

Ministers reflect

Lord Faulks

November 2016



Lord Faulks – biographical details

Electoral History

2010 – present: Conservative Member of the House of Lords

Parliamentary Career

2014 – 2016: Minister of State for Civil Justice

Lord Faulks was interviewed by Nicola Hughes on 9th November 2016 for the Institute for Government's Ministers Reflect Project.

Nicola Hughes (NH): You'd been a barrister for most of your career and then came into the Ministry of Justice [MoJ] early in 2014, is that right?

Lord Faulks (LF): Yes. It was right at the end of 2013 that I was appointed, but because I was in the middle of a case, I couldn't actually take up my position until the beginning of 2014.

NH: So did you get a bit of a transition or were you so busy doing your case that you didn't?

LF: I didn't get any transition, I think I finished in the Court of Appeal on Friday and started as a minister on Monday. I had my first debate on that Monday, on the front bench. So it was quite abrupt!

NH: A baptism of fire! What was that experience of coming into Government like?

LF: Well, I had a very good private secretary who told me a little bit about what was involved, but it was pretty speedy, on the hoof stuff to start with because there was quite a lot to do. I think I had a cup of tea with Chris Grayling, the then Secretary of State, who told me what he thought my responsibilities in general were going to be, but they hadn't quite finalised the scope of my portfolio. And I got on with it. What was clear was that I was going to be answering for the Department in the House of Lords, I knew that because I had seen my predecessor doing it. What was less clear was what I was going to be actually responsible for in terms of developing policy.

NH: So how did you get that established and figure out what your priorities would be?

LF: Well, of course, we were in the slightly odd position of it being only about sixteen months until there was going to be an election. So I wasn't starting with a blank sheet of paper and all the main policy direction, I think, had already been decided. I wasn't going to have any influence, really, in shaping it, other than making a few suggestions here and there.

I do remember, though, my very first box which contained a draft bill and it so happened that it was a draft bill in an area I knew something about. I thought 'Well, this is not a very good start with the Secretary of State but I am going to have to point out to him that I don't think this is a very good idea and I don't think it is going to work legally.' We had a meeting and he was very polite - I said 'I am sorry about this, it doesn't show any lack of general confidence or support but I just think I ought to point out, this is going to have real problems in the House of Lords: I know a lot of the lawyers there, they will make fun of it.' And he said 'Very well' and he discussed it with the Prime Minister and they decided that they were going to go ahead with it anyway. It was called the SARAH bill, Social Action, Responsibility and Heroism, which was in aspiration fine, but legally speaking, pretty much nonsense. Anyway, I had to take it through the House of Lords and I got generally mocked but we got it through, although it wasn't an easy passage.

The other thing was that there was a major piece of legislation - the SARAH bill was a relatively minor one - which was already due to come to the House of Lords about curbing judges' power in terms of judicial review. That was always going to be contentious. I think that was one of the reasons they'd got me in, because they thought, 'Well, he has knocked around the courts a bit and this is going to be difficult, it is going to be very technical, legally, so show us what you can do' - that was effectively what I was told. And you know, it was very, very tough, very interesting, very enjoyable. I got excellent support from the bill team, really good. I warned the Secretary of State that I thought we would lose a lot of votes and we lost a lot of votes, but not as many as I thought we would lose and we eventually got it through, more or less as they wanted it. We had to concede a few points here and there. It was hard graft: lots of late nights, a lot of work. But very interesting.

NH: Did it help you that you had been in the House of Lords before you became a minister - actually a lot of other Lords ministers haven't - did that help you in terms of knowing how the Chamber would react and so on?

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LF: I think so. I think I would have really struggled if I had just gone straight in, even as a lawyer doing the legal work, if I hadn't seen the way things are done in the House. This was about as tough as it gets, in the sense that there are Supreme Court Judges and senior barristers, all weighing in. You know, these are seasoned debaters and to go in there straight away and open your mouth with your maiden speech and get straight on with it would have been pretty tough. I am not saying there weren't some moments when I didn't do as well as I should have done, but I was very grateful that I didn't go in for it straight away.

NH: We have spoken to a couple of business people that came into government and often for them the most intimidating aspect of becoming a minister was the Lords, because it is such a strange beast and as you say, there are so many experts in there.

LF: There are, and actually it is generally misunderstood. Most people in the Commons actually don't really know what goes on in the Lords. They think it is rather a nuisance, because it stops things going through. I don't think they realise that it can be really quite tough, all they know is 'Oh God, the Lords have voted this down, this is a nuisance, why can't you get it through?' There is a bit of that. I am afraid that is, to some extent, shared in departments too. The amount of time spent considering how something is going to go down in the Lords is inappropriately small. One of the things I think my private office really managed to do was to put the Lords and Lords' business on the map. When we had Justice questions, which took place in the Commons one a month or something but were paused in the election process, it was all pretty formulaic. Most of the questions were known. The amount of preparation that went into that was quite extraordinary. Whereas I was answering three or four questions a week on different subjects, the whole time, and I got a briefing for half an hour and that was it. I think by the end we had really made some good progress, but mostly thanks to my private secretary who was a tenacious lady and made the officials wake up to what was required. They were perfectly capable of giving me what was required, they just didn't really know and she said to them 'You must come along to the Lords and actually see what happens, or at the very least watch it on the television.'

NH: Absolutely. You mentioned before seeing your first submissions and that your legal background, having been a QC, that helped you on the policy side to identify issues. What else was useful from your career in terms of skills that you brought into government?

LF: Well, I suppose the business of trying to take in information reasonably quickly and being able to come out with something reasonably coherent in terms of a reply. Thirty-odd years of answering questions from judges is a different thing, but I think it was quite helpful. One of the things that we were taught to do, when you were trying to be effective as an advocate, was to answer questions directly. Now politicians aren't always inclined to do that, for the quite good reason that direct answers aren't necessarily politically very wise. But actually, I found that on the whole it went down well in the Lords if you tried to address the particular question you were asked as opposed to just using the question as a lever for expounding on government policy. People actually listened and they gave you the benefit of the doubt and then when you came to a point and said 'I need some information and will come back to you', they were far happier to accept that than if you'd just flannelled and given the official line on everything, without addressing any of the questions. So I think that was quite helpful.

NH: Obviously you were in government as a specialist in a particular area, lots of other ministers come from the Commons and are much more generalist in their routes into power. Again, did you feel that it was important to have legal expertise within the ministerial team at Justice?

LF: I probably would say that anyway but yes, frankly. I mean, dealing with the officials was really good for me. I wasn't frightened of them, and I respected them and we developed a relationship whereby I didn't know the answer to everything, but I usually knew the right questions. I wasn't a career politician. So I found it a really good thing that nothing that I ever saw was completely out of my experience. Because I had quite a general and quite a long career doing lots of different things. So whilst, for example, I wasn't an expert in land law, but I had studied it, I had done a few cases in my first few years at the Bar and things like that, even divorce – nothing was completely unfamiliar. Obviously there was steep learning curve in some areas, but the basic lexicon, the grammar, the issues and how they were likely to be received in courts; that was all part of my DNA.

NH: Was there anything surprising about the Whitehall machine and the role of being a minister in a department?

LF: Yes, that was all really new and it took me quite a long time. I still don't think I got on top of it entirely, in terms of understanding the way that government worked. I had a slightly uneasy relationship with those responsible for communications, whose main object, it seemed to me, very often, was to prevent ministers from saying anything in case they said something stupid. Some strangled answers were often suggested to me - I think in a perfectly helpful way, to try and protect me - but with the benefit of hindsight, I think I would have been less careful. Indeed, in the end I began to say more or less what I thought and it didn't actually end in disaster. But I think for the best motives, they were being over-protective.

NH: So you talked about the Lords side of things and taking through legislation, but what was your day-to-day life like? What would a typical week look like as a Justice Minister?

LF: Well, it changed slightly after the election because then there was a relatively clean sheet, as opposed to when I had come in. So I was in at the beginning, in terms of quite a few policy areas and in particular, a major one which was the repeal of the Human Rights Act and the preparation of the British Bill of Rights. I had an awful lot of meetings on that and we have done an awful lot of work which may or may not ever come to light. But there were a lot of meetings, there was a great deal of information to take in and I shared that responsibility with another minister, which I think is relatively unusual. I think it was acknowledged that we had to deliver on a manifesto commitment, we had to be ready, we really had to get to the bottom of this. It was really interesting and really challenging and I found the officials absolutely classic civil servants in all the best ways, and occasionally in not such good ways, in that they didn't get over excited about anything but they gave you good advice. They looked up things, they didn't give away what they actually thought about the wisdom of any particular policies, but they gave all the support you would need. I found that the more you explained what you wanted to do, the better the rapport that developed.

There was a particularly good moment, when we had to see the parliamentary draftsmen, which is not something I think ministers often do. Parliamentary draftsmen are, in my view, a stupendously good breed of people, it is an extraordinary skill-set they have to have. We saw them, with our officials. I had been trying, no doubt in rather a stumbling way, to get across what I wanted to be reflected in the Bill and I don't think I was necessarily doing it very well and the parliamentary draftsmen were being a little stiff. One of the officials, who had been pretty, I would say, apparently unenthusiastic about what we were doing, suddenly said 'This is what we mean, this is what we are trying to do.' And I thought 'He has got it!' That was a very good moment, because I thought somehow there has been communication, I have got across the idea, and the parliamentary draftsmen understood it and we made some progress. I thought that was an example of, you know, a good working relationship.

NH: Your decision-making process - so it could be around that legislation or maybe more generally submissions coming up to you - what sort of factors would play into the decisions you made when you were approving or making policy?

LF: In some areas I had a pretty clear idea of what I wanted to do and by the end, most of the officials knew that. The recommendations were in a fairly narrow band and I would say that maybe 75% of the time I would accept the recommendations made and the other 25% I wouldn't necessarily reject them, but I would ask questions. You know, I found most of the recommendations really very sensible, and I never found them obviously wrong or obviously failing to reflect what the policy objective was.

NH: So you were largely making decisions based on the evidence as it was presented to you - what about outside groups, obviously the legal profession and lobby groups and things like that?

LF: I was always happy to see people, not necessarily for terribly long. It didn't seem to me that there was much of a downside in letting people get things off their chest. When I was occasionally advised that it wasn't a very good idea for me to see so and so, would say that I was not worried, I am happy to see them. They will then go away and say 'At least the minister listened' and I found that fine, if it was on my terms, in the office and after about 25 minutes my private secretary started looking at her watch! You

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know, I wish my professional life was like that more often, because the client has paid to see you and on the whole they want to bang on, you have to listen, even though you derived all you need from the first half hour or hour! That was good.

NH: I mean, did outside groups ever change your policy thinking on something or help you shift your view?

LF: Yes. I wouldn't say radically, but they probably influenced me. I mean, I was often holding the ring between different interests; you would have one group of people, interested parties, who would come and see you and say 'A, B and C' and the next people would say 'D, E, and F' and you would have to make up your mind which was right and try not to be too influenced by the fact that somebody was more persuasive an advocate, as opposed to somebody else who may have had a better point. But yes, that was pretty helpful.

NH: You mentioned a couple of big pieces of policy and legislation – what, would you say, is the achievement that you are proudest of?

LF: Gosh. I suppose that I am quite proud of the fact that I helped to increase confidence in the MoJ. My predecessor had had a very tough time and there was general disillusionment amongst the lawyers and others about the MoJ, the cuts, whether or not they were properly focused on access to justice and so forth. I think by the end, in the House of Lords at least, they were giving us the benefit of the doubt and they thought the department was listening and taking things on board. I am not claiming it very personally – it was through Michael Gove and his prison reforms, through his stopping endless cuts in Legal Aid and various things that I had to defend, which was not much fun, frankly. So I feel we had created a great deal more confidence in the fact that we were under control and it is disappointing that that has now rather disappeared, under the new regime. I am really disappointed. There were one or two concessions we made here and there to people and in the course of bills, which I think were good. Things like making sure that people were not locked up in prison under the age of 18 when they were on remand - there were 17-year-olds who were suddenly finding themselves banged up. Although it may or may not come to fruition, I felt that we had worked out a pretty good solution to the problem of the Human Rights Act and how we would retain protection of human rights but not be too beholden to Strasbourg. That was a complex sort of Rubik's Cube, which I thought we had got somewhere with, but whether it formed or at least might form the basis of any future policy, I don't know.

NH: You mentioned Michael Gove, you had the change from Chris Grayling to Gove, after the election. How did that work? How did you establish a relationship with the new Secretary of State?

LF: Grayling was fine in the sense that he seemed to respect what I could bring to the party, as it were. He had had a rough time with lawyers, generally and I don't think he was very well disposed towards most of them. I had to take that on board when we were discussing policy issues. When Michael came in, I think he was very intellectually self-confident and wasn't frightened of lawyers. I think he probably knew quite a lot of lawyers and whilst he wasn't unduly beholden to them, he felt they had an important role in the constitution and he had, I think, a proper respect for what his job was. I am not saying that Grayling didn't have that, but he was a slightly embattled minister, I think, towards the end. Although that was partly due to prisons which was a huge, long-term problem, caused by all sorts of things, way before him, including – sounds a bit political - but including the Labour government's desire to steal the ground as being tough on crime, so people were sent to prison for longer and there wasn't enough money spent on prison reform. So we inherited that and we didn't want to be soft on crime. Michael had the courage to say 'Look, we have got to do something about this.'

NH: Of course the other big thing going on in the last year was Brexit – did it affect your work?

LF: Yes. It did, because I wanted to remain in the European Union while Michael and Dominic Raab [then a MoJ minister] wanted to leave. We were probably, and I don't mean to downplay the others, but we were probably doing the more contentious areas of work between the three of us. It was a perfectly amicable disagreement, as a result of which I had a lot more work to do. I did a lot of things that the Lord Chancellor would do, because he was out on his battle bus for that period. It was intensely

interesting. Then there was this theoretical view, which was that I would be allowed to see certain documents that he was not allowed to see because I was a remainer. There was a great fuss in the Cabinet Office as to why you had to declare whether you were a remainer or not. I am not sure that that really was a problem, in fact. I went to Brussels, rather than anybody else, towards the end, because in so far as anybody knew in Brussels, I was at least in favour of remaining in the European Union and it was probably thought better that I went.

NH: Yes. And how did you find working with the EU, as a minister?

LF: Well, it was all rather bitty. When it was time for the usual European Council meetings you would be sent there and there would be certain issues, most of which had been sorted out by UK Rep over there, so you were slightly there in order to be the face of the government and your contributions were suggested to you. So, I don't think I made a major contribution, frankly. The only thing I did do, which was actually in Strasbourg, was when I had to plead to the Committee of Ministers in mitigation about the fact that we were not giving prisoners the vote. I think most of the work was done by those based there in Strasbourg who were calming things down but it was OK, it bought us some more time. The problem continues. But anyway, I wouldn't claim I had a huge influence in Europe.

Ironically, though, I did have quite a lot of influence in terms of taking the European Referendum Bill to the House of Lords, which I was asked to do. One of the things that people don't tell you about the House of Lords as a minister, is that although you are supposed to be Justice Minister, and I had a big enough portfolio, you might well be asked to do other things as well. And because I was a lawyer, they thought there were some tricky points in the Euro Referendum Bill. So I ended up answering questions on Article 50, dealing with the franchise in the Euro Referendum Bill, I did quite a lot of work for the Cabinet Office, the Foreign Office and the Ministry of Defence, so I had a lot of inter-departmental contact, which was absolutely fascinating.

NH: What was your sense of cross-government working – did you ever do much with Treasury, Number 10...?

LF: A little bit. Number 10 was always rather outside my scope but I got brought in a few times to the Cabinet Office. I started off thinking well, apart from being a lawyer, do I have anything to bring to the party, really, as a minister? And it just turned out, more by luck than anything else, that a lot of the issues that Government generally had were things I knew something about, like what we were going to do about whiplash and what we were going to do about the insurance industry, I had done a lot of work on insurance and so forth. So that was quite helpful and I was able to do some work with Cabinet Office. I also worked with the MoD, when we were dealing with claims against the military, which is a bit of an issue.

NH: What, if anything, what did you find frustrating about being a minister?

LF: I found the governmental decision making process difficult, because you would be prepared with the consultation, you had worked it up, you thought you were in the right place, you had the Secretary of State entirely on your side, and then you were told, via your private office, that Number 10 wasn't ready to go or had reservations. You never actually spoke to an individual or knew who had the reservations, I am perfectly certain it wasn't the Prime Minister, who had a lot of other things to do, but you felt it was somebody in Number 10 who didn't think this was going to play very well. Actually, in a strange way, there was a difference between the Coalition and the Conservatives governing alone, because in the Coalition there was this strange mechanism called the Quod, whereby there were the four senior ministers, two of them Conservatives, would decide things. Although I didn't necessarily agree with some of their decisions, I thought some of them were pretty strange, at least you knew that was the funnel through which everything had to go. Whereas towards the end, I was finding it increasingly frustrating. We had a bank of announcements to make, of course the referendum came into it and all sorts of other things, that we couldn't announce. I developed probably inappropriate prejudices that there was some 25-year-old PPE graduate in Number 10 who was saying 'This is not a good idea' and I thought that was not necessarily good government.

NH: But you were never told where it came from.

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LF: No. It was always one removed from me: 'Number 10 says this and Number 10 says that.' I would have quite liked to have spoken to the relevant people, from time to time.

NH: Aside from that, did the experience leave you with any reflections on how government could be made more effective?

LF: Well, it left me with a very considerable regard for the Civil Service and we are really in danger of underestimating it.

I think it is an easy thing to say that you think there ought to be more joined-up government. I wasn't in the Cabinet, I don't know how the Cabinet works, but I do think it should work whereby there are more decisions taken by ministers which are then respected across Cabinet, rather than government from the centre. I worry at the moment that there may be too much government from the centre and people can't say what they want to say and that, in the long run, can't be a good thing.

NH: Finally, what would be the advice that you would give to a new minister starting today? I suppose particularly a Lords minister?

LF: In terms of being at the dispatch box in the Lords, try hard not to be too political unless it is absolutely necessary. Treat everybody with respect, whatever your secret reservations are about the relevance of their questions or what they have to bring to the party. Show a great deal of willingness to engage with everybody and don't get tough and or political unless it is necessary - try to build up a significant amount of goodwill before you get tough. Unless you are coming up to an election, I am not sure that it is often necessary to be very political in a careers sense at all. So I think that is the way you should handle the Lords – very much we are all, as a House, in this together and try and forget the fact that the geometry is that you are across the floor from the Labour party. Remember, of course, that the Liberal Democrats and the Labour party may not agree and people in your own party may not agree with each other, so you are never going to please all of the people all of the time.

In terms of policy, try and make sure that your department understands what goes on in the Lords and how things can go wrong or what things will play well in the Lords. So that if you can get involved, for example, in legislation at an early stage and say 'Look, I can see that that might be a problem, because A, B and C will disagree with that.' so that it doesn't then suddenly come as an unpleasant surprise to your secretary of state or the Cabinet that something has gone wrong.

NH: That problem, of people that aren't quite thinking about, getting the Lords, is policy teams or private office or...?

LF: I think it can actually be the Cabinet, frankly. It is very important, for example, that the leader of the Lords represents the problems that the Lords has, not always problems, you know, but represent what they can contribute. If we have a second chamber, whatever reservations people have about it, you have got to accept that they have powers and you have got to take that into account when deciding what to do: Brexit and Article 50 being a case in point. I thought it was regrettable that, for example, not the current leader, but the previous leader of the Lords wasn't even a member of the Cabinet. If you are going to try and get the Lords onside, you want to butter them up, essentially, and downgrading the post of leader of the Lords is not good politics. This Prime Minister, for example, at least came to speak to the Lords at an early stage, so they feel involved. However much of a nuisance you think they are, that is a good idea.

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2 Carlton Gardens
London SW1Y 5AA

Tel: +44 (0) 20 7747 0400

Fax: +44 (0) 20 7766 0700

Email: enquiries@instituteforgovernment.org.uk

www.instituteforgovernment.org.uk

@instituteforgov

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