



House of Commons
Justice Committee

Work of the Committee

Second Report of Session 2007–08



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Report, together with formal minutes

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The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Powers

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

Publications

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

All publications of the Committee (including press notices) are on the internet at www.parliament.uk/justicecom

Committee staff

The current staff of the Committee are Roger Phillips (Clerk), Dr Rebecca Davies (Second Clerk), Ruth Friskney (Adviser (Sentencing Guidelines)), Ian Thomson (Committee Assistant), Jane Trew (SPIRE Pilot Manager), Chryssa Poupard (Secretary), Henry Ayi-Hyde (Senior Office Clerk), Gemma Buckland (Committee Specialist) and Jessica Bridges-Palmer (Committee Media Officer).

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1 Introduction

From Constitutional Affairs to Justice

1. This report is a review of the work of the Justice Committee and its predecessor Committee, the Constitutional Affairs Committee, during 2007.

2. 2007 was a year of major change for the Committee following the creation of the Ministry of Justice on 9 May 2007. This new department comprised the old Department for Constitutional Affairs and those parts of the Home Office responsible for prisons, probation and sentencing. We took evidence on the process leading to the creation of the Ministry of Justice and published a report in July 2007.¹

3. The Committee's remit was formally expanded to reflect these changes from the beginning of Session 2007–08,² although we regarded the change as having an immediate effect on our area of responsibility. This expanded remit also resulted in an increase in our membership, from 11 to 14 members. However, we are concerned that even though the Ministry of Justice came into being on 9 May, having been announced on 27 March 2007, the Government did not ask the House of Commons to endorse the necessary changes to the Committee's remit until 25 July with the changes only coming into effect at the start of Session 2007–08 on 6 November. The length of time taken to appoint new Members to the Committee, following the appointment of some of our Members to their respective parties' frontbench in June, meant that the Committee had a much reduced active membership between June and November. These delays caused difficulties in the forward planning of the Committee's future programme and maintaining the levels of scrutiny necessary for the major policy portfolio of the new Department.

4. We hope that the Leader of the House, the Party Whips and the Committee of Selection will liaise more closely to ensure that necessary changes to the remit and membership of Select Committees take place more speedily following any future Machinery of Government changes.

5. As a result of the change in remit, the Committee is now responsible for the scrutiny and oversight of two major policy areas: criminal justice and constitutional policy. We acknowledge that other Committees, such as Home Affairs Committee, Public Administration Committee and the Joint Committee on Human Rights, may have legitimate interests in areas that fall within the Committee's new remit and we will continue to liaise closely with them.

6. Following the announcement of the Machinery of Government changes, the Chairmen of this Committee and the Home Affairs Committee discussed how we could work together in future to ensure continuing effective scrutiny. The staff of both Committees liaise on a regular basis. This co-operation has already been demonstrated by our

1 Sixth Report of Session 2006–07, The creation of the Ministry of Justice, HC 466

2 The Committee was additionally charged with inquiring into the administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers). This was previously the responsibility of the Home Affairs Committee.

commitment to continue the Home Affairs Committee's inquiry into *Towards Effective Sentencing*, launched early in 2007, and to maintain and develop the scrutiny of draft Sentencing Guidelines issued by the Sentencing Guidelines Council.

7. We have an additional interest in developments within the European Union, following the creation of the Justice Committee. Our Chairman attended a meeting in Lisbon of the Chairman of the Justice and Home Affairs Committees of Parliaments within the EU. We intend to play an active role as the UK Justice Committee in liaising with our EU opposite numbers.

Evidence from a witness and collective responsibility

8. There was one significant occasion when the Lord Chancellor gave oral evidence to the Committee in relation to an area which is not covered by the normal doctrine of collective responsibility. In the course of our inquiry into Party Funding Mr Andrew Tyrie asked the Lord Chancellor for an assurance that the Attorney General would not interfere in any way with the conclusions of the DPP in connection with any possible prosecutions arising from the then current police inquiry into allegations of the sale of public honours and other matters. The Lord Chancellor replied: "Of course. It is a matter for the DPP and the Crown Prosecution Service to make decisions in relation to this in the normal way and, of course, the Attorney General would not interfere in the normal course of decisions being made."

9. In the light of later public statements made by the Attorney General about his duties in relation to decisions about prosecutions arising from the police inquiry, the Chairman of the Committee wrote to the Lord Chancellor seeking clarification of his answer. We received a letter in reply from the Lord Chancellor and also subsequently received further correspondence from the Attorney General. We set out the various letters in a Special Report³ in which we drew particular attention to the Attorney General's statement in his letter of 7 December in relation to his duties (including decisions about prosecutions) which fall outside the usual ambit of collective responsibility:

However, I know the Lord Chancellor well understands that he was not in a position to give an 'assurance', as you have termed it, as to how I would act. No other Minister, however distinguished or senior, has the ability to bind the Attorney General in how he exercises his role.

Relations with the Department

10. Relations with the Department continue to be good. There are regular liaison meetings between departmental staff and the staff of the Committee. We hope that the good relationship will continue with the new enlarged department.

Witness feedback

11. From the start of 2007, the Liaison Committee tasked Committees with obtaining feedback from the witnesses that appeared before them with the aim of identifying any

3 First Special Report of 2006-07, Party Funding – Oral evidence from the Lord Chancellor on the role of the Attorney General, HC 222

improvements that could be made to working practices to help Committees conduct their business more effectively. Generally, we have received a very positive response from witnesses about the administrative arrangements for oral evidence sessions.

2 Core Tasks and Inquiries

12. We now describe how we reflected the core tasks established by the Liaison Committee in 2002 in our work in 2007. A Table summarising this can be found on page 19.

Examination of Government and European Commission policy proposals

Core Task 1: Scrutiny of policy proposals from the Government and the European Commission.

The Governance of Britain

13. On 3 July 2007 the Government published a Green Paper entitled *The Governance of Britain*. In his statement to the House of Commons on the same day, the Prime Minister, Rt Hon Gordon Brown MP, introduced these proposals as addressing the need for a “new constitutional settlement that entrusts more power to Parliament and the British people”.⁴ While acknowledging that constitutional change “will not be the work of just one Bill or one year or one Parliament”⁵ the Prime Minister presented what he described as a “route map” seeking to address the issues of making those holding power more accountable and enhancing the rights and responsibilities of the citizen.⁶

14. The Committee published a Special Report in response to this major policy announcement on 23 July 2007.⁷ Other Committees will have an interest in aspects of this comprehensive programme of constitutional reform, but the Committee is keen to maintain a strategic oversight of the development and implementation of this aspect of the Ministry of Justice’s policy agenda. In this sense, the Committee will wish to take the lead on the scrutiny of the forthcoming Constitutional Renewal Bill, and other legislation which may emerge from this Green paper.

The Carter review of legal aid

15. We examined the far-reaching proposals by Lord Carter of Coles and the Government for changes to the way legal aid services are procured and paid for by the Legal Services Commission. This inquiry started in summer 2006 and led to the Committee receiving more than 300 memoranda; it built on inquiries into civil and criminal legal aid in a

4 HC Deb, 3 July 2007, col 815

5 HC Deb, 3 July 2007, col 815

6 HC Deb, 3 July 2007, col 815

7 Second Special Report of Session 2006–07, Scrutiny of Constitutional Reform, HC 907

previous session⁸ and will provide the basis for future examination of the development of the Government's reforms to the legal aid system.

16. Our report said that the proposals for reform posed a serious risk for access to justice among the most vulnerable members of society. We were adamant that a move to competitive tendering among firms for legal aid contracts would have to be properly piloted before it was implemented, and we called on the Government to abandon the “transitional period” of fixed fees, which were part of the proposed reforms to the procurement of legal aid. These changes were described as an attempt to stem the increase in the legal aid budget in recent years, but the Government had failed to focus on areas where costs were actually increasing, namely Crown Court defence work and public law children cases.

17. Our report concluded that it was “clear that the Government has been unwise in attempting to reform the entire system rather than concentrating on those areas which cause the problem”. We were especially concerned about the impact on black and minority ethnic firms. The Society of Asian lawyers and the Black Solicitors Network jointly launched proceedings against the Government on the grounds that it had not carried out a full racial impact assessment of the reform proposals in April 2007.

Freedom of information

18. The issue of freedom and security of information is a prominent feature of our work. We ensure that we focus on this subject in each Session. We refer to our work on protection of private data at paragraph 33 below.

19. In a report published on 25 June 2007,⁹ we urged the Government to abandon proposals to increase the fees for Freedom of Information requests and change the way the cost of civil servants dealing with Freedom of Information requests would be calculated. We concluded that these Government proposals were “unnecessary, unpopular and undesirable”¹⁰ and were not supported by objective evidence demonstrating that any changes were required. Moreover, the proposed measures had the scope significantly to reduce the flow of information into the public domain, which could result in public authorities avoiding answers to embarrassing, contentious or high-profile cases. We also criticized a Private Members' Bill¹¹ which would have exempted both Houses of Parliament from the Freedom of Information Act as “*contrary to the culture of openness which we have argued should prevail in the public service.*” We therefore recommended that the proposed new charging regime for Freedom of Information requests be withdrawn.

20. In our report, we also expressed concern that the Information Commissioner's Office (ICO) would not have sufficient resources to deliver an effective FOI complaints resolution service—especially with the predicted increase in complaints if the proposed fees changes

8 Fourth Report of Session 2003–04, Civil Legal Aid: adequacy of provision, HC 391; Fifth Report of Session 2003–04, Draft Criminal Defence Service Bill, HC 746.

9 Fourth Report of Session 2006–07, Freedom of Information: Government's proposals for reform, HC 415

10 See paragraph 53 of the Report

11 Freedom of Information (Amendment) Bill

were brought in—and called for the ICO to be made independent of Government and instead for it to be funded by and accountable to Parliament.

21. The Government published its response to our report in October 2007.¹² The Secretary of State for Justice announced that the Government’s initial plans to change the charging regime for Freedom of Information requests would be withdrawn. Moreover, he announced a consultation on whether Freedom of Information legislation should be extended to certain private entities delivering public services. The Government’s new approach was also highlighted by the Prime Minister in his speech on liberty at the University of Westminster on the same day.¹³ We were delighted that the Government acceded to our view on its initial plans effectively to limit the scope of Freedom of Information requests and we welcome the Government’s reversal of policy in relation to Freedom of Information.

Core Task 2: Scrutiny of emerging policy, or where existing policy is deficient

The role of the Attorney General

22. We decided to inquire into the constitutional role of the Attorney General following a series of controversies over the ending of the BAE Systems fraud investigation, the Attorney General’s potential deciding role in the “cash-for-peerages” investigation and the use of his advice about the legality of the war in Iraq. These events “compromised or appeared to compromise”¹⁴ the position of the Attorney General and raised serious concerns about how independence and impartiality in the role can be guaranteed. On 19 July 2007 we published our report.¹⁵

23. We were concerned that there was significant “confusion about the overlap” between the ministerial aspects of the role, relating to criminal justice policy, and superintending the prosecution services. The Attorney General’s responsibility for prosecutions had emerged as one of the most problematic aspects of the office. Current conditions had made the tensions between the political and legal elements of the role of the Attorney General in need of reform. We concluded that “allegations of political bias, whether justified or not, are almost inevitable given the Attorney General’s seemingly contradictory positions...This situation is not sustainable.”¹⁶ We also concluded that maintaining the status quo was not an option and considered that the office should be reformed so that “Parliament and the public can be clear about the basis on which decisions are taken”. The purely legal functions could be carried out by a “career lawyer”, not a political appointee, a politician or member of the Government.

12 Government response to the Constitutional Affairs Select Committee Freedom of Information: Government’s proposals for reform, Cm 7187, October 2007

13 Rt Hon Gordon Brown MP, Speech on Liberty, <http://www.pm.gov.uk/output/Page13630.asp>

14 See paragraph 54 of the Report

15 Fifth Report of Session 2006–07, Constitutional Role of the Attorney General, HC 306

16 See paragraph 56 of the Report

24. In the context of the *Governance of Britain* proposals, the Government has now carried out a public consultation on the reform of the office of the Attorney General. We received an interim response to our report from the current Attorney General, the Rt Hon Baroness Scotland, at the end of 2007, which we published as a Special Report in January 2008.¹⁷ Since then the Committee has noted a newspaper report that the Attorney General has reached conclusions on changes to the duties of her office. We expect the Government to respond more fully to our detailed recommendations in due course, once it has fully analysed the results of its public consultation.

A Coroners Bill

25. We also continued to pursue issues relating to the Coroners Bill which the Government had initially indicated it would introduce in Session 2007–08. Following the work the Committee had done in its previous inquiry into necessary reforms of the coroners' system and the draft Coroners Bill in the Session 2005–06,¹⁸ which the Committee believed required substantial improvement, the Committee questioned ministers about the Government's planned reform programme and the prospects of introducing a revised Coroners Bill. We are disappointed to find that, while changes to the death certification system not requiring primary legislation were taken forward, there is at the time of writing no sign of a new Coroners Bill being introduced in Session 2007–08.

Party Funding

26. Party funding was a major political issue at the end of 2006 and in 2007 in which this Committee was involved. This included close liaison on an official level with the team working for Sir Hayden Phillips, who published an interim report on the Funding of Political Parties on 19 October 2006. Subsequently, in March 2007, Sir Hayden published a report, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, which very closely reflected the conclusions of our report published in December 2006. Our report not only suggested a route map, but also achieved unanimous support from the three main political parties represented on the Committee. We made a significant contribution to the debate on the funding of political parties and provided further momentum to the establishment of cross-party talks on this issue, which were chaired by Sir Hayden.

Towards effective sentencing

27. Following the major change to Committee's remit as a result of the machinery of government changes on 9 May, we were keen ensure continuity of scrutiny of the policy areas which had transferred from the Home Office to the Ministry of Justice. On 6 February 2007, the Home Affairs Committee launched its inquiry into *Towards Effective Sentencing*.¹⁹ They heard oral evidence from Lord Woolf on 17 April 2007, but then lost responsibility for the oversight of sentencing policy some weeks later when it was

17 Second Special Report of Session 2007–08, Constitutional role of the Attorney General: Government Response to the Fifth Report from the Committee, Session 2006–07

18 Eighth Report of Session 2005–06, Reform of the coroners' system and death certification, HC 902

19 Home Affairs Committee, Fourth Report of Session 2007–08, Work of the Committee in 2007, HC 226, para 10

transferred to the Ministry of Justice. Following close consultation with the Home Affairs Committee, we decided to pursue this major inquiry. The Home Affairs Committee was happy to collaborate in passing to us the evidence it had already received.²⁰ We thank our colleagues for their assistance.

28. The Constitutional Affairs Committee took over the inquiry and issued a call for further evidence. Our programme of oral evidence not only provided the necessary continuing scrutiny of this major policy area, but also gave us the opportunity to meet some of the key stakeholders within the Committee's expanded remit. The Committee travelled to North America as part of its inquiry, where it met key stakeholders involved in administering prisons and organizing rehabilitative programmes for offenders. During the visit we met the presiding judge and officials in Redhook Community Court, which has served as a model for Community Courts all over the world, including in the United Kingdom.

29. On 5 December 2007 Lord Carter of Coles published his report *Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales*. This report, and the Government's subsequent recommendations, dealt with many of the issues which had been the focus of our inquiry. We therefore expanded our own inquiry to address these specific proposals, and will report our conclusions and recommendations early in 2008.

Devolution: a decade on

30. In January 2007, we decided to undertake a major inquiry into the impact of devolution at the UK level and, in particular, its consequences for the United Kingdom's constitution. 2007 marked the tenth anniversary of the devolution referenda which resulted in the creation of the Scottish Parliament and the National Assembly for Wales. The impact of devolution on the politics and governance of the constituent parts of the UK where it has been implemented is significant. Different electoral systems in Scotland and Wales have produced governments of a different party-political makeup in Edinburgh and Cardiff, and policy divergence means that UK residents now have very different experiences of public services, depending on where they live. The UK's system of asymmetric devolution has also had a considerable impact on the UK Government, and in particular on the practices and procedures of Westminster and Whitehall. One key question which has emerged as a result of this is that of the "English question." Exploring this issue and some of its potential solutions is one of the major themes that will be addressed by our inquiry.

31. Although the initial call for evidence was published in January, we decided to postpone the inquiry until after the elections to the Scottish Parliament and National Assembly for Wales in May 2007. Following those elections, the election of new administrations in Scotland and Wales brought into sharp focus many of the issues pertinent to our inquiry: for example, the consistency and suitability of the legislative process post-devolution, the robustness of the arrangements for inter-governmental relations in this new political climate, and the mechanisms for the effective management of devolution policy within the

²⁰ The Home Affairs Committee also printed the evidence. Home Affairs Committee, *Towards Effective Sentencing, Oral and Written Evidence, Session 2006–07, HC 267*

UK government. Similarly, the publication of the *Governance of Britain* Green Paper provided a new context for our inquiry. As a result, we delayed the first oral evidence session in this inquiry until November 2007.

32. The organization of this inquiry required close collaboration with colleagues on the Scottish, Welsh and Northern Ireland Affairs Committees in determining the appropriate remit and scope of the Committee's inquiry and also in making practical arrangements. We thank them for their help in relation to this inquiry. The Committee will visit Cardiff, Edinburgh and Newcastle early in 2008 to hear oral evidence in this inquiry and, for the first time, the Committee will hear oral evidence bilingually while in Cardiff.

Protection of Private Data

33. We have already mentioned above our commitment to scrutinising arrangements for freedom and security of information. On 20 November 2007, the Chancellor of the Exchequer reported to the House that HM Revenue and Customs (HMRC) had lost two CDs containing personal and banking information belonging to all child benefit claimants. In total, the loss of these discs affected about 25 million people. It is too early to know exactly what the impact of this loss will be on the families affected, but there are clearly major risks in connection with identity theft. This error was compounded by the fact that HMRC sent out 7.25 million personalised letters of apology for the CD data loss which contained the relevant child benefit claimant's name, address, national insurance and child benefit numbers. There is a grave risk that these letters holding personal data could be used for identity theft if they fell into the wrong hands.

34. We immediately took evidence from Richard Thomas, the Information Commissioner, on protection of personal data held by Government and other agencies. We were extremely concerned to hear from the Information Commissioner that there were more cases involving the loss of personal data which had not yet fully come to light. The warning which he had issued in the summer about the dangers of mishandling personal data and the extensive security lapses in a wide range of organisations had been proved correct.

35. It is too early to draw firm conclusions about the action to be taken on the basis of the HMRC case. The Government has started a series of reviews, which are largely independent of each other—some of which pre-date the HMRC case. It is clearly important for the Information Commissioner to be given adequate support in order to carry out any wider role in connection with data protection which results from a change in the law. We note that he already considers that his resources are at a minimum.

36. We shall return to the issue of data protection in due course. Meanwhile, we drew to the attention of the House that:

- There is evidence of a widespread problem within Government relating to establishing systems for data protection and operating them adequately;
- It is widely accepted that it is necessary to have a substantial increase in the powers given to the Information Commissioner to enable him to review systems for data protection and their application—recent events have underlined the urgency of this; and

- There is a difficult balance to be struck between the undoubted advantages of wider exchange of information between Government Departments and the protection of personal data. The very real risks associated with greater sharing of personal data between Government Departments must be acknowledged in order for adequate safeguards to be put in place.²¹

Core Task 3: Scrutiny of draft bills

37. In 2007, neither the Department for Constitutional Affairs nor its successor, the Ministry of Justice, published any draft bills within their respective remits. In the light of the somewhat disappointing experience of Public Bill Committees having to debate very large bills dealing with a wide range of quite disparate technical issues of the law in a very short time, such as the Criminal Justice and Immigration Bill, which was introduced in the House of Commons in June 2007, **we strongly urge the Ministry of Justice to publish its central legislative projects in draft in order to allow meaningful parliamentary scrutiny in the Justice Committee. We hope that the publication in draft of the Constitutional Renewal Bill in Spring 2008 will provide the Committee with the opportunity to engage in adequate pre-legislative scrutiny of the Government's detailed plans for constitutional reform.**

Core Task 4: Scrutiny of policy documents or other decisions

38. We have already referred to evidence from the former and present Lord Chancellors and Secretaries of State for Justice on general policy decisions relating to the Department for Constitutional Affairs and Ministry of Justice. These policies and proposals were contained in policy papers published by the Department, particularly in the context of the establishment of the Ministry of Justice and current developments in penal policy.

Objective B: Examination of departmental expenditure

Core Task 5: Scrutiny of expenditure plans and outturn of the department, its agencies and principal NDPBs

39. With the invaluable help of the House of Commons Committee Office Scrutiny Unit and its staff, the Committee examined the Department for Constitutional Affairs' Departmental Report 2006–07 and the Department's Spring and Winter Supplementary Estimates. We took evidence from the then Permanent Secretary of the Ministry of Justice, Mr Alex Allan, and other officials on 17 July 2007.²² The significant changes in the departmental structure, leading to the incorporation of large parts of the Home Office into the structure of the new Ministry of Justice, led us to examine the impact on the Ministry of Justice's budget in general and the resource allocation in the 2007 Comprehensive Spending Review settlement. Examining the Ministry of Justice's resource accounts in the light of the amalgamation of the former Department for Constitutional Affairs and the

21 First Report of Session 2007–08, Protection of Private Data, HC 154

22 Justice Committee, Oral and Written Evidence, Ministry of Justice: Aims and Objectives, HC 938–i of Session 2006–07

criminal justice parts of the Home Office in the new Ministry of Justice will remain one of the Committee's core issues of interest in the year to come.

40. In the light of the 2007 Comprehensive Spending Review settlement for the Ministry of Justice and its executive agencies and NDPBs and the pressure for significant efficiency savings in relation to the Ministry under the CSR 2007, we will keep under particularly close review the development of the budget for the delivery of penal policy. This covers the National Offender Management Service (NOMS), Her Majesty's Prison Service, the National Probation Service and Her Majesty's Courts Service. We will wish to ensure that it permits the adequate delivery of an effective penal policy.

Objective C: Examination of Departmental administration

Core Task 6: Scrutiny of the department's Public Service Agreements and associated targets

41. In the course of our evidence session with Mr Allan on 17 July 2007, we focused on those PSA targets relating to delivery and public confidence in the criminal justice system which the Department for Constitutional Affairs shared with the Home Office. In this context, we were especially interested in initial discrepancies in PSA target fulfilment as reported in the Home Office Annual Report for 2006–07 and that of the Department for Constitutional Affairs.

42. In the light of the new system of PSA targets announced with the 2007 Comprehensive Spending Review in October 2007, we will keep a close eye on the way the new cross-Government PSA targets are being evaluated and the delivery of the Ministry of Justice against those targets.

Core Task 7: Scrutiny of the department's executive agencies, NDPBs, regulators and other associated public bodies

The judiciary

43. The Justice Committee provides an important link between Parliament and the judiciary. Central to our work in 2007 was the relationship between the judiciary and the Ministry of Justice. In the course of the year, representatives of the senior judiciary and the circuit bench appeared before the Committee to inform it of the judiciary's views on issues such as the organisational structure of Her Majesty's Courts Service, sentencing policy, and the impact of overcrowding in prisons. Most importantly, in the context of the announcement of the creation of the Ministry of Justice on 27 March 2007, the Committee took evidence from the Lord Chief Justice and other members of the senior judiciary on the impact of this Machinery of Government change on the judiciary and its relationship with the Lord Chancellor and Secretary of State for Justice. The judiciary's evidence formed the basis of our report on the creation of the Ministry of Justice,²³ in which we criticised the Government for lack of public consultation and inadequate involvement of the senior judiciary in the process of establishing the Ministry of Justice. We wish to record our

23 Sixth Report of Session 2006–07, The creation of the Ministry of Justice, HC 466

continuing gratitude to the Lord Chief Justice and other members of the judiciary for their effective co-operation in the Committee's work.

Sentencing guidelines

44. The transfer of primary responsibility for sentencing policy from the Home Office to the Ministry of Justice, meant that we took over from the Home Affairs Committee the continuous scrutiny of sentencing guidelines. At present, consultation on sentencing guidelines to be issued by the Sentencing Guidelines Council are sent to the Committee for consideration. In July 2007 we considered and submitted comments to the Sentencing Guidelines Council on a consultation guideline on 'Failure to Surrender to Bail'. In October 2007, the Committee took oral evidence from the Magistrates' Association, the Criminal Bar Association and a Restorative Justice practitioner in relation to consultation guidelines which covered offences against the person such as common assault, attempted murder and cruelty to children and submitted comments to the Sentencing Guidelines Council.

45. The Council also wrote to us to set out its thoughts on changing the process by which sentencing guidelines are being developed. In the light of the Council's views and following an informal seminar with the Sentencing Guidelines Secretariat in October 2007, we will review how we can best add value to the process of developing sentencing guidelines.

Judicial Appointments Commission

46. Following the entry into force of the Constitutional Reform Act 2005 and the establishment of an independent Judicial Appointments Commission (JAC) in 2006, the Committee has been taking a close interest in the operation of the JAC and its delivery of judicial appointments solely on merit on the basis of a transparent selection process. On two occasions this year we took oral evidence from Commissioners and JAC staff about the work of the JAC and certain problems with the JAC's procedures which emerged during the year. On 20 March 2007 we heard from the JAC's Chair, Baroness Prashar, Mr Justice Goldring and the Chief Executive, Clare Pelham.²⁴ On 20 June 2007, the Committee took evidence from the Chief Executive and two lay commissioners (Professor Dame Hazel Genn DBE QC and Ms Sara Nathan) and representatives from the Bar Council and the Law Society to follow up issues that had emerged in the previous session with JAC representatives.²⁵ We also discussed with the witnesses the need for an improvement of the appointments processes and their results not only in terms of transparency but also in achieving greater diversity and gender-balance within the ranks of the (senior) judiciary.

Public Guardianship Office

47. On the 24 April 2007 we took oral evidence from the Rt Hon Baroness Ashton of Upholland, the then Parliamentary Under Secretary of State at the DCA, and Richard Brook, the new Chief Executive of the Public Guardianship Office (PGO).²⁶ This one-off

24 Justice Committee, Oral and Written Evidence, Judicial Appointments Commission, HC 416-i&ii of Session 2006-07

25 Justice Committee, Oral and Written Evidence, Judicial Appointments Commission, HC 416-i&ii of Session 2006-07

26 Justice Committee, Oral and Written Evidence, Public Guardianship Office, HC 497-i of Session 2006-07

oral evidence session provided an opportunity for the Committee to assess progress in some of the areas identified by the Adjudicator's Office and the National Audit Office as being a cause for concern.²⁷ We concentrated on whether the serious mistakes and grievances of the past had been rectified and remedied. It also provided an opportunity to monitor and evaluate the changes that were taking place in the PGO, particularly in light of the changes brought about by the Mental Capacity Act 2005.

Core Task 8: Scrutiny of major appointments made by the Department

48. Under Standing Order No 152 the Committee is expressly not allowed to examine individual judicial appointments made on the recommendation of the Lord Chancellor. However, we will consider taking evidence on appointments of regulators and certain other appointees when the opportunity arises.

Core Task 9: Scrutiny of implementation of legislation and major policy initiatives

49. A large part of the Committee's work relates to the implementation of legislation and major Government policy initiatives, which we have already referred to above.²⁸ Prime examples of the examination of the progress of implementation of major Government policies were the exhaustive inquiry into Lord Carter's and the Government's proposals for legal aid procurement reform,²⁹ the successful Freedom of Information inquiry³⁰ and our evidence sessions with the Judicial Appointments Commission in relation to the Government's stated aim to increase the diversity in the judiciary in terms of gender balance and minority ethnic groups.

Housing the new Supreme Court: the transformation of Middlesex Guildhall

50. The Committee also took evidence on the transformation of Middlesex Guildhall from an Edwardian Crown Court to the home of the Supreme Court of the UK, which is planned to open in October 2009. In the course of the evidence session on 17 April 2007, where the Committee heard from SAVE Britain's Heritage, the Victorian Society and the then Lord Chancellor, Lord Falconer of Thoroton, it became obvious that in transforming Middlesex Guildhall a careful balance would need to be struck between retaining the unique character of the building and some of its interior design and the needs of a Supreme Court for the 21st century.

27 The Adjudicator's Office, Annual report 2003 available at <http://www.adjudicatorsoffice.gov.uk/pdf/report2003.pdf> and Report HC 27 Session 2005–2006, 8th June 2005 available at http://www.nao.org.uk/publications/nao_reports/05-06/050627es.pdf

28 Paras 9 et seq

29 Third Report of Session 2006–07, Implementation of the Carter Review of Legal Aid, HC 223

30 Fourth Report of Session 2006–07, Freedom of Information: Government's proposals for reform, HC 415

Objective D: to assist the House in debate and decision

Core Task 10: production of Reports for debate

51. In 2007, our reports informed two debates in Westminster Hall. On 8 March 2007,³¹ an adjournment debate was held on the reform of the coroners' system and death certification. Our report on the reform of the coroners' system and death certification of Summer 2006³² was drawn to the attention of Members.

52. On 12 July 2007,³³ our report on the implementation of Lord Carter of Coles's review of the legal aid procurement and remuneration was debated in Westminster Hall.³⁴ Most speakers in the debate, which attracted an unusually large attendance of Members, welcomed the Committee's report and its findings and were critical of the Government's plans to radically change the way publicly funded legal advice was paid for by the Legal Services Commission.

General

53. As we have noted above, the change of the name and remit of the Constitutional Affairs Committee to the Justice Committee has resulted in a major change in the work of the Committee.

Co-operation with other Committees

54. We have always had a close working relationship with the Home Affairs Committee. The establishment of the Ministry of Justice has meant that we have taken over an important part of the Home Affairs Committee's remit. There is now considerable overlap in the area of work of both Committees. As a result, we have set up procedures for much closer liaison between the two committees, particularly at staff level.

55. We have also maintained continuing close links with other Committees where our work overlaps with their interests. For example, as we mention above, our Chairman and staff have maintained close links with the Northern Ireland Affairs, Welsh Affairs and Scottish Affairs Committees in relation to our inquiry relating to Devolution.

Changes in staffing

56. Our core task examining Sentencing Guidelines (a task previously carried out by the Home Affairs Committee) has meant that we are now supported by a full-time adviser to carry out this role, whose post was transferred from the Home Affairs Committee.

31 HC Deb 8 March 2007, col 513WH

32 Eighth Report of Session 2005–06, Reform of the coroners' system and death certification, HC 902

33 HC Deb 12 July 2007, col 487WH

34 Third Report of Session 2006–07, Implementation of the Carter Review of Legal Aid, HC 223

3 ANNEX

Table 1: Subjects covered by the Justice Committee, 2007³⁵

Subject	Evidence sessions in 2007	Outcome
First Special Report – Party Funding— Oral evidence from the Lord Chancellor on the role of the Attorney General	0	Special Report, 19 January 2007
Second Report – Work of the Committee in 2005–06	0	Report, 8 March 2007
Third Report – Implementation of the Carter Review of Legal Aid	5	Report, 1 May 2007
Fourth Report – Freedom of Information: Government proposals for reform	2	Report, 24 June 2007
Fifth Report – Constitutional role of the Attorney General	3	Report, 19 July 2007
Second Special Report – Scrutiny of Constitutional Reform	0	Special Report, 23 July 2007
Sixth Report – The creation of the Ministry of Justice	2	Report, 26 July 2007
First Special Report – The creation of the Ministry of Justice: Government Response to the Committee’s Sixth Report of Session 2006–07	0	Special Report, 3 December 2007
First Report – Protection of Private Data (Session 2007–08)	1	Report, 3 January 2008
Towards Effective Sentencing	7	Report to be published
Devolution: a decade on	1	Inquiry continuing
The Accommodation for the new Supreme Court	1	Evidence published
Public Guardianship Office	1	Evidence published
House of Lords Reform and Party Funding	1	Evidence published
Judicial Appointments Commission	2	Evidence published

³⁵ Up to the start of Session 2007–08 on 6 November 2007, the Committee was known as the Constitutional Affairs Committee.

Subject	Evidence sessions in 2007	Outcome
Reform of the Coroner's System and Death Certification—follow up	1	Evidence published
Ministry of Justice: Aims and Objectives	1	Evidence published
The Work of the Ministry of Justice	2	Evidence published
Draft Sentencing Guidelines: Assaults	1	Evidence published

Table 2: Visits by the Justice Committee in 2007

Location	Purpose of visit
Lisbon, Portugal	Meeting of Chairmen of National Parliaments Justice and Home Affairs Committees
New York and Toronto	Inquiry into Towards Effective Sentencing

Table 3: Liaison Committee criteria relevant to inquiries

	Government and Commission policy proposals	Examination of deficiencies	Departmental actions	Associated public bodies	Major appointments	Implementation of legislation and major policy issues	Draft legislation	Expenditure	Evidence from Minister	Public Service Agreements
First Special Report – Party Funding—Oral evidence from the Lord Chancellor on the role of the Attorney General			√						√	
Third Report – Implementation of the Carter Review of Legal Aid	√	√		√		√		√	√	
Fourth Report – Freedom of Information: Government proposals for reform Compensation Culture	√		√	√		√			√	
Fifth Report – Constitutional role of the Attorney General		√	√	√					√	
Second Special Report – Scrutiny of Constitutional Reform	√		√			√				
Sixth Report – The creation of the Ministry of Justice	√	√	√	√		√		√	√	√
First Report – Protection of Private Data		√	√	√				√	√	
Towards Effective Sentencing	√	√	√	√		√		√	√	√
Devolution: a decade on		√	√			√		√		

	Government and Commission policy proposals	Examination of deficiencies	Departmental actions	Associated public bodies	Major appointments	Implementation of legislation and major policy issues	Draft legislation	Expenditure	Evidence from Minister	Public Service Agreements
The Accommodation for the new Supreme Court	√	√	√	√			√	√	√	
Public Guardianship Office	√	√	√	√				√	√	
House of Lords Reform and Party Funding	√	√	√			√		√	√	
Judicial Appointments Commission	√	√	√	√		√		√	√	√
Reform of the Coroner's System and Death Certification—follow up	√		√	√		√		√	√	
Ministry of Justice: Aims and Objectives	√	√	√	√		√		√		√
The Work of the Ministry of Justice	√	√	√	√		√		√	√	√
Draft Sentencing Guidelines: Assaults	√	√	√	√		√		√		√

Formal Minutes

Tuesday 19 February 2008

Members present:

Mr Alan Beith, in the Chair

David Howarth

Daniel Kawczynski

Alun Michael

Julie Morgan

Virendra Sharma

Andrew Turner

Dr Alan Whitehead

Draft Report (Work of the Committee in 2007), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 56 read and agreed to.

Annex agreed to.

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

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

[Adjourned till Tuesday 26 February at the Radisson SAS Hotel, Edinburgh at 10.45 am.]

Reports from the Constitutional Affairs (now Justice) Committee during the current Parliament

Session 2007-08

First Report	Protection of Private Data	HC 154
First Special Report	The Creation of the Ministry of Justice: Government Response to the Committee's Sixth Report of Session 2006-07	HC 140
Second Special Report	Constitutional Role of the Attorney General: Government Response to the Committee's Fifth Report of Session 2006-07	HC 242
Third Special Report	Protection of Private Data: Government Response to the Committee's First Report of Session 2007-08	HC 406

Session 2006-07

First Report	Party Funding <i>Government response</i>	HC 163 <i>Cm 7123</i>
First Special Report	Party Funding – Oral evidence from the Lord Chancellor on the role of the Attorney General	HC 222
Second Report	Work of the Committee 2005-06	HC 259
Third Report	Implementation of the Carter Review of Legal Aid <i>Government response</i>	HC 223 <i>Cm 7158</i>
Fourth Report	Freedom of Information: Government's proposals for reform <i>Government response</i>	HC 415 <i>Cm 7187</i>
Fifth Report	Constitutional role of the Attorney General	HC 306
Sixth Report	The creation of the Ministry of Justice <i>Government response</i>	HC 466 <i>HC 140</i>

Session 2005-06

First Report	The courts: small claims <i>Government response</i>	HC 519 <i>Cm 6754</i>
Second Report	The Office of the Judge Advocate General	HC 731
Third Report	Compensation culture <i>Government response</i>	HC 754 <i>Cm 6784</i>
Fourth Report	Legal Services Commission: removal of Specialist Support Services	HC 919
Fifth Report	Compensation culture: <i>NHS Redress Scheme</i> <i>Government response</i>	HC 1009 <i>Cm 6784</i>
First Special Report	Legal Services Commission's response to the Fourth Report on removal of Specialist Support Services	HC 1029
Sixth Report	Family Justice: the operation of the family courts revisited	HC 1086
Seventh Report	Freedom of Information—one year on <i>Government response</i>	HC 991 <i>Cm 6937</i>
Eighth Report	Reform of the coroners' system and death certification <i>Government response</i>	HC 902 <i>Cm 6943</i>