



House of Commons  
Constitutional Affairs  
Committee

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**Work of the  
Committee 2003**

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**Third Report of Session 2003–04**

*Report, together with formal minutes*

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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 period covered by this report: 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](http://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](http://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).

### Contacts

All correspondence should be addressed to the Clerk of the Constitutional Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196. The Committee's email address is [conaffcom@parliament.uk](mailto:conaffcom@parliament.uk).

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# 1 Introduction

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1. This is the first Annual Report of the Constitutional Affairs Committee since we were set up—as the Committee on the Lord Chancellor’s Department—in January last year. In it we review the work which we have undertaken since our establishment and look forward to some of the matters we expect to examine over the course of the coming year. It has been prepared in accordance with the now established practice of Select Committees reporting annually on the objectives and tasks devised by the Liaison Committee, which in turn arose from a resolution of the House of 14 May 2002.

2. The establishment of a dedicated Committee to scrutinise the work of this Department could hardly have been more timely. Notwithstanding the work done by the Home Affairs Committee in examining the work of the Lord Chancellor’s Department in recent times, it was becoming increasingly clear that a Committee which had to examine the whole of the remit of the Home Office was unable to do justice to the gradually expanding role of the LCD. From the start we faced a very significant task in introducing proper scrutiny of this now very significant Department.

3. Our work in our first year was heavily affected by the unexpected announcement in June of the plans for abolition of the post of Lord Chancellor and his replacement by a Secretary of State, the establishment of a Judicial Appointments Commission and the replacement of the Appellate Committee of the House of Lords with a Supreme Court. The issue had arisen at one of our earliest evidence sessions when we heard Professor Erik Jurgens, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe. He had been preparing a report on the office of Lord Chancellor. Shortly afterwards, we took evidence from the then Lord Chancellor, Lord Irvine of Lairg, on a range of issues connected with the constitutional role of the Lord Chancellor. His announcement at that session of the publication of a White Paper on judicial appointments prompted us to arrange a visit to Scotland, which had already established a Judicial Appointments Board. The visit took place very shortly after the Prime Minister’s announcement of the change in the role and name of the Department; our Report *Judicial Appointments: lessons from the Scottish experience*<sup>1</sup> was one of the earliest contributions to the debate which has taken place since then on the Government’s proposals. We took evidence from Lord Mackay of Clashfern, the former Lord Chancellor, in September and following conclusion of the consultation period on the Government’s proposals for a Judicial Appointments Commission and a new Supreme Court we heard evidence from a wide range of interested parties. We produced a report in time to inform the House’s consideration of the Constitutional Reform Bill.

4. Those issues have not distracted us from the remainder of the work done by the Department. We examined the Courts Bill as it passed through Parliament;<sup>2</sup> we produced a very important and influential report on the Children and Family Court Advisory and Support Service, which provides a vital service to the courts, children and their families in the family court system<sup>3</sup> and which led to the resignation of the Chairman and most

<sup>1</sup> Second Report of Session 2002–03, HC 902

<sup>2</sup> First Report of Session 2002–03, HC 526–I and II

<sup>3</sup> Third Report of Session 2002–03, HC 614–I and II

members of the Board, followed by the appointment of a new board; we considered both the Department's Spring Supplementary Estimate<sup>4</sup> and its Annual Report for 2002–03;<sup>5</sup> we heard evidence from the Chairman and Chief Executive of the Legal Services Commission, which is responsible for the allocation of nearly £2bn worth of legal aid expenditure annually;<sup>6</sup> we began an inquiry into the immigration and asylum appeal system;<sup>7</sup> and we scrutinised very closely the Government's proposals for publicly funded legal aid and advice work in the immigration field.<sup>8</sup>

## Relations with the Department

5. Although relations with the Department since our establishment have been generally good, it is clearly taking the Department some time to get used to the requirements placed upon it by Select Committee scrutiny. On one occasion we encountered serious difficulty: that was during our inquiry into the Government's proposals for changes to publicly funded immigration and asylum legal aid work. The failure to ensure that a vital memorandum reached us before the Friday before the Tuesday morning on which we were to consider our final report caused us severe difficulties in meeting our timescale. This timescale had been agreed with the Lord Chancellor in order to foster greater cooperation with the Department and to assist the Department by allowing it adequate time to consider our Report, and the memorandum had been promised repeatedly over the course of the three weeks or so of this brief inquiry. On another occasion (in early 2004) the Committee was given last minute notice of a major statement by the Lord Chancellor<sup>9</sup> which impacted on a draft Report which we were considering. Ministers and officials must be fully aware of, and responsive to, the needs of Select Committees if they are to perform their role effectively. It is vital for Select Committees to have adequate notice of statements and to receive papers which have been requested in good time.

6. At the end of 2003, we were contacted by Ms Judy Weleminsky, a witness who claimed that she had been punished as a result of having sent us a memorandum which was used in our Report on CAFCASS. She was suspended by the Lord Chancellor (as a prelude to dismissal) on the grounds of misconduct which were set out in an accompanying paper which had been prepared by Mr David Crawley, Head of the Scotland Office, on the basis of a dossier of evidence left by Mr Anthony Hewson, the outgoing Chairman of CAFCASS. The paper set out a number of grounds for disciplining her, which included the fact that she had given evidence to the Committee. The Chairman wrote to the Lord Chancellor asking for an explanation. The Lord Chancellor replied that the fact of giving evidence to the Committee was not relied on as a basis for deciding to discipline Ms Weleminsky but acknowledged that he should have made this clear to her.

7. Having considered the Lord Chancellor's reply, we concluded that the matter the process of dealing with the complaints against Ms Weleminsky, starting with the dossier

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<sup>4</sup> Oral and written evidence of Session 2002–03, HC 611–i

<sup>5</sup> Oral and written evidence of Session 2002–03, HC 973–i

<sup>6</sup> Legal Services Commission Annual Report 2002–03, Section 1

<sup>7</sup> Which led to the Second Report of Session 2003–04, HC 211–I and II

<sup>8</sup> Fourth Report of Session 2002–03, HC 1171–I and II

<sup>9</sup> HC Deb, 26 January 2004, col 21

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 recommended that the House refer this matter to the Committee on Standards and Privileges. On 15 January, after a short debate on the matter, the House agreed to do so.

## 2 Objectives and tasks

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### **Objective A: to examine and comment on the policy of the department**

#### ***Task 2: To examine policy proposals from the UK Government and the European Commission in Green Papers, White Papers, draft Guidance etc, and to inquire further where the Committee considers it appropriate***

8. As noted above, much of our work this year has been concerned with the very significant proposals for the abolition of the Lord Chancellor and the establishment of a judicial appointments commission and Supreme Court (court of final appeal). Consultation papers on these latter two were published in July;<sup>10</sup> rather than asking witnesses to duplicate their work by sending evidence direct to us, we received from the Department copies of all non-confidential responses to the consultation on these two subjects. We held a number of evidence sessions, including one at which the senior judges were able to comment on the proposals. We also held a separate evidence session on the Government's proposed options for the future of the Ecclesiastical appointments powers held by the Lord Chancellor. We adopted a similar approach to our brief inquiry into the Government's proposals for changes to publicly funded immigration and asylum work, based on a consultation paper published in June.<sup>11</sup>

9. We receive copies of a wide variety of papers produced by the Department: these are kept under review as they arrive to assess their significance and we will raise them with Ministers as appropriate.

#### ***Task 2: To identify and examine areas of emerging policy, or where existing policy is deficient, and make proposals***

10. We made an early decision to examine the system for immigration and asylum appeals, which had been subject to considerable change in recent years and yet was still perceived as inefficient and wasteful. We have received a great deal of very valuable written evidence on the subject, but plans for early oral evidence sessions were overtaken by the announcement of the constitutional changes which we mention above. The Government's plans for further change to the immigration and asylum appeal structures mean that we are now trying to hit a moving target; but we completed our inquiries in time to inform Parliamentary consideration of the Bill implementing the latest set of changes. We have already undertaken a joint visit with the Foreign Affairs Committee to look at family visitor visa operations in India and Turkey, supplementing visits to the Immigration Appellate Authority operations at Taylor House in Islington and Hatton Cross, and all of these have been very useful to us in appreciating the problems facing the Department and the steps they are taking to tackle them, and the problems faced by applicants.

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<sup>10</sup> *Constitutional reform: a new way of appointing judges*, Department for Constitutional Affairs Consultation Paper CP 10/03 and *Constitutional reform: a Supreme Court for the United Kingdom*, Department for Constitutional Affairs Consultation Paper CP 11/03, July 2003

<sup>11</sup> *Public Consultation on Proposed Changes to Publicly Funded Immigration and Asylum Work*, Lord Chancellor's Department, June 2003

### **Task 3: To conduct scrutiny of any published draft bill within the Committee's responsibilities**

11. Our first set of formal evidence sessions, and our first Report, concerned the Courts Bill, which implemented proposals for the creation of a unified Court Service. Although the Bill followed the report of the Auld Review of the criminal courts, and was prefigured in the White Paper *Justice for All*,<sup>12</sup> it was not itself published in draft. Rather, we conducted our scrutiny as the Bill was passing through the House of Lords. Although this meant that to some extent we were again dealing with a changing situation, as amendments were made in another place, we were able to produce a Report which was referred to extensively at Second Reading of the Bill in the Commons and was also used by Members at Committee and Report Stage. Whilst the publication of legislation in draft is clearly advantageous for select committee scrutiny, the approach we took in reporting on the Court Bill may commend itself to other Committees as a way of assisting consideration of Bills which have not been considered in draft.

12. We have not so far conducted scrutiny of any other draft legislation. The Department has published two Bills in draft form, but both have been subject to detailed scrutiny by Joint Committees (the draft Mental Incapacity Bill by an *ad hoc* Joint Committee; the draft Gender Recognition Bill by the Joint Committee on Human Rights). The Department also contributed to the draft Corruption Bill, although the lead Department was the Home Office. We have indicated our intention to carry out scrutiny of the draft Criminal Defence Service Bill.

### **Task 4: To examine specific output from the department expressed in documents or other decisions**

13. The Department supplies the Committee with a wide variety of documents produced by the Department, ranging from research reports and statistical bulletins to Agency Reports and circulars. These are kept under review. In suitable cases we would consider taking oral or written evidence on them.

## **Objective B : to examine the expenditure of the department**

### **Task 5: To examine the expenditure plans and out-turn of the department, its agencies and principal NDPBs**

14. The Committee Office Scrutiny Unit assisted us with the scrutiny of the Spring Supplementary Estimates, bringing to our attention a number of matters which we raised with the Department in writing and subsequently with the Lord Chancellor himself in oral evidence.<sup>13</sup> Legal Aid is overwhelmingly the largest part of the Department's budget. We were particularly concerned by a significant overspend in this area, a matter which we pursued further at a later session with the Permanent Secretary on the Departmental Annual Report.<sup>14</sup> We will continue to keep a particularly close eye on legal aid expenditure,

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<sup>12</sup> Cm 5563, July 2002

<sup>13</sup> *op cit*

<sup>14</sup> *op cit*

and indeed have subsequently done so through a one-off session with the Chairman and Chief Executive of the Legal Services Commission (see below). In the current session, the Committee will examine the availability of civil legal aid in specialist areas.

## **Objective C : to examine the administration of the department**

### ***Task 6: To examine the department's Public Service Agreements, the associated targets and the statistical measurements employed, and report if appropriate***

15. We took written and oral evidence from the Department on the Departmental Annual Report,<sup>15</sup> a very productive exercise which we propose to repeat. As a recently established Committee, it has not been possible for us to discern trends or systematically to follow up lines of inquiry in the context of the department's Public Service Agreements and targets; but we have built on the valuable work done in previous years by the Home Affairs Committee and we hope over a period of time to be able to track progress against those targets.

### ***Task 7: To monitor the work of the department's Executive Agencies, NDPBs, regulators and other associated public bodies***

16. Our main project in this area was a detailed inquiry into the work of the Children and Family Court Advisory and Support Service (CAFCASS). CAFCASS was established in April 2001 and had been struggling ever since; our inquiry followed widespread concern which had been noted in sessions with the Lord Chancellor before the Home Affairs Committee. Our eventual report was followed by the departure of the Chairman of CAFCASS and, in response to one of our recommendations, a review of Board membership which prompted the requested resignation of the rest of the Board. Responsibility for CAFCASS has now been transferred to the Department for Education and Skills, under the Minister for Children. We hope that our Report will be the catalyst for significant change in the running of CAFCASS.

17. We have also taken evidence from the Chairman and Chief Executive of the Legal Services Commission in a wide-ranging session covering the whole of its work. Because Legal aid accounts for such a large part of the Department's budget, the Legal Services Commission has a vital role to play in the administration of the system which allows access to justice for some of the most vulnerable in our society. It must also account for very significant sums of public money. We will continue to look carefully at its work.

18. We also plan to conduct similar sessions with representatives of the other public bodies for which the Lord Chancellor is responsible and to provide a link between Parliament and two other important public office-holders associated with the Department, namely the Information Commissioner and the Electoral Commissioner.

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<sup>15</sup> Oral and written evidence of Session 2002-03, HC 973-i

### ***Task 8: To scrutinise major appointments made by the department***

19. The major appointment made during the past year was of course of the new Secretary of State for Constitutional Affairs and Lord Chancellor, Lord Falconer. We held an oral evidence session with him very shortly after his appointment, at which we discussed his plans for the new Department.<sup>16</sup>

20. We also held an evidence session with Mrs Clare Dodgson, the new Chief Executive of the Legal Services Commission: this took place in September following her taking up of her position in April. We are particularly grateful to the outgoing Chief Executive, Mr Steve Orchard, for submitting to us a “valedictory” memorandum which provided us with much useful material both for the session with his successor and for future scrutiny of the work of the LSC. This is another practice which we—and other Committees—may find useful in appropriate future circumstances.

### ***Task 9: To examine the implementation of legislation and major policy initiatives***

21. Since we have been established, the Department has been concerned chiefly with preparation for the implementation of policy initiatives, such as the unified Court Service and the creation of a Supreme Court, rather than in actual implementation. Implementation will, however, be an important part of the Department’s work in coming months and years, and we shall be keeping a close eye on progress. It may be, for instance, that a review of the implementation of the Courts Act would be a useful exercise to undertake following our Report on the Bill this year.

## **Objective D: To assist the House in debate and decision**

### ***Task 10: To produce Reports which are suitable for debate in the House, including Westminster Hall, or debating committees***

22. Our Report on the Courts Bill was “tagged” on the Order Paper at Report Stage and extensively referred to by hon. Members. Our Report on the Children and Family Court Advisory and Support Service was debated in Westminster Hall on 20 October. This was the first appearance of Mrs Hodge in her capacity as the Minister for Children. The Minutes of Evidence published in relation to our inquiry into the Judicial appointments and a Supreme Court (court of final appeal) were tagged on 16 December for a debate in Westminster Hall on the new Supreme Court.

### **All tasks: extent to which systematic structure is in place for meeting the indicative tasks listed, and response of department**

23. We have not yet fully developed a systematic structure for meeting all the indicative tasks. The choice of inquiries has been made with a view to accomplishing the various core tasks defined for committees. We have used the Scrutiny Unit for monitoring the Estimates and have received comprehensive written replies from the Department. We plan to

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<sup>16</sup> Oral evidence of Session 2002-03, HC 903-i

establish further systematic links with the Department in order to extend the range of work done to satisfy the requirements of the core tasks.

# Formal minutes

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**Tuesday 2 March 2004**

Members present:

Mr A J Beith, in the Chair

Peter Bottomley  
Ross Cranston  
Mrs Ann Cryer

Mr Jim Cunningham  
Mr Hilton Dawson  
Dr Alan Whitehead

The Committee deliberated.

Draft Report [Work of the Committee 2003], proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 23 read and agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

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

[Adjourned till Tuesday 9 March at 9.00 am

## Reports from the Constitutional Affairs Committee

The First, Second and Third Reports of Session 2002–03 were published by the Committee under its previous name, Committee on the Lord Chancellor's Department

### Session 2002–03

|               |  |                          |
|---------------|--|--------------------------|
| First Report  | Courts Bill<br><i>Government response</i>  | HC 526<br><i>Cm 5889</i> |
| Second Report | Judicial Appointments: lessons from the Scottish experience<br><i>No Government response expected</i>  | HC 902                   |
| Third Report  | Children and Family Court Advisory and Support Service (CAFCASS)<br><i>Government response</i>   | HC 614<br><i>Cm 6004</i> |
| Fourth Report | Immigration and Asylum: the Government's proposed changes to publicly funded immigration and asylum work<br><i>Government response (Second Special Report, Session 2003–4)</i> | HC 1171<br><i>HC 299</i> |

### Session 2003–04

|                      |   |        |
|----------------------|---|--------|
| First Special Report | Protection of a witness – privilege                               | HC 210 |
| First Report         | Judicial appointments and a Supreme Court (court of final appeal) | HC 48  |
| Second Report        | Asylum and Immigration Appeals                                    | HC 211 |