

HOUSE OF COMMONS  
ORAL EVIDENCE  
TAKEN BEFORE THE  
POLITICAL AND CONSTITUTIONAL REFORM COMMITTEE

**THE GOVERNMENT'S LOBBYING BILL**

TUESDAY 3 SEPTEMBER 2013

GAVIN DEVINE

JENNY WATSON, TONY STAFFORD and PETER HORNE

RT HON ANDREW LANSLEY MP

Evidence heard in Public

Questions 238 - 354

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## Oral Evidence

Taken before the Political and Constitutional Reform Committee

on Tuesday 3 September 2013

Members present:

Mr Graham Allen (Chair)  
Paul Flynn  
Sheila Gilmore  
Mr Andrew Turner  
Stephen Williams

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**Examination of Witnesses**

*Witness: Gavin Devine*, Chief Executive, MHP Communications, gave evidence.

**Q238 Chair:** Mr Devine, Gavin. How are you?

*Gavin Devine:* I am very well, thank you.

**Chair:** Thank you for coming in this morning at very short notice.

*Gavin Devine:* That is quite all right.

**Chair:** I think you will know that what we are trying to do here is get some pre-legislative scrutiny at a very, very quick pace indeed. Government produced this Bill, I think the day before the House rose and is giving it its second reading one day after the House has come back, effectively two working days. My Committee is not happy about that. We are trying to fill the gap in getting some pre-legislative scrutiny and we are asking lots of colleagues to come in and give us their opinions, which they are doing. I hope you can appreciate that we were either going to let this go and let this happen or do something very hurriedly. We decided that it was appropriate to ask people in. Thank you very much.

I do not know if you want to make any opening remarks.

*Gavin Devine:* No. I will just say that I am Gavin Devine. I am the Chief Executive of MHP communications. MHP is a full service communications firm. In other words we do a full range of PR, financial PR and all the rest of it, and we also have the largest public affairs practice in the UK.

I am very glad to be here. I am very glad you are undertaking this exercise because I agree with everything you have just said.

**Q239 Chair:** Do you have form as an employee of the House of Commons?

*Gavin Devine:* I do have form as Select Committee clerk for 12 years until 2004.

**Chair:** We have a lot of lobbyists come in. Many of them make their money by teaching people how to respond to select committee questions. You should be equally adept. Gavin, welcome.

**Q240 Mr Turner:** How much time do you estimate MHP spends communicating directly with Ministers and Permanent Secretaries?

*Gavin Devine:* How much time per month? Directly trying to persuade them of the merits or otherwise of a course of action, in other words, the terms of the Bill? I would imagine that that might amount to a total of somewhere between five and 60 minutes.

**Q241 Mr Turner:** If that were descended, as it were, into anyone working for the Government, how would that change?

**Gavin Devine:** It wouldn't change hugely. One of the things I find frustrating about this piece of legislation is that Cabinet Office appears to have almost wilfully misunderstood what we do for a living. Our role is not to go in and represent our clients. Our role is to help our clients represent themselves. No official or Minister or Permanent Secretary or MP or anybody else wants to hear from a lobbyist. They want to hear from the Chief Executive or from the Operations Director or the person materially affected by the piece of legislation or policy or a decision made by Government. The idea that we spend all of our time phoning up officials, special advisers, Permanent Secretaries, Ministers, however you want to cut it, trying to persuade them on behalf of our clients is completely fallacious. I find it really infuriating that officials have not bothered to investigate what our industry does.

**Q242 Mr Turner:** What is the descent?

**Gavin Devine:** It would not materially change, I don't think. We are talking about across 50 lobbyists. I would guess it might be a matter of a handful of hours at most. Even then that would be taking an incredibly liberal view of what persuasion and convincing is.

**Q243 Mr Turner:** So, special advisers, for instance?

**Gavin Devine:** Similarly. If it exists at all it is a tiny part of our business.

**Q244 Mr Turner:** You have said that the Bill must cover all those who offer third party support for lobbyists. What practical changes to the Bill would achieve this?

**Gavin Devine:** The significant problem with the Bill is the exclusions—the “mainly engaged in lobbying activity” point, which is included in the schedule, and the “substantial part” point, which I think is in clause 2.

As I have said several times on the record, as it stands MHP Communications would not be covered by this Bill because it is not something that we mainly do under the terms of the legislation because we are a full-service agency. We employ 200 people across the world. Even though we have a very large public affairs practice, it is certainly not the main part of our business. So already we are not looking likely to be covered, even if, as I have again said on the record previously, our public affairs practice could be broken out as a separate entity. It is not mainly what we do, to contact officials and others to try and persuade them. So the issue is around that word “mainly” because it appears to have been inserted almost deliberately to exclude certain categories of people such as solicitors, management consultants, trade associations and think tanks, who do a bit of lobbying or provide a bit of support for lobbying but again do not characterise themselves as public affairs.

**Q245 Mr Turner:** So if the word “mainly” was not in the Bill?

**Gavin Devine:** I don't think that is enough. I am not a parliamentary draftsman but that is the issue. The nub of the issue is around what is mainly lobbying.

**Q246 Chair:** You said that you are not covered by the Bill. Do you think you should be covered by the Bill?

**Gavin Devine:** I don't think the Bill should exist. In those many years that I worked in the House of Commons my understanding was that the point of primary legislation was that it should cure a problem. I do not see that the problem exists. There is significant transparency offered by my industry via the APPC and the PRCA, rather more than is demanded by this Bill, I may say. So there is already significant transparency. This Bill does not particularly

enhance that transparency and I am not completely convinced that there is an issue with lobbying.

If you look at the so-called lobbying scandals of the recent past, they tend to involve Members of Parliament and journalists and not professional political consultants in any way, shape or form. I am all for transparency. I have served on the management committee of the APPC for a long period of time and I support the idea of transparency. But if there is a point to this it is to identify who third party lobbyists are representing in much the same way as the APPC and PRCA registers do already and if that is worth doing, then it is worth extending to everybody who performs that function.

**Q247 Chair:** So as much as you and perhaps almost everybody in the field—even those promoting this Bill—might wish the Bill did not exist and are being towed along by the momentum of the need not to lose face—

*Gavin Devine:* To live up to a promise made in the heat of an election campaign.

**Chair:** Whatever, it does exist and do you think, since it does exist, that it should also include people or organisations like your own?

*Gavin Devine:* Yes. Absolutely. If it exists at all then of course it has to cover us. But it has to include everybody who performs third party lobbying. As I say, that includes a whole range of others.

**Q248 Chair:** Just to be clear, did I hear correctly that it is your view that this Bill as currently constituted would not have made one bit of difference to those things that have appeared in newspapers as lobbying scandals?

*Gavin Devine:* I think it would have made it worse and I will tell you why. Anybody who feared that they were being set up for a sting would have gone to a register and perhaps have been able to swerve it. In terms of being able to hold people to account, I think the Bill would make things considerably worse.

There is another way that it makes things considerably worse, by the way, which is that it does not required any minimum standards. One of my other concerns about this Bill is that it creates a Kitemark. I can imagine all sorts of people wandering the countryside telling people that they are a registered lobbyist and giving some sort of impression that that was an official stamp of approval while not being required to live up to any standard whatsoever unlike, for example, members of the APPC who are required to do all sorts of things.

There are various other areas that I think the Committee might want to look at in due course, such as for example the provision of parliamentary passes to former Members of Parliament and whether indeed some of those individuals are operating as lobbyists and advisers. It is an interesting area that is worth having a good delve into.

**Q249 Paul Flynn:** As a professional lobbyist you would advise the Prime Minister to break his election promise.

*Gavin Devine:* No. As professional lobbyist I would advise him to live up to his election promise by doing something that is meaningful. He should not have made the promise in the first place because the promise is based on a problem that in my view is not significant or does not exist.

**Q250 Paul Flynn:** The Prime Minister, who is also a professional lobbyist, he was, he works at a very high level, knows the industry well and made this impassioned plea in March 2010 when he identified lobbying as the next major scandal and gave this blood-curdling threat to the industry that at last a nemesis was on the way and they would be controlled away from their past excesses. You as a lobbyist would prefer the whole industry

to be left alone so you can carry on your saintly activities unhindered. Is that right? Is that what you are saying?

**Gavin Devine:** I am generally of the view that regulation should only exist when there is something worth regulating.

**Q251 Paul Flynn:** I think that many of us would say that there have been long and egregious examples of lobbying where it has been possible to persuade Governments and to buy access and advantage so that the rich are the ones that determine policy, and that is a feature of politics. Those—

**Gavin Devine:** I would be interested in some examples, Mr Flynn.

**Paul Flynn:** Those who cannot afford to buy influence are the ones neglected and left out. That is the general feeling, that we should at least have transparency so we know who is seeing Ministers, who is persuading them, who is filling their pockets with consultancies and other inducements.

**Gavin Devine:** I agree with all of that. Listen. As I say, we are longstanding members of the APPC. Every quarter we declare all of our staff and all of our clients. They are there on the public record for anybody to see. I am extremely happy to do that. My point is that everybody should do that.

**Q252 Paul Flynn:** Take an activity like 500 emails to a SPAD, an adviser to a Minister, pursuing a particular cause on behalf of, allegedly, Rupert Murdoch. Is that not an activity that deserves transparency and deserves to be regulated in some way?

**Gavin Devine:** There are many points of contact between the outside world and elected politicians, officials and others. I am sure you are aware of the campaigns that charities and other campaigning organisations have launched that have also involved huge numbers of emails being sent to MPs and others. Yes, I support the notion of transparency. If there is a desire to do something and put it on the record and there is a desire that self-regulation is not sufficient—which I do not think is necessary; I think self-regulation is achieving everything that is required of my part of the industry—but if there is a desire to change the status quo, then at least change the status quo for the better. That is my point.

**Q253 Paul Flynn:** We would all agree with that, I think.

Other than Ministers and Permanent Secretaries, which other categories of people should be included as those with whom contact counts as lobbying for the purposes of this Bill?

**Gavin Devine:** I would extend to everybody who holds a public office. That would certainly include MPs, Peers, special advisers and all officials.

Of course there is an issue with that, which is that at certain points you get into matters of definition. One of the reasons why this Bill has taken so long to appear and then has appeared in this rather hopeless state is that it is almost impossible to define what a lobbyist is. There are people sitting in the central lobby right now who want to meet their individual MPs to lobby them as individuals about certain issues. There are company managing directors within your own constituency who I am sure write to you on a regular basis.

**Q254 Paul Flynn:** We have heard this before that in order to deflect attention from what is the real target, which are the big corporate lobbyists—

**Gavin Devine:** Why is that the real target?

**Paul Flynn:** Because they do the greatest damage: somebody working for, say, an oppressive dictator, working for regimes like the one we have in Azerbaijan, many of them throughout the world, who pay to buy influence in this House; the huge industries, often the

huge polluting industries; those with defence contracts who are promoting war, a huge business; look at the Kagans at the right hand of Petraeus in Azerbaijan. One of the greatest influences are lobbyists—

**Gavin Devine:** Are you suggesting the trades unions and campaign groups and charities and various others do not have any impact on this House?

**Paul Flynn:** Of course they do. And so do ordinary constituents. But what we are saying is that in order to defend corporate lobbying, which is deeply damaging, your industry has changed the subject. You are saying if we are going to go for them we are going for all the nice cuddly institutions like the charities.

**Gavin Devine:** No. That is not my position.

**Q255 Paul Flynn:** In order to defend the nefarious activities of big corporate lobbyists you are dragging in public support, saying all the small guys are hit, when the target should be the one identified very accurately by the Prime Minister when he was in the Opposition.

**Gavin Devine:** I admire everything you have said but it is not my position. I would not extend this Bill to in-house lobbyists. I would not extend it to trade unions or indeed to charities and campaign groups precisely because if this Bill does anything at all it is at the moment that somebody walks in through the door and says, “I am from MHP Communications” and refuses then to reveal who any of their clients are, you can quickly nip over to your computer and find out immediately. So the only way that this Bill has any merit is in dealing with third party lobbyists. I do not join the APPC and PRCA and others in suggesting it should be extended to in-house lobbyists, in part, I have to say, for precisely the reasons you say because I suspect that at least some people who advocate that position are doing so because they want to confuse the picture.

**Q256 Paul Flynn:** In your original answer you suggested the Government did not understand what they were doing.

**Gavin Devine:** No.

**Paul Flynn:** Many would suggest they understand precisely what they are doing because they are composed, led by a lobbyist. They have many Tory MPs who are former lobbyists who will soon be future lobbyists. They know precisely what the business is. They were very reluctant to introduce this Bill anyway. It is three years late. It has been conceived in fear and panic and written in confusion and I think they may well have put in the Bill the attacks on charities and trade unions in order to sabotage their own legislation so the whole thing will collapse and the corporate lobbyists, the really bad guys, will carry on doing their work unhindered.

Is that a plausible explanation?

**Gavin Devine:** Well, it is a theory. I am not necessarily up for speculating on the motives of people who are far above my pay grade, of course, but I do suspect that it was rather rushed out in order to cover for the fact first that it had not been produced before and that there had been a spate of so-called scandals in the weekend newspapers a few months back.

**Chair:** I am keen to get back to the Bill rather than to rehearse your Second Reading speech, Paul.

**Gavin Devine:** It is very good, though.

**Q257 Paul Flynn:** One of the groups that I believe gets away with this and keep getting away with it, are the so-called think tanks. There are plenty of think tanks that are academic, objective and scientific, but there are others that are little short of being crooks.

They advertise themselves with the label of a think tank but they are in the pay of, say, the tobacco industry and other people and they do not announce, they do not have to say, who is lining their pockets. This is quite unanimous. They are respected.

**Chair:** We just need a question now, Paul.

**Paul Flynn:** And they are an obvious target, people who are lobbyists disguised as think tanks. Shouldn't think tanks be taken into the remit of this Bill?

**Gavin Devine:** I will make Mr Allen very happy by simply saying yes.

**Q258 Paul Flynn:** And consultancies and other bodies. They are all in the business of lobbying for commercial reasons.

**Gavin Devine:** Absolutely. That is precisely my point. My point is that there are a lot of people out there who are in some way supporting or facilitating what might be described as lobbying, and it is grossly unfair—it is commercially disadvantageous to me, which I obviously care about, but it is also grossly morally wrong—that the Government is attempting to put through a piece of primary legislation that would discriminate between different classes of people performing the same task. That has to be wrong under any definition of how primary legislation should be.

**Q259 Paul Flynn:** Would you describe this as the most futile Bill produced by this Government, or one of the most futile Bills in history?

**Gavin Devine:** I have not studied the Government's legislative programme to quite that depth but I am sure there have been some worse Bills than this. Dangerous Dogs springs to mind.

**Paul Flynn:** Also conceived in haste.

**Q260 Sheila Gilmore:** A slightly more detailed issue. You have already touched on this. The Bill attempts to exclude people who are engaging in mainly non-lobbying business. There have been a number of suggestions for how you might try to define that more closely. One was an income test, for example that any company or individual receiving more than say £10,000 a quarter from professional lobbying would be included. The other test, which I think is similar to the position in the United States, would be a time test where you would put the amount of time the individual or organisation was spending, say 30%. Do you have any views on those?

**Gavin Devine:** I think as soon as you put in thresholds then immediately people will try to find ways around them. As I have already said right at the outset of the session, the amount of time that we spend directly trying on our own account to persuade people to change their point of view on a particular issue or whatever is infinitesimally small. I should say, by the way, that lobbying is not mainly, I believe, about persuasion anyway. It is about providing information that people are then entitled to evaluate in the way they see fit.

But setting that to one side, the amount of time that we spend doing that is infinitesimally small. I would fear that people would find ways to slice and dice to a point that they found their way around such a definition.

My belief is that as is the case with the APPC, anybody who engages in this sort of activity for even half a nanosecond per quarter has to declare it. I think that is exactly the position that should apply in this case, if it should apply at all.

Perhaps to just go back to something that Mr Flynn said, the other thing to say is that there are an awful lot of rules already that cover lobbying. There are an awful lot of registers already that cover lobbying. One of the areas that the Committee might want to consider is to effectively use the tools that they have already. For example you may ask whether for example this is acceptable. The DWP published details of Ministerial meetings in Q1 this year

in July 2013 and the previous update had been in February. So there was a five-month gap. That is not very good for a quarterly report. I am told that no list of ministerial interests has been published by the Cabinet Office since December 2011. In that period of time 30 Ministers whose interests were not declared in the way that they are meant to be. There are all those things have entered Government. Obviously there are already registers of Members' interests. There are a lot of things that already exist that could be done to improve transparency and improve the alleged bad behaviour although, as I say, I am not sure that I see that much of it but what little bad behaviour there is, without needing recourse to primary legislation.

**Q261 Sheila Gilmore:** Your written evidence and also, I think, your evidence this morning, touched on the question of minimum standards. One idea would be to require everyone who is registered to sign up to the code of conduct of their own profession, whatever that might be, which might not be a lobbying organisation; it might be another one. How practical do you think that is?

**Gavin Devine:** I personally think that is a mess. If you have one register, there should be one level of standards. I think it is absurd to have people conforming to different standards on one register. I just don't think that works at all.

But I would say this. It does not need to be too onerous but there are two areas that I think are extremely important. One is around the payment of public officials and MPs, Peers, and so on, which is precluded by the APPC code and I think should not be allowed by anybody. By that I do not mean putting them in your employment but for example paying them expenses or paying them a fee to appear at an event or something. Those sorts of things smack of impropriety and I think should just not be permitted. The other one is around the issue of passes. I think it is extraordinary that the House of Commons still behaves as though it is a 19th century club and when you leave you are entitled to still use the facilities. That is bizarre. If I leave my employer I am not allowed to go back in and have a shower in the basement. That is just the most peculiar thing in the world. I do not understand it at all and I am waiting for somebody to explain it to me.

**Q262 Mr Turner:** Can we just follow up this limitation that covers Members of Parliament? It seems to me that we are covered when we are not lobbying and when it is our constituency and one or two people who are not our constituents such as youngsters under 18. What about the front bench Opposition? How are they covered? Are they covered by this?

**Gavin Devine:** As far as I can see, no. You may be better speaking to somebody with a greater grasp of the minutiae of the dots and commas of primary legislation but as far as I can see, no they are not.

**Q263 Mr Turner:** What would the consequences of that be, given these regulations?

**Gavin Devine:** The consequences would be that in theory you could lobby the Opposition front benches as much as you like without having to declare it. On the face of it that is not necessarily the worst thing. The Opposition front bench is not in a position to make decisions that at Government policy. So I can see there is a reason for that. There is a sort of progression of levels of influence and significance around all of these things.

The other fear I have about all of this is that we retreat to a stage where the Opposition front bench does not hear from interests of various sorts, including charities and campaign groups as well as business groups. Notwithstanding the potential conspiracy theories that may exist, better informed legislation is surely a good thing. To that extent I would robustly defend lobbying as a positive not a negative.

**Q264 Mr Turner:** You would be happy for the courts to determine whether something was found guilty or found innocent, in other words, by the Opposition although it may have no practical effect.

**Gavin Devine:** I honestly have not thought about it in huge detail. I suppose in theory the answer to that would be yes. But again to take a step back, by talking about court action, by talking about things like this, it goes against what has been a well-established principle of things like the PRCA and APPC that people abide by the spirit of the self-regulation that exists in those cases and you declare clients. Even if you are not necessarily entirely certain you declare them anyway because that is more appropriate way to do things. So I do think there is a risk of putting in place something that is overly rigid and people look for ways around it rather than the current situation where people abide by the spirit of transparency. I just wish more people did so.

**Q265 Chair:** Obviously you are concerned most about section 1 here, as a professional lobbyist.

**Gavin Devine:** Yes.

**Q266 Chair:** Have you any concerns about section 2, which we are told inhibits the ability of charities to campaign effectively in the run up to an election?

**Gavin Devine:** It is not my area of expertise.

**Q267 Chair:** Similarly on section 3?

**Gavin Devine:** I won't comment, but to pick up on something you said earlier, the existence of sections 2 and 3 in a Bill that ostensibly is there to create a register of lobbyists is a surprise.

**Chair:** As it was to us, one day before the House rose, when those two sections appeared.

**Q268 Chair:** Do you feel that had there been a proper process of pre-legislative scrutiny and that was mandatory within our own standing orders rather than a convention, many of these problems might have been smoked out in that process and resolution to many of them might have been made available to Government by Parliament?

**Gavin Devine:** Yes, clearly, although I suspect that what the Committee may have concluded is that the Bill is hopeless and should go back to the drawing board.

**Q269 Chair:** I am proposing on the Floor today that the Bill goes to a special Committee for six months and a new draft is present to the House. So in essence I suspect that would meet your proposal.

**Gavin Devine:** I agree and I hope that whoever is involved in drafting that draft will bother to consult with significant members of the industry and indeed with people who feel strongly in the opposite direction because I know they also feel that they have not been consulted about this and that is not right. Every side should have been given a good opportunity to comment on this and perhaps educate those involved in the drafting about what it is they are trying to regulate because they have done a pretty poor job so far.

**Q270 Chair:** You may well feel that Government has not consulted you effectively. I hope that you feel that the industry has been very well consulted by Parliament through this Select Committee.

**Gavin Devine:** I have always had the greatest respect for Parliament, when I worked here and since, and I appreciate both the opportunity today. Various other organisations

within and outside the House are also consulting hard on this subject. I am glad that they are. I only wish it had happened before.

**Chair:** Gavin, thank you very much.

### Examination of Witnesses

*Witnesses:* **Jenny Watson**, Chair, Electoral Commission, **Tony Stafford**, Head of Policy (Party and Election Finance), Electoral Commission, and **Peter Horne**, Director of Party and Election Finance, Electoral Commission, gave evidence.

**Q271 Chair:** Hello, Jenny. How are you?

**Jenny Watson:** Very well, thank you, Mr Chairman.

**Chair:** Good to see you. Tony, welcome.

You know why we have asked you in at rather short notice and that is that we are attempting to fill a very large gap in pre-legislative scrutiny on the lobbying Bill. I do appreciate you coming in at very short notice.

Peter also. Forgive me. I did not welcome you.

**Q272 Chair:** Jenny, is there anything you would like to say to us in general from the Electoral Commission's point of view about this Bill? Or do you want to go straight to questions?

**Jenny Watson:** No. I would appreciate the opportunity to make some general remarks. Thank you.

We are very grateful for the opportunity to come and speak to you about part 2 of the Bill. I know that much of your work has been around part 1 but we think that this is an area that warrants serious consideration. I welcome the Committee's decision to expand the scope of the inquiry and the evidence sessions you held in recess.

I want to be clear from the outset that we believe that wherever there is non-party campaigning taking place there should be appropriate levels of transparency and controls in place. Our own regulatory review of party and election finance that we published earlier this recommended that the Government should consider making some changes to the rules around third party campaigning, not least because the current scope does not look wide enough.

However, we also said that the changes needed to be carefully defined. That is particularly important for third parties because the rules can have an impact on a wide range of organisations, charities, campaign organisations, blogs, faith organisations, trade associations and industry bodies.

As the regulator we need to consider the impact of the proposed changes on those we may be asked to regulate and in that context we have already met with a number of organisations to help us understand the implications of the Bill for campaigners, including those in Scotland, Wales and Northern Ireland.

In summary, our view is that the Bill as drafted creates a high level of uncertainty that will make it difficult for campaigners to be confident about their activity from May onwards will be affected while simultaneously imposing new burdens on such organisations. The wide definition of election purposes gives us a great deal of discretion to interpret what activity will be regulated as political campaigning. This is discretion that we did not seek. It is likely that some of our readings of the law will be contentious and challenged, creating more uncertainty for those affected. This is made more like by the change in our remit, which the Bill also makes and which again we did not seek. Some of the new controls in the Bill may be

impossible to enforce and Parliament will want carefully to consider what the changes might achieve in reality and balance this against the new burdens that the Bill imposes.

Finally, we agree with the Committee's assessment that this Bill would have benefited from pre-legislative scrutiny. In its absence and given the relatively limited time that we have had to consider the Bill, it is possible that we may find ourselves in the uncomfortable position of not being able to answer all your questions as fully as we might wish. In some cases we are frankly still working through the implications of what is proposed. I hope that under the circumstances you will bear with us should this be the case. Nevertheless we look forward to your questions.

**Q273 Chair:** What level of consultation was there between the Electoral Commission and the Government before you saw section 2?

**Jenny Watson:** My board saw the Bill for the first time on the day on which it was published. There was no formal consultation. If I compare the relationship that we have had on this legislation with, for example, the level of consultation that we have had on individual electoral registration, which is also the Cabinet Office, that would be very different.

Peter, you might want set out a little bit more some of the conversation that you and your team have been having.

**Peter Horne:** My team and I have on-going conversations with the Cabinet Office over a range of policy issues associated with party and election finance. Over the course of the past number of months to January we have been undertaking a regulatory review in which we came up with a number of recommendations, including those noted by my Chair. We did raise those with the Cabinet Office. However the point at which the Cabinet Office indicated that there was a potential for legislation in such short order was from the beginning of June.

**Chair:** Would you repeat that for Mr Turner?

**Peter Horne:** The point at which they indicated that legislation was possible in such short order was from the beginning of June this year.

**Jenny Watson:** I think we did not see any clauses from that legislation until the beginning of July and as I say, my board did not see the whole Bill until the day it was published.

**Chair:** Very strange that in this poverty of consultation that almost seems like riches, that you were given four weeks to interact with Government on certain parts of that. It is certainly more than Parliament than this Committee had although we were waiting one year for a response to the report that we did on the consultation paper. They were talking to you at the time. They still have not responded to this Committee. So, well done.

**Q274 Mr Turner:** What do you think Government is trying to achieve by part 2?

**Jenny Watson:** I think that is a question that is probably best addressed to Government. We certainly think that there is scope to improve the rules. As I said, our own regulatory review did make some suggested changes. I guess in that I would distinguish between willing ends, which may be laudable and where we might agree with a point of principle, and willing means. At the moment it is the means in this legislation that are giving us cause for concern because they have to be right otherwise they do create a good deal of unintended consequence.

I have seen some comment about the fact that this is intended to address what is sometimes expressed as an Americanisation of British politics. It is worth being extremely clear with the Committee that the current rules do prevent people spending unlimited sums of money.

Tony, would you like to say a little bit more about that?

**Tony Stafford:** Yes. Under current rules, which have been in place since 2000, people can only spend money on election material that can be regarded as promoting a party up to a certain limit and they have to register with us above a threshold, which is currently £10,000 in England, £5,000 elsewhere. So there is already a level of control and a level of transparency about spending by people other than political parties. Clearly the Bill makes some changes to the scope. As Jenny said, some of the changes respond to comments we have made previously about the current scope but what the Bill does appears to go well beyond what we have recommended.

**Q275 Mr Turner:** So the existing benchmarks at £10,000 in England and £5,000 elsewhere, is there any problem with that change?

**Tony Stafford:** In terms of reducing the thresholds in the Bill?

**Mr Turner:** Yes.

**Tony Stafford:** If you reduce the thresholds, clearly that has the effect of bringing more people into the regulatory regime because it is above that level that people have to register with us. Combined with the widened scope of what is covered in the Bill, we think that creates scope for a lot more people spending really relatively small amounts over the course of a year before the General Election to need to register and therefore to comply with quite a significant list of requirements.

**Jenny Watson:** It is perhaps worth our explaining that the model in our mind for what the potential regulated community might look like is a pyramid. We think there are far more people spending smaller sums of money at the base of that pyramid. Therefore if you do what Tony has just described, which is to reduce the thresholds for registration and to reduce the amount that can be spent and to expand the categories of expenditure that are caught, or indeed to draw the definition as broadly as has been, we think a larger number of smaller organisations spending possible not very much money will be caught within that net because the pyramid at the base is much wider than at the apex.

**Q276 Mr Turner:** These proposals would be constituency by constituency wouldn't they?

**Peter Horne:** If I can address that, there is a mix of proposals that apply to specific constituencies and proposals that apply at a national level. If you are a group, whatever that group might be, and that may range from a campaigning organisation to a charity to a business lobby group and you are undertaking the sort of activity covered in the Bill, if you are spending more than £2,000 in Wales, Scotland or Northern Ireland in the 12 months prior to an election or £5,000 across England, you would need to register as a campaigner.

Additionally there is requirement for if you are undertaking activity targeting any particular constituency and has a significant effect within that constituency but is not targeted for or against a particular candidate—it starts to get slightly arcane in some of the examples here—you also need to consider the implications for what you are doing at a constituency level and monitor what is done and then limits around what is done at a constituency level.

**Jenny Watson:** A number of those different areas cause different problems and we would very much like the chance to make sure that we get that across clearly. If it is not clear at any stage, please do ask us to be clearer.

**Q277 Mr Turner:** I am probably going to get these wrong then, but let me try.

In 2005 the Conservative Rural Action Group spent £550,000 but each of these was third party, so they did not have to be made public.

**Jenny Watson:** Tony, do you want to pick that up?

**Tony Stafford:** I am not familiar with the precise case but if this was registered third party spending within the current scope of the legislation it would have been reported to us and they would have registered with us.

**Q278 Mr Turner:** But that is national, not constituency by constituency, all of that.

**Tony Stafford:** This is where it might be helpful just to step back. There are two separate sets of rules covering third party campaigning at the moment.

There are the rules on campaigning for or against individual candidates in a constituency that have been in place since the 19th century and only apply up until Parliament is dissolved. Those rules are not being changed substantially by the Bill. The Bill slightly increases the spending limit for that but otherwise it leaves the scope of those rules unchanged.

Then the rules that came in in 2000, which the Bill amends substantially, affect campaigning that relates to promoting the success of a party or a group of candidates, which can be candidates from different parties. That is what we tend to call in our guidance general or national campaigning as opposed to the local campaigning for or against an individual. So that is the sort of campaigning that would show up in our registers for 2005, 2010 and indeed what you quote comes from a register, that we can see the level of national spend. What there is not at the moment, neither for political parties nor for third parties, is a split of that expenditure by constituency.

**Q279 Mr Turner:** I see. So if the Conservative Rural Action Group were to deselect me and get somebody else backed in my constituency it would not be at all clear.

**Tony Stafford:** If they were using material that was entirely about you rather than about a group of candidates who share a view on a policy, then that would fall under the local campaigning rules and in effect would not apply except during the period after the dissolution of Parliament.

**Q280 Mr Turner:** We received a submission stating the run up to the referendum in Scotland in autumn 2014 would be a controlled period. Can you confirm whether referendum spending is dealt with separately and is not covered by part 2 of the Bill?

**Tony Stafford:** Yes. Campaigning at the referendum in Scotland will be covered by the Bill that is making its way through the Scottish Parliament at the moment and that proposes a regulated period that will start at the end of May 2014 and run through until the referendum in September. Under the usual arrangements we would regard campaigning in support of a referendum outcome as generally being clearly distinct from campaigning for election purposes. It has been possible in the past for people to engage in activity that is pursuing both objectives, so campaigning for a referendum outcome and promoting a political party. Where that has happened in the past we would generally say you apportion the cost of what you are doing between the two separate limits.

One of the questions raised by very broad scope of the new definition in the Bill for third party spending is that we and others will need to think carefully about whether there may be any overlap with campaigning at the referendum. That is something that we are currently considering.

**Jenny Watson:** We have not yet had any clarification or help from Government to better understand where there might be overlap with Scottish referendum campaigning. That is obviously an area of concern to us at the moment.

I think it is important to get across the change in the definition for the purpose of or in connection with electoral purposes. The impact of the change that is being made in the Bill is that we will have much greater discretion to interpret legislation that is capable of being interpreted in a wide range of different ways. It is clearly appropriate to have an independent

regulator that regulates in this area but there is a question for Parliament, I think, as to whether you wish to give effectively a group of unelected people the ability to exercise their discretion in thinking through what might be covered in terms of for the purpose of or in connection with electoral success. I would encourage the Committee and indeed Parliament more widely to consider that carefully.

**Q281 Paul Flynn:** Would you agree that the two great protections that we have against the Americanisation of politics, which means the richest person can buy the largest number of votes, is that party spending is controlled during the election period at a very low level and that candidates have access to the most influential media, which is the broadcasting media, which have a duty of balance? And that the two greatest threats are the print media, who have no duty of balance, and the number of organisations that are now spending huge sums of money in a number of targeted constituencies in order to unseat certain MPs or to gain party advantage and spending vast sums of money, the Countryside Alliance, Lord Ashcroft and so on; targeted intelligent campaigns that have been claimed have bought seats by their volume of advertising? Is that a fair summary of the position?

*Jenny Watson:* I am not sure I would entirely agree with your analysis of the situation.

**Paul Flynn:** Why not?

*Jenny Watson:* I think there are undoubted differences between British politics and the politics that we see in the United States of America. Tony has already outlined some of the differences in relation specifically to non-party campaigning. I hope and expect that there will be a lively debate in Parliament on this issue but I think I would like to, if I may, contain my comments to focus on the elements of the Bill that we have been concerned about around the enforceability of the constituency provisions, where we do have concerns, and around the degree of discretion that we are being given and the new definition of electoral purposes. Those are some of the areas where I think we would probably want to have more to say rather than the wider analysis.

**Q282 Paul Flynn:** I would like to go on to that but could I commend that you study what happened to the strongest advocate against lobbying and against a certain individual. He was the MP for Pendle, who is no longer the MP for Pendle because something like £0.25 million was spent by that individual in his constituency. I think there are other outrages throughout the country. There is a book by Peter Bradley, which I would commend to you to see the influence of these bodies that are distorting the electoral process.

**Chair:** Jenny, do you have a response to that?

*Jenny Watson:* Only that I would reinforce our view that where there is campaigning by non-party campaigners it is important that that be regulated appropriately with the right degree of transparency. I think that there we would not have any difference of opinion.

**Q283 Paul Flynn:** Currently the Bill does not exclude staffing costs from third party expenditure whereas staffing costs for political parties are excluded under the Political Parties, Elections and Referendums Act 2000. Do you think there are arguments for excluding staffing costs from third party expenditure as well?

*Peter Horne:* We looked at this issue in the review that we published in June. We looked at it firstly from the perspective of whether it was appropriate to exclude political party staffing costs from their expenditure returns. The view we took was that while it has been an issue that has been around for a number of years and questions were raised about it in the past, we thought it was appropriate for Government to look at whether there could be a model that could be found that could work for political parties and could be enforced. Our

view at the time was that political staff costs should be included, subject to a model being found for that.

The question then comes back to what model is appropriate in the circumstances for third parties. We made the recommendation that looking particularly at only election material in our regulatory role seemed to be a narrow definition and that third party campaigning had changed over time. When considering the implications of that third party campaigning and setting limits for it, the model seemed to say that the costs that people are spending, be they staff costs or be they other, should be included within that, we did not have the time or the opportunity to develop a model that said this is exactly what should work.

So to summarise, our view is that where people are spending money there should be transparency around it subject to that money being at a significant level.

**Jenny Watson:** Can I just supplement that?

It is worth pointing out, reminding us all, that the context in which we were conducting the regulatory review was within the context of cross-party talks on the future of party funding and party donations. So I think we were looking at what I might describe as housekeeping measures with the idea that if there were to be future legislation, that could be part of what might come. One of the reasons that caveated what we said quite carefully in that regulatory review was because this is a complex area of regulation and it does throw up so many unintended consequences. One of the challenges that we will face if this Bill passes with the definition that is currently in it is that we will have to work through in a great deal of detail a much wider range of types of activity and examples in order to be able to produce guidance.

**Q284 Paul Flynn:** You are very critical in your evidence of the definition of “for electoral purposes”.

Is there already a definition of “for electoral purposes” in the context of political parties and if so, why cannot that definition be applied to third parties?

**Tony Stafford:** The Bill effectively transposes across the current definition of what is covered in terms of campaigning by political parties and applies that to third parties. So the wording “for election purposes” in the Bill is defined as for the purpose of or in connection with promoting electoral success. I think the fundamental concern we have about that approach is that political parties are by definition absolutely different from third parties. The one thing that third parties have in common is that they do not put forward candidates at elections. They do many other things. Therefore you need to read that definition in a completely different context from the way in which we all read it at the moment for political party campaigning.

Our strong view and certainly the view of pretty much everyone we have spoken to over the summer recess about the consequence of that is that what we are left with is the definition that the context of third party campaigning is extremely wide and it is capable of a very wide range of reasonable interpretations.

**Q285 Paul Flynn:** Presuming at some date, if the House treats this Bill seriously, there will be a call for a new definition. Can you suggest a new definition that could replace the faulty one?

**Tony Stafford:** As Jenny said, our starting point is that defining the scope of third party activity that is regulated needs to be done extremely carefully because third parties do so many different things and it is very easy to have unintended consequences. So we certainly do not have a model definition that would work for the purposes of all the activities that the Bill is seeking to regulate.

If you look at what the current legislation does in respect of defining election material, the definition is reasonably helpful in that it contains several things that help us as the regulator to form a view on what is covered and explain that to people. The new definition in the Bill does not give us that kind of assistance in respect of all the types of activity that it is seeking to regulate.

**Jenny Watson:** It might be possible to recast the Bill's definition of what is covered in a way that provides more clarity about Parliament's expectation about when different types of regulated activity might be caught. I think we said that in our written evidence. The difficulty with that is that we are effectively re-engineering the vehicle as it is being driven along the road, which is not necessarily ideal. I think that the explanation that Tony has just given you perhaps clarifies our concern. All of us in public bodies are very for our decisions to be tested in the courts. That is entirely appropriate. But the courts should not become a day-to-day clarification mechanism for legislation that is itself unclear. Given the breadth of the definition and indeed the wide scope of opinions that have already been aired, we have concerns that that may come to pass.

**Q286 Paul Flynn:** You mentioned the possibility of a legal challenge. How likely is this if this Bill goes through unchanged? And what can we do about it?

**Jenny Watson:** We are vying to answer here. I'll kick off and my colleagues can come in.

I think I would suggest that the degree of debate that there has so far been and the range of different opinions expressed as to what this drafting means suggests that that legal challenge is very likely.

Do you want to add anything to that?

**Peter Horne:** Our experience as a regulator, and it may well be your experience as Members of Parliament who have stood in elections, is that in campaigning in elections there is generally somebody who is for something and generally somebody who is against something. So any time we come to a decision on something, be that be a policy decision as to our interpretation, or alternatively a decision in a specific case, there will always be somebody who is unhappy with the outcome of our decision. Given the range of additional areas that are covered by this Bill, moving from election materials through to something like eight or nine different categories that are also included, on each of those categories we will need to come to an evidence-based view as to what our interpretation is. We will need to do that in time for the May 2014 start of the regulated period and I would assess that there is at least some risk across each of those categories that we are challenged. The scale of that risk, I don't know.

**Jenny Watson:** Setting that in the context of the change to the Commission's remit itself, which we did not seek, a duty to take all reasonable steps to ensure compliance, you can put the emphasis on the "all" or you can put the emphasis on the "reasonable". Again, I think that is likely to lead to challenge.

**Q287 Chair:** Paul, if I may.

What you are saying is that in the run-up to the next election there will quite likely be judge-made law as we are in the process of running into that general election.

**Jenny Watson:** I think that has to be a possibility. We would try with what we can do with working this through to make that the least likely to happen that it could possibly be but it will be the case, as Peter outlined for you, that there will be people that disagree with our interpretation. So I think it is possible.

**Q288 Chair:** And charities obviously wish to spend all their money on their charitable purposes. Presumably if they wish to contest a potential interpretation they will

have to find the money to go to court during that last year before an election and there is no provision for legal aid, obviously, in these circumstances.

**Peter Horne:** I think the greater risk for all the members of the regulated community are undertaking the sort of activities that may or may not be regulated is the potential uncertainty. So we will be seeking to come to a definition as soon as possible once we understand more about the will of Parliament associated with this Bill. But during that period of time, let's say we have a definition that says, "Activities X, Y and Z are included but this activity is on the borderline and it is excluded," and so a campaigning organisation starts the year on that basis. If, halfway through the year an organisation happens to challenge that interpretation, it may be that our interpretation is still the one that is held to be valid but during the period of time all organisations who are undertaking the activity that is outside of our interpretation at that point would be suffering from that uncertainty. I think that is probably the broader risk rather than necessarily the risk for specific expenditure.

**Jenny Watson:** I wanted to respond directly to your point but I think it is probably for charities to tell you what they can and cannot spend their resources on. I would just say that there has been quite a considerable debate about how this Bill might impact on charities. But it is wider than that. It is faith organisations. It is trade associations. It is industry groups. It is campaigning organisations, indeed. And any one of those will be potentially caught by not only the uncertainty but also may seek, could seek, to bring a challenge to something where we have used our discretion.

**Q289 Chair:** Many of those are a little more capable of looking after themselves than some of the smaller charities. Many of the charities, let's say to do with personal ill health, may not encounter any challenge at all, but some charities are in areas of controversy. Let's take one from either side of the aisle, as it were; the people who would like to restore fox hunting; the people who would like not to have badgers culled. Now there are strong views on both of those issues. Presumably if you object to one of those charities' activities, you could embroil them in a quite expensive legal argument about the interpretation of these rules at the very time when democracy should be opening every door to hear every argument ahead of a general election.

**Jenny Watson:** That is precisely the debate that Parliament will need to have as it discusses this legislation. I hope we have been clear about the way in which we would aim to produce the guidance, but we do have a wide discretion to interpret that.

Do you want to say anything on that?

**Peter Horne:** If I can add our experience as a regulator since the foundation of the Electoral Commission has been based on developing and seeking to apply a risk-based and proportionate approach. We seek to bring people into compliance, we seek to provide appropriate guidance and we do seek to enforce where appropriate. The challenge in this area will be that people will report cases to us, they will seek for us to investigate, and what we need to understand from the passage of the Bill is the scale of activity that they are expecting to see from the Electoral Commission. For example, if we go back to the constituency example from earlier on, there are rules that are set around expenditure in a particular constituency. It may be that a small campaigning organisation has a particular issue that it is concerned about in a local area and that may be a protest against an incinerator, for example, and there will be questions around the extent that is or is not a political campaign or whether it is a community campaign. What would be difficult from a regulatory perspective in providing certainty for organisations is what intervention we could make and what assessment we could make of that expenditure, and that will be a challenge for the regulatory regime going forward.

**Chair:** Paul, forgive me for pursuing that.

**Q290 Paul Flynn:** No, that is fine. We were very grateful for your answer to this question. As a Committee and our clerks, we are under great pressure as well in order to produce some kind of practical suggestions for improving this Bill.

Do you think a definition of “for electoral purposes” that focused solely on the intent of the third party would be more workable than the current definition, which sounds like a lawyer’s delight in the litigation that would follow? Would that have a better effect? How would you judge that?

**Tony Stafford:** We now have some years of experience of trying to help people understand the current definition, which talks about material that can “reasonably be regarded” as intended to promote success, so that relates to intent, but it is not just the subjective intent of the person producing it, it is also almost an objective test of how anyone looking at what is being done might be intended. We can see how to make that work. We have been able to produce helpful guidance, although we do find that it is always very much dependent on the facts of each case whether things are covered and we often have to spend quite a lot of time helping people to understand whether the current rules apply to them.

Moving forward, certainly the current definition in the Bill, as we have been saying, seems to us so high level that it could be interpreted in all kinds of different ways, so it could be interpreted as mainly around intent, because of the words “in connection with” especially, it could be seen as being much wider. The expansion notes to the Bill talk about both intent and effect being covered in potentially a way that goes beyond what the current legislation does. Certainly we would find it helpful to have a definition that is clearer, because that would remove a lot of the concerns that we have been talking about in terms of the very wide scope for us to use discretion. I think the extent to what is regulated is purely about intent and how far it is about how other people see intent or how far it is about effect is something that Parliament will want to consider. It would not be for us to necessarily take a view. But certainly in terms of the practicalities of regulating purely subjective intent, understanding what someone had in mind when they did something, is not always easy to regulate and the current test, because it is objective, enables us to say in our guidance, “If you are planning to do something, think about how someone looking at it would see it”. That is a test that we found reasonably workable in practice.

**Q291 Paul Flynn:** My final question, the impact assessment states that the estimated cost of compliance with the Bill for registered campaigners will be in the region of zero to £800 and you say in your written evidence that you did not think these estimates were credible. What are your own estimates?

**Jenny Watson:** I will ask Peter to answer that. It is not the only point where we would perhaps question some of the numbers in the impact statement. We think the numbers of organisations that could potentially be caught by the legislation are much greater than is set out in the impact statement.

**Q292 Paul Flynn:** Peter has mentioned that your views are evidence-based and I think the Government would find that a very novel concept, the evidence pre-Bill.

**Peter Horne:** You asked how we originally thought that the expenditure between zero to £800 was an underestimate. If I can list what the activities that a third party would need to undertake in order to comply with the rules, first of all, they would need to understand the rules sufficiently to be able to determine whether or not they were regulated or not; they would then need to estimate the costs of their activities; they would then need to register with us; they need to monitor over the course of a 12-month period what their expenditure was, what the impact was; they need to be aware of their impact on particular constituencies. I

would like to remind the Committee that the only organisations up and down the country who are based around constituencies are political parties. There are very few other organisations who understand the boundaries that are in place, other than presumably the Boundary Commission. They would need to report to us any donations that they get and then after the period of the poll, they would need to report spending to us and they would additionally have to produce accounts following a standard that we would need to set at the Electoral Commission. That strikes me as quite a long list of activities. I would suggest that the other organisations that have given evidence, you would be better able to estimate how much it would cost them. I think it would prove particularly challenging for small organisations. For organisations in Scotland, Wales and Northern Ireland spending £2,000, this strikes me as quite a long list of activities to get for £2,000.

**Jenny Watson:** You were in search of practical things that could be done to make a difference to the Bill. We said again in our written evidence that one practical thing that could be done to make a difference to the Bill would be to raise the thresholds at which people have to register, and we have a particular concern about that as it relates to Scotland, Wales and Northern Ireland, because those thresholds are low. It is also worth drawing to the Committee's attention the fact that in some cases, the political culture of those parts of the UK can be somewhat different and expectations have grown up about the role that civil society organisations might play in political debate and so this Bill may have a particular interaction there. There is another practical solution, which is that in our regulatory review, we did make some recommendations about changes to the reporting regime, and again to simplify that reporting regime. Those might help to make this Bill have a slightly less disproportionate impact on small organisations.

**Paul Flynn:** I am grateful to you, thanks.

**Q293 Chair:** Is it possible then, Jenny, that the outcome of this Bill, unless we manage to adjust it, could be the corrosion of the big society, particularly in terms of its interaction with democracy?

**Jenny Watson:** That is probably something that I might allow organisations who want to campaign to comment on, rather than take directly. Our concern as the regulator has really been about the workability of the legislation and the degree to which we think that that is disproportionate and unenforceable in some cases in relation to the constituency provision. But it may well have an impact and that is something for Parliament to think about very carefully when it is debating the legislation, as are some of the issues around, for example, freedom of expression.

**Q294 Mr Turner:** I did not understand your last but one answer. You are saying that Scotland and Wales and Northern Ireland have a different culture than we have and accepting that there is this amount, differences of £5,000 and £10,000, you suggested that there are things going on in Scotland, Wales and Northern Ireland that I wouldn't understand. You are probably right, but I do not know what you are talking about.

**Jenny Watson:** I very much regret if I gave you that impression. Let me ask Peter to try again in a different way and we will see if we are clearer at the end of it.

**Peter Horne:** We went out at the beginning of August to speak to a number of organisations—we spoke to over 40 over the past month—to try to understand the greater range of activities that would be covered under this Bill and what the implications would be. That involved my team also going to speak with members of organisations in Scotland, Wales and Northern Ireland. If I can pick a particular example, there is the situation in Northern Ireland where the unions currently operate out of Dublin and they work on a cross-border basis and our understanding is that they were participants in the peace process. It is the case

that what we don't yet understand is what the implications would be for those organisations. Would their activities be regulated under this regime, and if so, the limits of expenditure of £11,000 in Northern Ireland, including staff costs, could pose a constraint on what they do. If it is the intent of Parliament that that is the case, then we will apply those rules, but what we were not sure is when this Bill was prepared whether those potential consequences were the intended effect.

**Jenny Watson:** This Bill makes a number of changes that do not only impact on a general election to the UK Parliament, they will also have an impact on the way that elections are conducted in Scotland, in Wales, in Northern Ireland and indeed the European elections. So we wanted to be clear that we understood from the perspective of not only the political culture that we have in relation with elections to the UK Parliament, but also the political culture that exists around elections to the Scottish Parliament, for example, the Northern Ireland Assembly, what the impacts there might be.

Tony, I don't know if you want to say anything more about those specific elections.

**Tony Stafford:** It is just worth adding in terms of the impact in other parts of the UK, clearly some of the structural issues that Peter mentioned are already in place. The concern about the Bill is that the combination of the wider scope of activities, the uncertainty around the definition of what is covered and the much lower spending limits all combine to potentially create much more uncertainty for people who are in slightly less common situations than we would normally think of within Westminster.

In terms of impact on other elections, the current controls on national spending apply to elections to the European Parliament, the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly as well as to Westminster. Quite a lot of the detailed changes in the Bill are only intended to apply to elections to Westminster, but some of the fundamental changes, including the change to the scope of what is covered and the definition of what is covered and the thresholds for registration will apply to all those elections, and clearly that potentially has quite a significant impact in terms of what people can spend, even within existing spending limits, because you are widening the scope of what is regulated.

**Mr Turner:** Thank you very much indeed.

**Q295 Chair:** Jenny, obviously you are speaking to a Committee of Members of Parliament and a TV audience of Members of Parliament too, and we all experience a tremendous richness and diversity as we approach an election, you get lobbied by NSPCC and Save the Children and League Against Cruel Sports and so on, you interact with those people. Is there anything in section 2 that will enhance and thicken and develop that relationship or is it all potentially either keeping things as they are or is there a potential to reduce that amount of interaction?

**Jenny Watson:** There I would go back to the point I made at the start, which is given that richness of interaction, it is important where sums of money are spent that that be appropriately and transparently regulated.

**Chair:** Of course.

**Jenny Watson:** So the transparency point is important, but I do not know that we have heard from any organisations that have seen possibly that many positives from their perspective, but they might not. They are going to be regulated and probably nobody likes to be regulated.

Is there anything that you would like to add?

**Peter Horne:** My experience is that organisations are not keen on being regulated. They are keen on us being proportionate and that is what I think would be appropriate in the outcome of this Bill.

**Q296 Chair:** But have people historically said to you, “We are too regulated” or, “We are not regulated enough” or have they just got on with their business?

**Peter Horne:** We currently have a strong role regulating the activities of political parties and we also have our established role regulating the activities of third parties when it comes to election materials. In our experience in past elections, on occasion people have come to us with complaints and allegations around the activities. Under those circumstances, we have sought to bring people into compliance and our experience is that we have either been able to do that, or alternatively we have found that the interpretation of the individual alleging a breach was not what we found in practice. The recommendation that came out of our regulatory review was twofold, one of which was that there is third party campaigning going on and that third party campaigning extends beyond election materials, so that the Government should think of that definition and should broaden it, and not only that, should also have the power to be able to up that interpretation over time.

What we also said though was that thinking about the limits there was particularly important. We have been discussing a little bit around expenditure in the past versus expenditure in the future. I would argue it is quite difficult to make that comparison. We are almost saying, “How much did somebody spend on apples in their last supermarket shop?” and then setting a limit for what they can spend on their whole supermarket shop the next time around without significantly more evidence as to what they normally spend. I think that is the gap that we need to address and the evidence base in this challenge that we need to push for as this Bill goes through.

**Q297 Chair:** Have any organisations in this sector asked for changes in the rules that might have prompted the Government to introduce section 2?

**Jenny Watson:** I would probably approach that in a different way and Tony can possibly talk more about this. We have from time to time in the past had experience with mainly charities—not so much faith groups and trade associations—sometimes finding it hard to understand that, as charities, they need to register with us. It is maybe entirely appropriate that they do under certain circumstances, and I am sure Tony will have examples, but I had thought that where we had got to in that situation was a good place. We have a good relationship with the Charity Commission. There is exchange of views and I think people are clear about our guidance.

Is there anything else you want to add to that?

**Tony Stafford:** Yes. We gave the example in our written evidence of the classic activity that can potentially bring charities into being regulated by the current rules, which is where they will set out a policy position and invite prospective candidates from different parties to say whether or not they agree with it and then publicise the names of the people who agree or disagree. That is clearly caught by the current rules that apply to candidates in relation to a particular policy issue, whether or not they are from the same party. I think there was a point a few years ago where some charities found that hard to understand, because their starting point was that they are regulated by the Charity Commission in respect of political activity, but as Jenny and Peter were saying, we are now in a position where we and the Charity Commission have a clear shared view of how the current rules work and the fact that it is entirely possible and appropriate for charities to have to register with us because of what they are doing, while being completely compliant with the charity law.

**Q298 Chair:** Finally from me, before I ask Sheila to ask a couple of questions, a logistical question really, both the Electoral Commission and Parliament are caught out and surprised by the speed with which the Government has moved on this and the lack of time we have had to be properly consulted. We are going to consider putting some amendments down

to the Bill as a Committee. We will consider that tomorrow. What is your process for getting amendments to this? There is hopefully an interaction with Government where if you see something remarkable, you can suggest a change. Do you formally ask people to put amendments down in the House of Lords or in the House of Commons if there is a glaring error, an omission that needs to be corrected? How does that work, Jenny?

**Jenny Watson:** It works differently depending on the type of Bill. Certainly I would hope and anticipate an on-going conversation with Government to allow us to work through some of the things that my team, with officials, would have been able to work through had there been greater consultation. We haven't touched very much here on enforcement. We might pick that up in a moment, because we have some real concerns about that. So I would hope that there will be an on-going conversation with Government.

I think perhaps particularly of, for example, changes to the timing of close of polls to allow queues; there are amendments that we have been supporting to the Northern Ireland Miscellaneous Provisions Bill around the transparency of donations to parties in Northern Ireland where we would seek support from individuals to put amendments down. In this case at the moment, we are having conversations with Government and if there are things where we think we can improve the workability, we will suggest what those are, but as I already indicated to Mr Flynn earlier, some of this is quite difficult to do while the thing is in motion, because you are retrofitting. That is a real challenge and there is a risk in that process that things are suggested that do not solve the problem that we are trying to solve, so we want to be quite careful how we go with this.

**Q299 Chair:** I was very taken with your analogy of a vehicle going downhill towards a school playground and you are talking about how we should fit the brakes at the moment.

**Jenny Watson:** I am not sure that was quite my analogy, Mr Chairman, if I may.

**Chair:** Sorry to stretch a point. That is the way it occurred to me. Sheila.

**Q300 Sheila Gilmore:** You described the accounting requirements of the Bill as onerous. How could they be improved?

**Jenny Watson:** I am sorry, I could not hear you.

**Sheila Gilmore:** Sorry. You have already described the new accounting procedures as onerous. How would you improve them?

**Peter Horne:** First of all, if I can cover what the requirement under the accounting requirements is, there is a reporting requirement for donations in the period of the 12-month regulated period, then also there is a requirement after the event to report on expenditure and then there is also a requirement to produce what is described as a statement of account for organisations, subject to them not already producing a statement of accounts in the manner of a charity. The first question that could be asked is around what is proportionate under the circumstances, so we started with our recommendations, which is campaigning that had a significant effect should have greater transparency around it. Obviously transparency has a cost associated with it, particularly within smaller organisations, of them understanding and complying with the systems. We recommended within our report that for political parties' expenditure below a certain level, they shouldn't need to file the same level of returns as, for example, the larger political parties need to do.

In the context of particular third party organisations, the question that could be looked at is what is the level at which organisations would need to register, so at what point is expenditure significant enough such that we would need them to provide that transparency, and secondly, the question is at what level should organisations be needing to provide us with significant levels of reporting? Is it okay just to register, provided your expenditure is not above a certain amount, and then above a certain amount you start to have the full panoply of

regulations that do apply to you, because that transparency is appropriate and in the interests of voters?

**Q301 Sheila Gilmore:** How would you always know—or how would the organisation know—the sort of point at which they are going to trigger that if it is simply “significant”?

**Peter Horne:** When I used the word “significant” there, my intent was that it would be helpful if Parliament was to indicate what was the appropriate level of campaigning that they thought was having an impact and should be controlled. This Bill has been described as one of the drivers behind it is the fear around the Americanisation of politics, significant expenditure on both paid party-political advertising on television and others. That is clearly an issue that is important in the US. In the UK, I would question as to if we think of campaigning as a pyramid, there is the significant expenditure of a small number of groups at the top. As we look at the sort of activities that are covered, at what point do we think people should still be included within the regulatory regime because they are having an impact on organisations? For me, that is something for Parliament to discuss and debate around necessarily something that the Electoral Commission has sufficient evidence to understand and give a specific view on.

**Jenny Watson:** So there is another area, if I may, where we would welcome the view of Parliament in terms of what your expectations might be from us, which is in relation to the point that we were discussing with Mr Turner earlier on about the enforcements of the constituency provisions. I think it could be quite easy for you and your colleagues to assume that there might be an army of regulators out in various different constituencies across the country from the Electoral Commission waiting to kind of pop up when any allegation is raised. That isn’t a model that we have so far thought that we would need to put in place, and indeed, I think it would have a substantial cost were we to do so.

I don’t know if you want to say a little bit more about that, if that is appropriate.

**Peter Horne:** To go back to the example of constituency limits, this is the point that if a third party organisation is having campaigning that is having an effect in a small group of constituencies, their expenditure needs to be ascribed against those specific constituencies. We do already have rules in place that are policed by the police around the RPA, which are around expenditure for or against a particular candidate. Arguably, it is easier to trace on the grounds that it clearly names or does not name a candidate and has that effect. This type of campaigning, because of the broader definition, would include events such as rallies and other activities.

The question for me as the regulator is if an individual was to come to us with an allegation that a third party organisation in a constituency in the north-east had breached a spending limit by going above the expenditure of £10,000 or so within that constituency within the calendar year, what evidence would we be able to find after the event in order to be able to make that determination? For example, if an organisation had held a rally, I could have an allegation that it had been entirely political, or alternatively, I could have the word of the organiser, which was it had been a party to celebrate the opening. How do you go in and how do you make those determinations?

**Jenny Watson:** That might become even more complicated if you think about the fact that somebody might choose to do something in a town centre, perhaps involving leaflets or conversations, and not everybody in that town centre will come from a specific constituency. People will travel from some way, passing through for different reasons. How would we, as a regulator, get the evidence that we would need in order to be able to enforce? I say that and I hope you hear it not as wanting to resile from a task that Parliament might set us, because we

would never do that, but simply to highlight to all of you that this is more complicated than it first seems.

**Q302 Chair:** Forgive me, that is post hoc, the event has happened, then you need to make a judgment, but you have also expressed concerns about being pre-emptive and understanding the potential at constituency level for abuse. As I understand it, you have some concerns that you do not have the logistical capability to nip in the bud potential abuses of these regulations.

**Peter Horne:** This is an issue of the question of going in and, for example, issuing a stop notice. This is an issue that we have considered in the context of the Scottish referendum and have been ready for in the past for previous elections. Within the context of the Scottish referendum, it is relatively easy for us to understand the geographic limits of Scotland and activity that is included within that, and also the level of expenditure that would be required to breach a limit, so for those of you who are not close to the expenditure limits in Scotland, for a third party that is £150,000 over the four-month regulated period. The case might be that we would have intelligence that an organisation or individual was seeking to spend significant sums of money in the run-up to the referendum and that activity could then result in a lack of confidence in the outcome of the referendum. Under those circumstances, we are going to be ready to make sure that we can take appropriate action and we are working with Procurator Fiscal to make sure that we can do that. However, you will appreciate that is something that is possible to do because Scotland is reasonably well-defined and the activities are going to be reasonably prominent and the expenditure of over £150,000 is a significant sum of money.

It is much more challenging to conceive of a model that would work at a constituency level, where the expenditure limits are much lower. The relationships that we would have to build up with a range of organisations are much harder and obviously underlining both the examples, that of the referendum and that at constituency level, are real questions around freedom of speech and handing a role to the Electoral Commission and to us as an organisation as to what we do and how we intervene. The tests that we would need to apply is something I think is a model that we hope that Parliament will consider carefully and give us clear guidance as to how we should implement that.

**Jenny Watson:** I think we said to you again in our written evidence that there may be circumstances where a stop notice might be argued to be needed in cases of, for example, asking somebody to take down a blog or a website or to prevent a rally from happening. That is a significant intervention for the Electoral Commission to take, and I hope we have given you an understanding of the fact that the breadth of the definition, together with the change to our remit, does give us a greater discretion.

A good parallel might be the Charity Act 2006, which introduced a public benefit test and then asked the Charity Commission to define that public benefit test. It has been an interesting experience for everybody involved and it has led to a number of legal challenges. In election law, it is very rare for officials to be given a wide discretion, and there is a reason for that. It is because certainty is a helpful thing. That gives us significant concerns, and we would appreciate understanding more about Parliament's expectations about when we might intervene and in what way we might intervene, because that will help us in working through the role that Parliament expects us to have.

**Q303 Chair:** You know we have a relationship with the Electoral Commission of great respect for the work you do and the independence you have. That could change, the law could change and people could be appointed politically to run the Electoral Commission and to give even yourselves, if I may say so, that foot in the door of what one might term the state deciding matters and interpreting matters of freedom of speech. Right now it doesn't concern

me, but setting that precedent about what could happen in the future does concern me. Does it concern you too?

**Jenny Watson:** I perhaps would remind the Committee—and you are aware only too well, Mr Chairman—that the Chair and Commissioners of the Commission are appointed by Parliament and there is a process for that. I am certain that anybody going through that process—

**Chair:** At the moment.

**Jenny Watson:** —would understand very clearly what their responsibilities would be. I think that is an issue that Parliament will want to debate and we would appreciate hearing that debate, because it will help us in working through the degree of intervention that Parliament wants from us. As we have said in our evidence, I would hope that we could set a high bar certainly for enforcement action that looks like a stop notice, because I think that is what Parliament would expect when it relates to fundamental issues of free expression, but our view will be informed by that parliamentary debate.

**Peter Horne:** Can I follow up? A description of the changes that the Bill will bring through at a high level is our recommendation in our regulatory review was there was not enough transparency around significant activity by third party campaigners because it was only concentrated on a particular area and we recommended that there should be increased transparency. This Bill does bring increased transparency. However, alongside it, with the reduction in spending limits, it also brings a point where there will be the constraint in activity and there will be controls as to whether expenditure should not go above that point. It is not for the Electoral Commission to say what level that should be at, but we feel that it is important for Parliament to consider what is an appropriate level of campaigning that a third party organisation should be allowed to undertake. So we support the transparency intent of the Bill. Our question is at what level does Parliament wish to set constraints around what third parties can and cannot do over and above that transparency?

**Q304 Sheila Gilmore:** A slightly more detailed question about the extension of the regulatory remit to cover party registration and entrant rules, are you content with this being within your remit?

**Peter Horne:** I am not sure I caught the question. Which aspect of this is the—

**Sheila Gilmore:** Sorry, the question was about the extension of your remit to cover party registration and the rules for entrants.

**Peter Horne:** The rules for entrants?

**Tony Stafford:** We already have the function of registering political parties and third parties and the Bill does not change our function. It changes the threshold above which a level of spending means that people have to register with us, so clearly we have some concerns, referring back to the entire discussion around the scope of what is covered, but other than that, I do not think the Bill makes any changes in those areas. It certainly does not change the rules on entrants.

**Q305 Chair:** One of the most anxious times in a Member of Parliament's life is having just won the election and then having to fill out their election expenditure, because you know if that job is not done properly and if someone on your behalf inadvertently spent money over the odds, you could lose your seat. If I can pick an example out of the ether, if Barnardo's were £10 over their spending limit, what would happen to them?

**Peter Horne:** We have developed our regulatory role at the Commission and our interpretation and approach to the legislation is that we seek to bring organisations into compliance and we seek to act in a proportionate way. The evidence of the cases that we have dealt with in the past is that where individuals or organisations have made a minor breach that

had not had significant consequences, for example, if people were to make allegations around an individual's election expenses, that they had misfiled them, but they had only spent 50% of the limit and they might have spent an extra 1% or 2% of that, our view would be we would go back to the individual concerned and seek for them to correct that. So that is our past experience and that is the approach that we do take. £10 expenditure over and above the limit I do not think we would lose enormous amounts of sleep over. However—

**Q306 Chair:** Aren't you obliged to enforce the regulations upon—

**Peter Horne:** We are obliged to enforce the regulations, but we take a proportionate approach. What we would do is we would look at the breach in the context of the impact that it would have and the level of effect that it had.

**Jenny Watson:** I think Tony wants to supplement.

**Tony Stafford:** Yes. There is a practical issue for people affected by the Bill here around how spending is controlled, because when candidates and their agents are spending, clearly you have quite tight control over what you are doing. When political parties are spending, the law requires them to have authorisation controls in place so that only people with the right authority can say, "Yes, that money can be spent". The law currently applies the same sort of requirements to third parties and those requirements clearly become much more important when you have lower spending limits and a wider scope of what is covered.

One of the concerns that several organisations have raised with us is that in practice, particularly if they are the kind of organisation that has not been covered in the past and perhaps you only realise you are covered when you are halfway through the year before the election, and we come along and say, "This looks to us like it is in connection with election purposes" you may well not have those controls in place. You may be the kind of organisation that is very diffuse, does not have the very tight command and control structures that the large political parties have, so that is something that clearly if Parliament decides it wants people to have to comply with—

**Q307 Chair:** You may be a local tenants' group, you may be the Isle of Wight campaign against fracking on the island. You may not have a big infrastructure. I have to say, as a political party, local constituencies having to do this stuff and submit is very onerous. We are quite used to it, but it is quite difficult. Aren't we going to catch a lot more of these minnows in this Hoover?

**Jenny Watson:** We talked earlier on about the regulated community being like a pyramid, more people at the bottom spending smaller amounts. If I can use another analogy that somebody put to us, we probably would say that the trawler mesh on this Bill is too small. It is catching the big ones, but it is also catching, as you say, the minnows. But the kind of organisations that you just referred to might well also be part of coalitions and there is an impact for this Bill on organisations working together.

Does one of you want to answer or take that point?

**Peter Horne:** These are anti-evasion provisions to avoid organisations setting up multiple organisations undertaking the same activity, but essentially having the same sort of control in mind behind it. However, the implications would be, say, in your example of an organisation based on the Isle of Wight that was also associated with organisations based up and down the country, viewed as part of a coalition by potentially people on the other side of the debate, at that point there, not only would they have to account for their own spending—should they be defined as a coalition—they would also have to account for the spending of all other organisations within the coalition. Given that the nature of these organisations, the local campaigns but also the national coalitions, is that they are not structured in an enormously formal way and their membership may not be enormously constrained, so all those

organisations would need to be able to account for the activities of each of the others and take responsibility for that when they make their spending return to us.

**Q308 Chair:** These organisations are going to have to budget to do what they have been used to doing in election campaigns, but with less money?

*Jenny Watson:* The impact of increasing the type of activity that is covered, yes.

**Chair:** So people—

*Jenny Watson:* There will be an impact. I should say in the regulatory review, as you know, we did make recommendations to broaden that because we did think that that was overly narrow and in need of change. It is the change in the definition now that gives us the greater cause for concern.

**Q309 Chair:** So there will be lots more people who have been used to spending a lot of money, but they are only going to have a certain amount. Obviously they will be pushed against that ceiling in a way that they have not been before. Am I—

*Jenny Watson:* Yes, that is fair. I also think there is a point about the time period that we have in which we have to issue the guidance, so we would always want, as a regulator, to give our regulated community—whether that is political parties or non-party campaigners—good warning, fair warning of what is coming. That would mean for a regulated period that begins on 23 May next year we would want to have guidance produced by February.

*Tony Stafford:* Late February at the latest.

*Jenny Watson:* Late February. It is not impossible, but it is difficult to start to do that with any degree of certainty until this legislation has passed, so you can see that the timeframe is exceptionally constrained.

**Q310 Chair:** I chose an example in which I hope nobody does wish to take Barnado's to court—or I hope Barnado's are in order—and I think that they are an organisation that commands pretty broad sympathy. Can I put to you, in the middle of an election campaign, which for some reason one of the big issues that has taken light is fox hunting, and people have different views about that and the RSPCA or the League Against Cruel Sports will have one view, the Countryside Alliance may have another view. I enjoy that play, I enjoy having to justify myself in those circumstances. They will have less money than they have been used to in previous election campaigns because lots of other expenditure will be included within their limit. There may be some elements in both camps who would love to get the other lot into court during an election campaign or immediately after to prove a point about how rotten they are. Isn't that a potential hornets' nest? Do you even have the staff to deal with this sort of controversial area when we are limiting the people's ability from all points of view to express themselves in a general election campaign? Isn't this really part of what general elections should be about?

*Jenny Watson:* I think that is precisely the point, if I may say, Mr Chairman, that Parliament will want to discuss as it debates this legislation. In terms of the impact on the Commission in terms of our resources, we will need to submit a further case for resources to the Speaker's Committee. We want to hear what Parliament wants from us and the tone of the debate before we start to pile in with a resources bid, because we want to hear what you expect from us. But there will be a substantial additional resource that is required.

**Q311 Chair:** I had always hoped that the Electoral Commission would want resources to engage people in more democratic activity, not have resources to force people to comply with regulations that are reducing their ability to interact during the political process. Do you feel comfortable with the role that you are being given here?

**Jenny Watson:** It would be for Parliament to decide what that role eventually looks like and we will have to consider what you expect from us at that time. We are happy to keep you briefed as to the expectation that we think Parliament has and the impact that might have on us.

**Q312 Chair:** Isn't this why you should have been consulted much earlier in the process?

**Jenny Watson:** We have already said that we thought this Bill would have benefited from a period of pre-legislative scrutiny, so I would agree that that would have been helpful.

**Q313 Chair:** Isn't it extraordinary that Government did not consult the board of the Electoral Commission and its accounting officer about the change that it is going to make in the Commission's role?

**Jenny Watson:** I was surprised at that.

**Q314 Chair:** One last one, if I may, Jenny, which is about section 3. Have you any interest or any locus in respect of the trade union part of the surprise package that we received at the end of July?

**Jenny Watson:** We have not focused on part 3 of the Bill. I do not think there is anything for us there.

**Tony Stafford:** It doesn't give us any role, no.

**Q315 Chair:** None whatsoever, okay. Jenny, anything that you would like to say by way of conclusion?

**Jenny Watson:** No, I do not think so. We are looking forward to listening to the debate in Parliament over the next few weeks and it will help to inform our thinking on a number of issues, so we look forward to that and thank you for the chance to give evidence to you today.

**Chair:** Thank you for coming in, Jenny, and again, my apologies for this process being very hurried and not at our usual depth and level of consideration, but that is entirely due to the timetable that we had to comply with. Government controls the agenda of the House of Commons, so we have had to fit in with their timetable. Thank you so much.

### Examination of Witness

*Witness:* **Rt Hon Andrew Lansley**, MP, Leader of the House, gave evidence.

**Q316 Chair:** Andrew, welcome.

**Mr Lansley:** Good morning.

**Chair:** How are you?

**Mr Lansley:** Good, thank you.

**Chair:** We understand you have to leave us for business questions.

**Mr Lansley:** No, we just need to be concluded, if it is all right, because we are expecting the second reading to come on after questions.

**Chair:** Rather important we are all there for that one.

**Mr Lansley:** That would be a kindness.

**Chair:** Is there anything you wanted to say to kick us off, Andrew, or shall we jump straight into questions?

**Mr Lansley:** I suppose I would really like to say two things. It seems to me that in the midst of the discussion about the Bill, very often I think what has been lost has been that the

Bill is trying to do some very specific things. In a sense, it is often being accused firstly because it is not doing things it is not attempting to do, and secondly because it is not trying to do the things it is being accused of doing. Those are the two things. Firstly, we are not setting out to control the lobbying industry; we are not setting out to regulate the whole of lobbying. We are setting out to ensure that we have a coherent, transparent process so that people can see who is lobbying whom on behalf of whom.

**Q317 Chair:** Was that the expectation when the Prime Minister made his remarks and when this appeared in the Coalition Agreement from both parties?

**Mr Lansley:** It certainly was our expectation where the coalition programme was concerned, because we said a statutory register of lobbyists, not a statutory regulator for lobbying, but it has been our expectation for a long time, let us put it like that. It is certainly as the proposals were put to you and your Committee, for example, for your helpful scrutiny in the course of last year, that is the basis on which.

The second thing I say is what we are accused of doing that we are not setting out to do, on part 2 of the Bill, the legislation already is very clear that where third parties wish to promote electoral success, to seek to promote or procure the election candidates or enhance the standing of political parties, there is already a legal framework that says that they should be regulated in relation to that. We are not intending substantively to change the boundary between what is perfectly proper campaigning by third parties on issues and policies, getting their arguments across and beyond that line where they are engaged with an intention or any effect of procuring electoral success impacting directly upon the election of candidates and parties. We are not proposing to change that. What we are proposing to do is to set lower overall cash limits where that is concerned, introduce a sense of regulatory control relating to how much of that limit might be able to be spent in individual parliamentary constituencies and extending, as the Electoral Commission recommended in June, the definition of controlled expenditure for that purpose so that it more closely approximates to the definition of controlled expenditure that applies to political parties themselves.

So to that extent, in our view, the idea that there is any reason why this would have any chilling effect, for example, on charities is to me neither contemplated by us nor the consequence of what we are proposing. Charities pretty much definition, by virtue of charity law, should not be engaging in directly party-political activity, so they should not be engaging in expenditure that would be defined as for electoral purposes. So pretty much by definition, they should be free to engage in the campaigning that they want to undertake and I am perfectly content and we are happy for that to be the case. Over to you.

**Q318 Chair:** Isn't that the case at the moment? Is there a big rash of NSPCC and RSPCA and others engaging in party-political activity at the moment? Is there a problem here?

**Mr Lansley:** No. At the last election, as I understand it, there were two charities that engaged, that registered.

**Chair:** Of 8,000 charities there were two?

**Mr Lansley:** There were two registered for the purposes of the calculation of expenditure for electoral purposes. It seems to me it is possible under charity law where it is completely incongruent with a charity's purposes for expenditure to be counted as for electoral purposes, but I think it is very rare. The point is at the last election, we were looking at 30 third party organisations that were registered. Under our new financial limit, we would probably see that number double and I think we are in position where this is not legislation simply in order to deal with a problem, this is legislation to make sure that we have a more coherent structure where third party campaigning is concerned. There is a theme to this, not

only transparency is at the core of this Bill, but the theme of this Bill, what connects the three parts of the Bill, is that we must have a more transparent and clearly accountable structure for how third parties impact on the political system. I do not want us to arrive at a point where we have to legislate in anger, as it were, because third parties are seeking to distort electoral outcomes and go round the proper restrictions that we have had for a very long time in relation to the expenditure that political parties themselves can undertake in order to procure election.

**Q319 Chair:** So currently there is not a problem with charities and others, but we are legislating on that. There is a very strong perceived problem about lobbying, lots of scandals, lots of stuff appears in the newspapers, lots of stories about particular difficulties and yet people tell me, Andrew, that your proposals will not affect any of those scandals that have appeared in the newspapers, quite narrowly defined, so the thing where people do see a problem in the UK is not going to be addressed and then, in your own words, where there is not a problem with charities, we are going to legislate on that. Aren't we missing the goal here?

**Mr Lansley:** No. The Bill is aiming at a very specific what we regard as a gap in the transparency regime, which is that for the first time in this Government, we are publishing Ministers' diaries, Permanent Secretaries' diaries. Speaking entirely personally, I think there is a case for thinking hard about who also in addition to those should think about how they put into the public domain who they see and for what purpose. For example, you should think about the heads of major public organisations, the Shadow Ministers, leaders of local authorities. You could think about a wider range, but we don't legislate for those things, but we have, I think quite properly, ourselves in Government instigated a culture of transparency which I hope does not stop here, but once you have that transparency, once you have things like Ministers' diaries, what you do not want is, on the one hand, going back to my previous life, the British Medical Association come to see the Secretary of State and they have come to discuss pay and pensions. You know where you are with that; you know who they are representing. XYZ consultant lobbying firm come to see the Secretary of State and you do not necessarily know and I think we should know. We are dealing with that issue.

You are quite right, of course there have been scandals. It would be invidious to fix on any individual one, but in reality very often what you have seen is these are scandals in circumstances where people are breaking the rules. Now, simply saying, "Oh well, we should have a new register or a regulator for lobbying and all the lobbyists should be on this" I think quite properly, the evidence you have heard recently and indeed last year, very often the lobbying industry said, "We want an ethical industry". In various forms there has been established voluntary systems of registration and indeed codes of conduct, and speaking for my own party, at the election we said we would encourage the industry to engage in that kind of self-regulation.

In truth, most of these, insofar as there have been scandals, I don't think you can say they have by and large been the result of offences by those who are participating in those kind of voluntary registers. So incorporating those into a statutory register, creating this bureaucratic beast that would involve thousands of organisations and companies and individuals recording potentially tens of thousands of clients and activities and contacts does not, on the face of it, necessarily solve the problem. The problem of course is making sure that we adhere to the principles of public life and whether it is Members of these two Houses of Parliament or others who are adherents to codes of conduct live by those. That is the point.

**Q320 Chair:** Andrew, can you understand why Parliament, charities and the Electoral Commission—many others—feel disappointed and sometimes angry at your failure to consult them effectively?

*Mr Lansley:* From the point of view of the Committee, as you know, I have become directly involved in this in the last three months, but Chloe and my colleagues have been at pains to express our regret and apologise to your Committee for the fact that a very long period of time passed between the report that you issued last year and the point at which we have been able to respond to that and take things forward. Coming to this, as I say, in the last three months, simply because in Government we have thought long and hard about these issues and when you came forward before, it was not strictly speaking just scrutiny of the proposals, but it was saying, “We think there is a different approach you should take”.

**Q321 Chair:** Andrew, you never even asked the board of the Electoral Commission, the accounting officer, about changing their role. They are a statutory organisation. You have had a queue of people from the voluntary sector lining up to say, “Why on earth didn’t you talk to us about this?” All these people, Andrew, we are not threats. We all want this legislation to be better. You can talk to us, you can inform us, you can consult with us, and we feel that we have a contribution to make. Speaking for Parliament, it is a legitimate constitutional issue that this Committee and Parliament itself is properly involved in this process, not a Bill published one day before the recess and a second reading one day after the recess, three working days between a Bill that many of us not even knew that certain sections existed and then Parliament is due to have it put through committee next week. Why on earth don’t you get people on your side to make a better lobbying Bill?

*Mr Lansley:* Firstly, as you know, part 1 of the Bill of course in that sense, although the drafting you may have seen more recently, the policy on which the drafting is based has been the subject of discussion for a long time. Where part 2 is concerned, relating to non-party campaigning, I would accept your strictures more if part 2 of the Bill was trying to do what it is sometimes represented as doing. It is not engaging in a major shift of the boundary between what is campaigning and what is electoral purposes—

**Q322 Chair:** Have you checked your emails today?

*Mr Lansley:* —so where the Electoral Commission is concerned, of course colleagues at official level, Chloe and my colleagues, as she reported to you, have been in conversations with the Electoral Commission more recently. But the truth of the matter is sometimes it takes a while to get to the point where, as a Government, you have reached policy conclusions on the basis of which you can take action, and I am afraid the timetable is a practical one. If we are to impact properly and allow time for the Electoral Commission and the Charity Commission, for example, to ensure that people have proper guidance in place before the electoral period bites ahead of the next general election, then we need to crack on with things, so we are.

**Q323 Mr Turner:** You say you have been responsible for this for the last three months. Is this because the Deputy Prime Minister has somehow decided not to get involved with this Bill?

*Mr Lansley:* That has been true for some time, that the Deputy Prime Minister has recused himself from the involvement directly in lobbying in order to avoid any potential or appearance of conflict of interest from a family point of view.

I got involved because we reached the point where collectively we realised that the Bill was going to be more than for one purpose, but there was a clear thread that was something that applied and was important across Government as a whole. Therefore it was

felt important that there be somebody from around the cabinet table who was responsible for the Bill as a whole. Since that could not be the Deputy Prime Minister, for my sins, I have taken on that responsibility. But I do not claim policy responsibility. Chloe is still the Minister responsible for the policy relating to part 1 and part 2 and Jo Swinson is the Minister responsible for the policy in part 3 of the Bill. Tom Brake and I, as Leader and Deputy Leader, are joining in in order to make sure that we have a full ministerial team to support it.

**Q324 Mr Turner:** The reaction we have received to part 1 and part 2 of the Bill suggests that it would have benefited hugely from pre-legislative scrutiny and if that could have popped in before, say, October, it would be a much better way of handling the Bill.

**Mr Lansley:** Can I just say from the point of view of timetable, you may say, “You might have wished to have started with a draft of a Bill at an earlier stage” but the collective discussions had not reached that point inside Government at an earlier stage. We do not have the luxury of saying, saving your grace’s reasoned amendment at second reading this afternoon, “Let us come back in six months’ time” because there will not be a legislative slot available in the programme and it would be too late in order to impact on the next general election from the point of view of part 2 of the Bill. Frankly, we have been clear in the coalition programme that we are going to do this thing about creating a statutory register of lobbyists. We were clear how we thought we were going to do it in policy terms and we set that out at the beginning of last year. To be honest, your Committee in this respect have construed “scrutiny” widely. Pre-legislative scrutiny, narrowly construed, is examining whether the draft of a Bill and the Bill for consideration achieves what it is intended to in terms of policy terms and is workable in the form which it occurs. It is not quite simply saying that it cannot be done, but it is not proper to describe as pre-legislative scrutiny saying, “We don’t like that policy, we’d like to have a different policy”. That is not pre-legislative scrutiny. That is saying you having a different policy idea.

**Q325 Mr Turner:** I am sure we can agree with that, but it would have been better had we not waited for a year and then had a very short response on 17 July. If the Government simply wants to make it clear whom third party lobbyists represent, why is the legislation so strict?

**Mr Lansley:** Because otherwise consultant lobbyists are under no obligation to disclose the fact that they are consultant lobbyists or whom they represent. They would be under no obligation to do so.

**Mr Turner:** The Government would do that because the Government keeps MPs diaries.

**Mr Lansley:** Ministerial diaries disclose who we have met, but they do not necessarily disclose on whose behalf those consultant lobbyist organisations are working. We said we would introduce a statutory register of lobbyists; it is not because only consultant lobbyists lobby Ministers, clearly not, those who lobby Ministers are actually the minority, but it is transparent who other people are when you look at ministerial diaries. What is not transparent is who is being represented by a consultant lobbyist firm. So we need to plug that gap.

**Q326 Mr Turner:** This is fairly minor, but surely Government knows who you are meeting and whom they represent. Or is it just a fact that somebody can swan into your office and say “I am Mr X”, rather than, “I represent Mr Y”?

**Mr Lansley:** No, but that information is not in our gift to put into the public domain. It is really a matter for the organisations themselves to disclose whom they represent. I have heard people from the lobbying industry explaining how lobbying extends beyond seeing Ministers and Permanent Secretaries and, indeed, some of them have said that in their view it

does not particularly include lobbying Ministers or Permanent Secretaries. It is perfectly possible to have a lobbying campaign that does not include that at all. I completely understand that. Before I came to this House in 1999, I worked for 18 months for what I would now describe as a consultant lobbying organisation. I know perfectly well how it works. The point, however, is that we have this transparency gap, we have Ministers' diaries, if there were more diaries in due course I think we would see, as a direct consequence of that, a widening of the benefit of the information provided in the register. I think it is fair to say that using the statutory register that we are proposing to legislate for, it will be transparent from that these are organisations that are using it in order to indicate on whose behalf they are working as lobbyists. Yes, legally, in relation to the question of whether they lobby Ministers and Permanent Secretaries, but in practice it will be a means by which they can illustrate on whose behalf they are working and lobbying the political system more widely.

**Q327 Mr Turner:** What is the logic behind requiring people to register if they communicate directly with UK Ministers but not Ministers in one of the devolved administrations?

*Mr Lansley:* Because we do not wish to trespass on the devolution settlement. These are responsibilities for those devolved administrations themselves. Indeed, you can see the Scottish administration is proceeding down a path of their own. That is fine. I wish them good luck with that. What we have to do, of course, is make sure that there is a degree of coordination between these things, and we will happily do that. They take things forward in the way they think is appropriate and we do in our way. We publish ministerial diaries, I am not sure that is always the same in all of the other political parts of the United Kingdom.

**Q328 Mr Turner:** Finally, you will know that Members of Parliament are protected within their constituencies, but it does not say anything about the Opposition frontbenchers; are they protected from this Bill or not?

*Mr Lansley:* Our view is that the exemptions that are not only in relation to Members of Parliament representing those who are resident in their constituencies, but that the register relates to those who are conducting consultant lobbying as a business and, for these purposes, we do not believe that the activity of Members of Parliament—including Shadow Ministers—could be properly included in the definition of what is conducting a business. We believe that the Bill already excludes Members of Parliament, unless Members of Parliament were actually engaging in consultant lobbying but, as I understand it, the actual practice of consultant lobbying by Members of Parliament would be contrary to the code of conduct of Members of Parliament themselves. In any case, my view is that the Bill does not require Members of Parliament to register by virtue of any of their normal activities. I will happily give you the assurance that I am in discussion with the House authorities about this, I am happy to listen to any of the discussion we have about this, and if there is any doubt about this we will come back and do something to make sure that it is clear that Members of Parliament are not captured by this provision.

**Q329 Paul Flynn:** Do you think history will judge this Bill to be a legislative atrocity and the signature policy of a Government in creating their ineptocracy?

*Mr Lansley:* No.

**Q330 Paul Flynn:** I do not recall the Prime Minister having an impassioned speech denouncing the next scandal as the excesses of the British Legion, Save the Children and Oxfam. Did he?

*Mr Lansley:* No, he did not.

**Q331 Paul Flynn:** Why is it a major part of—?

*Mr Lansley:* They are not. Unless you are telling me that these organisations are planning to undertake activity that would constitute spending for electoral purposes, and I don't think they are. I have no knowledge that they are. I know them very well as organisations. I think we all know, for example, the way in which Oxfam lobby quite properly, and very effectively. In my constituency they have a representative, who I meet at my constituency surgeries on a regular basis, who keeps me very well updated and informed about their views. It does not constitute activity or expenditure for electoral purposes, so why would they be constrained in any sense?

**Q332 Paul Flynn:** The Prime Minister correctly identified the great problems of corrupting the political process that are caused by the big corporate lobbyists. That was his target on March 29. This Bill has several targets, why is that?

*Mr Lansley:* Because this Bill is about the influence of third parties on the political system and, as well as the principles of transparency and accountability, links across the Bill.

**Q333 Paul Flynn:** We have heard from the lobbying industry, we have heard from those who campaigned for transparency; not a soul has uttered a syllable in support of this Bill. In fact, the transparency people said that it is worse than nothing. They would like to see the Bill killed.

*Mr Lansley:* I think that is clearly not true. That is clearly not true. I am not making exaggerated claims, I am not saying it will necessarily stop scandals in lobbying, not least because most of the scandals that you see involve people behaving badly and very often in ways that might already be illegal, contrary to codes of practice, certainly contrary to the Nolan Principles and the like. It is not an effort—which in any case I think would be doomed to failure—to try to create a controlling and enforcement mechanism for everybody who lobbies anybody for any purpose anywhere in the system. We believe, I think with justification, that transparency is the answer. Sunlight is the best disinfectant. We have taken substantial steps as a Coalition Government, since the election, to make this the most transparent open and accountable Government we have ever seen.

There is a gap in that process, we have identified it and we are proposing to legislate to meet it.

**Paul Flynn:** Those organisations that have been campaigning for twenty years for greater transparency contend this Bill as being worthless.

*Mr Lansley:* They are wrong on that.

**Q334 Paul Flynn:** Can you give an example?

*Mr Lansley:* Part one of the Bill is not a substitute for things that have been done up to now. There are things that have been done on the part of people in the lobbying industry themselves and we want to work with them and ensure that what we are doing is complementary. I won't exaggerate its impact, but it is a significant step forward in adding to transparency because it is perfectly obvious when we go down the path—as I hope we continuously shall—of making more open who is lobbying who that there was a gap and a failure to be able to accurately identify a particular kind of lobbying activity, which is a consultant lobbying activity.

**Q335 Paul Flynn:** So it is part of your intention to stir up a gale of opposition from charities and their supporters, which we are hearing now?

*Mr Lansley:* I am an old hand, perhaps not such an old hand at these things as you are Mr Flynn, but it is in the nature of government to put things forward and everybody has a go.

**Q336 Paul Flynn:** We were grateful to you for responding to our reports that you praised, we were rather disappointed that it took a year to do so and you did it in half a letter on the last day of the Parliamentary session and we had agreed to legislate for it today. I can think of no other example where a Bill is being conceived in such fear and panic, written in great haste and, as a result will be—and I think you should feel queasy about this—a legislative atrocity on the scale of the Dangerous Dogs Act.

*Mr Lansley:* Let's not get into dogs.

**Paul Flynn:** Could you offer a word of apology for the extraordinary way you have treated this Committee with disdain? No response for a year, a few paragraphs in response and we have to act immediately. We met during the recess to consider it.

*Mr Lansley:* My colleagues have been very clear in apologising to the Committee for the length of time it took us. As a Government we have engaged in significantly more pre-legislative scrutiny than our predecessors. I do remind you that the Political Parties Elections and Referendum Act 2009 was not subject to any pre-legislative scrutiny at all. I acknowledge the points the Committee makes about part 2 of the Bill, although I think much of the argument about part 2 of the Bill arises from a misplaced view about its impacts. On part 1 of the Bill I do not accept that it has not been scrutinised. I think that what you did in the course of the early part of last year was a scrutiny, it is just that in the end we did not agree with the conclusions of the Committee. We did not just come back and say two months later as we were required to do, “We don't agree with you”, my colleagues across Government went away and did a lot of work trying to establish on what basis we thought we should best take forward our Coalition commitment to introduce a statutory register of lobbyists. At the end of the day, the conclusion that we came to was quite close to the position we had been in in January 2012. I am sorry, I do not make any apology for that, I think we ended up in the place we needed to because that was the practical, workable thing to do.

**Q337 Stephen Williams:** Thank you. Can I apologise for missing the earlier evidence session, because as Chair of the APPG on Smoking and Health I was speaking at the plain packaging debate in Westminster Hall?

*Mr Lansley:* Don't get me started.

**Stephen Williams:** From your former role you would have been interested in that. I said there that that debate in this Committee and the debate in that room sat seamlessly, because you might say that the abandonment by the Government of plain packaging was a triumph for the lobbying industry.

*Mr Lansley:* Even I would not say that.

**Q338 Stephen Williams:** Chairman, I had the honour of seconding the Queen's Speech, the Loyal Address, in May and in my speech I lamented the fact that plain packaging did not appear in the Queen's Speech, but also that a Bill to regulate lobbyists was absent from the Queen's Speech as well. I speculated that they might be connected. When was the decision taken to resuscitate proposals to regulate lobbying?

*Mr Lansley:* It has always been our intention to fulfil the Coalition Programme commitment to introduce the statutory register of lobbyists; it is simply a case of the collective discussions to determine on what basis we were going to do that were not completed. It is interesting because one of my responsibilities as Leader of the House is to coordinate the process leading to the publication of the legislative programme in the Queen's Speech. The fact is what is included in the Queen's Speech is subject to the criterion of what

has been collectively agreed and settled. If you have not arrived at the point where we have agreed collectively on the policy basis on which we are going to bring forward a Bill, it is probably not sensible to incorporate it into the Queen's Speech because people will quite naturally, on that day, say "Fine, you have said you are going to introduce this so you know what the policy is". To some extent it is always true for every Queen's Speech that there is a degree of "other measures will be laid before you" and it is completely and utterly normal for a legislative programme to include legislative measures that were not included in the Queen's Speech. It happened in the last session, and it has happened in this session.

**Q339 Stephen Williams:** Chairman, Andrew says it was always the intention of the Coalition to legislate on lobbyists, I think that would apply to part 1 of the Bill, flawed as those proposals are according to this Committee. Part two I don't think was always the intention of the Coalition, I don't recall discussing it in advance of the Coalition Agreement or indeed any warning at all that it was going to appear in legislation. Whose idea was part 2 of the Bill?

*Mr Lansley:* The Government's.

**Q340 Stephen Williams:** Would you like to be more specific than that?

*Mr Lansley:* No. It was the Government's idea. We have a responsibility to ensure that election law is robust and effective. We were very clear that beyond the question of the introduction of the statutory register on lobbyists there was a wider point at issue here, which is that we wanted to ensure greater accountability in the way in which third parties impact on the political system more generally. When we looked collectively, as is our responsibility—nobody else can bring forward proposals to amend election law—it was clear that there was a significant risk that we could, over time, end up with the constraints on spending by political parties, which enable a certain degree of equality of arms in election times, being subverted by third party spending that would not necessarily be captured under the old rules; particularly insofar as it is thought to influence the outcome in individual constituencies by focusing disproportionate resources in a small number of places.

**Q341 Stephen Williams:** Some people might think that answer was slightly evasive.

*Mr Lansley:* Why?

**Stephen Williams:** If, as you said earlier, the Deputy Prime Minister stood aside from this as a party leader and does not want to get involved in discussions over lobbying, which Minister out of the other 80-odd we could choose from decided that part 2 should be appended to this Bill when there was no warning until a couple of months ago?

*Mr Lansley:* You will forgive me that it is the practice of successive Governments not to try to put into the public domain a running commentary, or even a post-hoc commentary, on who in Government, on a ministerial basis, was arguing for what and when. It is very straightforward, this is how it works. Chloe, as the Minister for Political and Constitutional Reform, has been working on the policy that is now reflected into parts one and two of this Bill. She has done so really well, working with colleagues across Government including Tom Brake as the Deputy Leader of the House, who has been working with her and others to make this happen. We are now incorporating this into the Bill team, so we are the visible face of this, but the decisions of Government are the decisions collectively across Government. They are not the decisions of individual Ministers.

**Q342 Chair:** You can see where this is coming from—

*Mr Lansley:* I can see where it is going to.

**Chair:** —because the Lobbying Bill was about lobbying per se, not all of it obviously, it is trundling along. We do our review of the consultation, the Government sits on a response for a year, it is very sleepy and slothful, then all of a sudden two new sections come out of Government and then helter skelter it has to be done. It has to be done quickly. There is no consultation, we don't talk to the Electoral Commission, we don't talk to the people concerned, the people that will be influenced by this or affected by it.

*Mr Lansley:* We do talk to the Electoral Commission.

**Chair:** You are getting around to it now, but they are pretty upset.

*Mr Lansley:* They might like to have a talk, but actually we talked to them—

**Chair:** You are changing their remit. You are changing their terms of reference without even mentioning it to them first. You are getting around to it now, which I am sure we are all grateful for.

*Mr Lansley:* It is in the Bill.

**Q343 Chair:** So why was there lethargy for a year and then knee jerk, really fast, don't even consult effectively with Parliament, on two clauses, two sections that you have added? Just give us a straight reason. I am sure you can justify it.

*Mr Lansley:* You know perfectly well that nobody in Government is sitting around doing nothing about this, they are working hard. It may be relatively difficult for people to say that because Government has not announced anything therefore nothing has happened. That is not the case. A lot happens inside Government in order to arrive at the point at which we can announce policies and that is what happened in this case. A lot of work was done to arrive at the point where we could announce this.

You keep characterising it as the Lobbying Bill, we said we would legislate to introduce a statutory register on lobbyists, we did not say we would introduce a Lobbying Bill that would necessarily not do anything else.

**Q344 Chair:** Your consultation did not do anything else at all.

*Mr Lansley:* It is completely normal for there to be consultations on parts of Bills—

**Chair:** And then invent two thirds of the Bill the day before the recess.

*Mr Lansley:* Bills often end up including more than one part which relates to more than one specific issue. This Bill, I think, is perfectly rational in the sense that it clearly has three parts, but as it happens the three parts are very straightforwardly connected insofar as they all relate to the achievement of greater accountability and transparency in relation to third party influence on the political system. The fact that there was a public discussion about the statutory register on lobbyists did not mean that we were in any sense barred from thinking about what equally needs to be done in a piece of legislation in order to improve the accountability of our political system. We are allowed to do that. We can bring forward proposals.

**Q345 Chair:** The Government can do anything it likes. It controls Parliament, it can get on and do stuff however it wishes, but Andrew you are not winning many friends on something that should be consensual, something that everybody should be able to agree on and move forward with. It seems almost deliberately trying to alienate the people who are going to be affected by this stuff and the community—particularly those who are interested in lobbying—who come in front of us and say, “Give us a chance, let's do this properly” and we can actually deliver a Bill that will do everything the Government wants and be able to do stuff for everybody else.

*Mr Lansley:* I completely understand and I share with my colleagues a sense of regret for the procedural and process indignities we have created for you. I agree with you in this

sense. Let us look at that then, let us move on and make this happen. We have substantial time available on the floor of the House to make this happen. There are three days planned on Committee and a report stage beyond. This should give us ample opportunity to look and ensure that. I might say much of the debate at the moment is not, “Let’s look at what you’re trying to do and make sure it works”, it is, “Well, we’d actually like to do something different”. There is a core point here that I think people are missing, which is that it is not our intention to control and regulate the whole of lobbying activity. The legislation is designed, and the policy is designed, to meet a specific requirement to make more complete the transparency regime rather than a top down legislative control of lobbying.

**Q346 Chair:** You are the Leader of the House, Andrew, will you undertake now to normally have a pre-legislative scrutiny process for Bills that come before this House?

**Mr Lansley:** You know perfectly well from our previous conversation. I have been clear, not only do we undertake more pre-legislative scrutiny than our predecessors—significantly more. In the last session we had approximately 13 measures published for pre-legislative scrutiny, which is way ahead of previous sessions. It is in the nature of Government that the manner of pre-legislative scrutiny will vary and there must be circumstances in which it is not possible to undertake pre-legislative scrutiny. Frankly, the closer you get to an end of a Parliament—and I say this for the fourth session in particular—it will be difficult sometimes for purposes where the Government feels the necessity to complete its legislative programme to have always completed the policy formulation in a state to be able to undertake pre-legislative scrutiny in all cases. The pre-legislative scrutiny itself, of course, can take a number of forms.

**Q347 Stephen Williams:** The Leader of the House is obviously trying to spare the blushes of whichever ministerial colleague it was whose bright idea—and what a bright idea—part 2 was. Has the reaction taken you by surprise? You said you were an old hand, but has the level of the surprise and the suddenness of it surprised you?

**Mr Lansley:** I am not surprised in relation to part 1 because I think people have been debating for a long time now, and I have seen and looked back at all of the debate and people have clearly been spending a long time wanting the legislation to do something different from what we are setting out to do. That is no different now to what it has been in the past. With part 2 I was disappointed, but not entirely surprised because I am afraid it is my frequent experience that in order to try to impact on the system, to lobby the system, sometimes people do not engage in trying to address the specifics, they try to characterise—and sometime over-characterise—what people are trying to do and then that gets you into the press because you get a row. If you get a row and you get into the press then you might get people to do something. Leave that one aside.

On part 2 I was disappointed and somewhat surprised because it struck that there was no justification for the proposition that the structure of the Bill constrains any campaign organisation—even 38 Degrees—from campaigning on issues and policies. It might be tempting to think that it might be a good thing if it was constraining 38 Degrees but it does not do that. They can campaign, they can even campaign in the run up to election periods, but what they cannot do is without putting themselves into the regulatory structure for controlled expenditure. They can campaign on issues and policies and their members can send emails to as many people as they like on policies and issues but if they step over the line and put themselves into a position of seeking to procure electoral success for candidates and parties then they should form part of the regulatory structure.

**Q348 Stephen Williams:** The point is that 38 Degrees will have generated a lot of emails we have had, I have had over 700 as of today. Even for Bristol West, which writes to me about just about everything under the sun, is quite extraordinary over about three days. I met with David Babbs, who runs 38 Degrees, yesterday. They think that part 2 of the Bill is going to constrain what they do, as does everyone from the British Legion through to the National Union of Journalists; there is a pretty extraordinary coalition of disparate interests who feel that part 2 will affect them, and perhaps they feel that because they think that Parliament is being bounced into perhaps approving something that it has not had the time to look at.

Can I ask you a detailed question, and that is about the registration limits that the Electoral Commission will be asked to monitor? They will be reduced from 5% of political parties' expenditure to 2%, in England from £793,000 to £319,000. Why was 2% chosen rather than 4% or 3%—what were the thought processes behind that?

**Mr Lansley:** Because we wanted to set it at a level which we felt was appropriate in relation to the overall spending and would not, of itself—when you looked at third party spending, it is not actually set at a level which will constrain spending for electoral purposes generally, compared to previous elections, but would pretty much not permit large numbers of organisations to join the cohort we have seen up to now who are engaging in large-scale election spending on a national basis. We wanted to pretty much say, “Okay, this is where we are and we don't think we should really go beyond this sort of level in the future.”

**Q349 Stephen Williams:** That sounds like an agreement that I would share that too much money is being injected into the political system to influence how people think. Logically, would it not have been better to reduce the expenditure limit by political parties and that, while maintaining the 5%, would have brought down expenditure by third parties?

**Mr Lansley:** No, I don't think that is logical. One of the central points that we have in mind is that at election time there should be a pretty clear distinction between those who are at the time of an election putting forward their view about policies and issues—whom we have no intention of constraining, they should be free to do that—and those who are engaged in trying to secure the election of candidates and parties. The point of the structure of the legislation is to reinforce the pre-existing legislative framework to secure that. Overwhelmingly, where spending takes place at general elections it is done by, through and with the authorisation of political parties; and where there is an exception and people are engaging in activity that has an impact on the electoral success that should not be disproportionate either at a national or a constituency level.

**Q350 Chair:** Just briefly on section 3, Andrew. What is the purpose of section 3?

**Mr Lansley:** To secure accountability. As we have seen, we want to make sure that those organisations who are the key third parties in the political system—trade unions are of course a very important participant in the political system, and indeed the economic system. There is no doubt about that. We want them to be there, and after lots of mergers and so on there are large and often quite diverse trade unions, so it is very important that their members and the public should be able to see clearly that they know who their members are and can account for who their members are. It is not seeking to constrain or impact adversely in anyway upon trade unions, it is simply part of this accountability structure.

**Q351 Chair:** Do they not do that already? Is it not in their interest, do they not make income from that?

**Mr Lansley:** It may well be in their interest to ensure that. If it is in their interest then they will have no objection to it. We simply want to make sure that the certification officer,

the public and the members can be assured that their membership and the accounting for their membership is accurate.

**Q352 Chair:** Should the same therefore apply to political parties?

**Mr Lansley:** There is no legislative framework for that. We have an existing legislative framework for certification officers to make sure that their members and the way in which they operate inside statute is accountable. We don't have such a structure for political parties to account for their membership.

**Q353 Chair:** Perhaps, since it is very important for trade unions is it not as important for political parties?

**Mr Lansley:** You will have to explain to me what purpose is served by doing that. I know where we are with trade unions because trade union members themselves and the public need to know that trade unions when they are exercising their membership, because in some respects their membership—for the purposes of ballots, for industrial action, for the calculations of political funds and memberships of organisations and so on—is in itself a key fact that leads to implications elsewhere. Where political parties are concerned I think the implications live within the parties themselves, it doesn't impact outside them directly. In an individual constituency association whether you have 500 members or ,000 members is a matter for the association, but it doesn't technically change the interaction between the association and the outside world.

**Q354 Chair:** Andrew, that is very helpful. Thank you for sparing us the time today.

**Mr Lansley:** Thank you very much. See you this afternoon.

**Chair:** See you later.

Did I get the impression you hadn't accepted the amendment that I put on the order paper?

**Mr Lansley:** No, I am afraid I am simply making an assumption that a reasoned amendment down from the official Opposition is normally accepted by the Speaker and not otherwise.

**Chair:** Andrew, thank you.