

JUDICIAL INDEPENDENCE AND THE EXECUTIVE

Note of Seminar held at Queen Mary, University of London

5th December 2012

1. Introduction

This is a note of a seminar on 'Judicial Independence and the Executive' that took place at Queen Mary, University of London on 5th December 2012. The seminar was the seventh in a series run under the auspices of a 3-year AHRC-funded project on *The Politics of Judicial Independence in Britain's Changing Constitution* by the Constitution Unit at UCL, Queen Mary University of London and the University of Birmingham. Those participating in the seminar had a professional interest in the issue, with contributions from senior and former judges, civil servants, journalists and others. The event was run under the Chatham House Rule and this short note reflects that. It is intended to give a general impression of some of the themes discussed.

2. HM Courts and Tribunals Service

Participants generally agreed that the current framework for operating HM Courts and Tribunals Service (HMCTS) in England and Wales – a compromise in which the judiciary and the Ministry of Justice jointly run the courts and tribunals service under an independent Chair – is working well. As one participant put it, it forces the judiciary to have conversations with the courts service and judges have proved very willing to get involved in administration and to take difficult policy decisions. The support provided by the Judicial Office – the judges' own quasi-civil service – has made this significantly easier.

Some argued that this arrangement is not the end point and alluded to problems with planning and long-term investment. Some planned improvements and reforms, such as a computer system originally promised in 1999, have been abandoned or delayed because of competing demands on resources, such as the legal aid budget. The system for managing information in the courts is worse than the equivalent that existed 100 years ago. The relationship is not always happy in respect of those areas in which the Ministry of Justice and the Judicial Office share control of administration.

3. Relations between Judges and Ministers

Participants also agreed that relations between judges and Government are now good, following a very difficult period of sustained criticism by politicians of judges, particularly in relation to sentencing, in the middle of the last decade. This stopped in part because of work by those within Government, such as the Attorney General, DPP and Government Legal Service who often prevent confrontation arising behind the scenes. There is also, as one participant pointed out, a risk in judges becoming too close to members of the executive.

The role of the Lord Chancellor is becoming more political. It may be that as a result of this the role formerly played by Lord Chancellors in acting as guardian of the rule of law and judicial independence is changing and that role may be discharged to a greater extent by the law

officers in future. The current Attorney General could be regarded as playing that role in connection to the current controversy on prisoner voting.

Civil servants also play a role and several participants noted that civil servants have a better understanding of issues around judicial independence and the rule of law than is sometimes believed. They are in a similar position to judges in that they are required to act impartially in relation to issues that are put before them. The civil service code obliges them to respect the rule of law and this obligation can be useful as it offers a concrete reason for acting in a certain way.