



House of Commons
Constitutional Affairs
Committee

**Party Funding – Oral
evidence from the
Lord Chancellor on the
role of the Attorney
General**

**First Special Report of
Session 2006–07**

*Ordered by The House of Commons
to be printed date 17 January 2007*

The Constitutional Affairs Committee

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

Current membership

Rt Hon Alan Beith MP (*Liberal Democrat, Berwick-upon-Tweed*) (Chairman)
David Howarth MP (*Liberal Democrat, Cambridge*)
Siân James MP (*Labour, Swansea East*)
Mr Piara S Khabra MP (*Labour, Ealing Southall*)
Jessica Morden MP (*Labour, Newport East*)
Julie Morgan MP (*Labour, Cardiff North*)
Robert Neill MP (*Bromley and Chislehurst*)
Mr Andrew Tyrie MP (*Conservative, Chichester*)
Rt Hon Keith Vaz MP (*Labour, Leicester East*)
Dr Alan Whitehead MP (*Labour, Southampton Test*)
Jeremy Wright MP (*Conservative, Rugby and Kenilworth*)

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/conaffcom

Committee staff

The current staff of the Committee are Roger Phillips (Clerk), Dr Rebecca Davies (Second Clerk), Maik Martin (Committee Legal Specialist), Jane Trew (Committee Assistant), Chryssa Poupard (Secretary), James Clarke (Senior Office Clerk) and Jessica Bridges-Palmer (Committee Media Officer).

Contacts

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1 Party Funding – Oral evidence from the Lord Chancellor on the role of the Attorney General

1. In the course of our inquiry into Party Funding¹ Mr Andrew Tyrie asked the Lord Chancellor the following question relating to any possible prosecutions arising from the police inquiry into allegations of the sale of public honours and other matters:

".. can you give the public an assurance that the Attorney General will not interfere in any way with the conclusions of the DPP and that the DPP would be permitted, were there to be something brought to him, to take any decisions for prosecution wholly independent of the Attorney General?"

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."²

2. 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 from the Attorney General further correspondence which we now report to the House. We draw particular attention to the Attorney General's statement in his letter of 7th 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."³

3. We have announced a wider inquiry into the constitutional role of the Attorney General, but consider that the House would wish to see this correspondence in advance of that inquiry.

¹ Constitutional Affairs Committee, *Party Funding*, First Report of Session 2006 – 07, HC 163 –I & -II

² Q 97

³ See page 6 of this report

Appendices

Appendix 1

Copy of a letter from Rt Hon Alan Beith MP, Chairman, Constitutional Affairs Select Committee, to Rt Hon Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor

You will recall that when we took evidence from you in April, in the course of our inquiry into Party Funding, the following exchange took place:

“Q97 Mr Tyrie: can you give the public an assurance that the Attorney General will not interfere in any way with the conclusions of the DPP and that the DPP would be permitted, were there to be something brought to him, to take any decisions for prosecution wholly independent of the Attorney General?”

Lord Falconer of Thoroton: 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.”

You will understand that the Committee was surprised to hear reports that the Attorney General intended to play an active role in any decision relating to prosecution under the 1925 Act. I would be grateful if you could explain whether the assurance which you gave the Committee was correct — namely, that the Attorney General would not play an active role in any decisions relating to potential cases under the 1925 Act — or whether it is intended that he will take an active roll in making such decisions.

We are just bringing our inquiry into this subject to an end and it would be very helpful if you could send me an early reply to this question in time for our deliberative session on Wednesday 6th December.

I am copying this letter to the Attorney General.

20 November 2006

Appendix 2

Copy of a letter from Rt Hon The Lord Goldsmith QC, Attorney General, to Rt Hon Alan Beith MP, Chairman, Constitutional Affairs Select Committee

Thank you for sending me a copy of your letter of 20 November 2006 to the Lord Chancellor.

In case you have not seen them, I enclose copies of my exchange of letters with the Shadow Attorney General, dealing the question of how I would discharge my role if I am consulted by the CPS about a prosecution in this case.

I am copying this letter to the Lord Chancellor.

27 November 2006

Annexes to Appendix 4

Annex A

Copy of a letter from Dominic Grieve MP, to Rt Hon The Lord Goldsmith QC, Attorney General

As you will be aware, there has been considerable public comment over the last few days in respect of the role of the Attorney General in any decision to bring a prosecution against any leading public figure. In particular, the issue has centred on the ability of an Attorney General to determine whether it is in the public interest for a prosecution to be brought in circumstances where a conflict of interest could be perceived to exist because of the Attorney General's political relationship with such a person.

You will also be aware that in the course of the giving evidence to the Select Committee on Constitutional Affairs, Lord Falconer gave his opinion that in such a case any decision would be taken by the DPP and the Crown Prosecution Service and the Attorney General would not interfere in the course of the decision being made.

I understand that it is your view that the Attorney General could not remove himself from determining the public interest in such a case and that ultimate responsibility in determining the public interest in bringing a prosecution must remain with him.

In view of the uncertainty created by these contrary views and of the controversy now surrounding the matter, I feel it would be helpful if you could set out your position and, in particular, how public confidence in the impartiality of the operation of the prosecution system would be maintained when such a potential conflict of interest clearly arises.

7 November 2006

Annex B

Copy of a letter from Rt Hon The Lord Goldsmith QC, Attorney General, to Dominic Grieve MP

Thank you for your letter of today's date. This gives me a helpful opportunity to clarify my position in the light of recent public comments in this case.

It is important to stress that these issues are wholly hypothetical at this stage. The police investigation is still underway and I do not know whether it will lead to a recommendation for any person to be prosecuted. The need for any decision on my part has not yet arisen and may never do so. I know you will understand that anything I say in this letter must not be taken as an indication that I have knowledge of possible charges: I do not.

There have been suggestions that I should stand aside from any involvement in this case. However, it would not be right for me to do that.

First, there are a small number of offences for which any decision to bring a prosecution would require my personal consent under statute. In such cases the need for my consent (or that of the Solicitor General) is an essential legal condition. It is not one which can be avoided. Nor can the consent power be delegated by the Law Officers to any third person. I emphasise that I do not know at present if there is any prospect of such charges being considered.

Secondly, even in relation to those prosecutions for which my personal consent is not required, the Attorney General has statutory responsibility for the superintendance of the CPS and is answerable to Parliament and to the public for its actions. It is therefore normal for the CPS to consult the Attorney General on any sensitive cases. As the Director of Public Prosecutions said yesterday: "The Attorney General is entitled to be consulted about cases, and it is normal practice for him to be consulted in serious and complex cases", such as the current inquiry. Lord Morris of Aberavon has also said that: "At the end of the day, [the Attorney General] and he alone is answerable to Parliament and there should be no question of this or any other Attorney General stepping aside".

As you and others have suggested, it can often be helpful for the Law Officers to instruct independent counsel to advise, and it is in fact quite normal for this to happen in sensitive or difficult cases. Accordingly if the CPS consult me on a prosecution in this case, I propose that my office should appoint independent senior counsel to review all the relevant material and advise on any prosecutions.

As you have acknowledged, I could not simply "rubber-stamp" the views of counsel, since this would not be consistent with my ultimate legal and constitutional responsibilities. However, if a decision were taken not to prosecute, I would consider at that stage how best to ensure that the basis for that decision was explained, including (so far as compatible with the interests of justice) making known what course counsel had advised. This would give greater confidence in the objectivity and impartiality of any decision.

You refer to comments made by the Lord Chancellor to the Constitutional Affairs Select Committee. The Lord Chancellor referred to decisions being taken by the DPP and CPS in the "normal way". As I have explained, it would be entirely normal for the Attorney General to be consulted by the CPS in relation to a case of this nature. In any event, as you know the DPP himself would not in fact be consulted or take any decision in this case since he has stepped aside from any personal involvement in it.

Finally, in view of certain recent press reports which the DPP has denied, I also take the opportunity of enclosing the text of his statement yesterday.

7 November 2006

Statement issued by the director of public prosecutions, Ken Macdonald QC, in response to an article in the Evening Standard 6 November:

"There is no question of my having threatened to resign on this or any other issue and any media reports based on that premise are wrong. The Attorney General is entitled to be consulted about cases, and it is normal practice for him to be consulted in serious and complex cases such as the "Cash for Honours" inquiry. There is

nothing political about the Attorney General's involvement. The CPS and I have a close and harmonious working relationship with the Attorney General."

Appendix 3

Copy of a letter from Rt Hon Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor, to Rt Hon Alan Beith MP, Chairman, Constitutional Affairs Select Committee

Thank you for your letter of 20 November 2006 — copied to the Attorney General — regarding the role of the Attorney General in any decision relating to prosecution under the 1925 Honours Act.

The Attorney General has since replied to you, enclosing his letter of 7 November to the Shadow Attorney General which deals with the question of how his role would be discharged in the event of his being consulted by the CPS about a prosecution in this case, whilst emphasising that the issue remains wholly hypothetical at this stage.

The Attorney General refers in his letter of 7 November to my statement before the Committee that decisions taken by the CPS and the DPP would be taken in the "normal way". He notes that it would be normal practice for him to be consulted by the OPS in relation to serious or sensitive cases. He also notes that it would be quite normal in such cases to take the advice of independent counsel, and that, should there come a time where the CPS consult him on a prosecution in this case, this is the course he would adopt.

As I have since stated publicly, my statement before your Committee that the case would be dealt with in the normal way without interference from the Attorney General is consistent with the process set out by the Attorney General in his recent statements. As the Attorney General has made clear, the DPP himself would not in fact be consulted or take any decision in this case since he has stepped aside from any personal involvement in it.

I am copying this letter to the Attorney General,

6 December 2006

Appendix 4

Copy of a letter from Rt Hon The Lord Goldsmith QC, Attorney General, to Rt Hon Alan Beith MP, Chairman, Constitutional Affairs Select Committee

I have seen the Lord Chancellor's letter to you of 6 December.

I think I ought to make one matter clear to avoid any further confusion. The office of Attorney General is a particular one in which a number of responsibilities are exercised independently of other members of government. That includes decisions in relation to prosecutions. All of this is, I hope, now well understood. This means that such decisions are not the subject of the normal cross-governmental decision-making process. It means that the doctrine of collective responsibility does not apply to such decisions. It has the

further consequence that no-one other than the Attorney General can speak for him as to how he will fulfil his duties and no-one can give any assurance as to how the role will be performed in any given circumstance.

I have no doubt that the Lord Chancellor was seeking to be helpful to you when he gave evidence in offering his views as to how I might act in given circumstances. 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.

Accordingly I would invite the Committee, if it wishes to know how I would act in relation to my responsibilities, to have regard solely to the statements I have made on this topic, which as you may know, have been supported by former Law Officers both Labour and Conservative.

I trust this has clarified the position.

I copy this letter to the Lord Chancellor.

7 December 2006

Formal minutes

Wednesday 17 January 2007

Members present:

Mr Alan Beith, in the Chair

Julie Morgan

Dr Alan Whitehead

Bob Neill

Jeremy Wright

Keith Vaz

The Committee deliberated.

Draft Report [Party Funding – Oral evidence from the Lord Chancellor on the role of the Attorney General], proposed by the Chairman, brought up and read.

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

Resolved, That the Report be the First Special 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.

[Adjourned till Tuesday 23 January at 4.00pm]