



## Why the new Speaker may not always be able to play a straight bat

*On 4 November, the House of Commons elected Lindsay Hoyle to serve as Speaker, following the resignation of John Bercow. It has been treated as accepted wisdom that a different approach to the Speakership is called for. However, Bercow has taken decisions about the Commons' handling of Brexit in circumstances where several - or all - of the available choices were potentially controversial. Jack Simson Caird argues that his successor might therefore find that trying to 'play a straight bat' is not as easy or appropriate as it might appear.*

Lindsay Hoyle is the new Speaker of the House of Commons . Hoyle, like many of his fellow candidates for the role, sought to emphasise that he would be very different from John Bercow. One of the main narratives around the election was that the Speaker should be, in the words of Chris Bryant, 'an umpire and not a player'. All the candidates, including Hoyle, pledged to follow Bercow in standing up for backbenchers, but at the same time suggested that he had made procedural decisions in the 2017 parliament that were problematic. It is in that context that this post seeks to revisit some of the major decisions taken by Bercow during the last parliament. In the narrative established by the media and several of the candidates during the election for his successor, Bercow's major Brexit decisions were portrayed as the product of his personality, and a desire to be the focal point of political debate. However, when the Speaker's key decisions are examined in context, that narrative seems rather simplistic. If, after the general election, Lindsay Hoyle is faced with a minority government that is seeking to push through constitutional reforms in the face of opposition from large numbers of MPs, then he may find himself in the political spotlight. The analysis below suggests that in that context, balancing a commitment to be a champion of backbench MPs and the desire to play procedural decisions with a 'straight bat' may prove to be difficult in practice.

### The foundations of the Brexit procedural battle in the 2017 parliament

The procedural controversies over the meaningful vote, which defined Bercow's role in the Brexit process, need to be analysed in context. The story started in the early summer of 2018, specifically, on 21 June 2018, when MPs were debating amendments concerning the 'meaningful vote' during the 'ping-pong' stages of the EU (Withdrawal) Bill.

MPs were considering an amendment made by the House of Lords which would have required the government to table a motion, which could be amended, in the event that the deal was not approved by MPs - either because no deal was presented or because the Commons voted to reject it. The aim of the provision, which became section 13 of the EU (Withdrawal) Act 2018 (which provides arrangements for the meaningful vote on the deal and duties on the government to bring further motions in certain circumstances), was to ensure that MPs had a parliamentary opportunity, in the form of an amendable motion, to take steps to avoid a 'no deal' Brexit.

In response, the government proposed its own amendments, which would mean that the House of Commons motions required by the Act if the deal was defeated would have to be 'in neutral terms'. The logic of the government's amendment was that a 'neutral terms' motion, according to the Standing Orders of the House of Commons, could not itself be amended.

The question was then would Conservative MPs opposed to 'no deal' seek to reject the government's amendments and inflict a

significant defeat (at this point in 2018 the government had only suffered one major Brexit defeat in the House of Commons). To dissuade them from rebelling, David Davis (then Secretary of State for Exiting the EU), produced a [written statement](#) outlining the effect of the use of the phrase 'neutral terms' in the government's amendments:

Under the Standing Orders of the House of Commons it will be for the Speaker to determine whether a motion - when it is introduced by the government under the European Union (Withdrawal) Bill - is in fact cast in neutral terms, and hence whether the motion is or is not amendable.

This statement was enough to ensure that a number of potential Conservative rebels, including Dominic Grieve and Nicky Morgan, voted for the government's amendments. They backed down because the government's statement was understood to be an admission that the motion would still be amendable.

### **The scope of a Business of the House motion to determine procedures for subsequent debates**

On 4 December 2018, MPs were asked to approve the government's Business of the House motion (BotH motion) for the five day meaningful vote debate. Dominic Grieve tabled an amendment to the BotH motion, which sought to ensure that all section 13 motions, including those required to be tabled by the government if the deal was rejected, could be amended. In a sense, the amendment sought to give effect to the government's position in its written statement on 21 June that it was effectively powerless to prevent the Speaker, and the Commons, from tabling and voting on amendments to particular motions.

The Speaker decided to select Grieve's amendment, even though the scope of the BotH motion was only concerned with the debate on the deal itself (and not with any subsequent debates that could occur afterwards if the deal was rejected). This was the controversial element of the Speaker's decision: how could one BotH motion purport to set the rules for subsequent debates? At first sight it would appear logical that the scope of a BotH motion is limited to the debate to which it relates. But there was a plausible counter-argument that, as the statutory provision responsible for the meaningful vote (section 13 of the EU (Withdrawal) Act 2018) also provided the arrangements for further House of Commons motions, this provided a basis for an expansive interpretation of the scope of the BotH motion. More broadly, the decision could also be justified on the basis that a number of MPs were concerned by the uncertainty over the potential for amending the government's post-rejection motion, and it was important to resolve this question before MPs decided how they should approach the meaningful vote.

### **Forthwith or not forthwith?**

The controversy over what should happen after the meaningful vote reached a head on 9 January 2019. The government tabled a new motion to amend the BotH motion to change the dates on which the meaningful vote debate would take place, having decided on 10 December 2018 to delay its conclusion. On 9 January, John Bercow decided to select an amendment, again tabled by Dominic Grieve (which sought to require the government to respond to the defeat of the deal within three days instead of 21 days as required by section 13 of the 2018 Act), to the government's motion, which should have been put 'forthwith'. In [an interview with Nick Robinson](#), Lindsay Hoyle suggested that this was a decision with which he disagreed.

On 4 December 2018, the House of Commons approved the BotH motion which stated:

(9) No motion to vary or supplement the provisions of this Order shall be made except by a Minister of the Crown; and the question on any such motion shall be put forthwith.

Erskine May [explains](#) the meaning of 'forthwith' in the following terms:

A number of standing orders require the Speaker to put the questions on certain matters forthwith, that is, without debate and usually without the possibility of amendment.

Hence when the House of Commons approved the Both motion on 4 December, MPs collectively agreed to enable the government to propose changes to the arrangements in the Both motion, which could not be amended. As a result, on 9 January (unlike on 4 December), Bercow seemingly had no interpretive discretion to select Grieve's amendment. By departing from precedent and contradicting the established understanding of 'forthwith', Bercow undeniably created a degree of procedural uncertainty. However, that procedural uncertainty needed to be weighed against the substance of the amendment itself, which sought to provide some clarity on the post-meaningful vote timetable. MPs knew that the deal was likely to be defeated, but wanted to have some reassurance that the government wouldn't simply disengage from the Commons should that happen. A number of MPs were especially concerned because of the government's decision on Monday 10 December to delay the meaningful vote by a month. When MPs had approved the Both motion on 4 December, they couldn't have known that the government would delay that vote, and so did not anticipate the significance of the power to vary the Both motion without the possibility of amendment. So it appeared that Bercow's departure from precedent was motivated by a desire to prevent the government from benefiting from procedural rules to gain an advantage that, on this particular occasion, a majority of MPs might not support.

Bercow's decision prioritised what he perceived to be the 'will of the Commons' over the existing rules as they stood at the time. In terms of Bryant's argument that the Speaker should be an 'umpire and not a player', this would suggest that the Speaker should instead prioritise applying the existing rules over any broader sense of what might be in the Commons' interest. Choosing which of the two to prioritise raises broader constitutional questions about the role of the House of Commons: is its primary purpose to act as check on the power of the executive or to facilitate functioning parliamentary government? Bercow has always been clear on his [position on this question](#). He may well have created some procedural uncertainty, but equally his position on each of the major Brexit parliamentary controversies was easy to predict: he would choose the option that would empower the Commons against the government.

## Conclusion

If the Speaker consistently departed from established precedents and the ordinary reading of the Standing Orders then the House of Commons would be in trouble. On the flipside, to say that the Speaker should never use his authority as the chair to depart from precedent in particular circumstances, based on his reading of the view of the majority of the House, also seems problematic. If Bercow had decided not to select Grieve's amendment on either 4 December 2018 or 9 January 2019, would that have made him any less of a political figure? It is arguable that if the Speaker in the 2017 parliament had stuck to an inflexibly literal reading of the Standing Orders and committed to always following precedent, that would have been equally controversial, albeit for a different constituency of MPs. In the 2019 parliament, Speaker Hoyle might find that his straight bat does not shield him from controversy.

*This [piece](#) was originally posted on the [UCL Constitution Unit](#) website.*

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