TRANSPARENCY INTERNATIONAL UK
fighting corruption worldwide

POSITION PAPER

REDUCING CORRUPTION RISKS IN A REFORMED HOUSE OF LORDS

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Editor: Steve Goodrich (TI-UK)

Researcher: Rose Whiffen (TI-UK)

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KEY TERMS

Bribery: The offering, promising, giving, accepting, or soliciting of an advantage as an inducement for an action to improperly perform a job, role, or function. Inducements can take the form of gifts, loans, fees, rewards, or other advantages (e.g. taxes, services, donations).

Conflict of interests: A situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests. This can include a conflict between someone's role as an elected official and their own private business interests, or those of family or close associates.

Cronyism and nepotism: A form of favouritism whereby someone in public office exploits his or her power and authority to provide a job or favour to a family member (nepotism), friend or associate (cronyism), even though he or she may not be qualified or deserving.

Patronage: A form of favouritism in which a person is selected, regardless of qualifications or entitlement, for a job or government benefit because of affiliations or connections.

KEY FIGURES

- **Over one in five** (68 out of 284) **political party nominees** for peerages between 2013 and 2023 **have made political donations**.
- These 68 peers have **donated over £58 million to political parties and their members** in total.
- £53.4million (**91 per cent**) **of Lords' political donations** went to the **Conservative Party**.
- **12 of these Lords are super donors who have contributed £1 million or more**, totalling £54 million (92 per cent of all donations from peers during this period).
- There are 50 sitting peers **who have never contributed more than five times** to proceedings in the House of Lords.[1] Only 6 per cent (3 peers out of 50) are those nominated by the House of Lords Appointments Commission (HOLAC), whereas party leaders nominated 74 per cent (37 peers out of 50).

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EXECUTIVE SUMMARY

As an organisation that advocates for legislative reform, Transparency International UK has worked with many members of the House of Lords over the years, and we recognise the invaluable benefit that some bring to the scrutiny of UK laws. Yet it is increasingly clear that the second chamber is being brought into disrepute, in large part due to political patronage, and there is a growing consensus that retaining the status quo is untenable.

Prime Ministers are afforded a high degree of discretion in the process of appointing peers, with few checks and balances. With their frequent turnover in recent years, prime ministerial resignation honours have rarely been out of the headlines, usually for all the wrong reasons. Crucially, these political appointments have too often been awarded to party donors, demonstrating flaws in the current system, and leading to accusations of cash for peerages – a criminal offence in law, yet seldom prosecuted successfully.[2] Combined with an almost casual use of this privilege as a reward for political loyalty, the reputation of the House has suffered greatly in recent years and in need of desperate repair.

Thankfully, those willing to arrest this decline have several options at their disposal, many of which do not require primary legislation in the immediate term. Below we identify at least 15 ways to help reduce the risk of corruption in the Lords, which can adapt to a range of different scenarios depending on the nature of reforms to the upper house.

Notably there is public support for key elements of this package – including reducing the size of the chamber and giving an independent body, rather than the Prime Minister, the power to make appointments to the Lords.[3] This shows that those pursuing the next chapter of reform could have significant backing from the electorate. However the second chamber is chosen – by appointment, the electorate, or through a mixed system – we must end the unfettered patronage and quid pro quo that undermines its credibility and confidence in our democracy more broadly.

RECOMMENDATIONS

Addressing corruption risks in the current appointments-based system

Recommendation 1: Parliament should legislate to end the Prime Minister's unfettered power to make appointments to the House of Lords, and scrap resignation honours. Pending legislative reform Prime Ministers should end the custom of resignation honours.

Recommendation 2: The UK Government should bring forward legislation to put the House of Lords Appointments Commission (HOLAC) on a statutory footing

Recommendation 3: HOLAC should have the power to veto nominations they deem unsuitable or improper.

Recommendation 4: There should be a ring-fenced number of crossbench nominations that HOLAC can make per Parliament.

Recommendation 5: HOLAC should have the ability to vet all nominations for suitability and propriety, regardless as to whether they are political or non-political candidates.

Recommendation 6: The independence of HOLAC's membership should be protected in law.

Recommendation 7: As recommended by the Public Administration and Constitutional Affairs Committee (PACAC) in 2018, when a person is nominated to the House of Lords, political parties and HOLAC should state why they have been nominated. Likewise, the person nominated should also make a statement outlining how they would contribute to the House.[4]

Recommendation 8: Political spending and donations should be capped in line with recommendations by the Committee on Standards in Public Life (CSPL) to end the corrosive influence of big money in politics, and its perception as a driving force behind political decision making.

Recommendation 9: There should be a cap on the size of the House of Lords.

Addressing corruption risks in systems with alternative selection methods

Recommendation 10: Parties should ensure selection processes for candidates are transparent.

Addressing corruption risks once a member is in the chamber

Recommendation 11: Parliament should introduce a new process in law for withdrawing peers' titles where they engage in egregious misconduct.

Recommendation 12: Those taking a leave of absence from the House of Lords should continue to be subject to its rules and reporting requirements.

Recommendation 13: The Lords' Commissioner should impose harsher sanctions for serious breaches of the code of conduct.

Recommendation 14: HOLAC should have a role in re-assessing peerages where Lords have committed serious wrongdoing that would have triggered a recall petition were they an MP.

Recommendation 15: Parliament should adopt the Lord Speaker's Committee's recommendation to introduce 15-year term limits for peers.

INTRODUCTION

This paper sets out our views on how to help address the current malaise through workable and robust safeguards against impropriety, which can be included in any future evolution of the Lords. Principally, it focuses on how to mitigate the risks of corruption – which we define as the abuse of entrusted power for private gain – rather than the democratic merits of various systems, although the two are inter-related.

In doing so, we outline the likely risks arising from five different approaches to choosing membership of the second chamber:

- appointed
- directly elected
- indirectly elected
- vocation-based
- mixed

We explore how these methods have implications for different forms of corruption – such as nepotism, bribery, and patronage – alongside ways to reduce the likelihood and impact of these behaviours.

Below we provide:

- a review of the functions, powers, and composition of the current House of Lords
- a summary of the current controls on appointments made to the House of Lords
- an introduction to alternative arrangements, with examples from overseas
- an analysis of the corruption risks with our proposals for reform

We recommend 15 practical solutions to help address the issues we identify, some of which could be implemented swiftly as they do not require legislative time.

We acknowledge the limits to the scope of this work. For example, we do not engage with broader, related debates, such as whether the UK needs a written constitution. There is also an almost inevitable focus on reforms to the current, appointed system – it is easier to analyse and prescribe solutions to what is known rather than some unspecified alternative.

This does not signify our endorsement of the appointment method; it merely reflects the practicalities of there being known loopholes to address opposed to the uncertainties of how other systems would be implemented. However, we outline corruption risks for all selection methods where they are reasonably foreseeable and provide as clear a blueprint as possible for preventing corruption in a reformed upper chamber.

POLICY AND LEGISLATIVE CONTEXT

The Westminster Parliament has two chambers – the House of Lords and the House of Commons – which have sat separately since 1341. According to data from the International Parliamentary Unit, 41 per cent of countries with national legislatures (78 countries) also have a bicameral system.[5] A clear majority of these have codified constitutions, while the UK relies on a patchwork of conventions and Acts of Parliament to define the division of labour between the two parts of the legislature. Bicameral systems around the world also vary greatly in function, powers, and mode of selection. Below we provide a high-level summary of these features, providing comparisons from other advanced Western democracies for illustration.

The functions of second chambers

Regardless of their composition, voting systems or size, bicameral democracies invariably seek to foster a functioning law-making body with checks and balances on power. The first chamber typically initiates legislation, which is then reviewed by the second. This review function can play a vital role in identifying loopholes and the unintended consequences of laws, both draft and enacted.[6] As Australian procedural and constitutional expert Harry Evans points out:

'in every walk of life-be it medicine, science, or day-to-day family problems – the second opinion is sought and valued. So it is in government.'[7]

Additionally, in federal nation-states a second chamber may seek to provide territorial representation in the legislature, as is the case in Germany and the US. In the US and until recently the UK, the upper house also has a quasi-judicial function.[8]

Within these functions, the chambers' powers and composition differ from country to country.

The powers of second chambers

Across Western democracies, upper houses have a range of powers, including the ability to:

- initiate legislation, financial or otherwise
- debate and delay legislation
- reflect and investigate through committees

These are not universal, however. A study of 20 countries found seven only allowed the first chamber to introduce new legislation.[9] Those that do give the second chamber this power include Canada, Germany, Ireland, the US, and the UK. In 16 out of 20 countries in the study the first chamber must initiate financial legislation, which includes tax and revenue related policies.[10]

Similarly, the period which a second chamber may consider and delay a bill varies. Ireland's Seanad has 90 days to review them, while in the US there is no time limit. Parliamentarians use this period to question the government, debate, and propose amendments to bills.

When there are consistent disagreements between the two houses on the contents of draft laws, often the lower house will have the final say, and as such will be the dominant chamber. When power is more equally distributed, there are also systems where they 'simply shuttle between the Houses until agreement is reached', or there is legislative gridlock.[11]

Lastly, it is common for second chambers to have permanent committees and the ability to set up ad hoc ones.[12] These often scrutinise legislation around thematic or departmental areas. They can also delve deeper into issues by conducting investigations, using powers to summon people and documents.

Powers of the UK House of Lords

In the UK, The Parliament Act 1911 and the Parliament Act 1949 (known as 'the Parliament Acts') ensure that the democratically mandated first chamber has the ultimate say over laws. While both houses can initiate new laws, the 1911 Act removed the Lords' ability to veto them or interfere with tax and spending legislation (so called 'money bills'). The 1949 Act also reduced the time that the second chamber could delay a bill to only one year. Aside from the money bill provisions, the joint powers of these Acts have only been used four times since 1949. Although not invoked often, these Acts legally cement the primacy of the House of Commons.[13]

A key power of the House of Lords is its use of committees. They can conduct investigations and publish their findings in reports, often with recommendations. While the UK Government is not required to accept these proposals, it must respond in writing to each report.[14]

The Composition of second chambers

There are several possible methods for selecting members of second chambers, with some countries deploying more than one. These include:

- direct election
- indirect election
- vocational members
- hereditary members
- members by virtue of holding another role ('ex officio')
- appointed

Direct election

The most common method is direct election, where members of the public vote for who they want to represent them in the second chamber. There are a range of electoral systems and arrangements used in these polls, which affect their relationship with the first chamber. For example, they can be held on the same day as the election to the lower house, or on a different electoral cycle. They might also use the same electoral system, or a completely different one. These factors have an effect on how similar the two parts of the legislature are in composition, which has implications for the ability of the second chamber to scrutinise the first.[15]

A classic example of direct elections is in the US. Each state elects two Senators out of a total of 100 who serve six-year terms, while Representatives in the lower house serve two. Elections are staggered with one third of senators elected every two years. Both houses use majoritarian voting systems. The staggered and differing term limits has the effect that around 30 per cent of Senators will be up for election on any polling day for the House of Representatives. As a result, the two houses often have a different political makeup, and as both have a strong democratic mandate this can lead to legislative gridlock.

Another example is Italy, where 200 out of 205 members of its second chamber are directly elected.[16] Both houses – the Chamber of Deputies and the Senate – have elections on the same day and with similar electoral systems. Both use a mixture of majoritarian and proportional voting. All 400 seats of the Chamber and all 200 seats of the Senate were up for election in the 2022. Both have term limits of five years for members. This arrangement is prone to generating a legislature that, across both houses, is remarkably similar in composition, creating disputes over who has supremacy and calls for reform.

Indirect election

Some countries choose their second chamber through indirect elections. As with direct methods, the exact means of selecting the second chamber varies. One approach is to use the results of a previous poll to determine the electorate used for choosing members of the upper house. For example, in France it is principally local councillors who form the electoral college for choosing French Senators. Voters are not directly involved in this contest, but their decisions at local and constituency elections provide an indirect mandate for those who have the final say.

In other countries, members are selected from legislatures at a different level of governance. In federal Germany members of the Bundesrat are drawn from each of the sixteen state governments, including the state presidents and deputy presidents, mayors, and ministers. This has the advantage of providing sub-national polities with a direct role in national political decisions. With this type of system, some question whether having two legislative roles simultaneously may undermine their ability to attend parliament and perform a detailed scrutiny function.[17]

Vocational

In a handful of countries, members of the second chamber are selected because of their vocational experience or past employment. This could be trade union or agricultural backgrounds, or achievements in the arts.

A notable example of this approach is Ireland, where 43 out of the 60 members of the Seanad are elected as vocational members. These 43 members are chosen from five panels of candidates. Each of the five panels represents a sector:

- an administrative panel, including those involved with social services and voluntary activities
- an agricultural panel
- a cultural and educational panel including those involved with literature, law, and medicine
- an industrial and commercial panel including those involved in finance, engineering, and architecture
- a labour panel including those involved with trade unions[18]

Candidates from each panel should have knowledge and practical experience of their sector. Candidates are nominated by bodies who are eligible to nominate if their work is concerned mainly with the interests of one of the panels. For example, "The Dairy Executives' Association" can nominate to the Agricultural panel.[19]

Members of Dáil Éireann (the lower house) also nominate candidates.

This system deploys methods from an indirect election selection method, as the candidates are voted in by members of the incoming first chamber, outgoing second chamber, and members of county and city councils.

Hereditary

In a small minority of countries, members are entitled to sit in the second chamber because of their 'right' or hereditary status. In Lesotho, the majority of members of the second chamber are hereditary tribal chiefs. The UK still retains hereditary members, albeit in a more limited form (see below).

By virtue of holding another role ('ex-officio')

Membership of the upper house is automatically given in some countries because of roles an individual has held or currently holds. These can be ex-presidents as is the case in Italy, or religious leaders as is the case in the UK.

Appointed

Under an appointed system, members are chosen by those in high office, such as the President or Prime Minister of the country. In some countries, like Italy and Ireland, appointed members make up a small proportion of the overall body (0.2 per cent and 18 per cent respectively). In Canada, on the other hand, all members of the second chamber are appointed.

Composition of the UK House of Lords

There is no limit to the number of peers that can sit in the UK Parliament's second chamber, with Lords selected via one of three means:

- by-election of hereditary peers
- by virtue of holding a specific role
- nominations, which are then appointed by the Crown[20]

As of July 2023, there were 784 Lords, of which the overwhelming majority (666 / 85 per cent) were appointed (see Chart 1).

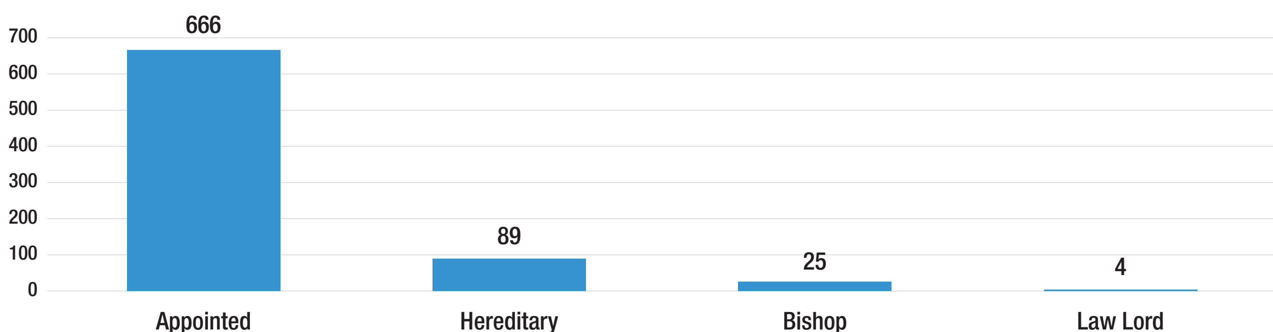

Chart 1: Composition of the House of Lords as of July 2023 (Source: House of Lords Library)

Hereditary Lords

Since the House of Lords Reform Act 1999, the number of hereditary Lords in the House is set at a maximum of 92, which is currently 12 per cent of the total. While hereditary titles still pass on from generation to generation, this Act removed the automatic right for these Lords to sit and vote in the second chamber. However, they can still enter the House of Lords through a 'by-election' of peers; ironically, the only form of election to the UK's upper house.

When a hereditary Lord leaves the chamber, a 'by-election' is held on who should replace them. The electorate in this contest are the remaining members in the House of Lords.[21] Eligible candidates to replace this seat are those who hold a hereditary peerage but do not currently sit in the chamber. Those with this privilege who wish to stand as members of the House of Lords are as listed in the Register of Hereditary Peers. The latest records list 211 peers as potential future candidates.[22]

By virtue of holding another role

These are Lords who have a seat in the House of Lords due to holding another role, also termed 'ex-officio'. Some of these roles are religious, including 25 bishops from the Church of England and other religious leaders holding seats by convention, such as the Chief Rabbi.[23]

As a legacy from its time as the highest appeal court in the land, there are currently four 'law lords' in the House. These highly qualified legal professionals used to decide on appeal cases in the Lords, and then moved to the Supreme Court when it was established in 2009 by the Constitutional Reform Act 2005.[24] Despite being disqualified from sitting and voting in the Lords while acting as Supreme Court judges, they could return on their retirement from the judiciary, although no new Supreme Court judges can enter the House of Lords via this route.

Appointed Lords

This constitutes the largest group of sitting peers. These Lords have been formally recommended by the government and appointed by the reigning monarch under the Life Peerages Act 1958. While the Crown appoints Lords, this is only a formality and de facto it is the Prime Minister responsible for this process.

There are two types of appointments to the House of Lords – non-partisan and party political.

The House of Lords Appointments Commission (HOLAC) recommends nominations for non-partisan appointments, which it sources through an open application process and assesses against a criterion.[25] All nominations from HOLAC sit as crossbench peers.

Party political appointments fall under several categories:

- Resignation honours – proposed by former Prime Ministers soon after they leave office.
- Dissolution honours –made by the Prime Minister at the end of a Parliament and before the next general election.
- 'Top-up' appointments – when a party wishes to add additional Lords to the House.
- Direct ministerial appointments – made by the government so that someone can be a minister who is not currently a sitting MP.[26]

These appointment processes are not set out in the Life Peerage Act; they have evolved over time, with some being first introduced in the 1800s and awarded as hereditary titles. Reforms by the Life Peerages Act mean titles are no longer passed down through subsequent generations, although invariably they expire only on death, even when someone leaves the Lords.[27][28]

Political appointments include nominations from various parties, not just the party of government. For example, Labour peers were created by Conservative Prime Minister Theresa May's 2019 resignation honours list. The Prime Minister will usually follow the advice of the leaders from other parties in nominating these appointments to the reigning monarch.

Current regulatory framework

The House of Lords Appointments Commission (HOLAC)

HOLAC is the advisory watchdog overlooking all appointments to the Lords – both partisan and non-partisan. It is responsible for:

- recommending non-partisan appointments to sit as crossbenchers
- vetting nominations from political parties

HOLAC does not have oversight of how hereditary peers, bishops or the Lords who are in the chamber by virtue of previously being a Law Lord enter the chamber.

HOLAC can make recommendations for members of the public to become crossbench Lords. They assess these recommendations on both 'propriety' and 'suitability'. As the Commission outline in their most recent report, their judgement is based on:

'merit and their ability to make a significant contribution to the work of the House. The Commission must ensure that the individuals it recommends are independent, have integrity and are committed to the highest standards in public life.'[29]

Despite its ability to recommend peers, HOLAC is only an advisory body without statutory powers or terms of reference enabling it to veto a nomination if they deem them unsuitable or improper candidates. It is the Prime Minister of the day who ultimately decides when and how many nominations to take forward.

The Commission is also tasked with vetting political nominations, albeit only on the basis of 'propriety', which it defines as:

‘in good standing in the community in general and with the regulatory authorities…and past conduct of the nominee would not reasonably be regarded as bringing the House of Lords into disrepute.’[30]

If, after vetting for propriety the Commission cannot support a nomination, it will notify the Prime Minister. If the Prime Minister continues to proceed with the nomination, then the Commission may write publicly to the Public Administration and Constitutional Affairs Select Committee (PACAC).

Currently, it does not assess political nominations on the basis of their suitability for the role.

House of Lords Commissioners for Standards and the Code of conduct

The House of Lords maintains a code of conduct for its members that was created and is amended via standing orders. This outlines how Lords are expected to behave and the standards to which they should adhere. It includes various rules, including how peers are to register their outside employment and investments, and how they should manage conflicts of interest that arise from them.

The Registrar of Lords’ Interests provides advice and guidance to members about how to comply with the rules, while the House of Lords Commissioners for Standards are responsible for investigating anyone who may have breached them and recommending appropriate sanctions for minor breaches.[31]

The Conduct Committee, consisting of both peers and lay members, reviews findings from the Commissioners when the breach is more serious. The Committee presents a final report and recommended sanction to the House, who vote to agree or disagree with the findings and recommendations. Sanctions can include censure, denying access to facilities and financial support, requiring an apology, and suspension and expulsion from the House.[32]

Unlike the House of Commons, there is currently no equivalent process to recall members who have been found to have committed egregious misconduct.

ANALYSIS

Below we outline the key corruption risks in relation to:

- each selection method for the second chamber
- members when they are sitting in the upper house

Along with a series of proposed reforms tailored to mitigate these risks.

We do not argue in favour of any particular system for selecting the membership of a reformed House of Lords, nor do we propose to re-write its core functions. However, we agree with Professor Meg Russell's principles for the upper house and those in the Lords' code of conduct, which together serve as a safeguard against abuses of entrusted power for private gain:[33]

- It should be distinct but complementary to the House of Commons, acting as a revising chamber to improve the quality of our nation's laws.
- It should have moderate-to-strong powers to challenge government, and function as a backstop against executive over-reach.
- It should have sufficient legitimacy to retain the support of the public and conduct the important constitutional functions mentioned above.
- It should continue to be guided by the Nolan principles, in particular accountability and transparency.[34]

As an addition we propose that, where possible, it should share the same rules and procedures of the House of Commons, in particular its code of conduct and associated reporting and declaration requirements.

We recognise that there are tensions and trade-offs between some of the above principles. For example, as Lord Norton of Louth argues, the House of Lords experiences 'output legitimacy' in that many peers adequately perform the second chamber's principal scrutiny function. However, its 'input legitimacy' – how members are chosen – is far more questionable.[35]

By implication, continuing to choose the second chamber by patronage could in theory help the House of Lords retain its role as an effective revising chamber; however, this ostensibly also provides the Lords with less political legitimacy to provide a counterbalance to a dominant executive. Conversely, a wholly elected chamber could give the House of Lords greater 'input legitimacy' and authority to prevent against executive over-reach; however, some might argue this could make it less likely to secure the expertise and independence necessary to provide detailed scrutiny of laws. The exact nature of this trade-off will depend on the specifics of reform and how they operate in practice. We do not speculate on what this is likely to be, but note they are recognised tensions in current options for reform.

CORRUPTION RISKS IN THE CURRENT, APPOINTMENTS BASED SYSTEM

Risks of bribery and patronage

The principal risks in the current appointments-based system are bribery and the endowment of political leaders with undue powers of patronage.

The notion that an individual can buy a seat in the House of Lords predates the 21st century yet continues to this day. In the 1920's, Prime Minister Lloyd George charged upwards of £50,000 for a peerage – over £2 million in today's terms.[36][37] At the time this practice was legal, but caused such scandal that Parliament legislated to criminalise it shortly thereafter through the Honours (Prevention of Abuses) Act 1925.

Almost 100 years later, in 2006, the police investigated Labour Party officials, fundraisers and donors for their alleged involvement in the sale of peerages in return for loans. Although the Crown Prosecution Service concluded that there was insufficient evidence to charge anyone with a criminal offence, this scandal triggered reforms to regulate political loans, which were until then exempt from controls and reporting requirements.[38]

According to research by Oxford University, there is a statistically significant relationship between donations to political parties and the award of peerages.[39] In November 2021, openDemocracy and the Sunday Times also revealed that every former Conservative Party treasurer that has donated at least £3 million in the past seven years, except the most recently retired, have been offered a seat in the House of Lords.[40] This gives rise to the perception of, and valid concerns about, the sale of peerages as a reward for substantial contributions to political parties, which is still a criminal offence albeit difficult to prove in practice in a court of law due to the high burden of proof needed; for example, the evidence needed would have to show an explicit agreement to exchange donations for a peerage.[41]

The Conservative Party, government spokespersons and donors implicated in this practice have vigorously denied any exchange of money for a place in the Lords.[42]

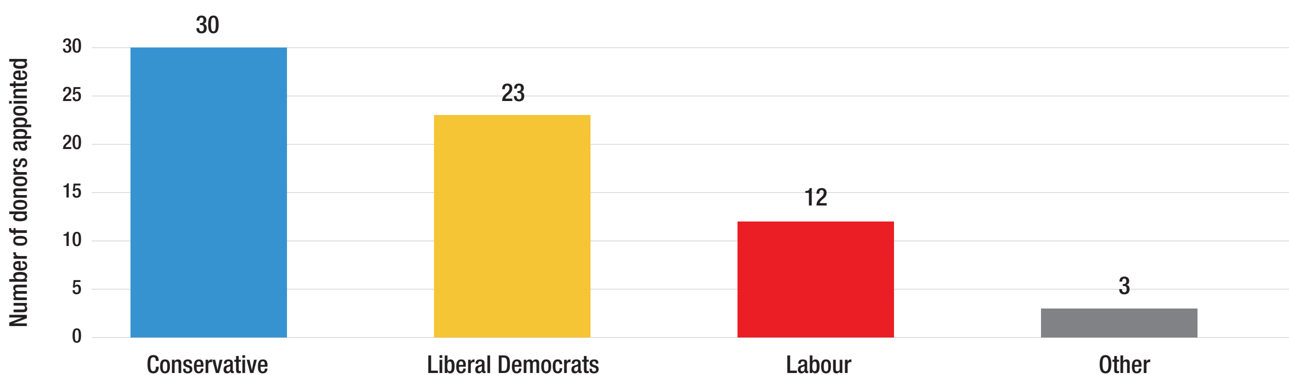

Chart 2 : Number of donors appointed to the House of Lords 2013 to 2023 by party (Source: House of Lords data dashboard: peerage creation and Electoral Commission)

The risk of peerages being awarded corruptly rather than granted on merit is enabled by the Prime Minister's unfettered ability to deploy patronage in appointing members to the upper chamber. This patronage can be used to reward party donors, political loyalists, and even family members, adding to the perception that the House of Lords is a club for political cronies.[43]

Our research shows that in the period from 2013 to 2023, parties nominated 284 individuals to be appointed to the House of Lords. Almost a quarter of all nominations from political parties were donors – 68 out of 284. Chart 2 shows the breakdown of these nominations by party. These 68 peers have donated over £58 million to political parties in total. Not only that, twelve of them are super donors who have contributed £1 million or more, totalling £54 million (92 per cent of all donations from peers during this period). Chart 3 shows the total donations to political parties by Lords. Ninety-

one per cent of these contributions by value (£53.4 million) went to the Conservative Party.

Cumulatively, this presents the Lords with a significant input legitimacy problem, which has also afflicted other nations with similar systems (see case study on Canada's Senate below).[44]

Public opinion surveys by the Constitution Unit show that only 6 per cent of respondents believe that the 'Prime Minister...should appoint new members to the House of Lords', compared to options such as an independent body being responsible for this role.[45] When designing an effective second chamber, one of the key principles is that it should have sufficient legitimacy to retain the support of the public so that it can perform its function in contributing to legislation. The current system of appointments and patronage is severely undermining the House of Lords' input legitimacy.

A key argument in favour of maintaining the appointments-based method for selecting the second chamber is that the current upper house is functioning relatively well. While it undoubtedly has issues with input legitimacy, its performance provides a counterbalance to the first chamber, and it plays an active role in effectively scrutinising bills. For example, as Meg Russell outlines in the 2019-2021 session of Parliament 'the Lords made 1,029 amendments to government bills, of which only 83 were government defeats'.[46] The clear majority of Lords' amendments were accepted, or the government offered its own amendments in response to those raised in the Lords. This supports the contention that the House of Lords possesses output legitimacy – it is good at its job, regardless of how its members are chosen.

This may well be true, but a relatively small cohort of peers carries this reputation. Analysis from the Electoral Reform Society found that the top 300 voting peers (almost 40 per cent of all peers) account for 64 per cent of all votes.[47] This raises significant questions about the utility and motivation of less active members. Available data suggests many are not motivated by a desire to contribute substantially to parliamentary affairs.

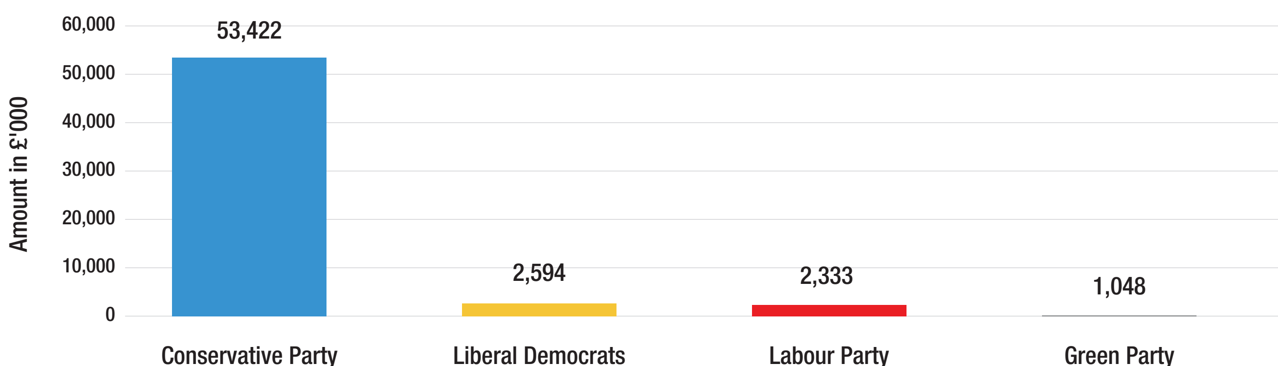

Chart 3: Donations to parties from Lords until June 2023 (Source: Electoral Commission)

CANADA'S SENATE: A CASE STUDY

Canada is one of the few countries in the world to have an appointed second chamber. On its creation in 1867 it was modelled after the UK House of Lords, although it has a few significant differences. First, the regions in Canada are entitled to an allotted number of seats. These are not distributed proportionally to population size, leaving some areas over or underrepresented in the Senate. Second, members of the Senate must be at least 30 to enter the upper house and have to retire at 75. And third, unlike the House of Lords, the Senate also limits the number of seats to 105.[48]

Historically, the Prime Minister has had sole discretion to appoint members, not even accepting suggestions from opposition parties. This has led to accusations that Senate seats are 'traded for party donations' and that this 'blatant political patronage… is the primary reason for the chamber's unpopularity'.[49] In this way, the Canadian Senate has suffered from similar issues of input legitimacy to the UK House of Lords.

Similarly to the UK, since its creation the Canadian Senate has been subject to calls for reform and moves to make it an elected chamber, notably by former Prime Minister Stephen Harper. In 2016, Prime Minister Justin Trudeau introduced the Independent Advisory Board for Senate Appointments after Senate scandal and political pressure. Similarly to the UK's HOLAC, it is an independent, non-partisan body responsible for making cross party nominations. For every vacancy in the Senate, it makes five nominations to the Prime Minister. These nominations are based on criteria that include merit-based milestones: non-partisanship; knowledge; personal qualities of ethics and integrity; and experience of public service, service to one's community or leadership in one's professional field. [50]

While its nominations are non-binding and the process based on convention rather than statute, the Prime Minister has only appointed senators from the nomination list since its creation. Early commentary and analysis reveal that this reform may have helped foster more input legitimacy for the Senate. Since 2016, the Senate has become more representative in terms of gender and indigenous background.[51] Commentators state that the 'new senate' are more willing to contribute to the chamber.[52] And the public's perception of the Senate has improved – nearly three in five Canadians now think the changes adopted 'will improve' the Senate in the longer term.[53]

Analysis by the BylineTimes shows that peers who had also been major donors tended to have low attendance in proceedings of the House, attending 31 sitting days on average in 2022.[54] Anecdotally, some of those appointed on grounds of patronage attend even less.

Our research finds that there are 50 sitting peers who have never contributed more than five times to proceedings in the House of Lords.[55] Often the interventions they do make relate to maiden speeches. Only 6 per cent (3 peers) are those nominated by HOLAC, whereas party leaders nominated 74 per cent (37 peers).

One might infer from this data that the honour of a peerage is often what is sought rather than a substantive role in scrutinising legislation. Negative press about the House of Lords comes invariably from appointments like these, which does nothing for its input legitimacy and as our research shows contributes little to its output legitimacy. If there is consensus on retaining an appointed second chamber, it would be beneficial for public confidence in this institution if the patronage afforded to the Prime Minister and party leaders, especially resignation honours, were removed. This would help avoid unnecessary scandal and the damage this does to public trust in our democracy, with little consequence for the effective functioning the upper house.

These changes could be implemented without delay. Resignation honours are not a constitutional requirement and there have been leaders in the past who have foregone issuing such a list without being prevented from doing so by statute.[56]

Additionally, ceasing the practice of resignation honours would also limit appointments spiking in the second chamber due to a tumultuous political climate, with frequent changes of Prime Minister.

Political appointments can be limited by the introduction of a cap on the size of the House of Lords, as we explore below. However, in the absence of such a cap or a substantial reduction in the size of the House, the current and future Prime Ministers should show restraint in their appointments and end the custom of resignation honours.

Recommendation 1: Parliament should legislate to end the Prime Minister's unfettered power to make appointments to the House of Lords, and scrap resignation honours. Pending legislative reform Prime Ministers should end the custom of resignation honours.

Weaknesses in the current system

Lack of effective control mechanisms

The lack of constraints built into the appointments process poses a significant corruption risk. There are four crucial safeguards and powers missing from the current system, which compounds the Lords' input legitimacy problem. These are that HOLAC:

- can be easily scrapped
- can be ignored
- has no clear remit
- lacks the ability to vet political appointments on suitability grounds

We explore these issues in more detail below.

As a non-statutory body, HOLAC can be both dispensed of and ignored with relative ease. If, for example, a Prime Minister wished to scrap it altogether, they would not need legislative time to do so. The system relies on the 'good chaps and chapesses' theory of government; that those in positions of power will adhere to norms because they have the right motivations. Recent political history suggests this is a fragile constitutional check on abuses of power and makes the case to put this process on a firmer statutory footing.

This is not necessarily completely failsafe. Some have questioned whether placing ethics bodies on statutory footing would protect them from dissolution and make them immutable.[57] Laws can be overturned in Parliament, but it takes considerable parliamentary time and political will, creating a substantial barrier to doing so.

The proposal has long-standing support. In 2007, the PACAC favoured this reform, stating that its remit and rules must be 'clear...widely agreed and they must be of unquestionable legitimacy. In short, they must be statutory.'[58] Lord Norton's House of Lords (Peerage and Nominations) Bill from 2022 sought to give effect to this proposal alongside other achievable and uncontroversial reforms to the House of Lords.[59]

There is also similar precedent for having constitutionally important bodies defined in statute. The Constitutional Reform Act 2005 established the Judicial Appointments Commission, which now selects judges for English and Welsh courts based on 'merit' – criteria defined in law.[60] Prior to its creation, the power to select judges sat entirely with ministers – a significant blurring of the executive and judicial functions deemed improper.

Given the above, it begs the question why HOLAC still relies on convention for its existence. Claiming the status quo works is to be blind to the facts. If the Lords is to remain an appointed chamber, we agree with previous efforts by parliamentarians to give HOLAC a grounding in law.

Recommendation 2: The UK Government should bring forward legislation to put the House of Lords Appointments Commission on a statutory footing.

This leads to a related but separate issue currently. Because HOLAC is an advisory body rather than a regulatory body that has a firm statutory footing, the Prime Minster can ignore its advice. HOLAC is reliant on those in high office adhering to convention, but this has been strained to breaking point in recent years, laying bare its inadequacy as a check on the abuse of power. The example of Peter Cruddas' nomination provides a case in point.[61]

As per HOLAC's role, it vets political nominees on propriety grounds, and declares when an individual does not meet this criterion. In 2020, the Commission advised that they could not support the Prime Minister's nomination, yet the Prime Minister ignored this advice and appointed Mr Cruddas as a member of the House of Lords in 2021.[62] The Commission was able to write publicly to the PACAC, providing transparency over this decision, but this did not affect the outcome.

Although the Cruddas affair was the only time the Prime Minister has overridden HOLAC's advice to date, it shows a breaking of convention that sets a problematic precedent for others to do so in the future. It also reflects how much power to appoint members of the legislature rests with the executive presently. To prevent this behaviour from being a regular occurrence and check the executive's unfettered power over selecting members of the legislature, the Committee should have the power to veto any nominations they deem unsuitable or improper.

Recommendation 3: HOLAC should have the power to veto nominations they deem unsuitable or improper.

Due to its unclear remit, the duties of HOLAC can be at the mercy of the Prime Minister of the day. When first established by the Labour Party in 2000, the then Prime Minister Tony Blair outlined that the reason for establishing the Commission and allowing it to recommend non-political appointments was to 'reduce this unfettered power of patronage' the PM had to appoint Lords.[63] Under his tenure, the Commission made 42 crossbench appointments over seven years, but by comparison some of his successors requested the Commission only make two appointments annually. Although one of these Prime Ministers presented this restraint as a response to calls to reduce the overall size of the chamber, they showed little restraint themselves by continuing to make plentiful political appointments. This example demonstrates that the Commission has no ability to fulfil its function fully and relies on the whims of the Prime Minister of the day.

The Lord Speaker's Commission argues that Prime Ministers need to revert to a 'maximum of 10 non-HOLAC crossbench appointments per parliament' in a bid to reduce the size of the House.[64] The Commission states that HOLAC's aim is to appoint individuals who 'add to breadth of experience and expertise that already exists within the House of Lords' and promote diversity of members.[65] These are praiseworthy aims that have the potential to enrich the composition of the second chamber, and bolster both its output and input legitimacy.

Recommendation 4: There should be a ring-fenced number of crossbench nominations that HOLAC can make per Parliament.

Lastly, the current system of oversight by HOLAC relies too heavily on political parties nominating suitable individuals for peerages. Currently for non-political appointments, HOLAC assesses nominees for suitability and vets them on propriety grounds. However for political appointments it vets nominees only for the latter. This creates a dual-track system in which political nominees undergo a less rigorous assessment process than their non-partisan counterparts.

We note that the then Chair of HOLAC, Lord Bew, wrote to political party leaders in October 2022 reminding and encouraging them to consider the Nolan principles in their selection of candidates – the implication being that nominees were not meeting the desired standards.[66] This is corroborated HOLAC's performance report covering the years 2018 to 2022, where it cites ten cases where they were not able to support parties' nominations.[67]

Recommendation 5: HOLAC should have the ability to vet all nominations for suitability and propriety, regardless as to whether they are political or non-partisan candidates.

Bolstering the role and powers of HOLAC may make it a target for political capture. Leaders could attempt to

parachute in their cronies as commissioners to influence the appointments process. However ensuring a robust selection method for Commission members – for example, through cross-party scrutiny of candidates, as is the case for the Electoral Commission – would help mitigate this risk. Lord Norton's House of Lords (Peerage Nominations) Bill outlines additional safeguards to ensuring independence, such as:

- requiring the Commons' and Lords' Speakers to nominate members
- for them to have regard to political balance in these nominations[68]
- legally requiring that members have never been a member of a political party or have given a public speech in support of a party

These arrangements can help create barriers to political capture of what should be a non-partisan body.

Recommendation 6: The independence of HOLAC's membership should be protected in law.

Lack of accountability over the rationale for nominations

To be a Lord is not just about having a title, it is also about undertaking the privilege of amending and contributing to the policy and law-making process. As mentioned above, there are some who do not make the most of this opportunity. While this may be in part due to poor checks on the suitability of candidates, there could also be more accountability about the nomination of candidates in the first place and expectations of members when they join the House.

Currently, the Prime Minister and party leaders do not have explain their reasons for their nominations. The UK Government simply publishes the list of new peers with their new title and, at most, a short summary of their recent roles in public life and/or business.[69] In contrast, HOLAC provides a detailed description of the achievements and experiences of the peers they have nominated.[70] If the second chamber is supposed to draw from a wide range of experiences and talents, surely it is easy enough for nominators to state what that experience and talent is. While this is no substitute for more thorough checks on suitability by HOLAC, it would at least subject the rationale for these proposals to greater public scrutiny. We agree with the PACAC's previous proposal to require all political parties and HOLAC to provide a written statement of nomination for a peerage, including why their candidate is suited for this privileged position.

As with MPs, there are also important questions as to what role Lords should play in the legislature. While the exact nature and frequency of their contributions will depend on their specific circumstances – such as their expertise, its relevance to current legislation and debates before Parliament, and the amount of free time they have from outside employment and interests – there could be more to set expectations up-front about this activity.

In Canada, nominees for the Senate must be able to demonstrate 'an ability to make an effective and significant contribution to the work of the Senate.'[71] Similarly, the Burns Committee and subsequently PACAC both argued that nominees should understand what being an active member of the House of Lords means before they enter Parliament.[72] We agree. Setting expectations of members should at least take the form of a written statement from political parties and HOLAC outlining how they will contribute to the work of the upper house, as recommended by PACAC in 2018, with supplementary guidance from HOLAC where necessary.[73] Additionally, those nominated should explain how they will contribute to the House, which could take the form of a statement that would be published online.

Recommendation 7: As recommended by the Public Administration and Constitutional Affairs Committee (PACAC) in 2018, when a person is nominated to the House of Lords, political parties and HOLAC should state why they have been nominated. Likewise, the person nominated should also make a statement outlining how they would contribute to the House.

Lack of controls against systemic corruption risks

Underlying many of the issues with peerages over recent decades are two separate but interrelated structural issues:

- weak controls on political finance
- no limits on the size of the House of Lords

At the core of allegations of cash being exchanged for honours are the substantial amounts of money individuals can give, in part driven by the seemingly insatiable appetite for those funds within the larger parties in Parliament. Indeed, the last meaningful attempt at cross-party talks to reform party funding was set against the backdrop of allegations that peerages were being bought through loans.[74] Despite being a seemingly distant prospect, reducing the prevalence of big money in politics remains the most strategically significant way to reduce corruption in our democracy.

Controlling the amount of money any one individual can contribute to political parties or their members – either directly or through connected companies – would significantly decrease the incentive for rewarding benefactors with a peerage. The risk of prosecution for an individual quid pro quo arrangement may be low, but the number of donors you would have to reward would be too high to make this a lucrative business model – in turn making it more obvious and enforceable. While providing HOLAC with a veto and a greater scrutiny role should help provide a stronger check against the exchange of cash for honours, removing big money from UK politics would provide the most effective structural safeguard against this pernicious and persistent threat.

In 2011, the Committee on Standards in Public Life (CSPL) recommended a series of changes that would have both reduced the demand for funding and introduced controls on how much anyone could give within a single year.[75] This is the last substantive review of how politics is funded in the UK. Since then, the UK Government has made the situation worse by increasing the spending limits at elections and reducing transparency over the provenance of these funds.[76] In the absence of any subsequent inquiry to explore this issue in similar depth, we continue to support the CSPL's previous proposals.

Recommendation 8: Political spending and donations should be capped in line with recommendations by the Committee on Standards in Public Life (CSPL) to end the corrosive influence of big money in politics, and its perception as a driving force behind political decision making.

The second major structural issue currently is a complete lack of limit on the size of the Lords. This empowers the PM and party leaders with almost endless patronage. From an anti-corruption perspective, controlling the size of the second chamber helps mitigate the risks of patronage, cronyism, and other nefarious conduct.

There have been several calls to reduce the size of the House of Lords, with its numbers growing year on year and far exceeding that of the House of Commons. A recent survey showed that 65 per cent of respondents believed that the number of members in the Lords should be no greater than 650 – the current size of the House of Commons.[77] The second chamber most like the UK, in Canada, has a limit of 105 senators. That the House of Lord's size is so frequently compared with China's National People's Congress shows how synonymous its proportions have become with poor governance.

The Lord Speaker's committee on the size of the House have done extensive work on how to reduce the chamber's size. They have proposed a 'two-out, one in' formula[78] – for every two members that retire or pass away, only one member should be appointed. This formula would also be coupled with a 'fair allocation of regular appointments between the parties', which could be calculated by averaging the number of Commons seats a party gets with its share of the national vote at the most recent general election.[79] These proposals aim to reduce the size of the House to approximately 600 in a manageable and sustained manner.

While we have no view on what the exact size of the second chamber should be and the means via which this should be achieved, having some form of limit is highly desirable from an anti-corruption perspective.

Recommendation 9: There should be a cap on the size of the House of Lords.

CORRUPTION RISKS IN SYSTEMS WITH ALTERNATIVE SELECTION METHODS

Direct election-based membership

Direct elections are a selection method that is popular with some campaigners and several politicians.[80] Under these proposals, the general public would be able to vote for members of the upper house. This model of bicameralism operates in countries like Italy, Australia, and the US. Advocates argue that directly electing members would give the second chamber the legitimacy it needs to better fulfil its role in challenging the government and prevent the executive from making 'bad laws'.[81]

Below we outline two key corruption risks that could arise from direct election as a selection method for the House of Lords.

Political donations

UK political parties currently must seek donations from members of the public, companies, trade unions, and other private actors to fund both their election campaigns and the running of the party machine in between polls. This does not come cheaply. At the 2019 general election, the Conservatives spent £21.4 million on regulated activities, with the Liberal Democrats spending £17 million, and Labour £16.3 million.[82] The total costs to each party were likely much higher given staff costs incurred by party headquarters is un-regulated, and so was candidate spending before the dissolution of Parliament at that poll. Since then, the UK Government has increased the amount parties and their candidates can spend before national polls substantially.[83] In practice, this could give them fundraising target nearing almost £100 million for major election years.

Our past research has found that donations to fund this expenditure often comes from a narrow set of interest groups. [84] A reliance on few donors can increase the risk of policy capture and erode public trust. A survey by the Hansard Society showed that 63 per cent of respondents felt the British system of government is rigged to the advantage of the rich and powerful.[85]

If the second chamber were wholly or partly elected, this could create greater demand for funding to contest these polls. Depending on the size of the upper house and how its elected and regulated, this could double overall demand for campaign finance. There is a risk that this additional demand could further entrench the undesirable donation patterns outlined above.

The design of the new electoral system might alleviate donation pressures. For example, if the size of the second chamber was relatively small and/or if its elections were held on the same day as those for the first chamber, as is the case in Australia, this could lead to a marginal increase in demand for money. However, they would not eliminate additional demand entirely. As mentioned above, political finance reform would help alleviate these pressures and reduce corruption risk.

Patronage

It is worth acknowledging political parties' internal election processes are not free from patronage. For example, often prospective parliamentary candidates must get onto a shortlist before being put to a ballot of local party members. The method of selecting this shortlist can put power in the hands of a select few to whom those successful may feel a lasting debt.[8687]

It is incumbent on parties to get the right candidates for the job rather than use selection purely as a tool for internal party politics. Where party elites install personal favourites in plum candidacies, this can increase the chances of choosing someone who is not fit for the role.

That is not to say that someone's chum would inevitably make a poor parliamentarian and it is ultimately up to the electorate to assess their credentials and decide if they want these candidates to become their MPs. However, introducing greater transparency over this system may help to mitigate against unqualified candidates. As the PACAC noted in its 2007 report, albeit in reference to the current appointments-based system, 'The more robust and transparent the parties' nomination processes, the more credible and legitimate will be the names put before the Commission [for a peerage].'[88]

While this type of patronage may not be as visible or corrosive as that associated with current appointments, it does show that introducing elections will not eradicate corruption risk entirely. If members of the House of

Lords were elected, this moves the power dynamics into party structures, for which are hard and undesirable to legislate. This can be even more so in a list-based system where the electorate chooses a party and not a particular candidate. As we propose for an appointments-based system, the basis on which parties selected candidates in an elected second chamber should be as transparent as possible.

Recommendation 10: Parties should ensure selection processes for candidates are transparent.

Indirect election-based membership

Indirect elections, such as Germany's system for choosing the Bundesrat, provides an alternative method of selection that combines an electoral mandate mediated through other representative bodies. This was a prominent proposal for the UK's House of Lords in the early 20th century, with Lord Bryce's 1918 report. He recommended that the upper house be comprised of 327 members with 246 elected by MPs and the other 81 chosen by a joint committee of the two houses.[89] Since devolution in the late 1990s and early 2000s, this method has added practical benefits to providing a greater voice for the nations and regions of the UK.[90]

There are a range of ways to structure indirect elections. Seats could be given automatically by virtue of having been elected to a particular position, such as a regional mayor, or they could be voted in by other parliamentarians such as local councillors, regional mayors or even MPs, as Lord Bryce proposed.[91]These methods, using the mandate from sub-national polls, could lend input legitimacy to the second house and offer territorial representation in the second chamber – something that Gordon Brown proposed in his report on the UK's future.[92] In all options, however, the risk of patronage would remain in candidate selection.

There are also questions as to the impact some of these methods might have on the second chamber's ability to scrutinise legislation and hold the executive to account. If members were to have dual mandates and dual responsibilities, they would have to do two jobs at once. Arguably this is already the case for Lords, who often hold significant interests and employment outside of Parliament. However, as has been the case in Northern Ireland, those holding two public roles simultaneously could face allegations that they are taking two salaries for doing half a job in each role.

This could be mitigated by designing a system that allows members to have enough time to fulfil this second role in the upper chamber and not detract from their original public position. For example, in the German Bundesrat there are provisions to ensure that representatives do not always have to be present for votes and committee meetings by delegating the latter to officials.[93] Nevertheless, there is still an inevitable trade-off between introducing indirectly elected members to an upper house and how present they have to be in parliamentary proceedings.

In the alternative selection method when the electoral college is composed of directly elected politicians at a sub-national level, there needs to be careful consideration about the risks of pork barrel politics being used to influence voting. Given how centralised local government funding is in the UK, there is a risk that ministers in Whitehall could use funding decisions to win votes from councillors and mayors in the electoral college. Conversely, these voters may use their position to leverage concessions from the government to benefit their local area. France provides a case in point, where a 'parliamentary reserve' – a substantial, and relatively unknown budget allocated to the upper house – was misused by senators for electoral purposes.[94]

It is also worth noting this option seems to work better in federal nations, which the UK is not. Moves towards devolution here have been asymmetric, with powers and functions devolved through ad hoc negotiations to different authorities covering an array of geographies and populations. For example, some parts of the UK have unitary authorities and others not; some have city mayors; some both city and regional mayors; and some have neither. Consequently, there is no natural and even electorate for these indirect polls. Feasibly, there may be a way to use these existing structures to create an electoral college, although it would be necessarily complex by design.

Other composition methods

The UK could adopt a mixed system where there is a combination of appointments and elections, as previous governments have proposed.[95] This would not eradicate the corruption risks related to these two approaches, as mentioned above. For example, if party leaders appoint half of the Lords this would still cause accusations of patronage. If the electorate chose the other half via a popular vote, this would still create an increased

demand for party donations. Both risks may be to a lesser extent, but they would remain.

There have also been efforts in other countries to have vocational appointments whereby members are drawn from specific professions, including public administration, agriculture and fisheries, education, and industry. However, the Irish system has had the unintended consequence of becoming just as partisan as elected legislators.[96] Outgoing members of the second chamber, incoming members of the first chamber and local politicians vote in vocational members, so this electoral college has clear political affiliations. Candidates must ‘woo’ these voters, which may include appealing to them on party political grounds. Consequently, the two houses are split similarly across party grounds, as seen in the 2020 elections. This is a reminder that it is almost impossible to eradicate entirely the risk of patronage in the political system.

CORRUPTION RISKS ONCE A MEMBER IS IN THE CHAMBER

Corruption risks do not dissipate once Lords take their seat in Parliament. Regardless of how they get there, they should adhere to the Nolan Principles and the upper house's rules. However, as shown by cases considered by the Commissioners for Standards in the Lords, peers can and do act in breach of the rules designed to ensure parliamentarians adhere to high standards.[97] In these cases, sanctions can provide a credible deterrent against similar behaviour in the future. We consider below how standards can be strengthened in the current system. Much of our proposals for bolstering accountability mechanisms would also be relevant to alternative models of selecting members of the second chamber.

Corruption risks in the current system

By its nature, an appointed chamber with life peers does not have the ultimate accountability mechanism – the popular vote. Nevertheless, there are laws that have sought to provide more substantive means of sanctioning egregious misconduct. For example, the House of Lords Reform Act 2014 introduced the automatic expulsion of peers who commit criminal offences, and those who fail to attend a whole session. The House of Lords (Expulsion and Suspension) Act 2015 has also given peers the power to expel members and suspend them through standing orders in the House.

Despite these changes there are five key issues that need resolving in the current system:

- the cumbersome process for withdrawing titles
- leaves of absence, which help peers to avoid accountability
- the lack of accountability for egregious conduct
- no equivalent of recall for appointed Lords
- a lack of term limits

In addition, there are considerations about whether to keep membership of the upper house as a part-time engagement or make it a full-time role.

The cumbersome process for withdrawing titles

While it is possible to suspend or expel a peer from the Lords in cases of gross misconduct this does not take away their title,[98] which for those who rarely engage in parliamentary activity is potentially a more valued feature of their membership. The only existing law enabling this sanction is confined to peers who took-up arms against the King during the First World War, which clearly would not apply to current members of the House. The recent case of Lord Ahmed showed that even when a Lord is convicted of attempted rape of a young girl, sexual assault of young boy and imprisoned, they still retain their title.[99] On Parliament's website, it currently states that Lord Ahmed is 'retired'.[100] There should be an updated and more efficient process to remove the title and privileges of those who engage in egregious misconduct.

Recommendation 11: Parliament should introduce a new process in law for withdrawing peers' titles where they engage in egregious misconduct.

Leaves of absence, which help Peers to avoid accountability

Currently, when a member goes on a leave of absence they are no longer bound by the parliamentary rules, including those that require them to declare their interests, such as directorships, shareholdings, and non-financial interests. However, during this period they retain their title and partial access to the parliamentary estate, which is particularly problematic if they are undertaking lobbying-related work for paying clients.[101] This is self-evidently a major loophole that needs closing. As long as Lords are awarded the privileges of this office, they should be subject to its rules.

Recommendation 12: Those taking a leave of absence from the House of Lords should continue to be subject to its rules and reporting requirements.

Strengthening accountability in the second chamber

Holding parliamentarians to account should be a universal aim regardless of the system of selection. However, currently there appears to be a lack of consequences for egregious misconduct. Below we explore this issue in more detail, and propose ways to strengthen accountability, particularly in the absence of periodic elections.

Lack of accountability for egregious conduct

Some of the sanctions imposed by the House appear to be soft compared to the breach found. For example, in at least four cases of serious misconduct including sexual harassment, bullying and racism and where the Commissioner found the peer had committed wrongdoing, the sanction was to undertake training and or write an apology.[102] This is serious and harmful behaviour, which the House of Lords are not properly holding to account.

In the case of Lord Lester – where the Committee for Privileges and Conduct[103] recommended he be suspended from the House of Lords as a result of a sexual harassment[104] – the House initially would not vote in favour of the sanction, due to complaints the investigation was not 'fair'.[105] In response, the Deputy Lord Speaker at the time replied that he was disappointed the House had rejected the sanction,[106] and Lords eventually agreed by a vote to the recommendations from the investigation. This case shows the precarity of the enforcement process, which may result in egregious behaviour going unchecked. It also raises questions as to whether it is appropriate and desirable for Lords to remain self-regulating.

There is an argument to have a more independent process for administering sanctions without approval by the House. As the Lords do not have a democratic mandate there is more of a case than in the House of Commons that Parliament empowers an independent body to impose sanctions. For example, decisions to expel a member would not be overturning a democratic mandate from the electorate. At the very least, to improve accountability where there is egregious conduct, the Lords Commissioner should more readily impose harsher sanction for egregious conduct.

Recommendation 13: The Lords' Commissioner should impose harsher sanctions for serious breaches of the code of conduct.

No equivalent of recall for appointed Lords

Under the House of Lords Reform Act, if the courts find a peer guilty of serious criminal conduct and sentence them to more than a year imprisonment, the Lord Speaker can remove them by a certificate. This means that any peer found guilty of criminality by a court but whose sentence is less than one year does not trigger expulsion by the Lord Speaker. Consequently, individuals who have broken the law could still have a say in making the law.

In the House of Commons, MPs sentenced to less than a year in prison face a recall petition from their electorate, and the risk of a subsequent by-election.[107] Currently in the House of Lords, this criminal sanction constitutes an automatic breach of the Lords' code of conduct, which the Lords' Commissioners for Standards investigates.[108] The Commissioners could recommend their own sanction, including suspension or expulsion, which peers would then vote on.

In both the Commons and the Lords, there are sound reasons for not expelling members who are guilty of lesser crimes automatically. For example, there may be legitimate reasons for causing 'public nuisance' through protest, which should not result in immediate removal from the House. However, there are legitimate questions as to whether the present method of reviewing these cases in the Lords is adequate, especially given its history of lax enforcement mentioned above.

Recall in the Commons gives voters an opportunity to decide whether, if asked again, they would still choose their MP given their recent misconduct. An equivalent for the Lords would be to require HOLAC to re-assess a peer's suitability and good standing in the circumstances mentioned above. It would certainly help deal with the current inconsistency where it is possible for a sitting Lord to remain in the chamber when HOLAC may not have supported their nomination had this misconduct taken place prior to their nomination.

Recommendation 14: HOLAC should have a role in re-assessing peerages where Lords have committed serious wrongdoing that would have triggered a recall petition were they an MP.

A lack of term limits

On a related point, the absence of term limits in the House of Lords combined with inconsistent enforcement of its rules risks engendering a sense of invulnerability amongst some peers. It is entirely possible at the

moment for Lords to engage in egregious misconduct yet retain their privileged position in the legislature until a time of their choosing. This is inconsistent with the Commons, where members are subject to periodic review by their electors.

Moreover, in other directly elected second chambers around the world, terms are usually longer than in the first chamber. For example, in the US Senators are in the second chamber for six years and in the first chamber for two years. In France Senators serve nine-year terms and members of the first chamber serve five. While this is a key element to promoting peers build their expertise and experience, it can hamper accountability without additional safeguards.

The Lord Speaker's committee has proposed introducing 15-year term limits to help reduce the size of the House.[109] Implementing this measure could help address the issue of a burgeoning second chamber while also acting as a backstop against inadequate enforcement of its conduct rules.

Recommendation 15: Parliament should adopt the Lord Speaker's committee's recommendation to introduce 15-year term limits for peers.

Full-time v part-time?

In the House of Lords, the part-time nature of the role and lack of salary means that members tend to have several outside interests. These can include employment with private companies, property portfolios and shares in businesses, all of which provide potential conflicts of interest between their public duties and private concerns. For example, there have been significant numbers of Lords voting on health care bills while holding financial interests in healthcare companies who may be affected by them.[110]

In the Commons, which is supposed to be a full-time role, the solution has been to introduce stricter controls on outside employment to help avoid issues arising. We contend this has not gone far enough. However, if an objective of the second chamber is to draw from a wide range of expertise and experience from outside of politics, introducing similar rules in the second chamber might be undesirable and/or impractical. Unduly tight restrictions could put off potential peers or make them unable to join the chamber in the first place.

Conversely, if it were full-time then there would be a greater expectation that they would have next to no outside employment. This would likely reduce the potential for serious conflicts of interest between their public and private roles. However, the downside is that this could attract more 'professional politicians' from within parties and lose the content expertise held by many within the current House of Lords.

Fundamentally, there are trade-offs either way. Having a clear purpose for the second chamber would help weigh these options more accurately. Regardless, there should remain strict restrictions on Lords' employment as outside lobbyists – whether acting in an advisory or advocacy role.

CONCLUSIONS

In the UK, the House of Lords can provide a vital contribution to our law-making process. Its ability to review bills and reflect longer term on the efficacy of government decisions bolsters our democratic process. However, frequent scandal overshadows the good work that the House does and undermines its legitimacy, to the extent that the status quo is untenable.

We are conscious that the measures we propose in this paper have to accommodate to the specifics of any future reform. If the Lords remains a largely appointed chamber, it is clear HOLAC needs to have a stronger role and the Prime Minister far less power than is currently the case. As was the case with judicial appointments two decades ago, it is time Parliament loosened the executive's grip on the legislature.

Across both appointed and elected methods big money risks corrupting our politics. While the prospect of substantive reform in this area seems distant, the case for change has never been more urgent. It is the cancer at the heart of our democracy that has been left to fester for too long, and with it poisoned our body politic.

We caution that a wholly elected second chamber is not without its risks. It could exacerbate the demands for campaign funding and the impropriety this encourages. Inevitably, it also shifts the place of patronage from out in the open to more closed party structures. While candidates will be judged by the public at polling time, it is in the interests of all parties that electorate have confidence in these processes and the best choice of legislators available.

Regardless as to how it is chosen, the upper house needs greater accountability for those endowed with the honour of serving in it. It is a bizarre anomaly that someone can be ejected from the Lords yet retain their title – seemingly the most treasured prize for many. Lax enforcement of existing rules, the absence of both term limits or a means of recall, and the ability to duck out of the rules entirely for periods at a time risks engendering a sense of invulnerability within some of its members. We must end this impunity to help rebuild the House's good name.

With an institution steeped in history, custom and tradition, progress on reform has been slow. Our analysis has sought to further the debate around change through proposing actionable and workable measures to rebuilt Parliament's reputation. Many of our proposals do not require primary legislation, could be introduced swiftly, and without too many cost implications. They would strengthen trust and legitimacy in the law-making process and should be at the top of any programme for reforming the second chamber.

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