320. You make a very good case for judges, in that **those people who failed to meet the criteria that you or your successors would set to become a judge would not be covered by the Freedom of Information Act but they would be given this opportunity to have an in-depth response to why they failed. However, that same criteria is not offered to somebody who fails to gain British Citizenship, and they do not have any rights under freedom of information either. I would like to see things fair for everyone**.

(*Lord Irvine of Lairg)* So would I, but if you are concerned with the fairness of the immigration process you must address your questions to the Home Secretary.

Miss Johnson

321. May I take this back to judges, because you have had your question on judges and I have not finished with judges. You are talking about the way the process works. People are not aware, presumably, of who is being consulted about their futures, or how those people are selected. There is the risk, on the sort of view that you have given of this, of it either being promotion by opinion poll, as it were, amongst your peers, or, in a sense - even worse, perhaps **- that the club becomes a self-reinforcing body and that only people who fit the same criteria as existing members of the club ever make it through to the next stage of the promotion ladder. I think the public would have quite considerable concerns, on both those fronts, that sometimes it does not appear that the judiciary is moving forward with the country, but, in some cases, has lagged behind.** Do you not think that it would be welcome for them to understand more about the way this process works and for people to have access to it in more detail? You have said that you felt it would be exempt under freedom of information. Under which aspect of the provision would it be exempt?

(Lord Irvine of Lairg) Confidence.

322. Information given in confidence?

(Lord Irvine of Lairg) Yes. Let me respond to what you said earlier. Most people will know who are being consulted. It is obvious to most practitioners, who want to be considered, who the people who are likely to be consulted about them are. Listening to this discussion today, I am very hospitable to the idea that when people apply, or when people are aggrieved, they can put forward names of people whom they would like to be consulted about their merits - and they very often do. Almost invariably, the people they want to be consulted are being consulted anyway. Of course, you could formalise this more, and it is something that I am actively looking at. I have spent an enormous amount of time, in fact, in studying the cards - as we call them. For every relevant person there is a card of material, noting assessments, going back over many, many years, and the names of the persons giving the assessments are all recorded. Speaking for myself, I have been genuinely impressed by the width of it. But any system can be improved. If additional names can be put forward by individuals whom they would like to be consulted then the system can accommodate that and that should be formalised. Do not forget, of course, that at the level of all judicial appointments up to Circuit Judge - which is the great majority - there are interviews as well as assessments, and the interviewing panel includes lay people. I sometimes find it very, very interesting indeed to compare the recommendations of the consultation committee community as against the assessment of the interview panel. You have to weigh the one against the other.

323. Do you accept that the existing process has not always delivered judges of the quality you would like to see in all cases?

(Lord Irvine of Lairg) **No system is perfect, and, of course, judges are not perfect, by any manner of means.**

324. I did not ask whether judges were perfect.

(*Lord Irvine of Lairg)* I do think, on the whole, that high quality people do get through. I can tell you that I have some concern that some people of high quality choose not to become judges when I would like them to become judges. This is not a vast problem; I think the overwhelming majority of practitioners do have an ambition to become judges, if they can, and, hopefully, the best people win through. I hope you are hospitable to my idea that an Ombudsman might provide a quite considerable guarantee of fairness, because he would, of course, have to have access to these cards.

325. Obviously we would welcome seeing some more detail on that. Can I ask you, finally, on the content of the annual report, what, at the moment, you envisage that encompassing, and who you plan to consult about what the nature of that report should be?

(Lord Irvine of Lairg) I would envisage that it would involve descriptions of how many people applied, how many people succeeded, a summary of the capacities of those who applied, the qualities that they had against the criteria for success - giving figures of those who won through. One would obviously want to know how many people from ethnic minority backgrounds applied, how many women applied and how many succeeded; we would be interested (and I am sure you would be interested) to measure that against the proportion of the relevant profession as a whole that people from ethnic minority backgrounds represent, women represent, and so on - the fullest possible information. I doubt if we would disagree on any point about what ought to be in this report.

326. Will that include retrospective comparative statistics for the previous three years?

(Lord Irvine of Lairg) It could. That would be more burdensome but I think it would be more helpful, in fact, because it would be of interest to see if changes were happening over time. I hope, for example, that over time more women will become judges, more women will become QCs and more people from ethnic backgrounds will become judges. I think a comparative study, looking backwards over a period of years, would be useful, yes.

327. Will it include details of how the lay assessors are appointed?

(Lord Irvine of Lairg) Yes, absolutely. The whole system.

328. What is that process?

(Lord Irvine of Lairg) How lay assessors are chosen? They are chosen by an advisory committee[2], and I am not aware of any complaint about the quality of the individuals who sit as lay assessors.

329. I am sure most of us have no idea who they are. We have just produced a report on public appointments and, obviously, a number of departments use various people in the process of making their appointments, but we are concerned to see that they are as independently representative as possible.

(*Lord Irvine of Lairg)* I entirely agree.

330. I have no idea about yours.

(*Lord Irvine of Lairg)* Perhaps you will allow me to write to you on that, and give you as detailed an answer as I presently can. I would also envisage that that material would appear in the report.

Chairman

331. Before I turn the questioning over to Richard Shepherd, I would like to ask you one question following on from Melanie Johnson's questions, namely, if you did produce a report in the spirit of openness and transparency about how the judicial appointment system was going would it also include information about the termination of judicial appointments following the recent termination of Mr Justice Harman when you were able to tell him that you did not know how you were going to do without him but you were going to to give it a damn good try from next Monday? Would you envisage

being able to state to judges what the minimum standards you expected from them were and if they fell below those standards consistently it might be the Mr Justice Harman treatment for them too?

(Lord Irvine of Lairg) First of all, I think you have to realise that the Mr Justice Harman experience was an extremely exceptional one.

332. We should all be grateful for that.

(*Lord Irvine of Lairg)* We should be grateful for that, of course and I am particularly grateful for that. The important point, of course, is that Mr Justice Harman resigned, he was not sacked. Plainly his judgement was, after the decision of the Court of Appeal which criticised him so strongly for sitting so long on a reserved judgement, that he ought to resign. There is no doubt about it that he arrived at the perfectly right view. The public are entitled to see very high-grade service from the judiciary and on the whole they do. The glory of our system actually, which compares so favourably with many countries in the world, is that a great majority of judgements are given at the end of a case extempore by judges and not reserved and that applies to the Court of Appeal dealing with much more difficult cases as much as to trial judges. It is a remarkable achievement but Mr Justice Harman fell down on these standards and did the right thing and he resigned.

Mr Hancock

333. Would you have sacked him?

(Lord Irvine of Lairg) I have no power to sack him.

Mr Shepherd

334. Lord Chancellor, your modesty comes as rather a surprise in the list of disclaimers that you gave before coming here to give evidence in terms of the departmental responsibilities of the individual Ministers but as the Prime Minister's "big cheese" on constitutional reform can you help me with something that has been puzzling me in respect of the Wales Bill.

(*Lord Irvine of Lairg)* The Wales Bill?

335. Yes, I understand that you fixed matters and clause 79 says that an Assembly member is a crown servant for the purposes of the Official Secrets Act, 1979. What principle underlines that concept?

(Lord Irvine of Lairg) I think I will write to you on that[3]. I am not going to attempt an extempore answer on that.

336. It does not require a great deal of thought in one sense.

(*Lord Irvine of Lairg)* You would know the answer if that is right.

337. I am trying to tease out of you, having sat in the Committees that try to arrange these constitutional arrangements, why it was that one picked upon a democratically elected assemblyman to be subject to the Official Secrets Act. It must have puzzled you as it went in front of your Committee and I wondered what was the justification or how does one reconcile this with any democratic principle?

(Lord Irvine of Lairg) I will be absolutely frank, I have no live recollection of the specific point arising in the Committee at all. It will have emerged in the Bill and I will have found out the answer by this afternoon and I will write to you.

338. I am grateful for that. What I really wanted to ask you about was the concept of public interest in the Official Secrets Act and what I wanted to try and get an understanding of was the relationship between public interest as set out in the White Paper and the kind of public interest that the courts have long applied under the law of confidence. It is the relationship really between those two things. In

particular, will it be possible for an applicant to obtain exempt information which would normally be protected from disclosure if it reveals that serious misconduct has taken place or there is a serious danger to the public?

(Lord Irvine of Lairg) You are referring of course to the iniquity rule of common law and the rule that you cannot withhold disclosure of information which it would be in the public interest to disclose because it would demonstrate misconduct or malpractice, particularly in Government. I have no reason to believe that any different conclusion would be arrived at under the Freedom of Information Bill. It is quite obvious that personal privacy yields to the public interest in exposing wrong-doing.

339. That is the narrow point of wrong-doing but we have a harm test in the Official Secrets Act of course.

(*Lord Irvine of Lairg)* Yes.

340. And the White Paper raises that and, in a sense, it seems rather generous as a general contention. It is not a damage test; it is a harm test.

(Lord Irvine of Lairg) I am glad that you say that. I think that this is a very very liberal Freedom of Information Bill that is contemplated. I would really hope that we would get some credit for that. It is very liberal. It is not a mere harm test, it is a substantial harm test, and that makes it as liberal a freedom of information regime which we contemplate as any in the world. Plainly, you could have had a simple harm test - we have a substantial harm test - and I believe that is why the Campaign for Freedom of Information, although they have points of detail and points of difference with us, as you would expect, on the whole, as I understand it, has given three cheers for the basic standards and principles of the proposed freedom of information legislation.

341. And it is in that spirit that I am asking the questions because I respect that fact and it has been widely received and perceived as wide-ranging and innovative and, in fact, it goes further than many other countries have contemplated in this area.

(*Lord Irvine of Lairg)* And I think further than many people expected.

342. Indeed, that is why I was trying to elicit information on particulars within this White Paper because we have not yet seen the legislation and clearly we are trying to inform and influence the balance of judgement that goes towards the Parliamentary draftman's construction.

(*Lord Irvine of Lairg)* Certainly.

343. As you know, this question of the public interest which is in front of Parliament now, my own Private Members Bill, this definition of what constitutes public interest - -

(Lord Irvine of Lairg) It is a fantastically difficult question.

344. Indeed, and that is what I am trying to elicit from you. What happens when we are confronted with the Official Secrets Act which has prohibition and then the public interest and the intent of the White Paper is set out to create a culture within Whitehall and within society, the constitutional framework you talked about involving young people etcetera, etcetera by making available information. What I am really asking is about the Commissioner who will have to create the first principles of what this relationship is between the harm test, prohibition and, say, the Official Secrets Act. I am just trying to see how the Government weighs this and how it is going to address it.

(Lord Irvine of Lairg) I do think the Information Commissioner, is and will prove to be, a very very important office. I think that we should be applauded for the very strong powers that we have given the Information Commissioner to go into departments, to look at documents, and to assess whether the claim of a department that a particular public interest would cause substantial damage can be made out.

I know that some have said that this should have been left to the courts but I entirely disagree. To have an Olympian litigation in the courts every time there is a dispute about this would be ludicrous and it would also operate in favour of the individual government departments that are seeking to withhold information. You want summary means available and you want the influence that the Information Commissioner can build up for himself in Whitehall over time so as to ensure that a liberal regime evolves but then as a backstop you do have the courts, and I entirely accept what I think you are saying, that of course questions of law will arise, of course questions of interpretation of the Freedom of Information Act will arise. Questions will arise about the inter-relationship between the Freedom of Information Act and other statutes and the Information Commissioner will try to resolve them but he can be judicially reviewed in the courts if, for example, he has erred in law, if he has construed the statute wrongly, if he has misunderstood its relationship with the Official Secrets Act, and so on. So there is a judicial backstop but it is right that the powers up front should be with the Information Commissioner. I think it is also right, incidentally, that he should be an independent officer and not accountable to Parliament. That in itself is a controversial proposition and that is something we thought about very very hard and there can be two views about that. We took the view that public confidence would be enhanced if he was a wholly independent officer because there would be a danger if he was accountable to Parliament that he would be equated with the Government of the day. Right or wrong, that is the view we took. Other views can be expressed and we do not even have a Bill yet.

345. Two of the conditions set out in the White Paper are that the decision should be "in line with the overall purposes of the Act, to encourage government to be more open and accountable." That is one factor.

(*Lord Irvine of Lairg)* What page are you at?

346. I think it is paragraphs 3.19 and 3.21.

(Lord Irvine of Lairg) Thank you. Yes.

347. And the decision should be consistent with other relevant legislation requiring or prohibiting the disclosure of information. Disclosures which breach the harm test and the Official Secrets Act will apparently not be permitted because of this provision and therefore it is the relationship between those two contending principles that concerns me. Clearly a public interest test needs to be set out in this legislation, does it not, when the Commissioner is - -

(Lord Irvine of Lairg) Certainly. I entirely agree that you are putting your finger on a difficult area which will have to be reconciled in the legislation. I entirely agree.

348. Some of us are very concerned over information given in confidence for instance, one of the criteria under the Official Secrets Act, by foreign governments because we now are governed to some extent and to a large extent by the Council of Ministers, for instance, on European matters. That is, in effect, the legislature for the United Kingdom. When it passes and agrees a Directive, etcetera it comes into law within the jurisdiction of the United Kingdom and yet we are excluded from knowledge of the workings of these organisations and that is covered under the "hold all" provision of the Official Secrets Act, information given in confidence. That is the interface between legitimate public enquiries as to how laws are made, rules affecting us are created and what are the trade offs or the arguments or the positions adopted by government. It is an important element in the formulation of public opinion and in the formulation of policy and that is why we think very much this needs to be very clearly defined within the scope of the legislation.

(*Lord Irvine of Lairg)* I agree with all that.

Mr Ruffley

349. Lord Chancellor, could I raise a question relating to the operation of freedom of information and your own Department. It seems to many people that your Department and you personally have gone to some lengths to conceal the facts relating to the refurbishment of the Lord Chancellor's residence. In the first instance we have a record of officials at your Department saying that the £650 million refurbishment was in fact - -

(Lord Irvine of Lairg) £650,000!

Mr Bradley: These things tend to get out of hand!

Mr Ruffley

350. I am thinking of what Lord Wolsey would have spent in that context! At first we were told that this was part of a ten-year rolling programme by your officials. Subsequently in a Parliamentary answer your officials had to retract that.

(Lord Irvine of Lairg) Do you want me to deal with one point at a time or would you like to make a list? Which would be more helpful?

351. I would like to make a list because it is the cumulative effect. On 23 February your Parliamentary press release stated: "The decision to refurbish the residence was made by the relevant House authorities and not by the Lord Chancellor." That would seem to be thrown in some doubt, I think, by the leaked letter you wrote to Black Rod of 1 July 1997 which appeared in a national newspaper following that press release which makes it fairly clear that those words that I quoted from the press release were misleading, which is the word some people have used, economical with the truth is certainly one characterisation of that press statement, Lord Chancellor. What I would then like to go on to - -

(Lord Irvine of Lairg) This is a speech rather than a question.

352. There are two discrete points there, Lord Chancellor, that I am sure with your legal experience you are able to follow. The third point relates to the concealment of the works going on which resulted in refurbishment of your residence.

(*Lord Irvine of Lairg)* I am not following that, the concealment?

353. Yes, concealment in the following respect: there are contracts which the contractors have been obliged to sign which contain clauses relating to official secrets and also separately commercial in confidence clauses - and I do understand the difference between those two things. It seems to me that in relation to particularly the last instance I quote of commercial in confidence clauses and official secrets clauses they are operating to gag and conceal the amount of information contractors are allowed to discuss about the costs and the details of refurbishment. As you are an exponent of freedom of information and your Government is in favour of freedom of information, supposedly, do you not think this is an example of hypocrisy? Is it not also the case that many people would see the details of the refurbishment of a Ministerial residence, which is what your residence is, a matter of public interest which should under the principles of freedom of information be publicly available and will you support that and will you give a confirmation to this Committee that you will be pushing for freedom of information proposals to ensure that information like that is freely available under the freedom of information principles?

(Lord Irvine of Lairg) Now then I would like to deal with each of these points separately. First of all, I would like to say that I entirely recognise that £650,000 is a lot of money. I entirely recognise that. And in fact that was why when the costings of this first became available to me in the letter to which you referred to Black Rod, I invited consideration by the relevant Committees who do make the decisions, I do not, as to whether this should proceed in one phase for the state parts, the public parts,

with the private residence parts being postponed to some indefinite point in the future. It was because of my appreciation that this was a large sum of money that I made that proposal.

Mr Tyrie

354. Your letter also advised that you thought phasing would not be ideal.

(Lord Irvine of Lairg) I certainly think that it would not be ideal and the Committee agreed with me because there are greater economies associated with doing something altogether than in two separate parts, but it is a proposal that I made, a proposal that the Committees considered. The Committees included many Conservative peers and the decisions were the decisions of these Committees and the decisions were taken unanimously without any dissent at all. I therefore find that there is a sharp contrast between the position being adopted by the Conservative peers who sat at these Committees, which was to approve it in full knowledge of the facts, and the position being adopted by some Conservative MPs in the House of Commons. Now I would like to deal with each point, as I said. It is quite wrong to say that there was ever an assertion made either by me or by my Department to the effect that the decision in relation to this residence ante-dated the General Election. Quite the contrary. Two press releases, one of June and one of July, said unequivocally that proposals for the refurbishment of the residence are under consideration. Now, really, if proposals are under consideration there has been no prior decision and that seems to me to be a complete answer to the first point. As a result of the decisions of these Committees, Committees of the House, the refurbishment of the residence was added to the ten-year rolling programme. It was made entirely plain by the Chairman of Committees in the House, as it had been made entirely plain in the press releases, that there had been no prior decision and that the decisions (which were the decisions of the House and House Committees) were taken after the General Election. Now I have never ever, nor would I dream of concealing, that this refurbishment has my strong support and approval. I sent a letter to Black Rod to that effect with the request that it be made available to every Member of the relevant Committees and, of course, in these circumstances there is every expectation that it would become public knowledge. But I have said on many occasions that I supported and approved this and I would like to take the opportunity of telling you why I do, but I repeat the point that the decisions are not for me, the decisions are for the House Committees, and they are composed of representatives of all parties and of none and the decisions were taken *nem con*. I want to make two other points. The residence is part of the Palace of Westminster in which we sit. This Palace is the Mother of Parliaments, it is a Grade I listed building and it is clearly right that when it is refurbished it should be refurbished to the highest possible standard because it is part of our national heritage. May I quote the Prime Minister, as she was, Margaret Thatcher, in November 1986: "The Palace of Westminster has no rivals as a symbol of our democratic institutions and most Prime Ministers in the past have given a lead in encouraging the conservation and, where necessary, the restoration of this priceless building. During my time as Prime Minister I have felt myself privileged to be able to carry on this tradition and a great deal of preservation work has been successfully completed. Much of it goes unseen but among the more spectacular projects so far undertaken the greatest pleasure has come from restoring the magnificent ceiling of the Chamber of the House of Lords and the exciting transformation of the State rooms in the Speaker's House." When Speaker Weatherill succeeded Speaker Thomas there was a very very high quality refurbishment and restoration of Madam Speaker's House under the previous administration. I think it is right that if you are refurbishing part of the Palace of Westminster, an important part, it be done to the very highest and historically authentic standards. So I think that it is right in principle. Secondly, as far as the works of art which I have been able, along with my wife, to borrow from reserve collections of great national museums, that is from cellars on to walls, in no case from walls, but indeed chosen by the curators in co-operation with us, every one of these curators approves of this, will have the effect of giving real public access, where there was none before to these works of art and

that was part of my motivation from the very outset. I saw it as an opportunity to confer public benefit by securing works of art which sadly languish in cellars on to walls, works of art appropriate to the building, where they could be seen and they will be seen regularly, and already charities are queuing up. The first are Womankind Worldwide, Breast Cancer Care, Disability Law Service, the Leonard Cheshire Foundation and One World Action, to mention only some. And, therefore, I have to say that while I understand that £650,000 appears to be a large sum of money, I believe that it is in a noble cause and that future generations will be grateful. And also I want to say this, to seize the wallpaper charge straight on the chin, we are talking about quality materials which are capable of lasting for 60 or 70 years. You are not talking about something down at the DIY store which may collapse after a year or two. What is intended is a durable refurbishment of an historic part of our national heritage in a way that will give satisfaction to future generations.

Mr Ruffley

355. You have actually answered a question I did not ask about works of art. Can we get back to freedom of information. My third point is in relation to clauses in the contractors' contracts, commercial in confidence clauses, Official Secrets Act clauses, restricting their ability to talk about the cost and the details of refurbishment. My question is not about works of art and I was rather surprised that you were so defensive in your response to a question I had not raised.

(*Lord Irvine of Lairg)* I was not in the least defensive. I am taking this splendid opportunity in front of you all to explain myself.

Mr Hancock: We are here to talk about the Freedom of Information Act.

Mr Ruffley

356. My question was in relation to freedom of information. Do you believe that members of the public should have the right to have available, under freedom of information, details which your Department is actually seeking to keep quiet because of the clauses in the contracts I have discussed?

(Lord Irvine of Lairg) Would you like to pause for an answer?

357. Is it the case that you think the public under the future Act your Government will be taking through has a right to know that information?

(Lord Irvine of Lairg) Now, would you like to pause for an answer? First of all, these contracts are not let by my Department. My Department is not party to these contracts. They are House contracts. The money that we are talking about is voted by the Treasury to the House as an institution. The contracts that you are referring to are standard form contracts. They have been used for donkey's years. They have got nothing to do with my Department or my Department's officials at all. My Department has nothing whatsoever to do with these contracts. I never saw any of these contracts and these are matters for the House authorities. I have to say knowing as well as you do the security risks which in modern society this Parliament faces, I see no objection at all to the Official Secrets Act applying to these contracts. Some of you will have noticed that in some of the newspapers there were published plans of the residence with a very accurate identification of its various parts. I hope that you would be the first to deprecate that on the grounds of the security implications.

358. One final question. Is it the case that you think the public as a matter of right, and not by virtue of MPs putting down Parliamentary Questions to find out the cost of wallpaper and carpets and beds and oak tables, should be able to discover the cost of refurbishing ministerial residences, yes or no?

(Lord Irvine of Lairg) All I would say is that so far as this residence is concerned, there was the clearest statement that it was £650,000 from a very early stage. There was a Parliamentary answer, I think more than one, giving a detailed breakdown and I do not think that there is any complaint at all. It

did not deter various people from saying that it was going to be millions of pounds or newspapers saying it was going to be up to £2 million. The figure was £650,000 and that was declared at a very early stage and there was the fullest disclosure of the breakdown by way of Parliamentary answers.

Mr Tyrie

359. When you wrote your letter to Black Rod did it occur to you that there might be some political embarrassment about it?

(Lord Irvine of Lairg) I thought that it was absolutely right to make the fullest amount of information available to the Committees of precisely what was contemplated and that is exactly what the letter did. I believe that the Committees were entitled to be fully informed of what was contemplated and that is what the letter set out to do and, as I say, because of a perception that £650,000 in one fell swoop might seem to be a very large sum of money, the two-phase option was given to them but I think that there is nothing but candour and the fullest detail in that letter and it caused me a certain amount of pleasure to read Lord Jenkin's letter to *The Times* saying that he regarded the letter as unexceptional. I do as well.

THE RT HON THE LORD IRVINE OF LAIRG, QC and MRS SARAH TYACKE

360. Can I just ask the same question again. Did it occur to you when you wrote this letter that there might be some political embarrassment about these refurbishments?

(Lord Irvine of Lairg) No.

361. Not at all? Did you have any assistance from your officials in drafting that letter?

(Lord Irvine of Lairg) None at all - just pause for the answer - I wrote every word myself and I take the fullest responsibility. My officials did not write a single word; I wrote it myself. It was a subject in which I was very interested and I wanted to see that the Committees had all the information that I could give them and I cannot see how that can be faulted on grounds of candour or anything else.

362. Did any of your officials see the letter before it was sent?

(Lord Irvine of Lairg) I am sure they would have done, yes.

363. Did they offer any advice to you about the possible political embarrassment that might cause?

(Lord Irvine of Lairg) Not that I have any recollection of.

364. Does this have any connection at all with your decision to appoint an Information Officer?

(Lord Irvine of Lairg) None at all. None at all.

365. When you took the decision to write - -

(Lord Irvine of Lairg) - - I have, by the way, a very good Information Officer, an absolutely excellent Information Officer, but because of my enhanced responsibilities in Government and because of a reappraisal by my officials of the Department and its responsibilities and its strengths and weaknesses and its priorities and allocation of resources and everything else, the view was taken because I had a much higher profile than my predecessor because of the responsibilities which I have been given in Government that it would be right that the office of Information Officer should be upgraded. That seems to me to be extremely sensible.

366. I think you said a moment ago that future generations would be grateful for the refurbishments you are undertaking. I am sure everybody agrees that future generations will be grateful for keeping the Palace in a state of good repair. There is already a budget for that of course - a rolling programme. £3.64 million is allocated for this year. Am I right in thinking that your £650,000 comes out of that budget and therefore has not part of the programme been set back, which future generations would

otherwise benefit from?

(Lord Irvine of Lairg) Let me tell you, it needed rewiring in the name of safety, it was full of asbestos, it needed smoke alarms. There was a lot of work that urgently required doing and that was catered for in previous sums set aside. To the extent that there was a new vote of money by the Treasury, I am not going to risk an answer because I do not actually know the facts but they can easily be ascertained and you can be told. There is no secret about them whatever

367. You have written a letter which has resulted in two-thirds of a million extra public spending.

(*Lord Irvine of Lairg)* I do not accept the letter that I have written has resulted in two-thirds of a million of public expenditure any more than I would accept that when an advocate appears in front of a court and succeeds in his argument that he is party to the decision of the court. What I was doing was not even submitting an argument to the Committee. I was setting out the facts as dispassionately as I could with the pros and cons of what we intended and I regard the decision as a decision for the Committees and I believe that it is their decision and their decision alone and not mine, although I have never concealed that I thoroughly approve of what is happening and I believe that future generations will agree and will regard all this as a remarkable storm in a tea cup, although I entirely accept that £650,000 is a substantial sum of money.

368. Just one final point, do you see any conflict or contradiction between what you have just described as a "storm in a tea cup" and the acute political embarrassment which parts of your party appear to feel over this issue?

(Lord Irvine of Lairg) I do not accept that they do feel acute political embarrassment. On the contrary I think up and down the country people are of the view that this has been blown grossly out of all proportion and that there are two signal points which justify the expenditure: the restoration and preservation of our national heritage and this Parliament; and the public benefit that will be gained from the refurbishment of the residence, and these are the overriding points in my judgment and I suspect in the judgement of very many people across the country as well.

369. So it can be summed up as, if I may coin a phrase, "*Je ne regrette rien*."

(Lord Irvine of Lairg) I am sorry?

370. "*Je ne regrette rien*."

(Lord Irvine of Lairg) I certainly do not think that any apologies are due. On the contrary, I tend to side with those commentators who have said "three cheers for this being done in Parliament and three cheers for the House Committees that decided to do it".

Chairman: Thank you very much for your answers on those questions, Lord Chancellor. Had I thought the "pattern book" row would be coming up today I would have thought it was about Rupert Murdoch censoring HarperCollins and not about the choice of wallpaper in the Lord Chancellor's lodgings.

Mr Hancock

371. I feel the first question I ought to ask you is would you care to give us all some advice on what to avoid at B&Q because - -

(Lord Irvine of Lairg) What was that?

372. But I will not ask that question because you might take too long in answering it and I will not get round to the - - I did not expect you to answer that and I will not expect you to.

(*Lord Irvine of Lairg)* It was very entertaining.

373. Oh, you want to answer it? I was led into it after your sentiments about not buying cheap wallpaper from do-it-yourself stores.

(*Lord Irvine of Lairg)* Any more than you would choose cheap wallpaper for this Committee room.

374. Absolutely. I want to get off the subject.

(Lord Irvine of Lairg) Well, you are not achieving it at the moment.

375. I was trying to bring a bit of humour into what has been a fairly turgid half an hour. I would like to ask you some questions about freedom of information but first you made a very interesting comment about the data protection legislation saying we were put in this position because of a European Directive. Would you say that if we had not had this European Directive you would have wanted to have seen the same sort of legislation coming through in tandem with freedom of information?

(Lord Irvine of Lairg) I do not want to speculate about that. It seems to me that builds hypothesis on hypothesis. Quite frankly, I have been sufficiently concerned with developing real parts of the legislative programme not to speculate whether in the absence of a Directive this very crowded legislative programme and the next very crowded legislative programme might have included legislation on data protection. That seems to me to be building hypothesis on hypothesis in a way that is not very helpful.

376. Do you anticipate that the actual legislation which will materialise will carry very much the same ambitions as the White Paper? Do you feel that the White Paper is going to be in any way diluted by the process between its publication and the delivery of the legislation?

(Lord Irvine of Lairg) The White Paper, as you know, is general principle. This White Paper is itself the subject of consultation because - and this is a point you might have raised - there are so many other statutes by the way that include restrictions on disclosure which are going to have to be amended to a greater or lesser extent in the Freedom of Information Bill. There is a very considerable amount of development of this Bill to be done but it is certainly intended that the basic principles of the White Paper will be reflected in the Bill. Instructions, however, have to go to Parliamentary draftsman and, as you know, the devil is always in the detail and problems emerge in the course of drafting which with the best will in the world you have not seen, even over many hours in Committee discussing general principle, but there is no hidden agenda. I am not aware of any material changes in principle that will develop and I hope you think that the background material to this White Paper which David Clark published, was an absolute model of its kind, that just as we want in relation to Government when advice is given to ministers by civil servants, whilst preserving the integrity of that advice, to give the maximum amount of background factual material as possible, that is also a principle of the White Paper. I hope you think that David Clark has been a model in that endeavour in providing this very very full background material to this White Paper which actually in my experience is pretty well unprecedented. I think I see Richard Shepherd nodding his head.

377. I think that is right and the point I am trying to make is I want to be confident that the hype does realise itself in the reality of a piece of legislation which will give the majority of the people in this country something that they can work with and use.

(*Lord Irvine of Lairg)* Let me just respond to that. You may remember at the beginning of the new Parliament when we decided that we were not going to accept the easy option of putting our predecessor's code of practice onto a statutory basis there was no shortage of fingers on the betrayal button to say at the very moment of acceding power we had lost our appetite for freedom of information. I think fair-minded people would say overall that it is a remarkable constitutional programme. The devolution legislation resulted in White Papers of very considerable complexity in record time after many, many hours of Cabinet Committee work and referendums in September with

the legislation on target. The Human Rights Bill, which most people applaud, we can argue about the detailed implications of this and that but most people applaud, was on time. Be not of little faith. The freedom of information legislation will do what you want it to do but we will all argue about the details. That is what makes life entertaining.

378. Surely you are not surprised that we are a little cynical when we are surrounded continuously with the hype mill? We are given something every day and it is right we are given the opportunity to question you.

(Lord Irvine of Lairg) I accept that but there has been no hype.

379. Fine.

(*Lord Irvine of Lairg)* Listen, there has been no hype in relation to this constitutional reform programme. We have delivered on time. We will deliver on time. I am not aware of any false hype in relation to any part of this constitutional programme that there has been and you have not told me that there has been.

380. This Committee is of one that we are enthusiastically behind this. We want to spend the time we are discussing it to try and improve it. You recently said that you felt this freedom of information would help rekindle young people's enthusiasm for public and political life. I am interested to know what you base that on?

(Lord Irvine of Lairg) I do not think I quite put it that way, but I certainly do think that there has been a culture of secrecy in this country for far too long. I think much greater openness is a good. I do not think that on top of Marnie mountain they will be talking of nothing else but I do think that it is an important incremental improvement in transparency and honesty and gives people who are sufficiently interested to want to know the opportunity to be much better informed citizens. You do not change the world overnight but this, I think, is a quite major step forward which some of us have been looking for for a very very long time. I do hope that this programme as a whole will restore people's trust in government and in politics and I think if you bring substantially to an end the culture of secrecy, that will enhance popular trust in the machinery of government.

381. I agree entirely with that; I hope that is what materialises.

(*Lord Irvine of Lairg)* That is all that motivates me.

382. To get me to agree with you?

(Lord Irvine of Lairg) That is what motivates me in advocating this freedom of information legislation. I take great pleasure if you agree with me.

383. Is legal aid going to be available for people who want to challenge the Information Commissioner's point of view because if it is not that is a pretty substantial impediment against the average citizen being able to challenge and actually use this Bill. It might then end up being something only used by those who can afford it.

(*Lord Irvine of Lairg)* I understand that. However, legal aid will remain available for judicial review and I myself am strongly of the view that legal aid should remain for appropriate cases where maladministration is alleged. The short answer is legal aid will remain available, so you need have no concerns.

384. How will the judgement be made for someone who seeks information and they are refused? They then seek legal advice about how they can proceed to judicial review?

(Lord Irvine of Lairg) They will probably not seek legal advice, it will not work that way. They will go along to the Information Commissioner and he will say probably the best way to deal with it is for

you ask for internal review and that is by the Department and he will no doubt facilitate the individuals seeking an internal review. The Information Commissioner could decide, if part of the complaint is how long a government department has been sitting on this request, that an internal review is just a waste of time and he will straight-forwardly intervene himself. He will intervene and he will be, as it were, on the side of the objectives of this Act, but suppose it is thought that he has misconstrued his powers, which is an error of law. Let us suppose, this is just the classic terrain of judicial review, he takes into account irrelevant factors or omits to take relevant factors into account. Let us suppose, highly unlikely but let us suppose it, that the government department is being utterly perverse and for some reason the Information Commissioner goes along with it. These are all the classic grounds for judicial review. The individual, if he qualifies for legal aid, will be able to apply for legal aid for that purpose in the ordinary way.

385. Fine. My last point relates to where you came in this morning about your role as chair of the relevant Cabinet Sub-Committee dealing with this. You were right up front in your suggestion that the Bill was much more liberal than most people would have expected would be the case prior to 1st May and we are delighted about that.

(Lord Irvine of Lairg) I do think that is properly right.

386. I do tend to agree with that so we have more than one thing in common, but I would be interested to know what sort of hostility - because you are the one who is mainly complimented with the fact that this White Paper ended up with a more liberal feel to it - -

(Lord Irvine of Lairg) I would not take away from the Chancellor of the Duchy of Lancaster. There is no doubt that as the Minister responsible he has at least an equal entitlement to the credit for it and really more as the responsible Minister.

387. What was driving the Home Office to be so anti that then?

(Lord Irvine of Lairg) I do not accept that that is so. The position is that many Cabinet Ministers were represented on this Committee and what emerged is the view of us all and you cannot expect me to discuss the give and take of discussion within a Cabinet Committee. You know perfectly well I cannot do that.

388. I just thought in this spirit of freedom of information you might disclose to us what the pressure was not to go so far and why.

(Lord Irvine of Lairg) I do not accept that there was any pressure from any source not to go so far, but there has been a lot of speculation about it. I can say, and I am sure Richard Shepherd would be the first to agree, there are serious arguments about whether you have a simple harm test or a substantial harm test and what has emerged is a substantial harm test. What actually has emerged in relation to the advice that civil servants give Cabinet Ministers is a simple harm test and you can see good justification for that as well but I can assure you that all points of view were weighed up and the Government is wholly behind this White Paper.

Mr Ruffley: Thank you.

Dr Clark

389. Lord Chancellor, firstly can I make it plain that even as a lawyer I welcome the role of the Commissioner in this and I am not advocating that courts should have the first bite of the cherry. One of the powers that is being mooted at the moment in Southern Ireland is to extend the equivalent Commissioner's power to allow him to do what we in Scotland would call a "stated case". In other words, where there is a dispute between the Commissioner and perhaps one of the departments about what the law means, he can put forward a case to the court asking the court not by way of judicial

review but merely by clarification as a point of law to clarify the law. Have you given any consideration to that sort of technical route rather than the remedy of judicial review or in addition, perhaps, to the remedy of judicial review?

(Lord Irvine of Lairg) I will certainly look at that but just off the top of my head I would have thought that if an issue of law, let's say interpretation of a statute, which is the simplest for everyone, arose between a government department and the Information Commissioner there is a different procedure in England but one which I do not doubt is essentially the same. It is a procedure called "originating summons" in which you get the court's view as to the correct state of the law. It is most useful, as I imagine it is in the Scots procedure of stated case, where the facts are essentially agreed and it is a dispute of law. I would go so far as to say it is intended that remedy be available to the Information Commissioner. It just comes in slightly different clothes from the Scottish clothes.

390. Just looking at the model of the Commissioner, again I would agree with you, I think the model of the Commissioner and the new powers that will be given to the Commissioner is a good model. What concerns me is that the other models such as the Ombudsman for Data Protection are all quite different and for no particular good reason perhaps quite different. For example, in the Ombudsman we still have a model whereby the constituent has to come to the MP and then refer to the Ombudsman and there are various steps in the process. The Ombudsman does not have the same powers and all this sort of thing. Would you agree that there is a need to look at the powers of the various different Commissioners or Ombudsman that we have to try and make sure that they are up to date and that we do not have this enormous spread of powers that makes it all very confusing for individuals?

(Lord Irvine of Lairg) I do not believe in perfect symmetry for its own sake but, on the other hand, I think I agree with you that there is considerable scope for looking at the powers and the means of exercising them of each of these officers. As you know, one issue under the Human Rights Bill is whether we could have a Human Rights Commission and the decision has been taken not to exclude that for all time but not now, wait for the Human Rights Bill to bed down, get some experience of it and them contemplate a Human Rights Commission. However, the Government has said very clearly, although this as you know is a matter for the House and not the Government, that it tends to favour the establishment of probably a Joint Committee of both Houses of Parliament whose remit is human rights. On the footing that that happens, and it is a matter for Parliament not for Government, then I think what you have just raised is a classic subject for attention by such a Committee.

391. If I could move perhaps on to a Scottish context because I am obviously representing a Scottish constituency. My understanding is that the present legislation which has been proposed will not apply to Scotland and I understand, of course, that the Scottish Parliament will have powers to deal with the freedom of information issue once it is up and running. My concern is that it may well take them a very long time to get round to that bearing in mind there will obviously be a time lag before they have a Parliament up and running and also that there will be a whole raft of very important issues which will be needing addressed. My own view is that there would be merit in making the present Freedom of Information Bill apply to Scotland leaving it open to the Scottish Parliament, of course, to change the legislation if they so wished in relation to devolved matters once they are up and running. That would at least mean we have freedom of information legislation in Scotland as soon as we had it in England and Wales.

(*Lord Irvine of Lairg)* I can see some force in that. Of course, the freedom of information legislation will apply to the powers reserved, ie, not the powers devolved to Scotland. It is quite right that the view has been taken so far that with the Scottish Parliament so imminent and with all these powers to be devolved, a very substantial area of legislative competence devolved, and a new Parliament about to establish new frameworks over a very broad range of home policy and legal policy and the like, that it might be better to leave the Scottish Parliament to address it, as no doubt it would wish to do at a very

early stage. That is precisely the kind of thing in which I can see that it can be argued both ways.

392. Moving on to another aspect, I am not entirely clear - this is my fault really - what is proposed exactly in relation to legislating for interpreting principles in relation to the European Convention. Is that going to apply to Scotland at the moment or is it going to be left over like the freedom of information position?

(Lord Irvine of Lairg) No, the Human Rights Bill is a United Kingdom Bill.

393. Yes, so again that is why I am confused really because I do not see the arguments that would appear to apply for leaving over the freedom of information to the Scottish Parliament because surely they apply, perhaps even more so, in relation to the fundamental issues that are raised by the Convention. My own view is that they should both be brought in now leaving it to the Scottish Parliament to change it if they wish. I am not entirely convinced about the Government's position in relation to the Freedom of Information Bill.

(*Lord Irvine of Lairg)* I can understand you saying that. On the other hand, the Convention constitutes well-known principles of human rights. We can all probably agree that these human rights principles should be respected by all government departments and that public authorities act unlawfully if they breach individual human rights without the express sanction of statute. We can all probably agree about that. It is a general principle. Basically what the Human Rights Bill does is legislate for general principle, but of course it offers a definition of "public authority" which is a very very broad one. When we are talking about a freedom of information regime however, what we are talking about is imposing substantial new obligations on government departments which have got to prepare themselves to comply. I know the reasoning that has applied so far is that with such major changes about to take place in the machinery of government in Scotland there is nothing inconsistent with saying that general principles of human rights should apply having been passed by the United Kingdom Parliament, but classically, machinery of government issues like freedom of information should be left to be addressed by the new Scottish Parliament which is not far away. I can see the contrary can be argued. In a sense it is an odd thing to say when the Scottish Parliament is so imminent let us just apply this statute and then they can change it if they like. We have waited in this country for a very long time for freedom of information legislation and it might be better to let the Scots do this for themselves.

394. There is a cultural change that has to be made and one of the advantages of what we are doing now in relation to this freedom of information legislation is trying to educate and change the culture. It does seem a pity that the Scottish civil servants can sit back and say, "Not for a while yet."

(Lord Irvine of Lairg) This is an on-balance thing. I have just expressed my view on balance. I can well see the contrary view can be maintained.

395. In relation to the European Convention and the principles, I understand that the remedy chosen was to go down the route of declarator incompatibility rather than incorporate the Convention as it stands into Scottish or English law.

(Lord Irvine of Lairg) That is true.

396. Would I be right in thinking that it would still be open if Scotland so chose to come up with a different remedy? It seems to me there is nothing to prevent the Scottish Parliament taking the view that incorporation of the Convention, certainly in relation to devolved matters, might be possible for Scotland because it might be thought that it would give a better remedy in a Scottish context.

(*Lord Irvine of Lairg)* I think that that is a very very very difficult question of law bearing in mind - - it really is so difficult that I want notice of it, but you must bear in mind that compliance with the Human Rights Bill or the Human Rights Act will be a limitation on the Scots Parliament's *vires* so that

is a very difficult question and I think I will undertake to look at it and write to you[4].

397. Perhaps an easier question is insofar as the individual litigant who gets declarator incompatibility, am I right in thinking that so far as that litigant is concerned, that is it, in other words he does not actually have a remedy?

(Lord Irvine of Lairg) That is right. That is the logic of this form of incorporation and the rationale is this: that the Act complained of as an unlawful Act was in breach of the Convention but it was sanctioned by Parliament, therefore it was not an unlawful Act, therefore no remedy to the individual. It is not made retrospectively invalid merely because Parliament decides that it is going to alter the legislation for the future. You can imagine particular cases where there might be pressure for *ex gratia* payments, but it is not policy of the Human Rights Bill retrospectively to invalidate that which was sanctioned by Parliament as the courts held in holding that the legislation was incompatible with the Convention.

398. I can see the logic of that. My concern is slightly for the individual litigant at the end of this long process when he has had a big success and the lawyer has to say, "I am terribly sorry, but that's it, big success but no remedy for you". That is a very minimum and one would hope if there were going to be retrospective legislation - -

(Lord Irvine of Lairg) It would not be retrospective legislation.

399. I am sorry, when there was legislation altering the law that serious consideration would be given to giving remedies to persons who have been aggrieved.

(*Lord Irvine of Lairg)* I think there would inevitably be pressure on government to do so, yes, but the principle of the Human Rights Bill is to reconcile giving greater effect to Convention rights, to the sovereignty of Parliament, and an unwillingness to allow the judiciary to set aside an Act of Parliament seems inconsistent with the Convention. This was a major decision of principle and I do think that the higher judiciary themselves, with whom the buck stops, did not want a power to invalidate Acts of an elected Parliament. They positively did not want it, although with other methods of incorporation it could have been given to them.

400. Bearing in mind that Parliament is sovereign there is nothing to stop Parliament saying in individual cases, "Okay, you have no power to declare the laws invalid but you do have the power to give a remedy to that particular litigant."

(Lord Irvine of Lairg) Certainly so. That could be argued very vigorously in the House of Commons in particular cases. You should not underestimate the enormous triumph that an individual gains if he persuades a court that an Act of Parliament is incompatible with the Convention and then kicks the issue very firmly back into the Parliamentary arena with the consequence that the Act of Parliament is changed. For many pressure groups and interest groups that will lie behind these cases that will probably be a greater prize than money.

401. I quite accept that but I still think, bearing in mind that we tend to base our litigation on solving individual cases, that if we have a situation where the individual case is not actually solved because no remedy is given that is not an entirely satisfactory resolution for that individual.

(*Lord Irvine of Lairg)* I can see why you are saying that. All that I am saying is that there is a larger public purpose that will lie behind these cases as well as a remedy for the individual.

Mr Bradley

402. I do not know, Lord Chancellor, whether you are aware of the singular honour conferred on you

today, but standing room only in this Committee is very unusual. It clearly shows, at least to myself, that public interest in home furnishings is equally matched by an appetite for constitutional reform!

(Lord Irvine of Lairg) They certainly seem to have run together recently.

403. They do. I wanted to ask about the relationship between Parliament and Courts, between elected politicians and appointed judges, particularly in the context of the incorporation of the Convention on Human Rights. Who should arbitrate on matters of interpretation of the European Convention as it effects British law and British constitution, the judges or politicians?

(Lord Irvine of Lairg) Once Parliament instructs the judges so far as possible to construe Parliament's statute compatibly with the Convention, that is an instruction by Parliament to judges to do that job and so Parliament is conferring that job on the judges but if with the best will in the world the judges say, "Well, we just can't construe this statute compatibly with the Convention", then the judges may make a declaration of incompatibility. They are not obliged to but they may make it and that then gives the problem, if you like, of incompatibility back to Parliament where I think it primarily belongs but the Human Rights Bill, as I say, confers this interpretative jurisdiction on the judges to construe all Acts of Parliament as far as possible compatibly with the Convention rights.

404. Who has the final say though?

(Lord Irvine of Lairg) Parliament always has the final say because Parliament is sovereign and can change the law and so, for example, if the judges construed an Act of Parliament in a particular way in order to be compatible with the Convention and if it was a big enough issue for Parliament to turn its attention to it and Parliament thought that another legislative means compatible with the Convention could be found, then our Parliament is sovereign and it could obviously achieve that. Also under the scheme of the Bill, if the courts made a declaration of incompatibility Parliament could decline to legislate to remove the incompatibility although obviously it would be under pressure to do so. The scheme of this Bill is to maintain the sovereignty of Parliament.

405. Other constitutions see it differently. In Canada, as I understand it, the courts do have power to strike out law they consider to be bad law.

(*Lord Irvine of Lairg)* They strike it down or as some of the models propose they would allow almost a judicial modification of the statute to make it compatible. Well, our scheme is a reconciliation of a strong method of giving greater effect to Convention rights with an adherence to the classic sovereignty of Parliament. I think we would have had a very very much greater controversy about this Human Rights Bill than anything which we have seen if we had gone to the Canadian model which allows judges to strike down Acts of Parliament. I would be interested to know if you are in favour of judges having the power to strike down Acts of Parliament.

406. I am not sure that I am but I can see an argument that suggests justice is blind - politicians maybe short-sighted but justice is blind - but is it not better to leave these very difficult matters of constitutional rights for citizens in the hands of people who have no political motivation? I see that argument, I am not sure I subscribe to it, but it is a valid argument.

(*Lord Irvine of Lairg)* It is a very very strong thing to give judges power to strike down an Act of a sovereign Parliament in the exercise of their judgement. You take us to the core of the Bill, of course, that the philosophy of this Bill is that judges in our culture looking at our history of Parliamentary sovereignty and so on, should stop short of doing that, that Parliament can say to the judges, "Do the very best you can to construe what we have said compatibly with this Convention. If you just can't, the problem is back to us."

407. What happens if judges construe and say to Parliament in effect, "We believe that this piece of

legislation is not compatible but Parliament in its wisdom decides to pursue it anyway"? We then have at least a public perception that we have legislation which is somehow unlawful.

(Lord Irvine of Lairg) It would not be unlawful.

408. By definition it would not.

(*Lord Irvine of Lairg)* I would have thought in the majority of the cases, probably the overwhelming majority of the cases where the judges had held a statute to be incompatible, Parliament would want to move fast and there is a fast track statutory mechanism for doing so to remedy the incompatibility. You are right to ask the hard question. Ultimately, Parliament is not obliged to do so because of course the individual could go to Strasbourg and get remedy on the footing that the judges had got it right and the statute was incompatible. For Parliament to abstain from making a remedial order to remedy the incompatibility would simply be to postpone the evil day.

409. Moving on to another important debate, I think most people recognise that freedoms often, or at least on occasion, conflict.

(*Lord Irvine of Lairg)* That is the greatest truth about freedoms; they conflict existentially.

410. Quite. There is conflict, not an inevitable conflict but obviously it will arise from time to time, between Articles 8 and 10 about which there has been a great deal of debate recently. There should be freedom of expression, freedom of information and the press.

(*Lord Irvine of Lairg)* Absolutely.

411. But it should not necessarily be an absolute freedom, should it? People also have the right to privacy?

(Lord Irvine of Lairg) And indeed Articles 8 and 10 respectively address the right to respect for private and family life. There is a right to freedom of expression, a major component of which is the freedom of the press, and our courts and the European Court of Human Rights have given a very very high value indeed to freedom of expression, freedom of the press, and I read out at an earlier stage a quote which I will not at this hour read again.

412. It is right that should be so. The balance is difficult to strike but it is right that we should preserve freedom of expression and freedom of the press. What does worry me though is that in my view we have still not properly resolved the right to privacy. I wonder whether you have any thoughts having moved on from the debate that took place a couple of weeks ago as to how best individuals' rights to privacy can be protected?

(Lord Irvine of Lairg) What I would say about that is to reiterate Government policy. We have no intentions of introducing a statutory law of privacy by the front door or by the back door and we strongly favour self-regulation and despite everything you may have read I have never said anything else and I do not myself believe that as a result of the incorporation of the European Convention on Human Rights the newspapers will go down to injunctions on a Friday night that upset their publishing dates and I think that the amendment which my colleague Jack Straw is bringing forward in relation to the Human Rights Bill will simply serve to emphasise that.

413. But that still leaves unresolved the right of the individual to privacy, does it not? We have read about a case recently where a private investigator has been convicted of obtaining information which she has been feeding to national newspapers about the private lives of individuals. She has been doing it by a method that is unlawful - -

(Lord Irvine of Lairg) We have to bear in mind that the Human Rights Bill reaches statutory bodies, it does not reach private bodies.

414. Of course, but the problem has focused on press intrusion, has it not, in the public debate that we have been having? You talk about self-regulation, which of course in principle is fine and the right way to conduct ourselves in a democratic society, but is it your view that that self-regulation as expressed by the Press Complaints Commission actually works and actually does afford to the individual the right to privacy that most of us would wish to have protected in our own lives?

(Lord Irvine of Lairg) Well, it has significantly strengthened and it was strengthened in ways which I think a lot of people found welcome in the immediate aftermath of the death of the Princess of Wales, but I dare say that all systems of self-regulation can be made better.

415. In what ways in this particular instance?

(Lord Irvine of Lairg) As I say, I do not have any particular agenda for enhancing self-regulation. One of the misstatements that was attributed to me was a proposition that I desired there to be statutory powers which would operate to make self-regulation stronger. I do not wish that nor was it what I said. Self-regulation is for the self-regulators and the Government has no plans for a privacy law.

416. I was not really seeking to point you in that direction, but do you think there is a problem both in the way it operates and in the public's perception that the Press Complaints Commission is funded by the press?

(Lord Irvine of Lairg) No, I do not think that. I do not think that there is any public demand for statutory regulation of the press. Certainly the Government is not in favour of that and it is a good thing that the press funds its self-regulatory body. You will also bear in mind that there is now a majority of lay people on the Press Complaints Commission which I think adds to public confidence.

417. Would it nonetheless be better if it were an independent body?

(Lord Irvine of Lairg) The only possible alternative to self-regulation is statutory regulation and the Government does not favour statutory regulation.

418. We have heard from previous administrations about "drinking in the last chance saloon." What would it take, do you think, to cause you to think again?

(Lord Irvine of Lairg) I would certainly not use that kind of language which I think comes from David Mellor. I think it is a hypothetical question which especially at this hour of the day I am not minded to embark on.

419. Just one other line of questioning which I am sure at this time of day you will not have time to go into in detail. We are talking about constitutional reform and I believe you are chairing or are certainly involved in consideration of the future of the House of Lords.

(*Lord Irvine of Lairg)* That is correct.

420. Can you give us any encouragement or indication as to when your considerations will see the light of day? I have seen it written that we can expect the Queen's Speech to shed some light on the programme for constitutional reform of the Lords.

(*Lord Irvine of Lairg)* You know perfectly well, of course, that I cannot anticipate what will be in the Queen's Speech or what the contents of the legislative programme will be, but you also know equally well that our manifesto on which we won the General Election contains a firm commitment to bring forward legislation to abolish the rights of hereditary peers and that commitment is alive and well.

421. Just one final question, I read with some interest your speech to the Citizenship Foundation and the strong points you were making, which Mike Hancock referred to earlier, about trying to involve young people in the democratic process and political life and so on.

(*Lord Irvine of Lairg)* Yes, I believe that.

422. It is a very important issue. Do you think they would be further encouraged if you in the House of Lords would take off your wig and sit on something other than the Woolsack?

(Lord Irvine of Lairg) The Woolsack, contrary to what you might think, is quite comfortable and not a bad place for a speaker to sit, in case you have been worrying about me , which I am sure you have not. The wig, however, is uncomfortable and - -

423. Could you sit on the wig perhaps?

(Lord Irvine of Lairg) I do not think I would sit on the wig. It is far too beautiful and historic an object to do it the great damage I would do it if I sat on it!

424. You might have to refurbish it!

(Lord Irvine of Lairg) It would certainly need an awful lot of refurbishment, I quite agree, after that - - I see the case for historic dress at state occasions like the State Opening of Parliament but as daily working clothes I have no affection for them whatsoever.

Mr Tyrie

425. Just a few questions on House of Lords reform, if I may Lord Chancellor. Is your Sub-Committee already examining or has it started examining at all stage two reform, that is beyond the abolition of hereditary peers? Have you had discussions or are there any papers?

(Lord Irvine of Lairg) Obviously I shall not tell you about Cabinet papers, but of course we are looking not merely at the issue of the removal of the rights of hereditaries but we are looking at all issues which are relevant to a reformed and more representative upper house, the House of Lords.

426. I do not know what you think but I think that it would be hugely helpful if such fundamental reforms as the reform of the upper house of the legislature should proceed, if at all possible, by consensus. I have several questions in this regard. First, do you think it might be a good idea if you could put your proposals for stage one reform to consultation, to even approach all the parties. Some parties are already involved, other parties, the Conservative Party and other parties, are not involved.

(*Lord Irvine of Lairg)* May I just respond to that right away. I think there is unanimity in the country that the rights of hereditaries must go. That is the position of my Party, that is the position of the Liberal Democrats and, as I read the puffs of smoke emerging from the Conservative Party, they have given up as a lost cause the defence of the rights of hereditaries so I have the impression that there is not a subject there to consult anybody about because everybody agrees that the hereditaries' rights are bizarre and have to go.

427. If you are so sure what the outcome of consultation will be, would it not be better to demonstrate to all concerned that everybody does agree by inviting views on stage one?

(Lord Irvine of Lairg) It is a just a question of who goes first. If, as I think, the position of the Conservative Party has become that the rights of the hereditaries are a lost cause then they should just say so.

Mr Bradley

428. Have they?

(Lord Irvine of Lairg) I know the feeling. You are not here to answer questions. That used to be the enormous strength of my position as an advocate when I was asked questions by the witness.

Mr Tyrie

429. You said you have already begun work on stage two. You have also said, or if not I think the Prime Minister said at some time that further reform would be put to some form of consultation. If you have already started work on that would it not be a good idea to consult on the further stages of House of Lords reform now rather than later?

(Lord Irvine of Lairg) I think that these are fantastically difficult questions on which it is necessary not to arrive at a concluded view but to have the benefit of a Cabinet Sub-Committee, the benefit of the resources of government, the benefit of looking at upper houses elsewhere and giving a very very thorough consideration to what a new model might be. You know perfectly well, we all know perfectly well what the possibilities are, wholly elected, wholly nominated, something in between. What to do about existing life peers? What about what I think is pretty broadly agreed by people that any reformed upper house should have a guaranteed place for independents or cross benchers and so on? We are looking at all the alternatives, all the possibilities, and we will decide, once we are clearer in our own minds of the shape that a reformed upper house might have, what the next stage might be.

430. My suggestion is to try and find some consensus about that. If you have started to form a view on that you might consult now.

(*Lord Irvine of Lairg)* My response to that is government must govern. We have a clear mandate. We have to get on with developing a policy but obviously that does not preclude discussions at a later stage.

431. With our unwritten constitution governing proceedings on these sorts of reform we have to rely heavily on precedent. I am sure you are aware, are you not, that the precedent in every case of attempted reform of the House of Lords has been to create some form of all-party consultative committee. In the 1910 reforms there was a constitutional conference. In the 1948 reforms Attlee also had an inter-party conference. In the 1968 attempt - -

(Lord Irvine of Lairg) If I may break into Scots, muckle good it did them.

432. So your proposal is not to have consultation because "muckle good it will do them", or whatever you said?

(Lord Irvine of Lairg) In my book it is usually prudent when you cite precedent to cite successful precedent. You have cited unsuccessful precedent. That is the only point I was making.

433. There was the Parliament Act of 1911 and the Parliament Act of 1948. Were those considered unsuccessful?

(Lord Irvine of Lairg) What I think we were talking about was the various other attempts that there had been to deal with the rights of hereditaries and create a new composition for the House of Lords. The Parliament Acts of course concern the powers of the upper house in relation to the elected chamber. We are now talking about two separate things, are we not? What powers ought the so-called upper house have, recognising that the House of Commons is the superior chamber? And what ought the composition of a more representative upper house be? I do not actually think that the two Parliament Acts are much guidance on that particular issue.

434. Just to clarify, you would not favour trying to generate consultation with all the other political parties in this country?

(Lord Irvine of Lairg) I have not said that. I have said the reverse.

435. You are welcoming approaches.

(*Lord Irvine of Lairg)* I have said the reverse. I have said that we do not exclude discussions with the other parties at an appropriate time but meanwhile it is the job of this Cabinet Sub-Committee - -

436. To decide what to do.

(*Lord Irvine of Lairg)* Not to decide what to do. To get ahead with the considered development of policy and to accumulate information from around the world and other upper houses and to be fully informed before coming to views which could perfectly appropriately, once these views are developed, be the subject of consultation.

Chairman

437. I know it is at the end of a very very long session but I do want to ask one or to questions about the Public Record Office not least out of courtesy to the Keeper of the Public Records and also because they are part of the Bill in the sense of how well thought through the Bill is. Could I ask you therefore whether you think that the White Paper and what it proposes on the Public Record Office is entirely consistent? In other words, where it refers to how accessible or what your rights will be in relation to the 30-year rule to get access to documents, why is there not a unified approach to openness in respect of current records and historical records covered by the 30-year rule?

(Lord Irvine of Lairg) I come back again to the same point I made earlier, you should not be looking for symmetry here. The point is that what we have got in relation to freedom of information is a regime which is under consideration and which will end up in the Bill which will be remarkably liberal in relation to current records. Once documents pass the age of 30 years then basically they should come free. Necessarily, therefore, the regime that applies to documents post 30 years of age is more liberal than the regime that applies to documents which are to be classed as current and less than 30 years. Just to apply the same criteria to both would, incidentally, diminish accessibility to historic records, that is to say those over 30 years of age. The other thing that I would like to emphasise is that the whole area of public records is going to be enormously enhanced by giving the Information Commissioner new rights in relation to public records, so that is entirely new. So what you have got is a measure of control and surveillance of a strong character by the Information Commissioner in relation to public records which was not there before and a statutory regime for freedom of information for current documents which I do not think anyone in this Committee has disputed is pretty liberal.

438. We do not but the Public Records Act, for instance, only covers the orders of central government and the Freedom of Information Bill will have a much wider range than just central government.

(*Lord Irvine of Lairg)* Certainly.

439. Why can it not apply to all public records, not merely those of central government?

(Lord Irvine of Lairg) Is this now the proposition that public records legislation should extend beyond the archives which it presently extends to and should be co-terminus with the freedom of information legislation?

440. It is worth running the case for that, is it not?

(Lord Irvine of Lairg) Well, you can argue it but what you are talking about, of course, is a great upheaval in relation to the preservation of public records on the back of freedom of information legislation which you never had before. I think what I will do is invite the Keeper to explain what the practical implications would be of even contemplating extending the range of public records legislation to the whole range of bodies who produce documents and information which will be within the ambit of freedom of information legislation. The way to consider this is to see the practicalities.

(*Mrs Tyacke)* Perhaps I can help you on this. Obviously public records those that come out of central government come to the Public Record Office but you may imagine stretching across England and Wales and indeed in Scotland and Northern Ireland the separate jurisdiction for record keeping which

is under the local authority and each local authority, be it unitary, metropolitan or shire, has its own record-keeping arrangements. And I think that while it would be entirely sensible to offer advice to local authorities as to how they might follow, if they wish to do so, some of the provisions in FOI - and indeed with the data protection registrar we intend to offer guidance to them if they wish it - I think that to actually consider what you are proposing would affect them greatly and I would suggest that it is better to offer central advice than to demand the great upheaval that the Lord Chancellor has spoken about.

441. I will wind up this exceptionally long session which has ranged very far and wide. I think I should say that you should be left under no doubt that this Committee is strongly in support of the Government's White Paper and is hopeful that there will be no resiling from the principles in the White Paper in the actual Bill when we see it in draft form initially in very few months' time and we would very much welcome your commitment that there will be no resiling from the excellent principles in the White Paper when we see the draft Bill. I should also say that our purpose in having you here this morning, and indeed other witnesses that we have had, is entirely to one purpose: to try to ensure that where there are going to be differences between the way that the Data Protection Bill and the Human Rights Bills are going to work that they are got going to cause confusion for the general public and our constituents. On the issues we have raised in relation to whether there should be a Commissioner for Freedom of Information but we should suspend judgement on human rights, we need to understand why a Commissioner is a good thing in one case and not in another, and in relation to parliamentary accountability why there should be an Ombudsman and a Joint Committee for Human Rights and no Parliamentary accountability for the Information Commissioner. We need to know why there are different things chosen for the different aspects of the three different Bills or proposed Bills. It is for that purpose. In that context I do want to thank you very much for your forbearance, endurance and the answers you have given to all our questions this morning.

(*Lord Irvine of Lairg)* Thank you very much. It has been a great pleasure.