

## Written evidence from Professor Pete Dorey<sup>1</sup> (MHL26)

### Public Administration and Constitutional Affairs Committee Membership of the House of Lords inquiry

If we rule out Unicameralism, entailing abolition of the House of Lords whereupon the House of Commons would become the sole national legislative body, then the options are either a wholly elected House of Lords, a wholly-appointed House of Lords, or a hybrid body which is partly elected and partly appointed.

An elected House of Lords would be problematic for several reasons:

- Candidates would almost certainly be selected and elected on the basis of party label, which would then result in a loss of the current wealth of experience and expertise. Partisanship would replace professionalism.
- An elected Second Chamber would almost certainly claim a democratic legitimacy, and so become a rival to the House of Commons. The potential for stand-offs and inter-House arguments would greatly increase.
- The timing of elections to an elected House of Lords would be problematic. If concurrent with elections to the House of Commons, then the same party might win a majority of seats in both Houses, which would weaken checks-and-balances. If elections to the House of Lords were held on a different electoral cycle, such as mid-term or half-way between House of Commons' elections, then there would be a much greater chance of another party winning, as governments often suffer mid-term 'blues' and loss of popularity. In this scenario, the House of Lords might claim to be a more accurate or up-to-date representative of public opinion at that stage.
- What electoral system or method would be adopted? If it was First Past the Post, the likelihood of duplicating the party balance in the House of Commons would greatly increase. If, instead, some form of PR was adopted, then why not PR for the House of Commons too?
- Would elected peers – of course, their name/title might need to be changed – acquire constituency roles and responsibilities, and if so, how would these be shared with the 650 MPs in the House of Commons?

A compromise might be to establish a 'hybrid' House which was partly elected and partly appointed, but this would retain many of the problems just identified, and with the addition of three more:

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<sup>1</sup> I am Professor of British Politics, and my two main academic specialisms are: a) contemporary British Conservatism and b) constitutional reform, with a particular interest in the post-1945 history of House of Lords reform, and associated debates over options. I have published several books, chapters and articles on House of Lords reform, including the 1958 Life Peerages Act, the Blair Governments' half-completed two-stage proposals, and the current proposals of Sir Keir Starmer, and Lord Norton of Louth. My most recent scholarly article on this topic, 'Elect or Select?: The continuing constitutional conundrum of House of Lords reform', was published in the latest (July-September) volume of *The Political Quarterly*.

- What would the ratio be between elected and appointed ‘peers’; 80/20, 60/40, 50/50, 40/60, 20/80, or some other permutation? When MPs voted on a similar range of options during Tony Blair’s premiership, no single option attracted majority support. Some MPs rejected these options because they favoured either a wholly elected or a wholly appointed House of Lords.
- How would the non-elected peers be appointed; by who, and on what basis or criteria?
- A ‘hybrid’ House of Lords would very likely entail two-tier peers, as the elected ‘peers’ assumed or enjoyed a democratic legitimacy compared to their appointed colleagues, who might also be viewed as ‘cronies’ of whoever had appointed them.

When we reject the three options of abolition/Unicameralism, a wholly-elected House of Lords, and a ‘hybrid’ Second Chamber, we are left with a fully-appointed House of Lords, but the method of appointment urgently needs to be reformed, via a significant strengthening of the House of Lords’ Appointments Commission (HOLAC), and a corresponding reduction in Prime Ministerial patronage.

### **Appointments to the House of Lords**

The current arrangements for appointments are *not* sufficiently robust to produce an effective and trusted Second Chamber, because they place too much power in the hands of a Prime Minister, and through him/her, the leaders of other parties. With HOLAC only appointing 20% of the Chamber’s new members, the scope and scale of Prime Ministerial patronage is enormous and excessive, quite apart from HOLAC’s lack of statutory power in effectively vetting or vetoing unsuitable nominees.

The appointments process can only be improved, and the Chamber’s legitimacy and public reputation enhanced, by greatly reducing the right of Prime Ministers (and through them, other party leaders) to choose the majority of Life Peers. This will require significant reform of HOLAC, and a major increase in its power and authority, as outlined in the next section of this submission.

A clear set of criteria should determine who is eligible for appointment to the House of Lords, with a strong emphasis on experience or expertise beyond Parliament. While HOLAC’s nominees generally meet this criterion, there is ample scope for increasing the number of ‘peers’ who have achieved success or acquired expertise beyond being an MP or Minister, and who could then utilise this ‘real world’ experience in examining and scrutinising policies, either via the House of Lords’ select committees, through the scrutiny of Public Bills, or when conducting Debates on issues of major or topical importance in the Chamber.

I recognise that the current House of Lords performs these roles currently, but by reducing – or maybe even removing altogether – Prime Ministerial patronage in determining its membership, the Chamber could be imbued with much wider and deeper ‘real world’ expertise or extra-parliamentary professional experience, and in so doing, restore some of

the public trust in politics which has been lost in recent years, partly due to perceptions of ‘cronyism’ in political appointments.

### **Strengthening HOLAC**

As noted above, HOLAC suffers from two major limitations, and so any reform of the House of Lords’ appointments process must entail greatly enhancing HOLAC’s powers. First, it needs to be much more than an advisory body whose recommendations can be ignored by Prime Ministers. As an absolute minimum, this requires that HOLAC should be placed on a statutory basis. This, of course, is at the heart of the Private Members’ Bill introduced by Lord Norton of Louth in his ‘House of Lords (Peerage Nominations) Bill, which received its Second Reading in November 2022.

However, this would still leave Prime Ministers – and through them, other party leaders – with the power to nominate the vast majority of Life Peers, subject to approval by HOLAC. Prime Ministers already possess an immense power of patronage in terms of Ministerial appointments, and in nominating the heads of sundry public bodies. Enjoying the additional power to recommend new peerages to the Second Chamber is, I believe, unwarranted, especially when it fosters strong suspicions of cronyism, via rewards and titles for loyal (compliant?) backbench MPs and Ministers, or generous party donors.

As a consequence, I would go much further than just placing HOLAC on a statutory basis, because this itself would still leave Prime Ministers with the privilege to make the vast majority of recommendations for Life Peerages, even though these would need to be approved by HOLAC. Instead, I would recommend that HOLAC itself should appoint the vast majority of new peers, with the Prime Minister permitted to nominate no more than 20% of new peerages (subject to HOLAC’s approval). This, of course, would totally reverse the current ratio, whereby HOLAC appoints 20% of new peers, and most of the remainder are recommended by, or via, the Prime Minister.

I am attracted by the notion of HOLAC making *all* appointments to the Second Chamber, and removing the Prime Minister’s power of patronage entirely in this sphere, but I recognise that this would probably be judged too radical and transformative, and that permitting the Prime Minister to continue nominating a small number of Life Peerages, subject to approval by HOLAC, would be a reasonable compromise, which in turn would hopefully make this proposal more likely to attract cross-party support among parliamentarians themselves, whose consent would be vital in contributing to the legitimacy and success of this reform.

The proposal that HOLAC should make *all* recommendations for Life Peerages has previously been made by Lord Steel of Aikwood, in the 2010-12 Session, but his Private Members’ Bill would still have left just 20% of the Second Chamber’s membership independent of any political party, with the Prime Minister and other party leaders free to submit nominees to HOLAC for approval, subject to meeting specified criteria, and with no party enjoying a majority in the House of Lords. This would have meant that party leaders in the House of

Commons retained the prerogative of nominating the vast majority of Life Peers, often on a party political basis, albeit via HOLAC.

### **Criteria of nominations and appointments**

HOLAC's main criterion when deciding on the suitability of nominations has been 'propriety', defined in terms of 'good standing in the community', and with their past conduct not likely to bring the House of Lords into disrepute. This should remain a minimum pre-requisite for all future appointments, but other conditions and criteria ought also to be met.

#### *'Real world' experience and/or professional expertise*

A major strength of the House of Lords is the breadth and depth of experience it enshrines due to the professional backgrounds of many Life Peers, and which ensures that whilst it is obviously not elected, it is relatively *socially* representative, in terms of the breadth of backgrounds of many of its members. However, there is ample scope for further widening the range of professional expertise and real-world experience in the Second Chamber, and thus providing representation or an indirect voice to a wider cross-section of British society when scrutinising legislation and other policies, and holding Ministers to account (particularly via Select Committee inquiries).

By granting HOLAC the statutory authority to appoint at least 80% of Life Peers, the Second Chamber could be infused with an even wider range of 'real world' experience and expertise, and while some of those appointed will be former MPs and Ministers with relevant knowledge or a proven record of success in their previous role(s), the overall number of 'political appointees' and party representatives should decline considerably.

It is envisaged that the vast majority of Life Peers appointed by a strengthened and statutory HOLAC, and in accordance with robust and transparent criteria, will be formally independent politically, like the Crossbenchers currently nominated by HOLAC, but who only constitute 20% of the Chamber's overall membership. The House of Commons would legitimately remain a political chamber dominated by party politics, while the House of Lords would become a 'chamber of experts and experience' mostly emanating from beyond Parliament and party-politics.

#### *Demographic parity*

Parliament has always been characterised by an under-representation of women, although this is gradually changing: 34% of MPs elected in 2019 were women, compared to just 3% in 1979.

In the House of Lords, 29% of peers are currently women.

One of the reasons for the historical under-representation of women in Parliament is that the type of careers and professions that MPs and peers have often emanated from have

themselves been male-dominated, although this too is now steadily changing as the glass-ceiling increasingly shatters.

With regard to achieving gender parity in the House of Lords, this could partly be achieved by appointing peers from a broader range of professional backgrounds, and with a wider range of 'real world' experience. Moreover, HOLAC could also aim to ensure that half (or even 51%) of its appointments were women, regardless of their backgrounds.

The same approach could be adopted also to ensure that the proportion of BAME peers matched the BAME population of the UK – in 2019, 6% of peers were from ethnic minority backgrounds compared to 13% of the UK population (based on ONS data).

### *Regional/Territorial representation*

In principle, the Second Chamber ought also to represent the regions of the UK (including the English regions) – in 2019, 43.6% of peers had their main address in London or the south-east. However, this might reflect the fact that many peers are based in the London and the south-east due to their careers or professional roles, with the HQs of many major organisations (private, public, voluntary) located in London and the southeast – including Parliament itself, of course.

### **Three (potential) problems with these proposals**

In recommending a Second Chamber in which at least 80% of members are appointed by HOLAC, and with broad parity of occupational and professional backgrounds or experience to render it much more socio-economically representative, I am acutely conscious of three likely problems which would need to be addressed.

First, some occupations can more readily be evaluated or quantified to measure the success or achievements of post-holders; how would the professional success or accomplishments of a Community [Police] Support Officer or social worker be evaluated in comparison to those of a barrister or senior academic? What criteria would need to be adopted and measured, and by who?

Second, but following on from this point; unless they have retired, it would be difficult for many citizens to combine attendance in the House of Lords with their main employment. Some professions have always been more readily combined with a parliamentary role, in terms of flexible hours, lengthy leave of absence granted by their employer, or already being based in London, but this naturally reinforces the relatively narrow and unrepresentative range of occupational backgrounds from which most MPs and peers emanate.

Third, but again following on from this last point, some potential appointees would be prevented from serving in the House of Lords due to lack or loss of income. Again, many established professions pay salaries (or pensions) which make attendance and activity in the House of Lords affordable, but for many other potential peers in lower-paid careers, the lack

or loss of income would make active attendance and regular involvement in the Chamber's business financially unaffordable and economically unviable.

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