

# Brexit and the Politics of Legal Expertise at Westminster in Times of Crisis

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## 1. Introduction

How is legal expertise deployed in an intensely political environment like the Westminster Parliament? Certainly what has marked out the period since the 2016 referendum on leaving the EU ('Brexit') has been a marked use of law and legal expertise by parliamentarians as a political instrument – or at least, a marked awareness of the importance of legal expertise for Brexit-related issues. Both *Miller* cases,<sup>1</sup> for instance, had Parliament at centre stage: *Miller I* concerned the role of Parliament in notifying the EU of the UK's intention to leave the EU; *Miller II* dealt with the question of whether or not the prorogation of Parliament was lawful.

Inside Parliament, there have been several occasions on which legal advice has been used in political argument. Various governments have made use of the Law Officers (ministers in the executive responsible for legal advice) in Parliament to bolster various positions on Brexit, with limited and sometimes unexpected effects: for instance, the May government was forced to publish the Attorney-General's legal advice on the effect of the Withdrawal Agreement's Protocol, following a Commons vote that ministers were in contempt of Parliament for refusing to do so.<sup>2</sup> Select committees have shown an increased willingness to publish legal advice provided by the in-house lawyers of the Houses of Parliament;<sup>3</sup> but there have also been leaks.<sup>4</sup>

And yet, some parliamentarians have felt dissatisfied with the adequacy of legal support available. We can get a sense of this from an older debate on the Chilcot Report on the Iraq War.<sup>5</sup> Graham Allen MP complained of the difficulties that parliamentarians had in getting legal advice at the time:

We raised collectively a series of issues about how the House works, one of which was the question of legal advice to Members of Parliament. ... The then Clerk of the House said, 'Yes, Mr Allen, I will get you some legal advice.' ... I was sent off to the lawyer that the House employs to deal with health and safety matters.... That was not of great help, although that was not the lawyer's fault. The House and Members should have had legal advice, just as the Government had legal advice...<sup>6</sup>

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<sup>1</sup> *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 ('*Miller I*') and *R (Miller) v The Prime Minister and Cherry v Advocate General for Scotland* [2019] UKSC 41 ('*Miller II*').

<sup>2</sup> The House of Lords Library has a useful briefing on this incident, and other attempts to force the government to publish government legal advice: see House of Lords Library, 'Publishing Government Legal Advice' (2018), <https://researchbriefings.files.parliament.uk/documents/LLN-2018-0115/LLN-2018-0115.pdf>.

<sup>3</sup> Ben Yong, Greg Davies and Cristina Leston-Bandeira, 'Tacticians, stewards and professionals: The politics of publishing select committee legal advice' (2019) 46(3) *Journal of Law and Society* 367.

<sup>4</sup> 'Leaked Commons legal analysis of Brexit deal vindicates Trump, contradicts May and adds to Brexiteers' concerns', *Brexit Central* (2 December 2018), <https://brexitcentral.com/leaked-commons-legal-analysis-brexit-deal-vindicates-trump-contradicts-may-adds-brexiteers-concerns/>.

<sup>5</sup> The Chilcot Inquiry was established in 2009 to consider events between 2001 and 2009 regarding the UK's involvement in the Iraq; and set out what happened and what lessons could be learned. The report was published in 2016 and can be found here:

<https://webarchive.nationalarchives.gov.uk/20171123123237/http://www.iraqinquiry.org.uk/>.

<sup>6</sup> HC Deb 14 July 2016 Volume 613 Col 478.

Similarly, Margaret Hodge, a Labour MP, has publicly discussed her attempt to gain ‘heavyweight’ legal support from the House of Commons when chair of the powerful Public Accounts Committee (PAC). Goldman Sachs, which had engaged in a tax-avoidance scheme, had struck a deal with the UK Revenue and Customs department (HMRC) to pay its taxes, but not the interest. When questioned by PAC, HMRC and the National Audit Office (NAO) both refused to disclose information on the deal on basis of confidentiality; and backed up their claims citing legal advice. Hodge argued:

As both the [NAO] and HMRC had legal advice backing them, we wanted to obtain our own legal advice to challenge them. However, when I asked for this to be arranged I was told that there was no money available. The House of Commons has a £200 million budget, but the powers that be could not find the money we needed to test our view with the lawyers. That decision had, I thought, more to do with the system conspiring against us than with the finances of Parliament. If select committees are to hold the government to account effectively, we need to be able to access all the advice and support necessary to help us to do our work. It is simply not on to permit public money to be used to fund advice to officials, but to deny the facility to politicians.<sup>7</sup>

These comments suggest parliamentarians, who are at the centre of the law-making process, appear to have limited provision or access to legal expertise. If true, this would be unfortunate: one study argues that ‘effective [parliamentary] scrutiny is more tied to legal expertise than is usually acknowledged’.<sup>8</sup> But we should be wary in reaching such a conclusion too hastily. We should interrogate the meaning of legal expertise; and examine the processes by which parliamentarians seek and receive advice about legal issues.<sup>9</sup>

In this chapter we use the broad term ‘legal support’ to refer to legal expertise. Legal support is best understood as different kinds of knowledge about legal issues from those trained in the law. There is legal advice, legal opinion and legal information. *Legal advice* is a formal written opinion to a client setting out the law, and its cautious application to a certain set of facts. This is what is commonly imagined when one talks of legal advice – and one suspects what Graham Allen MP was after. There is *legal opinion*, which has no identifiable client, and is perhaps less cautious and emphasises application of the law to facts. And finally there is *legal information*: a matter-of-fact statement of how the law works, but with no or very limited discussion of how it might apply.

This chapter uses Eliot Freidson’s model of lay and professional referral systems to explain how legal expertise is understood and made use of at Westminster. Parliamentarians do have access to a vast array of sources from which they can get legal support. But parliamentarians – like all laypeople – will first tend to make use of known networks to understand legal issues. They may seek help from in-house support, but this varies on what is being asked for, and only rarely will they seek legal advice – primarily, within select committees. The ultimate argument of the chapter is that the processes of seeking out and receiving legal support in Parliament operate similarly to the way that legal advice or professional advice is

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<sup>7</sup> Margaret Hodge, *Called to Account: How Corporate Bad Behaviour and Government Waste Combine to Cost Us Millions* (London: Little, Brown, 2016), p. 71.

<sup>8</sup> Carolyn Evans and Simon Evans, ‘Messages from the front line: Parliamentarians’ perspectives on rights protection’ in Tom Campbell, Keith D. Ewing, and Adam Tomkins (eds.), *The legal protection of human rights: sceptical essays* (Oxford: Oxford University Press, 2011), pp. 329 and 346.

<sup>9</sup> For elaboration of the issue at the EU level, see Leino-Sandberg in this volume.

sought and received in society more broadly. There is much ignorance of the law; much self-help; with only the educated or the highly motivated seeking (and perhaps needing) ‘legal advice’.

This chapter draws on data from a Leverhulme Trust-funded project examining the provision and reception of legal support in the four legislatures of the UK.<sup>10</sup> The primary research method were semi-structured elite interviews conducted over 2017-2018 **just after the Brexit vote**. The interviews aimed to capture a variety of actors to map the process of provision and reception of legal advice in the legislature: parliamentarians, in-house parliamentary lawyers, clerks, researchers<sup>11</sup> and third parties (i.e., lobbyists and private lawyers). A total of 85 people were interviewed, but in this chapter, we shall only make use of interviews done at Westminster.

**Table 1: Interviews at Westminster**

Actor	Number
MPs	3
Peers	6*
Clerks	11
Parliamentary lawyers	11
Research staff	7
Third parties	5
TOTAL	43

\* one of these peers was a former MP.

We begin this chapter by discussing how legal expertise and the legal profession has been understood in literature on the sociology of the legal profession, and Freidson’s model of the lay referral system and its counterpart, the professional referral system. We then briefly discuss the Westminster Parliament and its organisation. We suggest that the process of seeking legal support is primarily client-driven, and given the nature of Parliament, what we end up seeing is something similar to what Freidson described in relation to medical expertise: the operation of a lay referral system, and a professional referral system.

## 2. The Sociology of Professions

We begin with some brief comments on the sociology of the legal profession, which may shed light on the nature and use of expertise. Like the sociology of the professions more generally,<sup>12</sup> much of the early research on the legal profession initially focused on definitional issues – how the profession differed from other occupations, and the question of control.<sup>13</sup> Amongst other matters, a profession is marked by its claim to possess a particular

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<sup>10</sup> ‘Legal advice to legislatures – supporting a professionalising legislature’ (RPG-2016-388).

<sup>11</sup> This refers to permanent, non-partisan staff, rather than those staff employed and under the control of members themselves.

<sup>12</sup> Julia Evetts, ‘The sociology of professional groups: new directions’ (2006) 54 *Current Sociology* 133; and Elizabeth H. Gorman and Rebecca L. Sandefur, “‘Golden Age’ Quiescence, and Revival How the Sociology of Professions Became the Study of Knowledge-Based Work’ (2011) 38 *Work and Occupations* 275.

<sup>13</sup> See generally Richard Moorhead, ‘Lawyers and other legal service providers’ in Peter Cane and Herbert Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010), p. 785.

expertise, which laypeople do not and cannot share. Possession of this expertise points to another marker of a profession: control over its own work, and therefore autonomy from the client. Part of this autonomy is the capacity of the profession to determine what the appropriate boundaries of their expertise are. Moreover, since the client lacks this particular expertise, they are in a position of weakness relative to the profession. The potential for abuse of this position is offset by a final characteristic of professions: a normative orientation towards the service of their clients and more generally the public.

However, a major theme of the sociology of the legal profession is that in practice individual professionals, the structure of the profession as a whole – and therefore the use of legal expertise – has been and remains profoundly shaped by the client. Heinz et al. showed, for instance, in a number of classic works that the legal profession is organised into two hemispheres: those with large corporate clients and those with small clients.<sup>14</sup> This inverted the traditional view that a key marker of the legal profession is its relative autonomy from the client – instead, it is the client who organises lawyers. Later studies suggested that in practice the relationship between lawyer and client is not one of dominance and submission, but rather a negotiated relationship.<sup>15</sup>

If anything, the fundamental importance of the client for professionals, lawyers or otherwise, has only become more apparent in recent years. The sociology of the professions has arguably become the study of knowledge-based work, reflecting changes in the professions themselves. Whereas many (perhaps most) professions were previously self-employed, general practitioners, many now work within large complex organisations.<sup>16</sup> Professionals are now in a much more precarious position, subject to the demands and norms of their employers. They are also under pressure because of the emergence of other occupations who also offer services based on expert knowledge; and more recently, from the explosion of freely available information on the internet and moves towards automation.<sup>17</sup> All this weakens the ability of professionals to maintain control over what has traditionally been seen as ‘their’ bodies of knowledge. They no longer have a monopoly over their expertise.<sup>18</sup>

But the importance of the client has other implications. Lewis suggests that what matters is the client’s perception of expertise (legal or not). Expertise is therefore to some extent constructed.<sup>19</sup> As Moorhead has argued:

clients’ problems are embedded in the social: problems are ultimately defined in the clients’ language and should be solved in their world. Clients may want the lawyers to speak their language and empathize... More fundamentally, this emphasis on the

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<sup>14</sup> John Heinz and Edward Laumann, *Chicago Lawyers: The Social Structure of the Bar* (Revised Edition, Northwestern University Press and American Bar Foundation, 1994); and John Heinz, Robert Nelson, Rebecca Sandefur and Edward Laumann, *Urban Lawyers: The New Social Structure of the Bar* (Chicago and London: University of Chicago Press, 2005).

<sup>15</sup> Austin Sarat and William Felstiner, *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process* (Oxford, Oxford University Press, 1995).

<sup>16</sup> Gorman and Sandefur, “‘Golden Age,’ Quiescence, and Revival How the Sociology of Professions Became the Study of Knowledge-Based Work’.

<sup>17</sup> See also Micklitz in this volume.

<sup>18</sup> Gorman and Sandefur “‘Golden Age,’ Quiescence, and Revival How the Sociology of Professions Became the Study of Knowledge-Based Work’.

<sup>19</sup> Philip Lewis, ‘Aspects of Professionalism: Constructing the Lawyer-Client Relationship’ in Scott Cummings (ed.), *The Paradox of Professionalism: Lawyers and the Possibility of Justice* (Cambridge: Cambridge University Press, 2012), p. 132.

social (clients as the organizing construct), over the professional (a neutral body of specialist knowledge) casts some doubt on the objective value of legal knowledge.<sup>20</sup>

Eliot Freidson's research sits squarely within the sociology of professions. In a number of works, Freidson developed a model to understand the process by which illness is understood and diagnosed in a community, and more broadly, the role of the medical profession and the use of medical expertise.<sup>21</sup> And although he focused on the medical profession, Freidson did think his work could be more widely applied.<sup>22</sup> Freidson argued that professions cannot be understood without reference to their clients. Clients often have ideas about what they want and need which are different from that of the professions, or practitioners. To understand professions, therefore, they must be located in local communities of prospective clients.

In broad terms, Freidson posited two ideal referral systems (although in practice there may be several such referral systems coexisting at any one time): the lay referral system, and the professional referral system. A layperson exhibiting symptoms of an illness is likely to first self-diagnose. When this self-diagnosis fails, she then seeks out friends and family – what Freidson calls 'consultants' – for further diagnosis and potential remedies. This casual process of exploring diagnoses when drawn out takes form of referrals, moving from the close to the successively more distant. This is the lay referral system. At a certain point, however, a professional physician – the general practitioner (GP) – is finally consulted. It is at this point that the patient may enter the professional referral system, if the GP cannot herself diagnose and provide a cure for the patient's illness. Thereafter, depending on the nature of the illness, the patient may then be moved through the professional referral system (in the UK, the NHS – the National Health Service).

This process is not as tidy or deliberate as presented, of course. One of the characteristics of the lay referral system is its untidiness: this is because it is *the patient* who is in control and determines if she is 'sick' and when and if she seeks help. By contrast, the professional referral system is relatively regimented and structured. In this system, the layperson may be referred to other professionals, but he or she have limited say in the matter – it is primarily at the discretion of the professional they are seeing at the time.

Freidson's model fits most people's experience of sickness. If we have symptoms of illness, we tend to self-diagnose first: is this something we have had before, and have managed ourselves? Is this just a rash brought on by spring pollen, or something more? If our symptoms continue or become more serious, we may only then seek the advice of friends and family – those we think are more knowledgeable than ourselves. If their suggested diagnoses and/ or remedies do not work, we might ask a friend who is a retired doctor or nurse. Failing that, we might only then call our GP clinic for an appointment. We often avoid seeking professional advice unless we have to, for various reasons: because we do not even recognise we are sick; because we think we are competent ourselves to judge the nature of the illness; because the symptoms seem minor; because of time and cost; perhaps because of a lack of trust in physicians; because of the fear of the unknown; or because of previous experiences in the NHS. The broad point is that entrance into the professional referral system is variable because it is the layperson who largely determines when she has symptoms of illness which

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<sup>20</sup> Moorhead, 'Lawyers and other legal service providers' 785, at 788.

<sup>21</sup> Eliot Freidson, 'Client Control and Medical Practice' (1960) 65(4) *American Journal of Sociology* 374; and Eliot Freidson, *Profession of Medicine: A Study of the Sociology of Applied Knowledge* (Revised edn., Chicago, University of Chicago Press, 1988).

<sup>22</sup> See e.g., Freidson, *Profession of Medicine: A Study of the Sociology of Applied Knowledge*, p. 300.

requires intervention. So, for instance, it may be that one layperson puts up with a chronic illness because it is manageable, while another will quite quickly seek the support of her GP.

From Freidson's model we can see the central role of the layperson in the identification and rectification of 'the problem'. But Freidson's model can also tell us something about practitioners themselves. Their position in the process of referrals matters. Freidson posits two kinds of practice. First, the independent practice, which attracts its own clientele but must work with and to some extent appeal to lay expectations; and second, dependent practice, which does not attract its own clientele, but serves the needs of others – usually an organisation – and so are more able to resist control of individual clients.

More broadly, Freidson's model of lay and professional networks can be understood as a general model of how laypeople seek out and make use of expertise, and as a reflection on the nature of expertise. Becker, for instance, has extrapolated on Freidson's model, giving the example of computer users and 'computer gurus'.<sup>23</sup> Most computer users have in practice limited computer literacy, only using a fraction of their computers' functions. When faced with a problem, they may reach out to gurus, 'who tell you what you need to know when you need to know it.'<sup>24</sup> In some cases, computer gurus have become regularised, in the form of the 'genius bar' at Apple stores, or the IT department in a university. But on an everyday basis, gurus are often people who just know more than you: colleagues or family friends have learned to resolve problems, not through school and qualifications, but by helping others. Thus, Becker suggests, it might be better to understand knowledge and expertise not as a quantity of which experts have more and laypeople less, but rather describes a 'social relationship between a more knowledgeable person and one who knows less.'<sup>25</sup>

For our purposes Freidson's model of lay and professional referral networks is suggestive; we need not adopt it rigidly. What it illustrates is the importance of the client in shaping the work of those with legal expertise, and the kinds of factors that the client considers in seeking and making use of expertise.

### **3. Parliament as 'Client'**

How well does Freidson's model of lay and professional referral networks apply to Westminster? Given Freidson's emphasis on the client or 'consumer' of professional services, this first requires a discussion of what Parliament – 'the client' – is, how it is organised, and what it does. But this is no simple matter: 'Parliament' is constitutional shorthand for a complex entity. As Paul Seaward has recently put it, 'parliament is not one thing, but many; not a simple organisation, but a highly complex one, if, indeed, it can be called an organisation at all; not a single mind, but very many minds concerned with very many different objectives.'<sup>26</sup>

To explain: the Westminster Parliament consists of two houses, the House of Commons and the House of Lords. The Commons consists of 650 MPs, all elected and organised by political party. It is the most 'political' of the two Houses, and most matters are determined

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<sup>23</sup> Howard Becker, *What about Mozart? What about Murder? Reasoning from Cases* (Chicago: University of Chicago Press, 2014), chapter 3.

<sup>24</sup> *Ibid.*, at 57.

<sup>25</sup> *Ibid.*, at 58.

<sup>26</sup> Paul Seaward, 'Why the History of Parliament Has Not Been Written' (2021) 40(1) *Parliamentary History* 5, at 22.

on a partisan basis – that is, by whatever party or parties have a majority in the House. The Lords consists of approximately 800 peers, the majority being appointed as life peers; 99 hereditary peers; and 26 bishops. Approximately two-thirds of the appointed life peers belong to a political party; one-quarter of all peers belong to the non-partisan crossbenchers (often members of great professional expertise); the remainder to an amorphous ‘other’ group.<sup>27</sup> Since the reform of the House of Lords in 1999 and the removal of most hereditary peers, no political party has had a majority in the House: this means the executive must act more cautiously in the Lords. The two Houses are therefore quite different, in appointment, composition and culture: the Commons being a House of ‘passion’ and politics; the Lords being a House of relative expertise and deliberation.

Each House also consists of nominally equal members, which makes it difficult to impose any kind of hierarchy.<sup>28</sup> Indeed, the House of Commons is often likened to a group of 650 small businesses. Each parliamentarian may prioritise their roles and functions differently. Furthermore, like all legislatures, the Houses represent and contain disagreement.<sup>29</sup> These pressures towards disorganisation are offset to some extent by the self-organisation of members – in particular, political parties, but also in select committees and all-party parliamentary groups, amongst other arrangements.

Finally, leadership in Parliament is not clear. Each House has a governing body: a commission, which consists primarily of a cross-section of parliamentarians, and chaired by the relevant House’s Presiding Officer. Each commission manages an administration of non-partisan officials which supports parliamentarians in their work – in particular, on the scrutiny of legislation and executive action. However, these commissions have historically had a history of weak governance, unable or unwilling to set explicit goals.<sup>30</sup> Thus, Lord Norton has argued: ‘there is no one individual who can claim to speak for Parliament. There is no equivalent of a company chair, someone who can speak for the institution ... When there is a scandal, who can answer on behalf of the institution?’<sup>31</sup>

Moreover, as Seaward suggests, the many clients of Parliament have multiple objectives; and there are multiple arenas in which they can act and may require legal support. A report done by the Parliamentary Office of Science and Technology (POST) on the role of research in the UK Parliament noted, parliamentarians seek expertise in respect of their various roles –both as individuals (in committees, debates, constituency work) and in groups (committees, scrutiny of legislation and executive action, political parties, all party parliamentary groups). Moreover, they have a number of different aims in seeking expertise, some of which may conflict with the aims of other parliamentarians: amongst others, ‘to support effective scrutiny and inform policy; to provide background knowledge; to substantiate pre-existing views; to provide balance; to provide credibility; and to score political points’.<sup>32</sup>

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<sup>27</sup> House of Lords Library, ‘House of Lords: Statistics on Size and Composition’ (2019).

<sup>28</sup> Gerhard Loewenberg, *On Legislatures: The Puzzle of Representation* (Boulder, Paradigm Publishers, 2011), p. 49. Gary Cox, ‘The Organization of Democratic Legislatures’ in Barry Weingast and Donald A. Wittman (eds.), *The Oxford Handbook of Political Economy* (Oxford: Oxford University Press, 2009) p. 141.

<sup>29</sup> See generally Jeremy Waldron, *The Dignity of Legislation* (Oxford: Oxford University Press, 1999).

<sup>30</sup> See Ben Yong, ‘The Governance of Parliament’ in Alexander Horne and Gavin Drewry (eds.), *Parliament and the Law* (2<sup>nd</sup> edn, Oxford: Hart Publishing, 2018) p. 75.

<sup>31</sup> Lord Norton, ‘Speaking for Parliament’ (2017) 70 *Parliamentary Affairs* 191, at 201.

<sup>32</sup> Caroline Kenny, David Rose, Abbi Hobbs, Chris Tyler and Jason Blackstock, *The Role of Research in the UK Parliament* (London, Houses of Parliament, 2017), p. 11.

We have spent some time on the nature and (dis)organisation of Parliament for a reason. The literature on the sociology of the legal profession suggests that the use of legal expertise is profoundly influenced by the client. From the description above we can see ‘Parliament’ cannot be understood as a singular client; it is an arena, multicentred, comprised of multiple potential clients, and far less hierarchical than the executive branch of government. And therefore we should expect to see this reflected in the nature and use of legal expertise in Parliament. Indeed, we can see the influence in the sheer variety of legal support open to parliamentarians and the absence of a monopoly of legal support; the fluidity of what counts as legal support or expertise; and finally in the use and non-use of legal support by parliamentarians.

#### **4. The Non-Hierarchical Sources of Legal Support for Parliamentarians**

There are two matters which are striking about legal support for parliamentarians at Westminster. The first is the sheer variety; and the second is the absence of a clear monopoly over legal support. As one non-lawyer peer stated: ‘Half the blighters are lawyers to begin with. ... we’re awash with QCs [Queen’s Counsel] and lawyers’.<sup>33</sup>

##### *A. Internal Sources*

Parliamentarians from both Houses receive legal support from a range of sources. Kennon organises sources of legal support into two groups: those sources internal to Parliament and those external.<sup>34</sup> The internal sources include legally educated parliamentarians, library and research staff, and parliamentary lawyers. External sources include academics, NGOs, think tanks, political parties, the judiciary and the executive. Below, we focus primarily on the internal sources of legal support.

##### *Lawyer-Politicians*

There is a relatively high number of parliamentarians with legal education in the two Houses.<sup>35</sup> Over the past 40 odd years, the number of lawyer-MPs has stayed relatively stable at approximately 15% of the total number of MPs (approximately 100 MPs), although overall the proportion of lawyers in Parliament has been declining since the beginning of the twentieth century.<sup>36</sup> In the Lords, roughly seven per cent are lawyers (perhaps 50–60 peers), but some of these are far more senior figures:<sup>37</sup> several retired Law Lords or UKSC justices (e.g., Lords Hope, Mance and Neuberger); former Lord Chancellors, ministers who dealt with the courts and justice system (e.g., Lords Falconer and MacKay); former Attorneys-General and Solicitor-Generals (e.g., Lords Goldsmith and Morris, Baroness Scotland); and prominent lawyers (e.g., Baroness Chakrabati and Lord Pannick). These lawyer-politicians may provide legal support in debate, select committees, and privately with their colleagues – but it remains entirely informal.

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<sup>33</sup> Interviewee 27, peer (13 September 2017).

<sup>34</sup> Andrew Kennon, ‘Legal Advice to Parliament’ in Alexander Horne, Gavin Drewry and Dawn Oliver (eds.), *Parliament and the Law* (Oxford: Hart Publishing, 2013), p. 121.

<sup>35</sup> David Howarth, ‘Lawyers in the House of Commons’ in David Feldman (ed.), *Law in politics, politics in law* (Oxford: Hart Publishing, 2013), p. 41; see also Ross Cranston, ‘Lawyers, MPs and Judges’ in David Feldman (ed.), *Law in politics, politics in law* (Oxford: Hart Publishing, 2013), p. 17.

<sup>36</sup> House of Commons Library, ‘Social background of MPs 1979-2019’ (CBP 7483, 2020).

<sup>37</sup> Peter Dorey and Matthew Purvis, ‘Representation in the House of Lords’ in Cristina Leston-Bandeira and Louise Thompson (eds.), *Exploring Parliament* (Oxford: Oxford University Press, 2018), pp. 244 and 247.



## *Parliamentary Staff*

There are also staff who have legal training. There are four key sources here: members' staff; specialist advisers; committee staff; clerks in the House Libraries; and parliamentary lawyers. Members' staff are staff employed by parliamentarians themselves, and so may serve in a partisan capacity. Specialist advisers are experts appointed for a single inquiry held by a select committee: they are temporary, not permanent staff.

Committee staff, library clerks and parliamentary lawyers form a class of impartial 'permanent' officials who support the legislature in its various functions – permanent in the sense that they do not lose their job following a general election; and impartial in that they must support all parliamentarians, regardless of political disposition. Committee staff are usually experts in a particular area appointed to work with a particular committee on a permanent basis. Library staff belong to one of the libraries of the Houses of Parliament, and provide impartial analysis and briefings on core issues of the day. Finally, parliamentary lawyers are in-house lawyers employed by one of the Houses of Parliament to provide legal support to a number of different clients in Parliament.<sup>38</sup> Unfortunately, there is no official data on the numbers of legally trained members, committee staff or specialist advisers because statistics on these sources (where they exist at all) are not broken down by education. In terms of available data for library clerks, however, there are approximately 60–70 library clerks in the House of Commons Library, of whom approximately one-quarter have law degrees.<sup>39</sup> In the House of Lords Library there are approximately 20-odd clerks.<sup>40</sup>

As of 2020, there are about 23 parliamentary lawyers in total, although some work part-time.<sup>41</sup> In the House of Commons, there are 18 lawyers; in the House of Lords, five. Traditionally, parliamentary lawyers were organised functionally, attached to a particular committee, office or unit. This reflects the nature of Parliament: a body of semi-autonomous constituent parts – the Houses, select committees – each of whom acted with limited thought to the needs of the body as a whole.<sup>42</sup> However, in recent years there has been a consolidation of legal services, particularly in the House of Commons. Now most Commons lawyers are organised under the Office of Speaker's Counsel, and work in one of three teams: general, domestic legislation and EU legislation. In the Lords, organisation remains looser.

Parliamentary lawyers provide advice and legal support to various clients in Parliament: to one of the Houses in their corporate capacity on private law (e.g., employment law) or public law (e.g., parliamentary privilege); or to one of the Houses' many committees on a permanent basis (e.g., the Joint Committees on Human Rights and Statutory Instruments, the House of Commons EU Scrutiny Committee and until recently, the House of Lords EU Committee) or on an as-needed basis. They specifically do *not* support individual parliamentarians.

## *B. External Sources*

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<sup>38</sup> The House of Lords Constitution Committee's two part-time legal advisers sit on the 'penumbra': they are appointed on a sessional basis, but remain with the Committee for much longer than a single inquiry: so we class them as parliamentary lawyers.

<sup>39</sup> Private communication.

<sup>40</sup> FOI request to House of Lords (30 August 2019).

<sup>41</sup> These numbers are calculated from internal documents. We have not here included paralegal staff (two) or the 1–2 lawyers working for the Joint Procurement Service.

<sup>42</sup> Ben Yong, 'The Governance of Parliament' in Alex Horne and Gavin Drewry (eds.), *Parliament and the Law* (2nd edn, Oxford: Hart Publishing, 2018), p. 75.

External sources of legal support include academics, NGOs, think tanks, political parties' research units, the judiciary and the executive amongst others. Academics, NGOs, charities, and think tanks will primarily provide legal support through private briefings and correspondence with parliamentarians, or in evidence sessions to select committees.<sup>43</sup> Political parties have their own partisan research staff: for example, the Conservatives have the Parliamentary Research Unit; and Labour has the Parliamentary Research Service.<sup>44</sup> Political parties may on occasion also seek formal legal advice from counsel.<sup>45</sup> As one peer noted, 'Opposition people will have [legal support] in their shadow teams, they're awash with lawyers, or they will have lawyers on their side whom they can approach ...'<sup>46</sup>

Parliamentarians may also obtain legal support from the other two branches. As already noted, in the House of Lords, some retired Law Lords attend the chamber and will give their views on various issues. UK Supreme Court justices may give public speeches and give evidence before select committees. In terms of the executive, parliamentarians can obtain briefings and statements from ministers; from parliamentary counsel (government lawyers who draft primary legislation) on technical matters of legislation; and from the Law Officers (Ministers ultimately responsible for authoritative legal interpretation within the executive).<sup>47</sup>

So already we can see from the description of sources available to parliamentarians and Parliament that Freidson's model of a lay and professional referral system has some analytical purchase. The external sources of legal support seem to equate to a lay referral system; the internal sources of legal support to a professional referral system. NGOs, think tanks and academics, the judiciary and the executive are all theoretically independent of their 'clients' – indeed, parliamentarians and Parliament are not their clients at all. By contrast internal sources of legal support are much more constrained in who they can support and when. Parliamentary staff are also more dependent: they are employed by one of the Houses, and they are constrained by impartiality, and in the case of parliamentary lawyers, by limiting their support to certain institutional unit and functions and prohibiting their support to individuals.

Put differently, on many core functions no one source appears to have a monopoly of legal expertise: parliamentarians and Parliament can choose from whom to seek support. The key exception is parliamentary lawyers dealing with corporate matters (i.e., matters concerning the institution of Parliament as a corporate body – such as contract, procurement, privilege and freedom of information). We can contrast this with the way that legal support is arranged in the executive, where there is a hierarchy (with the Law Officers at the apex), and for the most part government lawyers have a monopoly over legal support.<sup>48</sup> The absence of a monopoly of legal support in Parliament ought not to surprise us. If the nature of Parliament

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<sup>43</sup> For NGOs as providers of legal expertise, see Lee and Abbot, and Korkea-aho in this volume.

<sup>44</sup> Kenny, Rose, Hobbs, Tyler and Blackstock, *The Role of Research in the UK Parliament*, p. 18.

<sup>45</sup> Denis Campbell, 'Hunt broke law by axing NHS 18-week treatment target, says Labour', *The Guardian* (27 April 2018), at <https://www.theguardian.com/politics/2017/apr/27/labour-hunt-broke-law-over-nhs-axing-of-18-week-treatment-target>.

<sup>46</sup> Interviewee 27, peer (13 September 2017).

<sup>47</sup> On the government legal service and the Law Officers, see Ben Yong, *Risk Management: Government Lawyers and the Provision of Legal Advice within Whitehall* (Constitution Unit and Constitution Society, London, 2013). See also House of Lords Library, 'Publishing Government Legal Advice' (2018), at: <https://researchbriefings.files.parliament.uk/documents/LLN-2018-0115/LLN-2018-0115.pdf>.

<sup>48</sup> See generally Yong, *Risk Management: Government Lawyers and the Provision of Legal Advice within Whitehall*.

is a set of complex relations and multiple actors with no one fully in charge, then it is hard to see how any one set of actors could assert a monopoly over legal support.

## 5. The Fluid Nature of Legal Expertise

It is worth clarifying at this point what constitutes legal support. Here are two different interviewees – first, a peer:

[Law Lords] say what their point of view is about the law is, and that's one of the reasons that they're there really. They're not doing legal advice so much as expressing an opinion for the House to consider.... it's not quite the same thing as the House are asking for legal advice. The House would normally ask for legal advice from the Attorney General.<sup>49</sup>

Second, a parliamentary lawyer:

If you compare to being in practice, you're asking an opinion on an issue. It's not like that, because [select committees] don't formulate issues for legal advice, questions for legal opinions. And of course, your role does include advising them in a way which means they're aware of stuff. So, it's kind of an informing role as well. So, the nature of things that go to them, you know, certain amounts of it is legal advice, in which you say, 'in my view the law is...', but a certain amount of the rest of it is informing them, telling them about relevant legal things ... So, it's much wider than just pure legal advice.<sup>50</sup>

From this we can suggest there are three 'ideal' kinds of legal support. There is *legal information*, which is a matter-of-fact statement about what the relevant law is and its immediate context, but no attempt is made to apply it to a particular set of facts. At its most extreme, this is the kind of support provided, for instance, by Library staff.<sup>51</sup> It adheres closely to 'the facts' to avoid claims that permanent staff are being partisan.

There is *legal advice*: a formal written opinion to a specific client, setting out the law, complete with legal references, and applying it to a particular fact situation. This is in practice much rarer, primarily given by parliamentary lawyers, although not always.<sup>52</sup> It is characterised by its reference to a formal client, a highly impartial tone, a cautiousness about predicted outcomes and an emphasis on what would happen were there litigation.

Finally, there is *legal opinion*, which will set out the relevant law and legal frameworks, and will apply the law (or prospective law) to particular situations. The line between legal opinion and legal advice can blur, but as suggested above, with legal opinion there is usually no clear client; with legal advice, there is. And because there is no specific client, legal opinion may be more speculative and less cautious; at the edges it may even move into the sphere of 'politics'.

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<sup>49</sup> Interviewee 8, peer (22 June 2017).

<sup>50</sup> Interviewee 22, parliamentary lawyer (27 July 2017).

<sup>51</sup> On legal information, see Jack Simson Caird, 'Public Legal Information and Law-making in Parliament' in Alex Horne and Gavin Drewry (eds.), *Parliament and the Law* (2nd edn, Oxford: Hart Publishing, 2018), p. 147.

<sup>52</sup> For examples of this, see Yong, Davies and Leston-Bandeira, 'Tacticians, stewards and professionals: The politics of publishing select committee legal advice'.

Cutting across this taxonomy, however, are the means of delivery in practice. Legal support can be oral or written: written support is more likely to be formal; oral support perhaps less so and allowing for possible nuances. Moreover, legal support may be iterative. It may not be a simple response to a single question but rather a series of answers in response to a series of questions, so that legal information may come closer to legal opinion – or at least touch more upon application.

In any case, the key point is that legal support differs in shape, form and function depending both on the source of the support, and the client seeking that support. So, for instance, permanent officials provide impartial, apolitical forms of legal support: legal information and legal advice. Whereas the legal support that external organisations and persons offer will primarily be a mixture of legal information and legal opinion: in almost all cases there is no lawyer-client relationship between those providing legal support and the parliamentarian(s).

## **6. The Use and Non-Use of Legal Support**

Given the sheer variety of legal support available, how was it possible that Graham Allen and Margaret Hodge MP could complain of a lack of legal support? The answer is that how and when parliamentarians seek legal support is a separate matter. That is, an abundance of sources of legal support does not necessarily mean greater use. So, for instance, significant numbers of lawyer-politicians in both Houses does not necessarily translate into a greater understanding of legal issues, or a greater readiness to think about issues of legality. Cranston notes that many lawyer-politicians became involved in law because they thought it was an avenue to politics; nor is it clear that lawyer-politicians actually focus on legal issues or use their legal skills in Parliament.<sup>53</sup> In short, use depends on a number of factors: most relating to the client (demand factors), but some connected to those providing legal support (supply factors).

### *A. Considerations of Demand and Supply*

We start with the demand factors. First, some parliamentarians may not even realise a particular issue has legal implications. Most parliamentarians are necessarily generalists at most things: no one can be expert at everything. As one peer with legal experience noted: ‘the ordinary parliamentarian ... is not particularly acute to notice sensitive [legal issues]’.<sup>54</sup> One MP-turned-peer noted their experience: ‘very often on bills, you don’t know there’s a problem until you get a letter from the square widgets organisation. So it could be pointed out, this is flawed here and there.’<sup>55</sup> Moreover, many – perhaps most – parliamentarians have a limited attention span because of the many demands on their time.<sup>56</sup> As one interviewee told us: ‘[Parliamentarians] are not sufficiently well-resourced in terms of time. ... there’s just no time to scrutinise. What would [additional] lawyers be doing, writing things that these people never read?’<sup>57</sup>

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<sup>53</sup> Cranston, ‘Lawyers, MPs and Judges’, p. 17.

<sup>54</sup> Interviewee 8, peer (22 June 2017).

<sup>55</sup> Interviewee 27, peer (13 September 2017).

<sup>56</sup> See generally Hansard Society, *A Year in the Life: from member of public to Member of Parliament* (London: Hansard Society, 2011).

<sup>57</sup> Interviewee 24, third party (3 August 2017).

Second, and coexisting with limited or no legal knowledge and time constraints is information overload in a highly politicised environment. A POST report notes talks of parliamentarians being ‘inundated’ and ‘overloaded’ with information.<sup>58</sup> Parliamentarians may suffer from an information glut, and as noted above, may have little means to filter or evaluate the information coming in; as such, what legal information is received may be ignored or misunderstood.

Third, some members take the view that legal support is irrelevant to parliamentarians when they are legislating, because Parliament by virtue of the doctrine of parliamentary sovereignty cannot do anything illegal. Jacob Rees-Mogg MP (at the time of writing, the Leader of the House of Commons), stated in a debate about the human rights compatibility of a clause concerning the deportation of prisoners in an Immigration Bill:

A principle that we should always state and restate in this House is that, by its very nature, Parliament cannot pass a law that is illegal. We can pass laws that contravene international obligations or that we may decide our diplomatic relations require us to remove or repeal, but Parliament cannot pass an illegal law. That point is important to remember, because there is a tyranny of lawyers. They give people advice stating that they think x or y, but until it has been judged by a court, that is no more than advice, which may be right or wrong.<sup>59</sup>

In short, some parliamentarians may not care about legal support or ‘the law’ at all. After all, part of the promise of politics is that the law can be changed.

Fourth, use can depend on client need. We have already seen that needs of the various clients in Parliament vary, depending on context and arena; this in turn affects parliamentarians’ receptiveness to legal support. One interviewee gave the example of legislative amendments. At Westminster primary legislation is mostly initiated by the executive, and then drafted by parliamentary counsel, who (despite the name) are lawyers employed by the executive. As part of the legislative scrutiny process, parliamentarians can suggest amendments to bills. At this point, it might be assumed that a lawyer could be useful in drafting amendments, but this ignores that parliamentarians do not necessarily want to correct or improve a government bill: they may want to signal to voters that there are problems with the bill, or even ‘wreck’ the bill.<sup>60</sup> The interviewee argued:

I can remember explaining that to some spad<sup>61</sup> who was going, ‘we’re wondering if we need to get a lawyer to help us draft these amendments.’ No of course you don’t. ... your amendments are not going to become law, even if you win a vote.<sup>62</sup>

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<sup>58</sup> Kenny, Rose, Hobbs, Tyler and Blackstock, *The Role of Research in the UK Parliament*, p. 32.

<sup>59</sup> HC Deb 30 Jan 2014 col 1084. I am grateful to Murray Hunt for this example.

<sup>60</sup> Louise Thompson, ‘More of the same or a period of change? Bill committees in the twenty first century House of Commons’ (2013) 66(3) *Parliamentary Affairs* 459; and Meg Russell and Dan Gover, *Legislation at Westminster: Parliamentary Actors and Influencers in the Making of British Law* (Oxford: Oxford University Press, 2017), pp. 127–134.

<sup>61</sup> A ‘spad’ is shorthand for ‘special adviser’. In the UK, special advisers are partisan staff of the executive branch: they are civil servants but personally appointed by a minister and not subject to the requirement of political impartiality. See Ben Yong and Robert Hazell, *Special Advisers: Who they are, what they do and why they matter* (Oxford: Hart Publishing, 2014).

<sup>62</sup> As a number of commentators have noted, non-government amendments are rarely incorporated. This is often because where a minister does accept the policy behind a proposed amendment, parliamentary counsel will then redraft the bill to ensure polish and cohesion: see Thompson, ‘More of the same or a period of change? Bill

Technical perfection is not the issue. What you want is an amendment that gets to the point. And as long as you can get to the point, and put the minister on a pin, and attract the people you want to vote for you to vote for you, that's good enough. ... that's better than the technically perfect amendment that the minister can dodge because it's unclear. ... It's not about the best legal drafting. ... And also ... It can be easier to get the MP's trust for something they see how it works. If you need a law degree to understand how the amendment does what you say ... there's already a gap in trust. Whereas if it says, 'don't lock up babies', they know what they're putting down.<sup>63</sup>

The irony of this is that this example comes from a lawyer. They did not deny the importance of legal expertise, but their point was that the demand for legal support from parliamentarians might be less than might be presumed. Use and demand depends on the context, the client's understanding of the issue, and what they think will aid them in responding to the issue. In the case of legislative amendments, what often matters is the politics rather than 'the law'.

But there are also supply factors, which stem from the sources of legal support. The first factor is availability: not all sources are available all the time. Academics, for instance, may be highly expert, but are constrained by other commitments such as teaching and administration. The second is comprehensibility: the general ignorance of many outsiders about parliamentary processes and activities may mean whatever support they offer either does not reach parliamentarians or is unlikely to be taken up by them because of the form in which it is sent.<sup>64</sup> So, for instance, if the relevant legal support is too legalistic or too long, parliamentarians may simply ignore it.

The third factor is institutional constraints. These relate in particular to permanent parliamentary officials. Some of these we have already covered, but bear repeating. Parliamentary officials must be impartial; this constrains them in what they can provide to parliamentarians. That means the legal support they offer will be limited to legal information or legal advice: the support will be cautious and perhaps dry, rather than yielding to the fire of politics. But impartiality has other dimensions. One reason parliamentary lawyers in Westminster do not support individual parliamentarians is that the number of potential conflicts of interest would increase.

There are other institutional constraints. In the case of parliamentary lawyers, there was a strong awareness from permanent staff that the use of in-house lawyers was a limited and expensive resource, and that it needed to be used in a cost-effective manner.

Here is one parliamentary lawyer:

what committees need varies. Sometimes, they need legal advice. On scrutiny...it's mostly focused on scrutiny of [eg., EU, European Convention of Human Rights] issues. They clearly need legal advice. ... Other stuff that you're doing may be giving them legal information, or information about the legal system. But an awful lot of that

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committees in the twenty first century House of Commons'; Russell and Gover, *Legislation at Westminster: Parliamentary Actors and Influencers in the Making of British Law*.

<sup>63</sup> Interviewee 24, third party (3 August 2017).

<sup>64</sup> Marc Geddes, Katharine Dommett and Brenton Prosser, 'A recipe for impact? Exploring knowledge requirements in the UK Parliament and beyond' (2018) 14(2) *Evidence & Policy* 259.

can be done more cheaply than deploying ... really expensive legal advisers if they use the library.<sup>65</sup>

Similarly, the number of in-house lawyers is small: the number of parliamentarians is high. To have individual parliamentarians as their clients would almost certainly make the workload of parliamentary lawyers impossible but also unpredictable. This concern with protecting resource could lead some staff to query parliamentarians' requests for legal support: 'there's much less legal knowledge required in a Parliament than you might think. And that's really odd... most of the time, we're not giving anyone legal advice. ... Quite often, people think they need legal advice. One of the first questions is, well, do you actually? What is your question here?'<sup>66</sup>

### *B. The Use and Non-Use of Legal Support: The Filtering and Evaluation Process*

It should not surprise us then that a POST report found that the two most frequently selected sources of research for MPs were specific organisations and then House of Commons library staff.<sup>67</sup> For it follows from demand and supply factors that parliamentarians will not necessarily make use of the abundant sources of legal support available to them; and where they do, those sources chosen are not necessarily the most 'expert' or authoritative. That is, what we see is legal support chosen and determined by the client: the operation of a lay and professional referral network. One lawyer-MP, when asked who MPs were likely to approach if they suspected legal issues, said:

It would depend a lot on the member, upon their background, there will be a raft of things as you can imagine ... it would be perfectly reasonable to talk to Dominic Grieve<sup>68</sup> about something, for example, you know, [or] other lawyer politicians because many of us are friends. ... if you're not a lawyer ... it is perfectly plausible that you'd ask friends. I've got a friend who is an employment lawyer and sometimes I'll say to him, 'What do you think about this job?' ... Otherwise, informally, it's going to be the usual range of contacts, which I suppose is that how would they get their advice on industry or the economy or whatever. What you read, who you might know, that might be the solicitors in your constituency you might know, for example, or somebody [you] might've bumped into. What your own business background or sense tells you .... I might know people, I could just say, 'just out of interest, off the record, what do you think about this?'<sup>69</sup>

Another MP was more blunt: 'Connections. I mean, it's terrible isn't it?'<sup>70</sup> But if there is an information glut and/or lack of knowledge about the law (indeed, both are simultaneously possible in Parliament) then using networks or focusing on trusted sources (connections) seems quite rational.<sup>71</sup> Parliamentarians – particularly non-lawyer parliamentarians – must seek some means by which to filter and evaluate the information they are being bombarded with. Moreover, parliamentarians operate in a highly politicised environment: the politics

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<sup>65</sup> Interviewee 22, parliamentary lawyer (27 July 2017).

<sup>66</sup> Interviewee 4, clerk (25 May 2017).

<sup>67</sup> Kenny, Rose, Hobbs, Tyler and Blackstock, *The Role of Research in the UK Parliament*, p. 27.

<sup>68</sup> At the time of the interview, Dominic Grieve had been a longstanding Conservative lawyer-MP (1997–2019) who had served as Attorney-General (2010–14).

<sup>69</sup> Interviewee 20, peer (26 July 2017).

<sup>70</sup> Interviewee 54, MP (16 January 2018).

<sup>71</sup> See e.g., Le Conte, *Haven't You Heard?: Gossip, Politics and Power*.

always matter, and so, trust and credibility of the sources are vital. Here is a one third party lawyer who dealt with parliamentarians regularly:

what is extraordinary about politicians – they will say ‘Oh I’ve got a problem, I don’t know what to do’, and they’ll say, ‘Go and see [X]’. ... The fact is, politicians are ... they’re a pretty distrusting lot, but if you said ‘Go and see [X], he’s sorted this out. He’s safe, don’t worry, he’s alright’, then there is that element of them coming in here through the door with some confidence. ... One person told me years ago, he’s now in the Lords, ‘try to remember one thing: that politics is a sole trader business.’ And it really is right, so people don’t think of going off ... it’s about trust, you know, can you really trust people?<sup>72</sup>

Even where non-lawyer parliamentarians are confronted with legal expertise, though, they may dismiss it. They employ particular rules of thumb to help them evaluate the veracity and credibility of the support. Here is one interviewee on how peers evaluate what lawyer parliamentarians say in the House of Lords – which, as we have noted, has some very senior British lawyers:

Lord Judge [former Lord Chief Justice of England and Wales] ... speaks less frequently, and is listened to more carefully. ... Lord Pannick [well-known public law Queen’s Counsel] speaks on too many things ... When Lord Mackay of Clashfern [former Conservative Lord Chancellor and Law Lord] supports an amendment against the government ..., one ..., he’s legally spot on, and two, everyone’s going to pile behind him, and you will be defeated. So he carries an awful lot of gravitas if he backs an amendment contrary to the government. ... the House knows who to listen to.<sup>73</sup>

We can see expertise obviously matters: parliamentarians pay attention to those with legal knowledge. But there are also other criteria of credibility here. First, those offering legal support to the chamber have a kind of credibility capital, which they must dole out carefully, lest they lose persuasiveness with their colleagues generally. Second, politics can matter. Lord Mackay may have been particularly persuasive in his criticism of the Conservative Government because Mackay himself is a very senior Conservative peer.

The combination of demand and supply considerations, then, means that parliamentarians are likely to seek legal support from some sources over others. Demand based factors operate to ensure that parliamentarians generally work first through their ‘lay’ networks – a mixture of internal (colleagues, the library) and external sources (third parties etc). These sources may provide all three kinds of legal support – legal advice, opinion and information, although primarily the latter two, because legal advice requires a formal relationship between lawyer and client. Supply based factors ensure that the ‘professional’ referral network (all internal sources such as specialist advisers, committee staff, parliamentary lawyers), which tends to provide legal advice, is engaged only under specific and controlled circumstances – for instance, in select committees. The result is that many parliamentarians understandably know little of parliamentary lawyers.

## 7. Conclusion

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<sup>72</sup> Interviewee 57, third party (2 May 2018).

<sup>73</sup> Interviewee 27, peer (13 September 2017).



The comments of Graham Allen and Margaret Hodge MP at the beginning of this chapter can be reconciled with the ‘reality’ of Parliament. Parliamentarians have access to a wide array of legal support. But most of them suffer from an information glut and lack the time and expertise to make effective use of the support they have. In seeking legal support, parliamentarians are more likely to make use of their own networks first—a mixture of sources internal and external to Parliament which provide mostly legal information and legal opinion. There is a cadre of permanent officials – parliamentary lawyers – who can provide more *formal* legal support in the form of ‘legal advice’ when necessary, but only under specific circumstances and in specific arenas (such as the House of Commons EU Scrutiny Committee) because of impartiality and resource constraints. That is, what we see at Westminster is the presence of a lay referral network and a professional one.

In a sense, we should not be surprised by this conclusion at all. Why should Westminster differ from wider society? After all, it is supposed to be a microcosm of society, representing its diverse interests. It is unsurprising that there should be a lay referral network (or networks), and that much of the professional referral network of parliamentary officials – particularly parliamentary lawyers—is relatively unknown by most parliamentarians.

This chapter has only focused on some empirical evidence of how parliamentarians make use of legal support and what legal support means to them. It does not address the normative question of whether parliamentarians *should* be making more use of legal support – and behind that, the question of whether more internal legal support should be provided for parliamentarians. This may be an issue following Brexit, and now that the House of Lords EU Committee (with its attached legal advisers) has been abolished. But it does suggest some tentative answers. There is a great deal of legal support to parliamentarians, albeit uneven and much of it unorganised. The ‘problem’, if there is one at all, is primarily with the clients (the demand side), not those providing support (the supply side).