JIP Follow Up Funding Proposal v10 24 March 2014

Context

1.1 Our three year research project on “The Politics of Judicial Independence in Britain’s Changing Constitution” (2011-13) finishes in December 2013. It has explored the changing relations between the judiciary, executive and Parliament in light of recent constitutional reforms which have established the judiciary as a more separate branch of government. Throughout the project we have held private seminars with representatives from all three branches of government and the legal profession, to stimulate dialogue between them about the issues we are researching. This has proved very successful, with senior figures regularly attending from the Ministry of Justice, the judiciary and Parliament. They include Jack Straw (former Lord Chancellor), Lord Neuberger (new President of the Supreme Court), Lord Phillips (then President), Lord Clarke (then Master of the Rolls), Sir Alan Beith (chair, Commons Justice Committee), Lord Goldsmith (former Attorney General), Ursula Brennan (Permanent Secretary, Min of Justice), etc. The speakers and attendance lists for these seminars are appended at Annex B. We have also held a similar seminar in Belfast, and are planning an Edinburgh seminar in June 2013.

1.2 The project seminars were surprisingly successful, not just in promoting our project and research, but in facilitating a dialogue between different parts of government with little previous contact. To take just one example, since (and, so we are told, partly a result of) our seminar on the Judges and Parliament, the Clerk of the House of Commons Sir Robert Rogers has been holding regular meetings with the Lord Chief Justice and UK Supreme Court. The seminars were high level, invitation only events held under the Chatham House Rule, which was part of the reason for their success. But we now want to take our findings out to a wider audience, by organising a series of lectures, seminars and conferences to disseminate our findings to different practitioner communities through 2014. We want to organise or speak at a series of events held in all three branches of government, and at lawyers’ conferences, running through 2014, finishing with a closing conference in autumn 2014.

1.3 This set of activities was unforeseen in the original proposal and award: we had planned a primarily academic project, with only elite level contacts, and the main output being an academic book. We had not anticipated how much interest our findings would generate in the different practitioner communities. In our follow up activities we aim to:

• Deepen our engagement with the three branches of government
• Engage with new audiences, in the legal profession, law students, the media and wider public
• Bring this public engagement together through a closing conference
• Add a historical dimension, by creating an archive of television quality interviews with all surviving Lord Chancellors and Lord Chief Justices.

To help us engage with new audiences, many of our follow-up activities involve working with partner organisations. All those mentioned in the proposal have agreed to work with us in hosting or co-hosting events or other activities.
Aims and Objectives

2.1 Our aims and objectives are:

- To disseminate our findings to the widest possible audience, amongst the judiciary, in government, in Parliament, the legal profession and the wider public
- To generate better understanding about the new relationships between the judiciary and the other branches of government, and a dialogue which continues after our project has gone.

Proposed Activities, Cost and Timetable

3.1 We set these out in order of budgetary importance. Many of the activities listed towards the end have little or no cost. The earlier items are the ones which need most funding, but we mention all the follow up activities we plan for 2014, to give a proper sense of the whole.

Archival Interviews with former Lord Chancellors and Lord Chief Justices

3.2 During the project we have talked to most of the former Lord Chancellors and Lord Chief Justices. We would now like to record proper TV quality interviews with each of them to create a historical archive. The interviews would be conducted by Joshua Rozenberg (former BBC Legal Correspondent), would be an hour long, and would be deposited in the National Archives (with whom we have had initial discussions). If they agree, we also hope to make them more widely available through Podcasts on our website and videos on YouTube. There are five former Lord Chancellors, and when Lord Judge retires in September there will be three former Lord Chief Justices. The interviews would be conducted between January and June 2014. We have negotiated very substantial reductions on normal interviewing and broadcast studio costs: the total cost would be £3.25k.

3.3 These would form an important historical record. The Lord Chancellors and Lord Chief Justices have been the leading actors in the big constitutional changes we have been studying, but for judicial reasons they have been reticent about their role. In the interviews we would cover their contribution to creating a more separate and independent Judiciary; the battles they fought with their colleagues, and the other parts of government; their successes and failures; and their legacy.

Closing Conference in autumn 2014

4.1 In November 2013 we plan a private, invitation only conference for 40 people to be held at St George’s House, Windsor. That will be our final elite level event with the top judges and policy makers. After that we want to take the discussion out to wider groups of audiences and to all three branches of government through the events listed in sections 5 and 6 below. At the end of that wider discussion will conclude with a big public conference in autumn 2014 to round off the public phase of the programme. The conference will involve the key participants of the last 10 years (Lord Woolf, Lord Judge, Jack Straw), and address the key questions raised during the public discussions: have the judiciary become too powerful? Are the judges sufficiently accountable? etc. The draft programme for the conference is at Annex A. The conference would be live tweeted and also made
available as a podcast (see section 7). The budget for organising and hosting the conference, plus travel costs of the speakers, is £10k.

Promoting dialogue with non-lawyers

5.1 Debates about the constitutional position of the judiciary are often viewed by non-lawyers as primarily for lawyers. To take the discussion out to wider groups in politics and civil society, we would like to organise three seminars with three different think tanks, IPPR, Policy Exchange and CentreForum. The topics would be three controversial issues connected with the Judiciary

<table>
<thead>
<tr>
<th>Topic</th>
<th>Date</th>
<th>Speakers</th>
<th>Host</th>
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<tbody>
<tr>
<td>Should the Human Rights Act be repealed?</td>
<td></td>
<td>Martin Howe QC or Anthony Speaight QC or Jonathan Fisher QC. Conservative defender of HRA? (Or Baroness Helena Kennedy QC or Lord Lester QC or Prof Conor Gearty LSE)</td>
<td>Policy Exchange or Centre for Policy Studies</td>
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<tr>
<td>Do we need positive action to achieve a more diverse Judiciary?</td>
<td></td>
<td>Lord McNally (former Minister of Justice) or Lord Faulks QC (current Minister). Baroness Neuberger (Head of Advisory Panel on Judicial Diversity). Christopher Stephens, chair of JAC</td>
<td>CentreForum</td>
</tr>
<tr>
<td>Is there too much judicial review of government decision making?</td>
<td></td>
<td>Jack Straw MP/Charles Clarke MP/David Blunkett MP. Sir Stephen Sedley, former judge in Court of Appeal, or retired Admin Court judge. Prof Maurice Sunkin (University of Essex)</td>
<td>Fabian Society or IPPR or Inst for Govt</td>
</tr>
<tr>
<td>Is clinical independence in medicine similar to judicial independence in the law?</td>
<td>Sept or Oct 2014</td>
<td>Lord Justice Rupert Jackson Former Medical Officer of Health?</td>
<td>King’s Fund Nuffield Trust</td>
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The cost of each seminar will be £500: total £1,500.

Promoting dialogue with the three branches of government

6.1 Through our practitioner seminars we have stimulated discussion between different parts of government about judicial independence and accountability. But those were elite level private discussions, with 30 participants at each seminar. We now want to open up the discussion to a wider audience in all three branches of government. Most of the events listed below will have no
cost for us: those with no cost are shown in italics. We include them for completeness, to show the full range of our planned dissemination activities in 2014. Because most of the events are cost free, the total cost of the events listed in this section is £2.2k.

6.2 The tables are grouped for different target audiences.

6.2.1 Events for Judges and Lawyers

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Topic</th>
<th>Speakers</th>
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<tbody>
<tr>
<td>Middle Temple Lecture</td>
<td>3 Nov 2014</td>
<td>Judicial Independence and Accountability</td>
<td>Lord Judge Robert Hazell Kate Malleson</td>
</tr>
<tr>
<td>UK Supreme Court lecture</td>
<td>March 2014</td>
<td>Independence and Accountability of Supreme Court</td>
<td>Lord Neuberger Kate Malleson Graham Gee Alan Paterson Joshua Rozenberg</td>
</tr>
<tr>
<td>Judicial College Lecture in LCJ’s court</td>
<td>May 2014</td>
<td>Internal Governance and senior judicial appointments</td>
<td>Sir Jeremy Stuart-Smith Kate Malleson</td>
</tr>
<tr>
<td>Const and Admin Law Bar Assn conf at King’s College Cambridge</td>
<td>2013 dates were 26-28 July</td>
<td>Judicial Independence and Accountability</td>
<td>Richard Gordon QC Graham Gee</td>
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6.2.2 Events in Parliament for Parliamentarians

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<tbody>
<tr>
<td>House of Lords Constitution Committee</td>
<td>Depends on suitable inquiry</td>
<td>Judges and Parliament Robert Hazell and Graham Gee</td>
</tr>
<tr>
<td>House of Commons Justice Committee</td>
<td>Depends on suitable inquiry</td>
<td>Judges and Parliament Robert Hazell and Graham Gee</td>
</tr>
</tbody>
</table>

6.2.3 Events for Ministry of Justice and Whitehall

<table>
<thead>
<tr>
<th>Min of Justice private seminar</th>
<th>Role of Exec in promoting Jud Indep and Accty</th>
<th>Catherine Lee Robert Hazell</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial Appointments Commission</td>
<td>Appointments, independence &amp;</td>
<td>Christopher Stephens</td>
</tr>
</tbody>
</table>
6.2.4 International Events

| Four Jurisdictions Conference (England & Wales, Scotland, Ireland and N Ireland) | Edinburgh 8-10 May 2015 | Changing definitions of Judicial Independence | Lord Reed, Robert Hazell, Graham Gee |

Dissemination in the media

7.1 With the help of Brian Walker, on our project team, and ex BBC (see below), we will promote all these events, and wider discussions through our web pages, YouTube, Facebook and Twitter. We have a lot of experience of working with the media: Robert Hazell has been on BBC News at Ten, Newsnight, C4 News, R4 Today, Law in Action etc, and written for the Times, Guardian, FT, Independent, Sunday Times, Mail on Sunday. His YouTube video on a Hung Parliament had 97,000 hits. Promotion with the mainstream media will be achieved through press releases and direct contact, media launches and offers to write special pieces by the authors.

7.2 Possible topics will include:

- The tensions between judges and politicians over different understandings of judicial independence
- The pressures to achieve greater diversity, especially to appoint more women and ethnic minority judges
- Tensions over the Judicial Appointments Commission, and high level appointments to the Supreme Court
- The judges’ own efforts to modernise and become more accountable and accessible through Parliament, public speeches and the media.
- The inside story of how the judges rebelled against Tony Blair’s plans to transfer the courts to the Home Office, so that he then planned to abolish the Lord Chancellor in great secrecy.

7.3 Among outlets to be targeted will be:

- legal and political editors, columnists and commentators in the media generally.
- Broadcasters including the BBC’s higher journalism such as Law In Action with Joshua Rozenberg, Inadmissible Evidence with Clive Anderson and R4 Analysis programme
- The Law websites of the media and the legal press.
- The expansive Guardian Legal Network of blogs and websites.

We already have good contacts with all of these.

Project Management
8.1 The project will be managed as before, with Prof Robert Hazell working closely with co-investigators Prof Kate Malleson (QMUL) and Graham Gee (Birmingham) and Brian Walker (media adviser and press officer). The project team will continue to meet every 2 months through 2014 to plan and manage these dissemination activities.

Robert Hazell will be the team leader, chairing project meetings, liaising with partner organisations, speaking at six of the events and conferences listed above, doing media interviews and writing articles for the press and for practitioner magazines.

Prof Kate Malleson will also liaise with partner organisations, speak at four of the events and conferences listed in section 6, do media interviews and write articles for the press and for practitioner magazines.

Graham Gee will speak at five of the events and conferences listed in section 6, do media interviews and write articles for the press and for practitioner magazines.

Brian Walker will liaise with the press and media, generating interest and arranging commissions from broadcasters and print commissioning editors, and publicise our events and findings through the blogosphere. He will devote 3 days a month to this, from Jan to Sept 2014.

Ben Webb will organise the project meetings, conferences and other events hosted by the Constitution Unit, issue press releases and generate interest in those events and media stories through Twitter and Facebook.

Collaboration with partner organisations

9.1 We plan to work with the following partner organisations, whom we have asked to host and co-organise an event. We have found it helps to ensure practitioner participation if a senior practitioner is invited to chair and to be a speaker. So at the Middle Temple we have asked the Treasurer (Lord Judge, currently the Lord Chief Justice) to chair the event and be a respondent; at the Supreme Court we will invite Lord Neuberger (the President); etc.

9.2 Partner organisations who have agreed to work with us include the following. Those who have yet to confirm are indicated by (tbc):

Judiciary and Legal Profession Supreme Court, Judicial Office, Judicial College, Middle Temple, JUSTICE, Constitutional and Administrative Law Bar Association (tbc), Four Jurisdictions Conference (tbc)


Whitehall Ministry of Justice, Judicial Appointments Commission, Institute for Government

9.3 We have close working relationships with all these organisations. Of those still to confirm, ALBA and the Four Jurisdictions event are conferences which settle their programmes nearer the
time; and submitting evidence to the parliamentary Select Committees depends on their agenda and the inquiries they decide to pursue in 2014.

Outcomes and Impact

10.1 The main beneficiaries of these dissemination activities will be:

- Senior judges, especially in the Supreme Court and Court of Appeal, and judges likely to occupy leadership positions in the future
- Senior parliamentarians in the Lords and the Commons, especially those with an interest in the constitution through their membership of a relevant Select Committee or the All Party Parliamentary Group on the Constitution; and parliamentary officials, researchers and MPs’ staff through the Library’s Parliament and Constitution Centre
- Senior civil servants through the events at the Ministry of Justice and Institute for Government
- Solicitors and barristers, through events organised with the Law Society and Bar Council.

10.2 They will benefit through challenge to long held preconceptions, especially amongst the judges, who tend to hold strong but simplistic notions about judicial independence and judicial accountability. Put very simply, they tend to believe that judges are the best guardians of judicial independence, and that judges are not accountable to anyone. Our findings will challenge that by suggesting, *inter alia*:

- Judicial independence depends on everyone, not just the judges. It is defined and upheld by the Executive (Attorney General, Parliamentary Counsel, Ministry of Justice), by Parliament (Clerks to both Houses, Speaker’s Counsel, Lords Constitution Committee, Commons Justice Committee) and by the media.
- Judicial accountability is not just to the superior courts, through giving public judgements which are subject to appeal. The judiciary regularly give accounts of their activities to Parliament, with over 100 judicial appearances before Select Committees in the last 10 years. And the judges are accountable for misconduct to the Executive, with the Lord Chancellor deciding all complaints and discipline cases in conjunction with the Lord Chief Justice.
- Generally, our findings show that judicial independence and judicial accountability depend upon a set of formal and informal relations between the judiciary, Parliament and the Executive, which are constantly being re-negotiated. Through those negotiations the understandings and definition of judicial independence and accountability are continually being subtly but gradually altered.
Annex A

The Politics of Judicial Independence: Are the Judges now Lions above the Throne?

Closing Conference Autumn 2014

Purpose

- To bring together the strands from all the private and public seminars in 2014
- To generate a policy debate, inviting leading practitioners to respond to our ideas for reform

<table>
<thead>
<tr>
<th>Time</th>
<th>Session Title</th>
<th>Possible Speakers</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.30-10.45</td>
<td>How different are the new Politics of Judicial Independence from the old?</td>
<td>Lord Woolf, Sir Tom Legg, Lord Judge</td>
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<tr>
<td>10.45-11.15</td>
<td>Coffee</td>
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<td>11.15-12.30</td>
<td>Judicial leadership: too much, or not enough?</td>
<td>Head of Judicial College, Spkr on Succession planning</td>
<td>Sir John Goldring or new SPJ, Lord Carnwath or Sullivan LJ</td>
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<tr>
<td>12.30-1.15</td>
<td>Lunch</td>
<td></td>
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<tr>
<td>1.15-2.30</td>
<td>Is the judiciary sufficiently accountable?</td>
<td>Prof Andrew le Sueur, Joshua Rozenberg, Lord Judge or new LCJ</td>
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<tr>
<td>2.30-3.30</td>
<td>How much has changed in Scotland and N Ireland?</td>
<td>Prof Alan Paterson, Strathclyde, John Lavery, NICS, Chief Exec, Scottish Courts Service</td>
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<tr>
<td>3.30-4</td>
<td>Tea</td>
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<tr>
<td>4-5pm</td>
<td>Have the judiciary become too powerful?</td>
<td>Prof Conor Gearty, LSE, Sir Nicholas Bratza, ECtHR, Jack Straw MP</td>
<td>Panel session, with Q&amp;A throughout</td>
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<tr>
<td>5pm</td>
<td>Conference close</td>
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