the second recall condition should be applied, and there was this elaborate process of a petition, which would end in a certificate to the Speaker that 10% of the voters wanted a by-election, after which the seat would be vacated. In a sense, it is an elaborate special case of an expulsion; it is a power that we already have.

Your Committee can, Mr Chairman, grasp the opportunity of an additional power for the House that the Government are offering, and resist, if I may suggest, the temptation to put in statute too many conditions for how that would work. It is a very big ask, to take a power, with all the political risks attached to it. The reason we are saying that is because of the risks of inviting the courts in to decide these highly delicate political matters, which would happen if the Act said "if the House has—after a fair process—agreed the second recall condition". That would invite litigation on whether the process was fair. There is a big opportunity for the House to take on this additional authority and your Committee will be hugely influential in how it works.

**Q112 Mrs Laing:** Could it be argued—in the interests of justice not only being done but being seen to be done, and the fairness of listening to both sides in the correct forum for such consideration, which Mr Rogers referred to—that those are necessary conditions in order that justice can be seen to be done?

**Robert Rogers:** It could be so argued.

**Michael Carpenter:** Chair, I don't want to sound too obscurantist but I think there are two levels here. There is what I might call the international level: what are our international obligations? Then there is the level of domestic law. With my colleagues, I am not in favour of prescribing in statute what should be done by Parliament, because you are then altering the domestic boundary between the judiciary and the legislature here. You would be inviting the courts in to determine proceedings in Parliament, and I am definitely not in favour of that.

When it comes to the international responsibility it is right that the House should adopt its own procedures that ensure fairness when it is making a determination against a person, so that the UK has a good argument if the matter comes before an international tribunal.

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**Q113 Stephen Williams:** I have a question about expulsion. I have read the report that Mr Rogers has presented to us, with Mr Laurence Smyth's assistance. It has an interesting section on expulsion and other criteria for a Member either being forced out of the House or throwing themselves out. It seems that expulsion was used only three times in the last century, two of which were for imprisonment, in 1922 and 1954, the last time it was used. In 1947 the House expelled Garry Allighan for publishing an article accusing MPs of being drunks. That is an interesting sanction that other MPs who have written such articles recently may wish to look at.

Since 1981, expulsion has been automatic under the law, as we heard in the previous session. However, for anything that falls short of a prison sentence of 12 months and one day, is it the case that the House of Commons has the power to expel a Member for any reason at all, whether it is breaking the law, or upsetting Members by publishing articles about MPs being drunk, randy or whatever else?

**Robert Rogers:** As I suggest in paragraph 12 of my memorandum, events and expectations have perhaps moved on since October 1947. Yes, it is absolutely true, and I would argue strongly that the House should maintain the power to expel, because it is a necessary character of a sovereign Parliament that it has control over its membership in that way. Not mentioned in my memorandum, but perhaps relevant, is a more modern example, a Conduct of Members case in 1976–77. There were findings, which might well amount in the category of “serious wrongdoing” that we are discussing to that level of misconduct against Albert Roberts, John Cordle and Reginald Maudling. When that report was debated by the House, there was an amendment down for expulsion. John Cordle, as you will see from the list attached to my memorandum, actually took the Manor of Northstead on the morning of the debate, as I recall. So there is a more modern example. Indeed, it was a conduct case, an assessment and judgment by the House that was in a relatively modern era, but rather predated the formal arrangements that we now have.

In terms of the current state of the law, the custodial sentence of more than a year means that expulsion would kick in automatically—the House does not have to do anything. However, the House certainly retains the absolute right to expel a Member if it wishes.

**Q114 Stephen Williams:** For whatever reason, whether it is transgression of the law decided by somebody else or adjudicated on by a judge and somebody else, or indeed for just being an irritant internally?

**Liam Laurence Smyth:** The case this Session when a sitting Member was found guilty of a false accounting offence was sub judice until the judge had finished with it. It was sub judice until sentence. There was a lot of press comment after his conviction. How could somebody possibly continue to be a Member of the House, having been convicted of such an offence? Because the matter was sub judice, it was not debated in the House and, as it happens, the Member, who had

already been disowned by their political party, took the Chiltern Hundreds before sentence.

In his sentencing remarks, the judge took account of the remorse that had been shown by the Member and arrived at a sentence, as it happens, of 12 months—just under the barrier for an automatic expulsion. But suppose the Member had not taken the Chiltern Hundreds at that point, and decided to tough it out, to sit in prison as, for example, Bernadette Devlin did when she was sentenced to prison? What would the House have done? There is a possibility that we might have had, in this Session, a proposition put in front of the House that the Member be expelled.

**Q115 Stephen Williams:** Was that Mr Illsley or Mr Devine?

**Liam Laurence Smyth:** Mr Illsley. His sentence after he resigned from the House was 12 months.

**Robert Rogers:** That perhaps is a very strong argument for the House retaining its absolute power.

**Stephen Williams:** There are lots of fascinating, historical data in the extract of your report that we have. Are there lots of examples of Members effectively taking the pearl-handled revolver over the Chiltern Hundreds or the Manor of Northstead rather than being expelled by their peers?

**Robert Rogers:** There are quite a few examples, yes.

**Liam Laurence Smyth:** I struggled with that, Chairman, when trying to prepare the note for Robert. I thought that I would perhaps include a list of revolver-in-the-library cases, and decided that it was much safer to include a complete list of everybody than make invidious judgments. I am afraid that it is a rather lengthy list.

**Q116 Mrs Laing:** I have one more question. It is about defining serious wrongdoing. You have dealt with this very well. Just to clarify it, in the general population, there is a huge spectrum of opinion as to what is a serious wrongdoing and what is not in any particular aspect of a person's behaviour. In general, we leave it to courts and the court procedure to properly decide that. We do not allow a lynch mob to decide where serious wrongdoing has occurred. We do not allow people to take such judgments into their own hands.

Are you satisfied, having examined the proposals before us, that the point at which the serious wrongdoing is taken to have been done or not is at the right point in the procedures and by the correct body? I think Liam was possibly suggesting that that should be rather different.

**Liam Laurence Smyth:** I knew about the manifesto commitment, and I therefore opened this with fear and trembling to see what the second recall condition said. When it just said that the second recall condition is that the House has decided that there should be a petition, I was delighted—thrilled. But it puts a great onus on your Committee to decide whether the House should want to take this power and, if so, to persuade the House that it can be trusted without needing the courts to supervise when and where it would use that power. It is very helpful that the Government set out what they think serious wrongdoing is, and of course



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in many cases it will be the kind of disciplinary thing that comes through the excellent process that you discussed earlier today with John Lyon and Mr Barron, who (if I may say so) modestly underplayed his leadership of the Committee. It is an astoundingly good Committee at dealing with things objectively.

**Robert Rogers:** Liam was delighted. I was relieved that we did not have the business of persuading that we should not have a more detailed process set out in statute, because I think the Article 9 difficulties would have been substantial.

**Q117 Chair:** Thank you. Robert, do you have any last comments or thoughts that you want to leave with us?

**Robert Rogers:** I do not think so, Chair—unless my colleagues do—but I would simply finish by saying that if, at any stage during your consideration of these matters, we could help further offline, so to speak, we would be very happy to do that.

**Chair:** Michael, Liam, Robert, thank you all very much for your evidence this morning. It has been extremely helpful.

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**Thursday 8 March 2012**

Members present:

Mr Graham Allen (Chair)

Paul Flynn  
Sheila Gilmore  
Andrew Griffiths  
Simon Hart

Mrs Eleanor Laing  
Mr Andrew Turner  
Stephen Williams

### Examination of Witness

*Witness:* **Lewis Baston**, Democratic Audit, gave evidence.

**Q118 Chair:** We are very light on the ground this morning. It is no reflection upon you. There is a one-line whip and some Members have taken the chance to get back to their patch. However, that does not influence anything in the Committee because you have a chance to talk at length to us and I and other colleagues will ask you a few questions, so please do feel free fully to take the chance. Lewis, welcome, and would you like to make some sort of opening statement just to help us get in the mood? Thank you.

**Lewis Baston:** I am immensely grateful to the Committee for asking me to come along and expand on the written evidence I sent in. I am here in my capacity as a senior research fellow of Democratic Audit, which is a research organisation that looks at political and constitutional matters. Our starting point is the old one that we would not start from here, as it were. We are sceptical about the entire proposition of recall but, looking at the contents of the coalition agreement and the manifestos, we can see why the Government has gone for something.

While we are critical, I think it is fair to say, of the way this draft Bill is proposing to go ahead we prefer it to some of the other suggestions that have been made in the public debate on this matter. We are sceptical that it sort of answers a problem. We feel a lot of the detail of what the Government are proposing seems reasonable. No doubt you will hear from John Turner if that is not the case but it looks reasonably well put together as a practical proposition, although we doubt that the procedure will ever be used. It is sufficiently narrowly drawn that we doubt one of these things will ever happen.

That prospect does not distress us, but the Government may be regarded as having come up with something that is supposed to reconnect people with politics but which fails to do so, and there is a risk of encouraging public cynicism rather than diminishing it if something is introduced with fanfare that actually makes no difference at all.

That is probably my opening statement, so I would be glad to have any questions or observations.

**Chair:** Andrew, would you like to kick us off?

**Q119 Mr Turner:** Could you start by telling us which things are good and which are bad in yours and the other people's submissions?

**Lewis Baston:** Interesting. Our submission is, of course, excellent. I would not like to single out any other submissions. I would possibly say that the oral hearing you had with your two parliamentary

colleagues, Zac Goldsmith and Douglas Carswell, and Alan Renwick was extremely interesting and intellectually stimulating, although I disagree with very much of what was said. The evidence that was sent in by, I think, Ms Twomey from New South Wales is interesting in terms of some of the details of how serious misconduct is established in Parliaments. The gentleman, whose name I am afraid I have forgotten, from Civitas, I thought also had some very interesting observations in his written evidence.

Our key point about this is that it is sufficiently narrowly drawn that it may well never happen. The criteria I think are nearly right that a serious criminal conviction is obviously something that detracts from the ability of an MP to have the confidence of their constituents and to do their job, and that the House should have powers, as indeed it does at the moment, to discipline people who have transgressed the rules in a serious way.

We are not entirely happy about imprisonment being the sole criterion for criminal convictions leading to opening of recall; I think there are other dimensions. Some things that people do not tend to get imprisoned for involve a breach of public trust and some things that do cause imprisonment are not necessarily of a sort of serious nature to breach the kind of bond or trust between constituents and MPs. I would give examples such as arrest at instances of civil disobedience, and so on. The case of the Northern Ireland Members from the late 1980s is instructive. Their constituents were well aware that they supported this sort of action and having exposure to recall would, I feel, not be helpful in that sort of case.

I am sorry, I have gone on to the substance of what I said in the written evidence, so please come in.

**Q120 Mr Turner:** From your point of view, in the Northern Ireland example at what point would that person be hauled before his electorate?

**Lewis Baston:** Under the Government's proposals?

**Mr Turner:** No, from your point of view.

**Lewis Baston:** From my point of view. I would not bother. I would say the next general election or if somebody is found guilty of a very serious offence.

**Q121 Mr Turner:** So you are proposing what? At what stage do they go before the public rather than Parliament?

**Lewis Baston:** I would not suggest people involved in minor terms of imprisonment like that.

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**Q122 Mr Turner:** No, but when will it be?**Lewis Baston:** The next general election.**Q123 Mr Turner:** Yes, but when will it be effective? Are you saying nobody should be hauled before their local electorate?**Lewis Baston:** Ideally I would suggest that we forget about the whole idea of recall. Given the Government does want to do this, I offer two suggestions. One is to lift the threat of recall from very short terms of imprisonment, such as those that are used in cases such as the Northern Ireland MPs. The other one is to require some element of dishonesty or breach of trust before exposing somebody to recall.**Q124 Mr Turner:** So you are not in favour of this at all? For the benefit of the Government you would give them some nod of approval, but it would be very unusual?**Lewis Baston:** Given the Government want to do this, I want to be helpful and suggest things that would limit the number of, I hope, rather unintended consequences such as the case of the Northern Ireland MPs.**Q125 Mr Turner:** But surely the case in Northern Ireland would be absolutely super, because the MP would have served his notice, then he gets one of these recalls. The local people decide whether to disqualify him or they would decide not to disqualify him. What is wrong with that?**Lewis Baston:** I would like to unpick the idea of local people. I think some of your witnesses have spoken in terms that rather idealise the civitas that they represent. What we are talking about is the existence of organised political opposition in the constituencies.**Q126 Mr Turner:** But there is not any. This is a very good example of where there is not, or rather is but the majority supports the Member of Parliament.**Lewis Baston:** They probably would. I would imagine in the Ulster cases from the 1980s that the Member for Fermanagh and South Tyrone would have been recalled and faced an election whereas the Member for Strangford probably would not. I think the exposure to the success of petitions does not really relate to the seriousness of the conduct but to the existence of an organised political opposition in the constituency, which has never liked the MP and never had confidence in them and wants to take an opportunity to—**Q127 Mr Turner:** They suggested 50%, I think, didn't they, not 10%?**Lewis Baston:** Your parliamentary colleagues suggested a high threshold for the number of signatures. Under the Government's proposal, of course, it is 10%. 50% feels high and 10% feels low, if I can put it that way.**Q128 Mr Turner:** What would be right?**Lewis Baston:** I think there is a trade-off here between two considerations. There is the threshold in terms of the number of signatures and the ease of access to recording your signature. The Government have

proposed a system with, I think, a fairly low threshold in 10% but making it rather difficult for people to record their signatures on the petition. A lot of other witnesses, I have seen from the transcripts, have said that they prefer easier access, but I think if there is easier access that should come at the price, as it were, of a higher threshold to reach. I am fairly relaxed about the exact balance between these two criteria. It does not seem to me that the Government has got it particularly wrong on this, maybe bump it up to 15% but—

**Q129 Paul Flynn:** The e-petitions were introduced with all kinds of benign intentions so that the voice of the people could be heard in Parliament. The early experience has been that the e-petitions have had the perverse effect of enlarging the voice of the tabloid, because those e-petitions that are supported by the tabloids are the ones that find they get to the 100,000 mark in a more speedy way than the others. Do you think there is a perverse effect possible here if we allow the might of the tabloids to be turned against MPs? There are the two you quote in your paper, Tom Watson and Tam Dalyell, and I can think of many others who challenge accepted public wisdom or un wisdom. Do you think that it would in fact give further power to the tabloids to excoriate MPs who are doing an heroic job?**Lewis Baston:** I take that risk very seriously in the sort of maximal version of recall that has been talked about. This is obviously less of a concern with the Government's proposals, but it is certainly something that worries me greatly because getting enough signatures to recall somebody is not just a matter of members of the public coming individually to a decision to do something. It will be a matter for campaigning. It will be a matter in which powerful interests can take people out who are opponents of theirs; Tom Watson I mention as somebody who would have been exposed to this kind of danger.

I feel the House is a collective matter, that it is a national conversation, and that individual MPs who have minority views, who have unpopular views, who have views that sometimes, like Tam Dalyell, attract outrage from the mass media, are performing a valuable function in Parliament as a whole. Parliament should represent a spread of points of view. I think MPs should also be able to speak their minds without fear or favour of these interests as far as realistically possible. I fear that as well as exposing brave MPs to harassment or successful recall, it could have a chilling effect on other people taking on powerful local or national interests. That is something that gravely concerns me and I feel would undermine something that the House does as a collective institution.

**Q130 Paul Flynn:** If you take yesterday's debate in the House of Commons where any MP who had the temerity to say anything that was mildly critical of the monarch or any of her relatives would have had his mouth bandaged by laws laid down in the 13th century and would have been silenced, do you think we should go in that direction of liberating Parliament

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to behave like a grown-up Parliament rather than following what was a knee-jerk reaction to a crisis?

**Lewis Baston:** Yes, I do. I agree with the premise and the conclusion of your points, yes.

**Q131 Paul Flynn:** The other point that you make strongly, and they are ones that are well remembered, I think, in this House, are the cases of Conway, Riddick, Tredinnick and Browne. There have been others. In those four cases, the sanctions that Parliament used against serious offences—in the Tredinnick and Browne ones they were caught out taking a bribe for putting down parliamentary questions; Browne was possibly a more serious case, it is remembered well—surely are so mild. We do have a reputation of standing together and looking after each other. There does need to be some kind of new powers that we should use. If recall is not the right way of doing it, what is the right way?

**Lewis Baston:** I believe in dusting off the power of expulsion in the most severe cases. I understand that the Committee on Standards and Privileges is a body that does work by precedent. That point was made, I believe, by Mr Barron in a previous hearing. But precedents can be reviewed, updated, superseded by new rules, and I believe there is a case for taking some of these cases much more seriously. I think in terms of restoring faith in Parliament and Parliament's reputation, Parliament putting its own house in order would be a much more impressive spectacle for the electorate out there than some sort of rather dribbled-out procedure such as the proposed recall. I do not necessarily want to go into personal details of any of those recent cases where people are alive, but I wrote a book once that touched upon the Poulson case, and the power of expulsion was very nearly used in the case of Mr Cordle on that occasion. He resigned before it came to the vote, which I suspect would be the usual pattern. Also in the case of Mr Illsley, for instance, he resigned rather than face a vote of expulsion or any other consequences.

So I suspect that this power of expulsion would be there in the background and that usually it would be possible to arrange for somebody to resign rather than face it. But I think seeing Parliament putting its own house in order would be a good thing. I think there is a great tendency to try to, for understandable reasons, move responsibility over to independent panels and so on, but ultimately Parliament has to keep its own house in order.

**Q132 Paul Flynn:** The reputation of Parliament has never been lower, in living memory certainly. As we are mentioning our books, I recently published a book that was intended to be very positive about the future of Parliament, reform of Parliament, and found that the book was presented by one tabloid newspaper as a vicious attack on MPs by going through it and picking out humorous stories. There is a feeling it is going to take a long time to restore the confidence and the trust in Parliament that has existed through the greater part of my lifetime. You rightly mention the danger of some of the heroes in Parliament being attacked on this for the wrong reasons, but can you describe a mechanism you think Parliament could

introduce that would be trusted by the public and would stop the unintended perverse consequences that you have mentioned, and how Parliament would enact that?

**Lewis Baston:** I think certainly one thing, as I said, is to review the scale of penalties that is operated by the Committee on Standards and Privileges.

**Q133 Paul Flynn:** Can you give us some idea of what you think they should be? If somebody was caught with their hands in the till or taking money from lobbyists or anything else, what kind of punishment do you think there should be?

**Lewis Baston:** If there is a kind of mens rea about it then expulsion in severe cases. Although the power exists, and we all know it exists, it would not hurt to remind people that it is there. The Committee presently seems to have a kind of tariff of different sorts of penalty, of suspension of repayment and so on, for different grades of offences. I would suggest keeping that but extending it at the upper end to show that Parliament really is firm on its own who stray.

I would say also that given the way in which the system of the Committee of Standards and Privileges works, it is a little harsh just to talk in terms of grandees deciding this kind of thing. The Committee does seem to take its responsibilities seriously to operate as a non-partisan body, not perfectly but I think the mentality, the ethos of that Committee is a non-partisan, quasi-judicial one. We trust local councillors to police their own. I think having Parliament doing it itself would do more to increase confidence.

There is a case, of course, for having lay people joining the Committee, which has been made already by the Committee on Standards in Public Life, and has been accepted here, there and everywhere. That sounds reasonable; that sounds fair. In terms of people's confidence in MPs, it will take a long time to overcome the shock of the expenses crisis, but I think things like the proposal for recall that has come up now is a sort of excessive response to the shock. Before the 2010 election, Parliament put in place quite strict mechanisms to ensure that you would not get the expenses crisis over again; that with the new codification of rules, the creation of IPSA, you will not have anything like the expenses crisis ever again. One may have some crisis of some sort you can't anticipate now, but I think we have already shut the door to having another expenses crisis through institutional change. I do not think there is any need for any extra mechanism like this and that just doing their job well and not pandering to anti-politics sentiment is probably the best thing that can be done to restore the reputation of Parliament.

**Q134 Paul Flynn:** I heard Sir Christopher Kelly earlier this week, who is regarded in some quarters as the witchfinder general in his area, described the creation of IPSA as being excessive in the way it has developed and we need to draw back from what was created there. In the case of, say, Browne, which I recall very well—I recall the debate on this—the punishment handed down, looking back at it now, does seem to be a very mild one. Is it a case, if you

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can remember the details, where you think expulsion would have been the appropriate judgment?

**Lewis Baston:** Yes. I am not conversant with the full details of the case but I understand that it did sound severe and his own party Whips took a very dim view of his activities. Yes, I would say that is probably the sort of territory where you get expulsion. The Cordle case, I think, is crystal clear as well from the 1970s.

**Q135 Paul Flynn:** Do you believe that it is possible or desirable for MPs to act as gatekeepers to the recall petition process? Is it sensible to do it that way?

**Lewis Baston:** Yes. I think given the way the House is constituted, given the existence of parliamentary privilege and so on, it seems reasonable to have a parliamentary process to sort of start the process. In terms of having MPs sitting in judgment on other MPs, it is never going to be entirely neutral obviously, but I do not see a problem. I think the Committee on Standards and Privileges basically seems to do quite a good job. Add the lay members to it, I think that is appropriate. If there is evidence that it will act in a partisan way in future, we can come back and consider the composition and working methods of the Committee, but I do not see a problem at the moment with the way that works.

**Paul Flynn:** I am sure the Standards and Privileges Committee will be very grateful. Thank you very much.

**Q136 Chair:** Are you saying, Lewis, we are fighting the last war?

**Lewis Baston:** Yes.

**Q137 Chair:** It is all over and we have really only caught up a little bit. You could argue we had not caught up when there was the Conway case. We were still fighting or we were still dealing with that under the old gentlemen's club, put a chap in order rules, and that was inadequate and belated. Now we are doing something else that is inadequate and belated because we have solved the problem, in large part.

**Lewis Baston:** In large part, yes, I think so. As far as the way the system works, the expenses problem has been largely solved. In terms of public reputation obviously there is some way to go. There does seem to be a pattern of late response and over-response sometimes to things. In the 1990s there was a ban on what was called paid advocacy, I think, and that was written in a rather obscure way in response to the feeling of the moment. If I may use an equine metaphor, the horse has bolted, the door has been shut, and we might as well forget about it all.

**Paul Flynn:** Very dangerous talking about horses.

**Q138 Stephen Williams:** Lewis, I know from talking to you in the past, is a fellow psephological nerd who studies elections. How could you separate out or is it possible to separate out the party from the person? All MPs, apart from the people round this table, are terribly vain people and think that our name on the ballot paper is terribly significant to each of our constituencies. But from your experience how many people do you think vote Labour in Nottingham North rather than Mr Allen in Nottingham North?

**Lewis Baston:** My mentor and sort of intellectual godfather, David Butler, used to say it was always worth about 500 votes, and he has later revised his view to maybe it is 1,000 or 1,500. I think there are some cases in which there are directly people who will support the Liberal Democrats in Bristol West in the form of Stephen Williams but not the party generally. You can sometimes measure these things with local elections, if they are conveniently timed, and I believe you probably can see a fair few in Bristol West, and I am sure in Nottingham and Epping Forest as well.

The risk of a more generalised power of recall is that people will use it against persons whereas it is actually the party and their policies that are responsible. If you believe in any way in the idea of the mandate, that a government party is elected on a manifesto with things to do, accountability really rests with the party rather than the person, surely.

**Q139 Stephen Williams:** That is what I was getting at. I am sure we can all think of people from past elections, Members of Parliament who have been defeated because they happened to be in a marginal seat even though they were held up to be an exemplary MP. The electoral tide was against their party and therefore they were swept out. We could just as easily think, probably, of mediocre people who have been swept in on the high tide of maybe 1997, for instance, or 1983 for that matter. Is it fair for the sins of a party or government to be visited upon an individual, just because a well organised body of people in their parliamentary seat happens to collect enough signatures on a petition?

**Lewis Baston:** No, I think it would be a gross injustice. I think the time for making parties accountable for their policies and their choices is at a general election. I will reluctantly admit the principle the Government has laid out in its proposals that if it is a question of individual misconduct there may be a case, but I feel the case for kind of making—and it would, as you say, be MPs in marginal seats who would be answerable for the sins or choices, let's say, of their party rather than the people in safe seats. It would be an unjust and destabilising thing for Members of Parliament to have to face the threat of, yes.

**Q140 Stephen Williams:** You are shortly going to have a whole new set of elections to pour over the entrails of in November when we have police commissioners for certain and possibly mayoral elections in several large cities, including Bristol and maybe Nottingham. Do you think there is more of a case for recall against an executive politician, like an American governor or mayor of New York?

**Lewis Baston:** Yes, I do. I think the case is stronger. I still don't quite buy it, but I think there are stronger arguments for it when you have a single elected executive person. Parliament is a collective legislature. As I alluded to earlier, there is a sense in which it is a national conversation and it is unjust to pick off particular people who say something someone powerful does not like.

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I would suggest that where there is misconduct at the level of an elected police commissioner or mayor, the accountability arrangements that have been set up under the system to their council or their assembly—or to some vague panel in the case of the police commissioners—the accountability relationship with other institutions is so weak that there may be a case for an element of recall. I dislike recall in general but there was a recall election that made me pause. This is the one that took place in Germany a couple of months ago in the city of Duisburg where there had been a disaster at a pop festival. The mayor had denied all responsibility even though it was fairly clear that he had made major errors, he had fairly recently been elected and he was just in a bloody-minded fashion going to sit out his term. Recall is very rare in Germany but it was used in this case and he was defeated by three or four to one. A fairly extreme case but one in which there did not seem to be any other answer in the way the institutions worked. I would be more open-minded about it for that sort of post than I am for Members of Parliament.

**Q141 Stephen Williams:** Do you think the Government has missed an opportunity? Given that these posts, previously alien to Britain, are being introduced, do you think that it should have, for elected police commissioners and mayors, introduced a power of recall?

**Lewis Baston:** I would certainly consider that. I am disappointed that it was not part of the thinking going into the electoral accountability arrangements. I would prefer to have a stronger sense of accountability to councils and to some other democratic organisation for the police commissioners. I would rather have that, but if that for some reason is impossible then maybe recall is the answer for those people.

**Q142 Stephen Williams:** Finally, if I can ask a question I asked to a previous set of witnesses. You may want to use your pen at this point, unless you have a good memory, because it is a multiple choice question. In the hierarchy of reform, because this Government is trying to reform the constitution in so many ways, how would you rank the following in order of preference from your perspective: reform of the electoral system to a more proportional system; taking big money out of politics; an elected second Chamber; primaries for selection of candidates; or recall? Which do you think would make the biggest difference to the public's perception of their political system?

**Lewis Baston:** Interesting. I would probably put it in the order in which you suggested them.

**Stephen Williams:** I was not meant to be leading you. Maybe it was the order I thought.

**Lewis Baston:** Electoral system first, although again that is a bit of a problematic position. Electoral system first, which to my mind is clearly broken. Big money out of politics? Yes, although our spending restrictions are fairly tight. It is important to keep big money out of politics but the scale of the problem is not huge. I think an elected second Chamber would probably help. Primaries, maybe. Recall, no.

**Q143 Stephen Williams:** So recall you would rank bottom out of that list I happened to give you?

**Lewis Baston:** Yes.

**Q144 Chair:** Before I ask Eleanor to come in, just to pick up a couple of things from Stephen's questions. One is that Members of Parliament subject to recall could well find themselves in a battle about much bigger issues so, "I don't know which way to go on the Member of Parliament but I do know I don't like what the Government is doing, therefore I can vote against the Member of Parliament to give a lesson to people in the Government". You seemed to make that case as one possibility. However, you changed a little bit when it is police commissioners or mayors to saying there are occasions that that might be acceptable. I do not want to lead you but just to suggest, are you saying that is because people will differentiate between the local issue connected to the mayor, connected to the police commissioner, whereas they are not going to do that with a Member of Parliament?

**Lewis Baston:** Yes. I think in the case of mayors it is fairly clear that people do look at mayoral elections in a rather different way.

**Chair:** Localised.

**Lewis Baston:** We have a track record of mayoral elections where all sorts of odd things happen. All sorts of odd things happen in mayoral elections. You can be re-elected as mayor when your party is unpopular and defeated when your party is popular quite often. Indeed, that is as it should be. But in looking at an MP it is inevitable that people are going to look at the record of the Government, the state of play between the parties. The MP is the local representative of their party. It is perfectly logical and sensible of electors to look at it in that way.

**Q145 Chair:** So the MP is proxy for the Government or the alternative Government and that is what people carry round with them?

**Lewis Baston:** I think they do.

**Q146 Chair:** Is that because MPs do not have executive authority in their own right?

**Lewis Baston:** Yes, I would think it is the fact that MPs are there to kind of support or oppose the Executive rather than constituting it themselves, as in the case of an elected mayor. To me that does make a difference. An elected mayor can be held accountable for his or her actions and decisions as an executive whereas MPs would be exposed, if we have a kind of broad system of recall, to what they say and how they vote. To me that is a difference that is important.

**Chair:** I have one further question, but I think Andrew wants to come in on that point.

**Q147 Mr Turner:** Are you really saying that where a Member of Parliament votes against his own Government that would not have an effect in the way his electors vote?

**Lewis Baston:** It would probably make a difference if the person is known as a systematic rebel, yes. I doubt the occasional rebellion would make very much notice. There may be people who will notice on litmus

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test votes, such as the Iraq war, one way or the other, or indeed on a general pattern of rebellion, but I think, as Stephen's question alluded to, that for the overwhelming majority of electors the MP and the national party are sort of blurred together.

**Q148 Chair:** Just back to Duisburg and the mayor, we all saw those horrible pictures of people being crushed in the tunnel trying to escape the crowd at the pop festival, which were awful to see. Was there any party political antagonism in that campaign, or did it keep to the issue and people did feel the mayor had reacted badly, or were scores being evened by former political opponents and so on?

**Lewis Baston:** I think the campaign did focus on the specific issues of the mayor's conduct. I do not know the details of the campaign. The margin of defeat was such that it certainly implied that a lot of the people who would normally have voted for the mayor's party voted to recall him.

**Q149 Mrs Laing:** I do apologise, as I was not here at the beginning, and for the pathetic nature of my voice this morning. It is very interesting to follow this whole argument through but we are looking at the issue of recall and the means of recall. Although we have been talking about a recall petition, have you considered whether it might be more effective to have a local referendum as a more appropriate means of measuring the strength of local feeling and enabling people in a particular constituency thus to express a view for recall or against the whole idea of recall?

**Lewis Baston:** Yes, I agree with you, or I agree with the premise of your question. I think there is a danger in defining something we are thinking of as strength of feeling in the constituency, and measuring only one dimension of it; that one is measuring the determination of a quite small minority of people to get rid of their MP. You are using that as a kind of test to see if everyone else in the constituency should be consulted in the form of a full all-out recall ballot. I would suggest that if there is a sense in which a Member is being picked on unfairly, there will be a lot of people who object to this and feel that it is harassment and inappropriate, and those feelings should be expressed at the early stage as well. I believe the evidence from Ms Long from Northern Ireland alluded to some of these issues. As well as fairness to the accused Member of Parliament, I think it also quite elegantly solves the problem of ballot secrecy almost, that if you are seen going into the town hall to cast your vote you could be voting yes or no. So you avoid intimidation, you maintain voter privacy and so on. To me that solves two problems. So if we have to go down this road, I would build in a yes/no option.

**Q150 Mrs Laing:** That is a very helpful contribution. Can I take you further on the operation, unless I missed this earlier. Have you discussed in great detail the 10% threshold?

**Chair:** We have touched on it, Eleanor, but go ahead.

**Mrs Laing:** May I then take you back to that, if the Committee will excuse me. Could it be argued—I am trying not to put this in a leading way—that a 10%

threshold being 10% of those eligible to vote in any particular constituency is a very low threshold? If you take the average constituency after the boundary changes as being something like 74,000, 740 people is quite a small number. Sorry, you know how I said that my voice was not working very well today—

**Chair:** Do not worry, but even 7,000.

**Mrs Laing:** 740 would be a very small number of people. Sorry, 7,400 is not a very large or significant number of people in times when all MPs now know that organisations like 38 Degrees with a touch of one button can bring the inboxes of our email accounts to a standstill with people sending long letters, which they seem to think mean that the MP believes that the person who has sent the letter has written it. These people have very little idea what they are "writing" to us about and yet it is very easy, if you have a list of email addresses, to get thousands and thousands of people to spend half a minute apparently expressing a view, and that view might well not be at all a considered view.

**Lewis Baston:** No, I agree. I think my feeling about the threshold was that there is a trade-off between ease of access to sign the petition and the threshold that you are going to demand to make it effective. The Government's proposals are fairly tight in terms of getting access to the petition process, that it is fairly efficiently controlled. People have to go in person to a fairly small number of voting places or request a postal return. If you have that restrictive nature of access then you can probably get away with having a low threshold.

Earlier I thought 10% was lowish but not ridiculously low, so perhaps bump it up to 15% or 20%. There may be evidence-based ways of working out what the appropriate level is, I don't know. But certainly if you have a very easy process, demand a very high threshold.

**Q151 Chair:** I think we can all imagine the editor of the local paper saying, "Well, we don't think our Member of Parliament is a bad person really but there is a process we can go through, so make sure the process is gone through, and we would urge you to open it up at an early stage, and then of course we will all get behind the Member of Parliament and they won't be recalled", just because that is good and democratic. We all, in our respective parties, occasionally may suffer from this attitude.

**Mrs Laing:** And just because it would give the local paper something to write about.

**Chair:** I think a number of us, certainly through the expenses question, who felt we had very good relations with local journalists and worked quite hard as researchers to give them stories on many occasions, suddenly found that we were fair game almost to guilt by association, "What is your view on the latest thing?" Do you think, Lewis, that is something we need to take account of in considering this issue?

**Lewis Baston:** Yes, I think that is right. I am sure the situation you describe with the local newspaper could easily happen; that people may have a woolly idea that it is democratic to have elections all the time rather than let people get on with their jobs once they have been elected, or want something to write about—

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very possible. I think there is a rather naïve approach sometimes that just because a petition does not go through or just because somebody is returned in the eventual election of the recall, “Oh, it is all right then”. Well, it is not. The MP will have had to have focused on winning this process, it is arduous, it is expensive. The MP will be hampered in doing his or her other duties for a while. I think that is a serious issue that needs to be taken account of.

**Q152 Andrew Griffiths:** Mr Chairman, you touched on this briefly. I thought you were going to ask my question for a moment. I am a great reader of political books and I remember reading a little while ago a book—I think it was by Iain Dale—where he imagined what would have happened had Michael Portillo not lost his seat. Extrapolated through he would then have become leader of the Conservative Party; would he have then won the next general election and what would Britain have been like? What do you think would have been the scenario, imagining in the same way, had we had recall during the MPs expenses saga?

**Lewis Baston:** My alternative history of how it would have worked, if we had had the Government’s proposal in place during the recall saga—I will come back to proper recall afterwards—is that very little different would have happened except people would have got a lot more frustrated. Let us not forget that the scandal broke late on in the Parliament, that the criminal cases resulting from it were mostly or entirely after the 2010 election. I think there would be a temptation for any MP accused, particularly late in a Parliament, to use procedural avenues to avoid getting to the point of the threshold for triggering a recall petition. What would have happened, for instance, in cases where the House of Commons had come to some sort of provisional verdict on somebody but then criminal charges were brought? It all seems a little bit complicated and messy. I doubt any of these things would even have happened. My guess is that people would have probably run the clock down to the 2010 election and then resigned.

If we had had proper recall then, yes, some of these people would probably have been recalled. I seem to recall that there was a petition against the former member for Bromsgrove that reached quite a high threshold of signatures, 7,000-ish, so there possibly would have been a few recall elections taking place in a few months before the 2010 general election, which seems a bit futile.

**Q153 Andrew Griffiths:** Can I just move you on to funding of recall? Do you have any views about the Government’s proposals and how you think funding should take place?

**Lewis Baston:** I more or less endorse what the Government are proposing on this. There are people probably better versed than I in how funding is done, but one has to realise that the petition process is in some ways analogous to an election and that an analogous kind of form of control should take place. The restriction, if I recall correctly, is £10,000. That sounds reasonable.

**Q154 Paul Flynn:** The lawyers representing three Members who were later convicted thought the rules on privilege were sufficiently ambiguous for them to make an appeal on the basis that privilege was intended to protect MPs who had committed crimes, whereas the purpose of privilege is very different from that, it is to protect MPs while they are defending the rights of constituents. Do you think there is a case for redefining what privilege is so we do not have those kind of conflicts in future?

**Lewis Baston:** Yes. Not being a lawyer, I am not sure what standing the judgment dismissing that case has, but it certainly seems to me worth sorting out that, as you say, somebody’s exercise of their rights to free speech and so on is different from somebody’s expenses tab. There still seems to be a great ambiguity about this, dating back to the legal opinions from the 1970s, as to whether bribery of an MP was justiciable or not. This seems to be an unclear area but it is not the only one in this area, so, yes, I would suggest that yourselves revisit the issue at some point.

**Q155 Mrs Laing:** Mr Baston, you happened to touch on an issue that I was just about to raise, which is that of how principles of natural justice and justice being done and being seen to be done can be preserved during a very public trial process. You mentioned a particular constituency situation during the expenses debacle. In a situation like the one you mentioned, the person who was accused of wrongdoing was later, once all of the details had been examined by Sir Thomas Legg and others, totally cleared of having done anything wrong whatsoever, yet it was not under a proper recall process but under a process where there was political fervour whipped up and people literally came into that constituency from far afield and made a lot of noise and protested and put up banners and hit the headlines in the national press day after day after day. It was later discovered that that was a party politically orientated campaign. How can we preserve natural justice in a situation like that where clearly there was no fair trial and there was no natural justice?

**Lewis Baston:** I am very sympathetic to what you say. I am sure such campaigns would very often be party political in nature. It is the nature of the situation we are in. I am sure, also, if there was open recall you would get these situations where a process would be short-circuited and somebody would be branded guilty before any kind of proper, fair procedure had taken place. I am sure in the sort of fevered circumstances such as we had prevailing in May and June 2009 you could probably have got up petitions against any number of people who had done nothing wrong, or certainly nothing wrong enough to justify them being exposed to such a thing. Parliaments and parties are not perfect, as we know. The case of Ian Gibson, I think, is an example here. The parties in Parliament are not perfect, but there is a procedure set out there in which people have a right to put their case and so on. The Gibson case was very much about the party’s mechanisms rather than Parliament’s mechanisms. One of the many things that concern me about this sort of recall on demand idea is that there is not a



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cooling-off period, because quite often frenzies are whipped up against individuals that bear no close relation to the facts.

**Chair:** Thank you, Lewis, for your evidence this morning. We would like John to come and join us at the table.

### Examination of Witness

*Witness:* **John Turner**, Association of Electoral Administrators, gave evidence.

**Q156 Chair:** John, how are you?

**John Turner:** I am very well, Chairman.

**Chair:** Welcome back, and I hope you feel that the parliamentary process has worked, in part at least, on some of the things that we have talked about in the past, and that the Committee is doing a reasonable job in not always getting its own way but in getting government to listen on a number of things such as individual voter registration and those issues. Your efforts and those of other witnesses are bearing fruit through us, I hope.

**John Turner:** Thank you. We were very interested to read your report and grateful for the comments you made, which have led already to some significant change, so thank you for that.

**Q157 Chair:** We will keep up, hopefully, the good work. John, would you like to tell us a little bit about your views on this issue and then members will ask you some questions.

**John Turner:** You will have seen our formal submission to you in terms of the request for evidence. As usual, we are trying to stay away from the constitutional issues, because we see that as a matter for others, Lewis included, and we are more interested in the nuts and bolts of this, of how it might work when and if there is a process put in place. We have concentrated largely on the two questions that you have posed, 7 and 9, but obviously you cannot deal with those exclusively without touching on some of the other arrangements that will come into place, which is why our evidence then starts to talk about the interrelationship between what might happen at the point the Speaker notifies the returning officer and then that process flows through. Also, some of the departures from accepted procedures vis-à-vis elections, or indeed a referendum, that seem to come out of this proposal and the consequences there would be in terms of equitable access to the process, given the size of constituencies, and the way in which the whole process would be operated during the period when the signing was open on the petition. We have tried to set out where we agree with the Government's proposals and also where we strongly disagree.

On that basis, through almost a step-by-step part of the process relating to kicking it off, and how and where it is done, consistency is important. Our experience with elections is that often when candidates and agents object to things it is because something inconsistent has been done, and it seems to me this is at the crux of the democratic process, so consistency is important. We are not happy about things that might lead to inconsistency.

There are some points of detail that are important in all of this. If I could just give you an example, which is how and when you fix the 10% figure. You asked

Lewis about whether that is at the right level. To a degree I am interested in how you actually determine what 10% is and how you publish that figure, because obviously the two things are important and are strictly linked. We are also very concerned about the arrangements for absent signing, as we should put it, largely because what is being suggested here is a departure from anything else we see in the electoral landscape and in fact flies in the face of propositions that we put to the Government almost immediately before the Bill became an Act last year, that led to the AV referendum where we said it was nonsensical for somebody not to get a postal vote when they expected to get one simply because it was another electoral arrangement. We firmly believe that is an error of judgment in terms of what has been put here because we believe that the electorate, who ought to be at the heart of this—they have been given the opportunity to speak about this thing—will seriously believe that if they always get a postal vote they will get one now and do not have to do anything to achieve it. So we think that is an error in terms of what is being proposed, and it should be consistent with what the public expect if they happen to be postal voters.

I think that and some of the other more minor technical matters about double signing and challenging the outcome are matters that I can deal with if you have questions on them.

**Q158 Chair:** Just before I ask Sheila to come in and at a slight tangent, you used the word "consistency" on half a dozen occasions. We are coming towards police commissioner elections, so if I may take the liberty of asking you in those elections, and indeed the mayoral elections, there is an inconsistency that this Committee has highlighted on previous occasions about the way in which ballots are declared void in that the system being used for elections will give the returning officer more discretion. Where that has been used in the past very high numbers of people have had their ballot paper voided. I think we are all familiar that in parliamentary elections we get 20, 30 possibly, but I think several thousand were made void in recent mayoral elections. Could I return you to the word "consistency" and give you the opportunity of expressing a view on whether we ought to be, as a Committee, doing something about that now rather than wait until after those elections and have lots of colleagues from all parties crying foul because the number of voids are bigger than the majority of their opponents.

Sorry, I do apologise, I did not even warn you. This is not relevant directly to the—

**John Turner:** No, I am very happy to take the opportunity you presented to tell you what I think about this. If I could take you back to 2007 in

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Scotland, you may recall that they combined the parliamentary with the local government elections on that occasion and there were very large numbers, we are talking hundreds of thousands of votes, that were declared void as a result, I think, of a misunderstanding or a lack of voter education in terms of what the voter in Scotland was faced with then. As a result of that the Electoral Commission, quite rightly in my view, asked Ron Gould, who is a very well known international expert, a Canadian former Chief Electoral Officer, to conduct a review and report. Ron published a report. We often, and we probably have in this paper, espouse the two principles that came out of that, which is that the voter should be at the heart of the process, and there is also the six months' rule, which is followed in breach mostly, and that is about legislation.

As a result of that you will know that it has now been decided to decouple Scottish parliamentary elections from Scottish local government and so that has now happened. That is largely because nobody could find a sensible way, it seems, to deal with the sorts of issues you are talking about. It does seem almost abhorrent to me that people take the trouble to go to the poll, do what they think they should be doing and then end up with thousands of other people having their vote discounted as a result of not understanding the process they are being asked to engage with.

There is a secondary problem about the point you make, and it is this. You talked about parliamentary elections, and you can couple local government elections. There is a wealth of case law on what is a good and bad vote in terms of majoritarian, first past the post voting, and if I had the legal textbooks with me, that much, you could find several pages that will illustrate it. That has enabled the Electoral Commission in their role as the providers of guidance to provide very clear guidance that I think is largely and widely accepted, both by practitioners and by candidates and agents, as to what is good and what is bad. You can cite the judgment that makes that call. So that is why I do not think you get great numbers at parliamentary, or indeed local government elections, and that is why there is not much dispute about what the actual decision of the returning officer is in respect of that. So far as I understand it, there has never been a case on a supplementary vote ballot paper, whether it is good, bad or indifferent, and that remains the case today.

So the guidance that the Electoral Commission can provide almost has to be an opinion. It might lead to a very clear and consistent piece of guidance that is followed by all returning officers, and it might not, but nevertheless there is still no legal basis for that opinion. It is their opinion; it might be a very good opinion. That, I think, is a recipe for what actually happened in Mansfield at the last mayoral election there where there were large numbers, not significantly large numbers but certainly enough to cause a stir, and I think there needs to be absolute clarity about what is intended to be good and what is intended to be bad. The only opportunity now for that to happen is in the secondary legislation that the Home Secretary will be bringing forward shortly in terms of the conduct of the PCC elections. As I

understand it, the opportunity so far as the mayoral is concerned has gone because I believe they have simply amended the previous mayoral election rules to bring them up to date for 2012. Members will have an opportunity when this legislation comes before you perhaps to raise that question, because it is a matter of some concern. Given the supplementary vote system and what it can do when you start to count second preferences, it could end up with some very close results and therefore the potential for challenge.

**Q159 Chair:** I hope that we will draw that question and answer to the attention of both the Electoral Commission and to the Government, because this Committee has pursued this for some time and we are offering a pre-emptive action to avoid these difficulties. I think we would take a very dim view of it if we had to take evidence after a number of elections had taken place where the majority of the winning candidate was smaller than the number of disqualified votes. I think that would put everyone in a very difficult position and arguably could even politicise returning officers, and we need to avoid that at all costs.

**John Turner:** I think you are right there. Just to make the point that, of course, it has never hitherto been a particular issue that has hit the national press, as it were. In London where it is used, of course the majorities are normally big enough, although not that big last time around. But you could, in the PCC elections, be in very small areas, if you think that Bedfordshire, for example, is a police force area, nothing like the population of Greater London.

**Q160 Sheila Gilmore:** I suppose the good news on all that was that the work that had been done since 2007 in Scotland seemed to work for last year's Scottish Parliament elections, and that included redesigning the forms so that you had separate forms for the two votes involved there. Form design shows that something quite small can have quite a marked effect. As far as the other half of it, we will know this May whether people have better understood another form of voting, which does lead to some complications when people do not put two crosses on the ballot paper or whatever. So we shall see if it is better. But it does show that you need to think about these things quite carefully or problems happen.

In terms of the question of recall, one of the issues that obviously concerns a lot of people is that they are going to have to have a place to go to. Will that place be sufficiently accessible? That could be in the technical sense of accessible, and some disability organisations have already raised that issue, but also in the sense of more generally is it one place, several places. How would you as electoral administrators manage that process?

**John Turner:** I think the expectation would be that any place designated as the place for signing would meet modern accessibility standards, largely because I suspect they will be in local government buildings that have been DDA compliant, generally speaking, in terms of the administrative headquarters. So I do not see that as a potential issue. It certainly should not be in 2012.

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Our concern is more generally about the fact that constituencies, particularly the rural ones, are very big areas and probably at the end of the current boundary exercise will cover even larger areas spread across several local authorities. From my early reading of it, constituencies may well touch on three local authority areas. It does seem absolutely against the principle of easy and equitable access to only have one place. I can think of some constituencies, one in Northumberland and one from my home county of Norfolk, which are linear constituencies, so if you go from east to west it is an enormous distance. If we are trying to encourage people to participate this seems a really odd way to do it, particularly if you link that to the postal vote problem I have already touched on, because you could be asking them to travel 70, 80, 90 miles simply to put their signature on a piece of paper in a process that they might be in favour of or against—that matters little to me. It just does not seem sensible to me, given that the very people who would be responsible for organising this are entrusted with organising it properly for the election of a Member of Parliament and they seem to do it okay. So they can work together, it is not difficult to do. That is why we come out strongly against the proposition in the White Paper because we believe accessibility in its wider sense is critical if this process is to be taken seriously.

**Q161 Sheila Gilmore:** But would this create both logistical and cost issues? I am thinking of some of the places like Argyll and Bute in Scotland that has numerous islands, as the Member is fond of reminding us frequently. That is true, it does indeed have, where boat travel is both expensive and sometimes weather-dependent. There are other very large constituencies obviously. I think the one that stretches over most of the north of Scotland is one like that and it is already very large physically. A lot of communities are quite small. Would you be suggesting we should use something closer to the polling station model and, if so, how would that be manageable?

**John Turner:** I would suggest that you would want to have at least one access point in each constituent part of that constituency, if that is not double heading it. In the sorts of situations you are describing it is not difficult, it seems to me, to make additional arrangements. You could, for example, say that we will have a peripatetic mobile equivalent of a polling station that will be on this island or in this place on every Thursday of the period set aside for the petition. Yes, it would add to cost but I always go back, as you probably know from the past, and say, “What price democracy here?” It is going to be notional cost, frankly, something that is not going to add dramatically to the overall bill but at least does allow access to all those who are affected by the proposition.

**Q162 Sheila Gilmore:** In terms of managing that from your staff’s point of view, our elections are one-day events, although a lot of preparation goes into it as well, but something like this that would last over a period of time clearly has other consequences?

**John Turner:** It does, which is why I link it back to the postal voting arrangement, because clearly with the number of postal voters that now sit with

permanent postal votes you would take some of the heat out of that issue. If they felt that they did not want to make the journey to go to the administrative centre to do it, they have got an alternative way to do it, which is why I would not shut the door to those who expect to get a postal vote because they always get a postal vote. You would also have a facility for people to apply for a postal signing, or whatever you want to describe it as, in addition to that so people could make their own choice to that degree. It just seems to me that it is essential that we make this as easy and as accessible as possible so that people are not precluded simply by virtue of where they live or how close they are to the centre. I mean centre in terms of not the middle of the area but where the administrative centre actually happens to be.

**Q163 Sheila Gilmore:** We tend to talk about signatures, because petitions traditionally have signatures and votes have something else, forms that you go and fill in and you are scored off on a sheet, and there are the issues about how reliable some of that is. Would it be feasible to have something that is more like an election where you go in, you get scored off so you can’t come again or get somebody else to come again, and then have a pre-printed form that you would tick or cross? Is that better? People have issues about signatures, and we have all seen the Donald Duck waste of time stuff that goes on.

**John Turner:** It could lend itself to the sort of thing you are describing, but if this is a petition it is universally accepted, it seems to me, that people sign a petition so I see nothing very different, except because of the privacy thing you are going to have to do it on bits of paper. That will help in terms of counting the thing.

My experience of petitions, for instance, in local government circles where you get landed with batches of very scruffy A4 with all sorts of things on it, if you were to spend time trying to verify how much of this was real and how much of it was the Donald Duck version of it probably would add greatly to the process, whereas a single slip of paper with somebody’s signature for the proposition is going to be a lot easier to administer. It will maintain the privacy issue and it will be a lot easier to count at the end of the day.

**Q164 Sheila Gilmore:** Would you envisage using the electoral register at the time people go in in order to score people off or not?

**John Turner:** I am assuming that will just be a matter of practice, yes.

**Q165 Sheila Gilmore:** At the moment it is still quite old-fashioned in that you go into a paper register that gets scored off. We are not talking here about people necessarily having to go to a single designated place presumably, so if somebody really wanted to run around two or three different places and try and further ascribe their signature, if you were to cut it off at the beginning would it be easier?

**John Turner:** Yes, and that is why we argue for an administrative centre in each part of the constituency because that would fall under the control of a separate

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electoral registration officer who would produce the one register for that district. So that is the proposition we have. We think it will work. It will also cut out the double signing issue that we allude to in the paper.

**Q166 Andrew Griffiths:** Mr Turner, can we just briefly touch on campaign funding, which I spoke to the previous witness about as well. The recall process by its very nature is supposed to be a groundswell of public concern over a particular MP and their behaviour. That groundswell is supposed to manifest itself in people being motivated enough to go and do something practical to change their MP. We have already heard from other colleagues the concern that it becomes a party political process in order to bring about a quicker election and my party winning rather than your party. If it is going to be that genuine recognition of the general public's feelings, how does that sit with your ability to control spending and expenditure on a campaign?

**John Turner:** I think you have to start from where any campaign starts, because there is not just the spending that goes on in campaigns in terms of what political parties might put in but there is also this third party position where people are either for or against something and then have to go through a process of registering and declaring what they spend in terms of third party expenditure. It seems to me this is more likely to attract third party expenditure perhaps than a straightforward election for all sorts of reasons, which I am sure you can imagine. Clearly to achieve anything like a level playing field in this, it will need to be regulated in some way. It would be strange to imagine a situation where there was no campaigning as such. How that would manifest itself, I think is different. You talked with Lewis Baston about the local media, for instance. I am sure they will take a view on this and then you have to decide whether that is a legitimate part of the campaigning process. But there will be others, I suspect, who will jump on that bandwagon, either for or against. So there has to be some regulation. It will be eventually for Members of Parliament to decide how that will be regulated and how much is allowed or permitted to be spent, but I cannot imagine a situation where you do not have that in some shape or form.

**Q167 Andrew Griffiths:** I think what I am trying to get at is it is very easy to regulate me as a candidate or my party as an organisation. It might even be easy to regulate the trade unions, for instance. If, as a Member of Parliament, I manage to upset every nurse, midwife and doctor in my constituency and they decide to get together and campaign against me, or I manage to not oppose a housing development and so everybody in that village thinks I am a terrible chap and wants to use this as an excuse to get rid of me and give me my comeuppance, if that village decides to go and produce a load of leaflets to say, "Griffiths out" or the nurses and doctors decide to do a campaign that says, "Griffiths out", how do you regulate that spending to make sure it is fair? Secondly, how do you regulate it to make sure that it is the nurses and doctors and not their union that are funding it?

**John Turner:** Two things, I think. The first is, of course, to get you out you will have had to have upset other people as well, because this is a limited recall process. So until your colleagues have decided that you are a dreadful chap then it is not going to start anyway, whatever your doctors and nurses think. The second thing about it is that the regulation of expenditure is not controlled by returning officers, or indeed the Electoral Commission, in terms of an election because expense returns and the declarations to go with them are taken at face value. They become self-policing in the sense that your political opponents probably scrutinise yours and you probably scrutinise theirs and if you find something you do not like or think is a bit odd that is when you start raising some issues. So the role of the returning officer or the Electoral Commission—and I think that has still to be determined who will police this—is largely the custodian of documents that are lodged and it does not go deeper than that in terms of then becoming the detective, or indeed playing the detective during the campaign to check that this or that or the other is or is not happening. In all honesty, I cannot see how you can change the situation that currently prevails unless you are going to set up some investigatory authority that will take the job of sniffing around the constituency to find who is putting what into which pot for which purpose. That is not currently done, even when it comes to electing Members of Parliament.

**Q168 Andrew Griffiths:** Yes, except, of course, the campaigning for an election, be that local or European or our Westminster election, tends to be via the political parties, whereas this, by its very nature, is intended to be the local population campaigning as individuals and as a group.

**John Turner:** Indeed, but I don't think in practice the way in which you would control or scrutinise it can be any different without some considerable resources being brought to bear to play the equivalent of the secret policeman in this. That system is just not there unless you are intending to invent it.

**Q169 Mrs Laing:** Carrying on the same sort of theme, I go back to the issue I raised with our previous witness about the operation of natural justice and it is a quasi trial process. Have you and your colleagues had the opportunity to consider the way in which and the method by which the evidence, the facts of the case, should be put before the electorate? We are all very good—well, we think we are good—at presenting our political case in our manifesto, in leaflets and so on in a way that is intended to become attractive to those who might vote for us, but this is a very different mindset of a decision-making process. Have you considered that and the way in which the facts can be monitored?

**John Turner:** To an extent. There are clearly provisions in the 1983 Act that regulate the way in which candidates deal with each other and prohibit certain things being published. Of course, if you fall foul of that, as one of your former colleagues did at the last election, there are certain consequences that flow from that, quite draconian consequences. I would

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assume, therefore, that when a Bill is published it will contain very similar provisions to ensure that the sort of behaviour that you are perhaps suggesting is outwith what is permissible in terms of anyone's behaviour. The difference here is you are not talking necessarily about a candidate and the penalties that flow from that, you are talking about anybody, it seems to me. So I think there will have to be some rules of engagement that prohibit certain matters otherwise you are into the opportunity almost for a witch hunt. That is not something that we would welcome because we would end up as the referees of the said witch hunt with very little power to do very much about it other than draw it to the attention of the prosecuting authorities and the courts. In any event, it would work against what has almost become a gentlemanly way of conducting politics with people knowing where the fringes are and knowing not to go outside those fringes.

**Q170 Mrs Laing:** This is a very important matter on which you have now struck, because is there not a difference between the normal political process where in most cases people are challenging their fellow candidates on matters of political belief, political record of action in the constituency and so on, all of which is very much subjective but sort of balances itself out? I am suggesting that the intelligent voter lining up in front of himself or herself four or five election leaflets will say, "Well, they are all exaggerating, aren't they, and therefore we can still work out who we like best out of this". But this is a different process, isn't it? We talked earlier about local papers. During the expenses debacle there were many, many cases where local papers were just desperate to jump on the bandwagon of having something sensational to say and did not let the facts get in the way of a good story. You suggested a moment ago that it would be possible then to bring a complaint about that, but would that not be too late?

**John Turner:** Well, it could well be except if you apply the principle in the 1983 Act, which is largely about not publishing scurrilous and slanderous remarks about your opponent, and if you broaden that out to say that has no part to play in this process. If any person were to do it, and it went through the complaints procedure, whatever that might be, and were found wanting in that sense it seems to me then that the petition, the election petition equivalent of this—that is the right to challenge the process—would then be available to the wronged party, in a very similar way to that which was employed in the place—

**Q171 Mrs Laing:** By which time the wronged party would have been effectively politically, morally and personally destroyed?

**John Turner:** Yes and no. If we go back to the case I am alluding to, that went through a certain legal process. We all know that legal process takes some time to find its way, but the sausage machine worked in that you got through the process and something happened as a result of that and there had to be another election. Unfortunately reputations can suffer, but reputations can suffer both ways. Perhaps I am

getting old now and almost romantic in the notion but the British sense of fair play can often work in reverse. A wronged person suddenly becomes a righted person simply because it has been demonstrated they were wronged.

**Q172 Mrs Laing:** That is helpful, thank you. Should there be an opportunity for the facts as determined by the Committee of the House of Commons, which is required to do so as a preliminary to recall, to be laid before the electorate at public expense?

**John Turner:** I think that would be a very helpful part of the process, to be honest. It seems to me, particularly in the world in which we live where information can be very simply and cheaply provided, I see no reason why you would not want to do that. I think one has to be realistic though, people who have a different take on this will, of course, use the facts somewhat selectively or not use them at all in terms of what they do. But that is why I think there needs to be rules of engagement that limits or defines the edges to which you go, and if you go beyond those edges you could find yourself in trouble with the legislation as it sits and how the courts will interpret it.

**Mrs Laing:** Thank you very much.

**Chair:** Eleanor has raised a very important point for members to consider about a dual process taking place here. You mentioned people being found innocent at the end of a process who in the court of public opinion were already guilty. We referred earlier to the Fiona Jones case where she lost her seat and then was cleared of all allegations, arguably lost her life having suffered reputational and financial loss through the court case. So members will need to consider this carefully when we come to write our report.

**Q173 Simon Hart:** Sorry I was not here earlier on to hear your opening remarks. I had another engagement, and therefore I might find myself asking a question somebody else has asked earlier. I just wanted to expand on that point really. Assuming that the process gets through the Committee of the House and you are therefore on public trial, it is a case of being guilty or very guilty, isn't it, in the eyes of your enemies, and indeed in the eyes of your friends? I am just wondering, while you might be able to say that the media or an active third party group might be limited in what they can say about the charges against you, what they would not be limited in, I would imagine, is their ability to organise a turnout campaign on the basis that the only people who are going to turn out are the ones who are going to vote against this guy. Therefore, they don't have to comment on the case at all. They can just say, "Look, this is what is happening, this is where it is happening, this is why it is happening", up to a point, and so all they require is people to turn out and sign on the dotted line in order to achieve their objective. They do not really have to go into the detail of the charges against the individual.

Going back to the point you made about rural areas, which I happen to completely agree with, it is whether we are as a Government attempting to make this an easy process or a hard process, and I am not quite sure

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where we are on that. Do you see there being any safety procedures in place to protect people against a vigorous campaign to get people out to vote?

**John Turner:** I can't see how that will work. I think the only factor that can be employed there is the one that Mrs Laing asked of Lewis Baston, and that is whether the 10% figure at the right level. It seems to me that if such a campaign were to be arranged and had a bit of oomph about it, it would be tolerably easy to achieve that. Once again, I think you would find it would be easier to achieve that in a tight urban area than it would in a rural area, but nevertheless I do not see it as a particular difficulty. I had an email in my inbox last night from somebody who wanted me to sign an e-petition to No. 10. I can't even remember what it was about now. But as Mrs Laing said earlier, it is not difficult to get the required number to create the next step in the process. So it seems to me that the guiding issue here is going to be around the percentage figure that will no doubt be debated once the Bill finds its way into Parliament.

**Q174 Simon Hart:** I did not hear Lewis Baston's view on that. Can anybody tell me what it was? Did he express a view? I do not know.

**Hannah White (Committee Clerk):** He said that because the process of signing the petition was relatively difficult he felt that 10% was broadly appropriate as a threshold. If you made it easier to sign a petition then you might need to have a higher threshold than 10%, but he thought 10%, 15%, 20% was around the right level.

**John Turner:** I would not disagree with that. I think there is a consequence of what I am arguing for, that is access and postal voting being applied in the usual way on that percentage figure. I am sure from your own experience you know how many postal voters you have. If you take Newcastle, for instance, that I think now is something like 65%, 70%, then getting your 10% with free access to postal voting is going to be very easy, I would suspect.

**Q175 Simon Hart:** I don't know if you agree with this; I think you hinted at it earlier. In a large rural area—strangely postal voting in my area is not at that level—the idea that you would get someone to drive an hour and 40 minutes to sign something I would suspect is unlikely.

**John Turner:** Yes. I think there is a direct correlation between the process you employ, what you would allow in terms of access, and the percentage level that is fixed. So I think there is almost not a sliding scale that would go into the legislation but I think Members of Parliament will want to think very carefully about what they allow in terms of access against the percentage that is applied to trigger the petition process.

**Q176 Simon Hart:** Assuming all of this happened and assuming there was a single place or multiple places where you could put your name to a petition, would it be your recommendation that in that location there is a summarised account of the charge against the Member in question, or is it your view that it should simply be a petition for the recall of that

Member of Parliament, the assumption being that everybody knows what it is about before they walk into the room?

**John Turner:** I would not want to depart from current practice where, for instance, at a parliamentary election the election addresses of the candidates are not permitted to be displayed in the polling station for the obvious reasons. So I do not think I would be in favour of having that information immediately available where the process took place, but I do not see any reason, particularly if it is in the town hall or the council buildings or whatever, that it should not be available in a public reception area or something if somebody wanted to see it.

**Q177 Stephen Williams:** We do not have anyone from Northern Ireland sitting on this Committee. It has been drawn to our attention there is what appears to us anyway to be an anomaly between the proposed regulations. In Great Britain people will be able to turn up to one place, as Mrs Gilmore was asking about earlier, but in Northern Ireland they would be able to post in their support for a recall petition with signatures on the forms that they post in. Do you have any views or do your members have any views on whether that anomaly is correct?

**John Turner:** I have read the White Paper and the reasoning behind that. I have not spoken to the Chief Electoral Officer for Northern Ireland on this particular issue so I do not have the benefit of his advice but I am assuming—I hope I am correct in assuming—that some discussions have gone on with him and with others and that is why this decision has been reached. I can see, given the particular circumstances of Northern Ireland and the history of the democratic process there, why that view should be taken. The slight anomaly for me is not particularly the notion itself, it is that to get a postal vote in Northern Ireland normally you have to go through a considerable number of hoops. It used to be the case on the mainland, which no longer exists. So it is almost turning the whole electoral process upside down in respect of this particular issue. But I can see why, given that the only reason somebody would turn up at the town hall to vote is to sign it, if they are seen going into the room they would not go in there if they do not intend to sign it. Anybody standing and observing this would know precisely who had signed, and why they had signed presumably and, given the history, I can understand why this alternative system is being suggested.

**Q178 Stephen Williams:** Coming back to Great Britain, the Committee on Standards in Public Life have suggested to us that the postal vote process and the proxy vote process, which you have talked about a little bit already, could be open to manipulation in a recall election. Do you think the existing rules over proof of identity, signatures and so on are now strong enough to stop that? Although we do not know for certain, of course, because these types of ballots have not taken place yet, but if the turnout in a recall petition was relatively low compared to an actual general election, the proportion of people who have voted by post or maybe proxy will probably be much

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higher as a share of the people who participate in the recall ballot than otherwise. So do you think there needs to be any more tightening of the postal vote regulations?

**John Turner:** No, I don't. I think the system that was brought in in 2006 has worked well in terms of avoiding the sorts of allegations that were made prior to that, the very reason they were brought in. They provide enough security and the ability to check backwards, as it were, to mitigate against the misuse of that system, particularly when the threshold is set at where it is. But that goes back to the answer I gave Mr Hart, in fact, which is very much about this process thing. We know as a matter of fact that some 70% of postal vote applicants actually vote. You will know from your own experience that is a much higher percentage than the normal turnout. So the mere fact that you were allowing and obviously encouraging postal voting will make it easier to get to the required figure. It is a simple statistical equation.

**Q179 Stephen Williams:** One final question. Just coming back to where Mrs Laing was asking the previous witness when she mentioned 38 Degrees, which sent a shiver down all our spines, do you think the answer to the problem of geographical difficulty, that Mrs Gilmore was asking about earlier, and other problems with having to turn up physically to one place would in fact be electronic petitions?

**John Turner:** I think the problem with electronic petitions—and I think you will have found this in terms of your experiences since the e-petition and the matters that you are now asked to debate—is that it is not a difficult thing to achieve, given the way in which you can use technology. You do not have to do very much about it. If you cast your mind back to the News International business and the campaign that was run by a particular organisation, they got a million signatures, if you can call it electronic, very quickly, calling upon all sorts of things to happen, largely

because public opinion had been stirred up anyway and most people had a very strong opinion one way or the other about this particular issue. I think you would achieve the same. I think it takes you down a very dangerous track and it opens up something that successive governments have turned their face against in terms of how you run democracy in this country. If we were to use electronic voting for parliamentary elections, for example, I think there is more of an argument to be had. But at the moment, given that we do not and, as I say, the former Government and the current Government have not expressed any interest in it whatsoever, I think it would be a retrograde step, particularly for this issue.

**Q180 Chair:** Finally, John, to pick up one of Mrs Laing's points. In administrative and cost terms, would there be a significant difference for electoral administrators tasked with running a recall referendum rather than a petition?

**John Turner:** I do not think it would make a great deal of difference. The cost for elections generally is very much in the preparation for them. You have to work on the basis that everybody is going to exercise their right, so you have to gear up for that. So whichever way round you did it the set-up costs would be very similar. If you get to having a referendum, if you take Mrs Gilmore's point and say are we talking about a polling situation here, that will add to the costs because you are going to have to open up premises where you would normally open them up, staff them and do all that panoply without knowing what the turnout is. It could be 5% or 95%, you do not know, so you have to gear up. The referendum would probably be even more expensive if you were to run it on a polling station principle.

**Chair:** John, thank you very much indeed again for your time and your sage advice, and we will consider your points of view very carefully. Thank you for helping us out again.

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**Thursday 19 April 2012**

Members present:

Mr Graham Allen (Chair)

Mr Christopher Chope  
Paul Flynn  
Sheila Gilmore  
Andrew Griffiths  
Fabian Hamilton

Simon Hart  
Tristram Hunt  
Mrs Eleanor Laing  
Mr Andrew Turner  
Stephen Williams

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**Examination of Witnesses**

*Witnesses:* **Rt Hon Nick Clegg MP**, Deputy Prime Minister, and **Mr Mark Harper MP**, Minister for Political and Constitutional Reform, Cabinet Office, gave evidence.

**Q181 Chair:** Thank you all for coming today, particularly Nick and Mark. You are very welcome to the Select Committee. We are going to divide this session half an hour on recall, if we may, and then a more general session for the remaining time up to 12.00pm, but welcome; good to see you.

If we may, we will jump straight in on recall. Fabian, I think you were going to kick us off.

**Q182 Fabian Hamilton:** Deputy Prime Minister, good morning. We have had quite a few witnesses come to this Committee to talk about the powers of recall that the Government is proposing to introduce, and my question really is this: why are you bothering? It seems that the powers are very narrow. It seems that a lot of our witnesses—including people who are strong supporters of the Government—feel that they could be a lot wider, and wouldn't most MPs, if they were challenged in that way, simply want to resign and call a by-election rather than go through the tortuous process that you are proposing? Discuss.

**Nick Clegg:** Well, good morning. Plunging straight into the recall issue, I think the most candid answer is we are trying to strike a balance. I accept it is an art, not a science, and the balance is this: of course the political reality is that if an MP were to be accused of or found to have committed serious wrongdoing, even if they were not then subject to a custodial sentence, they might well fall on their sword politically anyway. The rules, as they currently exist, mean that if you are given a custodial sentence of more than 12 months, you are automatically excluded as well. So I accept that we are trying to fill the gaps, the holes that are left, and they are quite substantial. Firstly, of course, the current arrangements do not cover a custodial sentence of 12 months or less, and we are saying that one of the two triggers that could lead to a by-election would be if you are subject to a custodial sentence of 12 months or less. So that is one bit of the system which is at the moment unresolved that we are addressing.

The second one is that more complex area of serious wrongdoing, so that constituents don't just have to endure the continued presence of their local MP until the next General Election, when they might feel that that MP has forfeited a right to represent them because they have committed serious wrongdoing. The balance we are trying to strike is to make sure that constituents have the ability to trigger a by-election, sling that

Member out, get a new MP in through a by-election, but not do so in a way that basically could allow the whole system to become—as it has done, frankly, in places, like California and elsewhere—just another kind of weapon for day-to-day, week-to-week political argy-bargy between the political parties. You have to have a certain degree of due process, otherwise the whole thing just becomes a sort of kangaroo court, really, where it is just whatever the opposition accuses you of doing, and before you know it you are subject to a by-election. So that is why we have put in place these checks and balances.

We were very, very clear, by the way, both in the Coalition Agreement and subsequently, that it wasn't an unlimited, unqualified, untrammelled right to trigger a by-election, whenever you happen to feel like it, because you don't like the cut of the jib of your local MP. There has to be a reason, it has to go through certain processes. We set out our ideas in the draft Bill, and obviously the examination that you are subjecting that to now is terrifically important to us in our final views.

**Q183 Fabian Hamilton:** That is perfectly reasonable, but let me put this to you. If, for example, a Member has very strong views about something, let us say the question of the time limits for abortion, there are many religious groups—not just Christian but non-Christian groups—who believe very strongly that abortion is wrong, and yet you have an MP who gets a majority, a good majority at an election, but is very, very strongly pro-women's right to choose abortion and the current timings that we have under the law. Do you think those groups could use your legislation, if it is enacted, to trigger a by-election because they don't like the very strong moral stand of a particular MP, either way?

**Nick Clegg:** Not at all. They can't use it, and they should not be allowed to. If a person is elected with views that a part of their constituents don't happen to agree with, they have every right to continue to be an MP.

**Fabian Hamilton:** What particularly in your legislation would stop the abuse—as I would see it, and many would see it—of that process to get rid of an MP with whom particular powerful groups within a constituency do not agree on a moral issue, not a political issue?



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**Nick Clegg:** Because under our plan you would have a number of steps in which, ultimately, the House would adjudicate whether serious wrongdoing has been committed. I can't, in a million years, imagine the House ever adjudicating in favour of triggering a petition that would lead to a by-election because a minority of his or her constituents for the MP in question just violently disagree with him. It is not about disagreeing, it is about wrongdoing. You are talking about opinion and strength of feeling around opinion. We are talking about wrongdoing. They are totally different issues.

**Fabian Hamilton:** So you are confident that on a very strong moral issue like that, the system you are proposing could not be abused?

**Nick Clegg:** I am 200% confident. By the way, I think the criticisms we are getting—such as they are—are coming from the other direction, which is have we overdone the checks and balances.

**Q184 Fabian Hamilton:** I am just coming to that. I was going to ask you, on the other hand, let us say you have a Member who spends most of his or her time here in the House of Commons, as we should, but actually does not go the constituency that much, does the bare minimum of advice surgeries but not enough for most constituents' needs, and does not turn up to a lot of events but is actually a very good parliamentarian. How does your legislation act in that case? For example, if a group of constituents say, "I have been trying to see my MP in an advice surgery and he or she is just not there often enough, but is always in the headlines"?

**Nick Clegg:** I will let Mark comment on some of the details by which we envisage the House would seek to define "serious wrongdoing", but we are quite candidly saying there are two triggers, as I say, which would lead to a possible petition, 10% of the local constituency demanding a by-election. As I say, one is a custodial sentence of 12 months or less, and the other one is the House finding a serious wrongdoing has been committed. But there is a fair amount of discretion for the House to decide what warrants serious wrongdoing, and so, strictly speaking, my response should be, "Well, that is a matter for the House". I have to say to you I would have thought it would be fairly unlikely that the House would regard just outright industrial-scale laziness as a matter of serious wrongdoing. I personally think someone who does that does not have much chance of getting re-elected in the next General Election.

**Fabian Hamilton:** Forgive me for interrupting you. I am not talking about laziness, because, as we all know, the problem for Members of Parliament is we are doing two jobs—and in your case, three jobs—but one is as a parliamentarian here in Westminster, making sure that we scrutinise the Executive, making sure we do our job in the House. You could have somebody who is a really good parliamentarian, always on their feet, always asking questions, always grilling government ministers, but actually not spending any time in the constituency.

**Nick Clegg:** Yes. Look, my intuitive response is I have to stress, as you have seen in the draft Bill, in a sense we are throwing the ball a little bit in your court,

if I may put it that way. It is for the House, and indeed, the people of the Committee here—what you come up will be very important in determining that, in deciding how "serious wrongdoing" is defined. So I can only express a personal opinion. I don't want to short-circuit the House's own collective view, but my own view is that I think you would be hard-pressed to argue that a failure to be present enough in the constituency warrants serious wrongdoing. It is perhaps a dereliction of duty and it certainly would risk, it seems to me, the risk of a failure to be re-elected in the next General Election, but whether that would really meet with the House's support as being defined as serious wrongdoing I would be very, very surprised indeed. Mark, I don't know whether you want to—

**Mark Harper:** All I would add, Mr Hamilton, going back to your original question, which is, why are we doing it—very simply, because all three parties have a commitment to deliver a recall mechanism. We are absolutely delivering on that. It was in the context of what happened in the last Parliament, as you know, with MPs' expenses, where we were not just talking about something that is an arguable political judgment, but where a number of people did things that were widely thought by the public to be wrong and unacceptable. That is what we are dealing with, so this is not designed as a political part of the continuation of politics by another means. It is very much not that. You have the criminal procedure in as the first trigger. The second one on wrongdoing is more complex. You have taken evidence, obviously including from Members of the Committee on Standards and Privileges, about how you define that. I think the test is it is about someone who has done something that is wrong. In your case, when you were talking about how someone had the balance right between their parliamentary duties and their duties in the constituency, those things are a matter of judgment for constituents to exercise at an election. I don't think anybody would say that person is guilty of wrongdoing. They might be guilty of making a poor judgment about their time management or where they focus their resources, but they are not guilty of committing serious wrongdoing, which I think is the test. Obviously, one of the things we want the Committee and the House to do is to come back to us with some thoughts about how you would deal with defining wrongdoing and judging it. Then we in government will have to make a decision about whether we think that has been adequately set out and is going to have good procedures, but I think our checks and balances in this process are pretty strong and correct.

**Q185 Chair:** The Committee will definitely look very carefully as this issue and will produce, as always, a very constructive report and seek to engage you in how we move this forward. It is probably only fair to say that I get a sense from colleagues—and they can speak for themselves—that to some extent this is fighting yesterday's battle, and everyone did put stuff in their manifesto. There was an aura around at that time, about what MPs were like or should do and so on. Two years later, or whatever, I think there is a

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slightly different sense. I won't go any further than that, because we have not discussed our report or what we would like to see in it, but I think it is only fair to flag up to you that I detect that among colleagues in the Committee.

**Mark Harper:** Chairman, if I may briefly respond before you move on. On that subject, what is interesting is that one of the reasons I think why all the parties made these commitments, because there was a sense from the public that they didn't feel that where MPs had done something seriously wrong that the existing processes would deal with it. One thing that has changed is that we have seen, for those people who committed the worst excesses, the existing processes worked. They either did not stand at the election or they were not re-elected, or, in the most serious cases, the criminal law took effect and people have gone to prison. That is possibly what has changed the position. People have seen that the existing processes we had actually did work, whereas I think before the election there had been quite a lot of feeling that people didn't have the confidence that MPs were going to be subject to the law just like everybody else, and I think what we have actually seen is we are.

**Nick Clegg:** Just to add, Chairman, and I know you are not hinting this is the case, before we all retreat from the commitments we made at the time of the last General Election, of course what Mark says is absolutely right, the passage of time has shown that actually justice has caught up with a number of MPs who have committed wrongdoing. At the time when we all fought the General Election, there was a very strong feeling in the public that there was just no recourse to normal justice. While that is true, as I said in my first answer to Mr Hamilton, if you look at it objectively, there is still some need for a backstop sanction. That is the way we have always rather candidly presented it, as a backstop sanction rather than as an aggressive tool that would be used or over-used or, worse still, abused for political purposes.

**Chair:** We will certainly engage and hope to move this matter forward with you consensually, so that we come up with the right answers here.

**Q186 Mrs Laing:** Chairman, we have just about covered everything on this, but in considering what the hurdles should be that Committees of the House, or others, should put in place to make sure that a proper judgment is made, we have heard evidence, which makes us concerned. For example, the case of the Bromsgrove constituency that happened before the last election, where the MP was, after all the evidence was properly examined by Committees of this House and others, found to have done nothing wrong at all and yet was hounded out by a political campaign, which was later proved to have been for political ends, not for moral ends. Evidence has shown us that there is a danger of that happening if the safeguards are not fully in place. You have practically already addressed this, but I wondered if you might want to say a bit more about those safeguards and the hurdles over which the system would have to jump before it gets to that stage.

**Mark Harper:** Sure. Obviously, as a minister, I don't want to comment on a specific case, but your general point, though, is there has to be due process for Members. We have set out clearly the two triggers. The first one, which is about a criminal process, has all the checks and balances of the judicial process. The second one—and this is one of the things I know you have taken evidence from the Committee on Standards and Privileges, and we will want to listen to what you have to say and what they have to say—is the existing House processes, which are quite robust about making sure there is due process. There is an investigation by the Commissioner. The Committee looks at it. There is a very thorough report. Then all of that has to take place before something goes to the House. In fact, picking up Mr Hamilton's "on the other hand" point, one of the things we have been criticised for is having too many checks and balances in the process, but I think that it is important that there is a due process and people have a fair hearing, that you come to a decision and that you don't just have, as you put it, a sort of witch hunt.

**Nick Clegg:** Also, maybe one of the virtues of having this mechanism, even if much of the time it is a backstop mechanism, is that it actually diminishes the ability for people to conduct what are purely political operations, because one can say, "Look, there is a mechanism there. If you have a beef or a problem with someone, just pursue that", and we have set out a process by which you can do it. It channels what otherwise might be a much more politicised operation.

**Q187 Stephen Williams:** We are all here as parliamentarians and, although we have our individual mandate and we represent a single constituency, we are essentially party representatives as well. When it comes to making a judgment about me in Bristol, or any of my colleagues in their constituencies, whether it is in a recall or in a General Election, people are partly thinking about how the individual Members perform but also how their party leader has performed. Because we are in a coalition, I will be judged on how Mark has performed and other constituent ministers as well. Wouldn't a recall ballot be much more suitable for politicians who are directly elected with their own mandate to run a particular service? The Government is introducing mayors; Sheffield and Bristol are going to have referendums shortly. We do have police commissioners. Why has the Government not brought in recall provisions for those directly elected politicians, like American governors?

**Nick Clegg:** For the police commissioners, we are envisaging a much, much lower threshold. I forget what the precise terminology is, but I think in effect police commissioners will be recalled and would have to resign if they are found wrong of any identifiable—I forget the phrase, I need to check, Mr Chairman. It is a much lower threshold because, in that case, of course the Police Commissioners are there to in part play their role in upholding the law to a very high standard.

**Stephen Williams:** But for mayors there is nothing, is there?

**Nick Clegg:** For mayors, and indeed possibly for a reformed House of Lords. Certainly on the latter that

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is something we would need to consider separately. On police commissioners I know we have been very precise.

**Mark Harper:** We set out MPs first, because that is what the commitment in our manifestos was about. We made it clear that we want to look at all the sponsors we have had to the consultation on this and what you have said, and then we will take a view of whether it is appropriate either at the same time to set out a recall mechanism for other officers in other roles, or whether that is something that ought to happen at a later stage. We certainly have not ruled it out, but we simply wanted to tackle MPs first, because that is what we have committed to do. We didn't make a commitment more widely. But clearly I know part of the evidence that you have taken, and whatever it will be, about other elective positions—and we will have to take a view when bringing forward proposals, do we want to basically deal with MPs first and leave others until later, or do we want to deal with them all at the same time? So obviously if you have thoughts about that, and about appropriate models about whether it is directly transferable or whether it needs to be different, that will of course be very helpful for the Government's deliberations.

**Q188 Simon Hart:** A quick one. Should the provisions account for MPs who wish or do change parties in mid-term and, if not, why not?

**Nick Clegg:** Should a party—

**Simon Hart:** If an MP changes party halfway through a Parliament, could recall be triggered at that moment and, if not, why not?

**Nick Clegg:** Again, it depends whether that would fall under the definition of "serious wrongdoing" as defined by the House. In my view, that intuitively falls under the category of something that one might violently disagree with and would be highly controversial, but is not serious wrongdoing in the sense of breaking rules that somehow require an instant recall, but if the House decides otherwise—

**Q189 Simon Hart:** Sorry, Chairman. Would you accept that voters may take a very different view about that? Voters may—

**Nick Clegg:** Yes, sure. But this is the nub of the issue, which is that if we were to design a recall system that is highly subjective, in other words, anyone can basically trigger a by-election because they don't like what their local MP has done, or they violently disagree with an opinion of what their local MP has done or they don't like a political decision that the MP has done, whether it is what party they are a member of or how they vote on a particular Bill, then our judgment—our judgment, but we are very keen to hear what you feel—is that way lies a capricious, unbridled, highly politicised tit-for-tat system, which I think would fly in the face of our traditions of representative democracy. So we have taken a very deliberate overt decision to put in steps, filters, checks and balances, to make sure that it can't topple into that sort of tit-for-tat slinging match, and that there is a threshold. But there are some people who disagree with that—some people who want us to move to a much more Californian-style free for all. I disagree. I

think that would massively distort the traditions of this House and of our democracy, so I just simply disagree. But if the Committee thinks otherwise, I would be very keen to hear it.

**Q190 Sheila Gilmore:** I have to comment that, on the basis of some of the evidence we have had so far, which you have probably seen, it seems to be a rather unloved proposal on both sides of the argument. But is there a risk that the public will feel even more disillusioned? For example, in Scotland at the moment there is a bit of a debate going on around the issue of recall, because of some behaviour, both of an MP here and, indeed, of an MSP at Holyrood, and the word "recall" is coming up. They are both to do with behaviours that don't necessarily directly affect their performance, or in some people's view don't affect their performance. It is not that they are not doing their job or they have broken any current laws, but if people find out that it doesn't happen, won't they be even more disillusioned with the system?

**Nick Clegg:** That is the art of politics. You have to make your case. There is a legitimate debate here. Of course, there are people who will say, "I don't like what the person has said or done or voted, therefore I want them recalled", of course, but it is our job, it seems to me as a representative of democracy, not to give way to every single spike in rage or anger or vituperative accusation. I make no apology for the fact that what we are trying to do is set some rules of the game. If other people want to advocate an entire festival of populist tit-for-tat politics, fine. I think it would be a dismal place to end up, I really do. We would spend all our time treading on eggshells and never taking big, difficult decisions and never seeking to try to explain them. We have to explain to people, this is a balance. It is a balance between giving people the right, under certain circumstances, to recall their MP, trigger a by-election and not simply wait until the General Election, but it is not a free-for-all. Subject to what the Committee feels—you say it is unloved—I hope that it would be appreciated that that is a balanced approach that we are seeking to adopt.

**Mark Harper:** The way I look at it is this. We are all subject to a recall election once every five years. That is what should be the position for normal politics. This is really about: have you done something that is so serious that it is not appropriate to wait until voters have their normal opportunity to express an opinion on your performance? That is really the gap we are trying to close. The normal cut and thrust of politics, the voters always have an opportunity once every five years to say, "Do you want to continue with your MP or do you want to get a new one?" That is perfectly adequate for most things. This is about filling a gap, where someone has done something where people generally feel it is not appropriate—perhaps, if they did something at the early part of the Parliament—to wait four years to express a view. That is the gap we are trying to close. This is not a substitute for elections.

**Q191 Andrew Griffiths:** Deputy Prime Minister, Stephen alluded to the fact that he would be judged on Mark's performance. Of course, I will be judged

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19 April 2012 Rt Hon Nick Clegg MP and Mark Harper MP

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on yours. My majority is just 6,300, so please bear that in mind.

**Nick Clegg:** I was about to say, I will try my best.

**Q192 Andrew Griffiths:** Following on from Sheila's question, the whole point about recall is that it gives the voters some confidence that they have power over MPs who have done something wrong. What do you say to the concern that is raised that, ultimately, the power still rests with this place? It still rests with MPs to make a judgment about whether they think another MP, a colleague, has done something wrong. It is very unclear how high that bar will be set, in terms of serious wrongdoing, and that the House generally has always had a position where it hasn't taken strong action against Members in the past, even though there were other options available to it. How do we convince the voters that recall means something when ultimately it is still Parliament, and Members of Parliament, who have the ultimate say, yes or no?

**Nick Clegg:** No. I totally understand the risk is that that is the perception. I guess the most important argument against that is that you have the Commissioner for Standards, the Standards and Privileges Committee, who I don't think have been slouches in highlighting wrongdoing and making it very difficult for the House to somehow brush anything under the carpet. So it is not entirely up to a subjective judgment of the House where, of course you are right in theory, the risk is that everybody constantly lowers the bar until it is meaningless. The fact that we have these belt-and-braces arrangements in place, which have strengthened considerably in

recent years—through the independence of the Commissioner, the rigour with which the Commissioner is investigating allegations of wrongdoing, and the Committee has also taken pretty robust action and made pretty robust recommendations on individual cases—should provide comfort that it is not just going to be a, “You scratch my back, I will scratch yours”-type arrangement that otherwise, you are quite right, would be the legitimate fear. I don't know, Mark, whether you want to add anything to that?

**Mark Harper:** That clearly is a risk, and I think part of it is about how the House conducts itself. That is why we were clear it was about serious wrongdoing and that, indeed, was the exact language used in our Liberal Democrat manifesto and similar to the language in the Labour manifesto. Part of it is about us explaining what this is designed to do, what it is not designed to do, and just being very clear about that to voters and then everyone is clear about what we are offering. The danger is you oversell it and you disappoint people. It is important for us to get it right about what it is for and what it is not designed to do, then actually it will improve the confidence that voters have, rather than reduce it.

**Chair:** Thank you very much. Thank you, colleagues. That concludes our opening section on recall. The Committee will continue to keep this matter under close scrutiny and will come up with a report in the not-too-distant future, and hopefully continue our good relationship in terms of moving this question and others forward.

# Written evidence

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## Written evidence submitted by Unlock Democracy

### ABOUT US

1. Unlock Democracy (incorporating Charter 88) is the UK's leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, a stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility.

### EXECUTIVE SUMMARY

- Unlock Democracy welcome the Government's publication of the Draft Recall of MPs Bill and in particular the fact that it has been made available for pre-legislative scrutiny.
- However we do not agree with the Government's conceptualisation of recall as a disciplinary tool. Our primary concerns centre on their second proposal regarding if an MP is found in serious breach of the Code of Conduct for MPs.
- Unlock Democracy believes that recall should empower voters, not parliamentary committees. Therefore, we propose that the public should be able to have the opportunity, once in a Parliament, to trigger the recall of a Member of Parliament. We want people to have the power to recall their MP and force a by-election if a majority have lost confidence or trust in them for *any* reason.
- We are less concerned about the Government's proposal that a criminal conviction should trigger a recall process. We recognise that there are instances where voters may not feel that the conviction warrants a by-election but this would give voters the opportunity to trigger one if they felt strongly.
- Our response to this consultation outlines three main ways in which we believe these proposals<sup>1</sup> can be improved so that they empower citizens and we make three recommendations.

*Recommendation 1: The public to have the right to determine when there has been serious wrongdoing and for them to initiate a recall petition at any time and on any issue they wish*

- We propose that if at least 10% of those on the electoral register for the constituency who are eligible sign a petition within eight weeks, on any issue of their choosing, a recall referendum be held in that constituency.
- If a majority voted in favour of recalling the MP in question, the seat would be vacated and a by-election would then be called. The MP would not be permitted to stand in the subsequent election.
- Any MP that had faced a recall ballot and survived would be exempt from recall proceedings for the rest of the Parliament.

*Recommendation 2: An automatic recall petition following a serious breach of the Code of Conduct*

- Whilst we fully respect the right of the House to discipline its own Members, it should also be a right of the public, those whom they represent, to decide whether to recall their MP. We therefore recommend that in the event of a finding of a serious breach of the Code by the Parliamentary Commissioner for Standards (PCS), a recall petition can automatically be triggered by the voters of that constituency.

*Recommendation 3: Widening the remit to include all elected officials*

- Unlock Democracy is disappointed that the current proposals only apply to MPs.
- We note the Government's commitment in the consultation that "once such a mechanism has been established for recalling MPs, the Government will give careful consideration to whether recall should be extended to other elected offices across the United Kingdom".<sup>2</sup>
- Recall is conventionally used for directly elected executive posts such as elected mayors and elected police commissioners. If the Government is reluctant to introduce full recall for MPs then these posts offer an alternative starting point for introducing full recall that is more in keeping with international experience.

### INTRODUCTION

2. Unlock Democracy welcomes the Government's publication of the Draft Recall of MPs Bill as it will trigger an important debate about parliamentary accountability and responsibility.

3. We further welcome the Government's willingness to "consider other models and, in particular, different proposals for triggering a recall petition".<sup>3</sup>

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<sup>1</sup> Annex A: Pg 38 Recall of MPs Draft Bill

<sup>2</sup> 158 pg 37 Recall of MPs Draft Bill

<sup>3</sup> Pg 22, section 82 of Recall of MPs Draft Bill

4. We do not agree with the Government's proposals which effectively define recall as a disciplinary tool. The White Paper clearly sets out the Government's thinking on recall as something that should be built onto existing measures for disciplining MPs within Parliament. Whilst we recognise Parliament's right to discipline its own Members, as set out in the Bill of Rights, we believe this characterisation of recall is confused and misguided.

5. Recall exists, primarily in the USA, as part of a suite of direct democracy tools for holding directly elected politicians to account. In recent years the UK has started to import these directly elected executive posts, such as elected mayors and now elected police commissioners, from the USA. Recall is the corresponding accountability mechanism to these executive posts and yet the Government proposes introducing it for MPs, rather than executive posts.

6. In the US model, recall is not a quasi-judicial disciplinary process; rather it is a means of voters holding powerful elected politicians to account. In the Government's attempt to marry recall with our representative system of government they have undermined the value of recall which is that it puts power in the hands of voters. The Government's proposals merely ask voters to endorse a view already formed by either the parliamentary disciplinary processes or the criminal justice system.

7. Unlock Democracy believes that the public should be able to have the opportunity, once in a Parliament, to trigger the recall of a Member of Parliament. We want people to have the power to recall their MP and force a by-election if a majority have lost confidence or trust in them for *any* reason. This could include for example crossing the floor of the House or breaking a manifesto/election promise etc.

8. Recent demonstrations of strong public feeling on issues such as the expenses scandal, tuition fees and the vote to go to war in Iraq, have shown that the public treat a broken promise by their elected representatives just as seriously, if not more so, than a breach of the MPs' Code of Conduct.

9. We readily agree that there should be safeguards to ensure this power is used rarely and appropriately. Recalling an MP is a serious matter and should not be undertaken lightly but soberly, with just cause and following proper consultation. It should be possible to do so, but hard enough that serious thought is given before undertaking the process.

10. Safeguards can be implemented to recall processes stipulating the threshold of signatures that needs to be achieved and in what time frame. The way the signatures are collected can also act as a safeguard. It is necessary to achieve a balance between too few safeguards, making the process too easy so that it could be used for frivolous or partisan purposes, and too many, meaning that in effect recall can never be used.

11. Unlock Democracy believes that the proposed recall mechanism, restrictive in scope, with a high threshold, a short time frame for signature collection and the proposed single location for signing the petition in person, are so stringent as to make the process nearly meaningless.

12. We fear that if the draft Bill goes ahead in its current form there is a very real danger that the Government's proposals will further alienate the public from their MP, when its intention is indeed quite the opposite.

#### SUGGESTIONS FOR REFORM

*Recommendation 1: The public to have the right to determine when there has been serious wrongdoing and for them to initiate a recall petition at any time and on any issue they wish*

13. Unlock Democracy believes it should be possible for the public to determine when there has been serious wrongdoing and for them to initiate a recall petition at any time and on any issue they wish.

14. In addition to the Government's proposals regarding custodial sentences (with which we agree), and its proposals on recommendations by the Committee on Standards and Privileges (which we address later), Unlock Democracy propose an additional option for recalling MPs.

15. We propose that if at least 10% of those on the electoral register for the constituency sign a petition within eight weeks, on any issue of their choosing, a recall referendum be held in that constituency.

16. The referendum is a necessary additional stage to ensure that the recall process is not hijacked by a particularly vocal minority, to ensure that the MP gets a fair hearing and that there is proper consultation before the cost of a by-election is incurred.

17. The referendum would be in the format of a Yes/No question asking whether the public wanted to recall their Member of Parliament. If a majority voted in favour of recalling the MP in question, the seat would be vacated and a by-election would then be called. The MP who had been recalled would not be permitted to stand in the subsequent election.

18. To ensure that voters have proper parliamentary representation and that the process does not drag on, we recommend that any by-election should be held within 12 months of the original recall petition reaching the required number of signatories.

19. We further recommend that if a majority of constituents voted against recall in any referendum, then the MP in question would not only remain in post under our model, but they would also be immune from any other recall petitions for the duration of the Parliament as well.

20. We do not envisage however there being a wave of successful election petitions against MPs should our recommendations be implemented. The example of British Columbia shows that such petitions are rare as the threshold is so high. Using the Government's own threshold, 10% is a large number of signatories to achieve in one constituency within the suggested timeframe.

21. The Government proposes that to sign the petition in person, voters must go to a single location such as a town hall. Unlock Democracy would not advocate going this far, as only having one place to sign a petition we believe would deter public participation. However there are numerous examples of safeguards that are commonplace in other countries and would help address any concerns about the purity of the process.

22. We know that it will be possible to sign the petition by post or absentee ballot but as this will require a number of processes to apply for the form and submit the signature, this does not adequately address our concerns about the accessibility of the petition stage.

23. If the Government remains committed to the single site collection model for signatures, we believe there should be a pre-petition stage to the recall process. This would involve campaigners having to collect a certain number of signatures to show that there is demand, before the local authority has to incur the costs of running a recall process.

24. The Electoral Commission should obviously have a key role as watchdog and regulator in any recall ballot and by-election. We agree with the Government's proposal that their duties and responsibilities should be similar to those which it holds in relation to elections under the Political Parties, Elections and Referendums Act 2000 (PPERA).

25. As regards to timing, Unlock Democracy is open-minded about whether any recall referendum or by-election is held at the same time as other constituency wide elections. Combining elections would reduce the overall costs but does risk making the referendum or by-election more partisan.

26. We feel very strongly, however, that it would not be at all appropriate for any referendum or by-election to be an all postal ballot or for signatories in any petition to be allowed to be collected electronically.

27. At the time of writing, Zac Goldsmith MP has a Bill before Parliament which advocates a similar approach to ours. The Recall of Elected Representatives Bill is currently awaiting its second reading.

28. The Minister of State Mark Harper MP has promised in writing to Andrew George MP that this Bill will be debated on the floor of the House.<sup>4</sup> We trust that this promise will be fulfilled and look forward to the debate.

*Recommendation 2: An automatic recall petition following a serious breach of the Code of Conduct*

29. Under the current government proposals, for the public to be able to initiate a recall petition three stages first have to happen.

30. In stage one, the Parliamentary Commissioner for Standards (PCS) must find and highlight a "serious" breach of the Code of Conduct to the Committee on Standards and Privileges (CSP). In stage two the CSP, which is an internal committee of MPs, then has to determine and recommend that the MP in question should face a recall petition. Finally in stage three, if the CSP does recommend that one of their colleagues faces recall, there must be a House of Commons resolution to implement the CSP's recommendation.

31. Whilst we fully respect the right of the House to discipline its own Members, it should also be a right of the public, those whom they represent, to have a say on the disciplining of their respective Members of Parliament. We therefore recommend that following the finding of a serious breach of the Code by the PCS, an election petition can automatically be triggered.

32. In our proposal, the CSP could still discipline the MP as they saw fit however the public could still take action if they wished and trigger a petition if, for instance, the CSP decided the breach did not merit recall. If the petition was unsuccessful the original CSP punishment would still apply. If the petition was successful, a recall ballot would be triggered.

33. We recommend stage three, whereby there has to be a vote on a resolution in the House of Commons, is abolished completely. We argue that there is no need for a Commons resolution to implement a CSP recommendation and that it is a superfluous stage. This can be seen by the admission in the consultation document that "the Government is not aware of a case where the House has failed to implement a recommendation of the Committee on Standards and Privileges in relation to discipline".<sup>5</sup>

<sup>4</sup> Letter to Andrew George MP from Mark Harper signed and dated 20/6/2011

<sup>5</sup> Section 77 pg 21 Recall of MPs Draft Bill

34. These recommendations we believe would remove the anomaly of having MPs being both judge and jury over their colleagues, eliminate the chances of MPs voting on party lines in any vote, empower citizens and underline the importance of the Code of Conduct.

35. We are less concerned about a criminal conviction triggering a recall process. We recognise that there are instances where voters may not feel that the conviction warrants a by-election but this would give voters the opportunity to trigger one if they felt strongly.

*Recommendation 3: Widening the remit to include all elected officials*

36. Unlock Democracy believes that all elected officials should be subject to recall, including MEPs, directly elected police commissioners, mayors, councillors etc. That the current proposals only apply to MPs is deeply disappointing.

37. We note the Government's commitment in the consultation that "once such a mechanism has been established for recalling MPs, the Government will give careful consideration to whether recall should be extended to other elected offices across the United Kingdom".<sup>6</sup>

38. There is already broad cross party support within Parliament for a recall mechanism as we envisage it. Early Day Motion 1253,<sup>7</sup> Recall of Elected Representatives, has at the time of writing been signed by over 50 MPs from across the House.

39. Those signatories all express their belief that voters should be able to recall their elected representatives if a majority have lost confidence in them, for whatever reason, and if enough voters sign a petition to trigger a recall vote. They also express disappointment in the current proposals to only allow it to happen if the CSP deem it appropriate, and that they do not apply to other elected officials.

40. There is a strong case for introducing recall to all elected positions. When looking at the experiences of other countries, recall has traditionally been introduced for directly elected officials who carry out executive functions such as sheriffs and mayors. It has then been extended to other elected representatives. Yet as the UK Government has imported US directly elected mechanisms such as police commissioners and mayors, they have not introduced the accompanying accountability tools such as recall. If they had then perhaps we would not be seeing the citizen led campaigns calling for referendums to abolish the position in cities such as Doncaster. Instead we believe the position holder would be recalled instead.

February 2012

**Written evidence submitted by Robert Rogers, Clerk of the House of Commons**

HOUSE OF COMMONS POLITICAL AND CONSTITUTIONAL REFORM SELECT COMMITTEE  
RECALL OF MPS WHITE PAPER AND DRAFT BILL (CM 8241)

1. I welcome the recognition by the Government in its *Recall of MPs* White Paper (Cm 8241) of the exclusive cognisance of Parliament, and I was glad to see the draft Bill's framing of the recall conditions in order to respect the constitutionally distinct jurisdictions of the Courts and of Parliament. I welcome the assurance by the Deputy Prime Minister and the Minister for Political and Constitutional Reform in the foreword to the White Paper that "[t]he Government has not sought to redesign the disciplinary arrangements for the House of Commons or abridge that House's historic privileges in order to establish a recall mechanism" (Cm 8241, page 5).

2. The White Paper's Impact Assessment (Annex G) addresses the fundamental questions:

- What is the problem under consideration?
- Why is Government intervention necessary?

RESTORING PUBLIC CONFIDENCE

3. The reply given to these questions is that:

*In certain circumstances under the existing disciplinary arrangements an MP may be found to have committed a serious wrongdoing but can retain their seat without having to account to their constituents until the next election. The Government has given a commitment in the Coalition Programme for Government to "bring forward early legislation to introduce a power of recall, allowing voters to force a by-election where an MP is found to have engaged in serious wrongdoing and having had a petition calling for a by-election signed by at least 10% of his or her constituents". The Government believes this mechanism will go some way to restoring public confidence in MPs and Parliament as a whole (Cm 8241 Annex G, page 51).*

4. I entirely agree that any public perception that a Member of the House of Commons has been guilty of serious wrongdoing and has gone unpunished is bad for the House and bad for Parliament. However, I think it

<sup>6</sup> 158 pg 37 Recall of MPs Draft Bill

<sup>7</sup> Full text and list of signatories can be found here. <http://www.parliament.uk/edm/2010-12/1253>



is also worth recalling that events have moved on since the Coalition Programme for Government was formulated. At that time three Members of the House of Commons and one Member of the House of Lords were facing charges relating to the claiming of expenses. Each of them claimed that criminal proceedings could not be brought against them by virtue of parliamentary privilege. The ruling against them by Saunders J on 11 June 2010 was appealed by the three Members of the Commons to the Court of Appeal. Thereafter the appeals were dismissed by the Supreme Court on 10 November 2010.

5. This decision did not in the least surprise me; the proper purpose of parliamentary privilege is to protect Members, Officers of the House and witnesses in respect of *proceedings in Parliament*, and not otherwise. However, the perception at the time that the commitment to legislate was made was that Members guilty of such serious wrongdoing could escape punishment by the operation of some arcane rule.

6. I think it is also worth bearing in mind that the legacy of the 2005–10 Parliament was a sorry one. As someone who for nearly forty years as a servant of the House has worked to spread understanding of the institution and so to enhance its reputation I was saddened, as were so many others. But the 2010 Parliament in many ways represented an increasingly confident new start: the arrival of 227 new Members; a range of procedural and other changes providing a greater role for back-benchers; increased confidence and activity of select committees, now with elected Chairs and Members, and the perception, after more than 18 months of the new Parliament, that the House is playing an ever more positive role in independent-minded scrutiny and debate.

7. This is not, of course, to suggest a dropping of our guard against any wrong-doing; but only to make the point that there are many ways of achieving the aim of restoring public confidence, and that the present proposals need to be seen in that broad context. No doubt the Committee will wish to test to what extent the proposals will contribute to restoring public confidence.

8. I should mention that the New Parliament Strategy for the House of Commons Service, which I head as its Chief Executive, is that we as stewards of the institution should play our full part in seeking to secure that by 2015 the House of Commons will be valued as the central institution in our democracy: effective in holding the Government to account, scrutinising legislation, representing the diverse views of the electorate, and thus deserving of respect. A copy of that strategy is annexed to this paper.

#### DISCIPLINARY POWERS OF THE HOUSE OF COMMONS—EXPULSION

9. According to the “do nothing” base case given in the Impact Assessment’s Summary of Analysis and Evidence (Cm 8241, page 51), the present arrangements are for “automatic disqualification if an MP is imprisoned for a period of more than 12 months or another disciplinary sanction (such as apology or suspension) decided by the House for any other wrongdoing”. This omits the significant power of *expulsion* (although the Evidence Base remedies this on page 55). Nothing in the draft Bill would affect the House’s power to expel a Member; and it is in my view essential that the House should retain its right to expel Members.

10. Interestingly, the Parliament of the Commonwealth of Australia legislated in its Parliamentary Privileges Act 1987 to remove the House’s power to expel its own Members. I would be concerned if the Government’s forthcoming Green Paper on parliamentary privilege in the United Kingdom were to propose a similar measure.

11. A list of expulsions up to the beginning of the nineteenth century was gathered in the Report of a Committee on Precedents on the Expulsion of Members, (1806–07), HC 79. Erskine May records that Members have been expelled for a wide variety of causes, listed in a footnote in the latest (24th) edition (page 199, footnote 101; unless otherwise stated the references are to the Commons Journal):

- being in open rebellion (1714–18 336, 467);
- being guilty of certain criminal offences, such as:
  - forgery (1722–27, 702; 1954–55, 25),
  - perjury (1782–83, 770),
  - fraud or breach of trust (1718–21, 406, 412, 413; 1727–32, 871; 1812, 176; 1892, 120; 1922, 273, 276, 293, 319; and see Colchester ii, 373),
  - conspiracy to defraud (1813–14, 433),
  - misappropriation of public money (1702–04, 171; 1810, 398),
  - and corruption either in the administration of justice (1547–1628, 588) or in public office (1711–14, 30, 97);
- having misconducted themselves in the exercise of their duties as Members of the House (1667–87, 24; 1693–97, 274 and 5 Parl Hist 900–910; 1693–97, 283);
- having behaved in a manner unbecoming an officer and a gentleman (1795–96, 661; 1890–91, 268, 272, 282); and
- being guilty of contempts, libels, or other offences against the House (1547–1628, 917; 1640–42, 301, 537; 1667–87, 431; 1711–14, 513; 1714–18, 411; 1722–27, 391; 1882, 61; 1947–48, 22).

As the White Paper recalls, three Members were expelled by Resolution in the last century:

- August 1922, Horatio Bottomley (Independent, South Hackney) following conviction for fraud and sentence of seven years imprisonment;
- October 1947, Garry Allighan (Labour, Gravesend) after lying to a committee and for gross contempt of the House after the publication of an article accusing MPs of insobriety and of taking bribes for the supply of information; and
- December 1954, Peter Baker (Conservative, South Norfolk) after receiving a custodial sentence of seven years following a conviction for forgery.

12. With hindsight, Mr Allighan's expulsion seems a little surprising. However, the sentences given to Mr Bottomley and Mr Baker would now result in automatic disqualification. Horatio Bottomley's offences were not felonies, so at the time he would not have been automatically disqualified. In the case of Mr Baker, the motion for expulsion need not have been moved: under the provisions of the Forfeiture Act 1870 then still in force, he would have been automatically disqualified by reason of his conviction for a felony.

#### TIMING OF RECALL PETITION

13. The Committee may wish to examine the workability of the draft Bill's provisions, taking account of the right to appeal against sentence and conviction, and how the law's delay might be exploited by a Member trying to postpone the opening of recall petition and, conversely, the risk of injustice where a Member's conviction is subsequently set aside on grounds of new evidence but *after* notice of a successful recall petition has been given. The case of Fiona Jones, (*Attorney General v. Jones* [1999] 1 All ER 451) where a Member's conviction for an election offence was quashed on appeal, demonstrated the wisdom of the House waiting a little while before proceeding to a by-election following a disqualification. The House wisely did not pass any motion for a writ for the Oldham East and Saddleworth by-election until the conclusion of judicial review proceedings in *R (on the application of Woolas) v. Parliamentary Election Court* [2010] EWHC 3169.

#### TIMING OF BY-ELECTION WRIT

14. The White Paper (page 30, paragraph 125) invites the House of Commons to consider whether provision should be made in the House's Standing Orders concerning the rules about when a writ for a by-election may be moved following a successful recall petition. The Committee may wish to take evidence from the parties' business managers on this proposition. It would be undesirable for the Speaker to be thrust into controversy by having to bring forward a motion for a Writ required under a Standing Order to be moved by a certain date, against the wishes of the political parties in the House. The present position, where the Chief Whip of the party holding the seat is generally reckoned to have the right to move the motion for the issue of the writ for a by-election, works reasonably well. A powerful constraint on that Chief Whip is the right of any Member to move the motion for the issue of the writ as matter of privilege at any time without notice, which generally militates against undue delay.

#### TYPES OF CONDUCT LEADING TO RECALL PETITION

15. The Committee may wish to probe the Government further on the implications of its assertion, in the summary of Analysis and Evidence at page 52 of Cm 8241, that the proposed recall model affording voters the power to force a by-election amounts to "a power not seen before and one which will be a significant step towards restoring the public faith and trust of the electorate in Parliament". The Government's recall model is confined to criminal or other serious wrongdoing. Expectations may be aroused that constituents might be given the power to force a by-election in wider circumstances which will also have powerful resonances, such as:

- breaking electoral pledges;
- mis-handling the economy;
- disregarding United Nations Resolutions;
- crossing the Floor (or other defection); and
- resigning, or being deprived of, the party Whip.

16. The Government's conclusion of its study of international examples (Cm 8241 Annex E, page 47 paragraph 29) is that no recall model can simply be imported: "The draft Bill sets out a bespoke recall mechanism which we believe best fits our model of representative democracy". The White Paper (Cm 8241, page 47, paragraphs 23 to 26) sets out the Government's concern that adopting the Californian model, for example, might serve only to prevent MPs from tackling controversial issues or taking on vested interests. The Government concludes that "recall must be more than a way of trying to rerun the election to get a different result".

17. The Committee may concur in the Government's view that the recall power ought to be confined to cases of serious *personal* misconduct. Arguments for wider scope may be made if the Bill is brought before Parliament, but these are matters of political judgement upon which I will not comment.

## CRIME AND CIVIL DISOBEDIENCE

18. The Government explains in paragraph 58 of the White Paper why the draft Bill takes no account of the motivation of the Member in committing a crime. The issue of civil disobedience is, I think, likely to attract interest if the Bill is brought before Parliament.

*Ordinarily, a person leaving a courtroom with a conviction behind him would wear a sombre face. But I left with a smile. I knew that I was a convicted criminal, but I was proud of my crime.—Martin Luther King, Jr, 22 March 1956*

19. Most recent cases of Members' imprisonment for criminal offences have been linked to civil disobedience:

- On 20 April 1972 the Speaker informed the House that Bernadette Devlin and Frank McManus had been imprisoned for offences of organising and taking part in processions contrary to law in Northern Ireland, for which they were later pardoned (9 May 1972).
- Between January 1987 and October 1988, Harold McCusker was imprisoned for failing to pay a fine imposed for driving a vehicle without a licence under the Vehicles (Excise) Act (Northern Ireland) 1972; Ken Maginnis and Peter Robinson were imprisoned for the same offence; Cecil Walker, William McCrea, Ian Paisley, Robert Beggs, Clifford Forsythe, Harold McCusker, William Ross, Martin Smyth and Peter Robinson were imprisoned for failing to pay fines imposed for attending an illegal procession contrary to the Public Order (Northern Ireland) Order 1987. Peter Robinson was imprisoned for this offence on several occasions.
- In July 1991 Terry Fields was sentenced to 60 days' imprisonment for refusing to pay a poll tax bill of £373. Mr Fields remained a Member of the House but he was expelled from the Labour Party and did not keep his seat in the 1992 election, in which he ran as an Independent (Labour-Socialist). The House was informed of the sentence by the Speaker.

20. While one might speculate that their electorates would have stood by the imprisoned Members (and there is good evidence for this in the case of the Unionists in Northern Ireland), the success threshold in a recess petition of only 10% might be regarded as readily achievable; no successful candidate, after all, ever secures as much as 90% of the vote.

21. The Committee might consider the implications of the draft Bill for such actions, particularly in view of the automaticity of the first recall condition in Clause 2(1)(a). On the one hand it could be said that a Member making a protest by way of such civil disobedience would do so in full knowledge of the possible result. On the other, the recall process as at present envisaged would effectively prevent principled protest of this sort.

## IMPRISONED MEMBERS

22. There are good practical reasons why constituents might wish to replace a Member who was unable to serve their interests effectively while in gaol. The Committee of Privileges First Report of Session 1970–71 dealt with the rights of Members detained in prison (HC 185). The Committee's view was that "While a Member of Parliament in prison after conviction remains a Member of Parliament he is no different position from any other person so detained. A Member of Parliament should not be given any special advantages by reason of his being a Member" (paragraph 3).

## CRIMINAL JURISDICTION BEYOND UNITED KINGDOM

23. The Political and Constitutional Reform Committee may wish to examine the Government's judgement that the first condition, a custodial sentence, applies to decisions of United Kingdom courts only. The Representation of the People Act 1981, introduced following the death of Bobby Sands, provides for the vacating of the seat of a Member disqualified because he or she is detained (or unlawfully at large when he or she would otherwise be detained) anywhere in the British Islands or the Republic of Ireland, having been sentenced in any country and for any offence and ordered to be detained indefinitely or for more than one year.

24. I would expect that the extent to which convictions in other jurisdictions ought to be part of the first recall condition in Clause 2 of the draft Bill might be the subject of debate if the Bill is brought before Parliament. At first sight, it might seem odd for Ireland and other EU partners not to be treated on the same footing as courts in the United Kingdom. A case might be made for taking account of convictions in any of the forty-seven Council of Europe countries (listed at Annex), as they share with the United Kingdom a commitment to abide by the European Convention of Human Rights and to respect the decisions of the European Court of Human Rights at Strasbourg. But of course a custodial sentence anywhere in the world will in fact prevent a Member so detained from serving his or her constituents.

## RESIGNATION FROM THE HOUSE

25. Hatsell (Volume II, page 78) records the House of Commons agreeing on 2 March 1623, in the course of its decisions on various election petitions, the fundamental principle that "a man, after he is duly chosen cannot relinquish [his election as Member of Parliament]". The convenient fiction of the "offices of profit under the Crown", including the Chiltern Hundreds, grew up to facilitate *de facto* resignation. The annexed list of

disqualifications covers a wide variety of cases. It may be that, in a few cases, Members have taken the Chiltern Hundreds (or Manor of Northstead) in order to jump, rather than wait to be pushed, out of the House.

26. The Committee may wish to consider how the proposed recall power would play out in the real world of party politics. A political party may prefer to precipitate an inevitable by-election by persuading its Member to resign in anticipation of conviction, or of an adverse finding by the Committee on Standards. A Member's chance of being re-elected to the House would depend largely on whether or not their political party was prepared to stand by them. Successful returns of sitting Members at by-elections include Tony Benn at Bristol South-East in the 1961, several Northern Ireland Unionists in the 1980s and most recently David Davis at Howden and Haltemprice. Dick Taverne left the Labour Party and forced a by-election in Lincoln, at which he held his seat, in 1973; Bruce Douglas-Mann, who submitted himself to his electorate in Mitcham and Morden in 1982 after defecting from Labour to the SDP, was not so fortunate.

27. In the present Parliament, Eric Illsley's 12-month sentence did not quite meet the threshold for expulsion, but he resigned after conviction, before sentence. In any event, he had already been suspended by the Labour Party, whose selected candidate comfortably held the Barnsley Central seat at the ensuing by-election.

28. It may be that if enacted the recall power will be invoked only rarely. However, the fact of its existence might mean that political parties might seek to anticipate the recall process by securing the resignation of a Member immediately rather than endure weeks of pre-campaigning over the petition before having in the end to fight a by-election on the back foot. Upholding the principle of innocence until proven guilty may come under pressure from electoral expediency.

#### THE SECOND RECALL CONDITION: A RESOLUTION OF THE HOUSE

29. In my view, it is right to leave it to the House itself to decide how, when and why to trigger a recall petition (the "second recall condition"). The proposed Act, seen in this light, offers an extension to the House's disciplinary powers. It is only reasonable for the Government, and public opinion more generally, to expect the House to give some indication of how these powers might be exercised. The Committee may wish to review the annexed list of recommendations by the Committee on Standards and Privileges for the suspension of Members who had been investigated by the Parliamentary Commissioner for Standards, and to consider in how many of these cases the House would have used the power to trigger a recall petition, had it been available at the time.

#### ROLE OF THE PARLIAMENTARY COMMISSIONER

30. In its 12th Report, the Committee on Standards in Public Life recommended that the Parliamentary Commissioner for Standards "should include in any report to the Standards and Privileges Committee an indication of the seriousness of any breaches in the rules or code of conduct which have occurred" (CSPL 12th Report, *MPs' expenses and allowances—Supporting Parliament, safeguarding the taxpayer*, Cm 7724, recommendation 50).

31. The Committee on Standards and Privileges responded as follows—

"In practice, the Commissioner already does this through his choice of language, and we note that there is no indication that the CSPL has something more formal in mind, such as a sliding scale. A formal arrangement of that kind might be seen as creating an unwelcome confusion between the roles of the Commissioner and the Committee, because it would in effect require the Commissioner to set his own tariff, which could be seen as pre-empting the Committee's judgment on a penalty. However, the CSPL clearly wishes the Commissioner in his reports to give a clearer indication of the seriousness with which he regards breaches of the rules and he has assured us that he will do so." (*Implementing the Twelfth Report from the Committee on Standards in Public Life*, Second Report from the Committee on Standards and Privileges of Session 2009–10, HC 67, paragraph 15).

32. The flowchart *Processes for triggering a recall petition* in Annex A of the White Paper (page 38) implies that the judgment of seriousness for the purposes of the second recall condition should be one for the Parliamentary Commissioner for Standards. Although the Committee on Standards and Privileges normally concurs with the conclusions of the Parliamentary Commissioner for Standards, it would be in my view wrong to require the Commissioner to take over the Committee's role in deciding on sanctions, which may in future include recommending to the House that there should be a recall petition. This would be a significant change in the Commissioner's responsibilities, and I think would put an unreasonable burden on a highly regarded but unelected official.

#### ROLE OF COMMITTEE ON STANDARDS AND PRIVILEGES

33. The Committee on Standards and Privileges has an exemplary record of non-partisanship, bolstered by the convention that no one party should have a majority on the Committee and that its Chair should be drawn from the Opposition benches. It would in my view be in the best interests of the House, as well as those of the wider public, for this non-partisanship to continue. The planned addition of lay members, which I would strongly urge be accompanied by splitting off the Committee of Privileges, will strengthen the perceived independence of the Committee on Standards.

34. The Human Rights Act does not apply directly to Parliament which therefore is not subject to the jurisdiction of the UK courts in respect of any allegation of an infringement of the European Convention on Human Rights. Nonetheless it is advisable for the House to seek always to apply the highest standards, not least because of the possibility of a challenge to the European Court of Human Rights in Strasbourg (as in *Demicoli v Malta*) that any unfairness in the parliamentary adjudication process was such as to engage the United Kingdom's international responsibility under the Convention. With the possibility of such challenge in mind, the House might consider adapting its own standards complaints procedure to make it as compliant as possible with the highest human rights standards of due process:

- (1) a complaint to the Parliamentary Commissioner for Standards;
- (2) investigation of facts by the Commissioner;
- (3) an opportunity for Member to respond to the Commissioner's findings before they are submitted to the Committee;
- (4) the appointment of an Investigatory Panel to assist the Commissioner under SO No 150 (5);
- (5) an oral hearing in public before a Sub-Committee, possibly augmented by the active participation of the Attorney General or the Solicitor General under SO No 149 (9);
- (6) an opportunity to respond to the draft Sub-Committee Report if the Sub-Committee were minded to find serious wrongdoing;
- (7) a separate appeal to the full Committee if the Sub-Committee made a finding of serious wrongdoing (Sub-Committee Members recusing themselves from the full Committee);
- (8) a Report to the House by the full Committee with its final decision; and
- (9) a debate and decision by the House on a Motion ordering the Speaker to issue a certificate for recall petition.

#### LETTING THE HOUSE DECIDE

35. The Committee may wish to consider whether it would be necessary, useful or even possible to indicate what kind of conduct the House might consider merited the opening of a recall petition. But I would stress that I would see this as no more than guidance which might help the Committee on Standards and Privileges calibrate a penalty. To make such provision on the face of the Bill might have the perverse effect of making the process less effective; and it would certainly open the way for the Courts to take a role in a way which I would expect the House to find unacceptable and which would in all probability breach Article IX of the Bill of Rights.

36. On this theme, I note that the White Paper (pages 22–23, paragraphs 82 to 86) states that the Government is prepared to consider “alternative models and different proposals” for triggering a recall petition. I hope that the Committee will indicate its support for the White Paper's approach as far as the second recall condition is concerned: an additional disciplinary power for the House, untrammelled by any statutory limitations which might lead to judicial intrusion into parliamentary proceedings.

#### RECESS ELECTIONS

37. In certain circumstances, writs for by-elections may be issued during the longer parliamentary recesses, and so without any proceedings on the floor of the House. Under the Recess Elections Act, these circumstances include death but do not include taking the Chiltern Hundreds. The Committee might consider whether or not it would be appropriate in the case of a successful recall petition for the by-election writ itself to be issued otherwise than in the normal fashion, after a debatable Motion has been agreed to on the floor of the House.

#### SECTION 141 OF THE MENTAL HEALTH ACT

38. Under section 141 of the Mental Health Act 1983, the Speaker must be informed if a Member is detained on mental health grounds. The Speaker must arrange for the Member's case to be reviewed by two specialists appointed by the President of the Royal College of Psychiatrists. If the specialists certify that the Member is properly detained, a second inspection must be made six months later. If the second inspection confirms that the Member continues to be properly detained, the seat becomes vacant. The origin of that provision apparently lies in a merciful parliamentary exception to the rule that sickness was no excuse for having to serve in the House: only in the case of incurable mental disorder (“lunacy” was the contemporary term used) were Members allowed to stand down. The White Paper repeats the signal given in a Written Ministerial Statement on 3 February 2011, that the Government agrees with the all-party parliamentary group on mental health, and with the Speaker's Conference on Parliamentary Representation, that section 141 of the Mental Act 1983 should be repealed as soon as a suitable legislative opportunity arises.

#### HOUSE OF LORDS

39. If the draft House of Lords Reform Bill were to be enacted in its current form, there might be some elected Members in the other House as soon as May 2015. The White Paper on the House of Lords Reform Draft Bill (Cm 8077, page 27, paragraph 139) says simply that “The Government will also consider whether

elected members of the reformed House of Lords should be subject to a similar system [to recall MPs where they have engaged in serious wrongdoing]". The Government proposes that any vacancies among elected Members in the upper House should be filled by means other than by-elections, as in a reformed House of Lords elected Members would be elected for 15 year terms in tranches at five-year intervals by proportional representation in very large multi-member constituencies analogous to those in which Members of the European Parliament are elected. The Political and Constitutional Reform Committee may wish to look at whatever emerges on this matter from the Joint Committee, which is required to report on draft House of Lords Reform Bill by the end of March.

#### WORDING OF RECALL PETITION

40. The proposed wording in Clause 8(2) of the recall petition in the case of a criminal conviction does not mention the suspension of sentence, although Clause 2(4)(a) makes it clear that a suspended custodial sentence falls within the first recall condition.

#### EARLY TERMINATION OF RECALL PROCESS

41. It strikes me as odd for it to be the returning officer informing the Speaker, rather than the other way round, that a recall petition has been terminated by either of the first two conditions mentioned in Clause 9 early general election or Member's death/vacating of seat, because it is the Speaker, rather than the returning officer, who is, so to speak, the first and authoritative "owner" of the information.

#### SCOTTISH LAW, ETC

42. Over the years, I have observed with some frequency the necessity of Government amendments to Bills which have been drafted with the English or UK jurisdiction in mind. The Committee may wish to seek assurances that phrases such as "overturned on appeal" in Clause 2(6) work equally well in Scotland.

#### Conduct of recall petitions

43. I have no expertise in the conduct of the electoral process, on which the Committee will no doubt receive expert testimony. However, in the drafting of the Bill, it strikes me that several consequences for actions by returning officers flow from the *giving* of the Speaker's notice, a fact of which the returning officers would not necessarily have knowledge until they had *received* the notice.

#### REVIEW OF RECALL PETITIONS

44. The Committee, and no doubt in due course the House of Lords Committee on Delegated Powers and Regulatory Reform, will wish to examine the sweeping "Henry VIII" powers in Clause 19 of the draft Bill to use regulations to make further provision about the recall petition process as envisaged in Clause 17 of the draft Bill, and to take a view on whether the scope of these powers is desirable in legislation of a constitutional character.

45. On one particular aspect, with the fairly recent experience of the Oldham East and Saddleworth election petition in mind, the Committee may wish to press the Government on how the comparable process might affect the timing of a seat being vacated after a recall petition. It usually takes some months for election courts to reach decisions after general elections: the election court examining the petition against the result of the May 2010 general election in Oldham East and Saddleworth handed down its decision on November, and was then followed by a judicial review challenge in the Administrative Court.

#### SHORT TITLE

46. I hope that the short Title of the Bill (Clause 21(6)) will be changed. This is to be a Bill primarily about "Parliament", not about "Recall", generally interpreted. There is also the practical point that online search engine results for the string of characters "mps" include a mass of irrelevant material. Might I suggest instead "Parliament (Recall of Members) Act"? I would also suggest the use of "Member" rather than "MP" in the titles of Clauses as being consistent with the long Title and other enactments.

January 2012

#### ANNEXES

1. New Parliament Strategy for the House of Commons Service, 2010 to 2015
2. List of Council of Europe Member States (all within the jurisdiction of the European Court of Human Rights at Strasbourg)
3. Members of Parliament disqualified since 1910 (not circulated in hard copy)
4. Suspensions recommended by Committee on Standards and Privileges

5. Parliamentary Privileges Act 1987 (Australia) section 8 Houses not to expel Members

**Annex 1**

NEW PARLIAMENT STRATEGY FOR THE HOUSE OF COMMONS SERVICE, 2010 TO 2015

OUR AIM

Our aim is that by 2015:

- The House of Commons will be valued as the central institution in our democracy: effective in holding the Government to account, scrutinising legislation, and representing the diverse views of the electorate. It will be seen both in the UK and abroad as a model of good practice and innovation, and will cost less money.
- Members of Parliament will have the information, advice, support and technology they need to be effective in their work and to engage closely with their constituents.
- The House Service will have earned the respect of Members of Parliament and of the public for our independence, integrity and professionalism, and for our commitment to making Parliament work ever more effectively. We will be seen as modern, efficient and responsive. We will feel proud to work here and confident that our contribution is valued.
- We will be engaged on an agreed plan of work to ensure both that the Palace of Westminster is preserved for future generations and that Parliament has the accommodation it needs to operate in a modern democracy.

OUR STRATEGY

To achieve this aim:

1. We will work at every level to earn *respect* for the House of Commons by:
  - having an open and transparent way of doing business;
  - encouraging public participation in parliamentary business, including the work of select committees and the legislative process;
  - developing our outreach and education services and making the House more welcoming to the public;
  - having clear and accepted standards of behaviour for Members and for staff, and taking action against breaches of these standards; and
  - engaging proactively with the media to encourage full and accurate reporting of House matters.
2. We will make the House of Commons more *effective* by:
  - supporting the House in implementing reforms to the way in which the Government is held to account and in strengthening the scrutiny of legislation;
  - developing new ways to represent the diverse views of the electorate; and
  - influencing decisions on constitutional reform, and being ready to respond to the outcomes.
3. We will make the House Administration more *efficient* by:
  - cutting our costs—our first commitment is to reduce our costs by 9% by 2012–13, which will mean reviewing what we do and how we do it, supporting and learning from the experience of other Parliaments;
  - becoming a greener, more sustainable Parliament, on track to meet our agreed long-term targets for reductions in carbon emissions, water consumption and waste generation, and increases in recycling;
  - doing the work required to enable decisions to be taken on the long-term future of the Palace of Westminster;
  - making Parliament a leader in the use of IT, exploiting the potential of online services and reducing the volume of printing; and
  - speeding up administrative decision-making, simplifying our processes and developing effective relationships between staff, unions and management.
4. We will ensure that Members, staff and the public are *well-informed* by:
  - giving Members the support and access to the information they require to be effective in their role;
  - making sure that staff have the skills and capability to play their part in helping the House innovate and develop for the future, and to deliver excellent service through high quality people development and unified leadership; and

- giving the public the information needed to understand and appreciate the work of the House and its Members, by continuing to develop our information, education and outreach services and opening the new Education Centre at Westminster.

**Annex 2**

**LIST OF COUNCIL OF EUROPE MEMBER STATES (ALL WITHIN THE JURISDICTION OF THE EUROPEAN COURT OF HUMAN RIGHTS AT STRASBOURG)**

Albania	Lithuania
Andorra	Luxembourg
Armenia	Monaco
Austria	“The former Yugoslav Republic of Macedonia”
Azerbaijan	Malta
Belgium	Moldova
Bosnia and Herzegovina	Montenegro
Bulgaria	Netherlands
Croatia	Norway
Cyprus	Poland
Czech Republic	Portugal
Denmark	Romania
Estonia	Russian Federation
Finland	San Marino
France	Serbia
Germany	Slovak Republic
Georgia	Slovenia
Greece	Spain
Hungary	Sweden
Iceland	Switzerland
Ireland	Turkey
Italy	Ukraine
Latvia	United Kingdom
Liechtenstein	

**Annex 3**

**MEMBERS OF PARLIAMENT DISQUALIFIED SINCE 1910**

It is impossible to provide an entirely exhaustive list about Members of Parliament who have been disqualified, as in many cases, the disqualification of a Member is not directly recorded in the Journal. For example, in the case of Members being appointed to an office of profit under the Crown, it has only recently become practice to record the appointment of a Member to such an office in the Journal. Prior to this, disqualification may be inferred from the writ moved for the resulting by-election. It is possible that in some circumstances, a general election could have occurred before the writ was moved, in which case there would be no record from which to infer the disqualification. This is likely to have been a rare occurrence. This list is based on the writs issued following disqualification and the reason given, such as appointments to an office of profit under the Crown; appointments to judicial office; election court rulings; and expulsion.

Appointment of a Member to an office of profit under the Crown in the Chiltern Hundreds or the Manor of Northstead is a device used to allow Members in effect to resign their seats, as it is not possible to simply resign as a Member of Parliament, once elected. This is by far the most common means of disqualification.

A number of Members were disqualified in the early part of the twentieth century for taking up Ministerial Office. Until the passage of the Re-Election of Ministers Act 1919, Members appointed to Ministerial Offices were disqualified and had to seek re-election. The 1919 Act made this unnecessary within nine months of a general election, and the Re-Election of Ministers Act 1926 abolished the requirement altogether.

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Sir Peter Soulsby	Manor of Northstead	Votes & Proceedings 01/04/11	
Eric Illsley	Chiltern Hundreds	Votes & Proceedings 08/02/11	
Gerry Adams	Manor of Northstead	Votes & Proceedings 26/01/11	
Phil Woolas	Election Court	Votes & Proceedings 08/11/10	
Iris Robinson	Chiltern Hundreds	(2009–10) 134	
Michael Martin	Manor of Northstead	(2008–09) 455	



<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Dr Ian Gibson	Chiltern Hundreds	(2008–09) 405	
David Marshall	Manor of Northstead	(2007–08) 491	
David Davis	Chiltern Hundreds	(2007–08) 461	
Boris Johnson	Manor of Northstead	(2007–08) 426	
Tony Blair	Chiltern Hundreds	(2006–07) 440	
Peter Mandelson	Manor of Northstead	(2003–04) 501	
Terry Davis	Chiltern Hundreds	(2003–04) 390	
Dennis Canavan	Manor of Northstead	(1999–2000) 660	
Betty Boothroyd	Chiltern Hundreds	(1999–2000) 591	
Cynog Dafis	Manor of Northstead	(1999–2000) 77	
George Robertson	Called up to the House of Peers	(1998–99) 492	
Sir Alistair Goodlad	Chiltern Hundreds	(1998–99) 403	
Fiona Jones	Representation of the People Act 1983, by virtue of conviction	(1998–99) 222	Overturned by Court of Appeal: CJ (1998–99) 269
Mark Oaten	Election Court	(1997–98) 184	Re-elected in the subsequent by-election
Piers Merchant	Manor of Northstead	(1997–98) 165	
Neil Kinnock	Chiltern Hundreds	(1994–95) 110	
Bryan Gould	Manor of Northstead	(1993–94) 350	
David Waddington	Called up to the House of Peers	(1990–91) 172	
Stuart Holland	Chiltern Hundreds	(1988–89) 376	
Sir Leon Brittan	Manor of Northstead	(1988–89) 73	
Bruce Millan	Chiltern Hundreds	(1987–88) 717	
Robert Kilroy-Silk	Manor of Northstead	(1985–86) 538	
John Golding	Chiltern Hundreds	(1985–86) 440	
Matthew Parris	Manor of Northstead	(1985–86) 300	
James Taylor	Chiltern Hundreds	(1985–86) 94	Re-elected in the subsequent by-election
Peter Robinson	Manor of Northstead	(1985–86) 94	Re-elected in the subsequent by-election
Harold McCusker	Manor of Northstead	(1985–86) 94	Re-elected in the subsequent by-election
Rev William Smyth	Manor of Northstead	(1985–86) 94	Re-elected in the subsequent by-election
Cecil Walker	Manor of Northstead	(1985–86) 94	Re-elected in the subsequent by-election
Clifford Forsythe	Manor of Northstead	(1985–86) 94	Re-elected in the subsequent by-election
Enoch Powell	Manor of Northstead	(1985–86) 94	Re-elected in the subsequent by-election
Roy Beggs	Chiltern Hundreds	(1985–86) 93	Re-elected in the subsequent by-election
James Molyneaux	Chiltern Hundreds	(1985–86) 93	Re-elected in the subsequent by-election
Ken Maginnis	Manor of Northstead	(1985–86) 93	Re-elected in the subsequent by-election
Rev William McCrea	Chiltern Hundreds	(1985–86) 93	Re-elected in the subsequent by-election
Jim Nicholson	Chiltern Hundreds	(1985–86) 93	
Rev. Ian Paisley	Manor of Northstead	(1985–86) 93	Re-elected in the subsequent by-election
James Kilfedder	Chiltern Hundreds	(1985–86) 93	Re-elected in the subsequent by-election
William Ross	Chiltern Hundreds	(1985–86) 93	Re-elected in the subsequent by-election
Eric Varley	Manor of Northstead	(1983–84) 333	
Robert Mellish	Chiltern Hundreds	(1982–83) 145	
Bruce Douglas-Mann	Manor of Northstead	(1981–82) 341	
Sir William Williams	Judicial Office	(1980–81) 407	
Geoffrey Dodsworth	Chiltern Hundreds	(1979–80) 248	
John Davies	Manor of Northstead	(1978–79) 158	
Sir Peter Rawlinson	Chiltern Hundreds	(1977–78) 272	
John Cordle	Manor of Northstead	(1977–78) 10	
Brian Walden	Chiltern Hundreds	(1976–77) 458	
David Marquand	Manor of Northstead	(1976–77) 251	

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Roy Jenkins	Chiltern Hundreds	(1976–77) 194	
Christopher Tugendhat	Manor of Northstead	(1976–77) 122	
David Lane	Chiltern Hundreds	(1975–76) 633	
Edward Short	Manor of Northstead	(1975–76) 552	
John Stonehouse	Chiltern Hundreds	(1975–76) 552	
Fred Peart	Called up to the House of Peers	(1975–76) 552	
John Lloyd	Manor of Northstead	(1975–76) 162	
Robert Carr	Called up to the House of Peers	(1975–76) 162	
Sir Frederick Jones	Called up to the House of Peers	(1974) 107	
Walter Scott	Called up to the House of Peers	(1972–73) 478	
Lord Lambton	Chiltern Hundreds	(1972–73) 478	
Maurice Foley	Manor of Northstead	(1972–73) 290	
George Thompson	Chiltern Hundreds	(1972–73) 137	
Dick Taverne	Manor of Northstead	(1972–73) 137	Re-elected in the subsequent by-election
Sir Richard Sharples	Appointed Governor of Bermuda	(1972–73) 34	
Ray Gunter	Chiltern Hundreds	(1971–72) 262	
Major John Boyd-Carpenter	Appointed Member and Chair, Civil Aviation Authority	(1971–72) 262	
Sir Arthur Harvey	Called up to the House of Peers	(1970–71) 595	
Richard Marsh	Appointed Member and Joint Deputy Chairman, British Railways Board	(1970–71) 494	
Horace King	Chiltern Hundreds	(1970–71) 424	
Walter Alldritt	Manor of Northstead	(1970–71) 317	
Quintin Hogg	Called up to the House of Peers	(1970–71) 73	
Francis Noel-Baker	Chiltern Hundreds	(1968–69) 364	
Sir Luke Teeling	Chiltern Hundreds	(1968–69) 149	
Sir Oliver Crosthwaite-Eyre	Manor of Northstead	(1967–68) 379	
Charles Hale	Chiltern Hundreds	(1967–68) 263	
George Wigg	Appointed Chairman of the Horse Race Betting Levy Board	(1967–68) 142	
William Roots	Chiltern Hundreds	(1967–68) 124	
Thomas Fraser	Appointed Chair of the North of Scotland Hydro-Electric Board	(1967–68) 26	
Herbet Bowden	Appointed Chair of the Independent Television Authority	(1967–68) 11	
Aidan Crawley	Manor of Northstead	(1967–68) 6	
Frank Cousins	Manor of Northstead	(1966–67) 353	
Anthony Marlowe	Chiltern Hundreds	(1964–65) 341	
Aubrey Jones	Manor of Northstead	(1964–65) 234	
Richard Butler	Called up to the House of Peers	(1964–65) 156	
John Morrison	Called up to the House of Peers	(1964–65) 96	
Frederick Errol	Called up to the House of Peers	(1964–65) 96	
Evelyn Emmet	Called up to the House of Peers	(1964–65) 96	
Reginald Sorensen	Called up to the House of Peers	(1964–65) 96	
Frances Bowles	Called up to the House of Peers	(1964–65) 96	
Peter Smithers	Chiltern Hundreds	(1963–64) 211	
Niall Macpherson	Called up to the House of Peers	(1963–64) 18	
Sir William Wakefield	Called up to the House of Peers	(1963–64) 14	
John Hare	Called up to the House of Peers	(1963–64) 9	
Charles Hill	Called up to the House of Peers	(1962–63) 316	
Malcolm St Clair	Manor of Northstead	(1962–63) 315	Following refusal of Peerage by Tony Benn <sup>8</sup>
John Profumo	Chiltern Hundreds	(1962–63) 295	
William Grant	Judicial Office	(1962–63) 11	
David Eccles	Called up to the House of Peers	(1962–63) 7	
Sir Reginald Manningham-Buller	Called up to the House of Peers	(1962–63) 7	
Alexander Montague	Called up to the House of Peers	(1962–63) 7	

<sup>8</sup> For more information see [http://en.wikipedia.org/wiki/Tony\\_Benn#Peerage\\_reform](http://en.wikipedia.org/wiki/Tony_Benn#Peerage_reform)

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Sir Arwyn Ungoe-Thomas	Judicial Office	(1961–62) 261	Later returned following refusal of Peerage <sup>2</sup>
Sir Jocelyn Simon	Judicial Office	(1961–62) 234	
Sir Edward Wakefield	Manor of Northstead	(1961–62) 230	
George Chetwynd	Chiltern Hundreds	(1961–62) 143	
Hilary Marquand	Chiltern Hundreds	(1961–62) 115	
Sir Toby Low	Called up to the House of Peers	(1961–62) 112	
William Summer	Judicial Office	(1961–62) 111	
Sir Geoffrey de Freitas	Chiltern Hundreds	(1961–62) 107	
James Carmichael	Manor of Northstead	(1961–62) 3	
William Ormsby-Gore	Chiltern Hundreds	(1960–61) 332	
Tony Benn	Called up to the House of Peers	(1960–61) 188	
Douglas Johnston	Judicial Office	(1960–61) 175	
Edith Summerskill	Called up to the House of Peers	(1960–61) 170	
George Ward	Called up to the House of Peers	(1960–61) 120	
Stephen Howard	Judicial Office	(1960–61) 115	
Arthur Molson	Called up to the House of Peers	(1960–61) 115	
Cuthbert Alport	Called up to the House of Peers	(1960–61) 115	
Alfred Robens	Appointed Deputy Chair of the National Coal Board	(1960–61) 11	
Philip Bell	Judicial Office	(1959–60) 340	
Derek Amory	Called up to the House of Peers	(1959–60) 324	
Peter Legh	Called up to the House of Peers	(1959–60) 324	
Alan Lennox-Boyd	Called up to the House of Peers	(1959–60) 324	
Antony Head	Called up to the House of Peers	(1959–60) 324	
William Milligan	Judicial Office	(1959–60) 203	
Ian Harvey	Manor of Northstead	(1958–59) 120	
Victor Collins	Called up to the House of Peers	(1958–59) 18	
Sir Robert Boothby	Called up to the House of Peers	(1958–59) 7	
Sir Lancelot Joynson-Hicks	Called up to the House of Peers	(1957–58) 307	
Sir William Fraser	Called up to the House of Peers	(1957–58) 307	
Daniel West	Called up to the House of Peers	(1957–58) 307	
Sir Hartley Shawcross	Manor of Northstead	(1957–58) 217	
Angus Maude	Chiltern Hundreds	(1957–58) 217	
George Lambert	Called up to the House of Peers	(1957–58) 115	
Sir Henry Raikes	Chiltern Hundreds	(1957–58) 18	
Charles Waterhouse	Manor of Northstead	(1957–58) 10	
Sir William Darling	Chiltern Hundreds	(1956–57) 192	
Gwilym Lloyd-George	Called up to the House of Peers	(1956–57) 113	
Patrick Buchan-Hepburn	Called up to the House of Peers	(1956–57) 113	
Sir Walter Monkton	Called up to the House of Peers	(1956–57) 92	
Anthony Eden	Manor of Northstead	(1956–57) 89	
Stanley Evans	Chiltern Hundreds	(1956–57) 85	
Harold Nutting	Manor of Northstead	(1956–57) 35	
Basil Neild	Judicial Office	(1955–56) 417	
Gerald Williams	Chiltern Hundreds	(1955–56) 299	
Charles Beattie	Found to have held a disqualifying office at the time of his election	(1955–56) 268	
Clement Attlee	Called up to the House of Peers	(1955–56) 185	
Osbert Peake	Called up to the House of Peers	(1955–56) 168	
Henry Hopkinson	Called up to the House of Peers	(1955–56) 165	
James Thomas	Called up to the House of Peers	(1955–56) 165	
Harry Crookshank	Called up to the House of Peers	(1955–56) 164	
Thomas Mitchell	Custodial Sentence	(1955–56) 71	
Sir Arnold Gridley	Called up to the House of Peers	(1954–55) 32	
James Clyde	Judicial Office	(1954–55) 32	
Peter Baker	Expelled	(1954–55) 29	
Malcolm Hamilton	Chiltern Hundreds	(1954–55) 10	
James Harden	Manor of Northstead	(1953–54) 339	
David Fyfe	Called up to the House of Peers	(1953–54) 330	
Oliver Lyttelton	Called up to the House of Peers	(1953–54) 310	

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Sir Sidney Marshall	Chiltern Hundreds	(1953–54) 310	
John Wheatley	Judicial Office	(1953–54) 138	
William Cuthbert	Chiltern Hundreds	(1953–54) 94	
Robert Gascoyne-Cecil	Manor of Northstead	(1953–54) 78	
Richard Law	Chiltern Hundreds	(1953–54) 65	
Sir Joseph Holmes	Called up to the House of Peers	(1953–54) 61	
Sir Geoffrey Hutchinson	Appointed Chair of the National Assistance Board	(1953–54) 57	
William Field	Chiltern Hundreds	(1953–54) 18	
Malcolm Bullock	Manor of Northstead	(1952–53) 313	
James Salter	Called up to the House of Peers	(1952–53) 312	
Sir Peter Bennett	Chiltern Hundreds	(1952–53) 237	
Sir Ralph Glyn	Manor of Northstead	(1952–53) 229	
Walter Ayles	Manor of Northstead	(1952–53) 137	
Edward Carson	Chiltern Hundreds	(1952–53) 111	
John White	Manor of Northstead	(1952–53) 78	
Sir Robert O'Neill	Chiltern Hundreds	(1951–52) 355	
Connolly Gage	Manor of Northstead	(1951–52) 355	
William Waldorf Astor	Called up to the House of Peers	(1951–52) 355	
Brendan Bracken	Called up to the House of Peers	(1951–52) 72	
James Milner	Called up to the House of Peers	(1951–52) 72	
Robert Hudson	Called up to the House of Peers	(1951–52) 72	
Rhys Davies	Chiltern Hundreds	(1950–51) 221	
Sir Ronald Ross	Chiltern Hundreds	(1950–51) 206	
Norman Bower	Manor of Northstead	(1950–51) 150	
Sir Robert Cross	Manor of Northstead	(1950–51) 128	
Sir Stafford Cripps	Chiltern Hundreds	(1950–51) 16	
Reverend James Godfrey	Priest of the Church of Ireland	(1950–51) 13	
Sir Terence Donovan	Judicial Office	(1950) 215	
Harry Morris	Manor of Northstead	(1950) 43	
John Belcher	Manor of Northstead	(1948–49) 126	
James Reid	Judicial Office	(1948–49) 20	
George Buchanan	Chiltern Hundreds	(1948) 403	
John Martin	Manor of Northstead	(1947–48) 212	
Thomas Williamson	Chiltern Hundreds	(1947–48) 158	
Henry Willink	Manor of Northstead	(1947–48) 145	
Oliver Baldwin	Called up to the House of Peers	(1947–48) 115	
Sir Archibald Southby	Chiltern Hundreds	(1947–48) 46	
George Thompson	Judicial Office	(1947–48) 42	
Clifford Glossop	Manor of Northstead	(1947–48) 38	
Garry Allingham	Expelled	(1947–48) 26	
Frederick Montague	Called up to the House of Peers	(1946–47) 380	
Tom Smith	Manor of Northstead	(1946–47) 56	
George Hall	Called up to the House of Peers	(1946–47) 14	
Clarice Shaw	Chiltern Hundreds	(1946–47) 7	
Sir James Thompson	Chiltern Hundreds	(1946–47) 3	
Sir Frank Macfarlane	Manor of Northstead	(1945–46) 400	
Sir Ben Smith	Manor of Northstead	(1945–46) 400	
Sir John Orr	Chiltern Hundreds	(1945–46) 396	
Francis Douglas	Chiltern Hundreds	(1945–46) 318	
Jennie Adamson	Manor of Northstead	(1945–46) 312	
Edward Williams	Chiltern Hundreds	(1945–46) 262	
Robert Morrison	Called up to the House of Peers	(1945–46) 92	
Sir William Davison	Called up to the House of Peers	(1945–46) 68	
Sir Charles Lyle	Called up to the House of Peers	(1945–46) 58	
Sir George Broadbridge	Called up to the House of Peers	(1945–46) 39	
Frederick Pethick-Lawrence	Called up to the House of Peers	(1945–46) 34	
Sir William Jowitt	Called up to the House of Peers	(1945–46) 34	
George Morrison	Manor of Northstead	(1944–45) 69	
David Lloyd George	Called up to the House of Peers	(1944–45) 65	
Sir Samuel Hoare	Called up to the House of Peers	(1943–44) 186	
Charles Ammon	Called up to the House of Peers	(1943–44) 73	
Cecil Wilson	Chiltern Hundreds	(1943–44) 45	
Henry Hunloke	Manor of Northstead	(1943–44) 31	

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Thomas Kennedy	Chiltern Hundreds	(1943–44) 31	
Sir Cooper Rawson	Manor of Northstead	(1943–44) 28	
David Cecil	Chiltern Hundreds	(1942–43) 170	
John Gretton	Manor of Northstead	(1942–43) 126	
Sir Denis Herbert	Called up to the House of Peers	(1942–43) 38	
Sir Roger Keyes	Called up to the House of Peers	(1942–43) 34	
David Colville	Chiltern Hundreds	(1942–43) 32	
William Spens	Manor of Northstead	(1942–43) 31	
Ernest Evans	Judicial Office	(1942–43) 27	
Gordon Macdonald	Chiltern Hundreds	(1941–42) 172	
Joseph Batey	Manor of Northstead	(1941–42) 138	
John Moore-Brabazon	Chiltern Hundreds	(1941–42) 74	
Henry Margesson	Manor of Northstead	(1941–42) 74	
Owen Morris	Judicial Office	(1941–42) 73	
William Benn	Called up to the House of Peers	(1941–42) 61	
Josiah Wedgewood	Called up to the House of Peers	(1941–42) 60	
Reginald Fletcher	Called up to the House of Peers	(1941–42) 55	
James Guy	Manor of Northstead	(1941–42) 12	
Sir John Erskine	Chiltern Hundreds	(1940–41) 210	
Herwald Ramsbotham	Called up to the House of Peers	(1940–41) 195	
Sir Herbert Latham	Manor of Northstead	(1940–41) 190	
Sir Hugh Seely	Chiltern Hundreds	(1940–41) 187	
Thomas Cooper	Judicial Office	(1940–41) 154	
Robert Gibson	Judicial Office	(1940–41) 151	
Frederick Roberts	Chiltern Hundreds	(1940–41) 104	
Daniel Hopkin	Judicial Office	(1940–41) 80	
Sir Reginald Dorman-Smith	Manor of Northstead	(1940–41) 52	
Robert Cecil	Called up to the House of Peers	(1940–41) 48	
Thomas Cassells	Judicial Office	(1940–41) 46	
Sir John Reith	Called up to the House of Peers	(1939–40) 256	
Sir Mervyn Manningham-Buller	Manor of Northstead	(1939–40) 256	
Cecil Palmer	Chiltern Hundreds	(1939–40) 255	
Thomas Sinclair	Chiltern Hundreds	(1939–40) 245	
Frank Griffith	Judicial Office	(1939–40) 218	
Bernard Cruddas	Chiltern Hundreds	(1939–40) 196	
William Kelly	Manor of Northstead	(1939–40) 188	
Charles Kerr	Manor of Northstead	(1939–40) 165	
Harry Nathan	Chiltern Hundreds	(1939–40) 162	
Sir Henry Croft	Called up to the House of Peers	(1939–40) 160	
Glyn Mason	Manor of Northstead	(1939–40) 149	
Sir Nicholas Grattan-Doyle	Chiltern Hundreds	(1939–40) 135	
Sir John Simon	Judicial Office	(1939–40) 135	
George Tryon	Called up to the House of Peers	(1939–40) 127	
Douglas Douglas-Hamilton	Called up to the House of Peers	(1939–40) 109	
David Lindsay	Called up to the House of Peers	(1939–40) 99	
William Sanders	Manor of Northstead	(1939–40) 98	
John Eastwood	Judicial Office	(1939–40) 47	
John Jones	Manor of Northstead	(1939–40) 41	
Sir Alan Anderson	Chiltern Hundreds	(1939–40) 32	
David Williams	Manor of Northstead	(1939–40) 32	
Herbert Dixon	Called up to the House of Peers	(1939–40) 32	
Sir Charles Barrie	Chiltern Hundreds	(1939–40) 31	
Sir William Mitchell	Manor of Northstead	(1939–40) 7	
John Remer	Chiltern Hundreds	(1938–39) 476	
Sir Samuel Rosbotham	Manor of Northstead	(1938–39) 460	
Sir Thomas Inskip	Judicial Office	(1938–39) 441	
Ivor Guest	Called up to the House of Peers	(1938–39) 342	
John Herbert	Chiltern Hundreds	(1938–39) 319	
Sir Herbert Cayzer	Manor of Northstead	(1938–39) 318	
Arthur Hope	Chiltern Hundreds	(1938–39) 198	
Sir Charles Barclay-Harvey	Manor of Northstead	(1938–39) 125	

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
William Lygon	Called up to the House of Peers	(1938–39) 62	
Katherine Marjory	Chiltern Hundreds	(1938–39) 33	
Sir Reginald Crom-Johnson	Judicial Office	(1937–38) 409	
William Ormsby-Gore	Chiltern Hundreds	(1937–38) 264	
Edward Cavendish	Chiltern Hundreds	(1937–38) 256	
Eustace Percy	Chiltern Hundreds	(1937–38) 18	
Sir Frederick Penny	Called up to the House of Peers	(1936–37) 292	
Walter Runciman	Chiltern Hundreds	(1936–37) 292	
Sir George Hamilton	Manor of Northstead	(1936–37) 290	
Sir Walter Preston	Manor of Northstead	(1936–37) 280	
Sir Stanley Baldwin	Chiltern Hundreds	(1936–37) 280	
Sir John Davidson	Manor of Northstead	(1936–37) 280	
Sir Robert Horne	Chiltern Hundreds	(1936–37) 265	
Sir George Bowyer	Called up to the House of Peers	(1936–37) 261	
Lawrence Lumley	Manor of Northstead	(1936–37) 214	
Philip Dunne	Chiltern Hundreds	(1936–37) 200	
Arthur Samuel	Chiltern Hundreds	(1936–37) 151	
Sir William Ray	Manor of Northstead	(1936–37) 103	
Hugh Cecil	Manor of Northstead	(1936–37) 89	
Sir Ian Fraser	Chiltern Hundreds	(1936–37) 70	
Eustace Percy	Chiltern Hundreds	(1936–37) 18	
William Kirkpatrick	Chiltern Hundreds	(1936–37) 11	
Sir Henry Cautley	Manor of Northstead	(1935–36) 311	
Sir Alfred Butt	Manor of Northstead	(1935–36) 311	
James Thomas	Chiltern Hundreds	(1935–36) 289	
John Loder	Called up to the House of Peers	(1935–36) 264	
David Beatty	Chiltern Hundreds	(1935–36) 172	
Archibald Cochrane	Manor of Northstead	(1935–36) 107	
Sir John Macpherson	Chiltern Hundreds	(1935–36) 50	
Sir Edward Young	Chiltern Hundreds	(1934–35) 284	
Clyde Wilson	Judicial Office	(1934–35) 263	
Edward Grenfell	Manor of Northstead	(1934–35) 246	
John Buchan	Chiltern Hundreds	(1934–35) 219	
Wilfred Normand	Judicial Office	(1934–35) 169	
Mungo Murray	Called up to the House of Peers	(1934–35) 142	
Sir Walter Grieses-Lord	Judicial Office	(1934–35) 92	
Arthur Nall-Cain	Chiltern Hundreds	(1934–35) 45	
Sir Reginald Banks	Judicial Office	(1933–34) 325	
Sir Henry Betterton	Appointed Chair of the Unemployment Assistance Board	(1933–34) 275	
John Erskine	Chiltern Hundreds	(1933–34) 219	
Alfred Chotzner	Manor of Northstead	(1933–34) 173	
Gerard Wallop	Chiltern Hundreds	(1933–34) 138	
Sir Gervais Rentoul	Judicial Office	(1933–34) 54	
Sir Bertram Falle	Chiltern Hundreds	(1933–34) 54	
Douglas Newton	Called up to the House of Peers	(1933–34) 50	
Arthur Stuart	Manor of Northstead	(1932–33) 323	
Sir Frank Merriman	Judicial Office	(1932–33) 317	
Sir Cyril Atkinson	Judicial Office	(1932–33) 217	
Michael Knatchbull	Called up to the House of Peers	(1932–33) 80	
George Herbert	Chiltern Hundreds	(1932–33) 51	
Rhys Morris	Judicial Office	(1931–32) 301	
Otho Nicholson	Manor of Northstead	(1931–32) 289	
William Ward	Called up to the House of Peers	(1931–32) 283	
Sir Robert Hutchison	Chiltern Hundreds	(1931–32) 230	
Sir James Rodd	Manor of Northstead	(1931–32) 152	
Sir Newton Moore	Chiltern Hundreds	(1931–32) 139	
John Thom	Manor of Northstead	(1931–32) 99	
Wilfrid Ashley	Called up to the House of Peers	(1931–32) 56	
Sir William Mitchell-Thompson	Called up to the House of Peers	(1931–32) 56	
John Tinne	Chiltern Hundreds	(1930–31) 284	
Sir Frank Nelson	Manor of Northstead	(1930–31) 237	
Sidney Herbert	Chiltern Hundreds	(1930–31) 216	

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Henry Snell	Manor of Northstead	(1930–31) 191	
Thomas Jones	Manor of Northstead	(1930–31) 142	
Hugh Morrison	Chiltern Hundreds	(1930–31) 128	
Sir John Davidson	Chiltern Hundreds	(1930–31) 104	
Henry Mond	Manor of Northstead	(1930–31) 80	
Noel Noel-Buxton	Chiltern Hundreds	(1929–30) 394	
Sir Albert Bennett	Manor of Northstead	(1929–30) 336	
Dr. George Spero	Chiltern Hundreds	(1929–30) 307	
Arthur Ponsonby	Called up to the House of Peers	(1929–30) 152	
Sir Edward Iliffe	Manor of Northstead	(1929–30) 84	
Sir William Joynson-Hicks	Called up to the House of Peers	(1929–30) 50	
Sir Henry Slesser	Judicial Office	(1929–30) 43	
Sir William Jowitt	Chiltern Hundreds	(1929–30) 39	
Sir Malcolm Macnaghten	Judicial Office	(1928–29) 82	
Francis Curzon	Called up to the House of Peers	(1928–29) 80	
Cornelius Homan	Bankrupt	(1928–29) 3	
Sir Frederick Sykes	Chiltern Hundreds	(1928) 231	
John Whitley	Manor of Northstead	(1928) 221	
Sir George Blades	Chiltern Hundreds	(1928) 213	
Sir James Remnant	Manor of Northstead	(1928) 199	
Sir Alfred Mond	Chiltern Hundreds	(1928) 196	
Sir Douglas Hogg	Judicial Office	(1928) 104	
John Hawke	Judicial Office	(1928) 27	
James Balfour	Called up to the House of Peers	(1928) 3	
George Gibbs	Called up to the House of Peers	(1928) 3	
Ronald McNeill	Manor of Northstead	(1927) 315	
Rupert Guinness	Called up to the House of Peers	(1927) 315	
Sir Davison Dalziel	Chiltern Hundreds	(1927) 198	
Robert Gee	Manor of Northstead	(1927) 156	
Dr. Leslie Guest	Chiltern Hundreds	(1927) 63	
William Benn	Manor of Northstead	(1927) 51	
John Davison	Chiltern Hundreds	(1926) 392	
Joseph Kenworthy	Chiltern Hundreds	(1926) 346	
Sir Henry Honynwood	Manor of Northstead	(1926) 341	
Donald Howard	Chiltern Hundreds	(1926) 330	
Sir Patrick Hastings	Manor of Northstead	(1926) 241	
Ellis Bartlett	Chiltern Hundreds	(1926) 173	
Sir Guy Gaunt	Manor of Northstead	(1926) 122	
Herbert Fisher	Chiltern Hundreds	(1926) 31	
David Fleming	Judicial Office	(1926) 3	
Alexander MacRobert	Judicial Office	(1926) 3	
Walter Guinness	Appointed Minister of Agriculture	(1924–25) 396	
Edward Wood	Manor of Northstead	(1924–25) 396	
Sir Edward Grigg	Appointed Governor of Kenya	(1924–25) 247	
Sir John Baird	Chiltern Hundreds	(1924–25) 238	
Sir George Lloyd	Manor of Northstead	(1924–25) 238	
William Preston	Found to have held a disqualifying office at the time of his election	(1924–25) 52	
Sir Ellis Griffith	Chiltern Hundreds	(1924) 332	
William Campion	Manor of Northstead	(1924) 249	
Frank Gray	Election Court	(1924) 202	
John Astor	Voting without having taken the Oath or Affirming	(1924) 74	
Sir Hallewell Rogers	Manor of Northstead	(1924) 24	
Sir Ernest Pollock	Judicial Office	(1923) 334	
Leslie Wilson	Manor of Northstead	(1923) 313	
Hilton Philipson	Election Court	(1923) 155	
Ivor Windsor-Clive	Called up to the House of Peers	(1923) 77	
Sir William Rutherford	Chiltern Hundreds	(1923) 18	
Sir Harry Mallaby-Deely	Manor of Northstead	(1923) 12	
Dr Thomas Worsfold	Chiltern Hundreds	(1923) 11	

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Herbert Pease	Manor of Northstead	(1923) 11	
Herbert Crayzer	Chiltern Hundreds	(1922) 356	
Horatio Bottomly	Expelled	(1922) 328	
Thomas Lewis	Appointed Lord of the Treasury	(1922) 251	
Sir Rhys Williams	Judicial Office	(1922) 205	
Sir Archibald Williamson	Manor of Northstead	(1922) 199	
Sir William Mount	Chiltern Hundreds	(1922) 187	
Sir Arthur Balfour	Called up to the House of Peers	(1922) 135	
Sir Arthur Du Cros	Manor of Northstead	(1922) 133	
Sir Gordon Hewart	Judicial Office	(1922) 64	
Leslie Scott	Judicial Office	(1922) 51	
Sir Eric Geddes	Manor of Northstead	(1922) 39	
Tomas Morison	Chiltern Hundreds	(1922) 39	
Thomas Brown	Judicial Office	(1922) 18	
Thomas Wallace	Judicial Office	(1922) 11	
Henry Knights	Chiltern Hundreds	(1922) 3	
Denis Henry	Judicial Office	(1921) 365	
Daniel Wilson	Judicial Office	(1921) 230	
Sir James Craig	Elected Prime Minister of Northern Ireland	(1921) 222	
Sir Edward Carson	Judicial Office	(1921) 201	
Thomas Brown	Judicial Office	(1921) 194	
Noel Billing	Manor of Northstead	(1921) 167	
Walter Long	Chiltern Hundreds	(1921) 156	
Albert Illingworth	Manor of Northstead	(1921) 156	
John Wigan	Chiltern Hundreds	(1921) 129	
James Lowther	Manor of Northstead	(1921) 115	
Laurence Lyon	Manor of Northstead	(1921) 101	
Lord Edmond Talbot	Chiltern Hundreds	(1921) 97	
Harry Barnston	Appointed Controller of His Majesty's Household	(1921) 88	
Frederick Kellaway	Appointed Postmaster-General	(1921) 79	
George Gibbs	Appointed Treasurer of His Majesty's Household	(1921) 78	
Sir John Gilmour	Appointed Lord of the Treasury	(1921) 78	
Stanley Baldwin	Appointed President of the Board of Trade	(1921) 78	
Frederick Guest	Appointed Secretary of State	(1921) 78	
Sir Edward Carson	Appointed Lord Privy Seal	(1921) 74	
Dennis Boles	Chiltern Hundreds	(1921) 70	
Sir Hallelwell Rogers	Manor of Northstead	(1921) 24	
Sir Arthur Griffith-Boscawen	Appointed Minister of Agriculture	(1921) 14	
Sir James Dalziel	Manor of Northstead	(1921) 14	
William Crooks	Chiltern Hundreds	(1921) 11	
Sydney Arnold	Chiltern Hundreds	(1921) 11	
Matthew Davies	Called up to the House of Peers	(1921) 3	
Charles Pulley	Manor of Northstead	(1920) 511	
Vere Ponsonby	Chiltern Hundreds	(1920) 502	
William Abraham	Manor of Northstead	(1920) 458	
William Grace	Chiltern Hundreds	(1920) 456	
Sir William Adkins	Judicial Office	(1920) 425	
Thomas Richards	Manor of Northstead	(1920) 295	
William Cozens-Hardy	Called up to the House of Peers	(1920) 278	
Robert Peel	Chiltern Hundreds	(1920) 274	
Albert Smith	Manor of Northstead	(1920) 189	
Sir Hamar Greenwood	Appointed Chief Secretary to the Lord-Lieutenant of Ireland	(1920) 97	
James Clyde	Chiltern Hundreds	(1920) 88	
Charles Murray	Judicial Office	(1920) 88	
Thomas Macnamara	Appointed Minister of Labour	(1920) 78	
Charles McCurdy	Appointed Food Controller	(1920) 78	
Sir Auckland Geddes	Manor of Northstead	(1920) 62	
George Wardle	Chiltern Hundreds	(1920) 60	



<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Sir William Sutherland	Appointed Commissioner of the Treasury	(1920) 20	
William Weigall	Manor of Northstead	(1920) 3	
Sir Albert Stanley	Called up to the House of Peers	(1920) 3	
Henry Forster	Chiltern Hundreds	(1919) 389	
Sir Edward Carlisle	Manor of Northstead	(1919) 367	
Waldorf Astor	Chiltern Hundreds	(1919) 338	
Sir Ian Malcolm	Manor of Northstead	(1919) 334	
John Taylor	Chiltern Hundreds	(1919) 329	
William Walker	Manor of Northstead	(1919) 317	
Arthur Samuels	Judicial Office	(1919) 239	
Robert McCalmont	Chiltern Hundreds	(1919) 127	
Rowland Prothero	Called up to the House of Peers	(1919) 46	
Hugh Anderson	Manor of Northstead	(1919) 27	
Sir Frederic Smith	Appointed Lord Chancellor	(1919) 16	
Sir Charles Bathurst	Called up to the House of Peers	(1918) 224	
Cecil Cochrane	Manor of Northstead	(1918) 215	
Sir Eustace Wisleton-Wykeham-Fiennes	Appointed Governor of the Seychelles	(1918) 212	
Henry Cautley	Judicial Office	(1918) 169	
John Clynes	Appointed Food Controller	(1918) 156	
Sir Arthur Lee	Called up to the House of Peers	(1918) 156	
George Faber	Chiltern Hundreds	(1918) 119	
Robert Sanders	Appointed Treasurer of His Majesty's Household	(1918) 116	
Sir Gilbert Parker	Manor of Northstead	(1918) 99	
Edward Shortt	Appointed Chief Secretary to the Lord-Lieutenant of Ireland	(1918) 85	
Edward Duke	Judicial Office	(1918) 79	
Joseph Chamberlain	Appointed Minister of the Crown without Portfolio	(1918) 59	
Sydney Buxton	Chiltern Hundreds	(1918) 41	
Sir Frederick Cawley	Manor of Northstead	(1917–18) 288	
Sir John Lonsdale	Chiltern Hundreds	(1917–18) 287	
William Ward	Appointed Vice-Chamberlain of His Majesty's Household	(1917–18) 273	
William Moore	Judicial Office	(1917–18) 240	
Arthur Salter	Judicial Office	(1917–18) 214	
Charles Murray	Judicial Office	(1917–18) 212	
George Roberts	Appointed Minister of Labour	(1917–18) 208	
Sir Christopher Knight	Judicial Office	(1917–18) 180	
Winston Churchill	Appointed Minister of Munitions	(1917–18) 163	
Almeric Paget	Manor of Northstead	(1917–18) 163	
Edwin Montagu	Appointed a Principal Secretary of State	(1917–18) 163	
William Fisher	Appointed President of the Local Government Board	(1917–18) 141	
Sir Ivor Herbert	Called up to the House of Peers	(1917–18) 137	
Amelius Lockwood	Chiltern Hundreds	(1917–18) 130	
Richard Chaloner	Manor of Northstead	(1917–18) 127	
Charles Lyell	Chiltern Hundreds	(1917–18) 91	
Herbert Nield	Judicial Office	(1917–18) 73	
James Chambers	Judicial Office	(1917–18) 61	
Gerog Esslemont	Manor of Northstead	(1917–18) 52	
Francis Newdegate	Manor of Northstead	(1917–18) 15	
Sir Arthur Annesley	Chiltern Hundreds	(1917–18) 10	
Lewis Harcourt	Called up to the House of Peers	(1917–18) 3	
Joseph Pease	Called up to the House of Peers	(1917–18) 3	
James Campbell	Judicial Office	(1917–18) 3	
Sir Stuart Samuel	Manor of Northstead	(1916) 262	
Sir John Dewar	Chiltern Hundreds	(1916) 262	
Sir Thomas Roe	Manor of Northstead	(1916) 262	
Sir Robert Finlay	Appointed Lord Chancellor	(1916) 262	
Charles Stuart-Wortley	Chiltern Hundreds	(1916) 250	
Sir William Aitken	Manor of Northstead	(1916) 250	

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Lawrence Dundas	Chiltern Hundreds	(1916) 241	
Godfrey	Manor of Northstead	(1916) 213	
Fetherstonhaugh			
Felix Cassel	Chiltern Hundreds	(1916) 206	
Harold Henderson	Manor of Northstead	(1916) 198	
Charles Leach	Under the Lunacy (Vacating of Seats) Act 1886	(1916) 191	
Sir Reginald Pole-Carew	Chiltern Hundreds	(1916) 169	
James Campbell	Judicial Office	(1916) 163	
Sir Edward Grey	Manor of Northstead	(1916) 158	
Harold Tennant	Appointed Minister for Scotland	(1916) 132	
William Walker	Chiltern Hundreds	(1916) 83	
John Gordon	Judicial Office	(1916) 68	
Henry Chaplin	Chiltern Hundreds	(1916) 51	
Francis Neilson	Manor of Northstead	(1916) 27	
John Logan	Chiltern Hundreds	(1916) 21	
Thomas Taylor	Manor of Northstead	(1916) 15	
Sir John Rolleston	Chiltern Hundreds	(1916) 15	
Sir Wilfrid Lawson	Manor of Northstead	(1916) 14	
Robert Yerburgh	Chiltern Hundreds	(1916) 14	
John Lyttelton	Manor of Northstead	(1916) 11	
Edward Hall	Judicial Office	(1916) 6	
Joseph Pease	Appointed Postmaster-General	(1914–16) 339	
Harry Lawson	Chiltern Hundreds	(1914–16) 335	
Edwin Montagu	Appointed Chancellor of the Duchy of Lancaster	(1914–16) 334	
Sir Charles Beresford	Manor of Northstead	(1914–16) 332	
Sir Alexander Henderson	Chiltern Hundreds	(1914–16) 331	
Cecil Norton	Manor of Northstead	(1914–16) 326	
Herbert Samuel	Appointed Chancellor of the Duchy of Lancaster	(1914–16) 296	
Rigby Smith	Judicial Office	(1914–16) 288	
Sir Lancelot Sanderson	Manor of Northstead	(1914–16) 260	
Charles Dickson	Judicial Office	(1914–16) 189	
Sir Stanley Buckmaster	Appointed Lord Chancellor	(1914–16) 162	
Alfred Tobin	Judicial Office	(1914–16) 136	
William Williams	Judicial Office	(1914–16) 84	
Charles Henry	Chiltern Hundreds	(1914–16) 55	
Gerald Kyffin-Taylor	Manor of Northstead	(1914–16) 49	
Edwin Montagu	Appointed Chancellor of the Duchy of Lancaster	(1914–16) 43	
Arthur Tyrell-Beck	Appointed Commissioner of the Treasury	(1914–16) 43	
Walter Rea	Appointed Commissioner of the Treasury	(1914–16) 43	
John Dalrymple	Called up to the House of Peers	(1914–16) 43	
Charles Duncombe	Called up to the House of Peers	(1914–16) 43	
Sir Frederick Low	Judicial Office	(1914–16) 38	
Sir David Jones	Judicial Office	(1914–16) 38	
Sir David Jones	Judicial Office	(1914) 430	
Joseph Chamberlain	Chiltern Hundreds	(1914) 334	
Richard Hazleton	Chiltern Hundreds	(1914) 329	
John Gordon	Manor of Northstead	(1914) 287	
Herbert Asquith	Appointed as a Principal Secretary of State	(1914) 113	
Sydney Buxton	Chiltern Hundreds	(1914) 20	
Ronald Ferguson	Manor of Northstead	(1914) 20	
Charles Masterman	Appointed Chancellor of the Duchy of Lancaster	(1914) 20	
William O'Brien	Chiltern Hundreds	(1914) 20	
Sir Charles Cripps	Called up to the House of Peers	(1914) 3	
Stanley Buckmaster	Judicial Office	(1914) 3	
Llewellyn Atherly-Jones	Judicial Office	(1914) 3	

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Robert Munro	Judicial Office	(1914) 3	
Sir Rufus Isaacs	Judicial Office	(1914) 3	
Alexander Ure	Judicial Office	(1914) 3	
James Hamilton	Manor of Northstead	(1913) 495	
Eliot Crawshay-Williams	Manor of Northstead	(1913) 182	
Sir Henry Kimber	Chiltern Hundreds	(1913) 149	
John Fletcher	Manor of Northstead	(1913) 128	
Sir Stuart Samuel	Undertaking a public service contract	(1913) 83	
David Edward	Chiltern Hundreds	(1912–13) 533	
George Lansbury	Chiltern Hundreds	(1912–13) 410	
Robert Wellesley	Manor of Northstead	(1912–13) 395	
William Murray	Called up to the House of Peers	(1912–13) 349	
Sir George Kemp	Chiltern Hundreds	(1912–13) 319	
John Seely	Appointed as a Principal Secretary of State	(1912–13) 208	
Henry Wilson	Manor of Northstead	(1912–13) 185	
James Morrison	Manor of Northstead	(1912–13) 98	
Sir James Rankin	Chiltern Hundreds	(1912–13) 50	
John Kirkwood	Chiltern Hundreds	(1912–13) 48	
John Arkwright	Manor of Northstead	(1912–13) 36	
Henry Webb	Appointed a Commissioner of the Treasury	(1912–13) 24	
Walter Rea	Appointed a Commissioner of the Treasury	(1912–13) 24	
Thomas Wood	Appointed Secretary for Scotland	(1912–13) 9	
William Williams	Judicial Office	(1912–13) 3	
William Hunter	Judicial Office	(1911) 518	
Sir Edward Strachey	Called up to the House of Peers	(1911) 460	
Alfred Emmott	Chiltern Hundreds	(1911) 455	
Charles Hobhouse	Appointed Chancellor the Duchy of Lancaster	(1911) 436	
Redmond Barry	Appointed Chancellor of Ireland	(1911) 434	
Edward Pickersgill	Manor of Northstead	(1911) 348	
Sir William Adkins	Manor of Northstead	(1911) 344	
Anthony Donelan	Election Court	(1911) 315	
John Muldoon	Chiltern Hundreds	(1911) 313	
Moreton Frewen	Manor of Northstead	(1911) 313	
Sir Alexander Fuller-Acland-Hood	Chiltern Hundreds	(1911) 313	
Thomas Ashton	Chiltern Hundreds	(1911) 313	
Frederick Masterman	Election Court	(1911) 301	
Aretas Douglas	Manor of Northstead	(1911) 295	
Sir Henry King	Election Court	(1911) 292	
Algernon Corbett	Manor of Northstead	(1911) 291	
Walter Rice	Called up to the House of Peers	(1911) 284	
Thomas Stanley	Chiltern Hundreds	(1911) 179	
Frederick Guest	Appointed a Commissioner of the Treasury	(1911) 159	
Ernest Soares	Manor of Northstead	(1911) 159	
Richard Mathias	Election Court	(1911) 156	
Richard Haldane	Called up to the House of Peers	(1911) 123	
Lord Alwyne Frederick	Chiltern Hundreds	(1911) 84	
Thomas Sandys	Manor of Northstead	(1911) 77	
Richard Hazelton	Election Court	(1911) 64	
Thomas Wilson	Chiltern Hundreds	(1911) 38	
Sir John Fuller	Manor of Northstead	(1911) 20	
Gilbert Drummond	Called up to the House of Peers	(1911) 6	
Willoughby			
William Jones	Appointed a Commissioner of the Treasury	(1911) 6	
Sir William Robson	Judicial Office	(1910) 299	
John Simon	Judicial Office	(1910) 299	
Frederick Guest	Election Court	(1910) 168	

<i>Name of Member</i>	<i>Reason for Disqualification</i>	<i>Journal Reference</i>	<i>Comments</i>
Sir Christopher Furness	Election Court	(1910) 168	
William Hunter	Judicial Office	(1910) 111	
Arthur Dewar	Judicial Office	(1910) 110	
Sir Samuel Evans	Judicial Office	(1910) 52	
Rufus Isaacs	Judicial Office	(1910) 36	
Sir Walter Foster	Manor of Northstead	(1910) 18	
William Benn	Appointed a Commissioner of the Treasury	(1910) 14	
Sir William Henry Holland	Chiltern Hundreds	(1910) 13	

**Annex 4**

SUSPENSIONS RECOMMENDED BY COMMITTEE ON STANDARDS AND PRIVILEGES  
(JAN 2012)

## I: RECOMMENDATIONS FOR SUSPENSIONS IN STANDARDS CASES

<i>Member</i>	<i>Summary of Offence</i>	<i>Recommendation</i>
David Laws [15R 2010–12]	Designation main home, &c.	(1) Apology to House (2) Seven sitting days suspension (3) No demand for repayment, because more already repaid than outstanding amount—since <i>some</i> ACA would have been payable.
Mr Derek Conway [4R 2007–08]	Employed his son Freddie Conway as a part-time Research Assistant and paid him at substantially more than appropriate rate for the job he was employed to perform. No evidence that he performed any of tasks involved in job. Mr Conway authorised bonus payments which exceeded limit set by the House.	Suspended for 10 Sitting days and apology to the House. Repay overpaid bonus sum of £3,962.97, rising to £7,161.05 if House unable to reclaim tax and National Insurance contribution and also to repay further £6,000.
Mr George Galloway [6R 2006–07]	Failure fully to register and declare interests; breach of advocacy rule.	Suspension for a period of 18 actual sitting days and apology to the House.
Mr Jonathan Sayeed [3R, 2004–05]	Failure to take adequate steps to prevent conflict of interest between responsibility as member and involvement with a private company, and other matters.	Suspend for two weeks and apologise to House.
Mr Clive Betts [5R, 2002–03]	Copying an altered document when improper use of the copy might reasonably be anticipated.	Suspend for seven days.
Mr Henry McLeish (former Member) [4R, 2002–03]	Failure to declare interest; inappropriate OCA claims.	None. [Suspend for one week if he had still been a Member]
Mr Michael Trend [3R, 2002–03]	Claiming Additional Costs Allowance inappropriately.	Suspend for two weeks.
Mr Geoffrey Robinson [1R, 2001–02] [20R, 1997–98]	Failure to provide proper responses to Commissioner and Committee.	Suspend for one month. Personal statement.
Mr Keith Vaz [5R, 2001–02]	Misleading Commissioner and Committee, and other matters.	Suspend for one month.
Mrs Teresa Gorman [5R, 1999–2000] [7R, 1998–99]	Misleading Commissioner and Committee, and other matters.	Suspend for one month. Personal Statement.
Mr Robert Wareing [5R & 6R, 1997–98]	Failure to declare a financial interest.	Suspend for five days

## II: RECOMMENDATIONS FOR SUSPENSION IN PRIVILEGE CASES

<i>Committed by</i>	<i>Summary of Offence</i>	<i>Recommendation</i>
(1) Don Touhig MP (2) Kali Mountford MP [10 & 11R 1998–99] Ernie Ross MP [8R 1998–99]	(1) As PPS in the relevant Department, asked for and obtained a copy of a committee’s draft Report. (2) As a member of the Committee, provided the copy of the draft Report. As a member of a committee, provided a copy of that committee’s draft Report to the relevant Department.	(1) Personal statement and suspend for three days. (2) Personal statement and suspend for five days. Personal statement and suspend for 10 days.

## Annex 5



## PARLIAMENTARY PRIVILEGES ACT 1987 (EXTRACT)

Act No. 21 of 1987 as amended

## 8 Houses not to expel members

A House does not have power to expel a member from membership of a House.

## Written evidence submitted by Lewis Baston, Democratic Audit

## ABOUT DEMOCRATIC AUDIT

Democratic Audit is an independent research organisation, established as a not-for-profit company, and based at the University of Liverpool. Our core objective is to advance education, and to undertake and promote research into, the quality and effectiveness of UK democracy. We are grant funded by the Joseph Rowntree Charitable Trust to conduct research into the quality of democracy in the UK and are currently conducting the fourth full Audit of UK democracy (the previous three Audits were published in 1996, 1999 and 2002). We also monitor democracy and freedom in Britain through a series of democracy assessments, reports and commissions, and through evidence to Parliament and official bodies. Lewis Baston is a Senior Research Fellow of Democratic Audit.

## 1. Summary of evidence

1.1 We doubt that “recall” will contribute to the laudable aim of “restoring public confidence in MPs and Parliament as a whole”. The problems of disconnection and alienation between the electorate and the political system are too deep rooted for such a minor measure to do very much to address. We further doubt that the Government’s proposals will ever result in a recall election taking place. While in itself this is not a bad thing from the point of view of parliamentary representation, it may undermine public confidence in the system if a widely-publicised system of recall is set up which is never used.

1.2 We are sceptical about the entire principle of “recall”. The broadest version of the concept, which involves merely the submission of a large enough petition to trigger an election and does not require any misconduct on the part of the “recalled” official, we regard as unacceptable. Parliament should contain a spectrum of views and MPs should be free to express views that may be unpopular at the time of speaking, and to challenge powerful interests. Even if an MP is confident of winning re-election, a recall petition itself can serve as a form of harassment of an individual MP or a group of MPs.

1.3 We are glad that the Government has rejected the idea of recall on demand. We believe that, if one is to have recall at all, there must be evidence-based and procedurally fair mechanisms that must be allowed to run their course before a recall petition may be opened. While not entirely content with the Government's proposed triggers, the principle that a serious criminal conviction or a serious reprimand from the House's own disciplinary mechanisms should be required is a sound one.

1.4 The essential problem is to identify the spectrum of conduct which would open an MP to recall but which is not sufficiently serious and conclusively proven to lead to the resignation of that MP (no doubt under some pressure from their party) or the House being justified in using its power of expulsion. This appears to us to be a very narrow and possibly non-existent window.

1.5 However, the technical details of the Government proposal appear to be workable.

## 2. Question 2: *Political risks in the Government's proposals*

2.1 We are concerned by the government's reference to a:

recall petition as a means of democratic expression; indicating the strength of feeling of constituents in relation to the issue in question.

2.2 "Strength of feeling" has traditionally not been taken into account in electoral events, except indirectly through turnout and the extent of tactical voting. Attempting to measure such an intangible quantity is always going to be problematic.

2.3 A petition signed by 10% of the electorate who feel strongly is not an infallible indicator of feeling among the other 90% of constituents. It may well reflect just the existence of a strong well-organised body of opinion in the constituency, probably affiliated with a party that hopes to gain the seat in the resulting recall election. For instance in the Northern Ireland cases (see below) it would seem likely that a recall election would have been triggered in Fermanagh & South Tyrone but not Belfast East, for reasons that would be unrelated to the local reaction to the MP's behaviour.

2.4 Not signing is a method by which the constituent may express indifference, but there is no channel by which constituents who feel ("strongly" or otherwise) that the recall is inappropriate can make their views known unless there is a costly and disruptive election as a result of the petition.

2.5 A highly mobilised minority, under the proposals, can trigger a recall election without reference to the majority or the general strength or otherwise of feelings among constituents. It is worrying that such a subjective and contingent criterion is being taken seriously.

2.6 The House has probably not used its powers of expulsion and discipline sufficiently in recent decades, with relatively minor suspensions being the punishment for even quite severe transgressions such as the cases of Conway (2008), Riddick and Tredinnick (1994) and Browne (1990). We wonder whether exposure to recall petition might be regarded as an alternative to the House of Commons exercising adequate internal discipline in the most serious cases; that a recall petition and election would merely drag out an inevitable process, at cost to Parliament's reputation, where a clean expulsion may be justified.

2.7 In cases of serious wrongdoing proved by parliamentary committees, and with all legal and parliamentary avenues of appeal exhausted, that reaches a possible threshold for opening a recall process, one cannot imagine many cases in which the MP concerned would not resign rather than face a recall election. This is the normal pattern on criminal conviction.

2.8 Even in cases where the prison sentence is such that the MP would face disqualification, as with John Stonehouse in 1976, resignation has been the normal procedure rather than formal expulsion or disqualification. An analogous case is that of John Cordle in 1977, found by a select committee to have engaged in conduct that "amounted to a contempt of the House", who resigned before the select committee report was debated in the House. Eric Illsley's resignation on conviction in 2011 is overwhelmingly the likely pattern for serious convictions below the one year threshold.

2.9 Further to the usually successful pressure exerted on MPs to resign their seats when severe misconduct has been proved, the parties have their own disciplinary mechanisms that may allow an MP to serve out the rest of a parliamentary term but then generally result in the MP not contesting the election or being defeated should they contest the seat as an independent. Suspension of the whip in such cases is usually a prelude to deselection. This happened in the cases of Browne, Conway and indeed Fields whose conduct was deemed unacceptable by the party leadership. It was also the result in numerous cases in the "expenses scandal" where there was either serious misconduct or sometimes just embarrassing circumstances.

2.10 Often, the amount of time remaining between the exhaustion of the appeals process and the next general election is short and it is hardly worth holding a separate recall election. This was the case in many of the expenses cases in 2009–10 and in the cash for questions affair of the 1990s when the process that started with allegations in 1994 did not reach a final conclusion until after the 1997 election. Recall petitions and elections in such cases may lead to the public concluding that they are an unnecessary complication to a problem that was in the process of being solved anyway. It is far from clear that the proposed recall mechanism would have

triggered any recall elections in times over expenses, except possibly in the case of Conway (which was a related, but separate and earlier, matter).

3. Question 3: *Do the Government's criteria capture "serious wrongdoing"?*

3.1 Serious criminal conviction or severe reprimand by the House of Commons seem to be reasonable definitions of "serious wrongdoing". However, we are doubtful about some of the precise definitions within these general headings, and note that neither of them completely capture the element of breach of public trust that is surely the most worrying aspect of potential misconduct by an MP. As outlined in paragraphs below, some severe breach of trust (tax evasion) may not meet the criteria, while conversely acts not generally regarded as serious *might* end up triggering recall elections.

3.2 We agree with the draft proposals in paragraphs 65 and 66 in the matter of criminal appeals and the recall process. It would be invidious for the recall mechanism to start before the full process of appeal has been exhausted, and the citation of the Fiona Jones case of 1999 is appropriate.

4. Question 4: *Should imprisonment trigger the recall petition mechanism?*

4.1 We are wary of the automatic opening of the recall process in cases of any sentence involving imprisonment. Imprisonment can occur for other reasons, including those with a political dimension. We would draw the Committee's attention to two areas in particular:

- Imprisonment resulting from acts of protest without any element of violence or dishonesty. In July 1991 Terry Fields was imprisoned for non-payment of the "poll tax". In 1987 and 1988 several Unionist MPs including Ken Maginnis and current First Minister Peter Robinson were imprisoned for brief terms for failure to pay car tax as a protest against the 1985 Anglo-Irish Agreement.<sup>9</sup> Their electorates were well aware of their support for civil disobedience at the time of the previous election (the MPs had both won re-election in a by-election in 1986 and the 1987 general election). The transgression involved in the protest was hardly of utmost severity. There may be other cases where non-violent protest can result in temporary imprisonment, but which does not reflect serious misconduct by an MP.
- Related to this, imprisonment can take place as a result of conduct like non-payment of fines and charges which are sometimes part of civil disobedience, and as a result of contempt of court where imprisonment can be decided summarily. The law as proposed could lead to a ridiculous situation where an MP could say something in the House under parliamentary privilege which would expose him or her to imprisonment for contempt of court (and therefore recall) if the statement were repeated outside the House. Given that the limits of privacy, contempt of court and free speech are much debated and somewhat uncertain, it would be undesirable if the existence of recall had a chilling effect on the freedom of parliamentarians to speak and engage in non-violent protest. The scope of contempt offences in particular—given that MPs are frequent media commentators—may cause concern.

4.2 Imprisonment in many of these cases is not about the severity of the offence, but is a device to induce compliance to fines or court directives.

4.3 We note also that some severe misconduct involving a breach of public trust unbecoming of a Member of Parliament may not result in imprisonment. Illegal tax evasion, for instance, is often dealt with by HMRC with payment of tax owed without a fine—assuming that the evasion is detected in the first place. Where legal action is taken, the usual result is a fine and payment of tax owed. Only very rarely is a custodial offence given.

4.4 But the Government's proposals would involve automatically exposing non-violent protest to recall while leaving tax evasion unpunished: it is doubtful whether Parliament would have the appetite, resources or ability to investigate such cases further than the HMRC or the courts have taken matters, and tax and customs cases are often resolved by private agreement. It may not, therefore, even result in any parliamentary censure on the offender.<sup>10</sup>

4.5 The frontier between what is considered an offence worthy of a custodial sentence and what is not is itself movable rather than a fixed standard.

4.6 We therefore doubt that the line between imprisonment and non-custodial sentence adequately captures the distinction between serious and other offences which the Government wishes to establish in the recall mechanism. We would urge that short periods of imprisonment for non-payment of fines, civil disobedience and the like should be removed from the threat of recall. Whether this is done by establishing an exception for short terms in prison, or by exempting cases where there is no element of dishonesty or violence, is a matter of judgement.

<sup>9</sup> See Appendix for details.

<sup>10</sup> In the case of Reginald Maudling, it appears clear that the Inland Revenue had significant concerns about his tax returns, and reached private settlement on some matters, but that his conduct in this area was not referred to the Parliamentary Select Committee in 1976–77.

5. Question 5: *Is it appropriate for MPs to be “gatekeepers” of the recall petition process?*

5.1 We agree that there should be a filter mechanism. It would be unsuitable, even undemocratic, for MPs to be exposed to recall, or harassment in the form of threatened recall—purely because of political disagreement or expression of allegedly offensive views by the MP. Campaigning MPs who have expressed views that were unpopular at the time, such as Tam Dalyell during the Falklands crisis, or several Conservatives who have spoken out for gay rights when it was not an accepted cause within the party, would be exposed to recall. Perhaps the most recent worrying case would be Tom Watson—can anyone doubt that there would have been media campaigns for his recall if there were no requirement for misconduct? Parliament, collectively, needs to represent a spectrum of views, and MPs as individuals need the freedom to espouse views and causes which may be unpopular or upset powerful interests without the chilling effect of the threat of recall.

5.2 Parliament has always had powers to discipline and even expel its own Members. It would be excessive to prevent MPs from being involved in the investigation and punishment of lesser transgressions, and inconsistent to bar them from involvement in the more severe cases.

5.3 There may be future cases where an MP is held up to contempt by the press, and even public opinion, for alleged misconduct while the facts of the case are ambiguous or exculpatory. During the “expenses scandal” there were many instances where MPs were harshly criticised for conduct that was not even against the rules of the House. There does need to be an assessment of the severity of the transgression, and a filter to prevent politically-motivated harassment, and while there are problems with MPs judging their colleagues there seems no readily apparent alternatives without relying solely on the criminal courts.

6. Question 6: *The adequacy of the House’s own mechanisms*

6.1 We acknowledge that Parliament’s own procedures for investigating and punishing wrongdoing have improved beyond recognition since the 1970s and the thoroughly unsatisfactory select committee process investigating the MPs associated with John Poulson. The system introduced following the mid-1990s “cash for questions” affair is more independent, rigorous and consistent than any previous system, and it has been steadily built upon with innovations such as the establishment of IPSA.

6.2 Ideas of procedural justice have also advanced over time, and it is here that there may be cause for concern. If there is a risk of being opened to a recall petition (or indeed our own preferred alternative of simply using the existing power of expulsion properly) there must be an adequate opportunity for the accused MP to compose and present a defence. The Commissioner for Standards may become more of a prosecutor than an investigating magistrate.

6.3 However, there is no way in the circumstances to be judged by an impartial jury of one’s peers; all MPs involved in the assessment of the degree of misconduct and the appropriate punishment will not only know the accused personally, but have a broad interest in the outcome because it is party political as well as a matter of individual justice. The political vested interests are both general and specific, and will vary based on the character of the MP and even more on the marginality of their seat.

6.4 But there are risks in transferring the decision to a body outside Parliament, even leaving aside the questions of privilege involved. There is no guarantee that an independent procedure is fair and considered; the experience of the Legg review of expenses should give one pause about the idea that an outsider is more capable of transparency and fairness than MPs. Further, we do not believe that the interests of restoring public faith in the political process would be well served by Parliament abdicating ever more responsibility for making important decisions and keeping its own house in order.

6.5 The solution would appear to be to add non-MP politically independent members to the committee when there is any chance of a recall petition being opened. While MPs would remain a majority, it is probably desirable that no party or government coalition has an outright majority on the committee.

6.6 We note that the Fixed Term Parliaments Act 2011 establishes a super-majority requirement for some categories of decision by the House of Commons. This might be used in the case of resolutions to expel or expose to recall petition, and thereby require support beyond a simple majority of MPs.

7. Question 7: *The mechanism of the recall process*

7.1 The procedure proposed by the Government for administering the petition process seems to be a reasonable one. The Draft Bill makes a good argument that there are significant concerns about intimidation and protection of personal privacy unless the process of petitioning is administered in a neutral and secure fashion.

7.2 We accept the Government’s case that signing a petition is analogous in many ways to voting in an election and that broadly similar standards of security should apply. If petitions were organised outwith the relevant returning officer’s supervision, there would then need to be a probably expensive, drawn out and contentious process of signature verification to confirm whether the petitioners had reached the required number of legitimate signatures.



7.3 The case for a (low) minimum number of voting places open during working hours for the eight weeks of the petition process is also convincing.

January 2012

## APPENDIX

### SHORT TERMS OF IMPRISONMENT OF NORTHERN IRELAND MEMBERS IN THE LATE 1980S

The following information was compiled and supplied by David Boothroyd, to whom Democratic Audit expresses its gratitude.

- (1) Harold McCusker (Upper Bann): Convicted of using a mechanically-propelled vehicle on the public road for which a vehicle license was not in force; fined £50, plus £16.66 arrears for the vehicle license, plus £3 costs for a total of £69.66. Imprisoned for seven days in default of paying the fine at Lisburn Magistrates Court on 26 January 1987. CJ [1986–87] 138. HC Deb 28 January 1987 vol 109 c317, <http://hansard.millbanksystems.com/commons/1987/jan/28/hon-member-for-upper-bann-imprisonment>
- (2) Ken Maginnis (Fermanagh and South Tyrone): Same offence. Imprisoned for seven days in default of paying the fine at Enniskillen Magistrates Court on 15 June 1987. CJ [1987–88] 17. HC Deb 25 June 1987 vol 118 cc36–7, <http://hansard.millbanksystems.com/commons/1987/jun/25/imprisonment-of-a-member>
- (3) Peter Robinson (Belfast East). Same offence. £25 fine, £25 arrears, £3 costs. Imprisoned for 14 days in default of paying the fine at Belfast Petty Sessions on 22 September 1987. CJ [1987–88] 93. HC Deb 21 October 1987 vol 120 c703, <http://hansard.millbanksystems.com/commons/1987/oct/21/imprisonment-of-a-member>
- (4) Cecil Walker (Belfast North). Convicted of taking part in a public procession. Fined £50. Imprisoned for seven days in default of paying the fine at Belfast Petty Sessions on 6 January 1988. CJ [1987–88] 235. HC Deb 11 January 1988 vol 125 c3, <http://hansard.millbanksystems.com/commons/1988/jan/11/imprisonment-of-a-member>
- (5) Peter Robinson (Belfast East). Same offence. Fined £20. Imprisoned for seven days in default of paying the fine at Belfast Petty Sessions on 20 January 1988. CJ [1987–88] 269. HC Deb 25 January 1988 vol 126 cc1–2, <http://hansard.millbanksystems.com/commons/1988/jan/25/imprisonment-of-a-member>
- (6) Rev Robert McCrea (Mid-Ulster). Same offence, fine and sentence from same court on 27 January 1988. CJ [1987–88] 285.
- (7) Rev Ian Paisley (North Antrim). Same offence, fine and sentence from same court on 27 January 1988; also convicted of a separate offence of taking part in a public procession at Ballymena Petty Sessions and fined £15; his two prison terms were served concurrently. CJ [1987–88] 286. HC Deb 01 February 1988 vol 126 cc681–2, <http://hansard.millbanksystems.com/commons/1988/feb/01/imprisonment-of-member>
- (8) Roy Beggs (East Antrim). Same offence, fine and sentence from Belfast Petty Sessions on 10 February 1988. CJ [1987–88] 316. HC Deb 15 February 1988 vol 127 c685, <http://hansard.millbanksystems.com/commons/1988/feb/15/imprisonment-of-a-member>
- (9) Peter Robinson (Belfast East): Convicted of using a mechanically-propelled vehicle on the public road for which a vehicle license was not in force. Imprisoned at Belfast Petty Sessions on 17 February 1988. The Court initially said he had been fined £75, with £100 arrears of vehicle excise duty and £3 costs, and that he had been imprisoned for 30 days—CJ [1987–88] 328, HC Deb 22 February 1988 vol 128 c1, <http://hansard.millbanksystems.com/commons/1988/feb/22/imprisonment-of-a-member>. On 24 February a second letter arrived which stated that the fine was only £25, and the imprisonment only for seven days.
- (10) Clifford Forsythe (South Antrim), Harold McCusker (Upper Bann), William Ross (East Londonderry) and Rev Martin Smyth (Belfast South) were all convicted of taking part in a public procession. Each was given a £20 fine, and imprisoned for seven days in default of paying the fine, at Belfast Petty Sessions on 24 February 1988. CJ [1987–88] 340–341. HC Deb 25 February 1988 vol 128 cc423–4, <http://hansard.millbanksystems.com/commons/1988/feb/25/imprisonment-of-members>
- (11) Peter Robinson (Belfast East) was convicted of taking part in a public procession and fined £280, later reduced on appeal to £50. He was imprisoned for seven days in default of paying the fine at Belfast Petty Sessions on 24 August 1988. CJ [1987–88] 716. HC Deb 19 October 1988 vol 138 c871, <http://hansard.millbanksystems.com/commons/1988/oct/19/imprisonment-of-a-member>

## Written evidence submitted by The Association of Electoral Administrators (AEA)

### 1. INTRODUCTION

1.1 The Association of Electoral Administrators (AEA) was founded in 1987 and has since established itself as a professional body to represent the interests of electoral administrators in the United Kingdom. It is a non-governmental and non-partisan body and has 1,674 members, the majority of whom are employed by local authorities to provide electoral registration and election services.

1.2 The AEA encourages and provides education and training in electoral administration, in addition to a range of commercial and professional services.

1.3 The key aims of the AEA are to:

- (a) contribute positively to electoral reform within the UK;
- (b) foster the advancement of consistent and efficient administration of electoral registration and the conduct of elections in the UK;
- (c) raise the profile of electoral administration both within the UK and internationally; and
- (d) enhance and maintain the AEA's reputation as the leading professional body for electoral administrators within the UK.

1.4 The AEA firmly supports and advocates the principle set out by Gould<sup>11</sup> that in implementing changes to the electoral system the voter's interests should be considered above all other considerations.

1.5 In this paper we respond to the invitation by the Political and Constitutional Reform Committee (the Committee) to comment on the UK Government's proposals for the recall of MPs as published in the White Paper and draft Bill on the recall of MPs.

1.6 It should be noted that the AEA does not comment on the constitutional issues involved nor do we comment on the merits or otherwise of recall petitions. This response focuses on matters relating to the conduct of the recall petition process. Therefore, we are commenting mainly on questions seven and nine of the Committee's questions as set out on the Parliament website:

- 7. What are your views on the Government's proposals for the conduct of the recall petition process?
- 9. Are there any technical concerns in the detail of the proposed legislation that you would like to draw to our attention?

1.7 However, the AEA also comments on issues relating to the regulation of campaign expenditure and donations as the proposed model envisages a regulatory role for the Returning Officer. Therefore, we provide a response in part to question eight:

- 8. Are the Government's proposals appropriate on campaign spending and funding during the recall process?

1.8 We have not commented on the proposed arrangements that relate specifically to Northern Ireland. We recognise that the context for such petitions may require different arrangements in Northern Ireland and that these will be agreed with the Chief Electoral Officer on the basis of his knowledge of the local circumstances.

### 2. LEGISLATIVE FRAMEWORK

2.1 The AEA is pleased that, as far as possible, the UK Government proposes to base the arrangements for the conduct of recall petitions on existing election rules and procedures. This will have the benefit of creating a process that has some familiarity for voters and for electoral administrators.

2.2 We welcome the opportunity for scrutiny of the draft clauses for the proposed Bill. We are keen to see at an early stage as possible the draft regulations which will contain much of the detail of how recall petitions will work in practice.

2.3 However, there are a number of areas on which we will be seeking clarification or which we believe would benefit from further consideration. These are set out in this paper under the relevant areas below.

2.4 The AEA supports and advocates two key principles set out by Gould<sup>12</sup> in his report on the 2007 elections in Scotland, namely that:

- All those with a role in organising elections should consider the voters' interests above all other considerations; and
- Electoral legislation should not be applied to any election held within six months of the new provision coming into force.

2.5 We also note that the proposed arrangements for recall petitions will need to be amended to reflect changes to electoral registration as we move to an individual system of electoral registration.

<sup>11</sup> *Independent Review of Scottish Parliamentary and Local Government Elections*, Ron Gould, 2007.

<sup>12</sup> *Independent Review of Scottish Parliamentary and Local Government Elections*, Ron Gould, 2007.

### 3. OPENING A PETITION

3.1 The method of opening a petition by means of an official notice from the Speaker to the relevant returning officer is clear and unambiguous and we welcome this.

3.2 We note that in the context of Condition 1 relating to a conviction resulting in a custodial sentence, allowance has been made for the usual period for lodging an appeal (or a further appeal) to expire without the MP having lodged such an appeal before opening the petition. We welcome this arrangement.

3.3 Paragraph 67 reviews an alternative option of allowing one month after the conviction during which the recall process would not commence. If no action was taken, the petition would be opened. It is suggested that this could increase the likelihood of an appeal being lodged after a petition had been opened resulting in the petition process being suspended until the appeal was disposed of.

3.4 If this were the case, we believe that it would be confusing to voters who would have been informed of a petition and then its suspension, with the potential for an appeal to fail and for the petition to be reopened (or a new petition opened). This would result in wasted effort, resources and cost for the returning officer (and therefore ultimately the public purse).

### 4. THE PREPARATION PERIOD

4.1 The AEA is satisfied that the proposed two-week period from the date of the Speaker's notice to the commencement of the signing period on the "designated day" should be sufficient for the necessary preparations to be made. We welcome the flexibility that has been built into this requirement in order to take account of any specific local circumstances.

4.2 Within this context, it will be necessary for returning officers to have plans in place for the conduct of recall petitions that they can quickly bring into operation. Returning officers will need to involve and reflect the work of the relevant electoral registration officers across the constituency in the planning process. These plans will need to be reviewed and updated regularly in the same way that election plans are maintained to ensure that they remain fit for purpose and reflect any changes to local circumstances across the constituency.

### 5. THE DESIGNATED LOCATION

5.1 The White Paper and draft Bill indicates that in Great Britain a single designated location will be identified by the returning officer for the purpose of providing a place for voters to sign the petition in person. This designated location will be made available at specified days and times for the whole of the signing period of eight weeks. For this reason, the UK Government is proposing that a single designated location would be satisfactory in terms of allowing voters throughout a constituency sufficient opportunity to sign in person. A single location would be more straightforward to administer but would not be convenient or accessible for all electors particularly in large rural constituencies.

5.2 The alternative scenario is considered whereby there are multiple designated locations. The AEA considers that this is the more preferable following the Gould principle espoused above of putting the voter at the heart of the considerations. It provides a more equitable and accessible option for electors from all parts of the constituency and reduces travel time and costs for some electors. It also removes a potential deterrent from participation in the process. Under this option, each of the returning officers with responsibility for the parts of the constituency within their respective local authority areas would take responsibility for the administration of the process in those areas under the general direction and control of the lead returning officer.

5.3 Although designated locations within each local authority area within a constituency would not result in absolute equal access given that constituencies are diverse in geographical size and the number of authorities, it would be an improvement on the option favoured in the draft Bill.

5.4 Schedule 1 (2) (3) provides for staff within local authorities to be put at the returning officer's disposal and we welcome this. However, we cannot find any provision for the returning officer to require the use of an accessible and suitable room for the purpose of the designated location. Such a power would assist returning officers in identifying and making use of the most appropriate location for the purposes of the recall petition.

5.5 Clause 7(5) refers to regulations making provision "permitting or requiring the returning officer not to make the recall petition available for signature for periods of a day or on particular days". We believe that there should be consistency in terms of the days/hours during which recall petitions are available for signing in a similar way to the arrangements for the receipt of nominations, for example. This would provide certainty and consistency both for returning officers and for voters.

### 6. THE WORDING OF THE RECALL PETITION

6.1 Clause 8 of the draft Bill sets out the wording of the recall petition for both first and second conditions as relevant to the particular case. The AEA makes no comment on these. However, if these have not been user tested for plain language, the UK Government may wish to consider doing so to ensure proper accessibility to the process.

## 7. ENTITLEMENT TO SIGN THE PETITION

7.1 Clause 10 sets out that “qualifying applications” include applications made on or before the day on which the Speaker’s notice was given, in effect creating a “cut off” for the register to be used for the petition. We welcome this as it creates clarity for administrative purposes and safeguards integrity.

7.2 However, the clause also sets out that “qualifying applications” includes additions to the electoral register via annual canvass forms (with reference to Section 10A(2) of the *Representation of the People Act 1983 (RPA 1983)*). This is to address the potential scenario of a recall petition called during an annual canvass period.<sup>13</sup> Schedule 2 of the draft Bill would insert into the RPA 1983 a new Section 13BD—*Recall petition process beginning within a canvass period*. Our reading of these provisions is that they replicate the current, flawed provisions for elections during the annual canvass period. This relates particularly to the issue of deletions from the register where a change on a canvass form would lead the electoral registration officer to that conclusion. We would welcome clarification from the UK Government on this matter.

## 8. THE 10% SIGNATORY THRESHOLD

8.1 The White Paper does not provide the detail of when and how the 10% threshold figure should be made public, and we assume the UK Government will specify this in regulations for the avoidance of doubt.

## 9. ABSENT SIGNING ARRANGEMENTS IN GREAT BRITAIN

9.1 The AEA has some concerns about the proposed arrangements for postal signing of a recall petition. The assumption is that a postal signing paper will be supplied only if an elector requests it and that those electors who have a permanent postal voting arrangement will not receive a signing paper automatically. We are unclear as to the reason for this policy decision. However, it should be noted that it could have significant practical implications.

9.2 This arrangement may be confusing to electors who are used to receiving their ballot papers for an election automatically and without the need to request them each time. It will be necessary to widely disseminate public information to explain this key difference.

9.3 We note that the detailed provisions for absent signing will be addressed in secondary legislation. Even so, the proposal leaves a number of questions unanswered about the practical operation of the proposed approach. These details are important in terms of the workability or otherwise of the process and the resulting impact on staffing and costs.

9.4 The proposed arrangements assume a fairly manual process. Therefore, if large numbers of voters request postal signing papers over the eight week period (for example, in areas with large numbers of existing postal voters) the process will quickly become resource intensive and expensive to administer without the benefit of automation and economies of scale currently achieved in relation to the issue and distribution of postal votes.

9.5 For practical reasons and in order to ensure that the request could be fulfilled, there will need to be a deadline for such requests. Similarly, there will need to be a deadline for the return of postal signing papers.

9.6 We are also unclear, in relation to proxy signing arrangements, whether there will be a deadline for appointing proxies, and therefore whether there is a need to consider arrangements for the appointment of an emergency proxy in the last few days of the petition period where a person has been taken ill?

9.7 The White Paper is vague in this regard referring in paragraph 112 to the entitlement to vote by post or by proxy being dependent on “their postal or proxy vote [being] effective before the signing period ends”.

## 10. EARLY TERMINATION OF A RECALL PETITION

10.1 The White Paper and draft Bill set out (in clause 9) circumstances in which a recall petition has to be terminated. These are that an early general election has been called with the new date falling within six months of the date of the Speaker’s notice for a recall petition; the MP’s seat has been vacated by death or disqualification, or otherwise; and the conviction, sentence or order is overturned on appeal.

10.2 There appears to be a general sense that the returning officer “will become aware” of these circumstances. However, one might reasonably expect the returning officer to be notified of these circumstances and we cannot find, for example, in the event of the third condition (the overturning of a conviction, sentence or order) that there is any requirement for the returning officer to be informed by the courts.

10.3 A returning officer will clearly want to be sure that they are acting on some kind of official or certain information before they terminate the process and notify the Speaker which of the conditions were the basis for doing so.

10.4 Clause 9 (6)(a) indicates that the returning officer must also “take such steps as the officer considers necessary to terminate the recall process”. There is a clear requirement to notify the Speaker. However, there is no similar express requirement to notify campaigners or the electorate of the early termination of the process

<sup>13</sup> See also Schedule 2 (7) which replicates current “election falling within canvass period” provisions by inserting subsection 6A into Section 13BB of the *RPA 1983*.

through some kind of public notice. For the avoidance of doubt and in order to ensure consistency, we believe this should be specified.

#### 11. DOUBLE SIGNING AND INTEGRITY

11.1 Each elector is entitled to sign the recall petition once on their own behalf and, as a proxy for a person, once on that person's behalf. The White Paper and draft Bill make provision for an offence in relation to signing a recall petition more than once, or "double signing". This offence will be an illegal practice and carries with it serious penalties on conviction as is appropriate.

11.2 The AEA believes that this offence will need to be clearly communicated to the electorate. "Double signing" may not sound as serious as "double voting" and so people may not realise the seriousness of the consequences of doing so, or that it will be detected if tried.

#### 12. CHALLENGING THE OUTCOME OF A RECALL PETITION

12.1 The White Paper sets out that there will be a process for challenging the outcome of a recall petition along the lines of the current election petitions process. Paragraph 123 identifies that careful consideration will need to be given to the question of how the time limit for a challenge to the conduct of the petition should relate to the likely timing of a by-election following a successful recall petition. Paragraph 125 notes that the timing of such writs is a matter of privilege and the House of Commons is invited to consider whether specific provision will be needed in the Standing Orders.

12.2 Clearly, it would be practical to coordinate the two sets of arrangements so that a writ is not issued until it is known whether a challenge has been lodged. The current election petition arrangements specify a period of 21 days following an election and a similar timescale would fit within the average time of 30 days between a vacancy arising and the writ being issued for a by-election.

#### 13. FUNDING AND RESOURCES FOR RETURNING OFFICERS

13.1 The assumptions contained in the White Paper, *Annex G: Impact Assessment*, appear to the AEA to be reasonable at this time, subject to the concerns we have raised regarding the postal signing arrangements.

13.2 We understand that Cabinet Office officials are reviewing election funding issues more widely. We welcome this and look forward to receiving information on the scope of this review. Any changes to election funding as a result of the review will need to be applied (as relevant) to the funding arrangements for recall petitions and reviewed periodically as is the case with national elections.

#### 14. CAMPAIGN SPENDING—REGULATION OF PETITION EXPENDITURE AND DONATIONS

14.1 The AEA does not generally comment on campaign spending issues unless they have an administrative impact on returning officers and electoral administrators. It is within this context that we comment below.

14.2 We are unclear as to the extent of the proposed "regulatory" role for the returning officer in relation to petition expenditure and donations, or why it is not proposed that this should be within the remit of the Electoral Commission. Whilst it is usual for returning officers to receive and hold the returns and receipts relating to candidates' expenses, it is a significant departure for returning officers to be responsible for registering campaigners, and to have "oversight" of campaign expenditure and donations as suggested in the White Paper.

14.3 The *Overview of recall spending and donation proposals* included at *Annex C* seem overly complicated and confusing.

14.4 We would welcome clarification and dialogue with the UK Government on this issue.

February 2012

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#### Written evidence submitted by Naomi Long MP, Alliance Party for Northern Ireland

1. I am writing in response to the Committee's call for evidence regarding the Government's proposals on recall of MPs. I am writing on behalf of the Alliance Party of Northern Ireland which is Northern Ireland's fifth largest political party, with eight seats in the Northern Ireland Assembly, two Ministers in the Northern Ireland Executive, one Member of Parliament, as well as 44 local councillors.

2. With regards to the Government's proposals for the recall of MPs, there are several points that I would wish to raise for the Committee's consideration. The ability to recall an MP who has been found guilty of serious wrong-doing is a reasonable mechanism to ensure that MPs remain accountable to their constituents in such circumstances. Alliance would, therefore, support the introduction of a recall mechanism. There is, however, also a need to protect any such mechanism from abuse either by special interest groups or political rivals and so the criteria for triggering a recall petition, the rules surrounding its collection and verification and the threshold for recall must be sufficiently robust to avoid this.

3. It is important that Government acts on promises made prior to the 2010 General Election to restore public confidence in MPs and Parliament, following the expenses crisis of 2009: the introduction of recall legislation would make some contribution to this end. Giving electors the power to remove an MP who has broken the law is a new power and could give the public confidence that no MP is above the law and that MPs can face similar punishments as those to which others in a professional environment would be subjected in their workplace, should they be in gross breach either of the law or of their contract.

4. With respect to the proposals set out in the draft Bill, the first criteria proposed for triggering the opening of a recall petition, whereby an MP is convicted of an offence and receives a custodial sentence of 12 months or less, would appear to be sufficiently clear and robust. It is appropriate that a custodial sentence of a year or less, whether suspended or not, for any criminal offence should trigger the opening of a recall petition; it is then a matter for the constituents whether or not they wish to recall their MP in such circumstances.

5. The second criteria for triggering a recall petition proposed in the White Paper, namely, that the House of Commons resolves that an MP should face recall, however, lacks clarity as the specific actions by an MP which would trigger such a resolution being put to the House are poorly defined. Indeed, the White Paper gives only the example of a report by the Committee on Standards and Privileges being presented in circumstances in which an MP has made a “serious breach” of the Code of Conduct. It does not, however, define “serious breach” nor does it suggest that this is the only way in which such a resolution of the House could be triggered, leaving the terms very poorly defined and potentially open to political exploitation, either to avoid or initiate recall petitions, depending upon the circumstances.

6. The maintenance of robust and unambiguous criteria for triggering a recall petition is crucial to ensuring that MPs are held to open and transparent standards and are seen to be so. It is also vital that they remain free during their term of office to make evidence-based decisions which they may judge to be necessary to the good governance of the country, but which may not be popular or against which there might be a campaign at the time of the decision. In such cases, where sizeable numbers of constituents disagree with the decisions which an MP has taken, there is already an opportunity to hold MPs to account for all of their decisions, viewed in the round, through the normal electoral cycle: recall should, therefore, be strictly limited to use in those extraordinary circumstances where the MP has behaved in a way which has betrayed the fundamental trust placed in them by their constituents.

7. High thresholds for the triggering of a petition should ensure that the power of recall cannot be used maliciously by political opponents to launch a campaign to remove another MP from their post through a public campaign. In Northern Ireland, where political divisions are particularly entrenched, the ability to use recall in such a malicious manner must be guarded against.

8. Following on from that, it is also important that the threshold required for an MP to be recalled in such circumstances is set at a level which will ensure that it is neither artificially high, thus practically preventing recall, nor so low as to encourage or facilitate politically motivated, opportunistic attempts to force costly by-elections as a campaigning opportunity either for opponents or special interest groups.

9. The requirement for 10% of the electorate only to be required to recall an MP whilst meeting the first test, would appear to risk failing on the second. Ten percent of the registered electorate is a relatively low proportion of the electorate to trigger what is an expensive process of recall and by-election. If only 10% of the electorate sign the petition, by extension, it could be assumed that the remaining 90% were not sufficiently moved as to wish to recall their MP, making the by-election unlikely to result in change, but it would still be sufficient to trigger a process which carries with it considerable expense. A more reasonable threshold may be between one fifth and one quarter of the registered electorate, which is achievable, would represent a significant level of discontent with the MP, and which would be less susceptible to abuse.

10. Finally, with respect to the proposed means of collecting petition signatures in Northern Ireland by absent voting only, I would wish to express very strong reservations in this regard.

11. Firstly, whilst recognising the particular challenges presented as, by the nature of a petition, anyone attending the polling place would be identified as supportive of the petition and, therefore, open to intimidation by those supportive of the MP, the reason for the restrictions on absent voting in NI elections, namely the risk of voter intimidation and fraud, would equally apply in this case. The risk that people could fraudulently either apply for or use the postal vote of another individual or apply coercion to an individual to sign the petition against their will is of serious concern and the use of postal voting provides no protection whatsoever against this. In fact, given the relatively low threshold for recall (proposed at 10% of the registered electorate), the degree to which the outcome could be influenced by voter personation or elector intimidation is actually greater than would be the case in a General Election where larger numbers of fraudulent votes would be required to influence the outcome, yet in such elections absent voting is very restricted.

12. Secondly, the difference in the method of collecting the petition in different parts of the UK could lead to differential turnouts in different regions, a fact which is not reflected in the threshold set for triggering a by-election.

13. Thirdly, whilst the particular circumstances in Northern Ireland give rise to specific concerns regarding the issue of intimidation, it is perfectly conceivable that intimidation of voters could also take place in other parts of the UK, depending upon the nature of the offence/s for which an MP was given a custodial sentence.

For example, were the offence related to a particularly divisive issue, such as race or freedom of religious expression, it could lead to significant communal division and related intimidation in any constituency and the ability of voters to exercise their mandate freely could be equally impaired.

14. We would propose that, in order to ensure that the system is transparent, protected against the effects of intimidation and operates in the same basis throughout the UK an alternative proposition should be considered, whereby a recall referendum question is put to the electorate, rather than a recall petition.

15. We would suggest that where an MP would be subjected to a petition under the current proposal, a recall “plebiscite/referendum” should instead be run. During the eight week period, voters in that constituency would have the opportunity to go to one of a number of referendum centres, or apply for a postal vote. Rather than attending to sign a “petition”, they would instead register their view on whether or not a by-election should take place. A standard wording would be used for all such plebiscites/referenda, such as “a by-election should be held in the constituency of (xxxx)”, with electors being asked to vote “I agree” or “I disagree”.

16. As this would not be the by-election itself, but rather a referendum on whether there should be such a by-election, we would propose that there should be a turnout threshold (as effectively would the case for a petition) but, again, I believe a figure of around 20%–25% may be more appropriate than 10%. If the referendum were to be passed, a by-election would then be held under the normal rules.

17. Such a system would result in no differential treatment of people in NI, no differential turnout issues, a clear threshold to prevent a small minority of committed opponents overturning the will of electors as expressed in a general election, the protection of the electorate from intimidation in respect of attending a polling place and would still achieve the same accountability of MPs at similar cost to the proposal contained in the White Paper.

18. In summary, I believe that the introduction of this draft Bill is an important step forward in holding MPs accountable for their actions and support the consideration of a system whereby electors can recall an MP in the event of serious breaches of the code of conduct and of the law. I believe that the custodial sentence test proposed in this draft Bill to trigger a petition is sufficient to ensure that an MP is not subjected to recall unless there has been very serious wrongdoing, which I believe should be the case. I do, however, believe that more clarity is required regarding the circumstances in which the House would pass a resolution to trigger recall, in order to maximise transparency to both Members and the public. I would wish further consideration to be given to the proposed 10% threshold for the actual recall of an MP, as it appears to be a low threshold for triggering a by-election process. Finally, I believe that the use of postal voting in Northern Ireland does not protect the process from fraud and intimidation. We would, therefore propose that a “recall plebiscite/referendum question” rather than a recall petition should be the mechanism used throughout the UK to determine whether an MP should face a by-election.

19. Thank you for taking these matters into consideration.

February 2012

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#### Written evidence submitted by Keith Archer, Chief Electoral Officer, British Columbia

1. As administrators of the recall process in British Columbia since 1995, I am pleased to provide you with some perspective of Elections BC’s experience with the recall process that I hope will inform the Committee’s work.

2. As non-partisan administrators of the recall process, Elections BC avoids taking a position on matters of public policy. Therefore our submission to the Committee will be limited to the administrative aspects of the recall process and some of the issues attributed to the British Columbia recall model referenced in the White Paper. Given that many of the challenges and attributes of the British Columbia recall model are not applicable to the model proposed in the draft Bill and White Paper, this submission will focus primarily on the aspects of recall that are common to both.

3. The following terms used in British Columbia will be used throughout this submission:

*Proponent*—the voter who initiates the recall petition; the proponent is an “authorized participant” in the recall process, is regulated and must follow recall financing rules.

*MLA*—Member of the Legislative Assembly; the individual subject to recall; the MLA is also an “authorized participant” in the recall process, is regulated and must follow recall financing rules.

*Canvasser*—a volunteer who solicits for petition signatures on behalf of the proponent; canvassers are regulated by the *Recall and Initiative Act* and must be registered with Elections BC.

*Observer*—a volunteer supporter of an MLA; observers are not regulated by the *Recall and Initiative Act*.

*Signatory*—an individual who signs a recall petition.

*Advertising sponsor*—any individual or organization that conducts “recall advertising” in relation to a recall petition; advertising sponsors are not “authorized participants” but must follow recall financing rules and have a spending limit much lower than that of “authorized participants”.

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4. During debate of the Recall and Initiative Act in 1994, MLAs debated whether a voter's justification for making an application for recall should be subject to review by the Ombudsperson using certain criteria. The Minister responsible for the Bill stated that there should be no grounds upon which the applicant's recall statement should be judged, and that it should be left solely to the public to decide whether or not to sign the petition. Elections BC does not take a position on this decision as it is a matter of public policy.

5. While no MLA has been successfully recalled since the law came into force, there have been 24 recall petitions issued to date. The petition to recall MLA Paul Reitsma in 1998 was begun by a voter because the MLA had been accused by a local newspaper of writing letters to newspapers under assumed names. The MLA's party removed him from caucus but he chose to remain an MLA. When the recall petition was submitted to Elections BC, the proponent claimed that the recall petition contained significantly more than the minimum number of required signatures. However, before the verification of those signatures was completed, the MLA resigned, rendering the recall process moot. It was widely hypothesised in media reports at the time that an imminent threat of being successfully recalled led to the MLA's resignation.

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6. One of the challenges of the British Columbia recall process is that while legislation governs the activities of volunteers canvassing for petition signatures, it does not govern the activities of those opposing the recall of the Member on behalf of the MLA. Unlike proponents and canvassers, MLA supporters are not required to register or comply with provisions of the Act regarding their conduct. These MLA supporters will often follow, or observe, the activities of the canvassers, leading to the informal term "observers" being used to describe them. Their actions in this regard have led to claims of the intimidation of potential signatories by proponents. Similarly, MLA supporters have claimed that the activities of individuals canvassing for signatures sometimes results in the intimidation of voters. Elections BC is unable to determine the impact of the actions of both canvassers and observers on the willingness of individuals to sign a recall petition.

7. Intimidation is a term that has different meanings to different people involved in the recall process. Intimidation can range from an individual's feeling of discomfort to the legal threshold used for determining whether an offence under the Recall and Initiative Act or other legislation has been committed.

8. Partly because of its subjectivity, Elections BC receives complaints of intimidation from signatories, canvassers and observers during recall. None of the complaints to date have met the threshold for the offence of intimidation under the Recall and Initiative Act. However, individuals who feel strongly that they have been intimidated also have the option to contact police to make a complaint outside of the framework of the Recall and Initiative Act.

9. While the collection of signatures for the recall petition process being proposed in the draft Bill is administered by a Returning Officer, thereby eliminating some of the tension that arises between canvassers and MLA supporters, we would still recommend that any guidelines established in law apply to activists both for and against the signing of the petition. Such guidelines could include registration requirements and an obligation to follow a common code of conduct.

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10. When asked by stakeholders about how the privacy of individuals who sign a recall petition is protected, Elections BC advises that due to the nature of the recall model established in the legislation, signing a petition is a public act. However, the recall legislation and the principles of protection of personal information do limit this public act somewhat. When signing the recall petition, the voter may tick a box beside their signature line requesting that their residential address and phone number be obscured on any copy of the petition available for public inspection. The signatory's full name and signature remain visible. While up to ten voters may sign a single petition sheet, canvassers are advised to keep signature sheets concealed except when they are being signed. Elections BC is unable to determine the impact of these issues on the likelihood of voters to sign a recall petition. The recall model proposed in the draft Bill and White Paper should eliminate these privacy issues in the UK.

11. A petition verification process is conducted by Elections BC after the petition is submitted by the proponent to determine if sufficient eligible voters have signed the petition for the MLA to lose their seat. Although it is not provided for in the legislation, to ensure transparency and procedural fairness, the Chief Electoral Officer authorizes the proponent and MLA to each have up to two observers present during the verification process. Observers watch the process to ensure verification is consistent and complies with the requirements of the legislation. Observers swear an oath not to publicly disclose the proceedings they observe, including any personal information they may see.

12. Once a petition has been submitted and the success or failure of the petition is determined by Elections BC, the Recall and Initiative Act only permits the public inspection of a petition by an individual who has satisfied Elections BC that they intend to use that information for an authorized purpose. An authorized purpose is generally limited to the administration of the recall process by Elections BC; for the purposes of the Recall and Initiative Act; for another provincial, municipal or federal electoral purpose (previously interpreted to



mean the administration of an electoral event by an electoral management body); or to enable an MLA to communicate with voters. It is the last permitted use that has led to a risk of perceived intimidation.

13. After one of the most recent recall petition campaigns, there were claims in the media that the MLA subject to the recall intended to request to inspect a copy of the petition. This was claimed by some individuals to be an act of intimidation, by trying to identify those that signed the petition to remove him. The MLA later responded although it was his right to inspect the petition, that his intent was only to determine the number of individuals who signed the petition (a cursory inspection revealed that the petition in question was well short of satisfying the signature conditions and so Elections BC did not perform a formal verification of the actual number of signatures). The MLA ultimately did not submit a request to inspect the petition.

#### CAMPAIGN SPENDING

14. Defining recall advertising and determining if specific activities meet the definition are two challenges for Elections BC in administering recall. The proposed £500 threshold for non-accredited campaigners will eliminate some of those issues under the UK model, as many of the activities that require this evaluation in British Columbia are free or very low cost.

15. The financing regime established by the Recall and Initiative Act is silent with respect to political parties. That is, even the political party of the MLA subject to recall is treated in the same manner as any other individual or group that wishes to conduct recall advertising for or against the recall petition, with the same registration requirements and spending limit as those entities. As the third party advertiser regime was established for a very different type of entity, the UK proposal to recognize the unique role of political parties in the recall process is commended.

16. The proposal in the white paper to parallel provisions of the Political Parties Elections and Referendums Act 2000 with respect to campaigners, donors and reporting requirements should make the understanding of, and therefore compliance with, recall financing provisions easier for all affected groups.

17. If the Committee has any further questions about the matters discussed above, or any other aspect of the recall process in British Columbia, please do not hesitate to contact my office.

*January 2012*

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#### **Written evidence submitted by the Committee on Standards in Public Life**

1. The Committee on Standards in Public Life ("the Committee") welcomes the opportunity to comment on the Government's Draft Bill providing for recall of Members of Parliament.

2. The Committee supports the principle that constituents should be able to petition for the recall of an MP whose conduct falls seriously below the standards expected of those elected to public office but which does not trigger automatic disqualification under the Representation of the People Act 2001. The proposals would give the House a broader range of sanctions to use in occasional cases of serious wrongdoing, while leaving the final judgement on an MP's conduct to their constituents.

3. The proposal is that, to be effective, a petition would need to be signed by 10% of those on the electoral register in the relevant constituency. The paper accompanying the draft bill acknowledges that this is lower than the analogous threshold in some other countries. The appropriate trigger level is clearly a matter of judgement, but the relatively low level required could leave the process open to abuse through manipulation of postal or proxy votes. Parliament may wish to consider banning the use of signatures sent though the post or by proxy.

4. In our Twelfth report on MPs' expenses and allowances (Cm 7724) we recommended that there should be at least two lay members on the Committee on Standards and Privileges as a step towards enhancing public acceptance of the robustness and independence of the disciplinary process. It is disappointing that this recommendation to strengthen those procedures has not yet been implemented despite the Committee on Standards and Privileges and the House both endorsing the proposal. We believe that this is an essential requirement, particularly as it will be up to the House of Commons to decide in most cases whether to send a specific case for recall, both to demonstrate that MPs are accountable to the people they serve and to enhance public acceptance of the robustness of the process, whether in the consideration of recall, expulsion or the range of less serious sanctions available to the House.

5. Finally, we would support a low campaign spending limit in respect of recall petitions.

*January 2012*

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### Written evidence submitted by Nick Cowen, Civitas

(Please note that Civitas has no views as an organisation and this response represents my personal view as a policy researcher.)

#### QUESTIONS

*The Government's aim in introducing a recall mechanism is to "go some way to restoring public confidence in MPs and Parliament as a whole". Are the Government's proposals likely to achieve this aim?*

1. The consultation on this proposal is very laudable. However, it is not clear whether the proposal, as suggested, would have a significant impact on the behaviour of MPs and so may not do all that much to increase public confidence in MPs.

*Are there political risks inherent in the Government's policy and its specific proposals that we should take into account?*

2. The main risk is that recall petitions are applied arbitrarily to MPs, rather than on the basis of an objective standard of wrongdoing. This is acknowledged as a key challenge in the draft proposal. When developing the legislation, I would argue that it is crucial to pay attention to the formal powers given to particular bodies to initiate a recall. It can never be assured that such bodies will always and forever use those powers in a way intended by legislation and so an objective control on petition powers is necessary.

*Do the two triggers for a recall petition proposed by the Government adequately capture the kinds of "serious wrongdoing" by MPs that concern voters the most?*

3. I am not convinced that they do at this moment.

*Is it appropriate that a custodial sentence of any length of a year or less, whether suspended or not, for any criminal offence, and no sentence of any other kind, should always trigger a recall petition?*

4. This is the preferred trigger as it involves an independent judicial trigger to decide eligibility for recall.

5. However, it would be arguably more appropriate to widen the risk of recall to MPs convicted of any indictable offence (see paragraph 83 for a similar option), regardless of the sentence passed. Indictable offences tend to be serious breaches of the law, and they are an objective measure that can establish an MPs eligibility for recall. This is not to suggest that every single indictable offence in every circumstance implies that an MP is unfit to represent their constituency. For example, MPs may be involved in civil disobedience against what they (and their constituents) may feel are unjust laws. However, their constituents should have the opportunity to decide, democratically, whether they are still fit to serve.

6. Another challenge for this approach is timeliness. In the wake of the recent expenses scandal, several MPs were eventually convicted of fraud and theft offences, but only after a period of investigation. In many cases, they had already stood down as MPs at a general election. In a sense, this shows that the system already works at removing MPs democratically, albeit slowly. The question is whether the recall petition is likely to add anything to this process. In order to do so, MPs would have to face prosecution sooner than has usually been the case in the past.

7. One way to achieve this might be to tighten up procedures in the police and the Crown Prosecution Service. Alternatively, it might be the very political sensitivity of accusations against MPs that makes these bodies take so much care before initiating a prosecution. In fact, this is arguably also a central problem with respect to regulating newspaper corporations, who appear to have used their political clout to avoid being investigated or prosecuted for criminal wrongdoing stretching back over several years.

8. If political sensitivity (rather than gathering strong enough evidence) is part of the problem, then it might be worth considering a more independent approach to starting prosecutions against politically powerful agents. In the United States, grand juries (randomly selected citizens who decide whether a prosecution is viable and in the public interest) have sometimes played an instrumental role in gathering evidence and initiating prosecutions against powerful individuals. Since, as jurors, they have no career interest in the criminal justice system, they have less reason to fear the response of a politically powerful actor whom they decide should be prosecuted. In the long-term, re-establishing such an institution might be a good way of allowing greater independent scrutiny of the politically powerful.

*Is it appropriate for Members of Parliament to be involved in deciding whether an individual colleague should face a recall petition?*

9. In my opinion, it is not. There is a risk that a recall petition will be wielded (or avoided) on the basis of political considerations rather than individual MP behaviour. The key problem here is that a fair process must have controls both on an affirmative decision to trigger a petition, and a decision not to trigger a petition when serious wrongdoing has taken place. This is in a context where the agents responsible for the decision will feel

significant, perhaps overwhelming, pressure to be partial to allies or potential allies in Parliament, especially those who might be able to help or harm their career progression.

*Would the House of Commons need to ensure that its internal procedures had met particular standards when triggering a recall petition? What if anything would need to be done to ensure this?*

10. N/A.

*What are your views on the Government's proposals for the conduct of the recall petition process?*

11. I can think of fewer other processes that would make a petition less likely to be signed than the one proposed in the consultation document. Requiring individuals to attend one location to sign the petition does too much to balance the security of the petition against the convenience of signing it.

12. Many US states allow recall petitions to be collected by campaigners using careful formatting and signature criteria. Although there are always legal disputes about the validity of a proportion of the signatures, it is usually clear whether enough eligible petitioners have requested a recall. The process admittedly looks messy but, at least, it engages voters. The process suggested in the consultation document, by contrast, will mean that petitions will be unseen and unknown to a great many constituents.

13. An alternative approach could involve an online petition system. Such a system could allow constituents to link a secure online account to their entry on the electoral register and add their signature to petitions using a PC or a smartphone. While there are additional security implications when using a remote system, in my opinion, the advantages of a more publicly engaging system outweigh the risks.

14. Finally, to reflect the difficulty of generating political engagement in some constituencies, I would suggest making the trigger threshold 10% of total votes cast in the constituency at the previous general election, rather than the total number of voters on the parliamentary electoral register. This would lower the bar to recall in areas of low turn-out, while making it a bit harder for MPs previously elected on a more popular mandate to be recalled.

*Are the Government's proposals appropriate on campaign spending and funding during the recall petition period?*

15. The proposed regulations on campaign spending are admirable in intent, but in practice, could involve more disadvantages than benefits. My intuition is that it would be better not to introduce any regulation in this matter.

16. Political campaigns certainly benefit from financial support, but their success is much more reliant on elements that money cannot buy. These include the prevailing economic conditions at the time of the election (with good conditions benefitting incumbents and poor conditions benefitting challengers), the relative charisma of the candidates and their party leaders, their track record (if any) in office, and their ability to articulate a set of engaging policies.

17. As it stands, the need to follow campaign regulations could create a distraction from the actual issue of the petition and the recall campaign. An increasingly common feature of election campaigning is a dispute not so much over the substantive and moral raised by campaign donations, but whether MPs and their staff have followed the letter of frequently very complex law. This raises the barrier to entry to new parties and new candidates who have to cope with a bewildering array of legal obligations, and encourages the professionalization of politics.

18. The light-touch option for campaigns with little funding is to be commended. However, the suggested regulations seem to create an inevitable likelihood of dispute. By not requiring campaigns spending £500 or less to make a declaration, the obvious question will be whether an unaccredited campaign is, in fact, breaking the rules spending more than £500 without reporting it. There will be other questions such as whether support received as benefits in kind (for example, free photocopying or printing from a local business) should count towards the spending limit and how it should be counted.

19. This could submerge the question of the petition and recall itself in controversies over process.

### Written evidence submitted by the Electoral Commission

1. The Electoral Commission is an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. Our objectives are:

- Transparency in party and election finance, with high levels of compliance.
- Well-run elections, referendums and electoral registration.

2. Our core principles for elections and party finance are:

- *Trust*: people should be able to *trust* the way our elections work.
- *Participation*: it should be straightforward for people to *participate* in our elections, whether campaigning or voting; and people should be confident that their voice counts.
- *No undue influence*: there should be *no undue influence* in the way our elections work.

3. This submission sets out our views on the Government's White Paper and draft legislation on the recall of MPs.

4. It is unclear at this stage whether the Government has a clear plan for introducing legislation and, as the White Paper makes clear, the Government may ultimately decide to adopt an entirely different recall model. These views are therefore confined to the particular model of recall set out in the White Paper. We have set out some issues that we think government and Parliament should consider in developing their thinking on recall further. It is also possible that Parliament may choose to amend its own rules in the light of debate following this White Paper. Whilst we can see that would be one way of addressing some of the issues raised during the consultation, we would not want to express a view on something which is for Parliamentarians to decide.

5. The recall petition mechanism is not analogous to current UK electoral events such as an election or referendum, although it is proposed that the process will be overseen by the relevant Returning Officer. It may not, therefore, be appropriate to apply directly current models for the conduct of elections and regulation of campaign spending to this process.

6. We have raised a number of issues below relating to the administration of the petitions and party and election finance, assessing these proposals against our core principles of trust, participation and no undue influence.

7. The Commission will be responding directly to the Government's White Paper, sharing the views we have raised here, in due course.

### ISSUES RELATING TO THE ADMINISTRATION OF RECALL PETITIONS

8. The White Paper envisages a process whereby, once notice has been given that a trigger condition for recall has been met, eligible constituents may sign the petition in person, by proxy or by post by specific request for a set period. Each signature sheet will be submitted separately and may not be viewed by others nor will cumulative totals be released; it will be for the Returning Officer to determine whether the petition has been reached the total number of signatures required.

9. The draft Bill proposes that Returning Officers in Great Britain must make the recall petition available to be signed in only one place within the constituency. The draft Bill provides that electors in Northern Ireland would only be able to sign recall petitions by post. We do not believe it is appropriate to provide significantly different arrangements for electors in Northern Ireland to sign a recall petition than those in Great Britain, given the drive towards greater alignment in electoral law and practice between Northern Ireland and Great Britain.

10. The Government and Parliament should consider:

- Whether the proposals are sufficient to allow participation by a broad section of the eligible electorate, particularly amongst those who may not be able to attend in person the single designated venue in each local authority area. Though the petition may also be signed by proxy or by post, this may not be suitable for those unable to correctly complete the requisite postal petition signature forms.
- Whether concerns about intimidation of electors in Northern Ireland are based on sufficient evidence, and if this is the case, whether the restriction on electors signing recall petitions in person adequately addresses this.
- Whether there should be any independent user testing of the wording for the proposed recall petitions, in the same way that the intelligibility of referendum questions are assessed by the Commission against published principles.
- Whether it is appropriate that the levels of privacy and secrecy found currently in polling stations should be applied to petitions which are, by their nature, public statements which require transparency and verification to support trust in the process and the result.

## REGULATION OF CAMPAIGN SPENDING AND DONATIONS IN RESPECT OF RECALL PETITIONS

11. The draft Bill contains no clauses on the regulation of campaigning in respect of recall petitions, but the White Paper states that: “*The Government believes that spending and donations during the recall petition process should be regulated, in the same way that spending and donations are regulated during other democratic processes, such as elections and referendums*”.

12. The White Paper also sets out proposals for the regulation of campaigning, which appear to be largely modelled on aspects of the current rules for candidates at elections, under the Representation of the People Act 1983 (RPA), and the rules for campaigners at major referendums, under the Political Parties, Elections and Referendums Act 2000 (PPERA).

13. The Electoral Commission regulates these RPA and PPERA rules. However, the White Paper proposes that regulation of the rules relating to recall petitions “*would be the responsibility of the relevant returning officer*” with the Commission having “*a power to provide advice and assistance to campaigners and returning officers as it does to permitted participants in referendums and returning officers at elections*”.

14. The current models for regulating spending and funding at UK elections may not be appropriate for recall petitions. This view is consistent with what we understand to be the Government’s intention that, while spending and donations relating to recall petitions should be regulated in some way, this should not necessarily be done in the same way as at elections.

15. The current models for regulating campaigning at UK electoral events can be seen as a “spectrum” in terms of scope and robustness:

- Campaigning by *political parties and non-party campaigners at major electoral events* (such as UK Parliamentary general elections, elections to the devolved legislatures and the European Parliament, and regional and national referendums) is subject to PPERA rules which are enforced by the Electoral Commission, an independent regulator which has a statutory remit to secure compliance and has powers to provide guidance to campaigners, investigate suspected breaches of the rules and sanction any failure to comply with the rules.
- Campaigning by *candidates at elections* is subject to RPA rules. The Electoral Commission has a remit to secure compliance with these rules,<sup>14</sup> but it has no investigative powers in respect of breaches and no sanctions of its own—instead, it can refer suspected breaches of the law to the police or prosecuting authorities.
- Campaigning at *local referendums* is subject to spending limits which are set out in legislation, but the Electoral Commission has no remit to secure compliance with them.

16. As noted above, the White Paper proposes regulation of campaigning in relation to recall petitions by the relevant Returning Officer, with the Commission only having the function of issuing guidance—which we presume will be non-binding. This is in some ways comparable with the current arrangements for the conduct of elections, but is a novel approach in respect of the regulation of campaigning.

17. The White Paper does not give detailed reasoning for its choice of this approach, although it suggests principles that should inform the design of the regulatory model, which are similar to the Commission’s own core principles of trust, participation and no undue influence in respect of elections. The White Paper also briefly outlines why alternatives, including no regulation of campaigning, have not been adopted.

18. In considering the arrangements for regulating campaigning around recall petitions, we recommend that government and Parliament should consider:

- Whether a recall petition process that allows regulated campaign spending and fundraising is the most effective and efficient policy response to the issues that the process seeks to address.
- How often petitions are likely to be used in practice if these proposals are introduced.
- Where the regulation of recall petitions should sit on the “spectrum” outlined above. This in turn will depend on whether and how far robust regulation of campaigning, supported by appropriate powers and sanctions, is thought to be needed in order to give voters confidence that the petition process is free of undue influence and is worthy of their trust.

19. We have two practical observations about the proposals in the White Paper. The first is that returning officers do not have experience of regulating campaigning, and are likely to need support in order to be able to carry out this role. The White Paper proposes that the Commission would have a power, but not a duty, to provide guidance to Returning Officers; but that guidance would not be binding, and the Commission would have no role in policing compliance with the rules.

20. The second is that the Electoral Commission does not routinely produce guidance on the regulation of campaigning in respect of electoral events which we do not regulate, and that taking on this role for a new regulatory regime, applying to a process which is not an election or referendum, would have potentially significant resource implications. If we were given a power to produce such guidance, we would need to

<sup>14</sup> Except at Scottish local government elections—PPERA s.145(2)

determine the additional resources that would be required to deliver this, if and when the proposals are introduced.

February 2012

### **Written evidence submitted by Professor David Judge, Professor of Politics, University of Strathclyde**

1. In responding to the Committee's call for evidence, this paper presents an abridged version of a paper on the *Recall of MPs' Draft Bill* submitted by the author to the Cabinet Office at the invitation of the Minister for Political and Constitutional Reform. As such it focuses upon the Cabinet Office's invitation to "trigger a debate on what would be the best model for a recall mechanism" and responds to a stated willingness to "consider alternative models" (Cm 8241 2011: 5–6). In this sense this paper does not directly address the specific questions listed in the Committee's call for evidence (though questions 1, 2, 3 5, and 6 are covered indirectly), but does draw to the Committee's attention some of the wider issues associated with recall.

2. The starting point for my comments is the Cabinet Office's Impact Assessment contained in the White Paper (Cm 8241 2011: Annex G).

#### **CABINET OFFICE'S IMPACT ASSESSMENT**

3. The Evidence Base for the Cabinet Office's Impact Assessment (Cm 8241 2011: 55 Annex G) identifies the MPs' expenses scandal of 2009 as the immediate trigger for the commitment to introduce a form of recall, made by all three main political parties at the 2010 general election.

4. By the time the Cabinet Office's Impact Assessment was drafted in 2011 recall was presented as the only viable option. The "base case" option—to do nothing—and continue with the existing arrangements had been automatically ruled out as it did not fulfil the commitment for recall provision made in the Coalition Programme for Government. This left one option, a recall petition to be triggered: i) automatically in cases where an MP had been given a custodial sentence of 12 months or less; and ii) under the discretion of the House where an MP had been found to have been engaged in "serious wrongdoing". Yet, the Impact Assessment did not consider two other options, both of which had been raised in the wake of concerns about the probity of MPs in 2008–09.

#### *Unconsidered Option 1*

5. Gordon Brown as Prime Minister had raised two possible alternatives to the status quo in 2009: i) effective exclusion and ii) recall for gross financial misconduct identified by the new independent regulator and the House itself. In his statement to the House of Commons on 9 June 2009 it was clear that there were options in the plural: "new proposals for dealing effectively with inappropriate behaviour, including the potential *options* of effective exclusion *and* recall for gross financial misconduct" (HC Debates 10 June 2009: col 796). He went on to repeat: "We will modernise the means by which we deal with those issues where exclusion *or* recall is a possibility" (HC Debates 10 June 2009: col 803).

#### *Considering unconsidered option 1*

6. The immediate responses to the MPs' expenses scandal were targeted at dealing with "the problem" of the expenses regime, the parliamentary norms associated with that regime and the widespread belief, shared by the public and MPs alike, that self-regulation had been thoroughly discredited. In rapid succession an Independent Parliamentary Standards Authority (IPSA) was established with a new scheme for MPs' allowances coming into effect in May 2010, a review of the Code of Conduct was initiated in the new Parliament, and, as part of the "recalibration" of the regulation of MPs activities to "conform with public expectations" (Cm 7224 2009: para 13.67), the Committee on Standards in Public Life proposed in November 2009, and the House debated (in December 2010), and the Government supported, the principle of the inclusion of at least two lay members on the Committee on Standards and Privileges. The rationale behind all of these measures was to enhance "public acceptance of the robustness and independence of the disciplinary process for Members of Parliament" (Cm 7724 2009: para 13.67).

#### **Cumulative Impact of Changes**

7. These measures have, according to the Public Accounts Committee, provided a system for paying MPs expenses that is "robust and has improved public confidence" (HC 1426 2011:5), and, according to Sir Ian Kennedy the Chair of IPSA, there is a "very significant sense that public money is now much better looked after than under the old system" (HC 1484ii 2011: q257).

8. The increase in public confidence was evident in an IPSOS MORI question commissioned by the National Audit Office in May 2011 that found that 55 % of respondents believed that the situation with expenses had improved (HC 1273 2011:7). If the decline in public interest in the publication of MPs' claims is also taken as an indicator of diminished concern over such payments, then IPSA noted that interest had declined from 10,000 unique website hits in December 2010 (the first round of published claims) to 86 in July 2011 (HC 1426 2011:ev 19).

9. In terms of the changed profile of claims for expenses, the position was reached within the first year that 99.7 % of MPs' claims were within the scheme rules (with the remainder rejected primarily because of administrative errors or other oversights (HC 1426 2011:7)). Indeed, the overall assessment of IPSA's Acting Accounting Officer was that: "[MPs] are not attempting to game the system. By and large the claims are boring, and that is good" (HC 1426 2011: q48).

10. This "regime change" has been achieved without recall, and within the "unique constitutional structure" noted in the White Paper. This is not to underplay the chafing of the new regime against some of the precepts of that structure (most notably on issues of parliamentary privilege) but simply to note that the initial "problem" of the old expenses regime has been addressed directly through legislation and through practical reviews post-2009.

#### Effective exclusion: use of existing powers

11. If the problem to be addressed is conceived in terms of the regulation of MPs' financial probity and their conduct in the performance of their public duties, the cumulative changes noted above have gone some considerable way to mitigating the initial problem. The norms of the House have changed to the extent that conscious infringement of the new expenses regime is unlikely, and, consequently, use of the disciplinary powers of the House to deal with such infringements is also less likely.

12. An alternative to recall, therefore, would be for the House to revisit the use of the expulsion procedure. Working from an investigation by the Parliamentary Commissioner for Standards, and after consideration by a reconstituted Standards Committee (if proposals for the inclusion of lay members is accepted), a motion to expel a Member would be moved. Depending upon the circumstances, and in accordance with established custom, a Member would be ordered to attend the House to offer an explanation. If the House accepts the motion the Member would be expelled and a writ moved for a by-election. An expelled Member would be able to seek re-election to the House.

13. The advantage of this option is that it simply revises and updates the historic disciplinary powers of the Commons and is nested within the established doctrine of parliamentary sovereignty.

14. The bald statement in the White Paper that: "the House of Commons rarely uses the power to expel MPs" (Cm 8241 2011:13) begs the question: why?

15. One part of the answer is that an MP faced with the prospect of expulsion may choose to resign voluntarily. However, should an MP choose not to resign, the sanction of expulsion is still available to the House. In the recent case of Eric Illsey, for example, had he chosen not to resign—and to serve his sentence of 12 months while seeking to continue as an MP—the option was not that nothing could have been done in the absence of recall, but that the power of expulsion could have been invoked in this case.

16. If part of the answer rests upon one, or a combination, of the following factors (identified by proponents of recall) then voters would have every right to be mistrustful of enhancing the power of expulsion: i) votes in the House on an expulsion motion would be decided on the basis of party voting—either inter-party or intra-party (a "settling of scores"); or ii) the Standards Committee acted as "Westminster grandees" (Carswell 2011) and so would be either reluctant to recommend expulsion, or be too ready to do so in the face hostile media campaigns.

#### *Unconsidered Option 2*

17. In February 2008 the foreshock of the Conway case, before the mainshock of the 2009 expenses earthquake, prompted 27 "freshmen" Conservative MPs to sign a letter making the case that: "consideration should be given to creating a recall mechanism, similar to that used in some US states, to enable constituents to vote on whether they remove their MP during the course of a Parliament" (*Daily Telegraph* 29 February 2008). This has been interpreted subsequently as a more open-ended commitment to the principle of recall than the option presented in the White Paper. It is worth noting, however, that the signatories stated: "We would want safeguards to be put in place to ensure that this mechanism was not abused, such as requiring a high percentage of registered voters in a constituency to petition for a recall ballot, or only permitting a recall ballot when the Commons Standards and Privileges Committee has recommended it as a sanction".

#### *Considering Unconsidered option 2: "Open recall" (for want of a better term)*

18. The other option left unconsidered in the Impact Assessment was that raised initially by 27 Conservative MPs in their letter, and subsequently modified and promoted by Zac Goldsmith in his Presentation Bill introduced in September 2010: recall which enabled constituents to remove their MP in between elections, without limitation to "serious wrongdoing". In initiating a debate about "what the best model of recall would be" the Government has now declared its willingness "to consider other models and, in particular, different proposals for triggering a recall petition" (Cm 8241 2011:22).

## APPROPRIATENESS OF COMPARATOR MODELS

19. Annex E of the White Paper provides a listing of the main models for the recall of individual representatives found in the USA, Canada, the Philippines, and Venezuela. Recall provisions are not considered for collective recall elections of legislatures in Switzerland (Canton), Germany (in six Länder), Lichtenstein, Japan (local government assemblies) and proposals currently under consideration in New South Wales, Australia for recall of the State's Legislative Assembly.

20. Most of the models of recall for individual representatives are summarily dismissed as comparators in the White Paper because they allow for a politician to be recalled for "political reasons" and thus infringe the Government's commitment to introduce recall only where MPs' conduct "falls below the standards expected of those who hold public office" (Cm 8241 2011:47). The belief that "it is our view that no model can simply be imported", and that what is needed is a "bespoke recall mechanism which we believe best fits our model of representative democracy", would appear to preclude from the outset the meaningful consideration of other models.

21. Yet it is worth examining other models to: i) shed light on the problems that were being confronted with the introduction of recall mechanisms; and ii) identify the difficulties/issues associated with their "political" nature. In the following section the comparator countries are "Anglo American" democracies of the USA and Canada.

### *Problem addressed by the introduction of recall*

#### Recall in United States of America

22. There are no recall provisions at federal level (see Maskell 2012). Nineteen state constitutions allow for recall of state officials and 29 allow for the recall of local officials (NCSL 2011). Eight states require specific grounds on a recall petition, these often encompass "malfeasance, misfeasance" (New Mexico, Florida, Washington) or "misconduct, malfeasance, nonfeasance" (South Dakota). In the other 11 states recall can be sought on any grounds; with some states requiring reasons to be stated on the petition.

23. The basic problem to be addressed through recall elections was the perception in the early 20th century (when the first wave of recall elections were included in state constitutions) that "state capitols and city halls [were] infested with the privileged, the sinister and the corrupt" (Cronin 1989:130). In other words, recall in the United States had its origins "in a notably corrupt political system" (Cronin 1989:131; Pack 2008:692). Similarly, more recent adoptions of recall "took place against a backdrop of a series of wide ranging and massive corruption scandals" (Bowler 2004:203).

24. Thus it is worth bearing in mind the context of the introduction of recall in the USA, as well as remembering that recall was often only one part, and often the most contentious part, of a triptych of reforms—of the initiative, referendum and recall (Weinstein 2005:133). This triptych relationship may explain in part the reason why recall at state level has been relatively little used: if policy disjunction between representative and represented is the source of contention then an initiative or a referendum on a particular policy may be more efficacious and efficient (with lower trigger thresholds) in addressing the issue than recall. Indeed, it has been speculated that the adoption of a recall mechanism in isolation may give rise to more recalls in other countries than has been the case in the USA (Jackson et al. 2011: 40).

#### Recall in Canada: British Columbia

25. The introduction of recall in British Columbia's *Recall and Initiative Act 1995* has been explained as a response to rising alienation from the parliamentary system (Ruff 1996:101). The background explanatory variables leading to the adoption of recall included a strong "populist culture" (see Ruff 1996:99), a potent mix of political scandals, combined with party electoral manoeuvring and bidding before the 1991 election (that saw the introduction of the 1990 *Referendum Act* and the promise of the ruling Social Credit Party to place on the election agenda the extension of citizens' participation, through the introduction of initiatives and recall).

26. In this sense the background to the introduction of recall in BC is perhaps most analogous to the context of the UK. Moreover, the constitutional DNA of British Columbia interweaves genetic strands distilled from the Westminster model. British Columbia differs from the UK, however, in drawing upon a pronounced, historically rooted populist political tradition. This has found reflection not only in the introduction of the citizens' initiative, referendum, and recall, but also in the British Columbia Citizens' Assembly of 2004.

### *What Does Comparative Experience Tell Us?*

#### *(i) Once introduced recall provisions continue*

27. In the US "no state has backed away from the recall after adopting it" (Spivak 2012) despite evidence, from elected officials and voters alike, of misgivings over its practice (Bowler 2004:211, and see, for example, attempts to limit "open recall" in Nebraska 2011). Only Alberta in Canada has abandoned recall once introduced. Recall was implemented under the *Legislative Assembly (Recall) Act 1936* and operated for one



year until its repeal in 1937. William Aberhart, the then Premier of Alberta, repealed the Act with retrospective effect from the date of its Royal Assent after being personally subject to its provisions in the first recall petition.

(ii) *Sub-national usage*

28. In the US recalls are most frequent at local level. Recalls serve as a powerful accountability mechanism in a context of: i) often personalised, low-intensity, or non-partisan elections, ii) low voter turnout, iii) occasionally maverick incumbents, and iv) the absence, or ineffectiveness, of alternative formal mechanisms of control, such as monitoring agencies, or informal accountability mechanisms, such as intra-party discipline. In these circumstances, inter-election direct accountability through recall—of representatives performing functionally specific tasks, for example school board members, sheriffs, soil and water conservation supervisors, etc—has an immediate logic. As Orr opines: “Recall elections fit a US-style, candidate centred politics”. In systems “rooted in Westminster forms and traditions”, however, he believes that they are “inadvisable” (Orr 2011:1).

(iii) *Infrequent use?*

29. In 1989 Cronin concluded that: “Because of relatively infrequent use the recall has not usually been a disruptive factor in representative government” (Cronin 1989:145). Bowler (2004:208) later estimated that 95–97 % of incumbents at local level were safe from recall. Indeed, historically the combination of initiative, referendum and recall in US state constitutions served to limit the number of recalls, if for no other reason than because it was easier to prompt action, or redress divergent policy preferences between the represented and their elected representatives through initiative or referendum.

30. But the historical pattern of infrequent recalls was challenged in 2011 when over 150 elected officials faced recall votes in 17 states (84 of whom lost their seats). Since the adoption of recall in 1908 32 state legislators have faced recall: seven in the period 1908 to 1980, 14 between 1981 and 2009, and 11 recall votes in the single year of 2011 (Spivak 2011). In 2012 Wisconsin Governor Scott Walker will be only the third Governor to face a recall vote. As Spivak (2011) concludes: “the growth of recall is a long-developing trend. Don’t expect it to disappear anytime soon”. Even so the number of recalls, as a proportion of office holders potentially subject to recall provisions, remains notably small.

(iv) *Organised publics: parties and groups*

31. Whereas in the discourse of supporters of “open recall” “the public”, “the people” or “the constituents” are often conceived as aggregations of atomised, independently rational individuals, the reality of political life in representative democracies is that the “general public” remains unorganised and “specific publics” become organised into, variously, political parties, interest groups, NGOs and social movements. Moreover, it should also be noted that sections of the media seek to play a significant role in “organising” so-called “public opinion”.

United States of America

32. The Wisconsin case is particularly instructive because it reveals that although recall is a mechanism directed at individual representatives, multiple simultaneous elections can have a cumulative and collective effect upon both the composition and the policies of a legislature. More specifically, although a recall petition names an individual representative, the recall campaign may be contested on the grounds of wider partisan or organised interest politics (see Jackson *et al*, 2011:20; Davey 2011; Gilbert 2011; O’Brien 2012). Indeed, as has been noted by the Panel of Constitutional Experts considering the introduction of recall in New South Wales, “the Wisconsin experience demonstrates that recall elections can become “normalised”, and become part of the ‘standard tool-kit of political conflict’, rather than an ‘extraordinary measure’” (Jackson *et al*, 2011:22).

British Columbia

33. Since first use of recall in 1997, 24 recall petitions have been launched, only two of which secured sufficient signatories to proceed to the verification stage. Between 2003 and 2010 no recall petitions were launched. This has led to the conclusion that: “It would seem ... that the difficulty of obtaining recall in British Columbia has meant that potential tensions with the broader understanding of a member’s role in a Westminster system have not crystallised” (Jackson *et al*, 2011:58).

34. Yet the recent 2010 campaign against the Harmonised Sales Tax (HST) revealed just such tensions when the 1995 *Recall and Initiative Act* was used to register a *HST Extinguishment Act* as a citizen initiative. Accompanying this initiative, a recall campaign was launched to remove MLAs one by one, in an attempt to prompt the government to repeal the tax or be threatened with the possibility of losing its nine-seat majority. Ujjal Dosanjh, Liberal MP until the federal election in 2011 and former BC premier, expressed concern that the anti-HST campaign misused the recall provisions: “the recall legislation was not meant to cause an overthrow of government because you disagree with the public policy of that government.” With the decision to abolish the HST in August 2011 the recall campaigns fizzled out (after a referendum vote to abolish the tax—even though the 55% majority did not meet the 1995 Act’s threshold of 50% support of all registered voters).

(iv) *Effect on recallees*

35. The experience of representatives who have been subject to recall campaigns is worthy of note. Tom Cochrane, CEO of the United States Conference of Mayors, noted in the face of what he called “recall fever”: “Most mayors survive recall elections, but the effort drains them of time and energy better focused on problems facing their cities” (Cochran 2011). Similarly, in British Columbia, one former Member of the Legislative Assembly and then cabinet minister, who had been subject to a recall petition in the late-1990s, noted during the anti-HST campaign: “The reality is you are trying to be an MLA and a cabinet minister, while fighting an extended election campaign” (cited in Mickleburgh 2010). And one of the targeted representatives for recall in the anti-HST campaign, Ida Chiong, reflected upon her experience: “You can work hard as an MLA. You can think people are paying attention to the good things you’re doing. But if you don’t communicate and share the good work, people don’t know—and that works against you” (cited in Slavin 2011).

(v) *“One of the more uncomfortable aspects of the recall process is not so much how it unsettles politicians, but how it exposes vagueness in our definitions of representation” (Bowler 2004:211)*

36. If a system of “open recall” were to be contemplated in the UK with few, or no, restrictions as to trigger, such as in Zac Goldsmith’s bill, then the ambivalences and ambiguities of representation in the UK would rapidly manifest themselves. Not least, the fundamental questions: what exactly do MPs “do”, or what do their constituents expect them to do, and for which actions do constituents expect their MPs to be held accountable? The fact that there are multiple theories of representation prescribing what an MP should do, which exist in parallel and which influence MPs’ own behaviour and citizen expectations, combined with the fact that there is no accepted job description for MPs, means that idealised models of representation couched in terms of principal-agent relationships, or idealised job descriptors, fail to capture even the normative complexity of what MPs “should do”.

37. Stated at its simplest, conflicting representative theories have coexisted, often uneasily, in the UK and impacted upon the performance of MPs’ roles in Westminster (Judge 1999). In this sense, the practice of representation is far from uni-dimensional, and the adherence to contrasting principles of representation leads to an ambivalence in the interpretation of the representative’s role. This is apparent in recent academic studies (most recently in Rush and Giddings 2011: 104–34), as well as in public attitudes (see Committee on Standards in Public Life 2011:29–35).

38. The fact that there is no formally accepted job description for the work of an MP was recognised, by the Speaker’s Conference on Representation in 2010, as a source of “misunderstanding” and “unrealistic expectations” on the part of voters in the constituency (HC 239-I 2010:para 85). To date an agreed description of the main functions of an MP has not been produced by the main parties, as recommended by the Speaker’s Conference. An earlier attempt at identifying “a number of commonly recognised tasks” performed by MPs had been made by the House of Commons Modernisation Committee (HC 337 2007:para 10). In identifying six common tasks the Committee concluded that: “The different roles that make up the job of being a Member of Parliament are not separate and competing; they are interconnected and interdependent” (HC 337 2007:para 11). This very interconnectedness has implications for open recall: MPs supporting their party in votes in Parliament (task 1) may very well conflict with “representing and furthering the interests of their constituency” (task 2) and “representing individual constituents and taking up their problems and grievances” (task 3), and also inhibit their capacity of “initiating, reviewing and amending legislation” (task 5).

39. Recall is based upon a conception of a representative acting as an individual (with a personal vote) for a specific locality (constituency focus), whereas the prevailing practice of representation in Westminster is primarily collective (party based) and statal (national focus). So too is the practice of voting. Although incumbent MPs seek to enhance their electoral prospects, particularly in marginal seats, through cultivating a “personal vote”, and although this strategy has had some limited effect in recent elections (see Curtice *et al*, 2010:395), it still remains the case that valence politics—assessments of a party leader’s image or perceptions of a party’s economic competence or party identification—continue to be the most powerful variables in explaining voting behaviour (Clarke *et al*. 2012: 117–33).

40. The significance of this is: if there is neither a simple single conception of what MPs should do, nor agreement upon what they actually do, it is extremely difficult to determine what they are responsible for, in the sense of individual culpability (beyond personal malfeasance or misfeasance), and the grounds upon which they should be recalled.

41. The complexity of the performance of representative roles in Westminster is perhaps not surprisingly a source of confusion for many voters. The latest *Audit of Political Engagement* reveals that “views on whether or not participants felt represented by their MP very much relied on knowledge of who their MP was” (Hansard Society 2011:32). Even at this most basic level of knowledge only 38 % of respondents were able to name their MP correctly (Hansard Society 2011:63). Admittedly, the fact that the survey was conducted only six months after the 2010 election, after a high turnover of MPs, might have reduced name recognition, but even at its height in earlier surveys only 44 % of respondents had been able to name their MP (Hansard Society 2011:63). The significance of this finding for a discussion of recall is that many of the participants who did not know their MP’s name proceeded to extrapolate that their MP “must not be doing a good job of representing them because, if they did not even know who he or she was, how could they be doing so?” (Hansard Society

2011:32). Equally, participants struggled to reconcile their pronounced view of MPs as representatives of their constituents with the strongly held view of the importance of a party's mandate and the expectation that party MPs would be expected to support that mandate through the course of a Parliament (Hansard Society 2011:32). As the report noted, these views clearly ran counter to each other (Hansard Society 2011:32).

*The Uniqueness of the UK: Parliamentary sovereignty as an inhibitor of the adoption of "open recall"?*

42. The Government places great emphasis upon the UK Parliament's sovereignty, its "exclusive cognisance over its internal affairs", and its "role in holding the executive to account" (Cm 8241 2011:para 21). In so doing, the Government claims to have "created a new model that we believe best fits our system of representative democracy" (Cm 8241 2011:para 157).

43. Whereas the Government starts from the premise that the UK's "unique constitutional framework" (Cm 8241 2011:para 5) provides firm democratic foundations, supporters of "open recall" identify that very framework as inimical to securing enhanced accountability of MPs to their electorates. Without rehearsing such criticisms in detail here, their essence is that representative government in the UK, historically, has been conceived and functioned as a means of legitimating executive power (see Judge 1993). An executive-centric state has been justified in terms of a legislative-centric theory of parliamentary sovereignty. The practical pre-eminence of the executive in the UK state has thus been founded upon the theoretical "pre-eminence of the House of Commons". This has been the central paradox of the parliamentary state (see Judge 2006).

44. It needs to be remembered, however, that the normative political claims associated with parliamentary sovereignty are different from the legal claims of the doctrine. The political claims have accommodated significant recalibrations of the UK's constitution—membership of the European Union, devolution, the Human Rights Act—while keeping intact the formal legal claims that Parliament cannot bind its successors and that the UK Parliament can ultimately repeal the legislative acts sanctioning these constitutional changes. In other words, to assert the uniqueness of the UK's constitution is as much a political claim as a constitutional claim: and does not necessarily, or obviously, preclude the enhancement of participatory processes (as already demonstrated in the introduction of e-petitions, party primaries, citizens' juries, etc). Whether these processes are allowed to flourish is equally a political question—of whether the executive is prepared to self-limit its legislative pre-eminence. Critics of the draft recall Bill would argue, and have argued, that the White Paper answers this question in the negative.

*So what does all of the above mean for an assessment of the Draft Bill?*

45. If the problem to be addressed is "serious wrongdoing" (of the type associated with the old expenses regime) then the changes to, and greater regulation of, the expenses regime since 2009, and the institutional bolstering of "standards" more generally, have severely curtailed the opportunities for serious transgression of the new rules. When this is taken in conjunction with the extremely low numbers of MPs (aside from those embroiled in the expenses crisis) who have received custodial sentences, or been sanctioned under the House's rules for what might be identified as "serious wrongdoing", then *it is a reasonable expectation that the recall provisions of the draft Bill would be invoked only exceptionally*. Indeed, in the words of Spivak (2012), MPs would have to have done something "breathtakingly wrong" to be subject to recall under the Government's proposals.

46. At one level, therefore, the draft Bill addresses the specific problem of sweeping up the remaining wreckage from the car crash of the expenses scandal. At another level, however, a number of factors—the restricted trigger mechanisms, exclusionary processes for recording petition signatures, and the moral and political and contortions that would confront MPs in deciding what constituted "serious wrongdoing" sufficient to trigger recall—all point to the conclusion that *the draft Bill is likely to generate more problems than it would solve*. More damagingly, the restricted nature of the Bill, although entirely defensible in terms of manifesto commitments and the Coalition Agreement, would do little to assuage public perceptions of a "unique constitutional framework" that is consciously (and in the case of the draft Bill deliberately) exclusionary.

47. In which case further strengthening of the disciplinary procedures of the House, through *an enhanced expulsion procedure, might be considered as a cost effective and efficacious option* within the "UK's unique constitutional framework". Manifestly, this option would require MPs to explain and justify why this was a feasible option. Part of this explanation would undoubtedly have to entail affirmation from MPs that "we are not all cheating, lying miscreants" and that the revised regulatory standards regime was judicious, effective and durable.

48. If this affirmation were to be rejected by the public, then the introduction of "open recall" as part of a wider reformist participatory package would be the preferred option of many critics. In turn, this would bring to the fore the problems and issues already apparent in other states that operate recall elections. These problems cannot be wished away, and *a prior public debate (and educational campaign) about "what MPs do" or "what they should do" would be essential to any scoping of the triggers for recall*.

49. Whether "open recall" would do much to "restore trust in our political system" is a moot point. The significance of this phrase is that ministers have stated that recall is "an important part of the government's programme of measures" to do just that. As it stands the draft Bill is unlikely to achieve this objective. *The*

*Cabinet Office might be advised, therefore, to revisit the two options excluded from its initial Impact Assessment.*

January 2012

## REFERENCES

- Bowler, S (2004). "Recall and Representation: Arnold Schwarzenegger Meets Edmund Burke", *Representation*, 3: 200–212.
- Carswell, D (2011). "What Progress on Political Reform". Available at <http://www.bbc.co.uk/news/uk-politics-15108961>.
- Clarke, H, Sanders, D, Stewart, M and Whiteley, P (2012). "Valence Politics and Electoral Choice in Britain, 2010", in J Fisher and C Wlezien (eds.). *The UK General Election of 2010: Explaining the Outcome*, London: Routledge.
- Cm 7224 (2009). *MPs' Expenses and Allowances*, Twelfth Report, Committee on Standards in Public Life, London: Stationery Office.
- Cm 8241 (2011). *Recall of MPs Draft Bill*, London: Stationery Office.
- Committee on Standards in Public Life (2011). *Survey of Public Attitudes Towards Conduct in Public Life 2010*, London: Committee on Standards in Public Life.
- Cochrane, T (2011). "Recall Elections Waste Public Funds and Cause Chaos", *USNews*, 10 May. Available at <http://www.usnews.com/opinion/articles/2011/05/10/recall-elections-waste-public-funds-and-cause-chaos>
- Cronin, T E (1989). *Direct Democracy: The Politics of Initiative, Referendum, and Recall*, Cambridge MA: Harvard University Press.
- Curtice, J, Fisher, S and Ford, R (2010). "An Analysis of the Results" in D Kavanagh and P Cowley (eds) *The British General Election of 2010*, Houndmills: Palgrave Macmillan
- Davey, M (2011). "In Wisconsin, a Big Recall Push Comes Up Short", *New York Times*, 10 August. Available at [http://www.nytimes.com/2011/08/11/us/politics/11wisconsin.html?\\_r=2](http://www.nytimes.com/2011/08/11/us/politics/11wisconsin.html?_r=2).
- Gilbert, C (2011). "State Recall Movement Stands Alone in US History", *Journal Sentinel*, 12 March. Available at <http://www.jsonline.com/blogs/news/117804138.html>.
- Hansard Society (2011). *Audit of Political Engagement 8: The 2011 Report*, London: Hansard Society.
- HC 1273 (2011). *Independent Parliamentary Standards Authority: The Payment of MPs' Expenses*, Report by the Comptroller and Auditor General, London: Stationery Office.
- HC 1426 (2011). *Independent Parliamentary Standards Authority*, 51st Report Session 2010–12, Committee of Public Accounts, London: Stationery Office.
- HC 1484 (2011). *The Operation of the Parliamentary Standards Act 2009*, First Report Session 2010–12, Committee of Members' Expenses, London: Stationery Office.
- HC 239-I (2010). *Speaker's Conference (on Parliamentary Representation)*, Final Report, House of Commons, London: Stationery Office.
- HC 337 (2007). *Revitalising the Chamber: The Role of the Backbench Member*, First Report Session 2006–07, Select Committee on Modernisation, London: Stationery Office  
[http://www.senate.gov/CRSReports/crs-publish.cfm?pid='0E%2C\\*PL%5B%3A%230%20%20%0A](http://www.senate.gov/CRSReports/crs-publish.cfm?pid='0E%2C*PL%5B%3A%230%20%20%0A)
- Jackson, D, Thompson, E and Williams, G. *Recall Elections for New South Wales? Report of the Panel of Constitutional Experts*, Sydney: NSW Department of Premier and Cabinet.
- Judge, D (1993). *The Parliamentary State*, London: Sage.
- Judge, D (1999). *Representation: Theory and Practice in Britain*, London: Routledge.
- Judge, D (2006). "'This is What Democracy Looks Like': New Labour's Blind Spot and Peripheral Vision", *British Politics*, 1, 3, 2006: 367–396.
- Maskell, J (2012). *Recall of Legislators and the Removal of Members of Congress from Office*, CRS Report for Congress, Washington, DC: Congressional Research Service.
- Mickleburgh, R (2010). "B.C. HST Foes Launch Drive to Vote Liberals 'Off the Island'", *Globe and Mail*, 20 September 2010. Available at <http://www.theglobeandmail.com/news/national/british-columbia/fight-hst-launches-bc-recall-campaign/article1715074/>
- NCSL (2011). *Recall of State Officials*, updated 9 November 2011, Denver: National Conference of State Legislators. Available at <http://www.ncsl.org/legislatures-elections/elections-campaigns/recall-of-state-officials.aspx>

O'Brien B (2012). "Enough Signatures Collected to Recall Wisconsin Governor", Reuters, 17 January. Available at <http://www.reuters.com/article/2012/01/17/us-wisconsin-recall-idUSTRE80G1TB20120117>

Orr, G (2011). "Submission from Graeme Orr, Panel of Constitutional Experts—Recall Election Inquiry", Available at [http://www.dpc.nsw.gov.au/\\_data/assets/pdf\\_file/0014/131126/15\\_Dr\\_Orr.pdf](http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0014/131126/15_Dr_Orr.pdf)

Pack, T (2008). "High Crimes and Misdemeanors: Removing Public Officials from Office in Utah and the Case for Recall", *Utah Law Review*, 2: 665–696.

Ruff, N (1996). "The British Columbia Legislature and Parliamentary Framework", in R K Carty, *Politics Policy and Government in British Columbia*, Vancouver: University of British Columbia Press.

Slavin, K (2011). "Chong Reflects on 'Volatile' 2011", *Saanichnews*, 23 December, Available at <http://www.saanichnews.com/news/136159808.html>

Spivak, J (2011). "2011: The Year of the Recall Election", *Los Angeles Times*, 27 December. Available at <http://articles.latimes.com/2011/dec/27/opinion/la-oe-spivak-recall-20111227>

Spivak, J (2012). "A Recall Law—The New Must-Have Tool for Voters", *Total Politics*, 6 January, available at <http://www.totalpolitics.com/blog/287332/a-recall-law-the-new-musthave-tool-for-voters.shtml>

Weinstein, R (2005). "You're Fired! The Voters' Version of the 'Apprentice': An Analysis of the Local Recall Elections in California", *Southern California Interdisciplinary Law Journal*, 15: 131–63.

## Written evidence submitted by SCOPE

### 1. INTRODUCTION

1.1 Scope is pleased to submit written evidence to the Committee's inquiry into the proposals around introducing a right to recall Members of Parliament. We have not taken a firm view on the merits of the Government's proposals in terms of the likely effectiveness of the recall mechanism in the form put forward, some of its elements such as the proposed trigger and the threshold, or the involvement of Members of Parliament in deciding who should face a recall petition.

1.2 Therefore, we did not answer the questions in the Committee's inquiry, and only focus on our concerns in relation to the Government's proposals for the conduct of the recall petition process. We are keen to ensure that disabled people would be able to participate and express their opinion without any barriers if a recall petition were to be triggered in their own constituency.

1.3 Overall, we believe that there is a need to ensure that the needs of disabled people are properly considered in the design of the recall process. We are, nevertheless, concerned that disabled people may be denied the opportunity to hold their elected representatives accountable that the Government intends the recall process to be as a result of how it is proposed that the process would work in practice.

### 2. ACCESSIBILITY OF THE SINGLE LOCATION FOR SIGNING THE PETITION

2.1 We are concerned about the proposal to designate a single location for signing the petition.<sup>15</sup> We recognise that the White Paper sets an expectation that Returning Officers will be required to take accessibility into account when deciding which location to choose. However, this expectation is not reflected in the draft legislation. We recommend that the clause 7 ("Returning officer to make recall petition available for signature") in the draft Bill be amended to reflect the need for Returning Officers to properly consider disabled people's access needs in fulfilling their duties in relation to the recall process.

2.2 We would suggest that a similar wording is used to Section 16 of the Electoral Administration Act (EAA) 2006. This puts a duty on local authorities to "ensure that so far as is reasonable and practicable every polling station for which it is responsibility is accessible to electors who are disabled".<sup>16</sup> Given the nature of the recall process, this responsibility would naturally apply to the Returning Officer rather than local authorities.

2.3 The consequences of designating an inaccessible location for the signing of the recall petition would risk excluding disabled people, and denying them the opportunity to decide whether their elected representative should face a recall process. These concerns are further increased by the recognition in the White Paper that buildings which are commonly used as polling stations may not be available for the recall process, particularly taking into account the extended period of time for which these would need to be available.

2.4 Buildings, such as schools, are more likely to be built to be accessible to disabled people, so we are concerned that this may lead to a situation in which it would be more difficult for Returning Officers to access

<sup>15</sup> Cabinet Office (2011), Recall of MPs Draft Bill, CM 8241, <http://www.official-documents.gov.uk/document/cm82/8241/8241.pdf>

<sup>16</sup> Electoral Administration Act (2006), <http://www.legislation.gov.uk/ukpga/2006/22/section/16>

suitable buildings (particularly so considering the demanding timeframes that organising the recall petition process will inevitably involve).

### 3. SUPPORT FOR DISABLED PEOPLE AND ABSENT SIGNING

3.1 We are pleased to see in the White Paper recognition of the need for Returning Officers to assist disabled people to sign the petition during the eight week period that will be allowed for this process.<sup>17</sup> However, we are disappointed about the lack of detail in the document about the level of support that Returning Officers would need to provide to disabled people.

3.2 This is particularly relevant considering that the proposed process relies exclusively on the requirement to provide a signature for the petition to express support to the recall process to be triggered. This would create considerable difficulties for disabled people who may be unable to sign as a result of the nature of their impairment. We would be concerned if the expectation is for Returning Officers to assist in such cases by signing on behalf of the disabled person, as this would both undermine the secrecy of the process, and potentially lead to allegations of multiple signing and undermine the legitimacy of the process.

3.3 We recognise that the availability of an option to provide a postal signature may, to a limited extent, make the process more accessible for some disabled people and mitigate against the potential inaccessibility of the location chosen by the Returning Officer for the signing of the petition. However, this does not address the inherent inaccessibility of the process generated by the need to provide a signature, whether in person at the designated location or by post.

3.4 Whilst we understand the desire to safeguard the anonymity of the signatories of the petition, we are concerned that the reliance on signatures exacerbates the difficulties from having an exclusive paper-based system, and risks making the process inaccessible for many disabled people. The only remaining option for a disabled person who finds it impossible to sign a petition at the designated (inaccessible) location, or who cannot sign the petition by post due to their difficulties to provide a signature, is to rely on a proxy signing. This, too, may also pose difficulties if the regulations make provision that the proxy would need to be a voter from the same constituency where the recall process is taking place.

### 4. CONCLUSION

4.1 To sum up, Scope appreciates that the use of a recall petition is designed to be used cautiously and only when it is warranted by the circumstances. In light of this, we are aware that the potential barrier to disabled people exercising their right to participate in democratic processes would occur less frequently than in an election. Nevertheless, the impact of designing an inaccessible recall process would be as extreme when this occurs.

4.2 The overall purpose of the recall process is to introduce a new mechanism by which to restore public confidence in MPs and Parliament as a whole. It would therefore be disappointing if the Government were to put in place a mechanism that, instead of empowering disabled people to participate in the political process, would create additional barriers to making their voices heard.

February 2012

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#### **Written evidence submitted by Professor Anne Twomey, Professor of Constitutional Law, University of Sydney**

1. The Committee has asked a number of questions. They are addressed in turn below:

*The Government's aim in introducing a recall mechanism is to "go some way to restoring public confidence in MPs and Parliament as a whole". Are the Government's proposals likely to achieve this aim?*

2. I do not believe that the recall system proposed in the Bill will be likely to aid the restoration of public confidence in MPs and Parliament as a whole, particularly where there is a crisis such as the recent one concerning expenses. This is because (a) the proposed recall system cannot be initiated by members of the public; and (b) the time delay in a recall being initiated will be so long that the damage will already be done.

3. A fundamental aspect of recall in other countries is that it is voters who initiate the process by starting a petition. In the United Kingdom, the voters will have no power to initiate a petition to remove a Member of Parliament. This will occur automatically based upon triggers initiated by other institutions of government, namely a vote of the House of Commons or the imposition of a prison sentence by a court. The process remains strictly under the control of the institutions of government, with the people being given a very limited role. The people are therefore likely to feel powerless, despite the illusory promises of empowerment. It is a proposal that is intended to make it look like the people will be directly empowered to recall their Member of Parliament, while ensuring that this will probably never occur.

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<sup>17</sup> Cabinet Office (2011), Recall of MPs Draft Bill, CM 8241, <http://www.official-documents.gov.uk/document/cm82/8241/8241.pdf>

4. In reality, given its record on expulsions, the House is extremely unlikely to initiate a recall petition. As for persons convicted of a criminal offence who are imprisoned for 12 months or less, it is most likely that they would “resign” (ie cause their seat to be vacated) anyway. This would be particularly likely if the person was to face a potential recall and by-election, as it would be difficult to fight them while in prison and being disqualified from the right to vote. (Note that in Australia a person who was not entitled to vote, such as a disqualified prisoner, would not be qualified to nominate or be elected as a candidate in an election. This does not appear to be the case in the United Kingdom.)

5. The other difficulty is one of timing. When a political scandal arises that undermines the trust of people in their Member(s) of Parliament, there must first be an investigation, the laying of charges, a trial, conviction and sentence and the completion of all appeals before a recall is triggered. In the case of the expenses scandal, the first publication of expenses in a newspaper occurred in May 2009. Charges were not laid until February-May 2010 and convictions did not take place until December 2010-May 2011. Appeals would string out the process further. On average, it is unlikely that a recall petition would be triggered until at least two years after the scandal first broke. By that time the damage, in terms of loss of confidence and trust, would already have occurred. A recall petition two years after the event is likely to be regarded as too little, too late.

*Are there political risks inherent in the Government’s policy and its specific proposals that we should take into account?*

6. There are many political risks inherent in recall processes, but the Government’s proposal is so limited that it tends to avoid them. The main risks that arise in other countries are derived from recalls being used as a means by political parties or well-financed interest groups to remove politicians, change the balance of power in the Parliament, tie up the finances and energy of their opponents in fighting recall petitions, or pressure politicians into changing policies to avoid recall. If unfettered, a recall process can be used to “re-run” a lost election or “buy” a new election. The pressure of potential recall can also lead to short-term populism and discourage politicians from making hard but necessary decisions in the long-term interests of the country. It has the potential to change the role of MPs from responsible representatives who hold duties both to their constituents and the country, to agents of their constituents.

7. The Government’s proposal, however, avoids these problems by confining recall to cases of serious wrongdoing and limiting the circumstances in which it can be initiated.

*Do the two triggers for a recall petition proposed by the Government adequately capture the kinds of “serious wrongdoing” by MPs that concern voters the most?*

8. Technically, as the House of Commons could resolve that a Member face a recall petition for any reason, then all types of “serious wrongdoing” are covered. In practice, however, the House of Commons is unlikely to resolve that a recall petition be initiated if a Member is not convicted of an offence and does not receive a custodial sentence. It is arguable, however, that the primary types of actions for which voters would like the opportunity to recall Members are those that involve the misuse or abuse of a Member’s position and do not usually involve prison terms—such as breaches of entitlements, acts of dishonesty, misuse of parliamentary privilege, nepotism, making decisions that favour family members or business associates, and the like.

9. The type of “serious wrongdoing” envisioned by the Government would appear to be similar to that identified by the courts in New South Wales as being sufficient to justify the exercise of the inherent powers of a House of the NSW Parliament to expel a Member. Neither House of the NSW Parliament has the power to punish a Member, but each has an inherent power to expel Members to protect the orderly exercise of its functions and to maintain public confidence in the Parliament. To warrant expulsion, conduct must be of “sufficient gravity to render the member unfit for service” (*Armstrong v Budd* (1969) 89 WN (NSW) 241, 250). A Member is unfit for service if he or she engages in “serious misconduct” which shows that the Member should not be entrusted with parliamentary responsibilities. Conduct involving want of honesty and probity, in particular, falls within this category (*Ibid*, 250, 256 and 261).

10. However, in New South Wales, almost all cases in which Members have been expelled or the subject of expulsion motions have not involved any conviction or prison sentences, albeit that conviction may have followed later in some cases. They involved other findings by parliamentary committees, royal commissions and the like, which tended to show a want of honesty and probity or the misuse of the privileges of being a Member of Parliament. They included cases where:

- a Royal Commission had found that a Member improperly benefited from money appropriated by Parliament;
- a Member was drunk and disorderly on the floor of the House, defied the Speaker, made unfounded allegations of bribery and corruption against the Speaker and others, and threatened to knock the Speaker “into a sort of pulverized sausage”;
- a Member was found to have wantonly and recklessly made corruption allegations under privilege in Parliament without any foundation;
- a court judgment described a Member (who was a witness in a case) as a person who would not hesitate to give false evidence if it was in his interest to do so and who was party to an arrangement to bring false evidence before a divorce court;

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- a Royal Commission found that a Member had lied under oath, consorted with criminals and had associations with illegal casinos;
  - a Special Investigation into a collapsed property trust concluded that a Member lied under oath, abused his position as a Member of Parliament to place pressure on others and was deceitful in his duties as a company director;
  - a Special Commission of Inquiry and a parliamentary committee both found that a Member made false allegations against others, under parliamentary privilege, of serious criminal acts, without any reasonable foundation; and
  - the Independent Commission Against Corruption made findings of corrupt conduct against a Member because of his misuse of parliamentary entitlements and expressed the opinion that the House should consider his expulsion.

11. Hence, it would appear that “serious misconduct” worthy of expulsion (and presumably worthy of a recall petition) may indeed extend to actions beyond those involving conviction and imprisonment. These actions can also undermine public confidence in the Parliament and its Members, and constitute conduct unworthy of a Member of Parliament.

*Is it appropriate that a custodial sentence of any length of a year or less, whether suspended or not, for any criminal offence, and no sentence of any other kind, should always trigger a recall petition?*

12. If one is to institute a system of recall, it is certainly appropriate that any form of custodial sentence trigger a recall petition (where the seat is not otherwise automatically vacated). It should be remembered that this will only initiate a form of consultation with the electors. If there are mitigating circumstances or the offence does not involve moral turpitude (eg a car accident resulting from a momentary misjudgment) or the offence involves a political stance against a “bad law” which is supported by the Member’s constituents, then they are unlikely to petition to recall him or her. Indeed, inertia and laziness suggest that people are unlikely to sign a recall petition unless the Member concerned has acted in a manner sufficiently reprehensible as to cause voters to take the active steps involved in signing a petition in person or seeking a postal vote.

13. As noted above, it is not clear that only custodial sentences ought to give rise to recall. Other conduct that involves abuse of office, dishonesty or a lack of probity, whether the subject of criminal charges, conviction and sentence, or not, should be considered for inclusion within a recall trigger.

14. I note that in New South Wales, the provision for the disqualification of Members who commit criminal offences also includes disqualification where a Member is convicted of “an infamous crime” (Constitution Act 1902 (NSW), s 13A(1)(e)). This means that a person convicted of a crime involving some kind of deliberate deceit (eg fraud, forgery, perjury and bribery) is disqualified from Parliament, regardless of whether the sentence includes imprisonment or not. I would not recommend, however, that the British Government adopt such a provision, as the term “infamous crime” is both archaic and uncertain in its scope. For example, there was debate in NSW about whether a Member convicted for taxation offences was disqualified because some or all of these offences amounted to an “infamous crime”. There is, however, something to be said for having a sub-set of crimes for which any conviction, regardless of the sentence, warrants the triggering of a recall petition because the nature of the crime is such as to render a Member unfit for office.

15. On the subject of detention on mental health grounds, in paragraph 63 of the Government’s White Paper, it is noted that:

A recall petition would also not be triggered where an MP has been found guilty of an offence and, instead of being sentenced to imprisonment, is detained in hospital on mental health grounds. This is because such a detention would be solely on mental health grounds rather than on the grounds of the seriousness of the offence.

16. Presumably if an MP committed a brutal murder but was found not guilty by reason of insanity and detained in a mental hospital, he or she ought not continue as a Member of Parliament and should, at the very least, face the prospect of recall. I doubt that many constituents would wish to be represented by a killer detained in a psychiatric institution.

*Is it appropriate for Members of Parliament to be involved in deciding whether an individual colleague should face a recall petition?*

17. As a general principle, it is preferable for there to be an independent body that at the very least determines the facts or whether there is sufficient evidence to warrant a House making such a decision.

18. New South Wales has an Independent Commission Against Corruption (“ICAC”) which deals with corruption allegations made against Members of Parliament, local councillors and public servants. A finding of “corrupt conduct” does not of itself result in a Member’s seat being vacated, but it is regarded as grounds for an expulsion motion and in practice all Members (including a former Premier) who have been the subject of a finding of corrupt conduct have resigned. It is an effective means of investigating and identifying corruption and is one of the reasons why the recall of individual Members for serious wrongdoing is not regarded as



necessary in New South Wales. Once the ICAC has made adverse findings against a Member, their resignation is inevitable.

*Would the House of Commons need to ensure that its internal procedures had met particular standards when triggering a recall petition? What if anything would need to be done to ensure this?*

19. When the NSW Parliament has considered a motion for the removal of a judicial officer, questions arose as to whether there was a need for natural justice, whether the judicial officer had a right to address each House, whether he or she should be entitled to be represented by counsel and if so, who should pay for that representation.

20. As the House of Commons would be determining matters in relation to a Member (rather than a stranger), who would presumably have the right to speak on his or her own behalf in any such proceedings, then issues of natural justice are less likely to arise. However, if the Member were detained (eg under a mental health enactment or imprisoned in a foreign country) then a question might arise as to how his or her interests might be represented fairly in the House and the interests of natural justice satisfied.

*What are your views on the Government's proposals for the conduct of the recall petition process?*

21. The methods of postal voting and voting at a particular place seem particularly cumbersome and could be regarded as intended to discourage voters from acting. Consideration should be given to electronic petitions. When this issue was recently considered by an inquiry into the establishment of a recall process in New South Wales, the NSW Electoral Commission recommended a form of electronic registration of signatures on a petition which involved use of a PIN and other mechanisms to reduce the risk of fraud and make verification of signatures much simpler. The NSW Electoral Commission's submission can be found at: [http://www.dpc.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0016/131119/21\\_Colin\\_Barry\\_NSWEC.pdf](http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0016/131119/21_Colin_Barry_NSWEC.pdf). While non-electronic methods would still be needed to accommodate those who do not have access to the relevant technology or do not feel competent to use it, most voters would find it much easier to register their acceptance of a recall petition online. This would also potentially enhance the secrecy of the process, as signing a recall petition electronically can occur in one's own home without having to enter a formal polling place and without having to receive formal papers in the mail.

*Are the Government's proposals appropriate on campaign spending and funding during the recall petition period?*

22. Yes, these proposals appear to be appropriate.

*Are there any technical concerns in the detail of the proposed legislation that you would like to draw to our attention?*

23. There are a small number of drafting issues which might need attention.

24. Clause 4 of the draft Bill provides that a "court" must notify the Speaker of certain events, including the conviction and sentencing of a Member of the House of Commons, the fact that an appeal has been brought and that the appeal has been determined or otherwise disposed of. I am uncertain as to whether in the United Kingdom a "court" has a status as a legal person and whether obligations of this kind should be imposed upon it, rather than a judge or registrar. It is also unclear to me whether a court would necessarily know that a person was a Member of Parliament. Is the defendant obliged to notify the court of this fact? Is judicial notice relied upon? It may be the case that the "court", as an institution, is not made aware of this fact and therefore fails in its obligations under this proposed Act.

25. The Speaker's obligation in clause 5(1) to give notice to the returning officer must be performed "as soon as reasonably practicable" after the recall condition "has been met". Where the satisfaction of that recall condition involves conviction and sentence by a court and the expiration of the "usual" appeal period, the Speaker may not be aware when that condition is met. The notification requirements in clause 4 do not appear to include notification of the "usual period" in which an appeal may be made. The Speaker is only notified if an appeal has been made and when it is determined. The Speaker receives no formal notification that the usual time for an appeal has ended and no appeal has been brought. Further, this obligation is not based upon any notification, but rather upon the fact of the recall conditions being met. This could place the Speaker in some difficulties in having to make this assessment.

26. Under clause 9, the returning officer is to take no further action, except for the termination of the recall petition process and the notification of this to the Speaker, where certain conditions are satisfied. These include the fact that the Member's seat is vacated or the conviction, sentence or order in question is overturned on appeal. Again, how is the returning officer to know this? There is no requirement that the returning officer be notified of the overturning of a conviction, sentence or order, or that the Member's seat has been vacated. The Speaker would be made aware of both facts. Should the Speaker be obliged to notify the returning officer?

27. It seems a little odd to me that a person who was entitled to sign a recall petition in the constituency for part of the signing period, but did not do so, and then moved to another constituency where he or she was registered, remains entitled (under cl 10(5)) to sign the petition in his or her former constituency. I assume that

this provision is included so as not to distort the figure of 10% of registered voters, but it still seems peculiar. If a person wished to sign the petition, surely he or she should do so before moving to a different constituency.

28. As an Australian, clause 21(3) also seems peculiar to me. We would say that a section comes into force on the day on which it receives royal assent—not the day on which it is passed—as the Bill does not become an Act of Parliament until it receives royal assent, which may be on a day later than the date of passage. The effect of cl 21(3) would appear to be to give that provision a retrospective effect (albeit for a minor period). It is not clear why this is necessary. This may, however, be a consequence of a British drafting custom of which I am unaware.

#### OTHER MATTERS

29. The Committee may also wish to know that the New South Wales Government has recently published a report of a Panel of Constitutional Experts on “Recall Elections for New South Wales”. A copy may be found at:

[http://www.dpc.nsw.gov.au/\\_data/assets/pdf\\_file/0013/134221/Panel\\_of\\_Constitutional\\_Experts\\_-\\_Review\\_into\\_Recall\\_Elections.pdf](http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0013/134221/Panel_of_Constitutional_Experts_-_Review_into_Recall_Elections.pdf).

30. The Committee might also find useful a report that I prepared as a submission to the NSW Panel on Recall Elections, as it provides a close analysis of the operation of recall in other countries and the problems to which it can give rise. The Report may be found on the University of Sydney’s Constitutional Reform Unit’s website: <http://sydney.edu.au/law/cru/index.shtml>. A condensed version of this work has been published as: A Twomey, “The Recall of Members of Parliament and Citizens’ Initiated Elections” (2011) 34(1) University of New South Wales Law Journal 41.

January 2012

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#### **Written evidence submitted by Professor Joseph F Zimmerman, Professor of Political Science, Rockefeller College, University at Albany—SUNY**

1. The following evidence is based upon recall elections in the United States of America in 19 states with a constitutional provision authorizing the recall of state elected officers, 10 states with a statutory provision authorizing the recall of state elected officers, and general purpose local governments in the United States authorized by either a statute in 19 states or numerous but uncounted charter (constitution) provisions to employ the recall to remove all or a specified elected local government (authority) officer(s).

2. Part I evidence addresses the nine questions raised by the Committee and Part II presents additional pertinent evidence.

#### PART I

3. The availability and use of the recall in the United States of America reduced voter alienation in jurisdictions where the recall is authorized, and thereby helped to restore public confidence in state government elective representatives and local government (authority) elected representatives.

4. There are no political risks inherent in the Government’s proposed policy.

5. The two triggers capture the types of “serious wrongdoing” by a Member of the House of Commons that initiates the recall process. The trigger that the House first must resolve that a Member should face a recall election is desirable as the provision ensures there is a substantial legal reason for the use of the recall by the electorate of the concerned constituency. The recall in the United States has been employed to remove an elected officer because of a policy dispute(s).

6. Any custodial offence of one year or less for a Member of the House of Commons is a *scandalum magnatum*, and should trigger a recall petition. The concerned electorate should be accorded a speedy and efficacious process to remove a Member of the House of Commons who has received such a sentence.

7. It is most important that Members of the House of Commons be involved in deciding whether an individual Member should face a recall petition as Members have an institutional responsibility to police the behavior of colleagues. Members of each House of the United States Congress play a direct role in removing a member from office as the recall of the member by voters is not authorized. The United States Constitution authorizes members of the U.S. House of Representatives and the Senate, respectively, by a two-thirds vote to expel a member, and the same two-thirds vote allows a house of a state legislature to expel a member.

8. The House of Commons will need to establish an internal procedure for verifying that a Member has been convicted in the United Kingdom of a criminal offence and received a custodial sentence of 12 months or less.

9. The designation of a single location for signing the petition contained in the Government’s proposals for the conduct of the recall petition process will inhibit to a degree voter participation in a geographically large constituency. This single location provision may encourage a number of voters in such a constituency to question the legitimacy of the petition process as the second trigger initiating a recall election. To protect the

secrecy of signers, the petition form should contain two options: (1) “*Retain the Member in Office*” and (2) “*Initiate a Recall Election of the Member*.”

10. The Government’s campaign spending and funding proposal for the recall petition period is appropriate.

11 (A). The holding of a recall election and a by-election to select a successor may result in candidates’ by-election campaigns to fill a potentially vacant seat overshadowing the reasons advanced for the recall if the campaigns commence prior to the recall election.

11 (B). Early United States recall experience revealed allowing an officer subject to the recall to be a candidate in the by-election on occasion resulted in the officer recalled by a majority of the voters, and re-elected by a plurality of the voters as three or more candidates split the ballots cast. To address this problem, state government constitutional provisions and recall laws and local government recall charters and laws were amended to declare an officer subject to a recall ineligible to participate in the by-election to elect a member that today typically is held on the same day as the recall election to avoid the costs associated with a by-election.

## PART II

12. Proponents’ reasons for the recall typically are printed on the recall ballot in the United States, but the number of words is limited; 200 words is the most common synopsis limit. The officer subject to recall may have printed on the ballot a statement of justification of conduct in office; 200 words is the common length limit.

13. A majority vote in favour of recalling the officer ipso facto removes the officer except in a jurisdiction that has an additional removal requirement(s). In Oxford, Massachusetts, for example, a town officer is removed by a majority vote of the electorate provided the vote exceeds “the number of votes the officer received on the occasion he/she was elected to office.”

14. Section 18 of Article II of the Constitution of California authorizes reimbursement of a state officer who is not recalled for “recall election expenses legally and personally incurred.”

15. In the event a recall attempt fails, proponents can initiate a second recall attempt in Arizona, Idaho, Montana, Nevada, and Oregon provided the proponents reimburse the state for the costs incurred in conducting the previous recall election.

16. The elected officer subject to a recall in five states—Arizona, Colorado, Idaho, Montana, and Nevada—is allowed to resign from office within five days after the petitions containing the required number of signatures are verified.

17. The Committee may wish to consider the procedure in the Commonwealth of Virginia where verified voter signed petitions equal to 10 percent of the votes cast for the office in the last election initiate removal proceedings in the Circuit Court (*Virginia Laws of 1975*, chapters 515, 595; *Code of Virginia*, §§24.2–233).

January 2012

### Written evidence submitted by Mark Harper MP, Minister for Political and Constitutional Reform

1. Thank you for your letter of 20 April,<sup>18</sup> containing further questions about the draft bill on the Recall of MPs. I understand that the Deputy Prime Minister is writing to you separately about the other issues raised in the session.

*The Association of Electoral Administrators told us it was concerned that voters registered to receive a postal vote would assume that they would automatically receive a postal ballot for a recall petition, when this was not the case. Can you explain the reason for this policy decision?*

2. The recall process must maintain political impartiality at all times. Automatically sending out a petition signature sheet to registered postal voters could be seen as soliciting petition signatures. There is also a risk that some constituents may feel compelled to sign something without the full understanding of what it is they are signing due to its authoritative appearance. For these reasons the Government decided that recall petition sheets should not be automatically sent to individuals who have registered for a postal vote.

*We received evidence that it would be more democratic, and better in terms of confidentiality, to hold a recall referendum—enabling voters signing a petition to express an opinion for or against the recall of their MP. This would also enable the same system to be used in Northern Ireland as in Great Britain, avoiding the divergence in electoral practice which is currently proposed. Why not allow voters to petition for or against recall rather than allowing only those in favour of recall to express their views?*

3. The proposed model delivers the commitment contained in the coalition agreement: that a by-election will take place where an MP has been found to have engaged in serious wrongdoing and 10% of constituents have

<sup>18</sup> Not printed

signed a petition calling for the recall of their Member. This model works on the basis that a significant percentage of constituents feel that there should be a by-election.

4. The model of recall adopted in some other jurisdictions, which requires a recall ballot after a successful petition, does not include the serious wrongdoing criteria. The recall ballot prevents frivolous or vexatious petitions leading to a by-election. In our model the finding of wrongdoing already serves such a purpose. Under the proposals, those who disagreed with the petition would have a chance to express that view at any resulting by-election where they have the option of re-electing their Member should they stand.

*It is often argued to be undesirable to include wide-ranging powers enabling Ministers to make secondary legislation in legislation of a constitutional nature. How do you justify the sweeping Henry VIII powers provided for in Clause 19 of the draft bill?*

5. Given their likely length, it would not be sensible to include on the face of the bill the provisions containing the level of detail which it will be necessary to provide in relation to the conduct of the recall petition and the questioning of it. There are several precedents for including provisions setting the framework of an election within primary legislation, but leaving the detailed rules about its conduct to regulations made under secondary legislation. This includes elections to the European Parliament, the devolved legislatures and is the model used in relation to local government elections in England and Wales.

6. In order to ensure that the regulations interact appropriately with the relevant primary legislation, the broad power to amend primary legislation has been included in clause 19. This is particularly necessary in view of the proposed introduction of a system of individual electoral registration. Schedule 2 to the bill contains detailed provisions on registration, and the broad power contained in clause 19 will permit any consequential amendments which may be needed as a result of the introduction of that scheme. To ensure any changes are subject to the appropriate level of scrutiny clause 19 provides that the regulations must be made using the affirmative resolution procedure. In addition, the regulations may only be made after consultation with the Electoral Commission.

7. I'd also like to take this opportunity to provide information about the disqualification criteria for Police and Crime Commissioners, which Mr Stephen Williams asked about during the evidence session.

8. Under the Police Reform and Social Responsibility Act, a person is disqualified from being a Police and Crime Commissioner if they are convicted of any imprisonable offence, whether or not they are actually sentenced to imprisonment. This is a more stringent standard than that being proposed as the first trigger for a recall petition in relation to an MP and therefore the Government does not consider that it is necessary to create a separate recall mechanism for Police and Crime Commissioners.

9. I hope you find these answer helpful. Please let me know if you would like any further information on the Government's proposals.

May 2012