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Evidence from Outside

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INTRODUCTION

Parliament does not have a long tradition of drawing on external evidence in the scrutiny of policy and legislation. While government ministers have long relied on the civil service to provide the necessary expertise to support policy, until recently most backbench MPs relied overwhelmingly on their own experience and expertise when seeking to hold the government to account. Throughout the nineteenth and most of the twentieth century, being a Member of Parliament was a part-time occupation, and Members drew on their professional experience outside of Parliament to provide informed scrutiny of government policy and legislation (Judge 1981; Rush 2001). To some extent, this tradition continues, most notably in the House of Lords, where many Members retain external occupations and bring that expertise to bear within the Chamber. However, since the latter part of the twentieth century, opportunities for Parliament to draw on external evidence have expanded considerably, and external evidence is now a central feature of Parliament's scrutiny and legislative functions.

In drawing on evidence from outside Parliament, a distinction may be made between the use of external evidence in the scrutiny of government policy and administration, and its use in the scrutiny of legislation. The creation of the departmental select committee system in 1979 significantly enhanced Parliament's capacity to draw on external evidence in the scrutiny of government policy and administration. However, formal mechanisms for applying external evidence to the legislative process have been somewhat slower to develop. In recent years, the greater use of draft bills has enhanced opportunities for pre-legislative scrutiny, including by external actors, while the introduction of public bill committees in 2006 has allowed for select committee-style external evidence-taking as part of the legislative process. In addition to these formal mechanisms for drawing in external evidence, a number of other factors have served to enhance Parliament's and parliamentarians' ability to draw on external evidence, including the work of all-party parliamentary groups, and developments in communications technology. While there are significant benefits to these mechanisms, each also has its limitations some of which are cross-cutting.



Parliamentary terms Pre-legislative scrutiny

Scrutiny of draft bills by committees of either House, or by a joint committee.

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The scrutiny of policy and administration: select committees

The creation of the modern select committee system in 1979 was perhaps the most significant development in terms of drawing external evidence into Parliament. Select committees examine the expenditure, administration, and policy of government departments and associated public bodies (see Chapter 16). They do this by undertaking detailed inquiries and publishing reports into the work of departments and aspects of public policy. Select committees choose their own topics for inquiry and, in carrying out their work, make extensive use of evidence from outside Parliament, inviting written submissions and hearing from witnesses, including those responsible for delivering policy, service users, and independent experts. Select committees have become a prominent feature on the parliamentary landscape, their reports receive a formal response from the government, may be debated in Parliament, and increasingly attract media attention.

A typical select committee inquiry will begin with a call for submissions of written evidence. In addition to a general call, a committee may request submissions from key stakeholders such as professional associations, think tanks, trade unions, charities, and user groups. Written evidence will be collated and is usually published on the committee's website (Rogers and Walters 2015, 321). This will be followed by several oral evidence sessions. Some of those invited to give oral evidence may have already submitted written evidence, while others may have been invited as interested parties or recognized experts.



Parliamentary terms Written evidence

Evidence from MPs, peers, outside experts, organizations, and the general public which is submitted in written form to a select committee or a bill committee.



Parliamentary terms Oral evidence sessions

When key stakeholders and interested parties (e.g. government ministers, civil servants, businesses, charities, academics) are invited before a committee of MPs to answer questions on a specific issue or on a proposed bill.

Oral evidence takes place over several days and the nature of the sessions may vary. Early sessions usually involve panels comprised of several expert witnesses. These are primarily information gathering sessions, designed to maximize the range of expertise available to the committee, and tend to be non-confrontational. There may also be sessions in which evidence is taken from those with direct experience of a particular policy. For example, a recent Work and Pensions Committee inquiry on employment opportunities for young people took evidence from several young people who had used government employment services (Work and Pensions Committee 2016). Significant witnesses, including government ministers, tend to be interviewed towards the end of the evidence-gathering process, and may be interviewed on their own, in order to allow for more sustained and forensic examination. The Work and Pensions Committee inquiry referred to above, for example, concluded with evidence from the Minister for Employment, Damian Hinds, in which he was asked to respond to the comments of the young people who had earlier given evidence (Work and Pensions Committee 2016). These later sessions may be more adversarial, particularly if the committee feels that witnesses are not being entirely open. The inquiry into the demise of the retailer BHS (see Chapter 14), for example, began with a number

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of information-gathering sessions with panels comprising representatives of the pensions regulator and the financial and legal services sector. In later sessions, Philip Green, the former owner of BHS, and Dominic Chappell, who bought the failing store shortly before liquidation, were interviewed individually and at length, in order to determine how the store collapsed and what plans were in place to rectify the shortfall in its pensions fund (Work and Pensions and Business, Innovation and Skills committees 2016).

Although the select committees have allowed for parliamentary scrutiny to be informed by an extraordinary range of external evidence, a number of studies have raised questions about the nature and range of witnesses called to give evidence (Berry and Kippin 2014; Geddes 2016). While government departments provide a large proportion of witnesses, among non-governmental witnesses some groups, such as charities and think tanks, are well represented, while others, such as trade unions, are relatively under-represented (Geddes 2016). There is also a clear geographical bias among those called to give evidence, with more than half of select committee witnesses coming from London and the south of England. Similarly, although select committees make extensive use of expert witnesses from universities, there is a clear preference for witnesses from Russell Group institutions, Oxford and Cambridge in particular, and more than half of academic witnesses come from universities in London and the south-east. Perhaps most alarmingly, one study found that more than three-quarters of all select committee witnesses were men (Berry and Kippin 2014). This may, in part, be explained by a lack of diversity in those institutions from which witnesses are drawn, but some committees have begun to monitor the diversity of witnesses. The relatively short time frame involved in most inquiries may also encourage a reliance on more readily accessible and experienced witnesses. Nevertheless, by relying on the 'usual suspects' committees are unlikely to ensure a broad evidence-base.

There are also questions about the capacity of select committees to make effective use of external evidence (see White 2015a). Some inquiries are, by their nature, incredibly complex. Committees are supported by a small team of clerks, and may also employ specialist advisers, such as lawyers or academics, who may be engaged on a temporary basis to advise the committee on particular issues. Nevertheless, committees are heavily reliant on the capacity of committee members to understand and engage with the evidence and, in particular, to scrutinize witnesses. The Parliamentary Commission on Banking Standards, an ad hoc committee which examined the complex issue of corporate governance in the UK banking sector, experimented with a much wider use of specialist advisers, including a QC, to examine witnesses on behalf of the Commission (see Case Study 15).

The legislative process: draft bills and public bill committees

Parliament's use of external evidence in the scrutiny of government policy and administration is now well-established. However, such evidence-taking was not, until recently, a significant feature of the legislative process. The movement towards the publication of more bills in draft form has enhanced opportunities for external input into legislation. Pre-legislative scrutiny usually provides for a much longer process of external scrutiny than is available once a bill is introduced. The government aims to publish draft bills at least three months before bringing them forward. Draft bills are usually subject to scrutiny by the relevant departmental select committee, although in some cases, if a draft bill is particularly large and complex, a joint committee of both Houses may be established to examine it. Draft bills may also attract scrutiny from more than one select committee. In 2016, for example, the draft Investigatory Powers Bill, was subject to scrutiny by a joint committee, by the House of Commons Science and Technology Committee and the Parliamentary Intelligence and Security Committee (see Case Study 7).

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Committees undertaking scrutiny of draft bills will usually collect a substantial volume of written submissions and undertake a longer and more in-depth period of oral evidence-taking than is afforded elsewhere in the legislative process. Evidence-taking at this stage provides an opportunity for input by those likely to be affected by a piece of legislation, as well as expert scrutiny from professional bodies and academics. Although the complexity of the legislation and time taken to appoint a committee may limit the time available for evidence taking, pre-legislative scrutiny is widely assumed to improve the quality of bills (see Chapter 7). There is evidence that governments are prepared to accept the recommendations made on the basis of evidence provided during pre-legislative scrutiny, and that evidence taken at this formative stage may also be used in debates during the passage of a bill (Oliver et al. 2005; Norton 2013).

There are further opportunities for outside evidence to have an impact once a bill has been introduced, although this is a relatively recent development. It is possible for bills to be sent to select committees for detailed examination after second reading, although this is rare (Rogers and Walters 2015, 181). Similarly, while a special standing committee procedure was established in 1980 to enable evidence-taking during the committee stage of a bill, this was only used nine times (Thompson 2014, 385). External evidence-taking only became a standard feature of the legislative process in 2006, following a recommendation from the Modernisation of the House of Commons Select Committee. The Modernisation Committee identified several benefits of embedding external evidence-taking in the legislative process:

It is first and foremost a mechanism for ensuring that Members are informed about the subject of the bill and that there is some evidential basis for the debate on the bill. Evidence-gathering is also, by its nature, a more consensual and collective activity than debate, and there is evidence that those outside Parliament have a more positive view of select committee proceedings than of debate. So there is a reputational benefit to Parliament in being seen to engage in a more open, questioning and consensual style of law-making, before moving on to the necessary partisan debate. (Modernisation of the House of Commons Select Committee 2006).

Following the Committee's recommendations, standing committees were reformulated as public bill committees and given the power to take evidence from external witnesses as part of the committee stage of a bill (see Chapter 9). Not all public bill committees take evidence, and some will accept written evidence without holding formal evidence sessions. Bills which start in the House of Lords do not have an oral evidence-taking stage, although this is the result of practice rather than procedure. In the 2015–16 parliamentary session, 22 bills were considered by public bill committees (see Table 15.1). Eight bill committees held oral evidence sessions, and a further seven took written evidence only. In total there were 21 oral evidence sessions and 788 written submissions were made. The number of written submissions received by individual bill committees varied considerably, from five for the Bank of England and Financial Services Bill, to 154 for the Housing and Planning Bill. Written submissions will usually be taken for as long as the committee is sitting and will be posted on the Parliament website. Oral evidence sessions take place at the beginning of a public bill committee's work and, in contrast to the lengthy period of pre-legislative scrutiny, only last for a few days. Bill committees will usually hold between two and four oral evidence sessions before moving on to their established role of line-by-line scrutiny of bills, where this evidence can then be integrated.

As with select committees, those asked to give evidence include interested groups, experts in the field and, in most cases, departmental officials and the relevant government minister. However, as with select committees there have been criticisms of the selection of witnesses. These have focused on the role of whips in selecting witnesses, and the limited role for committee members, particularly opposition Members, to add

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witnesses. It has also been argued that access to the public bill committees is limited, with a relatively small circle of well-connected organizations or individuals being called to give evidence (Levy 2010; Thompson 2014). It is also apparent that rather than providing an opportunity for new evidence to emerge, in some cases public bill committees merely provide a further opportunity to review evidence which may already have been provided to Parliament in other forms. This is particularly the case if a bill has been published in draft form and/or subject to pre-legislative scrutiny by a select committee. For example, of the 17 organizations or individuals who gave oral evidence to the Investigatory Powers Bill Committee in 2016, 12 had previously given oral evidence to the joint select committee which had examined the draft bill. Moreover, given that bill committees do not have the same level of clerical support as select committees and usually sit for only a few days, it is not clear how, or whether they have the capacity, to absorb what may be a substantial volume of written evidence.

Nevertheless, research on public bill committees has shown that the introduction of external evidence-taking has had an impact on the legislative process. Louise Thompson found broad acceptance on the part of MPs that the introduction of evidence-taking had enhanced the policy knowledge of MPs when considering legislation; this is particularly the case among opposition MPs who do not benefit from civil service support. Thompson (2014, 390) observes that external evidence taking has 'helped to level the playing field' between government and opposition MPs. She also found that MPs often make use of oral evidence to strengthen their arguments in the line-by-line scrutiny of bills, and may use proposals made by witnesses when drafting amendments to bills. Moreover, there is some evidence that evidence-taking has a direct impact on legislative outcomes. Committees which take oral evidence propose a greater number of amendments. Although the number of amendments accepted by governments at committee stage remains low, there has been an increase in ministerial undertakings to reconsider aspects of bills which have arisen from oral evidence sessions (see Chapter 9).

Informal mechanisms

In addition to the formal mechanisms outlined above, there are a number of other means by which evidence and expertise is drawn into Parliament, some of which are well established, while others reflect more recent developments.

In addition to formal committee work, parliamentarians may gain access to information and expertise from outside Parliament through all-party parliamentary groups (APPGs). As shown in Chapter 11, there are many hundreds of APPGs covering a diverse

Table 15.1 Evidence-taking by public bill committees (PBCs) in the 2015–16 session

Total number of bills considered by the House of Commons PBCs	22
Bills which took oral and written evidence	7
Bills which took oral evidence only	1
Written evidence only	7
Bills taking oral or written evidence	15
Total oral evidence sessions held	21
Total number of written submissions received	788

Source: House of Commons, *Sessional Return, session 2015–16*, HC1

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range of issues and activities. In addition to allowing like-minded parliamentarians to meet and discuss particular issues of mutual interest, APPGs also provide a forum in which parliamentarians can meet with interested parties and experts from outside Parliament, including charities, professional bodies, learned societies, and trade associations. APPGs may invite external speakers, organize seminars, produce reports, and lobby on behalf of particular issues or policies. The Parliamentary and Scientific Committee is the oldest such group and has well-established links with scientific bodies in academia and industry. Its activities include monthly seminars in Parliament, attended by some of the country's leading scientists, and external visits to scientific and industrial establishments. One of the most recently established APPGs, the All-Party Parliamentary Cycling Group, actively promotes cycling and sustainable transport policies, and has conducted a number of high-profile inquiries. Its *Get Britain Cycling* inquiry took evidence from over 100 witnesses, including representatives of road transport user groups, cycling charities and professional bodies, the police, local authorities, and government ministers. The subsequent report, which included 18 recommendations, was the subject of a Westminster Hall debate, received a lengthy response from the government and was followed by the announcement of an additional £214 million investment in cycling (All-Party Parliamentary Cycling Group 2013).

While the submission of written evidence, coupled with invitations for carefully selected individuals to speak to parliamentarians, have been the primary, formal, and informal mechanisms by which Parliament has sought to draw in evidence from outside, advances in technology have provided parliamentarians with new opportunities to seek external evidence and, in some cases, to access it directly from within Parliament. In 2015 the Speaker's Commission on Digital Democracy recommended that 'the House of Commons should experiment with new ways to enable the public to contribute to different stages of the law-making process, primarily by digital means' (Digital Democracy Commission 2015, 44). The Commission made a number of suggestions for using digital technology to draw in evidence from outside, including exploring alternative means for enabling the public to put questions to ministers and the establishment of a digital discussion forum to operate in parallel to parliamentary debates (Digital Democracy Commission 2015).

The select committees have, perhaps not surprisingly, been particularly active in using new technology to engage with those outside Parliament. While most now use social media to announce inquiries and call for evidence, the Education Committee and the Communities and Local Government Committee have used social media to solicit questions for ministers under the hashtags #AskGove and #AskPickles. These initiatives, which generated several thousand questions from the public, clearly posed a challenge to the committees. In both cases, a selection of questions were put directly to the minister during a 'quick-fire' oral evidence session, with their responses posted on YouTube. Although this only allowed for a small number of questions to be put directly to the minister, the committees also claimed that the public responses informed their own questioning. Such methods provide a potentially powerful source of evidence and, moreover, one which ministers may be more reluctant to dismiss than questions posed by a panel of fellow MPs. However, they also produce a highly selective and partial representation of public opinion, and unless systematically applied may appear as little more than eye-catching supplements to the traditional work of select committees.

Technological developments have also created opportunities for parliamentarians to access information from outside directly from within the parliamentary Chambers. The use of electronic devices within the Chambers of both Houses has been the subject of considerable debate. In 2011, the House of Lords trialled the use of handheld electronic devices, although not laptops, in the Chamber, but peers were not permitted to use them

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to search for material which might be used in proceedings. When the House of Commons Procedure Committee looked at the issue it found that not only would such a ban be difficult to enforce in the House of Commons, it was also suggested that the use of electronic devices for consulting material and checking facts might lead to better informed debate. The Committee concluded that ‘Members should be allowed to use electronic handheld devices for any purpose when in the Chamber whilst not speaking’ and that they should also be permitted to use them as ‘an aide memoire, whilst speaking in a debate’ (Procedure Committee 2011, 9). Both Chambers now permit the use of handheld devices, and in 2015 all MPs were provided with an electronic tablet. While the use of such devices occasionally prompts concerns that Members may not be focused on their primary role, they are perhaps just the latest manifestation of a gradual opening up of Parliament to external evidence, experience, and expertise.

Conclusion

The opportunities for Parliament to draw in evidence from outside have increased considerably in recent years. The use of external evidence is now an established feature of the scrutiny of government policy, administration, and legislation. There are also a growing number of less formal mechanisms through which various parliamentary bodies and individual parliamentarians access external evidence. While some of these are well established, others, such as the use of social media, are new and somewhat experimental. The capacity of Parliament and its Members to access external evidence has, to some extent, served to balance the government’s monopoly on information in relation to policy and legislation (see White 2015b). There remain, however, limitations to Parliament’s use of external evidence. The process of selecting evidence and finding an appropriate balance between witnesses is clearly challenging. Parliament, and particularly its committees, are often criticized for drawing on a limited pool of expertise; there are, however, significant challenges involved in identifying and engaging with a wider range of external evidence, not least in terms of resources. While there are further opportunities for exploiting new mechanisms for getting evidence into Parliament, considerable responsibility continues to rest on parliamentary committees and individual parliamentarians both to seek out the best evidence, and to make best use of the evidence that is available.

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Case Study 15: Use of external evidence by the Parliamentary Commission on Banking Standards

The Parliamentary Committee on Banking Standards ('the Commission') was a temporary joint committee with Commons and Lords membership. It was established by Parliament in July 2012 in the wake of the financial crisis and the LIBOR scandal about the fixing of the London Inter-Bank Offered Rate. The Commission offers an interesting case study of the use of external evidence by parliamentary committees because, in addition to using normal evidence-gathering methods, it enjoyed two unusual powers. These were the right to create an unlimited number of subcommittees, and the power to invite specialist advisers to examine witnesses on its behalf.

ROLE AND MEMBERSHIP OF THE COMMISSION

Rather than being a permanent select committee with an ongoing remit to scrutinize a government department or particular policy area, the Commission was an ad hoc joint committee established to look into standards in the banking industry. It also undertook pre-legislative scrutiny of the Financial Services (Banking Reform) Bill during its existence of just less than a year.

The ten members of the Commission included: the then Chair and several members of the Commons Treasury Committee, a former Chancellor of the Exchequer, a former Cabinet Secretary, and Bishop Justin Welby, who became Archbishop of Canterbury during the course of the Commission's work. The previous experience and expertise that the members brought to their work significantly enhanced the credibility of the Commission's recommendations in the eyes of the banking industry towards whom many of these were directed.

Although in many ways the Commission operated like any conventional parliamentary committee, it was conceived by its members and Chair, Andrew Tyrie MP, as an opportunity to trial new committee working methods, particularly in relation to its use of external evidence.

WORKING METHODS

Like a typical select committee the Commission made use of evidence from outside Parliament, in the form of written and oral evidence. However, unlike a typical committee, the Commission had an unlimited budget underwritten by a 'blank cheque' from the government, which enabled it to undertake more activity and draw on more sources of external advice and support than would be normal for a joint committee of this type.

The Commission received numerous pieces of written evidence and made significant use of the power normally afforded to Committees to 'send for persons, papers and records'. It used this power to access corporate records from financial institutions, including HBOS, which shed light on the processes that led to the financial crisis. And it heard oral evidence from a total of 252 witnesses. The Commission appointed more than 20 specialist advisers to support its evidence gathering and analysis and, in addition to its core parliamentary staff, drew on the expertise of staff appointed on secondment from external organizations including commercial banks, the Treasury, and the Bank of England. This enabled the Commission to ensure its evidence gathering, conclusions, and recommendations were well informed.

Unusually, the Commission was given the power to establish an unlimited number of subcommittees (described as 'panels') with a quorum of just one member. Commons committees

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are normally allowed to establish only a single subcommittee with a quorum of three. The Commission established 11 panels on subjects as diverse as HBOS, Scotland, and corporate governance. This power significantly expanded the Commission's capacity to gather external evidence because each panel was able to conduct its own evidence sessions and fact-finding visits. By the end of its inquiry, the Commission had published nearly 5,000 pages of evidence and reports online. While the volume of evidence the Commission gathered added to the credibility of its conclusions, it is doubtful that its staff and members could have genuinely assimilated this quantity of material in the time available. This was not least because some of the evidence gathered by panels was heard by only one or two members, and panels were not given the power formally to report to the main Commission.

The Commission was also given the power to invite specialist advisers to examine witnesses on its behalf. It is very unusual for anyone other than parliamentarians to be allowed to get involved in parliamentary proceedings because of the risk that this might invalidate the 'parliamentary privilege' that protects parliamentarians from prosecution for what they say in the course of their parliamentary work. The Commission used this novel power to appoint barristers as specialist advisers. They were used to research and develop lines of questioning and to ask questions during oral evidence sessions. The Commission found that barrister-led questioning was very useful in certain circumstances, particularly to establish on the record facts that had already been identified through background research in relation to its inquiries into HBOS. It was felt to be less useful for exploring issues in general and encouraging witnesses to identify matters of which the Commission had been unaware.

IMPACT OF THE COMMISSION

The Commission's evidence gathering seems to have enabled it to achieve significant impact. The government accepted a very high proportion of the recommendations and, because of the credibility of the work they had undertaken, Commissioners were able to secure some significant amendments to the Financial Services (Banking Reform) Bill during its passage through the Lords. However, the most significant factors contributing to the Commission's impact were not novel, and could in theory be enjoyed by any parliamentary committee. These were: political backing (the impetus and legitimacy the Commission derived from cross-party support); resources (the government's 'blank cheque'); and relationships (the contacts, status, and expertise of its members).

This case study demonstrates therefore the importance of outside evidence in enabling MPs to draw sensible conclusions in relation to complex issues. The Commission's efforts to gather a substantial body of evidence—using both normal select committee tools and two more unusual powers—enabled it to develop recommendations that were seen as credible by both government and the financial services industry, and which therefore were implemented.

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FURTHER CASE STUDIES

- Evidence taking by the Work and Pensions and Business, Energy and Industrial Strategy Committees as part of their joint inquiry into the collapse of BHS (2016).
- Inquiry by the Women and Equalities Committee into sexual harassment and sexual violence in schools, focusing in particular on its collaboration with the young people's charity, Fixers (2016).
- Evidence session with Secretary of State Eric Pickles, Communities and Local Government Committee, for which the Twitter hashtag #AskPickles was used to collate questions, 22 January 2014.

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