



House of Commons
Constitutional Affairs
Committee

Protection of a witness – privilege

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The Constitutional Affairs Committee

The Constitutional Affairs Committee (previously the Committee on the Lord Chancellor's Department) is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Constitutional Affairs and associated public bodies.

Current membership

Rt Hon Alan Beith MP (*Liberal Democrat, Berwick-upon-Tweed*) (Chairman)
Peter Bottomley MP (*Conservative, Worthing West*)
Mr James Clappison MP (*Conservative, Hertsmere*)
Ross Cranston MP (*Labour, Dudley North*)
Mrs Ann Cryer MP (*Labour, Keighley*)
Mr Jim Cunningham MP (*Labour, Coventry South*)
Mr Hilton Dawson MP (*Labour, Lancaster and Wyre*)
Andrew Rosindell MP (*Conservative, Romford*)
Mr Clive Soley MP (*Labour, Ealing, Acton and Shepherd's Bush*)
Keith Vaz MP (*Labour, Leicester East*)
Dr Alan Whitehead MP (*Labour, Southampton Test*)

The following Member was a member of the Committee during the inquiry:
Mr Mark Field MP (*Conservative, Cities of London and Westminster*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House.

All publications of the Committee (including press notices) are on the Internet at: www.parliament.uk/parliamentary_committees/conaffcom.cfm

Committee staff

The current staff of the Committee are Roger Phillips (Clerk), Richard Poureshagh (Committee Assistant), Alexander Horne (Legal Specialist) and Julie Storey (Secretary).

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Protection of a witness - privilege

1. In the previous Session, the Committee reported on the Children and Family Court Advisory Support Service (CAFCASS).¹ In the course of the inquiry, the Committee had reason to reassure informally some of the potential witnesses that they were protected by parliamentary privilege from adverse consequences flowing from giving evidence. One witness, Ms Judy Weleminsky, a CAFCASS board member, on her own behalf and on her own initiative sent the Committee written evidence which was extremely useful in supporting the Committee's conclusions in the report, many of which were critical of the management of CAFCASS. She received advice that she was protected by parliamentary privilege when giving such evidence to the Committee.

2. It was a central recommendation of the Committee that a fundamental review of the board of CAFCASS should be undertaken. The Government responded in October 2003 and accepted the criticisms of CAFCASS.² After the Committee's report had been published, Mr Anthony Hewson, the Chairman of CAFCASS, resigned (he left the board on 10th October). On 24th September he presented the Lord Chancellor with a dossier detailing alleged breaches of Ms Weleminsky's duties in her capacity as a board member. These allegations were reviewed by Mr David Crawley, Head of Office, Scotland Office, Department of Constitutional Affairs, who reported to the Lord Chancellor on 9th October.

3. Soon after the Committee reported, ministerial responsibility for CAFCASS was passed to the Minister for Children, although formally the Lord Chancellor retained the legal responsibility for Board appointments. This legal responsibility has now passed to the Secretary of State for Education.

4. Subsequently, the Lord Chancellor invited the rest of the CAFCASS board to resign. They all did so, with the exception of Ms Judy Weleminsky, who refused. As a result of her refusal to resign, the Lord Chancellor wrote to Ms Weleminsky about the allegations, attaching Mr Crawley's review. A copy of the letter from the Lord Chancellor to Ms Weleminsky and the attached report on her conduct dated 9th October and referred to in his letter to her are attached as Appendix 1 to this report. As the supporting document shows, one of the grounds (the first specific one) for disciplining Ms Weleminsky which Mr Crawley examined was that she had given evidence to the Committee. There are also other grounds named for proceeding against her.

5. On 17th December 2003 the Chairman wrote to the Lord Chancellor in the terms set out in the letter printed as Appendix 2. The Lord Chancellor's reply is printed as Appendix 3. The Lord Chancellor agrees that it would be quite wrong to discipline someone in her position for having given evidence to the Committee and says that he would not do so. He adds that his decision did not depend "wholly, or in part, on the fact of her giving evidence to the Select Committee". He concedes, however, that having regard to the reference in the

¹ HC 614-I and II of Session 2002-03

² The Response of the Government and the Children and Family Court Advisory Support Service to the Committee's Report on the Children and Family Court Advisory and Support Service (CAFCASS) – Cm 6004

supporting paper to the fact of giving evidence to the Committee he should have made it clear that this could not be the basis of disciplinary action against her.

6. The Lord Chancellor's letter to Ms Weleminsky of 9th October initially led us to assume (as did Ms Weleminsky) that the fact of her having given evidence to the Committee was a material ground for proceeding against her. Even in the light of the Lord Chancellor's assurances in his letter to the Chairman (set out in Appendix 3) that he had not used her assistance to the Committee as a material ground for proceeding against her, **the papers clearly show that the process of examining her conduct involved official criticism of her on the basis that she had given evidence to the Committee.**

7. **In the view of the Committee, the process of dealing with the complaints against Ms Weleminsky, starting with the dossier prepared by Mr Hewson, continuing with the review of the matter by Mr Crawley and ending with the letter from the Lord Chancellor to Ms Weleminsky and the supporting document might be regarded as a prima facie breach of privilege. Accordingly we believe that the House should refer this matter to the Committee on Standards and Privileges.**

Appendices

Appendix 1

Copy of a letter from Rt Hon The Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor to Ms Judy Weleminsky

Thank you for your letter of 3rd December 2003. I know that you have since had a meeting with David Normington, Permanent Secretary at the Department for Education and Skills. I understand that he asked you to reconsider my request that you should tender your resignation as a member of CAF/CASS. I am sorry that you remain unwilling to do so. I remain of the view that a fresh start is in the best interests of CAF/CASS and the children and families it serves.

As David explained, my original request was based on Professor Sir Clive Booth's advice. At our request, he had conducted a fundamental review of the Board's membership. It was a "central recommendation" of the Select Committee that this should be undertaken. Sir Clive advised that there should be a fresh start with the Board, and that all members of the Board should be invited to submit their resignations. You will be aware that I have now accepted resignations from 9 of your colleagues.

Given your unwillingness to resign, I have carefully considered the position and am minded to terminate your membership pursuant to Regulation 4(3)(b) of the CAF/CASS (Membership, Committee and Procedure) Regulations 2000.

On 24th September 2003, the outgoing Chair, Anthony Hewson, made a recommendation to me that your membership should be terminated. He handed me a dossier detailing instances of alleged breach of your duties as a Board member with supporting documentary evidence. I asked a senior member of my Department with no previous involvement with CAF/CASS to review this dossier. On 9 October 2003, he reported to me with his analysis of the dossier (below). I was giving careful consideration to these findings but decided to postpone further consideration of what action I should take because of the wider issues affecting the CAF/CASS Board at that time. Mr Hewson ceased to be Chairman on 10 October, having tendered his resignation. On 16 October, I asked Sir Clive to conduct a review of the membership of the Board, as recommended by the Select Committee. As you now know, I then accepted Sir Clive's advice that all Board members should be invited to tender their resignations. While these events were unfolding, I did not consider it sensible simultaneously to pursue the separate matter of your personal conduct as a member. Given your unwillingness to resign in company with your colleagues of the old Board, I have now had to review the situation.

I am satisfied that there is evidence that you have:

- i. failed to behave in a corporate manner;
- ii. behaved inappropriately in relation to the Chief Executive and staff of CAF/CASS;

iii. refused to observe confidentiality.

If established, the case could justify termination of your membership of the Board. Before making any final decision I would welcome your comments on this matter.

In the meantime, I am suspending your membership of the Board with immediate effect. During your suspension you will not receive any Board papers and will not be entitled to attend any Board meetings. You must not enter CAFCASS premises. During the period of your suspension, you will receive payment equivalent to the fee that you would receive for 3.5 days' work per month. I invite you to provide me with your comments in writing on the above matters by close of play on 16 January 2004.

Once I have had the opportunity to consider your written comments, I will consider whether (a) to terminate your membership; or (b) to lift the suspension of your membership.

I would ask you to indicate in writing by 5.00pm on 12 December that you consent to the terms of your suspension. You should be aware that if you do not consent to the terms of your suspension, I will have no alternative but to terminate your membership of the Board with immediate effect.

If, of course, you prefer not to engage with the process outlined above, I remain willing to accept your resignation.

11 December 2003

Paper by Mr David Crawley, Head of Office, Scotland Office, Department of Constitutional Affairs

CAFCASS: Performance of Board member, Ms Judy Weleminsky: review of documentary evidence

INTRODUCTION

1. I was invited by the Permanent Secretary at the Department for Constitutional Affairs to conduct a review of the evidence relating to allegations of breach of duty on the part of a member of the Children and Family Court Advisory and Support Service (CAFCASS) Ms Judy Weleminsky. In view of the timescale in which this work has had to be done my review has been confined to the documentary evidence made available to me. This paper reports my findings on this basis.

2. I should note that, as Head of the Scotland Office, I have had no prior engagement with the subject and have no personal knowledge of CAFCASS, its Executive Team, staff or any of its Board.

BACKGROUND

Appointment and responsibilities of Board members

3. CAFCASS was established by the Criminal Justice and Court Services Act 2000 to support and advise children and their families in respect of family proceedings where children's welfare may be in question. Regulations under Schedule 2 of the Act provide for the appointment, resignation or removal from office of members. Under the regulations the Lord Chancellor has the power to terminate the office of a member inter alia if the member is unable or unfit to carry out his/her functions as a member. The CAFCASS framework document sets out the responsibilities of members. These responsibilities have since been clarified and extended in the CAFCASS Board Performance and Conduct Procedure Note finalised in July 2003.

Allegations

4. The allegations to be considered have been submitted to the Department for Constitutional Affairs in a report, supported by documentary evidence, by the Chairman of the Board. In summary there are three general areas of criticism and six specific ones.

5. The three general areas are:

- i. Inability of Ms Weleminsky to act in a corporate manner;
- ii. Oppressive/difficult behaviour in relation to the Chief Executive and staff of CAFCASS;
- iii. Refusal to observe confidentiality.

6. The six specific areas are:

- i. that Ms Weleminsky presented separate evidence to the Select Committee inquiring into CAFCASS, in a manner which undermined the organisation and without consultation with the Chairman or other Board members;
- ii. that she provided sensitive information which she possessed as a member of the Board of CAFCASS to the Daily Telegraph in a way which undermined the CAFCASS position;
- iii. that she gave an interview on File on 4 on 8 July without any prior clearance or discussion;
- iv. that she contributed to various articles in 'Community Care' without prior 'consultation or discussion;
- v. that, during the course of 2002, she had contact with the then suspended Chief Executive while disciplinary proceedings were in progress, the terms of which criticised the Chairman;
- vi. that she has continuously refused to implement a decision of the Board on the closure of the SMART Group.

ANALYSIS OF ALLEGATIONS

Inability to act corporately

7. It is suggested that Ms Weleminsky has, over a long period of time, demonstrated that she is unable and/or unwilling to act with proper regard to her responsibilities as a Corporate Board member. There is a good deal of documentary evidence of other members concerns supporting this view [e.g. Anthony Hewson's comments of 7 June 2003, various Board members comments at a private meeting on 17 June 2003, Angela Killick's of 30 October 2001]. Comments from Board members include a statement that Ms Weleminsky's approach has distorted priorities and destroyed trust and co-operation within the Board and between the Board and the Executive and the Board and Whitehall. Ms Weleminsky has herself stated in an e-mail of 24 September 2003 to a Board member that "I needed to continue to take an external route to influence since the internal one clearly wasn't working." She also said that "If I see real evidence of a chance of approach by the Board and ET then I will work with you and not around you. However until I do, I feel that for the sake of the service we are supposed [to] provide, I must keep up my efforts."

8. Over the life of CAF/CASS there have been a number of meetings at which Ms Weleminsky's attention has been drawn to the issue of corporate responsibility. A notable example was 11 April 2002 at which the Chairman noted that "corporate responsibility was about ownership of Board decisions Once decisions are taken the debate should not be reopened. To do so undermined the Executive who alone could implement the non-Executive Board decisions". In response Ms Weleminsky "thought it important to reserve the right to change wrong decisions".

9. The documents referred to in paragraphs 7 and 8, and the other evidence available, clearly suggest that several other members of the Board have been concerned about her approach and that she herself sees her role in an individual rather than a corporate light. The issue of Ms Weleminsky's approach to her responsibilities as a member of a corporate board is central to each of the areas of concern. An overall assessment of her ability to act as a corporate board member therefore depends on the assessment of all of these issues. This is considered further below.

Behaviour towards Chief Executive and staff

10. It is suggested that Ms Weleminsky's behaviour towards the Chief Executive and the Executive team has been oppressive. She is said to engage in an incessant flow of e-mails which have the effect of seriously undermining and demoralising staff. I have to hand some evidence of a high volume of critical and questioning e-mails from Ms Weleminsky; and I have also noted reference to two specific instances of e-mails to relatively junior staff which might be regarded as oppressive, the first dating from October 2001.

11. This seems to me to be an area which could be further explored through discussion with Board staff and examination of e-mail traffic from Ms Weleminsky over a period. The evidence I have available suggests a surprising, and possibly intrusive, questioning style and may support the view that there is some confusion between Ms Weleminsky's role as a strategic Board member and the proper role of the Executive. Other Board members have

suggested that her approach causes distortion of priorities and effort but a full assessment of the impact on staff of her style of operation as a Board member needs more research.

Confidentiality

12. It is suggested that Ms Weleminsky is not prepared to accept that a degree of confidentiality is a reasonable part of the normal procedure of a Board especially where certain issues or documents are concerned. In the minutes of the CAFCASS Board meeting of 28 November 2001 it was noted that "on the issue of Cabinet responsibility the Chairman made a request that members of the Board kept confidential or sensitive matters to themselves and avoid making controversial comments wherever possible". The Chairman urged Ms Weleminsky to "exercise judgement and discretion" and also noted that her statements outside Board meetings "tended to have disproportionate" effects. In the light of the disclosure by Ms Weleminsky in July 2003 of a draft paper for Ministers to someone outside the Board, the Chief Executive asked for the final version of the draft to be kept as confidential. (Chief Executive's letter of 31 July 2003 to Ms Weleminsky). Ms Weleminsky was not prepared to accept that the paper should be treated as confidential.

13. I also now have to hand evidence that Ms Weleminsky recently posted on the SMART Group website an extract from the draft minutes of a Board meeting taken in private session (which she did not attend). The discussions concerned sensitive financial matters which affect negotiations with the relevant Trade Union. Other members of the Board and the Executive have expressed serious concerns about this.

14. The Performance and Conduct Procedure Note provides at paragraph 3.2 that one of the corporate responsibilities of Board members is to ensure confidentiality on all matters deemed confidential by the Board. There is clear evidence that Ms Weleminsky takes a separate and independent view of what should or should not be confidential. Whether or not the Board has formally deemed a matter to be confidential it does seem to me that her approach makes it difficult for the Board to work together in developing policy with a reasonable presumption that discussions should be private until there is a corporate agreement that they should not be. The degree of openness applied by any Board, against the background of Freedom of Information legislation, should be a matter for a common, corporate policy. Stakeholders, such as Government, need to know what that policy is so that they know how papers, including developing advice, may be handled. It would be unusual for an organisation's openness policy to be established through the actions of one Board member.

Submission of separate evidence to the Select Committee

15. The facts of this element are clear. Ms Weleminsky wrote to the Clerk to the Select Committee in the Lord Chancellor's Department on 2 May 2003. Her letter gave separate evidence to the Select Committee's study on CAFCASS. It covered the recruitment, selection and appointment of the CAFCASS Board, the work of the shadow Board, concerns about preparedness, finance and operation, more recent concerns over the current situation and management competency and style. There were also comments on governance effectiveness and style, Board access to information, and access to information and good practice by the workforce. In each of these areas it is factually correct to state that

the comments involve significant criticism of the various processes, individuals and bodies involved including other Board members, the CAFCASS Executive, the Chair, the Lord Chancellor's Department and the present senior management team.

16. The submission of this separate evidence to the Select Committee gave rise to significant concerns on the part of the Chair and other members of the Board, which were expressed at a private Board meeting on 17 June. A series of criticisms of Ms Weleminsky's action in submitting this evidence were made. Ms Weleminsky is reported as having said that she had tried in a number of ways to express her views but with little success and was frustrated by lack of support for colleagues. She had serious concerns regarding the Board's failure in collective governance and felt that the Committee should be made aware of this. She stated explicitly that "she deliberately did not consult with fellow Board members as she did not want to compromise them or be persuaded not to follow the course of action taken". The Chairman of the Board wrote to the Select Committee in June disassociating the Board from her evidence.

17. It is quite clear therefore that Ms Weleminsky did submit evidence to the Select Committee which had not been discussed or cleared with the Chairman or other Board members beforehand; and that it was (and was intended to be) in conflict with the evidence that CAFCASS itself had previously submitted to the Committee on 13 March.

Contact with Daily Telegraph reporter

18. Again, the facts seem clear. The Chief Executive wrote to the Daily Telegraph on 11 September making clear CAFCASS's position on court appointed children's guardians, including the issue of recruitment and pay rates. It is suggested that Ms Weleminsky subsequently provided the Telegraph with information undermining the Chief Executive's position based on information on the budget shared with the Board for their meeting on 17 September. The article in the Daily Telegraph on 18 September refers to the letter from Mr Tross but against that specifically refers to the fact that Judy Weleminsky had told the newspaper of a projected overspend and said that only two-thirds of children were allocated a guardian within seven days. Her view that delays were bound to get worse unless the budget went up was also reported.

19. On the evidence provided, including the Daily Telegraph article itself, this appears to be a clear breach of confidentiality. Ms Weleminsky in an e-mail of 24 September to another Board member acknowledges his "disappointment about the Telegraph piece" and states that she "was in touch with Joshua Rosenberg before our latest meeting" but decided that she had to continue to apply external pressure, including on the issue of resources. It seems likely that the information she gave Mr Rosenberg was taken from the paper prepared for the Board meeting on 17 September which was circulated on 11 September. On the face of it this is a breach of the confidentiality expected of any Board member.

Interview with File on 4

20. Ms Weleminsky gave a short interview on the BBC Radio 4 programme File on 4 on 8 July without prior notice or discussion with the Chair, Board or Chief Executive. I have considered the transcript of this programme. Ms Weleminsky criticised the

CAFCASS approach towards the dispute with guardians early in the life of CAFCASS and indicated that there had been a minority group on the Board which could not persuade colleagues of a different approach. She also said that CAFCASS was a traditional top down organisation, and should be more bottom-up, taking a lot more notice of front-line practitioners and frontline staff. She indicated that Board members were discouraged by management from hearing first hand information. I note that the Chief Executive, Jonathan Tross, was also interviewed for the programme and that what he said reflected CAFCASS policy. Subsequent to the programme a number of comments were received from staff expressing disappointment at Ms Weleminsky's comments.

21. Again, the facts do not appear to be in dispute. Ms Weleminsky did undertake the interview without prior notice or discussion; it was critical of management and, particularly given Mr Tross's presence on the programme, was likely to undermine the broad position being put by the Board and the senior management.

Community Care articles

22. There are references in the documentation to at least two articles having been submitted to the magazine Community Care by Ms Weleminsky, on 1 August 2003 and, previously, in November 2002. Ms Weleminsky's August article responded independently to the recommendations of the Select Committee. The articles were submitted without consultation with the Chairman or the CAFCASS Head of Communications.

23. Again, the facts are clear. The issue is one of judgement on whether independent articles by a Board member of this type can reasonably be regarded as undermining the Board's overall position and conflicting with the member's own corporate responsibility.

Contact with suspended Chief Executive

24. The papers provided to me also indicate that Ms Weleminsky breached Board agreement by engaging in dialogue with the former Chief Executive during her suspension in 2001/02. A letter of 8 October 2002 from Pip O'Byrne, Chair of the Disciplinary Committee, to the Chairman drew attention to an e-mail of 26 November 2001 from Ms Weleminsky to the suspended Chief Executive Diane Shepherd. This e-mail was notable for its criticism of the Chairman and might have been construed as interference with the disciplinary process. It was sent in conflict with advice to Board members not to have any contact with Ms Shepherd.

25. On the evidence available, this contact was both surprising and improper in view of the continuing disciplinary proceedings. In those circumstances, the criticism in it of the Chairman, which would have been improper in any normal circumstances, appears highly damaging.

Refusal to accept Board decision on SMART Group

26. The SMART Group is an unofficial website which allowed a wide range of communication among staff and the wider external (largely professional) group CAFCASS deals with. Board support for it was withdrawn following a decision of the Board which appears to have been in 2002. There had been earlier discussion of the merits or otherwise

of Board members contributing to the SMART Group site and I found reference to an agreement that Board members would not input to the site. Ms Weleminsky continued throughout to support the operation of the site and to argue against the Board decision to withdraw support from it. On 10 October 2002 she placed an e-mail on the site indicating her support for the SMART Group and, among other things, very much regretting that the SMART group was now separate from the official communication channels of CAF/CASS. This was despite the clearly expressed views of the Chief Executive (e.g. on 29 May 2002) and the position of the Board. In particular the Chief Executive points out a number of severe management and technical disadvantages to the SMART group approach to communications.

27. It is clear that Ms Weleminsky deliberately ignored the express views of the Board in respect of the SMART Group as well as the views of the Chief Executive.

ASSESSMENT

28. In looking at the evidence I have sought to test it against the explicit duties placed on Board members under the Performance and Conduct Procedure finalised in July 2003, together with the founding legislation and documents for CAF/CASS and also against a reasonable view of the roles and responsibilities of Board members of Non Departmental Public Bodies. The evidence of Ms Weleminsky's actions needs to be considered in particular against:

a. Corporate responsibilities of Board members. Relevant in this context is the fact that the Procedure Note points to members corporate responsibilities to ensure high standards of corporate governance at all times; to establish the overall strategic direction of CAF/CASS within the policy and resources framework agreed with the Lord Chancellor; to ensure that in reaching decisions the Board has taken into account any guidance issued by LCD and all relevant legal and financial advice; to treat others with respect; and to abide by corporate decisions that have been agreed by a majority of the Board after all due information and advice has been considered. The provision placing a duty on members to ensure confidentiality on all matters deemed confidential by the Board is also relevant although in my view there is a wider issue relating to the normal standards of privacy within which policy discussions by any corporate board can be expected to take place.

b. Individual Board members responsibilities, in particular the duty to engage fully in collective consideration of issues, taking account of the full range of relevant factors, advice and information and the need to act in good faith and in the best interests of CAF/CASS.

29. I have also considered whether Ms Weleminsky was made properly aware of her corporate responsibilities as a Board member. I have concluded that she was. Without now listing again the various specific occasions it is clear that there have been a number of meetings since the establishment of CAF/CASS at which the responsibilities of Board members in general and Ms Weleminsky in particular have been discussed; initial training for Board members was provided through a CMPS course which I understand Ms Weleminsky attended on 23 November 2001; and in November 2002 the Board held an Awayday which specifically discussed how the Board should work together. I can see no basis for any argument that Ms Weleminsky did not understand or had not been encouraged to understand what were her responsibilities as a Board member.

30. The six specific points detailed in paragraphs 15 to 27 above are demonstrated by the evidence available. It is also clear that in different respects these actions challenged or conflicted with the corporate position of the Board.

31. They therefore do much to demonstrate the main charge which is an inability to behave corporately. The substance of that charge rests to a significant extent on the views of other Board members and the Chairman and it may be useful to discuss the issue with them in order to provide a fuller picture. However, given the evidence available, I can only conclude that Ms Weleminsky does not see herself as a corporate member of the team and does not regard herself as bound by normal conventions of collective discussion and decision making. She has consistently failed to act in a corporate manner with other members of the Board, the Chairman and the Chief Executive, has overtly and publicly challenged Board positions and has, on any reasonable view, breached the normal confidentiality expected among members of a Board working together. I think it is right to conclude on the basis of this evidence, therefore that Ms Weleminsky does not behave appropriately as a Board member of CAFCASS.

32. It is not entirely clear to me how far the various charges relating to interaction with Executive members and staff have been demonstrated by the material in front of me. There is a great deal of assertion and some evidence from e-mails but there would be value in exploring this question further, particularly with staff themselves at various levels.

33. Finally I should note that I have looked at this only from the point of view of Ms Weleminsky's behaviour as a CAFCASS corporate Board member. I have not taken any view on the merits or otherwise on any of Ms Weleminsky's policy positions. Those are a matter between her and other members of the Board.

9 October 2003

Appendix 2

Copy of a letter from Rt Hon A J Beith, Chairman of the Committee to Rt Hon The Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor

Ms Judy Weleminsky

Ms Judy Weleminsky has sent the Clerk of the Constitutional Affairs Committee a copy of a letter (dated 11th December) from you to her setting out the reasons for her suspension and possible dismissal as a CAFCASS board member, with a supporting document by Mr David Crawley, Head of Office, Scotland Office. Mr Crawley's document reviews evidence against her prepared by Mr Anthony Hewson, the former Board Chairman.

The supporting document sets out areas of criticism in both general and specific terms. The first mentioned specific term is that Ms Weleminsky "presented separate evidence to

the Select Committee inquiring into CAFCASS, in a manner which undermined the organisation and without consultation with the Chairman or other Board members.”

It appears from these papers that Ms Weleminsky may be being punished for having given evidence to the Committee. The Committee certainly found her written evidence most useful and relied on it considerably when considering its Report.

I am gravely concerned that the action of sending written evidence to the Committee might cause a witness to suffer in this way. As you know, the Committee will next meet on 6th January. I shall put this matter before the Committee then for consideration, as it will need to decide what further action to take.

17 December 2003

Appendix 3

Copy of a letter from Rt Hon The Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor to Rt Hon A J Beith, Chairman of the Committee

Thank you for your letter of 17th December concerning the suspension of Ms Weleminsky.

You expressed grave concern that the action of sending written evidence to the committee might cause a witness to be suspended and possibly dismissed. I agree that it would be quite wrong to discipline someone in her position for having given evidence to the Committee, and I would not do so. You will note that I made no reference to this aspect of the dossier in my letter, and I completely understand that individuals must feel free to give evidence to Select Committees.

The dossier was substantial, and the reference to Ms Weleminsky's decision to give evidence to the Select Committee was part of it. Having considered the evidence submitted to me, I proceeded to suspend her. My decision does not depend wholly, or in part, on the fact she had given evidence to the Select Committee. I want to make it clear that the fact of her giving evidence cannot form part of any action against her.

Completely disregarding the fact of giving evidence to the Select Committee, I believe the suspension was justified. In taking these steps, my over-riding concern was the effective operation of the CAFCASS Board, and the interests of the children that it serves.

A decision on whether or not to dismiss has not yet been taken in this case, and the comments from Ms Weleminsky on the allegations made against her by the former Chairman are being considered carefully.

The final decision will be made by Charles Clarke, as responsibility for CAFCASS is due to transfer to the Secretary of State for Education and Skills on Monday 12th January. I will

ensure that he is aware of your concerns and the content of her letter. But I make it clear that no disciplinary action can be based on the fact of giving evidence to the Select Committee. Having regard to the reference in Mr Crawley's dossier to this allegation, I should have made this clear. Even ignoring this allegation, suspension was plainly justified.

I am sorry that I cannot discuss the details of the case with you, but this is being treated as a serious matter and Ms Weleminsky's response requires careful consideration.

8 January 2004

Formal minutes

Tuesday 13 January 2004

Members present:

Mr A J Beith, in the Chair

Peter Bottomley
Ross Cranston
Mrs Ann Cryer
Andrew Rosindell

Mr Clive Soley
Keith Vaz
Dr Alan Whitehead

The Committee deliberated.

Draft Special Report [Protection of a witness – privilege], proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Special Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 7 read and agreed to.

Resolved, That the Report be the First Special Report of the Committee to the House.

The Committee divided.

Ayes, 6

Noes, 1

Mr A J Beith
Peter Bottomley
Ross Cranston
Mrs Ann Cryer
Mr Clive Soley
Dr Alan Whitehead

Keith Vaz

Ordered, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Report.

Ordered, That the Appendices to the Report be reported to the House.

[Adjourned till Tuesday 20 January at 9.00am]