



JUDICIARY OF  
ENGLAND AND WALES

**Response from the Judiciary  
to the House of Lords Select Committee on the Constitution report  
on relations between the executive, the judiciary and Parliament.**

**House of Lords Select Committee on the Constitution report on relations between  
the executive, the judiciary and Parliament (HL Paper 151) – 26 July 2007**

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**Chapter 2: Executive and Judiciary**

We have no comment to make on the factual account of the formation of the Ministry of Justice or the discussions between the Ministry and the judiciary. We are at present still engaged in discussion with the Ministry and the new Lord Chancellor and therefore do not think it helpful or appropriate at this stage to respond to the points in your report.

**Chapter 3: Parliament and the Judiciary**

*Laying Written Representations Before Parliament*

In the light of the decision that the Lord Chief Justice should produce an Annual Report we now envisage that there will be two types of communications with Parliament under section 5 of the Constitutional Reform Act 2005:

- the routine publication of an Annual Report to The Queen in Parliament; and
- in exceptional circumstances, the expression of some immediate concern about an issue important to the judiciary.

We welcome the proposed handling arrangements for any such representations made by the Lord Chief Justice; the opportunity for an early debate and a timely response from the Government will be essential to ensure that there can be full and proper consideration of issues that are raised.

*The Question of Accountability*

The constitutional changes reflected in the Constitutional Reform Act 2005, in particular the displacement of the Lord Chancellor as the Head of the Judiciary and the creation of a Supreme Court, led to new interest in the judiciary as an institution and in the issue of the accountability of judges and the judiciary. Both individual judges and the judiciary as a branch of the state are subject to a number of forms of accountability. The forms of accountability and their limits are discussed in the attached paper which is on the judicial website ([www.judiciary.gov.uk](http://www.judiciary.gov.uk)). The limits in the paper result from the

acknowledged need in a democracy for an independent and impartial judiciary which is free from improper influence.

Individual judges are accountable for their decisions through their duty to give reasons and the appellate system, and that they are accountable for their general conduct through the system for judicial complaints, handled by the Office for Judicial Complaints. The duty to give reasons for all decisions is a clear example of “explanatory” accountability, which not only facilitates appeals but assists transparency and scrutiny by the other branches of State and the public.

Save in accordance with the procedure under the Act of Settlement, individual judges cannot be held accountable either to Parliament or to the executive in the “sacrificial” sense whereby their judicial office is put in peril, and they cannot be externally accountable for their decisions. Such accountability would be incompatible with the principle of the independence of the judiciary. It is right, however, that if the judiciary is to have the input we would like into all aspects of the administration of justice, then we should account for the way in which we have discharged our administrative responsibilities. The question is how to do this in a way which is not incompatible with the judiciary’s core responsibility as the branch of the State responsible for providing the fair and impartial resolution of disputes between citizens and the State, in accordance with the prevailing rules of law.

Your Report suggests that Select Committees “can play an important role in holding the judiciary to account by questioning in public”. As you will appreciate from the attached paper and our earlier guidance to judges appearing before Select Committee, accountability has in the judiciary’s view many facets and we have made clear the aspects on which it would be appropriate for the judiciary to discuss in Parliament.

It follows that we see merit in the suggestion that Select Committees can represent an appropriate and helpful forum for the Lord Chief Justice, after publication of his annual report, to explain his views on aspects of the administration of justice that are of general interest or concern and upon which it is appropriate for the judiciary to comment. There may, of course, be other circumstances in which the judiciary consider it appropriate to express views to Parliament on other issues. We have already developed guidelines on the kinds of issues that it would be appropriate for the judiciary to discuss with Parliament in this way and we are cautious about your suggestion that this should include their views on “key legal issues”. There are difficulties in judges giving views on new legislative proposals or the operation of the law. Although, as our guidance recognises, it is appropriate for a judge to comment on the operation and procedures of his or her jurisdiction and the implications of any Bill or Act in these respects we need to be particularly aware of the fact that a senior judge might, at some stage in the future, be asked to adjudicate on an issue they had commented on in the past. An awareness and appreciation of the guidelines, from both the judiciary and the Committee, should ensure that we avoid any such pitfalls.

We are concerned, however, that the appearance of judges and magistrates before Select Committees should not become routine for fear of stepping beyond the proper boundary between the judiciary and Parliament. We have already seen an increase in the number of invitations to appear in the 18 months since the implementation of the constitutional reforms. Therefore, while we welcome the indication that Committees would be open to additional appearances from the judiciary, such appearances need, we believe, to be truly necessary and appropriate.

## *An Annual Report on the Judiciary*

As already stated, we have agreed that it would be appropriate for the Lord Chief Justice to, in future, produce an Annual Report. This seems to us to be a key part of the judiciary's explanatory accountability. We expect that this will build on the information about the court systems that is already made public, will cover the work of the judiciary, within the courts and with others involved in the justice systems, and will highlight areas of particular concern to the judiciary. We hope that the first report will be available early in the New Year.

It is our intention that the Report should be laid before the Queen in Parliament. We agree, as set out above, that it would be appropriate for the Lord Chief Justice to discuss the contents of the Report with both Houses of Parliament at a convenient point soon after publication, and suggest that this might be most appropriately done through a joint meeting of the relevant Committees of each House. However, as we are sure Parliament would anticipate, the Report will be sensitive to the kinds of issues on which the judiciary should not comment and, as we have already indicated above, we would expect the questions at the subsequent Committee hearings also to take account of these sensitive areas.

### **Chapter 4: Judiciary, Media and the Public**

#### *Introduction*

We agree. Judges have their own part to play in maintaining public confidence in the judiciary and the justice system.

#### *Public perceptions*

We agree with the Committee's view on the public position Government Ministers should take in relation to judicial decisions.

#### *Role of individual judges*

It is a cardinal principle that a judge should give his decision and the reasons for it in public. It has, for some time, been the practice that where a judgment is long and complex a judge will, where practicable, incorporate into his judgment a short summary to assist public understanding. When making sentencing remarks in shorter judgments a judge will always endeavour to explain the reasons for his decisions in a way that can be understood by the public who may not be familiar with the details of the case. Where reasons are given orally, as is almost always the case when sentencing, judges are encouraged to consider preparing a written note of their sentencing remarks to be given by hand to reporters in court. It is inappropriate for a judge outside of his decision to seek to amplify or explain his decision – his public judgment speaks for itself. It follows from this principle and the nature of judicial office that we endorse the Committee's views that judges should not give media briefings.

### *The Role of the Lord Chief Justice*

The Lord Chief Justice has been Head of the Judiciary for 18 months. As the Committee acknowledges, there will always be a gap between the level of activity the media would like to see from the Lord Chief Justice and what is wise or even appropriate for the Lord Chief Justice to undertake. In fact, as the Committee advocates, this is kept under constant review, not least as interview bids and other requests arrive for him on a daily basis.

It is important to bear in mind that the Lord Chief Justice has now a direct means of communication with the public through the judicial website ([www.judiciary.gov.uk](http://www.judiciary.gov.uk)): an illustration of this is the publication on the website of his two interviews with Marcel Berlins (there have been 8840 downloads since April 2006), as well as the publication of speeches and statements by him and other senior judges.

### *The Role of the Judicial Communications Office*

The JCO is, in government terms, a small and relatively new unit responsible for providing communications support to more than 40,000 judicial office-holders. It provides support to the judiciary and to the media when questions arise about judicial issues and keeps up to date the judicial website which, as we have said, is an important means of external communication.

It is accepted there may be occasions, such as the media's reporting following the Sweeney judgment in June 2006, when the timely use of a judicial spokesperson, rather than a JCO press officer, to explain sentencing *process* might help provide a balance in the reportage. The Judges' Council is, therefore, considering the best means of developing a proposal, that whilst ensuring adherence to the principle that judicial decisions must speak for themselves, to provide in certain circumstances information through certain serving judges that will assist public understanding and debate.

Along with the judicial website, the JCO is actively involved in producing educational material for schools and the public generally about the work of judges within the operation of the justice system.

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