



House of Commons
Committee on
Standards and Privileges

**Privilege: Protection
of a Witness**

Fifth Report of Session 2003–04

*Report and Appendices, together with
formal minutes, oral and written evidence*

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Committee on Standards and Privileges

The Committee on Standards and Privileges is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

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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/standards_and_privileges.cfm. A list of Reports of the Committee in the present Parliament can be found in this volume.

Committee staff

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1 Introduction

1. On 15 January 2004, the House referred to us the First Special Report of the Constitutional Affairs Committee.¹ The Constitutional Affairs Committee² had reported that Ms Judy Weleminsky, a member of the Board of the Children and Family Court Advisory and Support Service (CAFCASS), who had submitted, on her own initiative, written evidence to its inquiry into CAFCASS,³ had informed it that, on 11 December 2003, the Lord Chancellor had sent her a letter⁴ stating that he was satisfied that there was evidence that she had failed to behave in a corporate manner; behaved inappropriately in relation to Chief Executive and staff of CAFCASS; and had refused to observe confidentiality. He continued “if established, the case could justify termination of your membership of the Board”.

2. The letter was accompanied by a dossier which the Lord Chancellor described as “detailing instances of alleged breach of your duties as a Board member with supporting documentary evidence”, and an analysis of the dossier (“the Crawley review”)⁵ by Mr David Crawley, a senior official in the Department for Constitutional Affairs with no previous involvement with CAFCASS. The dossier⁶ (“the Hewson dossier”) had been prepared by Mr Anthony Hewson, then Chairman of CAFCASS, and submitted by him to Sir Hayden Phillips, Permanent Secretary at the Department for Constitutional Affairs,⁷ on 24 September under cover of a letter in which he recommended that Ms Weleminsky be asked to resign forthwith from the CAFCASS Board and that, if she failed to do so, she should be required to leave. Ms Weleminsky, who had not previously been aware of Mr Hewson’s action, subsequently sent a copy of the Crawley review to the Constitutional Affairs Committee.⁸

3. The Hewson dossier summarises, in support of the allegation of breach of duty, the process agreed by the CAFCASS Board for reporting suspected breaches of duty, and sets out what it describes as concerns raised by a number of Board members as to Ms Weleminsky’s conduct. Several of those relate to the circumstances and nature of the evidence she gave the Constitutional Affairs Committee. It is accompanied by some background, describing patterns of behaviour to support the alleged breach of duty, and a

1 Constitutional Affairs Committee: First Special Report of Session 2003–04: *Protection of a witness—privilege*, HC 210.

2 Until 11 September 2003, the Committee was named the Committee on the Lord Chancellor’s Department. In June 2003, the Prime Minister had appointed a Secretary of State for Constitutional Affairs, who subsumed the responsibilities of the Lord Chancellor. We have referred to it throughout as “the Constitutional Affairs Committee”.

3 Committee on the Lord Chancellor’s Department: Third Report of Session 2002–03: *CAFCASS*, HC 614–II, Ev 226.

4 See Appendix 1. (This letter has previously been published by the Constitutional Affairs Committee, First Special Report of Session 2003–04, HC 210, Appendix 1.)

5 Constitutional Affairs Committee: First Special Report of Session 2003–04, HC 210, Appendix 1, p 4.

6 Not reported.

7 The Lord Chancellor has, since June 2003, also been Secretary of State for Constitutional Affairs and Sir Hayden Phillips has been Permanent Secretary of the Department for Constitutional Affairs. This new department subsumed the former Lord Chancellor’s Department. The Lord Chancellor’s statutory functions in relation to CAFCASS were vested in him in that specific capacity, and we continue therefore describe him as ‘Lord Chancellor’ in this Report.

8 The Crawley review was published by the Constitutional Affairs Committee, First Special Report of Session 2003–04, HC 210, Appendix 1, p 4.

substantial amount of supporting material. One of the items cited in support of the alleged breach of duty is the letter she submitted to the Constitutional Affairs Committee.

4. The Crawley review summarises and analyses the allegations into three general areas and six specific areas, the first of which was that she presented separate evidence to the CAFCASS inquiry, in a manner which undermined the organisation and without consultation with the Chairman or other Board members. We discuss the Crawley review in more detail below.

5. Following an exchange of correspondence between its Chairman and the Lord Chancellor, the Constitutional Affairs Committee concluded:

“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.”⁹

6. In the course of our inquiry, we took oral evidence from Ms Weleminsky, Mr David Crawley, Sir Hayden Phillips, Mr Anthony Hewson, the Lord Chancellor, and Mr David Normington, Permanent Secretary at the Department for Education and Skills. This evidence is published with our report. We have also received a substantial number of written submissions and other documents, including advice from the Attorney General on some of the legal issues involved. We are grateful to all who have contributed to our inquiry.

7. A complicating feature of the inquiry has been that, as part of the machinery of Government changes announced by the Prime Minister in June 2003, *policy* responsibility for CAFCASS passed to the Minister for Children in the Department for Education and Skills. The Lord Chancellor’s *statutory* responsibility for CAFCASS was formally transferred to the Secretary of State for Education and Skills with effect from 12 January 2004. In the intervening period, significant decisions were in practice taken by agreement between the two sets of Ministers.¹⁰ However, Mr Normington did not think that the division of responsibility had any practical consequences in relation to this case.¹¹

8. As he is also a member of the Constitutional Affairs Committee, Ross Cranston decided to stand aside from our inquiry into this matter,¹² and withdrew from meetings for the duration of any relevant proceedings. Mr David Heath also took no part in these proceedings in view of his Front Bench responsibilities in this area.

9 Constitutional Affairs Committee: First Special Report of Session 2003–04, HC 210, para 7.

10 Appendix 4, para 6.

11 Ev Q 240.

12 See Minutes of Proceedings, 10 February 2004.

2 The key issues

9. The vital importance of witnesses giving evidence to committees free of any risk of interference or recrimination by others has long been recognised by the House. Unless witnesses are able to give their evidence fully, honestly and frankly, the effectiveness of this core element of parliamentary scrutiny would be seriously impaired. As the Clerk of the House pointed out,¹³ the House resolved, nearly three centuries ago, that “the presuming to call any person to account, or to pass censure upon him, for evidence given by such person before this House, or any Committee thereof, is ... an high violation of the Privileges of this House.” The sentiments underpinning this resolution remain as true today as they were then. **Select committees have a key role to play in enabling the House to hold the Government to account and witnesses must be free to give evidence without fear of retribution.**

10. As the Clerk of the House’s memorandum makes clear, any interference with the undoubted right of the House or its committees to take evidence as they consider appropriate, or to seek to punish someone for evidence they have given, may be regarded as a contempt of the House.¹⁴ In assessing this, the potential impact of the action on others, such as whether it might deter future witnesses, is also relevant.¹⁵ In common parlance, such actions are frequently described as ‘breaches of privilege’. Strictly speaking, this term has a narrower meaning¹⁶ and we have therefore used the expression ‘contempt’ in our conclusions. It has, however, been used in the evidence in the terms in which it is commonly understood.

11. The fundamental question for us is therefore whether any of the action taken against Ms Weleminsky has been a consequence, directly or indirectly, of her submitting evidence to the Constitutional Affairs Committee. We have also addressed two related questions. The first is whether there were any reasonable grounds for Ms Weleminsky to think that any action *was*, in whole or in part, directly related to her submitting evidence. The second is whether Ms Weleminsky’s treatment, whatever the intention lying behind it, might reasonably deter her or others from giving evidence, and hence indirectly endanger the House’s right to hear evidence from whomsoever it wishes.¹⁷

13 Appendix 3, para 3.

14 Appendix 3, para 3.

15 Appendix 3, para 4.

16 For precise explanations of what constitutes ‘Parliamentary privilege’ and ‘contempt’ respectively see *Erskine May*, (22nd Edition) p65 and 108. (23rd Edition: p 78 and 128.)

17 This consideration has arisen in a previous case. Appendix 3, para 16..

3 The sequence of events

12. We have examined closely the sequence of events from the submission by Ms Weleminsky of her evidence, to the present time. In essence, this appears to fall into two distinct but inter-related strands:

- Ms Weleminsky’s submission of written evidence to the Constitutional Affairs Committee and her notification to CAFCASS Board colleagues that she had done so; the CAFCASS Board’s discussion of this action on 17 June 2003; Mr Hewson’s letter to Sir Hayden Phillips of 24 September¹⁸ and the accompanying dossier; Mr Crawley’s examination and analysis of that dossier, completed on 9 October; and further consideration of the matter by Ministers and officials culminating in their decision on 31 October to take no further action for the time being on the allegations relating to Ms Weleminsky’s personal conduct;¹⁹ (the first strand);
- Publication of the Constitutional Affairs Committee report on 24 July; Ministers’ acceptance of the recommendation that there should be a fundamental review of CAFCASS Board membership; Professor Sir Clive Booth’s review of board membership, submitted to Ministers on 9 November, which recommended that all existing board members be asked to resign; Ministerial acceptance of the recommendation and decisions on how to implement it, leading on to invitations to resign being issued to all CAFCASS Board members by the Lord Chancellor on 2 December; Ministers’ response to the refusal by Ms Weleminsky alone to resign, leading to the letter from the Lord Chancellor of 11 December and her subsequent suspension (the second strand).

The first strand

13. Ms Weleminsky decided to offer her own written perspective as a CAFCASS Board member to the Constitutional Affairs Committee after watching a video of the Chairman and the Chief Executive giving evidence,²⁰ reading the other evidence on the Committee’s website and noting “a number of queries being raised about the role and effectiveness of the Board”,²¹ and accordingly wrote to the Clerk.²² The Committee found her evidence most useful and relied on it considerably when considering its report.²³ The matter of her letter to the Committee was discussed, in private, at the CAFCASS Board meeting on 17 June 2003. The discussion was initiated by the Chairman, but had been specifically requested by another Board member. The minutes record Ms Weleminsky had confirmed in writing the need for the matter to be discussed by the Board.²⁴

18 Not reported.

19 Appendix 4, Annex A.

20 This evidence was given on 22 May 2003. Committee on the Lord Chancellor’s Department, Third Report of Session 2002–03, HC 614, Volume II, Ev 49.

21 E-mail from Ms Weleminsky to fellow Board members, and the Chief Executive, 6 June 2003, not reported.

22 Published by the Constitutional Affairs Committee in its Third Report of Session 2002–03, HC 614–II, Ev 226.

23 Constitutional Affairs Committee: First Special Report of Session 2003–04, HC 210, para 1 and Appendix 2, p 12.

24 Not reported.

14. A number of Board members commented critically on the implications of Ms Weleminsky's action. One member suggested that "perhaps the time had come for Judy Weleminsky to consider her position on the Board". At the conclusion of the discussion, Mr Hewson "noted that eight members had effectively expressed a lack of trust and or confidence in Judy Weleminsky and she now needs to reflect on this. The Chair will set up a meeting with her and the Deputy Chair within the next fourteen days ...".²⁵ There was no formal Board resolution on the matter.

15. In evidence to us, Mr Hewson confirmed that he saw the proposed meeting as a formal meeting in the context of the Board's Performance and Conduct Procedure in respect of concern, complaint or allegation about the level of performance or conduct of an individual Board member or where there has been a suspected breach of the standards set out in the Code of Practice and Rules of Conduct for Board members. In the event, this came to nothing, as Ms Weleminsky declined to attend such a meeting. Asked whether Ms Weleminsky's evidence was the "tipping point" in deciding to take action against her, Mr Hewson said on several occasions that it was not.²⁶

16. The CAFCASS Chief Executive has confirmed that there was no further discussion of Ms Weleminsky's conduct at subsequent Board meetings.

17. On 24 September 2003, following a meeting with Sir Hayden Phillips the previous day, Mr Hewson wrote to him the letter already mentioned at paragraph 2 above, with which he enclosed the Hewson dossier. The letter mentioned the difficulties he and other Board members had experienced in working with Ms Weleminsky, and commented:

"... I believe that events significantly changed on the 17th June 2003 when practically all Board members expressed in her presence, their deeply felt concerns about her behaviour. I think it important to clarify that this expression of discontent was an accumulation of much frustration that had built up over the previous 2 years. So it is very important not to identify the events related to her decision to write to the Select Committee, as in any way central to the comments made by Board members at that meeting or indeed to my decision to write to you today. On the contrary every member of the Board recognises the importance and value of the Select Committee process and the right of any individual to provide information and evidence as they consider their public duty. ...".

18. Mr Hewson also described the recommendation, and his own resignation from the Board which he had tendered to Sir Hayden Phillips the previous day, as "part of a package of measures that will help rebuild some of the confidence that was lost as a result of the Select Committee report".²⁷

19. On 7 October, Mr David Crawley was appointed "to provide a rapid and independent assessment of the evidence contained in the Hewson dossier".²⁸ He was to complete his task by 9 October²⁹ "given the pressure for speed from the members of the CAFCASS Board".

25 CAFCASS Board minutes, 17 June 2003, Item 16 (Matters taken in private), not reported.

26 Ev Qq 116, 120, 136, 157-160.

27 For the remainder of the package, see Ev 22.

28 Appendix 4, para 10.

29 See also Ev Q 37.

He had no formal written terms of reference, but was, according to the Department, briefed orally “to conduct a review of the evidence in the dossier, to analyse whether in his view the evidence amounted to evidence of unfitness, but not to make recommendations on what actions might be taken”. His review was also intended, according to the Department for Constitutional Affairs, to reveal whether further investigation, such as interviews with any of the principal players, was needed.³⁰

20. In his evidence, Mr Crawley told us that the essence of his task was “to review the dossier in front of me in ... a very short period of time and reach a view on the nature of that material and the extent to which it could reasonably form the basis for some possible action ...”.³¹

21. Asked whether his conclusions would have been the same if he had explicitly put on one side the giving of evidence to the Constitutional Affairs Committee, Mr Crawley maintained that the fact that Ms Weleminsky gave evidence was not part of his assessment, but considered that it would have been quite difficult to have ignored some of the impacts which had flowed from the way in which she did so. He pointed out that a number of other issues were “absolutely critical” and summed up his position thus:

“On the whole, my view is that I would have reached the same broad conclusions about Ms Weleminsky’s inability to act in a corporate manner and about her ability to ... keep matters confidential when, in a broad and commonsense way, that was what seemed the right thing to do”.³²

22. Mr Crawley told us that, in submitting his report to the Department, he clearly considered that the totality of the dossier provided sufficient evidence to justify an invitation to Ms Weleminsky to resign, but that if there was any intention of proceeding to dismissal, due process would have to be followed.³³ He also saw what he was trying to do as “to summarise ... the charge sheet that emerged from the dossier. The dossier did not in every respect clarify and specify quite what it meant, but looking through the dossier in some detail, the inability to act corporately was absolutely at the core of the whole dossier from beginning to end”.³⁴

23. In his report, Mr Crawley concluded that the six specific points he had identified “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”.³⁵ He continued, “They therefore do much to demonstrate the main charge which is an inability to behave corporately ... 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 ... I think it is right to conclude on the basis of

30 Appendix 4, para 10.

31 Ev Q 32.

32 Ev Q 33.

33 Ev Qq 38–9.

34 Ev Q 55. See also Ev Q 56.

35 Constitutional Affairs Committee: First Special Report of Session 2003–04, HC 210, p 11, para 30.

this evidence that Ms Weleminsky does not behave appropriately as a Board member of CAFCASS”.³⁶

24. Mr Crawley suggested that further inquiries should be made in two specific areas. As the substance of the “main charge” rested in his view to a significant extent on the views of the other Board members and the Chairman, he considered that it might be useful to discuss the issue with them “in order to provide a fuller picture”. It was also “not entirely clear” to him how far the various charges relating to interaction with Executive members and staff had been demonstrated by the material he had. He thought there would be value in exploring this question further, particularly with staff themselves.³⁷

25. In his evidence to us, Mr Crawley implicitly conceded that, with the benefit of hindsight, he should specifically have excluded the giving of evidence to a Select Committee as a reason for taking action.³⁸

26. Sir Hayden Phillips told us that, following the submission by Mr Crawley of his report, officials then considered “what the right process should be in terms of fairness, in terms of analysis, in terms of legal advice ...”.³⁹ Mr Normington told us that there was “a long period of consideration of the Hewson dossier and then the Crawley report in the DCA in the period from around the end of September through to the Booth report.”⁴⁰ DCA told us that, at the end of October, the Lord Chancellor, in agreement with the DfES Ministers, decided to take no further action on the case, as Ministers were now pursuing a broader strategy to reform the entire CAFCASS Board, following acceptance of the Constitutional Affairs Committee recommendation that there should be a fundamental review of its membership.⁴¹

The second strand

27. On 16 October 2003, following acceptance of the Constitutional Affairs Committee recommendation, Ministers asked Professor Sir Clive Booth to review the membership of the board of CAFCASS. Sir Clive reported on 9 November and a key component of his conclusions was that the Board needed a fresh start. He therefore recommended that all existing CAFCASS Board members be invited to resign, but without prejudice to their right to apply for appointment to the new Board, which he envisaged would be appointed quickly. As part of his review, Sir Clive interviewed, amongst others, all the current Board members, and the former Chairman.

28. Ministers decided to accept Sir Clive’s recommendation for a fresh start, but considered his proposed implementation mechanism impracticable.⁴² Rather than allowing the existing Board to continue under the acting Chairman, Angela Killick, until a new Chairman and Board had been appointed, Ministers decided instead to appoint a new

³⁶ *Ibid*, para 31.

³⁷ *Ibid*, paras 31–32.

³⁸ Ev Qq 49–53.

³⁹ Ev Q 67.

⁴⁰ Ev Q 277.

⁴¹ Appendix 4, para 12. See also Ev Q 67.

⁴² Ev 39.

Chairman quickly, and also a small interim Board, to act until the new permanent Board was selected. As part of this strategy, the Lord Chancellor wrote to each CAFCASS Board member on 2 December, inviting them to resign and setting out the proposed arrangements for the transitional Board. They were asked to reply by noon on 8 December.

29. Ms Weleminsky wrote back to the Lord Chancellor on 3 December declining the invitation, and offering to work with the members of the transitional Board. On 9 December, she had a meeting with Mr David Normington, in which she maintained this position. The four other Board members initially reluctant to resign also had meetings with Mr Normington, on 9 December.⁴³

30. By the morning of 11 December, Ms Weleminsky was the only CAFCASS Board member who had not agreed to resign. She had originally been appointed to serve until 31 March 2004. Accordingly, if Ministers wanted a clean sweep of the old Board, she would have to be dismissed. The Lord Chancellor could only so act if one of the statutory grounds for dismissal of a CAFCASS Board member could be made out. In practice, the only option available to him was to seek to dismiss her on grounds of inability or unfitness, in his opinion, to carry out the functions of a Board member.⁴⁴

31. The Lord Chancellor told us that, having regard to Mr Hewson's complaint and in the interests of CAFCASS if it was made out, he had concluded that it would be better, on balance, if Ms Weleminsky were to be removed. Ministers in DfES had told him that the incoming Chairman of CAFCASS shared this view.⁴⁵ Mr Normington confirmed this⁴⁶ and also said that "to have one member of the Board, and actually a very controversial member, serving on the interim Board was not going to give us the fresh start we needed".⁴⁷

32. The Lord Chancellor therefore wrote to Ms Weleminsky saying that he was satisfied that there was evidence that she had:

- failed to behave in a corporate manner;
- behaved inappropriately in relation to the Chief Executive and staff of CAFCASS; and
- refused to observe confidentiality.

He also said that, if established, the case could justify termination of her Board membership and sought her comments before making any final decision. He also sought her agreement, which she subsequently gave, to suspension from the CAFCASS Board, on full pay, while he reached a decision on the matter.

33. In support of this action, the Lord Chancellor sent with his letter copies of the Hewson dossier and the Crawley review, but not the covering letter which Mr Hewson attached to his dossier. He also informed Ms Weleminsky that, on 24 September, the Chairman had

43 Pip O'Byrne, Nalini Varma, Nadine Watson-Cutts and Leonie Jordan.

44 The Children and Family Court Advisory and Support Service (Membership, Committee and Procedure) Regulations 2000, SI 2000/3374, Article 4(3)(b).

45 Ev Qq 192–5.

46 Ev Q 241.

47 Ev Q 235.

made a recommendation that her membership be terminated.⁴⁸ Ms Weleminsky told us that the Lord Chancellor's letter was the first she knew of Mr Hewson's recommendation. She has responded to his request for comments, and remains on paid suspension from the CAFCASS Board pending a decision.

48 A copy of this letter was subsequently sent to her on 13 February 2004.

4 Conclusions

34. **One thing this inquiry has revealed beyond doubt is the inadequacy of the guidance on parliamentary privilege currently issued by departments, both for use by Non-Departmental Public Bodies, and for internal departmental use.⁴⁹ We are glad that the Government appears to have recognised this, and is taking steps to remedy this deficiency. We urge the Government to treat this as a matter of urgency. The House should be consulted on the terms of any proposed guidance.**

35. We now turn to each of the key points on the sequence of events to see what account was taken of parliamentary privilege.

The CAFCASS Board meeting on 17 June

36. At the Board meeting on 17 June, the Board reached no collective decision on Ms Weleminsky's conduct in submitting evidence to the Constitutional Affairs Committee. However, the Chairman decided, on his own responsibility, to invoke the Corporate Governance Code, in effect treating the criticisms made as a complaint against her. Decisions on how such matters are dealt with under the Code are for the Chairman.

37. In his oral evidence, Mr Hewson sought to distinguish between the 'what'—the principle of giving of evidence to the Constitutional Affairs Committee and the 'how'—what she said, and the impact this had on relations with her Board colleagues.⁵⁰

38. Mr Hewson said that his Board colleagues considered that Ms Weleminsky had every right to go to the Constitutional Affairs Committee, "There was never any doubt about her right to do that, but what they did not agree with was the way in which she had put forward various points of view ... without consulting with anybody else during the process". He saw the meeting he proposed to initiate with Ms Weleminsky following the discussion "as a continuation of the process where we had had two formal meetings previously and this conduct continued unabated".⁵¹

39. We do not believe that the distinction which Mr Hewson seeks to draw can properly be drawn. In effect, he appears to be saying that it would have been entirely acceptable for Ms Weleminsky to have given evidence if she had stuck to a collectively agreed line, but not otherwise. We reject this. **The freedom to give evidence must be absolute and any decisions as to whether to accept it and what weight to place on it must be for the Select Committee alone, not the body, not least because it might otherwise be possible for a majority to present, unchallenged, a false or misleading face to the Committee, and thereby subvert the process of Parliamentary scrutiny.**

40. We do not accept Mr Hewson's evidence that Ms Weleminsky's evidence to the Constitutional Affairs Committee was not 'the final straw'.⁵² Mr Hewson, with the active

49 Appendix 4, para 18; Ev Qq 83, 107.

50 See Ev Qq 116 and 131–6. See also Ev Q 145.

51 Ev Q124. See also Ev Q130.

52 Ev Qq 120, 127, 135–40.

encouragement of the majority of his Board, sought to initiate the formal disciplinary process against Ms Weleminsky after the 17 June Board meeting as a result of the evidence she gave to the Constitutional Affairs Committee. **We do not believe that a code of conduct or Board rules can override the rights and obligations of witnesses to select committees, a view in which we understand the Attorney General concurs. Mr Hewson’s attempt to ‘call Ms Weleminsky to account’ for the evidence she gave was, in our view, a contempt of the House.**

Mr Hewson’s submission of the letter and the dossier

41. At the heart of the dossier submitted by Mr Hewson is a series of alleged breaches of duty. Several points made relate to the evidence Ms Weleminsky gave and the letter to the Constitutional Affairs Committee is cited as one of the patterns of behaviour to support the alleged breach of duty.

42. In his covering letter, Mr Hewson makes no reference in terms to breach of duty, but states that “she is quite unable to act as part of a team or to accept any form of code of behaviour and conduct that one would normally associate with the practice of good corporate governance.” As we have already pointed out,⁵³ he sought to establish that events related to her decision to submit evidence were in no way central to his recommendation that Ms Weleminsky resign or be removed, once again seeking to distinguish the ‘why’ from the ‘how’.

43. As we have said above, we do not believe that such a distinction can properly be drawn. We have no doubt, on the evidence before us that, taking the letter and the dossier together, Mr Hewson’s recommendation was in reality founded in part on the evidence that Ms Weleminsky gave. By making the recommendation that she resign or be required to leave the CAFCASS Board, he was in effect seeking to censure her, and her evidence was part of the grounds. **In our opinion, this was a repetition of the contempt to which we have just referred.**

The Crawley review

44. Mr Crawley defined what he described as ‘the main charge’ as “an inability to behave corporately”, in essence picking up one of the main themes of Mr Hewson’s letter as the key element, the underlying contention of the dossier. The Department for its part was expecting the Crawley review to demonstrate whether the evidence amounted to unfitness.⁵⁴ The lack of clear terms of reference for the review undoubtedly led to some of the subsequent difficulties.

45. Mr Crawley conceded that his analysis gave no evidence that he was aware of the rules of parliamentary privilege and agreed that this was an omission,⁵⁵ although he maintained that he was “perfectly well aware of the sensitivity of the fact that Ms Weleminsky had given evidence to the Select Committee”.⁵⁶ He had not intended an implication of criticism

53 Para 15.

54 Appendix 4, para 10.

55 Ev Q 31. See also Ev Q 44.

56 Ev Q 40.

of the evidence she gave to be read into his reporting of the fact that the remarks had an impact on subsequent Board discussions.⁵⁷ He also told us that it would have been quite difficult to have ignored some of the impacts which flowed from the way in which she had given evidence. In essence, therefore, he too was making a similar illusory distinction to that for which we have criticised Mr Hewson. With the benefit of hindsight Mr Crawley recognised that he ought to have addressed the issue of parliamentary privilege. While accepting that the document was produced under pressure of time,⁵⁸ it is clear that its reference to Ms Weleminsky's evidence was based on an inadequate grasp of the fundamentals of parliamentary privilege.⁵⁹ The centrality of this document to subsequent proceedings makes this particularly unfortunate. More care should have been taken, especially as this was an internal document never intended for open publication and therefore not subject to any external scrutiny or review. **We are surprised that an official of Mr Crawley's seniority failed to grasp the sensitivity of the references in the dossier to parliamentary proceedings and we take the view that Mr Crawley's inclusion of references to the nature of Ms Weleminsky's evidence in his review in the way he did constituted a contempt.**

Further consideration of the matter up to 31 October

46. As Departmental examination subsequent to the Crawley review led to no action before Ministers decided to abandon disciplinary moves against Ms Weleminsky based directly on Mr Hewson's recommendation, we do not consider this further here. This is, however, highly relevant to the handling of the matter after Ms Weleminsky refused to resign, and we consider it further at paragraph 56 below.

The Booth report and Ministerial decisions on its recommendations

47. We have seen Professor Sir Clive Booth's report, in which he recommended that the whole of the CAFCASS Board be invited to resign. It is clear that he treated Ms Weleminsky no differently from any other Board member and has confirmed that he was not aware of Mr Hewson's recommendation when conducting his review. We are satisfied that Ms Weleminsky's evidence to the Constitutional Affairs Committee had no effect on the conduct or conclusions of his review.

48. Ministers' acceptance of Professor Sir Clive Booth's principal recommendation appears to have been based on the intention of establishing a new CAFCASS Board as soon as possible. The chosen strategy was a general one—to seek the resignations of all the existing Board members, with dismissal as the preferred option in respect of any who refused. Professor Booth's report gave Ministers reasonable cause for optimism that the latter option would prove unnecessary. We have seen no evidence to suggest that Ms Weleminsky's evidence played any part in influencing Ministers to adopt this strategy.

57 Ev Q 42.

58 Ev Q 48.

59 Ev Q 31.

Implementation of the Ministerial decision

49. A number of CAF/CASS Board members besides Ms Weleminsky were reluctant to resign, and the next step was for Mr David Normington to meet all five members who either refused to resign or were reluctant to do so, to seek to persuade them to. We have seen the official notes of all these meetings, and there is no evidence in these that Ms Weleminsky's evidence was used as an argument to persuade her to resign.

50. In the event, Ms Weleminsky was the only Board member not to agree to resign. Ministers were therefore faced with the choice of either allowing her to serve out the remaining four months of her term of office, or seeking to dismiss her from the CAF/CASS Board. They chose the latter option. We are satisfied that, in making this choice, Ministers had regard only to their policy objective of giving CAF/CASS a fresh start as soon as possible. Any other Board member who had declined to resign would also in our view have been so treated. We do not therefore consider that any question of privilege arises in relation to Ministers' decision to seek to dismiss Ms Weleminsky.

51. The first step towards the implementation of this decision was the Lord Chancellor's letter of 11 December to Ms Weleminsky, with which he enclosed copies of the Hewson dossier (but not the original covering letter) and the Crawley review. In his letter, he stated that he was satisfied that there was evidence that Ms Weleminsky had:

- 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.

and that, if established, the case could justify termination of her Board membership.

52. While he did not specify the evidence which had led him to this conclusion, we have no doubt, given the similarity of the grounds described above with the three general areas of criticism identified in the Crawley review,⁶⁰ that it would have been reasonable to conclude that the Lord Chancellor was, by implication, praying in aid the contents of both documents. Once this assumption is made, the fact that Ms Weleminsky gave evidence to the Constitutional Affairs Committee would inevitably appear to have been one of the grounds for seeking to dismiss her.

53. Both the Lord Chancellor⁶¹ and Sir Hayden Phillips⁶² have made it clear that the letter of 11 December was not in any way founded on an attempt to discipline her for giving evidence. They both concede, though, that, given the nature of the two supporting documents, both of which include reference to this, it could be so construed, in contradiction both of their intentions and their understanding that it would be improper to do so.⁶³ The Lord Chancellor conceded that a serious mistake had been made⁶⁴ and

60 Constitutional Affairs Committee: First Special Report of Session 2003–04, HC 210, p 5, para 5.

61 Ev Q 176.

62 Ev Qq 62, 90, 92–94.

63 Ev Q 92.

64 Ev Q 199.

accepted responsibility.⁶⁵ He also said that he “had looked at the attachments earlier and the letter became detached from them. When I was signing the letter, I did not go back to the attachments and see what the overall effect would be ... what I failed to clock was to put three documents together and you could only come away with one conclusion, that the Select Committee was part of [*the grounds for action*]”.⁶⁶

54. The Lord Chancellor has apologised to Ms Weleminsky for giving the impression that her evidence was one of the grounds, and has assured her that it would not be taken into account when decisions are taken.⁶⁷ The Secretary of State for Education and Skills has reiterated this assurance, which we welcome.

55. While we accept that it was not the Lord Chancellor’s intention to penalise Ms Weleminsky for giving evidence, the letter and enclosures nevertheless clearly gave the unfortunate impression that it was. A subsequent apology is not, however, sufficient to undo the original damage, and it has been demonstrated in earlier cases⁶⁸ that it is not necessary to establish malicious intent to find that a contempt has been committed. Whatever the intentions of Ministers and their officials in this case, they have themselves conceded that the letter of 11 December, with its enclosures, could be interpreted as a punishment for the giving of evidence to a select committee of the House. **We therefore conclude, on the basis of the facts admitted in evidence, that, even in the absence of intent, the issuing of the letter of 11 December and enclosures constituted a contempt.**

56. We are in any case surprised that the Crawley review and the Hewson dossier were the sole evidence used in support of the action proposed in the letter. Ministers had already been warned by Professor Sir Clive Booth that considerable practical difficulties would surround any attempt to dismiss individual Board members. It is clear that no general strategy had been developed for this eventuality. It is also clear that, in the three weeks between the submission of the Crawley review and Ministers’ decision to suspend the examination of the allegations against Ms Weleminsky, nothing new of substance appears to have emerged to strengthen the case against Ms Weleminsky. It therefore did indeed rest largely on a 24 hour examination of the Hewson dossier, despite Mr Normington’s assertion to the contrary.⁶⁹ We would have expected a step of this seriousness to have been planned and considered with rather more care and attention, and rather more respect for the possible rights of the individual concerned and appreciation of the issue of parliamentary privilege, than seems to have been evinced in this case.

57. Finally, we address whether the treatment of Ms Weleminsky might be, or might have been, likely to deter her, or others, from giving evidence to select committees in the future. We believe that might indeed have been the consequence if the matter had not been brought speedily into public view. **Had it not been for Ms Weleminsky’s vigilance in bringing the matter to the attention of the Constitutional Affairs Committee and the speed with which it in turn brought the matter to the attention of the House, those who**

65 Ev Q 178.

66 Ev Q 214.

67 Appendix 2.

68 See, for example, the Report from the Committee of Privileges (Alleged misconduct affecting a parliamentary agent), Session 1988–99 (HC 502), paragraphs 3, 8; Appendix 2, p 42.

69 Ev Q 277.

had followed the case, as well as the witness herself, might well have formed the view that she *was* being dismissed from the CAF/CASS Board for giving evidence to the Constitutional Affairs Committee. The new guidance to be issued both to Departments and Non-Departmental Public Bodies should lead to a much better understanding of parliamentary privilege in those quarters. We accept that there is a need for proper corporate governance procedures in such bodies, and we recommend that, for the avoidance of doubt, any rules they may adopt make explicitly clear the need to respect parliamentary privilege in their application.

General conclusions

58. The Lord Chancellor, and all the officials who gave evidence maintained that they were aware of the existence of parliamentary privilege, and acknowledged its importance. However, they also conceded that there was no hard evidence pre-dating the letter of 17 December 2003 to the Lord Chancellor from the Chairman of the Constitutional Affairs Committee which alerted them to the issue. The difficulties which have arisen in this case might have been avoided if parliamentary privilege had been at the fore-front of the minds of all concerned, rather than at the back.

59. **We do not consider that any further action should be taken by the House in respect of Mr Hewson, Mr Crawley or the Lord Chancellor.** So far as Mr Crawley and the Lord Chancellor are concerned, we understand the sequence of events that took place and do not find that there was any motive to penalise a witness. In the case of Mr Hewson, we believe that his actions were influenced in part by his misunderstanding of both the concept and the practical implications of parliamentary privilege, matters about which there was no reason to have expected him to be expert, and on which he and his Board colleagues appear to have been given little or no official guidance.⁷⁰ Furthermore, there was a clear and admitted lack of detailed guidance by Government to Non-Departmental Public Bodies on the application of parliamentary privilege.

60. The issuing of proper guidance on parliamentary privilege to all Government Departments and public bodies ought to mean that no similar case to this one should arise in the future. Nonetheless, we believe that all committees have a responsibility to continue to be vigilant in this matter, not only in the interests of their own particular witnesses and their own inquiries, but also to protect the undoubted constitutional rights and duties of the House and all its committees, and the rights of those who give evidence to them.

70 Ev Q 115; Ev 22, 23.

Appendix 1: Letter to Ms Judy Weleminsky from Lord Falconer of Thoroton QC, 11 December 2003

Thank you for your letter of 3rd December 2003.¹ 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 CAFCASS. 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 CAFCASS 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 CAFCASS (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 (attached).² I asked a senior member of my Department with no previous involvement with CAFCASS to review this dossier. On 9 October 2003, he reported to me with his analysis of the dossier (attached).³ 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 CAFCASS 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 CAFCASS;
-

1 Not reported.

2 Not reported.

3 Not reported.

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 5.00 pm 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

Appendix 2: Letter to Ms Judy Weleminsky from Lord Falconer of Thoroton QC, 21 January 2004

Thank you for your letters of 12th December and 2nd January.¹ I confirm that I received the comments that you enclosed in the second of these letters.

You ask me to clarify the process after receiving your written comments. I set out the process as fully as I could in my letter of 11th December. Responsibility for CAF/CASS has now transferred from my Department to the Secretary of State for Education and Skills, Charles Clarke. I have passed your comments to him, and can assure you that Mr Clarke will, as I would have done, take full and proper account of your comments before considering whether to terminate your membership or to lift the suspension of your membership.

It would not be appropriate for me to comment on a matter that has been referred to the Standards and Privileges Committee, other than to repeat what I said in my letter of 8th January to the Chairman of the Select Committee, Alan Beith (a copy of which is enclosed).² That is to say that my decision to suspend you from the Board did not depend wholly, or in part, on the fact that you had given evidence to the Select Committee. I should have made that clear, and I apologise for not doing so. The fact of your giving evidence will not form part of any action which may be taken against you by the Secretary of State for Education and Skills.

Thank you for your co-operation in this matter.

21 January 2004

1 Not reported.

2 Constitutional Affairs Committee, First Special Report of Session 2003–04: *Protection of a witness—privilege*, HC 210, Appendix 3.

Appendix 3: Memorandum from the Clerk of the House

The CAFCASS Privilege Case

Origins of the present Inquiry

1. This inquiry arises from a complaint of privilege from the Chairman of the Constitutional Affairs Committee, Mr Beith. The complaint was given precedence by the Speaker on 14 January, following the publication of a Special Report from the Committee,¹ which drew attention to a claim that a member of the board of CAFCASS,² Ms Judy Weleminsky, had been adversely treated as a result of evidence which she had submitted to that Committee earlier in the year. After a short debate in the House on the following day,³ the Committee's Special Report was referred to the Committee on Standards and Privileges, without a division. I understand that the background has been described in greater detail in a paper prepared by the Clerk of the Committee.

2. It may be noted that in considering a matter of privilege drawn to his attention under the procedure which has operated since 1978,⁴ the Speaker's responsibility is to decide only whether issues are involved which justify giving the matter precedence. It may also be noted that the special report from the Constitutional Affairs Committee avoids pre-judging the issue of a possible contempt, concluding only that the events concerning Ms Weleminsky "might be regarded" as a *prima facie* breach of privilege, and that the matter should therefore be referred to the Committee on Standards and Privileges.

Molestation of witnesses

3. There is no doubt that the House may treat as a contempt any conduct which is intended to deter prospective witnesses from giving evidence before a committee; and since 1900 the House has passed a Resolution to that effect at the beginning of every session.⁵ The House may also, and on the same principle, regard as a contempt any molestation of or threats against those who have already given evidence:⁶ indeed, on 10 May 1733 the House resolved in unequivocal terms that "the presuming to call any person to account, or to pass censure upon him, for evidence given by such person before this House, or any Committee thereof, is ... an high violation of the Privileges of this House".⁷

4. The current case appears to fall into the latter category of potential contempts; but the Committee will bear in mind in its deliberations on the matter that it could in certain

1 Constitutional Affairs Committee, First Special Report of Session 2003–04: *Protection of a witness—privilege*, HC 210.

2 The Children and Family Court Advisory Support Service.

3 Official Report, 15 January 2004, Vol 416, cols 975–983.

4 This requires a Member wishing to raise a complaint to do so in the first instance in writing to the Speaker, who may subsequently inform the House of any decision which he has taken on the matter of precedence.

5 E.g. Votes & Proceedings, 26 November 2003.

6 *Erskine May*, 22nd edn, pp 126–27.

7 CJ (1732–37), 146.

circumstances be argued that actions taken against an individual in respect of evidence previously given might act as a deterrent against that individual, or others, giving evidence in the future—a concern expressed by several Members in the debate on 15 January. I believe that the Committee may already have had its attention drawn to the fact that questions concerning earlier suggestions that other individuals had been discouraged from giving evidence were put to the Chairman and the Chief Executive of CAFCASS when they gave evidence to the Constitutional Affairs Committee in May 2003.

Previous relevant cases

5. Three previous cases in modern times have involved allegations similar to those which arise on this occasion.

The Cambrian Railway case: In 1892, the Select Committee on Railway Servants (Hours of Labour) concluded that an employee had been dismissed by the Cambrian Railway largely as a result of the evidence he had given to the Committee. The House found this to be a breach of privilege and the railway company's directors and manager were summoned to the Bar of the House and admonished by the Speaker.⁸

The Grimshaw case: In 1976, the Committee of Privileges considered a Special Report from the Select Committee on Nationalised Industries in the previous Session, concerning allegations that an employee of the National Coal Board, who had been made redundant by the Board, had been dismissed because he had given evidence to the Committee in a manner which was critical of the Board. In this case the Committee of Privileges reported that they were satisfied that there was no evidence “that Mr Grimshaw's treatment was adversely affected by his having been a witness before Parliament”.⁹

The Dagnan case: Most recently, in 1989 the Committee of Privileges considered a complaint referred by the House on the motion of a Private Member (Ms Short), that an employee of Birmingham City Council had been adversely treated in his employment as a consequence of his acting as agent for a petition against a private bill promoted by the Council for the extension and variation of its powers in relation to the Birmingham inner-city road race.¹⁰ The Committee of Privileges concluded that the action of the Council in seeking to transfer the employee to another post did constitute a “technical contempt”, although they recommended no further action by the House.¹¹

Relevance of the Witnesses (Public Inquiries) Protection Act 1892

6. The Witnesses (Public Inquiries) Protection Act was passed in 1892 as a direct outcome of the Cambrian Railway case referred to above, it having been regarded as unsatisfactory that the House was unable to offer any compensation to the witness concerned, or to enforce any kind of damages against the employer. The Act, which also applies to witnesses

8 Special Report from the Select Committee on Railway servants (Hours of Labour), Session 1892, HC 125. See *Erskine May* (22nd edn) p 127.

9 Third Report from the Committee of Privileges, Session 1975–76, HC 274.

10 Witnesses before private bill committees enjoy the same protection as those before other select committees of the House.

11 Report from the Committee of Privileges (*Alleged Misconduct affecting a Parliamentary Agent*), Session 1988–89, HC 502.

before a Royal Commission or any inquiry established by statute (but not before the courts), establishes it as a criminal offence to threaten, or in any way “punish, damnify or injure”, any person “for having given evidence upon any inquiry, or on account of the evidence which he has given upon such inquiry”, unless such evidence was given in bad faith. It also empowers the court to order the payment of compensation to the complainant.

7. In the Grimshaw case, the originating Committee noted that it was open to the witness concerned to bring a prosecution under the 1892 Act, but believed that this possibility was not affected by their recommendation that the matter should be referred to the Committee of Privileges. However, the then Leader of the House declined to table the necessary motion to refer the matter to the Committee of Privileges for almost a year, on the grounds that “the time for statutory procedures” had not yet expired¹², and that “it would not be appropriate” for the House to take action in case criminal proceedings were commenced during that period.

8. In his memorandum to the Committee of Privileges on this case, my then predecessor (Sir David Lidderdale) expressed the view that it should be “presumed that the House would not normally wish to proceed against an offender who had already been punished in the courts”. But he also drew attention to the fact that section 7 of the 1892 Act specifically provides that nothing in the Act “shall in any way lessen or affect any power or privilege possessed by either House”.

9. This is an important point. The Act does not in any way override or supersede the right of the House to investigate an allegation of this kind as a matter of privilege: it may be better regarded, and appears to have been intended, as a supplementary procedure, providing for appropriate punishments not in practice available to the two Houses, and a method of enforcing the payment of compensation. If it were argued that the existence of the statutory provision in practice prevented the House from examining an alleged contempt of this kind, this would have the paradoxical effect of overriding both the privilege and section 7 of the Act itself.

10. That said, the Committee will no doubt have some sympathy for the underlying concerns expressed in 1975 that an inquiry into this matter as a question of privilege should not be thought to compromise any proceedings in the courts. This could arise, for instance, because any evidence already submitted to either committee in respect of the claim of alleged molestation might not then be brought into evidence in court.¹³ So far there is, I understand, no indication that any proceedings under the 1892 Act are contemplated, and the latter factor amongst others might well inhibit such a development. There is in any case a further complication—namely that it would be potentially difficult to establish when the time for instituting proceedings in this case had expired, since the

12 Under s 104 of the Magistrates’ Courts Act 1952, a prosecution could be initiated for up to six months after the offence was alleged to have been committed (in the Grimshaw case, this was regarded as being the date of Mr Grimshaw’s actual dismissal). The same limitation is now imposed by s 127 of the Magistrates’ Courts Act 1980.

13 The Joint Committee on Parliamentary Privilege in 1999 concluded that the intention of Parliament in respect of the Act (and in respect of the Parliamentary Witnesses Oaths Act 1871) must have been that parliamentary privilege “was not intended to stand in the way of evidence relating to proceedings being given in court”. No prosecutions appeared to have arisen under the Act, however, and the Joint Committee believed that it would be advisable to “reaffirm” these two statutory exceptions to the application of Article IX of the Bill of Rights in any future statute on privilege (Report from the Joint Committee on Parliamentary Privilege, Session 1998–99, HC 214, paras 316–8).

allegation appears to concern a sequence of events over a period of some months, rather than a single event (such as the termination of employment) to which a specific date could be attached.

11. While the Committee may wish to seek the views of the Law Officers on this point, my view is that there is nothing at present to prevent the Committee from continuing with its inquiry, and that the House in referring the matter expects it to do so. The Committee may of course conclude that when considering the timing of the publication of any evidence or Report arising from the inquiry it may wish to check the position in case any proceedings are then in fact in train.

Meaning of “witness” and “evidence”

12. Erskine May generally refers, and previous cases have generally related, to the molestation of “witnesses” in the sense of those who have given oral evidence to a committee. In such cases their status as witnesses is unquestionable, since they will have been specifically invited—or on rare occasions summoned—to attend in this capacity.

13. There is similarly no question about the status of any papers received by a committee if their authors have been specifically invited to prepare and submit them: such papers will from the start assume the status of evidence, whether or not the committee concerned makes use of them or even reports them to the House. It is a daily occurrence, however, for select committees to receive papers, either entirely unsolicited or in response to a press or internet notice inviting the views or opinions of the public. These are likely to acquire the status of formal evidence only if the committee concerned makes use of them in some specific way—by reporting them to the House, for instance, or by quoting from or referring to them in a Report to the House—or specifically confirms to the author or authors that they are accepted as such.

14. The present case concerns an unsolicited memorandum, but one of which the committee concerned appears to have made use in support of its conclusions, and which was reported to and published by order of the House. There is therefore little doubt that the memorandum falls into the category of formal evidence, and that the individual concerned enjoys the status of a witness. The Committee may nonetheless feel it prudent to invite formal confirmation of the circumstances in which the memorandum was received by the Constitutional Affairs Committee and of the nature of any guidance given to Ms Weleminsky—and others—about the status of any papers which they had submitted, or planned to submit.

What constitutes “molestation”?

15. In two of the previous relevant cases (that of 1892 and 1976), the question at issue was whether an individual had been dismissed by his employer as a result of the nature of the evidence given to a select committee. It is clear, however, that molestation can mean things other than dismissal. Erskine May cites examples from older cases, including assault, the threat of assault, insulting or abusive behaviour, misuse by a gaoler or censure by an employer. But this cannot be regarded as an exhaustive or exclusive list, and the Committee may wish to start from the principle underlying the Resolution of 1733, which

summarises the contempt as “the presuming to call any person to account, or to pass censure upon him”.

16. Indeed, in the most recent case to be considered by a Privileges Committee (the Dagnan case in 1989), the allegation was not that the employee concerned had been dismissed, but merely that he had been offered an alternative post at a similar grade, ostensibly for reasons other than the fact of his acting as agent and giving evidence to a private bill committee. No material loss was therefore involved. In evidence to the Committee on that occasion the then Clerk of the House (Sir Clifford Boulton) advised, on the basis of earlier precedents, that a contempt might even arise inadvertently, when the person who commits it had no intention of offending. And in reaching their conclusion that a technical contempt had been committed on that occasion, the Committee accepted that the Council officials concerned “may not have intended to hinder or deter” Mr Dagnan, but also accepted that the witness himself “genuinely thought that their intervention constituted improper pressure on him”: as a result the actions of the Council officials “might reasonably have deterred him and hence endangered Parliament’s right to hear evidence from witnesses, even if that was not the intention”.¹⁴ Some of these considerations may well be relevant to the case currently before the Committee.

The imposition of penalties

17. If the Committee were to conclude in this case that a contempt has been committed—deliberately or inadvertently—it will then need to consider what action, if any, it should recommend to the House.

18. In theory the House retains some formal penal powers in relation to Strangers, including imprisonment (to the end of the current Session) and admonishment at the Bar of the House (last employed in 1957), but not including the imposition of fines, a power last employed in 1666 and now regarded as expired.¹⁵ In 1978¹⁶ the House endorsed the recommendations of the then Committee of Privileges,¹⁷ which in turn supported those of an earlier Select Committee on Parliamentary Privilege to the effect that the House should “follow the general rule that its penal jurisdiction should be exercised (a) in any event as sparingly as possible and (b) only when the House is satisfied that to exercise it is essential in order to provide reasonable protection for the House, its Members or its officers, from ... substantial interference with the performance of their respective functions”.¹⁸ As a result the House has not sought since that date to exercise its formal penal powers against Strangers.

19. On the most recent occasion when the Committee’s predecessors found that a contempt had been committed (the Dagnan case, referred to above), they recommended that no further action be taken by the House, but set out a number of observations and

14 Report from the Committee of Privileges, Session 1988–89, HC 502, para 8, and Ev pp 42–43.

15 *Erskine May*, 22nd edn, p 138. Both the Committee of Privileges in 1976–77 and the Joint Committee on Parliamentary Privilege in 1998–99 recommended that the power to imprison (in practice unworkable) should be replaced by limited powers to fine non-Members: no action has been taken on these recommendations.

16 CJ (1977–78) 170.

17 Third Report from the Committee of Privileges, Session 1976–77, HC 417.

18 *Ibid*, para 4.

declarations which they hoped would serve as “a salutary warning to all those who might be in a position to interfere with the freedom of individuals exercising a legitimate right of access to Parliament”.¹⁹

20. In the case now before the Committee the allegations involve a variety of individuals serving in different capacities—the officers of a government agency (CAFCASS), civil servants in what now constitutes the Department for Constitutional Affairs, and at least one Minister of the Crown, including the Secretary of State for Constitutional Affairs (and Lord Chancellor). Although there are no examples in modern times of the House or a committee of the House deciding that a complaint of contempt against a servant of the Crown in a case of this kind had been proven, there are equally no precedents to suggest that the House has no power to so decide, or to take action if it so decides.

21. The Committee will be aware, however, that the privileges of Parliament are shared between and owned equally by the two Houses. As a result, this House is not competent to claim or exercise any authority over a member of the House of Lords; indeed, Lords Standing Order No 24 explicitly claims that “No Lord shall either go down to the House of Commons or send his answer in writing or appear by Counsel, to answer any accusation there”, and the two Houses have generally been as assiduous in respecting the claims of privilege of the other as of their own.²⁰

3 February 2004

R B Sands

¹⁹ *Ibid*, paras 9–10.

²⁰ Erskine May suggests that “If a complaint is made against a Member or officer of the other House, the appropriate course of action is to examine the facts and then lay a statement of evidence before the House of which the person complained of is a Member or officer” (*Erskine May*, 22nd edn, p 149); but this reflects a practice not employed for at least the last two centuries, and may be regarded as impracticable, if not spent.

Appendix 4: Memorandum from the Department for Constitutional Affairs

Events leading to the suspension of Ms Judy Weleminsky from the CAFCASS Board

1. This note is intended to provide the Committee with an overview of the events leading up to the suspension of Ms Judy Weleminsky from the Board of CAFCASS on 11 December 2003 and the immediate aftermath. It should be read alongside the chronology of events attached at annex A.
2. As early as June 2001, three months after the establishment of CAFCASS in April 2001, Lord Chancellor's Department (LCD) officials learnt of problems within the Board, in particular that Ms Weleminsky (amongst a few others) was not accepting collective decisions made by the Board. Over that summer, the Department was made aware that she was presenting her own unsolicited papers to the Board. During September and October 2001 the Chairman, Anthony Hewson and Chief Executive independently discussed with departmental officials the difficulties they were having with Ms Weleminsky. As was already known, Ms Weleminsky had told the Department she had no confidence in Mr Hewson; in addition she had posted messages on an unofficial internet group site used by staff including information from Board on handling an industrial relations dispute; and had written to Mr Hewson declining to keep confidential any matters that she unilaterally felt CAFCASS should be more open about.
3. In the course of meetings throughout 2002, the Chairman regularly informed LCD officials of the continuing problems with Ms Weleminsky's behaviour. This culminated, in July 2002, with the Chairman submitting a dossier to the Department detailing complaints about Ms Weleminsky. He sought advice on the dismissal process for a Board member.
4. At the time, LCD officials encouraged Mr Hewson to ensure that any process is fair and transparent, to ensuring that there is properly evidenced support from other Board members, to challenge each problem with Ms Weleminsky as it occurs and review progress with her. It was noted that it was for the Chairman to judge when a critical mass had been reached, and to distil the evidence. Only after all internal efforts had failed to improve matters should the Chair consider seeking dismissal of a member: a serious matter in any NDPB but especially so for CAFCASS where there was an urgent need for the Board to be strongly focussed on improving front line services.
5. In 2003, the Constitutional Affairs Select Committee announced an enquiry into the performance of CAFCASS. The Committee had earlier taken evidence from the Chairman and Chief Executive of CAFCASS on 22 May, and had separately received written evidence from Ms Judy Weleminsky on 2 May. They published their report on 23 July 2003.
6. Quite separately, ministerial responsibility for CAFCASS was transferring from the Lord Chancellor to the Secretary of State for Education and Skills: this decision was announced at the time of the Government reshuffle on 12 June, but the formal transfer of responsibility did not occur until 12 January 2004. In the intervening period Department

for Education and Skills' ministers (Charles Clarke and Margaret Hodge) took the lead on policy developments, but statutory responsibility for ministerial decisions remained with the Lord Chancellor. In practice, significant decisions were taken by agreement between the two sets of ministers.

7. Soon after, the longstanding discontent with Ms Weleminsky's behaviour on the part of most of the rest of the CAFCASS Board finally came to a head. As a consequence Mr Hewson wrote to the Lord Chancellor on 24 September 2003 recommending that Ms Weleminsky's membership of the Board should be terminated;¹ on 25 September he submitted an extensive dossier of evidence (the "Hewson dossier") about Ms Weleminsky's behaviour as a Board member over a period of more than two years since 2001 to support this recommendation.² Simultaneously, Mr Hewson signalled his intention to resign as Chairman of the CAFCASS Board.

8. Mr Hewson's letter of 24 September notes near the top of page 2 that:

"I think it important to clarify that this expression of discontent [about Ms Weleminsky's behaviour] was an accumulation of much frustration that had built up over the previous two years. So it is very important *not* to identify the events related to her decision to write to the Select Committee as in any way central to the comments made by Board members at that meeting or indeed to my decision to write to you today. On the contrary every member of the Board recognises the importance and value of the Select Committee process and the right of any individual to provide information and evidence as they consider their public duty."

In other words the CAFCASS Board were alert to Ms Weleminsky's right to give evidence to a Select Committee.

9. Following a meeting between the Department for Constitutional Affairs (DCA) Permanent Secretary, Sir Hayden Phillips, Mr Hewson and the CAFCASS Chief Executive Jonathan Tross on 6 October to discuss how DCA might respond to the dossier and Mr Hewson's letter of 24 September, David Crawley, Head of the Scotland Office (and therefore with no previous connection with CAFCASS and its affairs) was appointed to provide a rapid and independent assessment of the evidence contained in the Hewson dossier.

10. David Crawley was asked to complete his task by 9 October, given the pressure for speed from the members of the CAFCASS Board. He was given no formal written terms of reference, though in his introduction he says:

"I was invited ... to conduct a review of the evidence relating to allegations of breach of duty on the part of Judy Weleminsky."

The Department briefed him orally to conduct a review of the evidence in the dossier, to analyse whether in his view, the evidence amounted to evidence of unfitness, but not to make recommendations on what actions might be taken: the value of his assessment was his fresh eyes, independent of officials who were familiar with the long history of Ms

1 Not reported.

2 Not reported.

Weleminsky's relations with the rest of the CAFCASS Board. His review was also intended to reveal whether further investigation was needed (eg interviews with any of the principal players). in addition to the Hewson dossier and the covering letter from Anthony Hewson, Mr Crawley was also given a small selection of relevant background papers [list at annex B].³

11. Mr Crawley's report, submitted on 9 October, falls into two main parts.⁴ Paragraphs 3–6 set out the background to his review, and in particular provide a summary of the allegations made against Ms Weleminsky in the Hewson dossier (the dossier itself provides no concise summary of the grounds for the recommendation in Mr Hewson's letter of 24 September that she be asked to leave the Board if she were not prepared to resign). The second part of Mr Crawley's report, from paragraph 7 onwards, is his own analysis and assessment of the allegations in the dossier, against the three general areas of criticism (paragraph 5 of his report), and the six more specific areas (paragraph 6).

12. David Crawley was not asked to advise on what action, if any, should be taken on the basis of his assessment of the Hewson dossier. It was envisaged that DCA officials would advise, in the light of the content of the report. The Lord Chancellor did not in the event see the Crawley report immediately after its completion on 9 October, but made clear, in a meeting with Anthony Hewson and his successor Angela Killick at about this time (10 October), that due process would have to be followed in handling the case. His concern, and that of officials and legal advisers providing further advice to him on handling the case later in October, was to ensure that the normal public law requirements of fair and reasonable treatment were met in the unusual circumstances of this case; the fact of Ms Weleminsky's evidence was not a material consideration in this advice. However, at the end of October, the Lord Chancellor, in agreement with DfES ministers, decided to take no further action on the case.

13. This was because ministers were now pursuing a broader strategy to reform the entire CAFCASS Board. On 16 October, the Government and CAFCASS had published their responses to the Select Committee report, including acceptance by the Government of a recommendation for a fundamental review of the Board. On the same day, Professor Sir Clive Booth was asked to carry out an independent review of the CAFCASS Board.

14. Sir Clive Booth reported on 9 November, and recommended that all Board members be asked to resign and to be replaced immediately by a new Board. (The report contains options for achieving this.)⁵

15. Advice on the Booth report was submitted to ministers in both Departments in the course of November. This resulted in letters to all the members of CAFCASS from the Lord Chancellor on 2 December, inviting them to resign by 10 December [at Annex C]. This approach, based on the Booth report, was unconnected to the Hewson dossier and the Crawley report. At the same time, Baroness Pitkeathly accepted an invitation to chair a small interim board, to take over on the departure of the old Board.

3 Not reported.

4 See HC 210, Appendix 1, p 4.

5 Not reported.

16. Some of the Board members resigned without further ado. Ms Weleminsky replied on 3 December declining to do so. The DfES Permanent Secretary discussed the position with her, and with 4 other Board members who had not immediately resigned. By the morning of 11 December all the members of the Board had offered their resignation except Ms Weleminsky. The Lord Chancellor reviewed the position with advice from officials and leading counsel, and decided to proceed in the terms of his letter of 11 December to Ms Weleminsky.⁶

17. The Chairman of the Select Committee wrote to the Lord Chancellor on 17 December expressing his concerns that Ms Weleminsky might be being punished for having given evidence to the Committee. As the Lord Chancellor made clear in his reply on 8 January,⁷ his decision did not depend wholly or in part on the fact that she had given evidence to the Select Committee; the fact of her giving evidence could form no part of any action against her; and that suspension was plainly justified even ignoring this fact. That said, Ms Weleminsky could not necessarily have been expected to see things in the same way as ministers. With hindsight it would have been better if the Lord Chancellor's letter of 11 December had been explicit in saying that the decision to suspend did not depend wholly or in part on the fact of her having given evidence to the Select Committee earlier on. The Lord Chancellor's letter to Ms Weleminsky of 21 January repeated the assurance given to the Chairman of the Select Committee, and apologised for not having made that clear previously.⁸

18. Looking to the future, this episode has identified a gap in the existing guidance for NDPB Board members on the issue of evidence to Select Committees and parliamentary privilege. The Cabinet Office is currently reviewing the guidance and will take this forward as part of the review. Meanwhile, interim guidance is being prepared for use within the DCA, in order to ensure that all officials are aware of the issue.

9 February 2004

Department for Constitutional Affairs

Annex A: Chronology

1 April 2001. Formation of CAFCASS.

14 June 2001. Department alerted to emerging problems within the Board. Three members, including Ms Weleminsky, were allegedly seeking to overturn a board decision of the previous month.

10 September 2001. Letter from Ms Weleminsky to Lord Chancellor criticising the Chairman, Anthony Hewson.

18 to 24 September 2001. Departmental officials conduct several meetings with individual Board members. Allegation of inappropriate behaviour, operating in a quasi-executive

6 See Appendix 1.

7 See HC 210, Appendix 3, p 12.

8 See Appendix 2.

capacity. Report that more “Cabinet responsibility” was needed to ensure previous Board decisions are not re-opened. CAF/CASS Board reported to contain mavericks and destructive behaviour, when loyalty was important.

25 September 2001. Smartgroup posting alleged to undermine HR position on guardians’ dispute. [Smartgroup was an unofficial Internet group site used by staff to which Ms Weleminsky on occasion contributed, to the considerable irritation of other Board members]

1 October 2001. Letter from Anthony Hewson to Ms Weleminsky, representing complaints from other Board members and the Executive Team that Ms Weleminsky’s posting of Board private session minutes on Smartgroup site has caused difficulties. Asks Ms Weleminsky to cease publishing CAF/CASS information until the Board has decided how information should be made public.

2 October 2001. Letter from Ms Weleminsky to Mr Hewson states she is publishing information on Smartgroup because CAF/CASS had not made its own arrangements for access to records of Board decisions.

26 October 2001. Ms Weleminsky posted comments on Smartgroup about a current CAF/CASS industrial relations dispute with guardians.

30 October 2001. Angela Killick (Deputy Chair) complains to Anthony Hewson (Chair) about Ms Weleminsky not sticking to an agreed corporate approach, and of making statements unhelpful to CAF/CASS, damaging to the Board, and which could be perceived as damaging and oppressive. Her contributions to Smartgroup were a serious contravention of the corporate view.

7 November 2001. Letter from Mr Hewson to Ms Shepherd [the then Chief Executive] refers to ‘differences’ between Ms Weleminsky and HR Director.

12 November 2001. Email from Ms Weleminsky participating in a Q&A session on the Smartgroup site.

26 November 2001. Email from Ms Weleminsky to the suspended Chief Executive (on disciplinary grounds) critical of the Chairman, Anthony Hewson, despite advice to Board members to have no contact in order to avoid interference with the disciplinary process.

November 2001. Meeting with Ministers. Mr Hewson reported Ms Weleminsky had been in contact with Ms Shepherd after the latter’s suspension from office on 9 November 2001.

28 November 2001. Minutes of Board meeting noted Ms Weleminsky’s disregard for the Board’s wish for a corporate approach, resulting in a loss of trust, promoted in part by her contributions to the Smartgroup site. Ms Weleminsky dissents from Board decision not to contribute to Smartgroup site.

11 April 2002. Meeting between Hewson, Killick and Weleminsky. Hewson recorded as stating that once decisions [by the Board] are taken, the debate should not be reopened. To do so undermined the Executive [in implementing Board decisions].

31 May 2002. Ms Weleminsky records that she sees monitoring Smartgroup as part of her remunerated work for the Board, even though the Board felt it inappropriate.

25 July 2002. Mr Hewson delivers 'dossier' to the Lord Chancellor's Department making allegations about behaviour of Ms Weleminsky and enclosing an e-mail exchange between Ms Weleminsky and Angela Killick on the lack of trust in Ms Weleminsky's ability to be discreet with information. Mr Hewson sought advice on the process for seeking the resignation of Ms Weleminsky and, if needed a recommendation for her termination as a Board member.

8 October 2002. Pip O'Byrne (another Board member and Chair of the Board's disciplinary committee) states in a letter to the Chairman that Ms Weleminsky has undermined the entire Board by engaging in a dialogue [reference the email of 26 November 2001] with the [then] Chief Executive while the latter was suspended on disciplinary grounds, and seeks an inquiry by the Chairman into Ms Weleminsky's behaviour and the reasons for it.

10 October 2002. Ms Weleminsky states in a posting on Smartgroup site that she finds the site invaluable, and that she appreciates the information, discussion and professional exchanges it provides.

11 November 2002. Meeting between Hewson, Killick and Weleminsky. Note records Ms Weleminsky as being told that her continued correspondence with the Acting Chief Executive on Smartgroup was in contradiction with requests made to her in April 2002—behaviour that was bordering on if not actually experienced as bullying and harassment. Separate exchanges with individual members of staff were felt to be intimidatory, and were in breach of a previous Board decision that communication with staff by Board members should be via the Chair. Overall, Hewson's view was that she had been repeatedly disloyal, destabilising and acted inappropriately.

27 November 2002. Anthony Hewson (Chair) records that an article by Ms Weleminsky in Community Care was produced without prior consultation with himself or CAF/CASS staff, even though the article will be seen as carrying CAF/CASS's authority

17 June 2003. Private meeting of the Board. Several members expressed views that Ms Weleminsky was damaging the Board; Angela Killick (Deputy Chair) noted that the disadvantages of her membership potentially outweighed her initial contribution, and that she should consider her position on the Board.

8 July 2003. Ms Weleminsky provided an interview to File on Four without prior notice to Board colleagues, critical of CAF/CASS' effectiveness.

23 July 2003. The Constitutional Affairs Select Committee published its report on CAF/CASS. A central recommendation was that a fundamental review of the Board be undertaken. The Committee said that the Board needs people of experience and stature who can develop the strategy necessary to deliver an effective, child-centred service.

28 July–14 August 2003. Series of exchanges about the preparation of a memorandum for the Minister for Children, which Ms Weleminsky was not prepared to treat on the confidential basis that her Board colleagues wished.

24 September 2003. Mr Hewson made a recommendation to the Lord Chancellor that Judy Weleminsky's membership should be terminated. The following day, he provided a dossier giving details of alleged breaches of her duties with supporting evidence. Mr Hewson also signalled his intention to resign as Chairman.

7 October 2003. David Crawley, a senior official of DCA was commissioned to review the dossier.

9 October 2003. David Crawley reported.

13 October 2003. Anthony Hewson's resignation became effective and Angela Killick was appointed as Interim Chair of CAFCASS.

Also on 13 October, Lord Chancellor requests advice on handling the Crawley report.

16 October 2003. The Government and CAFCASS published their responses to the Select Committee. The Government said it accepted the recommendation for a fundamental review of the Board and would carry it out promptly.

16 October 2003. Professor Sir Clive Booth was asked to carry out an independent review of the Board. The remit of the review was to consider the membership of the Board of CAFCASS for the qualities, type and level of skill, background and depth of experience needed for the Board; and whether the existing membership of the CAFCASS board matched those requirements.

31 October 2003. The Secretary of State for Constitutional Affairs [after consulting DfES Ministers] decided to take no further action on Ms Weleminsky's personal conduct pending receipt of the report from Sir Clive Booth.

9 November 2003. Sir Clive Booth reported and advised that the Board needed a fresh start and all members of the Board be invited to tender their resignations.

29 November 2003. Ministers were advised on handling of the Booth recommendations, and the transition from the old Board to the new, raising the possibility of considering the dismissal of members who did not resign.

2 December 2003. The Lord Chancellor wrote to all CAFCASS Board members asking them to resign.

3 December 2003. Ms Weleminsky, replied declining to resign.

9 December 2003. DfES Permanent Secretary spoke to all 5 board members who at that point had not resigned.

10 December 2003. All but two Board members had resigned.

11 December 2003. One further Board member resigned. Ms Weleminsky was the only member who did not resign.

11 December 2003. The Lord Chancellor reviewed the situation and wrote to Ms Weleminsky to suspend her, pending an examination of her personal conduct as a member

of the Board. He requested her comments on the dossier submitted by Mr Hewson and on the report by David Crawley.

11 December 2003. A new chair and interim board was appointed. Baroness Pitkeathley OBE (Jill) was appointed Chair of CAFCASS. Other members of the interim Board appointed were Richard Sax; Baroness Howarth of Breckland OBE; Professor Jane Tunstall and Nicholas Stuart CB.

12 December 2003. Ms Weleminsky wrote to the Lord Chancellor, consenting to the terms of her suspension.

17 December 2003. The Chairman of the Constitutional Affairs Select Committee wrote to the Lord Chancellor, criticising aspects of the treatment of Ms Weleminsky.

8 January 2004. The Lord Chancellor replied to the Chairman of the Select Committee, making it clear that it would be quite wrong to discipline Mrs Weleminsky for having given evidence to the Select Committee, and that the fact of her giving evidence could form part of any action against her. He welcomed the opportunity to clarify this for the Standards and Privileges Committee.

12 January 2004. A Transfer of Functions Order transferred formal responsibility for CAFCASS to DfES.

14 January 2004. The Constitutional Affairs Committee published a special report. The Committee's view was that the process of dealing with the complaints against Ms Weleminsky might be regarded as a *prima facie* breach of privilege.

15 January 2004. The Government supported the motion to refer the Special Report of the Constitutional Affairs Committee to the Committee on Standards and Privileges.

21 January 2004. The Secretary of State wrote to Ms Weleminsky, apologising for not making it clear that her suspension was not connected to the fact of her giving evidence to the Select Committee.

Annex C: Letter to Ms Judy Weleminsky from Lord Falconer of Thoroton QC, 2 December 2003

I am writing to you as a CAFCASS Board member about the outcome of the Review of the Board undertaken by Professor Sir Clive Booth. I and my Ministerial colleagues have considered Clive Booth's report and have decided to accept the central recommendation that the time has come to make a fresh start with the Board. This would be in the best interests of children and families. It is also in line with the Select Committee's expectation that there should be a new Board (paragraph 181 of their report).

We have accepted Clive Booth's proposal that all Board members should be asked to submit their resignations and I am therefore writing to seek your voluntary resignation. We propose that the Board members' resignations should come into effect at close of play on 10th December. However, we request an immediate response from you to this letter, and in any event no later than noon on Monday 8th December, so that arrangements for constituting the new Board, can go ahead with the minimum of delay.

It is important to have in place quickly someone to take the Chair in time for the consideration of applications to the new Board. The new Chair must clearly be capable of commanding the respect of the stakeholders. This person will also play a key role in developing and communicating the vision and values of CAF/CASS to all the stakeholders in the family justice system, not least the children and families. With the approval of the Commissioner for Public Appointments, Dame Rennie Fritchie, we propose to appoint the Chair by a fast track process for a limited period of 2 years with effect from 11th December 2003. The person appointed will have to submit to an open competition should she or he wish to continue beyond the fixed term of 24 months.

Whilst the new Board is being recruited, the Chair will lead a small Transitional Board. This transitional Board will come into effect from December 11th. The intention is that meanwhile the open competition for appointing members of the new Board will be as short as is consistent with meeting all the requirements of the Commissioner for Public Appointments. Our best estimate for this is three or four months, so that the new Board would meet in late March. You will of course be free to apply to be a member of the new Board.

The Transitional Board will take forward the appointment of a new Chief Executive and will be able to finalise the person specification and further particulars in consultation with Ministers and agree a timetable for the key stages in the selection process. These stages will need to be timed so that the long listing, short listing and interviews can be undertaken by the new Board in March, in time for the successful candidate to take up post in July 2005.

I would like to express the Government's keen appreciation of your contribution to CAF/CASS since your appointment. Clive Booth has made special mention of the commitment and hard work of the Board during a very testing time. I hope you agree that the way forward outlined above will be in the best interests of the children and families served by CAF/CASS.

Finally, I would like to outline the approach we propose to take to the public presentation of this matter. This letter has been sent to you in strict confidence because we are concerned that the reconstitution of the CAF/CASS Board is handled in such a way as to maintain the dignity and professional standing of existing Board members. As soon as we have replies from all Board members, we would like to be able to make a public statement saying that the present members of the CAF/CASS Board have individually agreed to stand down in order for a new Board to be constituted as recommended by Clive Booth's review. This will permit the rebalancing of the Board as envisaged by the Select Committee. We will draw attention to what CAF/CASS has achieved and pay tribute to the contribution of the Board. We will also say that present Board members will be able to apply for membership of the new Board.

We are keen to move forward quickly in the best interests of the children and families served by CAF/CASS. I would therefore be very grateful if you could let me have your response to this letter no later than noon on 8th December. I would be grateful if you could reply, indicating whether you will resign.

2 December 2003

Formal minutes

Extract from Minutes of Proceedings relating to declaration of interest

Tuesday 10 February 2004

Ross Cranston declared a non-pecuniary interest, as a member of the Constitutional Affairs Committee, in relation to the inquiry into the First Special Report of the Constitutional Affairs Committee, referred to the Committee by the House on 15 January; and that he would therefore take no part in the said inquiry.

Tuesday 30 March 2004

Members present:

Sir George Young, in the Chair

Ross Cranston	Mr Andrew Mackay
Mr Andrew Dismore	Mr Kevin McNamara
Mr Derek Foster	Richard Ottaway
Mr Michael Jabez Foster	Mr Stephen Pound
Mr David Heath	

The Committee deliberated.

Draft Report [Privilege: Protection of a Witness], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 60 read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

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.—(*The Chairman.*)

Ordered, That the Minutes of Evidence taken before the Committee on 2 and 9 March, together with Appendices thereto, be reported to the House.—(*The Chairman.*)

* * *

[Adjourned till Tuesday 27 April at 9.30 am.]

Witnesses

Tuesday 2 March 2004 (morning sitting)	<i>Page</i>
Ms Judy Weleminsky	Ev 1
Mr David Crawley , Head of the Scotland Office, Department for Constitutional Affairs	Ev 5
Sir Hayden Phillips GCB , Permanent Secretary, Department for Constitutional Affairs	Ev 8
Tuesday 2 March 2004 (afternoon sitting)	
Mr Anthony Hewson OBE , Former Chairman of CAFCASS	Ev 16
Rt Hon Lord Falconer of Thoroton QC , Lord Chancellor and Secretary of State for Constitutional Affairs	Ev 24
Tuesday 9 March 2004	
Mr David Normington CB , Permanent Secretary, Department for Education and Skills	Ev 32

List of written evidence

Supplementary evidence was received from the following:

1	Mr Anthony Hewson	Ev 22
2	Department for Constitutional Affairs	Ev 30
3	Department for Education and Skills and the Department for Constitutional Affairs	Ev 38
4	Mr David Normington	Ev 38

Reports from the Committee on Standards and Privileges in the current Parliament

Session 2003–04

First Report	Conduct of Mr George Galloway	HC 73
Second Report	Conduct of Ms Diane Abbott	HC 285
Third Report	Conduct of Mr John Spellar	HC 339
Fourth Report	Conduct of Mr Iain Duncan Smith	HC 476 I–III
Fifth Report	Privilege: Protection of a Witness	HC 447

Session 2002–03

First Special Report	Standards of Conduct: Letters from the Committee on Standards in Public Life	HC 516
First Report	Complaint against Mr Nigel Griffiths	HC 195
Second Report	Eighth Report of the Committee on Standards in Public Life: “Standards of Conduct in the House of Commons”	HC 403
Third Report	Complaints against Mr Michael Trend	HC 435
Fourth Report	Complaints against Mr Henry McLeish	HC 946
Fifth Report	Complaints against Mr Clive Betts	HC 947
Sixth Report	Pay for Select Committee Chairmen	HC 1150
Seventh Report	Guidance for Chairmen and Members of Select Committees	HC 1292

Session 2001–02

First Report	Complaint against Mr Geoffrey Robinson: Supplementary Report	HC 297
Second Report	Complaint against Mr Roy Beggs	HC 319
Third Report	Complaint against Mr John Maxton	HC 320
Fourth Report	Restrictions on the Initiation of Parliamentary Proceedings: A Consultation Paper	HC 478
Fifth Report	Complaints against Mr Keith Vaz	HC 605 I–II
Sixth Report	Registration of Interests by Members who have not taken their seat	HC 624
Seventh Report	Complaints against Mr Nigel Griffiths	HC 625
Eighth Report	Complaints against Mr Archy Kirkwood	HC 755
Ninth Report	A new Code of Conduct and Guide to the Rules	HC 763
Tenth Report	Complaint against Mr Peter Brooke	HC 1147

Oral evidence

Taken before the Committee on Standards and Privileges

on Tuesday 2 March 2004

(morning sitting)

Members present

Sir George Young, in the Chair

Mr Derek Foster
Mr Michael Jabez Foster
Mr Kevin McNamara

Mr Andrew Mackay
Richard Ottaway
Mr Stephen Pound

Witness: Ms Judy Weleminsky, examined.

Q1 Chairman: Good morning. I am George Young, Chairman of the Standards and Privileges Committee and these are my colleagues. One or two have absented themselves; Ross Cranston is on the relevant Select Committee and the other one shadows the Lord Chancellor. Ms Weleminsky, the background to our inquiry is the Report of the Constitutional Affairs Committee, which says that the circumstances might be regarded as a *prima facie* breach of privilege, and the House has referred it to this Committee to make some enquiries, which is what we are doing and we are grateful to you for coming along. Could I kick off with one or two questions. We are not dealing with the broader question as to whether or not it was right to invite you to resign or to suspend you, but we are dealing with the slightly more vexed question as to whether there has been a breach of privilege. Can I start off by asking whether you feel you have been threatened or penalised as a result of your giving evidence to the Select Committee?

Ms Weleminsky: I feel that the treatment I have received as a result of giving evidence to the Select Committee has been of a piece with the gradual escalation of action against me where I was speaking out about my concerns and I feel that the letter that I received from the Lord Chancellor, where item number one was that I had given evidence to the Select Committee, did appear to suggest that this was the major foundation for their concerns.

Q2 Chairman: You will have seen what the Lord Chancellor asserted in his letter to Alan Beith which appears in the Report.¹ This is what he said: “My decision does not depend wholly or in part on the fact that she”, ie you, “had given evidence to the Select Committee”, and this is one of the issues that we are going to have to resolve. I wonder if you could shed any light on the assertion by the Lord Chancellor.

Ms Weleminsky: I cannot make any comment on the Lord Chancellor’s thinking or motivation because I do not have any information or knowledge on that.

What I do have in the set of papers which was sent to me, which I believe you have seen, was the Chairman’s e-mail with a colleague on 9 June 2003² where he commented on my submission to the Select Committee and said I would have to go because of that, but it was to be seen that it was not because of my giving evidence to the Select Committee.

Q3 Mr Mackay: Can I take you up on that point from the Chairman. It was in fact in September, I think you will find, that he recommended your dismissal.

Ms Weleminsky: Yes.

Q4 Mr Mackay: Why do you think he chose that particular time, because from some of the evidence you have submitted to us and what you said in your opening answer, there was an ongoing dispute and disagreement between you and him and you and other members of the Board, so why do you think September was the time that he would make this recommendation?

Ms Weleminsky: Although he did not resign publicly until 10 October, I think in effect he had resigned at some point, in agreement with the Department, earlier than that in September. I think part of that agreement was that he would write this letter recommending my dismissal, so I am sure that it had been the subject of discussions. As far as I could see, the way he behaved was that he did not do anything without having discussed it with the Department and with relevant officials or ministers and, therefore, although he might have wished to take action earlier, he would have had to go through various processes to ensure that he had the backing of other people to do that.

Q5 Mr Mackay: You see, we are turning to our sole interest which, as you know and as the Chairman has already said, is the matter of privilege. It was some three months before that when you gave evidence to the Select Committee in this House and I wonder why if, as you have asserted, one of the major, but not the sole, reasons you were dismissed is that you

¹ Constitutional Affairs Committee, First Special Report of Session 2003–04 (HC 210), Appendix 3.

² Not reported.

2 March 2004 Ms Judy Weleminsky

gave evidence to a select committee here. That took three months before the dismissal recommendation, so that does seem to be quite a long gap to me which puzzles me and I find it difficult to get proper answers on that.

Ms Weleminsky: Have you seen the e-mail correspondence between Anthony Hewson and Pip O'Byrne?³

Q6 Chairman: Yes, it is in the bundle of documents.

Ms Weleminsky: That makes clear what he is wishing to do. It just takes a while to put the decisions together, one might have to assume. Anthony was never one to move very fast on anything, but I think that e-mail makes it clear what he wishes to do and why he wishes to do it.

Q7 Mr Mackay: How much did you know about parliamentary privilege? Here you were giving evidence to a select committee, which is unusual and most members of the public do not, and I think it was your first time, so did you understand that your evidence was protected by parliamentary privilege or not at the time?

Ms Weleminsky: I was vaguely aware of it, but it was not a matter of particular concern to me.

Q8 Mr Mackay: At what point did it become a point of concern—when you were dismissed?

Ms Weleminsky: When I was dismissed, and I have to say that it is less from my particular position and more because in general I would like to feel that other people in public governance positions feel that they can speak out on matters of concern, and I know that you are particularly concerned that people should be able to speak freely before select committees. I think there is a wider issue in that when you are given a public governance role and you see that something is wrong, there need to be effective ways to try and put that right. I started with all the internal mechanisms of the proper ways to do things and was getting absolutely nowhere, so gradually you go up an escalator of what you need to do in order to say that something is wrong, and my writing to the Select Committee was on the way up that escalator.

Q9 Mr Mackay: Just looking at the Board you sat on, and in many ways it was an unhappy and uncomfortable time for you, would you agree with the suggestion that it was a “mediocre Board” which had been recruited, including yourself?

Ms Weleminsky: Yes.

Q10 Mr Mackay: You would?

Ms Weleminsky: Yes.

Q11 Mr Mackay: You more or less implied this in the evidence you gave to the Select Committee. Then the Lord Chancellor requested that you all resign and everybody did resign but yourself. Bearing in mind that the CAF/CASS Board had been justifiably criticised and it seemed the right decision to start

again, were you surprised that you alone did not resign when the Lord Chancellor requested that all the Board did?

Ms Weleminsky: I do not think anyone wanted to resign, but everybody felt the pressure and felt unable to resist that pressure. I think I was alone in feeling able to carry on the issues.

Q12 Mr Mackay: I am not quite clear in my own mind, when the clear recommendation was for a fresh start and that the whole Board should resign and you have just admitted to me now what I already more or less knew from looking at your evidence to the Select Committee, that it was a mediocre Board which was not working well, including yourself, why you did not also resign at that point.

Ms Weleminsky: We were a mediocre Board, obviously one which had gained three years' experience by this stage, but I believe that our problems were only very partly to do with the Board and that the Board were being cleared out, but everything else was still in place and, therefore, a new Board appointed, if it was not brought up to speed very quickly with the issues and was not given the courage to face those issues, would just in three years' time have a similar Select Committee with similar problems.

Q13 Mr Mackay: Why did you not resign when the others did?

Ms Weleminsky: Because I wanted the issues that I was concerned about to be raised. I still felt that we were being manipulated by the Department. I think we were put in as a puppet Board and agendas were being followed which were not being made clear to us and then we were the fall guys when things went wrong and I did not want that to happen to the next Board. I was in discussions with a lot of people at the front end of CAF/CASS, practitioners, front-line managers and so on who had continued to be very worried about the way that CAF/CASS was run and I felt a duty to them and to the children we serve to make those issues clear because CAF/CASS was continuing to fail in its duty of care to children.

Q14 Chairman: Can I ask you, have you reapplied to join the new Board?

Ms Weleminsky: Yes.

Q15 Chairman: Would the answer to my next question follow from what we have just heard you say, that you regret that you are not at present able to offer your resignation? Is that because you wanted these other changes to take place before you resigned or was there some other significance in that remark?

Ms Weleminsky: Yes, if I had seen a solid Board being appointed with the right qualities of people on it and with the commitment of the other parts of the equation to a new approach, then my term of office anyway finishes at the end of March when I was expecting my term of office would finish, so as long as I was reassured that a new start was being made in a new way which I felt was consistent with the best interests of children, then I would have been happy

³ Not reported.

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to pull back. There are many able and qualified people out there who can do a very good job in CAFCASS.

Q16 Mr Michael Jabez Foster: This is really about the people and you made some issue about the concerns of processes and so on, but what was your view about the quality of the fellow Board members that you were serving with?

Ms Weleminsky: As I think I implied in my letter, I have been a chief executive for three organisations and most of them I would very happily appoint as a second tier in my own organisations, though not many of them I would happily appoint as chief executive. I would have expected the Board to be made up of a higher level than that and indeed I think the new interim Board has shown that in that the current Chair and the interim Board members are fairly well-known people within their fields of expertise and within the sectors in which they work, whereas we were by and large a group of people nobody had ever heard of, who had no particular standing in our own communities. I perhaps had more standing in the voluntary sector, but I had been out of public office, so to speak, in that area for about ten years, so I hope I brought qualities, but I was expecting people with serious experience in the field of representing children in courts and in the whole area of CAFCASS's concerns to be on that Board, and I think that is where we were not sufficiently senior. Just to compare it, the other similar body that I am on, the General Social Care Council, the people there are all much more senior and well known, and the result is that when an issue comes to the General Social Care Council, people have to say, "Well, how can I answer back to my constituency on this matter? I have to make sure that I have spoken up for the concerns of that area", whereas on the CAFCASS Board there was no such feeling and no such experience. Most people had not worked at a national level before and had very little knowledge of the workings of government and were quite overawed by the senior civil servants that were putting pressure on the organisation.

Q17 Mr Michael Jabez Foster: So were you surprised when the recommendation came through that the Board members should be asked to resign *en bloc*?

Ms Weleminsky: When Sir Clive Booth was appointed, he was given two weeks to do his job and he arranged to interview everybody and I was, along with two other people, interviewed on the last day. By the time he came to see me, he had already formed his view, so it was clearly not to do with myself or the other two people he was seeing on that day, but he had already formed his view that there should be a fresh start. His report has never been seen, so I do not know what it contains, but it seems to me that a fresh start when it is only the Board and not any of the other parts of the organisation just implies that the public face will change, but the rest of the organisation will continue as before.

Q18 Mr Michael Jabez Foster: What I was asking was whether you were surprised because you have made criticism of the quality overall of the Board, so was it, therefore, a surprise that someone recommended that they should start again and everyone should resign?

Ms Weleminsky: In some ways no. I have been trying since before the Select Committee, but since the Select Committee I think we have always had a power in the Act which set us up to co-opt people on to the Board and I have been trying for a long time to get some co-options of some senior people who could come on to the Board who I knew were willing and who would have a lot of credibility. Even after the Select Committee when it was said that there should be a review of the Board, I again made recommendations of the kind of people that I thought could come on to the Board and I had the names of people who would have been willing, so I thought at that stage that we could have strengthened our Board to make us more credible and, given that we had three years' experience behind us, perhaps could have worked forward, but I was not totally surprised that Sir Clive Booth thought it was easier just to say, "Let's totally start again".

Q19 Mr Michael Jabez Foster: So my final question arising out of that is, would you have expected, you or indeed others, to have been reappointed after your term of office ended on 31 March, given the reservations that you have expressed about the way the system was operating?

Ms Weleminsky: I think the point I would make is that if the Department were taking seriously the Select Committee, then one might say, "Which members of the Board were getting it right", as far as the Select Committee was concerned, "and which members of the Board had got it wrong?" There were three members of the Board who had consistently tried to argue the way the Select Committee had argued, one of whom resigned fairly early on and two of whom were still there. You might say with those who had got the analysis, as far as the Select Committee were concerned, right all the way through, it would have been valuable to have some continuity if only to embolden the Board to move forward on the Select Committee's recommendations, so I think that would have been another approach.

Q20 Richard Ottaway: Do you have a copy of the Board minutes of 17 June?

Ms Weleminsky: For which year?

Q21 Richard Ottaway: Last year, 2003.

Ms Weleminsky: I do at home, but not unless they were in the bundle of papers. I have so many documents.

Q22 Richard Ottaway: Perhaps we have a spare copy. (Same handed). It is attached to a CAFCASS letter, dated 6 February. These are the minutes of the

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Board meeting of 17 June 2003,⁴ which is normal business all the way through until we get to item 16, which must be about the seventh or eighth page, which is matters taken in private and relates to your evidence to the Select Committee. At the bottom of the page with item 16, it says: “The following points were made”. Are you with me?

Ms Weleminsky: Yes.

Q23 Richard Ottaway: “All but one Member expressed their disappointment that the letter had been sent without any prior discussion . . .”, and it goes on, another point, another point, another point, all of which are critical about you giving evidence to the Select Committee, and then the last point there, it says, “The Deputy Chair suggested that in the circumstances, and given previous discussions between the Chair, Deputy Chair and Judy Weleminsky, perhaps the time had come for Judy Weleminsky to consider her position on the Board”. The phrase “given previous discussions”, were the previous discussions discussed at that Board meeting or is that a sort of late addition to the minutes?

Ms Weleminsky: The previous discussions were not discussed at the Board meeting and I was aware of what the Deputy Chair meant, but it meant that the other Board members were not aware.

Q24 Richard Ottaway: She said, “given previous discussions . . . [she] should consider her position”.

Ms Weleminsky: Not herself, but I think that is what she was implying.

Q25 Richard Ottaway: In the light of that, you have been asked to consider your position on the Board related entirely to your giving evidence to the Select Committee?

Ms Weleminsky: Yes.

Q26 Richard Ottaway: And Mr Hewson, in an earlier letter, says, “This was the moment”, and I think it is his letter to Sir Hayden Phillips which by now you have seen, “when the rest of the Committee reached a conclusion”, so would you say that that discussion was a defining moment in the whole exercise?

Ms Weleminsky: Yes.

Q27 Mr Derek Foster: You said that you felt that the Board was being manipulated by the Department. Am I right in thinking that you took the view that the Department had no depth of understanding of the problems that the organisation was wrestling with or with the solutions which were necessary to deal with them?

Ms Weleminsky: I am not sure that I would quite present it in that fashion. I have cogitated over it to try and understand it myself and when you are in a Board position, as I was, but not the Chair and not privy to the meetings and discussions that were going on, but only having a feeling of how things are happening, you really do not actually know how

things work. It is only with the odd chink of light that you get when you get a copy of a letter or minutes or something that you start to understand how things are operating. My understanding that I have come to, and this is only my personal opinion, is that a number of things went wrong with CAF/CASS. The first was that there was not the competence within the Lord Chancellor’s Department to set up a body such as CAF/CASS. We are talking here not only about the work that they do in the courts which you might imagine that they would have some experience of, and clearly they do, but I think, more importantly, the difficulty of setting up a £100 million organisation made up of complicated parts from scratch, and I think that lack of competence, and that can be shown in many, many different ways, was then compounded by the fact that there was a desire and an agenda to bring the guardians into line. That was never a public agenda and the guardians were not aware of that agenda or, if they were, they were unhappy with it, so the seeds of the conflict were sown from the beginning. We, the Board, were not directly told that the agenda was to bring the guardians into line and it just became apparent over time with everything that was happening that that was what was trying to be achieved. They did not like the independence of the guardians, which was achieved through being self-employed and partly through taking their instructions from the courts, and they wanted a managed service and it was this managed service which was at the root of the conflict that started right at the beginning. As a Board, we were given the impression that we were in charge, but the reality was that there was continual guidance being given to the Chair as to how we should behave and what we should do. A third issue was the financial matter, that we were way adrift on money right from the beginning, a matter which I had pointed out right from the beginning, but had been pooh-poohed and that meant that we could not deliver on many of our commitments, so the seeds of incompetence were sown from the beginning, but I do not know that there was a deliberate conspiracy to do that; it was just a gradual evolution.

Q28 Chairman: Can I just ask for clarification of an answer you gave to Richard Ottaway. It is your view that at the Board meeting he referred to, the tipping point, if I can use that phrase, was giving evidence to the Select Committee?

Ms Weleminsky: That is my understanding, yes.

Q29 Chairman: Have you had any response to your application for the new Board?

Ms Weleminsky: No, I have not heard anything, although I believe that the interviews were due to be held on 28 February, but I do not know any more than that.

Q30 Chairman: Do colleagues have any questions? No, so can I ask you, Ms Weleminsky, if there is anything else you want to say to us on this subject before we allow you to resume your life?

⁴ Not reported.

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Ms Weleminsky: I know that your remit is narrow and is focused on specific privilege in relation to the Select Committee and obviously that is a concern, but I think the point I would make here is that in public life, if you want honest people with integrity to serve on public bodies, then we need to be protected in all the complaints that we might make

because, otherwise, it would have to wait for a select committee in order for the troubles to be addressed. I would like to see a wider protection of the position of people in public positions of responsibility in addition to when they give evidence to a select committee.

Chairman: Ms Weleminsky, thank you very much for giving evidence to the Committee.

Witness: **Mr David Crawley**, Head of the Scotland Office, Department for Constitutional Affairs, examined.

Q31 Chairman: Mr Crawley, good morning. I think you are familiar with the background to our inquiry; it is the Report of the Constitutional Affairs Committee which said that there might have been a breach of privilege, and the House of Commons referred the matter to this Committee and we are now making some enquiries. Firstly, looking at your assessment,⁵ would it be fair to say that there is no evidence in the paper that you were aware of the rules of parliamentary privilege?

Mr Crawley: The paper certainly does not give that evidence, I agree, and I think I would accept readily that it was an omission that it did not. It would not be fair to say that I was ignorant of the broad and general rules of parliamentary privilege in that I have been a civil servant for many years and have worked closely with Parliament on a number of occasions and I would like to say at this point that I have the profoundest respect for Parliament and its privileges.

Q32 Chairman: Would it be fair to say, with the benefit of hindsight, that you might have added a sort of new paragraph 18, saying, "Evidence to the Select Committee is privileged and Ms Weleminsky cannot be dismissed or suspended for having given it"?

Mr Crawley: I think that depends a little bit on recognising the essence of what it was that I was asked to do. What I was asked to do was to review the dossier in front of me in, as you know, a very short period of time and to reach a view on the nature of that material and the extent to which it could reasonably form the basis for some possible action. It was not for me, I was expressly not asked to make recommendations to the Secretary of State and I did not do so. Having said that, what I think would have been helpful would have been if I had remembered to quote the material in the Chairman's letter of 24 September,⁶ under cover of which he had submitted this dossier to the Department and in which he expressly made the point that he did not think that the evidence to the Select Committee should be a central issue and in which he expressly recognised the right of Ms Weleminsky to give evidence.

Q33 Chairman: At the end of your report you have some conclusions. Would those have been the same if you had put on one side explicitly the giving of evidence to the Select Committee?

Mr Crawley: I think I can reply to that on basically three points. Firstly, the fact of her giving evidence to the Committee, I can quite clearly say to you, was not part of my assessment. In fact it was not part of the reason why I reached the conclusions I reached. Secondly, however, I think it would have been quite difficult to have ignored some of the impacts which flowed from the fact that Ms Weleminsky, not that she had given evidence, but to some extent the way in which she had done so because clearly the impact of that evidence was to lead to an already highly fractured Board, it seemed to me from the papers in front of me, reaching a position where it was not going to be able to operate. Thirdly, there were a whole range of other issues. I had all of these issues, as it were, in a mass in front of me and I was working very, very quickly. I was looking across a whole range of issues, starting from 2001 or whenever it was. I could pick on two or three other issues which were absolutely critical, one of them being the fact that she had been in contact with the former Chief Executive while that person was suspended on disciplinary grounds, the fact that Ms Weleminsky had released material about private negotiations with the trade unions, and I think those kind of issues were very much apparent in my mind. Whether or not I would have reached exactly the same conclusion, it is always quite difficult to say, but my view is that it is perfectly possible that I might have decided on one ground or another that it would be advisable to talk further to the individuals before reaching a conclusion. On the whole, my view is that I would have reached the same broad conclusions about Ms Weleminsky's inability to act in a corporate manner and about her inability to, as it were, keep matters confidential when, in a broad and commonsense way, that was what seemed the right thing to do.

Q34 Mr Pound: Could I possibly just concentrate on a point you have already touched on, which was your actual remit from the Lord Chancellor. I do appreciate the point that you made earlier on, but,

⁵ Constitutional Affairs Committee, First Special Report of Session 2003-04 (HC 210), Appendix 1, p 4.

⁶ Not reported.

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for the record, could you just tell the Committee how you saw, and what was, the actual remit of your job?

Mr Crawley: Well, as you know, I was not given a written remit, but basically I was asked to conduct a review of documentary evidence which I was given which was provided by the Chairman of CAF/CASS concerning allegations of breach of duty on the part of Ms Weleminsky as a member of the Board of CAF/CASS. The intention was that I should consider the available evidence from an independent standpoint and whether, as it stood, the evidence gave sufficient grounds to suggest that she had failed in her responsibility as a Board member.

Q35 Mr Pound: So to review, yes, but to recommend as well?

Mr Crawley: That point was explicitly discussed between me and the DCA before I took on the commission and it was agreed between us that I would not make recommendations and I did not do so.

Q36 Mr Pound: Could I ask you what may seem an unfair question, and probably is an unfair question, which is to what purpose were you expecting the report to be used? Were you at any stage considering that the report you had made might one day become a public document and may actually be used in support of Ms Weleminsky's dismissal?

Mr Crawley: I think there are two parts to that question. The report was not written in the expectation that it would become public. I would have to say that virtually any civil servant nowadays would be unwise, however, to craft such a document without recognising the possibility that it might become public at some point. Secondly, as far as Ms Weleminsky is concerned, yes, I did expect that the report would form part of the process which would ultimately lead to whatever decision was finally taken about her. If that decision were to be that there should be proceedings leading to her dismissal, my presumption was that the report would be the first part of the process and that there would be the proper opportunities for Ms Weleminsky to comment on that report and for issues raised on it to be debated and discussed. What I have to say I did not expect and would not normally expect would be for a document of this kind to be put into the public domain before that kind of process had been completed.

Q37 Chairman: Can I just ask you at that point whether those processes then took place?

Mr Crawley: Well, formally speaking, I suspect you may know more about that than I do, although in fact of course I know a bit and I have seen the chronology and I have seen all the papers that you have seen. In terms of my involvement in any of the decisions, I came into this on the morning of 7 October when, as it happens, I was in Edinburgh and I was asked to take on the commission and I

submitted my report in London on the afternoon of 9 October. I have had no further formal part in the proceedings. I have been kept in some touch with what has subsequently happened simply because it was thought that I might, but not necessarily would, subsequently be asked to interview Ms Weleminsky or other people involved in the process.

Q38 Mr Pound: You said that you anticipated that your report of Mr Hewson's dossier might form part of a process which could lead to a disciplinary or a breach of procedure. Did you expect any further enquiries to be made as part of it or did you indicate that a line of investigation could be followed, particularly in respect of the operation of the Board?

Mr Crawley: Well, in submitting the report to the Department, I set out a number of considerations for them which they might want to take into account. The first of these was that I thought that the totality of the dossier gave really quite enough evidence to suggest that Ms Weleminsky was so far at odds with the majority of the Board members, the vast majority of the Board members, that it did not seem to me to be unreasonable to ask her to resign. I did, however, say that if there was any intention of proceeding to dismissal, then clearly a process needed to be followed which would lead to that or which would, as it were, take one towards that and that certainly involved having proper opportunity to comment and so on.

Q39 Mr Pound: Surely the fact that the majority of people may be at odds with the individual is not necessarily grounds for the individual resigning, but it could be grounds for the majority resigning?

Mr Crawley: Clearly I cannot quarrel with that as a general proposition. All I would say is that I immersed myself in the material in the dossier over a period of 24 hours or so and it seemed to me to be very clear that the frictions and various specific and general difficulties had gone back a very long way and that there was more than one occasion when actually many another Board member, perfectly creditably and respectably, might have chosen to resign in order in effect to put themselves in a stronger position to make whatever points it was they wanted to make outside the bounds of some form of corporate responsibility. That was why I felt that at the end of the day there was really a very strong case for Ms Weleminsky herself deciding that resignation was an honourable and sensible course.

Q40 Mr Pound: I appreciate that you have done a very good forensic piece of work in a very, very short period of time, in fact three days I think, but at what stage did you become personally aware that the issue of privilege might arise in this case?

Mr Crawley: The specific question as to the issue of privilege did not arise for me until the response to the Secretary of State's letter. I would, however, want to point out that I was perfectly well aware of the sensitivity of the fact that that Ms Weleminsky had

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given evidence to the Select Committee and, quite apart from anything else, (a) it was a matter of commonsense, and (b) it was quite well documented in certain respects in the dossier itself. I think what I regret in a sense is that in the attempt to clarify the position, I did not adequately qualify the reference to the Select Committee on a basis which I would have had a perfectly good basis for doing from some of the documentary evidence itself.

Q41 Mr Mackay: Mr Crawley, can we go back to your earlier answer to Sir George when we were talking about privilege in the select committees when you said that in principle there was nothing wrong with her giving evidence to a select committee, but it was the way she gave the evidence. What did you mean by “the way she gave the evidence” that added weight to your conclusions?

Mr Crawley: I think that my report itself says something along the lines that she gave evidence in a way which undermined the Committee. I am sorry, I cannot find the point.

Q42 Chairman: Is it 16?

Mr Crawley: In paragraph 15, I did say that “the comments involve significant criticism of the various processes, individuals and bodies involved”. The point I was trying to make when I answered the Chairman earlier was simply that there was in a sense a fact that having done that, that had an impact on the subsequent discussions of the Board. It was, I think, a fact that her comments were critical and I do not seek to criticise her for making those comments. What I was trying to do was to report the facts, the truth as I saw it, which is what I did.

Q43 Mr Mackay: I am afraid it gives the impression that it is fine to give evidence to a select committee, providing you do not say anything of any interest and the moment somebody is critical, then it is held against you, so let me just take it a stage further. You referred then to the Board meeting and the minutes of the Board meeting being on the confidential side where they discussed at some length her evidence and the Deputy Chair of CAFCASS said that Ms Weleminsky should consider her position because of the evidence she had given. Do you think that was a fair and reasonable report?

Mr Crawley: Well, on the first point, may I say quite clearly that I did not say or mean to imply that it was inappropriate for someone to give evidence that was critical. I merely reported the fact that it had been done. On the second question, again I do not know that I was in the business of reporting whether or not it was fair for the members to ask her to resign; it was not what I said and it is not what I say now. I think it was clear from the evidence of that meeting that Ms Weleminsky was set, either by herself or by the other members, apart and that she was at that point in a difficult position, and the minutes of that meeting were some evidence of the fractured and difficult discussions in the Board.

Q44 Richard Ottaway: Following on from the questions which have just been put to you, when you wrote this report, you were aware of the concept in principle behind parliamentary privilege?

Mr Crawley: Yes, I was.

Q45 Richard Ottaway: You have just said to Mr Mackay that all you were doing was simply reporting what had happened, but in paragraph 31, which is towards the end of the assessment, you actually go on to say, referring to paragraph 30, which is the six specific points and includes the submissions of evidence to the Select Committee, “They therefore do much to demonstrate the main charge which is an inability to behave corporately”. Do you think that is going a bit beyond just doing an empirical observation of what happened?

Mr Crawley: I think the whole paragraph is designed to give an overall assessment of what I saw as the evidence. Of course I was expected to reach an overall view on the totality of the evidence and the extent to which it could reasonably form the basis of any further action against her.

Q46 Richard Ottaway: That is fair enough, but you reached that conclusion on the knowledge that included as a part of that the giving of evidence to the Select Committee and the rules of parliamentary privilege.

Mr Crawley: I noted the fact of that. I have already said that I regret the fact that I did not include in the report words which basically would have repeated what Anthony Hewson said in his letter of 24 September, namely that the question of her giving evidence to the Select Committee was not, and should not be, a central feature of the evidence against her.

Q47 Richard Ottaway: But you made it a central feature.

Mr Crawley: I would not agree that I made it a central feature. I would say that I noted it as one of the six areas of concern. There were a number of others which I could have quoted, but did not, but I did not indicate that that or any other issue was the central issue and I would not agree that it was.

Q48 Richard Ottaway: But in paragraph 30 you say, “The six specific points”, in other words, that these are the highlights, these are the six points you want to draw everyone’s attention to.

Mr Crawley: What I wanted to do was to give some substance to the three general allegations. If maybe my drafting is not perfect, I think you will forgive me as I had no time to redraft this document and some of the statements in it are blunter than I would necessarily write if I was crafting a submission to a select committee or to Ministers when I had some considerable time to do it. The broad point is that the documentary evidence as a whole included a great deal of evidence, commentary, discussion and assertion which gave substance to the three general issues which I outlined first. I then felt that it was necessary to look through this to some of the issues

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which might have led to those three issues being issues of concern. I did that and that was the reason why the six specific points were identified.

Q49 Richard Ottaway: If you were re-doing this again now, would you write this report in a different way?

Mr Crawley: It would be quite hard, following all the discussion and debate about this issue, I think, for anyone to write this kind of report in exactly this way and I perfectly accept that were I to find myself in this unfortunate position again, I would of course write it in a different way.

Q50 Richard Ottaway: And would you be prepared to say that that is primarily as a result of the issue of parliamentary privilege?

Mr Crawley: I think it is fair to say that this particular type of instance has not, so far as I am aware, occurred in quite this format before. I, therefore, think it quite likely that a number of people will have a number of lessons that they will want to learn from it and I freely admit that those people include me.

Q51 Richard Ottaway: That is not quite an answer to the question I asked. Would you put it in a different way because of the issue of parliamentary privilege?

Mr Crawley: I am sorry, I am not quite sure what you are wanting me to say, but all I can say is—

Q52 Richard Ottaway: Well, you can say yes or no.

Mr Crawley: I am sorry, but all I can say is that if I was put in the same position again, I would once again undertake as detached and analytical an examination of the material in the dossier, I would report the facts as I saw them, I would give as objective an assessment of the facts as I could, with the additional point that I would add, if circumstances were precisely the same, a number of specific savings on the question of parliamentary privilege.

Q53 Richard Ottaway: I am going to put the question again. Is that because you have changed your approach to it because of the issue of parliamentary privilege? I will not put it again, but you can give a straight yes or no answer if you want to.

Mr Crawley: I am sorry, but I do not think I need to. I think I have answered your question very fully.

Q54 Mr Derek Foster: When you were given this task, were you clear in your own mind that it was the preliminary skirmishes to disciplinary action or dismissal of this individual at some subsequent time?

Mr Crawley: I was clear that it was highly likely that it would lead to a process against that individual, yes.

Q55 Mr Derek Foster: You mentioned a charge which I think was related to the inability to act corporately. Was that one of your charges or was that a charge which had been provided either by the Department or by the Chairman?

Mr Crawley: Well, in a sense what I was trying to do was to summarise, as it were, the charge sheet that emerged from the dossier. The dossier did not in every respect clarify and specify quite what it meant, but looking through the dossier in some detail, the inability to act corporately was absolutely at the core of the whole dossier from beginning to end.

Q56 Mr Michael Jabez Foster: If you had been asked for a further list of particulars other than “acting in a corporate manner”, would there have been included within that list of particulars giving evidence before a select committee or, for that matter, the nature of the evidence given to a select committee?

Mr Crawley: Certainly not. In relation to the problem of inability to act corporately, it seemed to me to be clear that Ms Weleminsky, over a long period, had felt that she could only pursue her particular concerns, whatever the merits of those concerns, by approaches which did not recognise her own personal corporate responsibilities for the running of the organisation and which on a number of occasions, quite separately and differently from this, appeared to make it more, rather than less, difficult for the Board to resolve some of the extremely difficult issues which it faced. That was the message which I took from the dossier.

Q57 Chairman: Are there any other questions colleagues want to put. No. Mr Crawley, is there anything you want to say before we allow you to go?

Mr Crawley: No, only to thank you, Chairman, for questioning me so courteously.

Chairman: Thank you very much for giving evidence, Mr Crawley.

Witness: Sir Hayden Phillips GCB, Permanent Secretary, Department for Constitutional Affairs, examined.

Q58 Chairman: Sir Hayden, good morning.

Sir Hayden Phillips: Could I just say that I am accompanied by my private secretary.

Q59 Chairman: I am George Young, the Chairman of the Standards and Privileges Committee, and these are my colleagues. The background, as I am sure you know, is the report of the Constitutional Affairs Select Committee which said there might have been a breach of privilege and the House of Commons has referred it to us to make some enquiries, which we are now in the process of doing. May I start off with a general question

which is how officials in your Department are briefed about privilege and related issues, particularly officials who may have contact with select committees.

Sir Hayden Phillips: I think that, as far as the appearance of civil servants before select committees is concerned, they are very well briefed. The rules have been of long standing and they are quite detailed. I think what this case has shown, in relation to guidance about handling the position of members of non-departmental public bodies and the link with privilege, is that there was no such guidance and I have asked the Cabinet Office to make sure that is changed.

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Q60 Chairman: In this specific case, when were you aware that the handling of the Weleminsky case might lead to issues of privilege being raised?

Sir Hayden Phillips: I was conscious from the time I was given the information by the Chairman—

Q61 Chairman: The Chairman of?

Sir Hayden Phillips: The Chairman of CAFCASS. I was conscious from that time that she could not be suspended or disciplined because of giving evidence to the Select Committee. That was clear to him and indeed he wrote it in his letter to me that she had every right to give such evidence. We were, therefore, looking at a whole range of other things. I should say straightaway that what should have been done at that point, and I should have made this happen, is that that assumption should have been made explicit. That would then have dealt with the issue of privilege. Although I did not take it as a privilege point at the time, I was quite sure she could not be acted against because of the fact of giving evidence.

Q62 Chairman: Yet when the Lord Chancellor originally wrote his letter it was not explicit that this was not taken into account. He had to write afterwards and in effect apologise for not having made it clear earlier. If you were aware that privilege might arise, as you said, at an earlier date, why was the point not taken on board in the correspondence about suspension?

Sir Hayden Phillips: I think I would acknowledge, and I am sure my Secretary of State and Lord Chancellor would acknowledge (because of the fact that he did write to apologise and he wrote a letter of explanation to Alan Beith), that although we were clearly conscious of the fact that we could not take action against, or would not, on the basis of giving evidence, we did not make that explicit either at the start of the process in September or at the crucial moment, before he wrote his letter of 11 December.

Q63 Chairman: Is there any written evidence available in your Department to show that the issue of privilege was at the forefront of anyone's mind before Alan Beith wrote to him on December 17?

Sir Hayden Phillips: No, I am not aware of any. The information we had and the assumptions we had were about not taking disciplinary action against her, which would have taken account of the issue of privilege but it was not expressed as a matter of privilege.

Q64 Mr Michael Jabez Foster: Good morning. Can I ask you about the resignation of Mr Hewson. We are aware that he apparently gave his resignation to you on 24 September and it only became public on 11 October. Why did it take so long, the whole process of his resignation? Was there something happening behind the scenes?

Sir Hayden Phillips: The meeting I had with him on 24 September was largely about his resignation, the timing of that and the timing of that in relation to the Board's response to the Select Committee

recommendations. We wanted to make sure that his resignation and the timing of the response were aligned. There was a delay because, of course, the Chief Executive, Jonathan Tross, was in New York and we wanted him to come back. I wanted to be able to try and give advice to the Lord Chancellor about who should succeed Anthony Hewson on an interim basis and to try to get that into as ordered a way as possible. They were the basic reasons for the delay. All those reasons were straightforward.

Q65 Mr Michael Jabez Foster: Then he gave you an extremely clear view about Ms Weleminsky and what he thought should happen. Had there been any discussion within the LCD before you received that advice from Mr Hewson about the merits or demerits of Ms Weleminsky? Were you involved in any issues of concern about her? Was there chatter going on?

Sir Hayden Phillips: I was not personally involved, but as you will know because you have the material, throughout 2001, 2002 and 2003 there were concerns in the Board about her behaviour in relation to Board members. Undoubtedly, certainly in a couple of meetings with me, I cannot be precise when they occurred but it was well before September 2003, he had mentioned to me that she was a problem that he had to manage. I think people were conscious of that, but it did not become an issue for me to attend to until he handed the material to me on the day after the meeting on 24 September.

Q66 Mr Michael Jabez Foster: Was there any reference within any of those exchanges to her giving evidence to the Select Committee? Was it mentioned at all?

Sir Hayden Phillips: Not to me before 24 September and indeed not until the twenty-fifth when the dossier arrived. The meeting on the twenty-fourth was primarily concerned with his position, with the ability of CAFCASS to produce a sensible response to the Select Committee, and her position was mentioned in passing at that meeting and he said he would send me the dossier that he prepared, which came the following day.

Q67 Mr Michael Jabez Foster: We know that you then asked Mr Crawley to make his report and we have heard from him. When you received his report, what sort of consideration did you give to how you should deal fairly with Ms Weleminsky? Did you consider putting something to her at that stage?

Sir Hayden Phillips: At that stage, having got his report, the process we put in hand was one where officials would then consider what the right process should be in terms of fairness, in terms of analysis, in terms of legal advice. That was beginning to go on. The Board were very keen on us taking urgent action. I was quite clear that we should do this in a very deliberate way. That work was really essentially suspended once the Secretary of State for Education and the Lord Chancellor decided to ask Clive Booth to undertake his inquiry. It did not

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then become an issue again, because I think it is fair to say we had expected all the members to resign, until she was the only one who did not resign and that takes us into mid-December.

Q68 Mr Michael Jabez Foster: And that brings us indeed to the letter of 11 December.⁷ Do you have a copy?

Sir Hayden Phillips: I have got it.

Q69 Mr Michael Jabez Foster: What involvement did you have in the writing of that letter?

Sir Hayden Phillips: I was not involved in the writing of that letter. From the time that Clive Booth undertook his report I had concluded that it was sensible to have one Permanent Secretary in charge of the work rather than two, and I had really stepped back from involvement in the case and the leadership at Permanent Secretary level was then with David Normington who is the Permanent Secretary at the DfES.

Q70 Mr Michael Jabez Foster: Would he have been responsible of the drafting of that letter?

Sir Hayden Phillips: I cannot answer as to whether he wrote it personally. At that point the way the system worked was that both my officials and DfES officials reporting through him to Charles Clarke and to Lord Falconer would have handled that advice.

Q71 Mr Michael Jabez Foster: That letter can have different interpretations. The evidence that is being referred to is very generalised, “failed to behave in a corporate manner”, “refused to observe confidentiality”. At least (1) and (3) could have been interpreted as referring to the evidence that was given to the Select Committee. What do you say about that?

Sir Hayden Phillips: I accept that. I think that on receipt of the letter and given the fact that the dossier was enclosed and the report was enclosed she would have seen that the reference being made was to giving evidence to the Select Committee. As Lord Falconer has said in his letter of 21 January,⁸ we should then have made it clear that that could not be taken into account and would not be taken into account in any disciplinary action and he apologised for not doing so.

Q72 Mr Michael Jabez Foster: So you would accept that the appointee, Ms Weleminsky, could certainly have assumed that that was an active consideration in why the letter was written?

Sir Hayden Phillips: I do not know what she assumed, but I would have thought a reasonable person reading that letter and then looking at the dossier could have assumed that the giving of evidence was a part of the process of discipline and it certainly was not meant to be and could not be so—hence the letter of 21 January.

Q73 Mr Michael Jabez Foster: Can you help us about when Ministers decided to appoint a new, permanent CAF/CASS Board Chairman and a new interim Board. Why did they decide on that rather than follow Sir Clive’s recommendation that the existing Board should continue until the new Board was ready for appointment?

Sir Hayden Phillips: I cannot answer that for the reason I gave you earlier. On a personal basis, I thought in his report he had indicated that it was very important that all the Board should resign because they were so entangled in the history of difficulty that had been created that a fresh start was really desirable.

Chairman: If I could just shed some light on that. He then said, “Should anyone refuse, the least problematic course would be to let them complete their terms of office rather than seeking to eject them,” which I think is the point Mr Foster is making.

Q74 Mr Michael Jabez Foster: But you were not involved?

Sir Hayden Phillips: No, I was not involved in that stage.

Q75 Mr Michael Jabez Foster: Do you know when the decision was taken to go for a new, permanent Chairman plus an interim Board? Do you know when that decision was made?

Sir Hayden Phillips: I am not clear. It would be wrong for me to hazard a guess as to that fact.

Q76 Mr Michael Jabez Foster: One of the issues that I think is at least of interest is that there was this dossier prepared on the unfitness of Ms Weleminsky but not, apparently, other Board members, unless we are wrong about that. Were dossiers prepared on the fitness of other Board members apart from Ms Weleminsky?

Sir Hayden Phillips: Not as far as I know.

Q77 Mr Michael Jabez Foster: Why not?

Sir Hayden Phillips: That was a judgment for the Chairman to make. It was very important at all points in the process that the Chairman and the Board members themselves were putting forward proposals where they wanted the Lord Chancellor to take action. In July 2002 Mr Hewson then asked my Department’s officials for advice on what action could be taken against Board members and he was then advised that the process should be clear, evidence based, fair, etcetera and that it was very important that the Department was never seen to be putting any particular pressure on the Chairman or the Board. It was their decision. They had to come forward to the Lord Chancellor.

Q78 Mr Michael Jabez Foster: It was clearly the view of the Department that there were a number of members of the Board that were unsatisfactory, including perhaps the Chairman. Why was no consideration given to preparing the case against others other than Ms Weleminsky?

⁷ Appendix 1.

⁸ Appendix 2.

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Sir Hayden Phillips: You have to try and look at things through the spectacles of the time. There was a period in the autumn of 2001 when the former Chief Executive was in the process of being dismissed and where the then Lord Chancellor and I had to make a judgment as to whether or not the Chairman's position was satisfactory. We came to the conclusion then that it would be more destabilising for the organisation if they were to lose both the Chief Executive and a Chairman. I am sorry to go into this detail but it is quite relevant to the context. The most important next step that I took—and I am not saying that in a self-regarding way but as a matter of fact—was to get a new Chief Executive in the form of Jonathan Tross. The key task through 2001 and 2002, 2002 in particular into 2003, was to re-stabilise the organisation and I think it is fair to say that he did a very good job at doing that with the co-operation of many Board members and indeed was greatly complimented by Ms Weleminsky for his role in the whole affair. I think throughout that time what one was trying to do, which is a legitimate thing to do, was to try to make the Board work, to get good co-operation between the executive team and the Board and that was genuinely improving, hence the reason why we did not consider that any action should be taken against Board members unless and until the Chairman came forward with a request for us to do so.

Q79 Mr Michael Jabez Foster: When resignations did come in following the request to do so, were any of the other members offered compensation for their loss of office?

Sir Hayden Phillips: I am not clear about that. I would need to give the Committee a note.⁹ I can get the information from the DfES about the position.

Q80 Mr Michael Jabez Foster: But you are not aware of any one way or the other?

Sir Hayden Phillips: No.

Q81 Mr Michael Jabez Foster: If I can take you to the memorandum for Sir David Normington with copies to yourself and others from Sally Field, Head of Family Policy Division, dated 8 December.¹⁰ It is the document which gives an update and references as to who has resigned, who has not, what is to be done and there was a further very brief one which is the distribution list to various people in the Department. What I am trying to get at here is to ask the extent to which junior ministers and others were involved in the exchange of information as to progress. Was this purely at officer level or were ministers in any way involved in the decisions as to what to do next?

Sir Hayden Phillips: At that stage the position was that David Normington was going to take the lead in dealing with individual Board members rather than me. This note was a briefing note to him about how it all should be handled. My understanding,

although we do not have papers in my bundle or yours to indicate this, is that both Lord Falconer, Margaret Hodge and Charles Clarke were kept in touch with that process, but I do not have written evidence of that and there is none in your file.

Q82 Mr Michael Jabez Foster: When they were kept in touch, are you aware of them giving any advice or making any proposal or was it simply for information only?

Sir Hayden Phillips: I am not aware of any specific instruction that was given. I was clear when observing this that Ministers were anxious, as Clive Booth had been, that as many as possible, taking the point the Chairman drew my attention to earlier, of the Board members should resign to enable as fresh a start as possible.

Q83 Mr Michael Jabez Foster: We have also seen Robert Moore's letter of 9 February¹¹ and you will have seen that there is the memorandum attached which is headed "Events leading to the suspension of Ms Weleminsky from the CAF/CASS Board".¹² Right at the end of that, paragraph 18, the words he uses are, ". . . this episode has identified a gap in the existing guidance for NDPB Board members on the issue of evidence to select committees and parliamentary privilege." Following on what the Chairman has asked earlier, does it not also identify a gap in the guidance within the Department itself?

Sir Hayden Phillips: Yes. I think I said earlier in relation to the Chairman's question that I have asked the Cabinet Office to make sure that guidance both to departments and to NDPB Board members is explicit on the issue of giving evidence to select committees and the question of privilege. That was a gap which has been put right both for departments and for the boards.

Q84 Mr Michael Jabez Foster: Let us go back for a moment to that letter of 11 December, which of course is the one that has caused concern. Whatever the Lord Chancellor's intentions arising out of that, would you think it is more or less likely in the future that persons in a similar position would want to give evidence to a select committee?

Sir Hayden Phillips: On the assumption that the guidance that is now prepared and goes around is crystal clear on the point that no one should be disciplined or other action taken against them because of giving evidence to a select committee, I would have thought that would leave a position in which people were then clear about that and there would be no discouragement as a result of this event.

Chairman: That was not quite the question.

Q85 Mr Michael Jabez Foster: Do you believe that people would be more or less likely to want to give evidence given the history or are you saying,

⁹ See supplementary evidence from the Department for Constitutional Affairs, Ev 30.

¹⁰ Not reported.

¹¹ Not reported.

¹² Appendix 4.

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perhaps you are, that if they are aware of the new guidelines that would have saved any fears that they might otherwise have had?

Sir Hayden Phillips: I would think it was more the latter. People would still do what they thought was their duty and give their views and the fact that there was clarity about the fact that no action could be taken against them because of that would be an encouragement rather than a discouragement.

Q86 Mr Michael Jabez Foster: On a practical point, is it ever possible to wholly divorce decisions of discipline or whatever other action can be taken against an individual from an act such as giving evidence to a select committee? Can you put it aside when otherwise deciding what action to take?

Sir Hayden Phillips: I certainly think you can in the sense that if you are looking, as we were in this case, at a series of events and activities over a long period of time. As I think the Lord Chancellor made clear in his letter to the Chairman of the Select Committee, there was a great deal of material here which in his view justifies suspension in any event. I think it is perfectly possible to set it aside in those circumstances.

Mr Michael Jabez Foster: Thank you very much.

Q87 Richard Ottaway: Sir Hayden, did you see the Lord Chancellor's letter of 11 December before it went out?

Sir Hayden Phillips: I do not think I did. I can check with my records as to whether it was put to me.¹³

Q88 Richard Ottaway: A yes or no to that would influence my line of questioning. On balance which way do you think it would go?

Sir Hayden Phillips: I do not think I did but I cannot be absolutely sure.

Q89 Richard Ottaway: Let us assume you did not. You are an experienced and respected senior civil servant. You will be well aware of the concept of parliamentary privilege. Can I take you to Mr Crawley's paper which is attached to that. It is the key letter that is attached to the Special Report, it is Appendix 1, paragraphs 30 and 31 at the end. Taking them in reverse order, paragraph 31, the first sentence says, referring to paragraph 30, "They therefore do much to demonstrate the main charge which is an inability to behave corporately." What he is referring to there is the six specific points in paragraph 30, one of which is the giving of evidence to the Select Committee. Are you with me?

Sir Hayden Phillips: Yes.

Q90 Richard Ottaway: Would you not agree that any detached observer reading paragraph 31 would say that giving evidence to the Select Committee was grounds for criticism?

Sir Hayden Phillips: As I said in answer to a previous question, if you took the letter of the eleventh together with this document then the

person receiving it could have believed, and possibly would have believed, that giving evidence to a select committee was grounds for the process that was going ahead. I think it is possible to make, although I do not place enormous weight on it, a distinction between failing to behave corporately, which might, for example, include the manner in which he gave evidence. Certainly the previous Chairman, Mr Hewson, had made it quite clear to us that they were concerned about how things were done rather than what had been done and that that could be taken into account as an analysis of corporate behaviour, but the distinction between that, which is what David Crawley was being asked to do, and on what grounds any disciplinary action might be considered against her—and I am saying I was quite clear and my Secretary of State was quite clear that giving evidence should not be part of that—I think is a valid distinction, but someone reading this without that distinction being made explicit might well have said that the Select Committee evidence is included in this.

Q91 Richard Ottaway: You contrast the two letters of 8 January with the 11 December letter. What had happened in between was someone had said there is an issue of privilege here which would explain the difference between the two letters.

Sir Hayden Phillips: Yes.

Q92 Richard Ottaway: Which would indicate that privilege had not been fully taken on board at the time of writing the first letter on 11 December.

Sir Hayden Phillips: As I said in answer to an earlier question, I was quite clear from the time I received the Hewson dossier that Ms Weleminsky had a perfect right to give evidence to a select committee and that, given that right, she could not be disciplined for it. I did not take a privilege point then. I think, as the Secretary of State's letter both to Alan Beith and her made clear, he was clear about that when those letters were sent. Our mistake was not to make our assumptions explicit.

Q93 Richard Ottaway: But that is not clear in the letter of the 11 December. It is crystal clear now and it was becoming quite clear in January, but it was not clear on 11 December.

Sir Hayden Phillips: No, and I think that was a mistake and we should have made it explicit in the letter of the 11 December. I wish I had made my assumption explicit at an earlier stage.

Q94 Richard Ottaway: So to summarise what you are saying, it is clear that you recognise the concept of parliamentary privilege but a mistake was made in this letter of the 11 December by referring to the giving of evidence to the Select Committee as grounds for an inability to behave corporately?

Sir Hayden Phillips: By omitting the fact that giving evidence to a select committee could not be used as grounds for disciplinary action we left the impression that it might be. We have obviously sought to correct that very clearly.

¹³ See supplementary evidence from the Department for Constitutional Affairs, Ev 30.

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Q95 Richard Ottaway: You have corrected it, but the converse of the impression given on 11 December is that it was a breach of privilege.

Sir Hayden Phillips: That is a matter for the Committee to judge when it has taken all the evidence.

Q96 Richard Ottaway: As you were not involved in the drafting of this letter I just wondered if you had a view?

Sir Hayden Phillips: We knew she could not be disciplined for giving evidence. There was no intention by us to seek to do so. But the way in which the letter of the eleventh was written, by omitting those facts, could have given the wrong impression that she was being suspended in part for this reason.

Q97 Richard Ottaway: You said there was no intention to seek to do so. This letter of 11 December does seek to do so.

Sir Hayden Phillips: It sets out the generic issues which I think are being put to her, failure to behave in a corporate manner, confidentiality, etcetera. The letter does not deal with a select committee in its terms, but in the Crawley dossier it does cover the Select Committee.

Q98 Richard Ottaway: The Crawley dossier is attached as grounds supporting the letter.

Sir Hayden Phillips: Yes.

Q99 Richard Ottaway: Therefore you have to read the Crawley evidence in conjunction with the letter.

Sir Hayden Phillips: I have accepted that.

Q100 Richard Ottaway: It is saying in paragraph 31 that giving evidence to the Select Committee demonstrates the main charge, which is an inability to behave corporately.

Sir Hayden Phillips: He said they do demonstrate the main charge of inability to behave corporately, but I think that is a different point, is it not, from saying whether or not you would use such evidence of giving evidence to a select committee actually to discipline someone?

Q101 Richard Ottaway: Tell me if I am wrong. I have read all this. The criticism against her is her failure to behave corporately, a component of which was giving evidence to the Select Committee.

Sir Hayden Phillips: For which we could not take action against her. There is also a vast array of other issues.

Q102 Chairman: On this specific point. You have said on several occasions it was not your intention to discipline and you could not do so. Is there any documentary evidence of that intention at any point?

Sir Hayden Phillips: No. I am asking the Committee to accept that what I am saying is what is true.

Q103 Chairman: That was your intention?

Sir Hayden Phillips: Yes.

Q104 Mr McNamara: Sir Hayden, you told the Committee earlier that you first read the dossier on 25 September following a meeting you had on 24 September. The dossier gave an account of the meeting which was held when this matter of Ms Weleminsky's appearance before the Select Committee was discussed by the CAF/CASS Board and in it you will see that there are continuous references to the need to act corporately, for the CAF/CASS Board just to have one opinion. As you have accepted, that shows the need for fresh instructions to go to non-departmental public bodies, for example, but would not any reasonable person reading this see the appearance of Ms Weleminsky before the Select Committee as the last straw or the final nail in her coffin which forced this action to be taken? These were Ms Weleminsky's own personal ideas and she was appointed to the Board for that reason and yet when things are going wrong there have been discussions between you and the Chairman and presumably between officials as well but no positive action has been taken until the lady appears before the Select Committee.

Sir Hayden Phillips: I accept that is a possible interpretation. I have thought about that and I have come to a rather different conclusion. On the giving of evidence to the Select Committee which emerged to the Board in June and July, I thought to myself why did not they take action then, if this was the reason. I thought about that and I thought that would be the logical thing for them to have done. They did not. They waited until late September to bring the information to me.

Q105 Mr McNamara: But in July and August governments go on holiday and so do civil servants and these sorts of things are delayed in this way and you must know that from your own experience.

Sir Hayden Phillips: I accept that. There was no indication before the vacation to me. It was not until 24 September that this was indicated to me that they thought the time had come for her position to be considered. During August and into September, and the dossier includes examples of this, she had given a series of interviews outside to magazines, to the *Telegraph*, to *File on Four*, so from the Board's point of view there was a continuing failure of corporate behaviour which went beyond the Select Committee period. The second thing, and this is a question very much for the former Chairman of the Board, is that when I saw him my impression as to the timing of this was more to do with their preparing their response to

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the Select Committee recommendations and more to do with his resignation than it had been to do with her having given evidence to the Select Committee. I thought rather carefully about that because I thought it was an important point and they are the conclusions I myself came to.

Q106 Mr McNamara: Is it not more accurate to say that what the lady was saying in those further meetings, articles and so on may have been an elaboration on what she had said already? Was any fresh material introduced?

Sir Hayden Phillips: Not as far as I am concerned. Her colleagues had been aware of her views for a very long time before she gave evidence to the Select Committee.

Q107 Mr McNamara: So that really should not be a cause of concern. It falls by the wayside with regard to that. Can the Select Committee see these guidance notes to the non-departmental public bodies about how to approach select committees?

Sir Hayden Phillips: Yes, absolutely. I will let the Committee have the instruction I have given within my Department to all those who are dealing with NDPBs to the extent that in the light of this case, if people are considering any disciplinary action in those bodies, I should be told straightaway so I can give instructions as to how the case should be handled and I will tell the Cabinet Office that I have committed them to showing this guidance to this Committee.¹⁴

Q108 Mr Mackay: Sir Hayden, may I take you back to the line of questioning my colleague Mr Ottawa was pursuing. I think it is accepted by everybody that the case against Ms Weleminsky was, in a nutshell, that she did not behave corporately and you have mentioned that several times yourself and that can be accepted. If we then look at the Lord Chancellor's letter in December and I think you say that it was unfortunate that the privilege point was not written in a slightly different way. Are you not concerned that you have left the impression that even though a case of evidence before a select committee cannot as a matter of privilege be used as evidence against, you still think that it should be mentioned in the letter as another example even though it cannot be specifically used and that that was yet another example of a lack of collective responsibility on the part of Ms Weleminsky? If that is going to be left to lie on the table without you correcting it is there not a danger that in future people will still be loathe to give evidence before select committees, because although it cannot be formally put into evidence against them it can still be used as background? That is what seems to be happening at the moment. Does that not need to be corrected?

Sir Hayden Phillips: I take the point and I understand exactly what you have said. It is a step beyond the interchanges I was having with Mr Ottawa and relates to the question about

encouragement or discouragement. I think, to take Mr McNamara's question, it is important that the guidance that now goes out should try to deal with the issue of whether or not giving evidence to a select committee can form a legitimate part of a criticism of corporate behaviour or lack of it as well as being wholly excluded from any disciplinary action. That takes the central privilege point, but I think what you are suggesting is that if people felt that the giving of evidence could even be considered as part of an analysis of corporate behaviour this would discourage people from voicing their opinions, I think that gets us into more subtle territory and that we try to tackle that issue in the way that the guidance is constructed.

Q109 Mr Mackay: If the letter in December as now revised by you to cover the privilege point was left to lie on the table it would still have included mention of the fact that she had given evidence to the Select Committee, which was yet another example of a lack of collective corporate responsibility on her behalf and that would be most unfortunate because it would have precisely the effect that I and Mr McNamara and Mr Foster have just been mentioning.

Sir Hayden Phillips: I think the best answer to that, with the benefit of hindsight, is to say that if, as I wish we had and I regret we did not do this, we had made the point about not taking action against her explicit at the time, for example, David Crawley wrote a report for me and made it explicitly at the time written to her I am not sure that the judgment would then have been made that it was right to include that information. I think that is something which I do not know because that was not what happened, but I think with the benefit of hindsight that is a perfectly valid point.

Q110 Chairman: Are there any other questions? Could I just ask a final question? When the dossier was sent to Ms Weleminsky why was not the covering letter sent at the same time which had some of the qualifications we have been talking about, about not taking this into account? Would this not have clarified matters?

Sir Hayden Phillips: I think it would have done. If I recall rightly and I have asked about this, the advice at the time indicated that as it covered the position of other individuals, including references to the Chief Executive, it was felt that it was inappropriate to send her that because it contained confidential material. That has now been corrected after the event, she has a copy of it and I think it was right to say it would have been sensible to have sent that at the same time.

Q111 Chairman: If colleagues have no other questions, Sir Hayden, is there anything else you want to say before we allow you to go?

¹⁴ See supplementary evidence from the Department for Constitutional Affairs, Ev 30.

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Sir Hayden Phillips: Only one thing. I take this issue very seriously. I want to make sure, whatever views the Committee come to, that we use this case to make sure that there is real clarity for both civil servants and departments and for members of non-departmental bodies about the link between

behaviour, corporate responsibilities and giving evidence so that this sort of privilege issue cannot arise again.

Q112 Chairman: Sir Hayden, thank you very much.

Sir Hayden Phillips: Thank you, Chairman.

Tuesday 2 March 2004
(afternoon sitting)

Members present

Sir George Young, in the Chair

Mr Derek Foster
Mr Michael Jabez Foster
Mr Andrew Mackay

Mr Kevin McNamara
Richard Ottaway

Witness: **Mr Anthony Hewson OBE**, Former Chairman of CAF/CASS, examined.

Q113 Chairman: Good afternoon. Thank you for coming along. I am George Young, the Chairman of the Standards and Privileges Committee and these are my colleagues. The background to our inquiry, as you know, is the report of the Constitutional Affairs Committee which said there might have been a breach of privilege in respect of the case that we are looking at, and it asks this Committee to make some inquiries which we are in the process of doing. I wonder if I could kick off with some general inquiries. You mentioned in your letter to Sir Hayden Phillips that you were aware of the importance of Select Committees.¹⁵ Can I ask when you first learnt of the special protection available to those who have given evidence to Select Committees?

Mr Hewson: Could you repeat the question, please?

Q114 Chairman: Yes. Those who give evidence to Select Committees have special protection which is called "privilege".

Mr Hewson: Yes.

Q115 Chairman: And what we are looking at is to see whether there was any breach of privilege, in other words whether any witnesses were threatened or penalised as a result, and I was wondering when you were first aware of the protection that witnesses have when they give evidence to a select committee.

Mr Hewson: In a formal sense when I was invited to come to this meeting, but in a general sense certainly I was aware from the time the Select Committee called for the CAF/CASS inquiry that there were issues around privileges and that did not surprise me. It seemed absolutely right and proper.

Q116 Chairman: When you had this discussion on June 17 at the Board meeting, would it be fair to say that the fact that Ms Weleminsky had given evidence to the Select Committee was the tipping point at which it was then decided that something had to be done?

Mr Hewson: No, I do not think so. I think what happened at that Board meeting was there were a number of members of the Board—in fact, all members of the Board had I think continued to express a view that they had expressed on many, many occasions previously, and indeed had asked me and the Deputy Chairman to take action on from

time to time. I think the concern, as it always was on these sorts of occasions, was not about the what but the how—how Ms Weleminsky had gone about the way of being critical of her colleagues on the Board and so on and so forth.

Q117 Chairman: But, at the meeting on 17 June, was it not decided to take the criticism of her a stage further by suggesting that there should be a meeting with her?

Mr Hewson: Yes, indeed it was, and I asked for a meeting and you, I think, will know from the notes that she in fact said that she did not want to attend such a meeting.

Q118 Chairman: You have probably had an opportunity to read the Crawley review which was published along with the Select Committee's report?

Mr Hewson: Yes.

Q119 Chairman: Do you think that is a fair summary of the position, as you saw it?

Mr Hewson: I think it has focused rather narrowly in some respects on the position that was around at that time, rather than a number of issues that went back to, in fact, August of our first year, when Ms Weleminsky wrote to the Lord Chancellor and sought a meeting and various other things. I know Mr Crawley has made reference to that but I think a lot of the focus of his report was around the circumstances—and understandably so—of June of last year.

Q120 Chairman: Just going back to the issue I raised right at the beginning, would it be true to say that Ms Weleminsky's evidence was the final straw in your decision to seek her dismissal?

Mr Hewson: No, it was not actually, and I have thought very carefully about this matter, as you might expect. I would like to leave with you today a letter—a very personal letter actually, and I would really rather it did not enter the public domain but that will be a decision for the Committee, of course—that I wrote to Ms Weleminsky in early August, and I think that will demonstrate beyond any doubt to your Committee that I was trying right up until that time to find a way forward with her, to allow us to move on as an organisation, and I will also give you her reply which demonstrates very clearly that she intends to continue to take an independent line on the Board's position.

¹⁵ Not reported.

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Chairman: Thank you very much. Mr Derek Foster?

Mr McNamara: With respect, Chairman, Mr Hewson has introduced some new evidence, or wishes to leave with us some new evidence to create an impression. Should we not have an opportunity to see that evidence now?

Q121 Chairman: Is it in the form of a letter?

Mr Hewson: Yes, and may I say that I only actually discovered this in my files on Sunday, so I decided that it was better to bring it along to the Committee. I also wanted to discuss with a colleague whether, in fact, it was right to bring it to the Committee.

Chairman: I propose to continue the discussion with Mr Derek Foster but perhaps you could let the Clerk have a copy of the letter which we can then have photocopied while we make progress.

Richard Ottaway: Chairman, Mr Hewson has indicated he would rather it was not in the public domain, but handing it over to this Committee is putting it in the public domain.

Chairman: We have powers to sideline evidence and not to publish it or include it in our report. It is a decision for the Committee.

Richard Ottaway: Is that what we are proposing?

Mr McNamara: We do not know; we have not seen it.

Q122 Chairman: I think Mr Hewson indicated that he recognised that it was our decision.

Mr Hewson: Absolutely.

Q123 Chairman: And on that basis he was happy to give it to us.

Mr Hewson: The Clerk made it perfectly clear to me.

Q124 Mr Derek Foster: When you told Ms Weleminsky at the Board meeting of June 17 that you would be setting up a meeting after discussion of her evidence, did you see that as a formal meeting and part of the Board conduct review procedures?

Mr Hewson: Yes, I did, and I need to say one thing more which is that I did not see it as a meeting about her decision to give evidence to the Select Committee; I saw it as a continuation of the process where we had had two formal meetings previously and this conduct continued unabated.

Q125 Mr Derek Foster: I think you must understand that any fair-minded person looking at this evidence and seeing the constant source of irritation that you and other Board members had experienced over a two-year period would find it a little surprising that immediately after discussing her giving evidence to the Select Committee you decided to go into a formal procedure. Can you understand that?

Mr Hewson: Yes, of course I can understand that. However, I think there had been a great deal of difficulty in getting agreement to the code of conduct and a great deal of this difficulty stemmed from the

fact that two members of the Board, one of which was Ms Weleminsky, constantly took a position of saying that she did not agree with certain wording around disclosure and so on and so forth, and she wanted us to agree to wording that the rest of the Board were not comfortable with, and so we had a very long period—I think it was probably a good six to nine months—where the code of conduct was endlessly under discussion. Now, it is also true to say that the code of conduct was agreed on an interim basis I think in the early part of last year, and so I do not think it should have come as any surprise to Ms Weleminsky that having had two formal meetings, both of them with myself and the Deputy Chairman about the same issues—indeed, I seem to remember in her refusal to have the meeting with us she pointed out that we had discussed many of these things before and she saw no point in continuing with them again—we were having that process either.

Q126 Mr Derek Foster: You see the difficulty we face is that in the giving of evidence we have to be convinced that, no matter what you and others say, that has not been the final straw, as the Chairman chose to put it, and this will certainly be very important in our deciding as to whether privilege has been breached or not. Surely you understand that?

Mr Hewson: I do.

Q127 Mr Derek Foster: How can you convince us that this was not uppermost in your mind when you decided to go into the formal procedure?

Mr Hewson: You have not seen the letter but I believe the letter that I am presenting to this Committee is very clear evidence that I wanted to continue to work with Ms Weleminsky: to try and move the organisation on. I did not see it as a personal issue—which may be somewhat surprising to you after the number of very personal attacks she had made on me over a period of two and a half years but I think, and I think the evidence stands, that I managed to maintain amongst all the hullabaloo quite a distant position from allowing it to become a personal affair, and I would like to think that I behaved professionally throughout.

Q128 Chairman: Can I intervene at this point? I am about to distribute your letter to my colleagues but you do realise this may get into the public domain, and Ms Weleminsky may see it?

Mr Hewson: I do.

The witness withdrew.

On resuming:

Q129 Chairman: Thank you for withdrawing. The Committee have read the letter and we will not be publishing it, so that is a relief to you.

Mr Hewson: Thank you.

Chairman: Perhaps I could ask Derek Foster to resume the questioning.

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Q130 Mr Derek Foster: Coming back to this meeting of 16 June, which you did say that you regarded as a formal meeting, did you regard it as a first stage or a second stage meeting, and was the Lord Chancellor's Department made aware of what you were doing?

Mr Hewson: I think in a technical sense, because the code of conduct had only been recently approved formally, we would probably have to have regarded it as a first stage but I have to say, and I would be surprised if this had not occurred to the Committee, I was treading a very difficult line. I had a number of Board colleagues who, frankly, had had enough of this and had expressed that on a number of different occasions, and yet I believed it was my job—and I still believe it was my job—to tread a course where, in terms of performance management of one's Board colleagues, we should not take any different action to that we would take with members of staff, and actually take a responsible line. I think Ms Weleminsky had tested us on a number of different occasions and, as I said before the adjournment, I took a view that this was just another part of the process, a process that had been going on for two years.

Q131 Mr Derek Foster: I can well understand the frustration of your colleagues and them putting pressure on you. Do you think they were aware that giving evidence to the Select Committee had rather changed the disciplinary process and made it much more difficult for you to achieve what it seemed the majority of the Committee wanted to achieve by then, namely Ms Weleminsky leaving the Committee?

Mr Hewson: I think in the evidence that the Department for Constitutional Affairs has submitted a number of my colleagues expressed during the course of that meeting that this was not a matter of going to the Select Committee or writing to the Select Committee: yet again—I am sorry to keep repeating this but if you read the notes of the meetings Ms Killick and I had with Ms Weleminsky¹⁶ on two previous occasions, on numerous other informal occasions, the picture is absolutely consistent all the way through—it is not the what, it is the how, and frankly, you know, if a member of the Board continues to publicly criticise her colleagues, continues to make statements in the press—and I think on one occasion she described them as a lot of “middle managers”—that is not only irritating for them but factually incorrect as well, and I think there comes a time when people say, “Well, hang on a minute, Chairman, could we please have another meeting and try and sort it out”, and when she refused to come to the meeting I cannot say I was entirely surprised about that.

Q132 Mr Derek Foster: We understand all of that and it comes out from reading the papers but the point I was trying to get at was, when she had given evidence to the Select Committee, notwithstanding what that evidence was or the tone of it and the

perception of that by the Committee members, that introduced a new element in any possible disciplinary procedure under your existing code of conduct. Were you aware of that? Were any members of the Board aware of that?

Mr Hewson: I am sorry to appear to differ but I think it only introduces a different element if it is about the principle of giving evidence to a select committee. I do not think it changes anything if it is about the how or, indeed, whether the content of what you submitted to the Select Committee was accurate factually, and factually it is not accurate. On some of the evidence submitted, which has come as a very big surprise to me and some of my other colleagues on the Board, there has never been any question by anybody about the veracity of what has been written in her evidence. It has just been accepted as being the truth. I have to say there are some parts of the evidence she has submitted that I and my colleagues on the previous Board do not recognise as being the view of the rest of the CAF/CASS Board, or at the very least the vast majority of it.

Q133 Mr Derek Foster: Perhaps I can get to the point a slightly different way. We have had before us today the Permanent Secretary, and in his evidence he made it quite clear that, following the evidence given to the Select Committee, the Department, certainly at some point after that evidence was given, were quite clear that they had to proceed very delicately indeed following giving evidence to the Select Committee. It looked as though they had begun to appreciate that parliamentary privilege had been introduced. Now, I am looking for some evidence that you or your colleagues on the Board were either aware of that on June 17 meeting, or became aware of it subsequently?

Mr Hewson: I think I would have to say in direct answer to your question the Board was not aware in giving evidence to the Select Committee that that changed our disciplinary process at all, because of the point I made about the what and the how.

Q134 Chairman: Can I clarify that? In your letter you said, “On the contrary every member of the Board recognises the importance and value of the Select Committee process, and the right of any individual to provide information”. In your answer to Mr Derek Foster, did you just confirm that?

Mr Hewson: Yes, absolutely. I thought extremely carefully about what I wrote to the Permanent Secretary, and—sorry, I do not want to go on repeating myself, Chairman!

Q135 Richard Ottaway: Do you have a copy of the minutes of the Board meeting on 17 June,¹⁷ and can I take you to paragraph 16, “Matters taken in private”, which is the relevant part of the minutes? At the bottom of that first page it says, “The following points were made: All but one Member expressed their disappointment that the letter had been sent without any prior discussion”, and then the last bullet point, “The Deputy Chair suggested

¹⁶ Not reported.

¹⁷ Not reported.

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that in the circumstances, and given previous discussions between the Chair, Deputy Chair and Judy Weleminsky, perhaps the time had come for Judy Weleminsky to consider her position on the Board". Did you agree with that?

Mr Hewson: Again, in relation to the previous discussions we had had and on the basis that none of the criticisms were about her going to the Select Committee, they were about what she had said about various issues which were not the Board's view, yes, I did think it was time to say to her—this was not the first time, of course, this had been said to her. This had been said on a previous occasion.

Q136 Richard Ottaway: I want to come back to that point but you just said: Given that it did not relate to her evidence to the Select Committee. Are you sure about that? All the points here are in relation to the evidence to the Select Committee.

Mr Hewson: No, sorry. I really do have to keep saying this: all members of the Board were putting forward a view about how she went about it, not about the principle, and if you read the verbatim note of the meeting that has been given, there are several references to members of the Board saying that she had every right to go to the Select Committee.¹⁸ There was never any doubt about her right to do that, but what they did not agree with was the way in which she had put forward various points of view and, sorry, without consulting with anybody else during that process. It came as a complete surprise to all of us that she had submitted it. Normally, in a Board of any kind, if one wants to do something which is different from all other members of the Board and you have consistently done that for two and a half years, you would resign. That is the normal process that I understand.

Q137 Richard Ottaway: I am now more confused than when I started. I am looking at a minute here where it seems to be the view of everybody possibly bar one, which is not you, that the time had come to consider her position on the Board?

Mr Hewson: Yes.

Q138 Richard Ottaway: And you agree with that?

Mr Hewson: I do.

Q139 Richard Ottaway: Has that appeared in the minutes anywhere else on an earlier occasion?

Mr Hewson: No. It occurred on one occasion when Ms Killick and I met with her for one of the two formal meetings we had, and I think it is recorded that Ms Killick said to Ms Weleminsky, "Well, if you do not like it then you should consider going".

Q140 Richard Ottaway: Is that before or after 17 June?

Mr Hewson: Oh, long before 17 June. In 2002. I would need to look that up carefully but I believe it was. If it was not said, it was certainly intimated very heavily.

Q141 Richard Ottaway: The letter that you showed us in private, which we are not going to publish, indicated, you continued, "you want it to work"?

Mr Hewson: Absolutely.

Q142 Richard Ottaway: That seems to be inconsistent with your suggestion that she should resign, taken three months earlier?

Mr Hewson: I think my colleagues on the Board were simply asking Ms Weleminsky to stop behaving in the way she was, as they had asked her on a number of other occasions in 2002.

Q143 Richard Ottaway: I understand that but, at the end of the day, you are still asking for her resignation which you agreed with?

Mr Hewson: Well, the Deputy Chair suggested it, yes, and I thought it was a perfectly reasonable thing for a Board member to suggest in the light of all the comments made by all the other Board members—and then, of course, the Select Committee report came out and that does focus one's mind, I have to say—but subsequent to that I reflected very carefully on the position and then decided to write to her in the terms I did

Q144 Mr Mackay: Mr Hewson, can I pursue a little further the points being raised by my colleague, Mr Ottaway, because all we can go on of this June Board meeting is the minutes we have in front of us. You have an advantage because you were there and there were obviously other things being said as well. Under item 16 you were all specifically talking about the letter to the Clerk of the Select Committee that Judy Weleminsky sent, and clearly everybody bar one was against the letter being sent in the circumstances that it was sent, and you have just confirmed to Mr Ottaway that you agreed with the Deputy Chair's suggestion that Judy Weleminsky should consider her position. Now, this does mean in terms of privilege that you and your colleagues were using her evidence to the Select Committee as a final reason for her dismissal. We have followed very carefully the longstanding dispute and, frankly, we do not want to get too involved with it because it does not affect our particular Committee because we are just dealing with the privilege matter; we can understand what you said very clearly and the past history. You then go on to say, yes, Board members and staff members can give evidence to a select committee—and I do not want to put words into your mouth here so I have to be very careful—providing that the evidence is, in your view, fair and reasonable but if it is something that is critical or that they have not consulted their other colleagues on, then that is something for them to be punished for. This is what your evidence today comes across as. Now, I do appreciate that you did not in June fully understand the privilege position of the House of Commons, and I do not think necessarily you should have done so that is not a criticism, and you said at the beginning that you only completely understood it on being summoned to this Committee, but you can see our dilemma looking at the minutes.

¹⁸ Not reported.

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Mr Hewson: I am sorry if I have given the impression, Chairman, that because someone is critical I do not think that is a good idea for them to give evidence. That is quite wrong, and if I have given that impression I am sorry. It is not the impression I meant to give.

Q145 Mr Mackay: It is what the minutes say, and that is all we can go on, you see. This is our difficulty.

Mr Hewson: Yes, but I think it is really important to try and ask the Committee to remember that this is yet a further incident—I am sorry, I understand the point that you want to park all that, but actually the reality I had to deal with at this Board meeting was that after nearly three years of constant barrage from this individual, of constant undermining of not only myself but my colleagues, finally she decides to make a statement to the Select Committee—I did not have any problem with the principle of that at all. In fact, to be honest with you, I would have been amazed if she had not done it, but if you do that you must stick to the real facts and not embellish them with your personal point of view. That is all that my colleagues on the Board were saying. It is not about the what, it is not about the principle of delivering to the Select Committee, but about how you go about that.

Q146 Mr Michael Jabez Foster: Can I be clear: are you distinguishing between the right to appear and the right to what you say to a select committee?

Mr Hewson: No. I am sure people can appear and say what they want to say but if you are a member of a Board—you see, Chairman, can I just say that I think one of the problems with this is Ms Weleminsky has portrayed herself as some form of whistleblower. Well, you will not be surprised to know that I spent a great deal of my weekend preparing to come here—indeed, that is when I came across my letter—and, actually, no, Ms Weleminsky is not a whistleblower, and the reason for that is very straightforward. If you read the letter she has written to the Constitutional Affairs Select Committee,¹⁹ what she wrote was 99% in the public domain already or could have been available to the Select Committee, and I really do think that is a very important issue. So the only extra that is added to it is a personal view about various events that were going on that were not views shared by any other member of the Board.

Chairman: What we are focusing on in the Select Committee is whether or not there has been a breach of privilege in threatening or penalising a witness, and the Committee is trying to focus on that rather narrow issue and not get too involved in whether there were grounds for dismissing. Mr Foster?

Q147 Mr Michael Jabez Foster: Please accept that we do not criticise or comment even on your concerns. They may well be justified or not but that, as the Chairman said, is not the issue. The issue again, if I can come to it, is that you said that you did

not distinguish between the two, and yet it appears that she was challenged about what she said—not what happened but what she said?

Mr Hewson: She was challenged about the way she had portrayed the position of CAF/CASS, which was not the view of other members of the Board.

Q148 Mr Michael Jabez Foster: Now, she portrayed that position in a number of forums, not least, however, before the Select Committee. Did you distinguish your concerns about what she said as opposed to the fact that she appeared in respect of that appearance before the Select Committee? Were your concerns the generality of her comments that you disagreed with, or the fact that she said it to a select committee?

Mr Hewson: No, I was not concerned that she said to it a select committee: I was concerned about the accuracy of what she was saying.

Q149 Mr Michael Jabez Foster: So you were concerned about the accuracy of what she said to the Select Committee?

Mr Hewson: I was, yes, and I think all my Board colleagues were concerned about the way she put it to the Select Committee.

Q150 Mr Michael Jabez Foster: So if we establish that, really all we then need to look at is what in consequence occurred because of that and was that instrumental in your mind in the recommendations you made subsequently that, apart from all the other things she did, this was the last straw?

Mr Hewson: No. After the Board had met and we had got through the other end of the Select Committee report and had had time to reflect on that a little, I wrote to Ms Weleminsky the letter that has been circulated today within—what, about two weeks of the Select Committee report being published. I wanted to think through my own position, and that was starting to influence me—what was I going to do? I came to one or two brief conclusions. One was that I did not want to leave the Board until the Board had given its formal reply: I did not want to leave the organisation totally rudderless—I thought that was not the responsible thing to do, to be honest—so I started towards the end of August to fix my view on what would happen, and I started to share that with Angela Killick, the Deputy Chair, and she and I had two or three meetings at which we talked about what might happen if I resigned. My main focus was to ensure there was proper continuity of the organisation; we both agreed that the likely scenario—but how wrong one can be!—was that if I went, probably two or three other members of the Board would leave over the next few months, and some were coming to the end of their period of office in any case. The Board had already discussed co-opting three or four new people so she and I took that into account—

Q151 Mr Michael Jabez Foster: I do not want to stop you but I want to focus on this one last question, speculating about what might happen

¹⁹ Committee on the Lord Chancellor's Department, Third Report of Session 2002–03 (HC 614), Volume III, Ev 226.

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then: can I ask you to speculate what you think you would have determined about Ms Weleminsky if she had not appeared before the Select Committee?

Mr Hewson: The same. Exactly the same.

Q152 Mr Michael Jabez Foster: You are satisfied about that?

Mr Hewson: I am absolutely satisfied about that and actually Ms Killick and I sat down and talked about whether, if I went, she could work with the Board with her present, and the conclusion was that she could not.

Q153 Mr McNamara: You said that 99% of what Ms Weleminsky said was accurate.

Mr Hewson: In my letter?

Q154 Mr McNamara: No. What you said in evidence just now. You said 99% of what Ms Weleminsky said to the Select Committee was accurate, and was already in the public domain.

Mr Hewson: No. I said it was in the public domain.

Q155 Mr McNamara: If it was in the public domain, then what was the reason for this very elaborate minute?

Mr Hewson: We keep coming back, and I am sorry, to the same point: it was not the what of what she was saying, it was how she was doing it and the way she went about that process. The way she described various situations was not what her colleagues recognised.

Q156 Mr McNamara: I understand that and I stand corrected, but you go on to say in your minute, “. . . in particular . . . Board members should accept collective responsibility for decisions reached at Board meetings and should support those decisions in public”, but you have then said in evidence that Ms Weleminsky was perfectly free to say what she liked to the Select Committee. Is there not a contradiction there?

Mr Hewson: I do not think so. I think it is a matter of style and the way you go about it. A lot of the things that Ms Weleminsky said to the Select Committee were correct, accurate in factual terms, but it is the way she went about it and the way in which she undermined many of her colleagues, the way she described certain situations that none of her other Board colleagues, or most of them, did not recognise.

Q157 Mr McNamara: Can I be rather brutal and suggest, on the what and the how, “How do we get rid of her. She gave this evidence; now we have got her”, and these decisions were made, and then in your later letter you suddenly realise that privilege and other matters were suddenly raising their heads, and therefore you were trying to back out of a situation where you felt, in fact, you had already got her?

Mr Hewson: I think I would have to say, Mr McNamara, that I do not recognise that sort of behaviour frankly, firstly, and, secondly, when I started giving evidence to this Committee today I

made it clear that I was aware that there was the privilege issue but actually was not fully aware of it until I received a letter about two weeks ago, so my position did not change between the June Board meeting and two to three weeks ago when I was summoned to this Committee.

Q158 Mr McNamara: Then it would be fair to say, in light of what you have said there, that having got this evidence that was given to the Select Committee by your errant Board member, you felt now you were in a position to move?

Mr Hewson: No.

Q159 Mr McNamara: And this was a combination of a series of incidents which were building up?

Mr Hewson: No.

Q160 Mr McNamara: I am not entering into the privilege situation now but the whole of the tenor of this minute, that “Nobody should disagree, we should all act as one on a decision that is made”—all of which are not improper principles, I am not denying that for one moment—and you have this maverick coming along and you thought, “Right, now we have got her”?

Mr Hewson: I do not recognise the terminology, “We have got her”. That is not the way I operate and I think, although in my experience CAF/CASS has been an extremely difficult one, if I have shown anything it is a lot of patience over these sorts of matters. I actually would not want to treat Ms Weleminsky any different to anybody else.

Q161 Mr McNamara: I am not saying you would but you see in the evidence to the Select Committee—and just let me finish because this is what you have been talking about, evidence to the Select Committee—“The Deputy Chair suggested that in the circumstances, and given previous discussions between the Chair, Deputy and Judy Weleminsky, perhaps the time had come for Judy Weleminsky to consider her position on the Board”, and you might want to put in brackets after that “again”?

Mr Hewson: I think what Ms Killick was saying was that in the circumstances of not only the way she had gone about the task of giving evidence, the way she had undermined her Board colleagues and a whole range of other things, but also remembering Ms Killick was the person—

Q162 Mr McNamara: Just hold on for a moment. When you say “undermined her colleagues”, are you meaning now at the moment “undermined her colleagues before the Select Committee in her evidence”?

Mr Hewson: If you read her evidence to the Select Committee, it is clearly undermining her colleagues.²⁰

²⁰ Committee on the Lord Chancellor's Department, Third Report of Session 2002–03 (HC 614), Volume III, Ev 226.

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Q163 Mr McNamara: Yes—

Mr Hewson: Amongst many other things.

Q164 Mr McNamara: Because you have already been saying she has been undermining her colleagues in other ways but I am trying to be specific, because we have to be specific about this matter. Please go on.

Mr Hewson: Remembering that Ms Killick was present at both the previous formal meetings that had been held with Ms Weleminsky about her behaviour, I think Ms Killick was referring to the generality of that situation and not specifically about giving evidence to a select committee.

Q165 Chairman: I think we are beginning to go over ground. Unless colleagues have any more questions, there is one matter I would be grateful if you could perhaps drop us a line on. In your letter to Sir Hayden you said that Ms Weleminsky's dismissal and various other matters should be seen as "part of a package of measures that will help rebuild some of the confidence that was lost as a result of the select Committee report." Could you drop us a line

outlining what was the complete package you had in mind, and also what response you got from Sir Hayden Phillips, just to complete the picture?

Mr Hewson: Yes.²¹

Q166 Chairman: Finally, is there anything you want to say to the Committee, before we let you go?

Mr Hewson: Just one brief point, Chairman. In terms of the generality there has been a lot of focus on what was said, and I understand the reason for that, at the 17 June Board meeting. I think the Board was extremely concerned about what had been said primarily because of the work it was doing and had been doing for the previous twelve months to bring the organisation out of the difficulties it had been in. I have to say that this constant returning to the negative focus on CAF/CASS and on the past reputation of the Board was something that, frankly, we felt extremely strongly about, and we recognised that the consequences were likely to be immense—and so they were. Thank you, Chairman.

Chairman: Mr Hewson, I am very grateful to you. Thank you for coming along and giving evidence to us.

²¹ See supplementary and further supplementary evidence from Mr Anthony Hewson, Ev 22–23.

Supplementary written evidence from Mr Anthony Hewson

The Chairman asked me to clarify at Q165 matters relating to my letter to Sir Hayden Phillips. The "... package of measures ..." that I referred to in that letter were as follows:

1. My resignation. I did not resign because of the Select Committee report. The reasons I resigned are set out in my letter of resignation to the Minister dated 23 September 2003 (copy attached).¹ I resigned in part to give the Board some space to reorganise itself and move forward.
2. Mrs Killick had offered to continue as Chairman to ensure continuity—whilst matters stabilized. I believed that the Board would consolidate around Mrs Killick's leadership which would help the organisation to "move on".
3. The Board had spoken openly about its willingness to quickly co-opt 3/4 new Board Members. Some of the existing Board Members were coming to the end of their term of office—so it seemed likely that if I left—others might also feel the right time had come to leave and give space for others to move in.
4. The Board submitted its formal response to the Select Committee report on the day I resigned. This provided an important milestone and plan from which the organisation could move forward.
5. Ms Weleminsky's departure. I was clear that seven other Members of the Board could no longer work with Ms Weleminsky. That was the only reason why I delivered the dossier to Sir Hayden Phillips with a clear recommendation. Mrs Killick was also clear that she could no longer work with her.

That completes the "... package of measures ..." I had in mind.

There are other matters I would like to bring to the attention of the Committee.

- I have re-read my evidence very carefully indeed. I do believe it is crucially important for me to confirm that no member of the Board had any idea on 17 June 2003 that we might have been anywhere remotely near an issue of "Parliamentary Privilege".

In this context I do want to be sure that the Standards and Privileges Select Committee has seen the "Verbatim Note" (there was only one such note) contained in the dossier I passed to Sir Hayden Phillips. In that note several Board Members overtly refer to their view that Ms Weleminsky (JW) had the right to give evidence to the Select Committee.

¹ Not reported.

So I do believe that without exception Board Members supported Ms Weleminsky's right to go to a Select Committee. The difficulty arose when she said things to that Committee which were either factually inaccurate or wilfully undid much of the work the Board had been doing in the previous 12 months to stabilize the organisation. I am bound to also record that most Board Members were mightily perplexed when the Department for Constitutional Affairs Select Committee failed to seek either verification of Ms Weleminsky's version of events or the views of any *other* Board Members.

- I do believe that **all** references on 17 June 2003 about Ms Weleminsky's evidence to the Select Committee were wholly in the context of a management process that had been running for nearly two years. They were absolutely *not* about Parliamentary Privilege—in any sense whatsoever.
- I do believe it is relevant to draw the Committees attention to the fact that as early as 12 November 2002 it had been formally recorded that *continuance* of Ms Weleminsky's behaviour—that is to say the *way* she did things—would be the subject of further action if required. Paragraph 3.6. Page 6 of 7 of the meeting held on *11 November 2002* states:

“AH said that the tone and style of JW's interventions had to stop. He did not wish to have any further meetings such as those of 11th April 2002 and today. These were an unwelcome diversion of his priority, which was to work for children and their families. If there was a further episode of the type outlined in this meeting, AH would lay the matters discussed before the Board, and invite their decision on JW's future”.

The Committee will note that this was some time before the Select Committee responsible for the Department for Constitutional Affairs had even announced there was to be an inquiry into CAF/CASS.

I do believe that it was this type of “event” that informed the Board's thinking on 17 June 2003 and specifically the Deputy Chair's suggestion that Ms Weleminsky should consider her position.

- It does seem important to record that no other Board Member can recollect *any* reference to Parliamentary Privilege in our training or preparation for being a member of the Board of an NDPB. Neither can I recollect in the preparation for submitting evidence to a Select Committee in which I took extensive advice from the Civil Service (including specific training)—which made any reference to Parliamentary Privilege.

I hope the Committee finds this helpful.

9 March 2004

Further supplementary evidence from Mr Anthony Hewson

Whilst tidying some CAF/CASS papers away at the weekend I realized that I had not directly addressed one of the questions the Chairman of the Committee on Standards and Privileges had asked of me at the hearing on Tuesday 2 March 2004.

In my letter of 9 March 2004 I outlined in paragraphs numbered 1–5 the “. . . package of measures” I had in mind when I submitted my resignation. However the Chairman also asked (Q165 last 2 lines) “. . . and also what response you got from Sir Hayden Phillips, just to complete the picture”.

Some six months have passed since my two meetings with Sir Hayden so recalling the fine detail isn't easy. However what I am able to recall is that at the first meeting (24 September 2003) I outlined the reasons why I felt it was the right time to leave. I recall using my letter to the Minister dated 23 September 2003 as a “prompt”. Additionally I shared in general terms the other issues noted in paragraphs numbered 1–5 in my letter of 9 March 2004 to yourself.

But it is important to record that I think my resignation came as a surprise to Sir Hayden and we did not dwell on any particular point in any detail. I do not recall Sir Hayden making any particular point about the dossier (which was in fact delivered to this office in the following 48 hours). We agreed to meet at a later day to deal with detailed issues relating to my departure. We met again on 6 October 2003. I do not recall any specific discussion about the dossier other than a simple acknowledgement that it had been received and matters were being progressed. I do recall a brief discussion about Ms Weleminsky's continuing contact with the press. If I recall this correctly it was no more than an “update”—so the department was aware of the most recent developments.

I regret the omission of this information from my submission on 9 March 2004. I would be grateful if you would convey my apologies to Sir George Young.

23 March 2004

Witness: Lord Falconer of Thoroton QC, a Member of the House of Lords, Lord Chancellor and Secretary of State for Constitutional Affairs, examined.

Q167 Chairman: Secretary of State, thank you very much for coming along. You are aware of the background to our inquiry—the Select Committee report and the reference by the House of Commons to this Committee. We are not concerned with the broader question as to whether or not it was right to suspend Ms Weleminsky or ask her to resign; we are focused on the rather narrower issue of whether, having given evidence to the Select Committee, she was penalised or threatened in any way, and we have seen the correspondence. Perhaps I can start off with this question: when you decided to suspend Judy Weleminsky, you say you put on one side that section of the evidence before you that related to her evidence to the Select Committee. Is there any evidence of your having done that?

Lord Falconer of Thoroton: No, not really. Only my response after the event, not before the event. It is obvious, looking at the letter I sent to Ms Weleminsky²² with the two attachments, that anybody reading that would take the view that the Select Committee aspect of it could have played a part in the decision to start disciplinary proceedings and could result in disciplinary proceedings subsequently, and I deeply regret that. That was never my intention. When I first saw the Crawley report²³ that Mr Crawley wrote and the Hewson letter and the attachment to it,²⁴ it was obvious that you would put the Select Committee to one side—obvious because Hewson says it in his letter but also obvious that you could never penalise somebody for giving evidence whether to a court or to Parliament, and the letter Ms Weleminsky had written was plainly the same as giving evidence to a select committee. I looked at the letter at the time it was sent on 11 December and did not put it together with the attachments, so my mistake was not to realise what the effect on any reasonable reader of it would be when it arrived shortly after 11 December.

Q168 Chairman: You say you made no reference to this aspect of the dossier, that is the giving of evidence, in your letter, the first letter dated December 11, but in that letter you did refer to the generic offence of failing to behave in a corporate manner into which Mr Crawley subsumed the presentation of separate evidence. So in a sense does this not constitute a reference to having given evidence to the Select Committee?

Lord Falconer of Thoroton: If you put the letter together with the two attachments, I agree with you, I do not think you can come to any other conclusion in relation to the correspondence than that. I make it clear that was not my intention but, having looked at it subsequently, it is obvious that if you send somebody a letter saying, “There is evidence, please comment on it”, I am asking her in effect to comment among other things on the Select Committee material.

Q169 Chairman: Were you aware when you sent the first letter—

Lord Falconer of Thoroton: Which? The 11 December letter?

Q170 Chairman: The first letter to Ms Weleminsky on December 11, on parliamentary privilege and the rights?

Lord Falconer of Thoroton: Oh, yes, I was. Completely. When I saw the Hewson letter of 24 September and the attachments and the Crawley material, which I had seen before I sent the letter of 11 December, of course I knew that it is wrong and breach of privilege to do anything which might intimidate somebody into not giving evidence or prejudice them in some way for having given evidence to a select committee.

Q171 Chairman: Before I ask my colleagues to chip in, your letter to Alan Beith appears to be rather carefully worded.²⁵ You say, “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”. Why did you not say, “I did not do so”?

Lord Falconer of Thoroton: I thought I was. I was certainly intending to make that clear. There was no intention to be careful in the wording.

Q172 Chairman: This is the letter dated January 8?

Lord Falconer of Thoroton: Yes, I have it in front of me.

Q173 Chairman: You say “and I would not do so”. Why did you not say “and I did not do so”?

Lord Falconer of Thoroton: Well, I am sorry I did not, but I was trying to make clear to her that the position was that it formed no part at all in what I was doing.

Q174 Richard Ottaway: Lord Chancellor, can I take you to the Crawley attachment to your letter of 11 December and take you to paragraph 31?²⁶ I will ask you to look at paragraphs 30 and 31 together but starting with 31, the first sentence says, “They therefore do much to demonstrate the main charge which is an inability to behave corporately”. The “they” is in paragraph 30, which is the six specific points.

Lord Falconer of Thoroton: Yes.

Q175 Richard Ottaway: One of the specific points is the submission of separate evidence to the Select Committee?

Lord Falconer of Thoroton: Yes.

Q176 Richard Ottaway: Now, you just said in answer to your question to the Chairman that you did not intend that to be a part.

²² Appendix 1.

²³ Constitutional Affairs Committee, First Special Report of Session 2003–04 (HC 210), Appendix 1, p 4.

²⁴ Not reported.

²⁵ Constitutional Affairs Committee, First Special Report of Session 2003–04 (HC 210), Appendix 3.

²⁶ Constitutional Affairs Committee, First Special Report of Session 2003–04 (HC 210), Appendix 1.

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Lord Falconer of Thoroton: Certainly not.

Q177 Richard Ottaway: However, the wording of Mr Crawley which you adopted in your letter indicates that he certainly did?

Lord Falconer of Thoroton: I think you have seen Mr Crawley earlier in the day and there is no doubt, looking at Crawley's summary of allegations, he plainly does. He does not distinguish at all the Select Committee material, and you draw attention to paragraphs 30 and 31 explicitly referring to all of the six specifics.

Q178 Richard Ottaway: But in your letter of 11 December you sign off on this?

Lord Falconer of Thoroton: I do, and I accept responsibility for that.

Q179 Richard Ottaway: So it is not open to you to say, "I am sorry if that impression was given but it is not the case". You signed off on a state of affairs that was the case?

Lord Falconer of Thoroton: What I was intending to say in my letter was, "There is evidence which justifies you, in effect, having a case to answer". What I was intending to mean by that was "evidence apart from the Select Committee" but I did not say that. Anybody reading my letter could not have come to that conclusion because no distinction is drawn in my letter, so I am guilty of giving the impression that the Select Committee evidence was to be treated like everything else. That was not my intention.

Q180 Richard Ottaway: It may not have been your intention, but you were signing off on a document the author of which had that intention?

Lord Falconer of Thoroton: Yes. Well, you have to ask Mr Crawley what his intention was but—

Q181 Richard Ottaway: We have done that.

Lord Falconer of Thoroton:—I do not think you can draw any other conclusion from the terms of his letter.

Q182 Richard Ottaway: Can I take you back to a question the Chairman asked, which was whether there was any supporting evidence of what your intention was? Was there a meeting at the time you signed off the letter? Was there any minute of that meeting?

Lord Falconer of Thoroton: No. Can I give a bit of background? What happens is the issues about what to do about Ms Weleminsky arise roughly at the beginning of October or end of September—and stop me if you already know this. Mr Hewson comes and sees Sir Hayden Phillips; he puts the letter and the dossier to Sir Hayden; Sir Hayden gets Mr Crawley then to look at the material; Mr Crawley looked at it around about 9 October; I see Hewson and Killick, who is about to become the Chairman of CAF/CASS, on 10 October; they refer to the dossier; I am told—I think Sir Hayden is in the meeting which I have with Mr Hewson and Killick—that the dossier is being analysed by somebody else;

and before it comes back to me Professor Booth is appointed to look at what to do about the Board generally. It, in fact, comes back to me about 23 October—that is when I first see the Crawley and the Hewson material. I at that point think there is obviously a case to answer here, even putting aside the Select Committee, but we pause to see what Booth says. Booth reports on 9 November. There is then a series of decisions to be made on what to do about the Booth report and we decide to ask everybody to resign. We get to about 9 or 10 December and we decide—because, by then, everybody has resigned except Ms Weleminsky—what to do about Ms Weleminsky and the question then is whether one revives the proceedings that had been started by the Hewson matters. After advice, I decide that we will. I then send the letter of 11 December and the mistake is not, as it were, to put back together the attachments with the letter of 11 December. If that had been done, I would have seen precisely the mistake that I made which you have identified, which is that I basically signed off on the Crawley report which plainly does not distinguish the Select Committee allegations from the other ones.

Q183 Richard Ottaway: No one said to you, "Chancellor, there is a weakness in this"? I presume that you have people advising you on letters you sign.

Lord Falconer of Thoroton: I do, yes, but nobody did, no, and I am not blaming them for that because, first of all, it is apparent—

Q184 Richard Ottaway: I was going to ask you if they knew about the principle—

Lord Falconer of Thoroton: I roughly know what Mr Crawley thinks and I think the question of parliamentary privilege matters have been in the back of his mind, but quite far in the back of his mind. As far as I was concerned and I think Hayden was concerned, we had seen what Hewson had said at the beginning of his letters. It completely accorded with what one's instinct as a lawyer would be, perhaps for me more a lawyer than a parliamentarian, because it is impossible to prejudice anybody for giving evidence before or after it is given.

Q185 Richard Ottaway: Do you intend to dismiss Ms Weleminsky or will you let her contract expire on 31 March?

Lord Falconer of Thoroton: It is not my decision anymore; it is a matter for Mr Charles Clarke to decide. I was responsible for all this up to 12 January but, on 12 January, as a result of a transfer of functions order, he then became responsible for CAF/CASS.

Q186 Richard Ottaway: Had you made any recommendations?

Lord Falconer of Thoroton: I had spoken to Charles Clarke and he agrees completely with me that the question of giving of material to the Select Committee cannot play any part whatsoever in it.

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Q187 Richard Ottaway: Did you make any recommendations about letting her contract expire or to dismiss her?

Lord Falconer of Thoroton: I have not discussed that with him and I think the reality is that nothing will happen until this Committee reports and conclusions are reached.

Q188 Chairman: Can I pick up on questions that arise from that. Is it the case that the correspondence and the papers went straight to you as Secretary of State without going through a junior Minister?

Lord Falconer of Thoroton: Yes, it is. Looking at the submission, the papers were going to myself, Margaret Hodge and Charles Clarke.

Q189 Chairman: But, within your own Department, there was no junior Minister who was filtering it before it came up to you?

Lord Falconer of Thoroton: No.

Q190 Chairman: You mentioned in response to Mr Ottaway the Booth intervention. What Professor Booth recommended was that if there was a problem and not everyone resigned, they should be allowed to serve out their remaining term.

Lord Falconer of Thoroton: Yes.

Q191 Chairman: In the event, that was not an option which you pursued. Why did you reject Professor Booth's scenario and move to suspend?

Lord Falconer of Thoroton: First of all, that was certainly his recommendation. The other aspect pointing in that direction was the fact that of course everybody else by then had gone. So, in a sense, the people with whom the difficult relationships existed had all gone. Having said that, a very experienced Chair had been found to take over from Hewson and then Killick, Baroness Pitkeathley. The issue I had to address was, did I go on with potential disciplinary proceedings for the other matters or just leave Ms Weleminsky in place. I thought, having regard to the fact that there was this complaint and in the interests of CAF/CASS if it was made out, it would be best for CAF/CASS if she went. I make it clear, if it was made out. I thought the right thing to do was to go on.

Q192 Chairman: Did you discuss this with the incoming Chairman of CAF/CASS, Baroness Pitkeathley?

Lord Falconer of Thoroton: I did not discuss it with the incoming Chairman of CAF/CASS. I did discuss it with ministers in the DfES.

Q193 Chairman: She might have said, "I would be quite happy for Ms Weleminsky to serve out her remaining three months" without going through the aggravation which has now confronted you.

Lord Falconer of Thoroton: That is correct but the discussions I had with the Ministers in the DfES tended to indicate what the new Chairman's view on that would be.

Q194 Chairman: So they had discussed it with her?
Lord Falconer of Thoroton: They had, yes.

Q195 Chairman: And she had indicated . . . ?

Lord Falconer of Thoroton: She had indicated that she would prefer it if they did proceed. I should make it clear that that would not be decisive one way or the other.

Q196 Mr McNamara: I wonder if I could ask you about the actual mechanics of your Department. It is the Department for Constitutional Affairs.

Lord Falconer of Thoroton: That is correct.

Q197 Mr McNamara: And Parliament plays some part in it.

Lord Falconer of Thoroton: Of course, yes.

Q198 Mr McNamara: Is there any group or body in your Department which looks specifically at relationships with Parliament?

Lord Falconer of Thoroton: There is a Parliamentary Department but that Parliamentary Department is engaged on, as it were, the mechanics of what questions and what debates are going on in the Commons and the Lords.

Q199 Mr McNamara: What I find hard to believe is your very bold comment that there was nobody there who looked at the dossier when it came in and said, as people reading it would say, "Look, they seem to have come to this decision, after this very full discussion about what happened at the Select Committee, that she has to go." I just find it mind boggling that there was nobody who said, "But sacking her for this . . ." I do not see how this could have happened. I am not saying that it did not happen, just that I do not see how it happened.

Lord Falconer of Thoroton: I have thought about this a lot because I think this is a pretty serious mistake that has been made. I can see exactly how it happened and it is not an excuse. What everybody was focused on in relation to this was what to do about the future of CAF/CASS. Parliamentary privilege was never uppermost in anybody's mind because, as far as I was concerned and as far as Hayden was concerned, there was no question about that. The issue was always CAF/CASS. We knew that she would never either have disciplinary proceedings started against her or be subject to any prejudice as a result of having given that material to the Select Committee. Mr Hewson's letter²⁷ made that clear and both of us knew that instinctively, but it is utterly clear that, far from that being made clear to her, we left a completely different impression with her. That is the problem. It is because we were focusing on CAF/CASS and because we accepted that that we never made that clear.

Q200 Mr McNamara: It could be argued that Mr Hewson put that in his letter when he suddenly realised that—

²⁷ Not reported.

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Lord Falconer of Thoroton: To be fair to Mr Hewson, that letter accompanies his initial submissions to the Department and the matters that are referred to is both before and after the Select Committee. I do not want to make any comment about who is right and who is wrong in relation to what was going on on the Board, but it is perfectly obvious that there was a long period of time both before the Select Committee and after the Select Committee when there were real conflicts between Ms Weleminsky on the one hand plus a few others and other members of the Board in which they were saying quite separately to the matter of giving evidence to the Select Committee, “She is difficult to deal with.” She was responding and saying, “No, it is they who are making mistakes, they were impossible”, but there was a longstanding history of them not getting on.

Q201 Mr McNamara: Yes, I accept all that, but what we have is, in that minutes of the CAFCASS Board²⁸ looking at the evidence given by Ms Weleminsky, this insistence upon corporate understanding, “we all must act corporately; we must accept the decisions of the majority; you cannot say anything out of turn” and, reading all that and then suddenly finding in the letter—

Lord Falconer of Thoroton: I do not and somebody has to reach a conclusion in relation to that before any final decision is made because I made it clear that the reason why I agreed to the suspension was on the basis of everything, putting aside the Select Committee, not that she is necessarily guilty but that there is at least a case to answer and, pending the resolution of that, the right thing to do was to suspend her. On the point that you are making, the impression I have is that the problem was that Hewson was going, and there was a worry about what would happen after Hewson went. So, it was not the Select Committee that provided the trigger. All of this needed to be looked at.

Q202 Mr Michael Jabez Foster: The whole consideration, for me anyway, was post Select Committee, starting off with the report from Anthony Hewson. Did you ever discuss his comments with him or was it purely a paper exercise?

Lord Falconer of Thoroton: I met him on or about 9 or 10 October. He told me—because I had not seen it at that point—that he had submitted this document about Ms Weleminsky. He made allegations about the impossibility of working with her. I did not discuss the detail. I do not recall him referring to the Select Committee at all. I said that needs to be looked at because I knew at that point that what was happening was that the dossier was being analysed by an official in the Department, that was Mr Crawley. I never discussed the detail.

Q203 Mr Michael Jabez Foster: So, you never knew, for example, that he was concerned not about Ms Weleminsky attending the Select Committee but the manner and content of what she said to them?

Lord Falconer of Thoroton: No, I did not know that. I have seen this material subsequently.

Q204 Mr Michael Jabez Foster: Did you feel there was an opportunity to test the veracity of what he was saying or did you leave that wholly to Mr Crawley’s reporting?

Lord Falconer of Thoroton: I felt it would be wrong for me to start getting into that with Mr Hewson. If I talked to Hewson about it in detail, I would just get Hewson’s point of view in relation to it. He was making allegations, he was telling me this, and they needed to be analysed by somebody independently and that was going on. What would I achieve from it? I thought I would achieve little by just going through the detail with him then. I was in effect seeing Mr Hewson and Ms Killick because he was going and she was going to take over.

Q205 Mr Michael Jabez Foster: So, when you decided that something had to happen and Mr Crawley was involved and then he came to you with his report and I think you fairly reflected his knowledge of privilege was background knowledge but not specific, did you ask him at any time whether and to what extent he had taken into account the privilege issue?

Lord Falconer of Thoroton: I did not see Mr Crawley at all in person in connection with this until after it had actually started.

Q206 Mr Michael Jabez Foster: So, that was a paper exercise between him and you?

Lord Falconer of Thoroton: Yes.

Q207 Mr Michael Jabez Foster: So, someone wrote this letter for your benefit on 11 December.

Lord Falconer of Thoroton: Yes.

Q208 Mr Michael Jabez Foster: Who was that? Was it someone engaged in the exercise or how did it come about?

Lord Falconer of Thoroton: It came from officials and it came with . . . The way the matter was happening at that point was that, as the days wore on from 2 December, I think we reached a point where there might have been two who were holding out and not resigning at that point: Ms Weleminsky and one other or two others, I cannot remember which it was.

Q209 Mr Michael Jabez Foster: Ms Jordan.

Lord Falconer of Thoroton: I was getting advice that was saying things like, “You should consider whether or not you dismiss everybody for not resigning” and I was absolutely clear that I could not do that and I was equally clear that I could not possibly even start any sort of process unless there was a basis for doing so. So, a range of letters of various sorts were being given to me. Eventually, Ms Weleminsky was the last person who had not resigned. It was then necessary for me to review whether or not we revived the disciplinary proceedings. I took advice from counsel about that and was advised that it would be appropriate to do

²⁸ Not reported.

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so because there was a case to answer. At that stage, there was no focus on parliamentary privilege because everybody proceeded on the basis that the question had to be looked at on the basis of, was there enough without the matter of her giving separate evidence to the Select Committee?

Q210 Mr Michael Jabez Foster: Did you apply your mind as to whether there was enough without the Select Committee?

Lord Falconer of Thoroton: I most certainly did, yes.

Q211 Chairman: It seems to me that it was so obvious but no one else seems to have mentioned it or written it down.

Lord Falconer of Thoroton: It was so obvious to myself and Hayden. If you look at Mr Crawley's report, it obviously was not so obvious to him. Richard is right, I take complete responsibility for sending the letter, and I think the critical link is the sending of the letter to Ms Weleminsky.

Q212 Mr Michael Jabez Foster: Sir Hayden tells us that he was the guy who really did know about privilege and all the rest of it.

Lord Falconer of Thoroton: Yes.

Q213 Mr Michael Jabez Foster: He was not engaged in the approval or drafting of this letter.

Lord Falconer of Thoroton: That is correct.

Q214 Mr Michael Jabez Foster: So, was there a sort of gap somewhere that someone did not ask someone? Sir Hayden is the guy with all the knowledge and knows all about the privilege issue and someone else produces a letter and you sign it. So, was there no discussion in the office as to the wisdom of this?

Lord Falconer of Thoroton: I do not remember talking to Hayden about it at the time. I had looked at the attachments earlier and the letter became detached from them at this point. When I was signing the letter, I did not go back to the attachments and see what the overall effect would be. My view was that there was evidence which he had to deal with about saying that she was behaving in a way that made it impossible for her to stay on the Board. What I failed to clock was that putting the three documents together, you could only come away with one conclusion, that the Select Committee was part of that.

Q215 Mr Mackay: Following on Michael Foster's points, would you accept that having taken evidence under cross-examination from a number of people, it is right for us to conclude that you, quite rightly and obviously, understood every aspect of parliamentary privilege as did Hayden Phillips but that it is equally clear that other senior public servants have only a very hazy and vague idea of what it is all about?

Lord Falconer of Thoroton: I do not understand every aspect of parliamentary privilege but I understand the basic point that you can do absolutely nothing before or after somebody has

given evidence to a select committee which might prejudice them for it, but broadly I accept your point.

Q216 Mr Mackay: Do you equally accept that Mr Crawley and Mr Hewson, in their evidence, gave us a clear impression that they did not properly understand and one therefore presumes that other senior public servants are probably in a similar position?

Lord Falconer of Thoroton: I think that might be fair. It is obvious from looking at the Crawley memorandum that that is right.

Q217 Mr Mackay: Would you also say it is fair comment that, when they do half understand, they come up with the sort of conclusion that, if you say something that is broadly supportive and fine to the Select Committee that is okay and that, once you rock the boat, then it is not and this we have found as well?

Lord Falconer of Thoroton: Yes. It is not right to say, "I do not mind people giving evidence to a select committee but, when I look and see how they give evidence, that is most regrettable." You could not draw such a distinction, I agree with that.

Q218 Mr Mackay: I am grateful for those two points. Would you then agree that it illustrates that Ministers have a very great responsibility—and I accept completely the apology you have made—as do all of your colleagues who have a better understanding of parliamentary privilege perhaps than public servants, to ensure that we do not get to a situation where people will be fearful of giving evidence before select committees because of what has happened in this case and might happen again?

Lord Falconer of Thoroton: Yes, I do.

Q219 Mr Mackay: How would you propose that this does not happen again, both in your Department and elsewhere by better advice being given?

Lord Falconer of Thoroton: The ubiquitous Sir Hayden has obviously contacted the Cabinet Office. We need to determine what guidance should be given. The guidance that should be given obviously depends in part on what this particular Committee says about this particular case. I think there are two separate aspects to it. One is, how do you deal with both the Board members of a non-departmental body, which is the issue that arises here, but also precisely the point that Andrew was making and which Kevin was making as well and that is, how do you make sure that the Department is advising Ministers properly and how do you underline to Ministers that they, probably more than any person in a Department, are the people with the main responsibility in relation to it because we are the Parliamentarians, not the officials, so we are the people with the responsibility to ensure that this does not happen.

Q220 Mr Derek Foster: I think we may well have touched upon what I was going to raise. To say that you prayed in aid is perhaps too strong a word but

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you mentioned the fact that the former Chairman had written in his letter that the fact that Ms Weleminsky had given evidence to the Select Committee had no bearing on his recommendations as if to confirm, "Of course, I would not do it" and we accept that and of course the Chairman was in that position too. In our questioning of the Chairman, he was very hazy indeed about all this.

Lord Falconer of Thoroton: The point I would make on that is, if you look at what he says, to be quite frank, it is not that clear precisely what he is saying on 24 September, but what is clear is that he understands that there is something there about parliamentary privilege, that you should not do anything to somebody because they have or are about to give evidence to a select committee.

Q221 Mr Derek Foster: I am not absolutely convinced of that after our questioning of the Chairman and neither am I convinced that the members of that Board had any idea that parliamentary privilege was complicating the whole process. Clearly, Sir Hayden took that view too because he confessed that there was a gap in the advice that we give to public bodies like this and he gave an undertaking that that gap would be dealt with. You may have understood but I am not at all clear that the Chairman or any member of his Board were clear and I think they are really quite hazy about this whole process.

Lord Falconer of Thoroton: I do not dissent from that proposition and I think it makes it the two points that Kevin and Andrew have made all the more important which is somebody in the Department advises Ministers and Ministers understand their responsibility, but it also means that the guidance that the Cabinet Office and other relevant officials come up with after the result of this hearing is not just to officials and departments but that it also goes beyond that to non-departmental public bodies.

Q222 Chairman: In your letter of 11 December, you say at the end, "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." How robust legally would that decision be?

Lord Falconer of Thoroton: If I were justified in suspending somebody, putting aside the privilege issue, and they said, "No, I am not going to agree to be suspended, I am going to keep on coming into work" or "keeping on acting as a Board member", then I think you would be entitled, if you were in the position of being the accountable officer, to say, "That is not possible, therefore we are going to have to terminate you immediately." Is it not parallel to an employment situation?

Q223 Chairman: Would it not have been subject to legal challenge?

Lord Falconer of Thoroton: If somebody makes an allegation against an employee and the employer thinks the right thing to do is to suspend pending the investigation and the employee says—

Q224 Chairman: She is not an employee?

Lord Falconer of Thoroton: I know but you have to think about what the practical way of dealing with the problem is. The nature of the allegation was—and this is nothing to do with the privilege—that nobody could work with her because of the lack of all the various things that have been gone through. If that was very destructive of CAF/CASS, the idea that, if she refused to be suspended and kept on coming in, the accountable person, namely myself, could not say, "Look, I am sorry, we cannot go on like this. You are going to have to stop coming in and, if you will not do it by suspension, we shall have to think about termination", I think would be legally robust. It would not be legally robust if it was based upon the Select Committee but, putting aside the Select Committee, I think it would be perfectly robust.

Q225 Mr McNamara: Would it not be right and fitting that she has in fact in some ways done better than the other Board members in that a Board member suspended in terms of emoluments and so on, she did rather better than . . . ?

Lord Falconer of Thoroton: Of course, she must be paid all that she is entitled to and has been because the whole basis of suspension is that we do not know what the right and what the wrong answer in relation to it is, so she cannot suffer any prejudice during the period of suspension.

Q226 Mr McNamara: Compared with those who were forced to resign?

Lord Falconer of Thoroton: I think those who resigned were paid some money by the DfES and I am not sure whether that money in fact took them up to the date that their periods expired. I cannot remember.

Q227 Chairman: Perhaps we could have a note on that.

Lord Falconer of Thoroton: Sure.²⁹

Q228 Chairman: Are there any final points that you want to make to the Select Committee before we allow you to go?

Lord Falconer of Thoroton: No.

Chairman: Then, thank you very much.

²⁹ See supplementary evidence from the Department for Constitutional Affairs, Ev 30.

Supplementary evidence from the Department for Constitutional Affairs

I am writing further to last Tuesday's evidence sessions to provide the additional information promised by Sir Hayden and Lord Falconer.

The Committee asked Sir Hayden and Lord Falconer whether compensation payments were made to resigning Board members. To clarify the position, it was recommended that all resigning Board members should receive a payment of £2,800, and this was agreed by Ministers in DCA and DfES. The figure of £2,800 was notionally based on the fees Board members would have normally received up to the end of March 2004. There was a delay in making the payments while Treasury approval was obtained. Approval has been given and I understand that all Board members who resigned have either been paid or advised that their payment is being processed.

The Committee asked whether Sir Hayden saw the Lord Chancellor's letter of 11 December 2003 prior to it being sent. Sir Hayden has checked his records and advised that "*my office received the letter of 11 December in draft, and, on the same day, the final version. I do not recall if I saw the draft and the final version at the same time, but I did not comment or shape the draft.*"

Finally, the Committee asked to see the Department's guidance note issued to those dealing with NDPBs in the light of this case, and this is enclosed.

8 March 2004

DISCIPLINE CASES AGAINST NDPB MEMBERS AND PARLIAMENTARY PRIVILEGE

Parliamentary privilege allows individuals speaking in Parliament, including the giving of evidence to a Select Committee, do so freely, without fear of penalty. The Standards and Privileges Committee are investigating a possible breach of parliamentary privilege following a referral by the Constitutional Affairs Committee.

It has become clear that there is a gap in the current central guidance about giving evidence to Select Committees. The guidance issued by the Cabinet Office (Departmental Evidence and Response to Select Committees known as the "Osmotherly Rules" www.cabinet-office.gov.uk/central/1999/selcom/role.htm), focuses on civil servants. Most Board members and staff of NDPBs are not, however, [usually] civil servants. The existing "*Guidance on Codes of Practice for Board Members of Public Bodies*" (which all newly appointed Board members should receive) currently does not make reference to giving evidence to Select Committees, or to Parliamentary privilege.

The Cabinet Office is currently reviewing the "Osmotherly" guidance on Select Committees and will include parliamentary privilege and NDPBs as part of the review.

Interim guidance

Meanwhile, if consideration is being given to disciplinary action of any kind by the DCA against a member of an NDPB, the Permanent Secretary should be consulted well in advance of any action being taken.

Further supplementary evidence from the Department for Constitutional Affairs

1. Lord Falconer had read both the Crawley report and the Hewson dossier. He was absolutely clear—as was Sir Hayden—that the material relating to Ms Weleminsky's decision to submit separate evidence to the Select Committee could not form part of any action taken against her. That should have been made explicit and, as he said to the Committee, he regrets that at the time it was not. He recognised both as a parliamentarian and a lawyer that all witnesses must be completely free to give evidence, without fear or favour.

2. On the basis of the advice they had received over a period of some months, and the Constitutional Affairs Select Committee report, Ministers had decided that the CAF/CASS Board was not operating effectively. They felt that a fresh start was in the best interests of the organisation, and that Booth's recommendation of inviting the whole Board to resign provided the best way to achieve a fresh start. They did not want to single out any member(s). Lord Falconer's concern throughout was that a fair procedure was followed in relation to all members of the Board. But after the decision of all except Ms Weleminsky to volunteer their resignations, Ministers had to consider whether to look again at the evidence that had been presented to them in relation to Ms Weleminsky's conduct as a member of the Board. Without making any judgment as to whether a case would be made out (or as to what action might be taken), it was decided that there was a prima facie case to answer. Ms Weleminsky then agreed to suspension pending further consideration of her position, and she agreed to provide her comments on the matter.

3. The mistake made was that on the 11 December, when the letter to Ms Weleminsky was signed, the letter was not considered alongside the attachments to see what the overall effect on the reader would be. Officials' focus in the drafting of the letter, and in seeking advice from Counsel, had been on administrative law and on how to ensure fair procedure. Whilst Lord Falconer remained clear that the fact of her giving evidence to the Select Committee should not be taken into account in any way, he failed to make that explicit

in the letter. When Alan Beith rightly highlighted the issue, Lord Falconer corrected any impression that Ms Weleminsky might (quite reasonably) have been under since 11 December that the Select Committee evidence might have been taken into account. In fact, the decision to suspend Ms Weleminsky was based on a whole range of quite separate issues about her conduct that needed to be considered.

4. The final decision by this point was one for Charles Clarke to take, after the evidence against Ms Weleminsky and her comments on it had been fully evaluated. Charles Clarke has since reiterated that the Select Committee evidence will not be taken into account in his final decision.

19 March 2004

Tuesday 9 March 2004

Members present

Sir George Young, in the Chair

Mr Derek Foster
Mr Michael Jabez Foster
Mr Andrew Mackay

Mr Kevin McNamara
Richard Ottaway
Mr Stephen Pound

Witness: Mr David Normington CB, Permanent Secretary, Department for Education and Skills, examined.

Q229 Chairman: Good morning, Mr Normington. I am George Young and I am the Chairman of the Committee on Standards and Privileges. My colleagues are arranged on either side with their name plates in front of them. Thank you for joining us. Last week we interviewed two members of the Board of CAF/CASS and we got an impression of what it looked like from their point of view, as it were, looking upwards and we interviewed, also, the Lord Chancellor and saw what the policies were from the top looking down. Where we need your help is on the bit in between. We saw Mr Crawley who took a snapshot of the position last October but was not involved formally either before or afterwards. We saw Sir Hayden Phillips but he indicated in answer to one of our questions that it was sensible to have another Permanent Secretary in charge of the work rather than two and he could therefore step back from the case and the leadership at Permanent Secretary level was, therefore, with David Normington, which is why we have asked you to join us this morning. Can I start off by asking what you know about the privilege and the protection witnesses have when they give evidence to select committees?

Mr Normington: I do understand perfectly, I think, about parliamentary privilege and also about, particularly in this case, the need for an individual to be able to give evidence to a select committee. I understand that, I have been in the Civil Service for 31 years; I feel it is in my bloodstream.

Q230 Chairman: Is that perception shared by senior officials in your department?

Mr Normington: I have asked myself that. I cannot be absolutely sure of that, I have to say. I believe so but I cannot be sure of it. That is partly because there is no written guidance on this particular issue of members of boards giving evidence to select committees and it is not an issue that I have come across before.

Q231 Chairman: Can I ask if there is any evidence in any of the written material within your department that parliamentary privilege could be an issue in the handling of this case?

Mr Normington: No, there is nothing in our documentation.

Q232 Chairman: Okay. Can I turn then to the letter that the Lord Chancellor sent to Ms Weleminsky. Can I ask who drafted that?

Mr Normington: Is that the one of 11 December?¹

Q233 Chairman: Yes.

Mr Normington: It was drafted by a combination of counsel, the senior lawyers from the DCA and the DfES and officials.

Q234 Chairman: With the benefit of hindsight, would it have been better if there had been some reference to select committees and the role of privilege?

Mr Normington: Yes. It would have been better if it had said specifically that the fact that Judy Weleminsky had given this evidence to the Select Committee was not an issue in the case. It should have said that. That was the position, in fact, but it should have said it.

Q235 Chairman: Okay. Can we just look at the recommendations of Sir Clive Booth² and why they were not followed. What he suggested and one of the options was that if he wanted them all to resign they should be allowed to serve out their remaining term. It seems that advice was rejected and Ms Weleminsky was invited to resign and then suspended. Why was the recommended route proposed by Sir Clive not followed?

Mr Normington: He said something like the easiest option would be to let the Board members who were reluctant to resign serve their term of office, I think. We took the view, and this was the bit that I was very much involved in, that we should try to draw a line. It was clear that this was a very dysfunctional Board, it was not providing the leadership to CAF/CASS which was needed and I and my ministerial colleagues in the Department and the Lord Chancellor took the view that we should try and draw the line and we should try not to personalise this issue around any individual. That was what happened after the Clive Booth report and my involvement, of course, at that point was to try to persuade those who were reluctant, to resign. When we got to the position that there was just one member who was reluctant to resign we took the view, rightly or wrongly, that if we were going to have a fresh start, we should have a fresh start and that to have one member of the Board, and actually a very controversial member, of course, serving on the interim Board was not going to give us the fresh start we needed. That was the view we took.

¹ Appendix 1.

² Not reported.

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Q236 Chairman: How many members of quangos has your Department dismissed or sought to dismiss recently?

Mr Normington: There was a quite famous case of the Chairman of the QCA when Estelle Morris was the Secretary of State.

Q237 Richard Ottaway: QCA?

Mr Normington: I am sorry, the Qualifications and Curriculum Authority; but this was not the same as this case at all. I am not aware of others.

Q238 Chairman: No. Do you believe that due process was followed in the way that Ms Weleminsky was invited to resign and then suspended? Would it have stood up in court if it you had been challenged?

Mr Normington: I was advised so. All through this process the advice of lawyers and of counsel was taken and in the period just immediately before the sending of the 11 December letter, counsel was effectively drafting that letter and considering the grounds so I believe so, yes.

Q239 Chairman: Can I just ask who the counsel was?

Mr Normington: I think it is John Cavanagh. I am afraid I did not meet him myself but I think that is the person.

Q240 Chairman: Okay. Responsibility for policy transferred between departments during this process and although the Lord Chancellor signed off the letters the policy had switched to your Department. Was the fact that policy changed from one Department to another in any way responsible for some of the confusions and misunderstandings that may have arisen?

Mr Normington: I do not think so. I have looked at that in preparing for this Committee because clearly there was a period around the end of October into November when responsibilities changed but, in fact, the same core team, a joint team of the DCA and the DfES, were working on this through this period. The Minister for Children was working with the Lord Chancellor so I do not think that was an issue.

Q241 Chairman: I have got one final question before I ask my colleagues to come in. You mentioned that Ministers decided to go down the dismissal route to get the clean break and a fresh start. Were the views of the incoming Chairman relevant in taking that decision?

Mr Normington: She did express a view that she would prefer it if there was a fresh start for the interim Board. But, I think I have to be careful about this, I do not think her view can be a factor in considering the action against Judy Weleminsky. She is not a material witness in that case but she had expressed the view that she would prefer to draw a line.

Q242 Chairman: Finally, do you have some sympathy with the view of Ms Weleminsky given the letter and the dossier, that she might have felt that she had been penalised for giving evidence to a select committee?

Mr Normington: Yes, I can see why she would think that.

Chairman: Okay. Richard Ottaway?

Q243 Richard Ottaway: Did you actually see the Lord Chancellor's letter of 11 December before it went out?

Mr Normington: No but, if you like, I can explain precisely what happened. I do not want to by saying "no" to give the impression that I was not around and was not dealing with the issue but, no, I did not see the letter. I took the view on the night of 9 December going on to 10 December, when there was a lot of to-ing and fro-ing between the Lord Chancellor's office and officials and counsel, that I had nothing further to contribute to this. I had never looked in detail at the case against Judy Weleminsky. I had been advised that there was a case and I expressed the view that one of my senior officials should sign off that letter.

Q244 Richard Ottaway: Who was the senior official?

Mr Normington: I asked my Director-General, Tom Jeffrey, to sign off that letter.³ In fact, there was a lot of to-ing and fro-ing right up to the point of that letter being sent, including a meeting which the Lord Chancellor had with John Cavanagh QC, I think, on the phone.

Q245 Richard Ottaway: Mr Jeffrey took ultimate line responsibility for it, did he?

Mr Normington: Yes.

Richard Ottaway: You said in your evidence a second ago that privilege was uppermost in the minds of senior officials.

Mr McNamara: No.

Mr Derek Foster: His own mind, not necessarily all senior officials.

Q246 Richard Ottaway: What I wrote down here was "it was the position and it should have said it". Those were the words I wrote down.

Mr Normington: Yes. May I clarify? I was asked whether I understood about parliamentary privilege, and I do. I am afraid that in this case it never was in my mind that there was an issue of parliamentary privilege.

Q247 Richard Ottaway: As you did not sign off the letter what was in your mind was not really relevant. Was it in the mind of Mr Jeffrey?

Mr Normington: I do not know. I do not think anybody in this case put together the letter with the dossier and with the David Crawley report. It is the

³ *Note by witness:* Tom Jeffery's role was to sign off the draft submitted to the Lord Chancellor on the evening of 9 December. He was not involved in the discussions on 10 December.

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putting together of those three things which makes it plain that that is where the reference to the Select Committee evidence is.⁴

Q248 Richard Ottaway: Have you had a conversation with Mr Jeffrey about this? Did he understand the principle of privilege?

Mr Normington: I believe he did understand it but I do not think he thought it was an issue in this case either.

Q249 Richard Ottaway: Can I take you to the Crawley dossier which was attached to the Lord Chancellor's letter?⁵

Mr Normington: Yes?

Q250 Richard Ottaway: Can I take you to paragraphs 30 and 31?

Mr Normington: Yes?

Q251 Richard Ottaway: Can I take you to the first sentence of paragraph 31: "They therefore do much to demonstrate the main charge which is an inability to behave corporately." The "they" we have at the beginning is paragraph 30, and it is the six specific points detailed in paragraphs 15 to 27, one of which is giving evidence to the Select Committee.

Mr Normington: Yes.

Q252 Richard Ottaway: Do you think it is fair to conclude that the inability to behave corporately, one of the grounds for it, was giving evidence to a select committee?

Mr Normington: I think if you read that you can infer that from the way in which this is set out. Yes, I think it would be so. I have to say, again, it was never in my mind that that was an issue, nor in the mind of any of my colleagues, but that is how you can read it. That is precisely so, the six points are in paragraph six and it is cross-referenced to 31.

Q253 Richard Ottaway: You say it was not in your mind and yet earlier on I thought you said it was in your mind, the question of privilege?

Mr Normington: The question of privilege was never in my mind in this case. I never considered in detail the Judy Weleminsky case. My involvement was to try to persuade the whole of the Board to resign so I never looked at the individual case. I was advised that there was a case for suspending Judy Weleminsky. I did not look at these documents in detail and, therefore, I did not make the connection. The issue of parliamentary privilege was not in my mind in this case nor was it in the mind of any of my colleagues.

Q254 Richard Ottaway: But if you had looked at it in detail bells might have rung?

Mr Normington: Possibly. I would hope so but I cannot say for sure obviously.

Q255 Richard Ottaway: Even now you cannot say for sure?

Mr Normington: No-one else in this case put together the letter of 11 December with the Hewson dossier,⁶ with the Crawley report and made that connection. I can see that connection can be made now having looked at the papers so I am admitting it is there. Whether I would have seen it if I had done that in the end, I cannot be sure. I hope so.

Q256 Richard Ottaway: It seems even with hindsight you are rather qualifying this?

Mr Normington: No, I can see it with hindsight, yes.

Q257 Richard Ottaway: You can?

Mr Normington: Yes.

Q258 Mr Mackay: I think you accept you would not be here today or for that matter we would not be here today if that attachment, the Crawley report, had not been attached to the letter that the Lord Chancellor sent, I think that is correct, is it not?

Mr Normington: Yes.

Q259 Mr Mackay: Equally it is clear that there is a breach of privilege in the Crawley report, as Mr Ottaway has just referred, and you agreed when you read it and take it in its full context, it is clear breach of privilege. Would you agree?

Mr Normington: I can see that is how it can be read. I just have to say we did not have that as the issue on which we were suspending her. That was never discussed as the key issue but I have agreed with Mr Ottaway that that is in the papers, and I can see how it can be read as a breach of privilege, yes.

Q260 Mr Mackay: In answer to Sir George's earlier questions you have explained you fully understood privilege and you hope that other senior officials do. Here is Mr Crawley, a very senior official indeed, quite clearly writing something, and a key element of his report was the six reasons for coming down against Ms Weleminsky which is a breach of privilege. I think we can conclude that here was at least one senior official, the person who wrote it, who did not understand, would that be fair?

Mr Normington: He has given his evidence. It would have been better if he had put on the face of the report that this was not an issue. It is possible to conclude, I have not read his evidence to your Committee so I do not know what he said to you but it would have been better if he had said specifically that this should not be taken into account. The fact that he did not means that it could not have been in the forefront of his mind, I think.

Q261 Mr Mackay: It was the reverse, the six points raised by Mr Ottaway that you have confirmed were pivotal to the conclusion which was accepted by the Lord Chancellor for dismissal. One of the six points was the privilege one. It was not a side issue.

⁴ See supplementary evidence from the Department for Education and Skills and the Department for Constitutional Affairs, Ev 38.

⁵ Constitutional Affairs Committee, First Special Report of Session 2003–04 (HC 210), Appendix 1, p 4.

⁶ Not reported.

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Mr Normington: I think the Lord Chancellor has explained that that issue was not in his mind when he was considering suspending. He is very sorry, and so am I, that we gave the impression it was. That issue will not be taken into account when we reach the final view on Ms Weleminsky.

Q262 Mr Mackay: Can I just raise one final remaining issue. The Lord Chancellor's evidence explained that obviously he had read the letter he signed, but he never read the report as well. When you then said in answer to Mr Ottaway—I quote you I think correctly—that a lot of to-ing and fro-ing went on before the letter was signed off, I think you said between the Lord Chancellor and counsel and a few other people. So if it was taken that seriously, and not every letter can be taken that seriously, you are indicating there was a high degree of seriousness in this letter, rightly so I think, it might seem to casual observers like us quite amazing that with this to-ing and fro-ing and the high degree of seriousness before signing off the letter that the letter refers to a pivotal report and that report is not read by the Lord Chancellor and is not discussed in this particular way. I cannot quite get my mind around this.

Mr Normington: I was not involved in this but I understand that the issue which was being considered was about the process of suspending her and leading to her potential dismissal and whether that process was fair and whether the letter was giving her enough time and whether it was set out properly, whether the process was okay. That was what I believe was being discussed, whether we had got the process right and whether that was challengeable in the courts.

Q263 Mr Mackay: Nobody, but nobody, felt that sending the letter with the important appendix, which I keep referring to, would be seen by her as a breach of privilege, as it clearly was, seen by Sir Alan Beith and his Committee as a breach of privilege and caused this rather serious inquiry we are having now?

Mr Normington: I am afraid no-one did see that and I am really sorry for it.

Q264 Mr McNamara: I am just a little bit at a loss. The letter was drawn up in consultation with senior counsel?

Mr Normington: Yes.

Q265 Mr McNamara: Senior lawyers in your Department and Lord Falconer's Department and with senior officials in your Department?

Mr Normington: Yes.

Q266 Mr McNamara: They had the whole of the dossier, therefore they had the whole of the minutes of the CAFCASS meeting following Ms Weleminsky's evidence to the Select Committee and the penny did not drop?

Mr Normington: I am afraid it did not.

Q267 Mr McNamara: Do you not see how I might find it very difficult not only to understand but to believe?

Mr Normington: Yes, but I have to ask you to believe it because it is true. I can see why you might be sceptical about that. I am afraid no-one in this process saw this link.

Q268 Mr McNamara: I am sorry. Senior counsel, your senior lawyers, your senior officials, the ultimate thing which is bringing about the downfall of Ms Weleminsky is the evidence that she gave to the Select Committee and nobody said "Stop, hold on a minute"?

Mr Normington: There were lots of issues.

Q269 Mr McNamara: I know there were other issues. Yes, I know the other issues but the thing was—if you read the minutes of CAFCASS⁷—they had Ms Weleminsky at last on this. If you read the whole of the minutes that is what comes from it.

Mr Normington: Actually I did not at the time see all these papers but having looked at them I think there are a lot of issues. I think over two years there was a problem on this Board and growing problems with relationships between the Chairman, some members and Ms Weleminsky. I know nothing of that history except what I have read.

Q270 Mr McNamara: I hold no brief for Ms Weleminsky but we know from when the Chairman was here things she had complained about were upheld by the Select Committee and failed to be corrected and admitted so by the CAFCASS Board. So rather than she being the only one out of step, everyone was out of step except her.

Mr Normington: I cannot really comment on that because we are going through a process of considering her response to her suspension and she has set out her case and that is being considered at the moment. I cannot really comment on what happened in the previous two years. It was handed over to the DFES formally on 12 January but last summer policy responsibility transferred.

Q271 Mr McNamara: Basically here you have somebody who has been a problem. CAFCASS Board see this as an opportunity to get rid of her. You are saying your senior counsel and all the senior officials and senior lawyers did not see this as a potential problem but on reading the dossier it jumped out a mile?

Mr Normington: I think in fact the Chairman of CAFCASS specifically said, did he not, in his letter covering his dossier that the Board knew that her giving evidence to the Select Committee could not be taken into account? I think he specifically says that in his letter.

⁷ Not reported.

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Q272 Mr McNamara: Yes, I also believe that was an afterthought. That does not come out in the minutes as they appeared.

Mr Normington: I did not know that.

Q273 Mr Michael Jabez Foster: You said in answer to Mr Ottaway that the reference to the Select Committee was not a key issue in your consideration or in consideration. Was it an issue at all and why do you distinguish it from being a key issue as opposed to an issue?

Mr Normington: It was just a turn of phrase really. I was responding to the fact that it is in the documents and I was particularly responding to the fact was it possible for somebody to infer that this was an issue, and it is clearly in the documents. All I can say is that although I was aware that the Board had been annoyed about this, at no point in my connection with this had the giving of evidence to the Select Committee been an issue, that is a fact.

Q274 Mr Michael Jabez Foster: You say anyway you knew about privilege and so on. Who gave the brief to counsel to draft the letter?

Mr Normington: I am afraid I do not know that, I think it would be the senior lawyer at the Department for Constitutional Affairs. If I may say so, this consideration of the dossier and David Crawley report had been going on from September right up to the Clive Booth report when we decided that we would not pursue the individual case but we would turn our attention to asking the whole Board to resign. A lot of the work had been done then and some work had been done at that point on how we might raise the issues with Judy Weleminsky. It was out of that that came the drafting of the letter. I think formally it would be the senior lawyer who was dealing with this at the DCA, but I do not know that as a precise matter of fact.

Q275 Mr Michael Jabez Foster: What is difficult to understand is you go to leading counsel for what is on the face of it a reasonably straightforward issue, if only we could all do that, but you go to leading counsel and you appear not to even raise the issue of privilege which is in the documentation itself?

Mr Normington: I do not know precisely what his brief was but I think he was asked were there grounds here for taking action against Judy Weleminsky and he advised that there were strong grounds for doing that.

Q276 Mr Michael Jabez Foster: He mentioned telephone calls, did he actually receive a written brief, did he see the documents before he advised?

Mr Normington: I am afraid I do not know. I am almost certain he would do, but I do not know.

Q277 Mr Michael Jabez Foster: What is really surprising is at the end of the day this case against Ms Weleminsky rested largely on a 24 hour examination of a rather complex dossier. Do you think it was the rush of it that led to some of the problems?

Mr Normington: That really is not so. There was a long period of consideration of the Hewson dossier and then the Crawley report in the DCA in the period from around the end of September through to the Booth report.⁸ In fact there was a lot of work going on with serious consideration whether we should take action against Judy Weleminsky at that point. It was only when we got the Booth report when he said it would be better to ask the whole Board to resign and draw a line that, in fact, that focus shifted. A lot of the work had been done then so although, yes, between 9 and 11 December this all had to be brought to a conclusion, it was based on all the work which had been done which I think counsel had been involved in at that point.⁹

Q278 Mr Michael Jabez Foster: What we are finding difficulty in getting a handle on is at what point and who drafted that letter and did they take into account the whole of the dossier? Did anyone who drafted the letter see the dossier?

Mr Normington: I believe so.

Q279 Mr Michael Jabez Foster: You cannot say?

Mr Normington: I do not know that as a matter of fact. I am sure we can check precisely what the position was and let you know the answer to that question but I do not know myself at this moment.¹⁰

Q280 Mr Michael Jabez Foster: What I am really asking you is who does know because every witness we have had tells us "it is not me, gov". What we are really looking for, we know who signed it, the Lord Chancellor, but who drafted it and what was in their mind at the time?

Mr Normington: I believe actually it was mainly drafted by counsel and there was more than one version of it.¹¹ In the way in which letters are drafted they go backwards and forwards between counsel/lawyers and the officials involved. I am quite sure we can provide you with the details of who those people were.

Q281 Mr Michael Jabez Foster: Was counsel experienced in parliamentary matters, the counsel instructing?

Mr Normington: I am afraid I did not choose him but I assume the Lord Chancellor's Department went to good counsel. I do not know whether he knew about parliamentary privilege, I assume he would but I do not know.

⁸ *Note by witness:* Point of clarification: consideration of the action that might be taken on Ms Weleminsky was suspended on 31 October, when it was known that the Booth report was imminent.

⁹ *Note by witness:* DCA departmental lawyers advised on the process to be adopted. Counsel was instructed later, not at this point.

¹⁰ See supplementary evidence from Mr David Normington, Ev 38.

¹¹ *Note by witness:* A first draft was prepared by a DCA departmental lawyer for officials in DCA and DfES, as well as counsel, to consider. Counsel and others amended the draft.

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Q282 Mr Derek Foster: I think our difficulty is this: the Lord Chancellor said that the fact that a member of the Board had given evidence to a select committee was not material in his decision, that was the gist of the letter that he sent. The Chairman sent a letter to that effect as well but in our questioning of the Chairman certainly I formed a completely different opinion, that it was clearly in the mind of the Board that giving evidence to the Select Committee was important to them. Now it seems to me that it was not in the mind of anyone who dealt with this matter, not the Lord Chancellor, not yourself and I accept your explanation as being very fair, you cannot guarantee, and I think that is fair, that it was in the mind of the person who drafted the letter, nobody can guarantee it was in the mind of counsel and I can fully understand it was not in the mind of counsel. It seems that there has been quite a serious failure of the system in recognising that privilege was an issue at all, would you not agree?

Mr Normington: I think there was a failure to recognise that was an issue and that is because at no point did anyone think that giving evidence to the Select Committee was the key issue. I cannot say what the Chairman and his Board thought but I can tell you that was the case in all my involvement in this case and in the discussions I have had with colleagues in the Department since. It was simply not in our minds. I think it is a sin of omission really and it clearly should have been seen. We never sat down and said "There is an issue of privilege here", we never did that.

Q283 Mr Derek Foster: If it was in the mind of the Board, which I think it was, and I think some of my colleagues probably agree with me, should it not have been obvious to someone who was dealing with this matter that it was an issue and it could be construed in this way?

Mr Normington: I suppose it should have been really, yes. I repeat, I am simply surmising because I was not involved at this point at all, the Chairman's letter¹² said it was not the issue on which they were presenting the dossier. It would be surprising if the Board had not been rather annoyed about the evidence she had given.

Q284 Mr Derek Foster: Sure.

Mr Normington: That is human nature, I do not think that is a case of legal and parliamentary privilege, I just think that is so. He did specifically—whatever we think of his motives—say that is not the issue when he presented the dossier. I think probably, but again I am putting thoughts into other people's minds which I do not know were there, everybody just accepted that was so. It is true that David Crawley then examined it.

Q285 Mr Derek Foster: One final question, Chairman, if I may. The Lord Chancellor admitted to us that a serious mistake had been made. In our questioning, trying to see how this serious mistake has been made, it strikes me that it is the sins of

omission that you have mentioned. I would put to you again my statement that the system has rather seriously failed and in that has been a serious mistake, would you agree with that?

Mr Normington: Yes, I think the system has failed.

Chairman: A footnote from Mr McNamara.

Q286 Mr McNamara: I am wondering about the amount of time, effort, energy and people involved in what is a relatively minor matter in your Department and in Constitutional Affairs. Why was it necessary in quite this sort of way to spend so much time and so much money and have the attention of very senior officials and members of the Cabinet?

Mr Normington: I thought that too when it came to my notice. I did think it was really important to put a new Board in place and let CAF/CASS get on with it. Actually there were lots of problems, and still are, with CAF/CASS which have to be sorted out and I took the view that it was my responsibility to try to put that right. I think that hopefully will pay dividends in terms of sorting out the issues of the poor service, the financial problems, problems on the Board, issues of the senior executive team, all those things have to be sorted out. It seemed to me that until we had the Board sorted out we could not really address those issues so it was worth investing in that and I never wanted, nor did my colleagues in the DFES, to focus this on Judy Weleminsky. It was only on 9 December when I failed to persuade her to resign that she became the one person who had not resigned and then the case began to focus back on her again. From the previous weeks, from the Clive Booth report to that point, we had been trying to avoid singling her out because I agree with you we would be spending a lot of time on an individual and it would not make sense to do that.

Q287 Mr McNamara: From 9 December were you aware of the privilege issue?

Mr Normington: No.

Q288 Mr McNamara: Despite the fact at that time you had thumbed through the dossier?

Mr Normington: I had not thumbed through the dossier at that point. I had deliberately not done that because what I was trying to do—and I think probably we sent you the notes of my meetings with them¹³—I was really saying "We do not want to single anyone out here, we just would like to draw a line under the whole Board." That seemed to me, and actually to the Lord Chancellor at that point and to the Minister, the sensible way of putting CAF/CASS on a stable and secure basis.

Q289 Mr McNamara: Do you think it might have been in her mind that this was being done because she had given evidence to the Select Committee?

Mr Normington: It might have been but we did not talk about her at all. We talked about the need for the whole Board to resign. I did not personalise it at all, indeed it was my aim not to.

¹² Not reported.

¹³ Not reported.

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Q290 Mr McNamara: If you felt that you had been justified by events, by what the Select Committee had said, by what Hewson had said in correspondence with her, would she not have felt she was being picked on particularly because you were right?

Mr Normington: What Clive Booth had said was—and he did not say it in quite this way—that it was a dysfunctional Board, that it was trapped in its history, it had to have a fresh start. That was what I based my conversation with her on. I did not single her out, I did not want to.

Q291 Chairman: If you are able to let us have a bit more information about the background to the letter—this has emerged in questioning—because Sir Hayden Phillips told us that he was not involved in writing the letter and, as I said earlier, he concluded it was sensible to have one Permanent Secretary in charge of the work rather than two and he stepped back. But we have heard from you, I

think, that the Lord Chancellor's Department may have chosen counsel and the people from that Department may have been involved in the letter.

Mr Normington: I will set it out precisely.¹⁴

Q292 Chairman: If you can set it out as best you can what the brief was, who was involved in drafting it, who signed it off, that might help us come to a conclusion.

Mr Normington: Yes.¹⁵

Mr Michael Jabez Foster: I would like to know actually about this brief. I would like to know what questions were asked of counsel because it would be helpful to us to see the document which went to counsel or the note of the telephone call if it was by telephone.

Chairman: Mr Normington, thank you very much.

¹⁴ See supplementary evidence from the Department for Education and Skills and the Department for Constitutional Affairs, Ev 38.

¹⁵ See supplementary evidence from Mr David Normington, Ev 38.

Supplementary evidence from Mr David Normington

You asked for clarification on two points relating to the additional information provided following my appearance before the Committee on March 9.

On the further point raised in Question 278, I can confirm that the lawyer who first drafted the letter had seen the dossier, as had a number of the officials and lawyers who were involved in the re-drafting process. Others had seen the Crawley report, which summarises the dossier, but not the full dossier.

On the further point raised in Question 292, the questions asked of Counsel were about points of administrative law and points of procedure, as outlined in my earlier note. The perceived legal issue was the possibility of judicial review of any of the decisions to be made. The specifics were:

- To confirm that there was no legal objection to the Lord Chancellor appointing five members to a transitional board, while actively recruiting the full complement of members.
- To advise on the general approach to letters of suspension.
- To advise on the terms of draft letters of suspension to particular members. In relation to Ms Weleminsky, the Instructions contain the following paragraph:

“Counsel will appreciate that Ms Weleminsky is in a different position from other members, in that allegations of unfitness were made by the departing Chair and then independently reviewed by a departmental official who found there to be prima facie evidence of unfitness.”

(3) Counsel is asked to advise on the terms of any letter suspending Ms Weleminsky's membership.”

There is no other reference to the Hewson dossier or the Crawley report.

Counsel was provided with a number of relevant background documents, including the Crawley report. In the time available, he was not provided with the Hewson dossier or letter.

The issue of parliamentary privilege was not raised or alluded to in any way in the Instructions to Counsel. In any legal proceedings, the Instructions would clearly attract legal professional privilege. They were prepared in contemplation of possible court proceedings and are therefore highly confidential in nature.

18 March 2004

Supplementary evidence from the Department for Education and Skills and the Department for Constitutional Affairs

The Committee has asked for information about the preparation of the letter of 11 December to Ms Weleminsky.

The process started on 9 December, at a point when several Board members had not resigned, and a new interim Board was being actively recruited. Officials sought legal advice on how to proceed: their instructions to counsel related to the mechanics of the appointment of the five-member interim board, to the issue of

whether the suspension of any Board members would be appropriate, and to the terms in which letters to the Board members might be drafted. The focus of Departmental lawyers and counsel was administrative law, and the need to ensure procedural fairness.

The first draft of the letter to Ms Weleminsky was submitted to the Lord Chancellor on the evening of 9 December alongside David Normington's advice that he had reached the end of the road in persuading Board members to resign. David Normington was unable to clear that draft himself before he went to another meeting, so he asked Tom Jeffrey to do so on his behalf.

It was prepared by a senior DCA lawyer in consultation with DCA and DfES officials and DfES lawyers. A number of amendments were made to the letter over the next two days by officials and by counsel. Again, the focus was on points of administrative law and procedural fairness. None of the amendments related to the parliamentary privilege issue, and I can confirm that:

- The terms of the list of 3 matters derived from the Crawley report which appears in the final letter were not altered in any of the drafts.
- There was no reference in any of the drafts to the fact of Ms Weleminsky giving separate evidence to the Select Committee.

The Committee has also asked about the decision taken by Government in response to the Booth report. Sir Clive recommended that all members should be asked to resign. Ministers considered that the best option, but Sir Clive's suggestion that resignations should be undated was not felt to be workable, since it might have given rise either to an inquorate Board or to a situation in which there would be no Board at all.

Ministers decided that the best course was to plan for all resignations to take effect on a specified date. That allowed for a properly planned hand-over to an interim Board. It was decided that the sooner this could be arranged the better. Ministers did not want to prolong the process and hamper the organisation moving forward. The timing was arranged to ensure the last meeting before Christmas of the existing CAFCASS Board, on 10 December, could proceed to take some important decisions, and that resignations should be asked to take effect the next day.

Margaret Hodge and Charles Clarke decided that this was the way forward on 20 November, and Lord Falconer agreed on 24 November.

The Committee have asked for information on whether, when, and to whom Sir Clive Booth shared his emerging findings. Sir Clive has said that:

“Towards the end of my interview programme with CAFCASS Board members and others in early November it was becoming clear to me that the best course would be to invite all Board members to resign because the Board in my view was dysfunctional for a variety of reasons. This option also gave members the opportunity to make a reasonably dignified exit. I therefore decided to test this idea (of resignation) with those who were last in my interview programme in the week beginning 3 November. As it happened, among these was Judy Weleminsky. Judy gave me the impression at the interview that she agreed with my approach, but as later events showed, she either changed her mind or I had misunderstood her, because she refused to resign.

I also requested a meeting with Peter Makeham and Althea Efunshile of the DfES which took place (if my recollection is correct) at the DfES on the early evening of Monday 3 November. (It was Peter Makeham who had originally approached me to ask me to do the review.) I outlined my thinking to them and they asked questions for clarification but they did not attempt to influence my conclusions. I also communicated my emerging conclusions to the Chief Executive of CAFCASS and (briefly by telephone) to senior DCA officials in the same week and sought, by email, guidance on some of the administrative aspects of my emerging conclusions.”

We can confirm that the meeting with Peter Makeham and Althea Efunshile did take place on 3 November, and that guidance on administrative aspects was provided by DCA officials. The Secretary of State for Education and Skills met Sir Clive Booth on 20 November, after the report had been delivered.

Following full consultation on the process with the Commissioner for Public Appointments, Baroness Pitkeathly was interviewed for the fixed-term position of Chair of CAFCASS on 2 December 2003, and formally offered the post on 9 December 2003. On the same day she indicated by telephone that she would accept the appointment.

15 March 2004

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