



House of Commons
Constitutional Affairs
Committee

The Office of the Judge Advocate General

Second Report of Session 2005–06



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Advocate General**

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

*Ordered by The House of Commons
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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)
James Brokenshire MP (*Conservative, Hornchurch*)
David Howarth MP (*Liberal Democrat, Cambridge*)
Barbara Keeley MP (*Labour, Worsley*)
Mr Piara S Khabra MP (*Labour, Ealing Southall*)
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Julie Morgan MP (*Labour, Cardiff North*)
Mr Andrew Tyrie MP (*Conservative, Chichester*)
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 John Gearson (Second Clerk), Richard Poureshagh (Committee Assistant), Alexander Horne (Legal Specialist), Julie Storey (Secretary), Tes Stranger (Senior Office Clerk) and Jessica Bridges-Palmer (Committee Media Officer).

Contacts

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1 Introduction

1. The Constitutional Affairs Committee decided to conduct a short inquiry into the work of the Office of the Judge Advocate General, the body responsible for the conduct of proceedings at Courts Martial for the Army and Royal Air Force, appointing civilian judge advocates and monitoring the military criminal justice system.
2. The Office of the Judge Advocate General falls under the responsibility of the Department for Constitutional Affairs. The appointment of the Judge Advocate General is made by the Sovereign by Letters Patent. The Judge Advocate General appoints judge advocates to conduct proceedings at Service Courts and to hear custody applications and applications for search warrants. The Judge Advocate General does not operate courtrooms, provide staff for hearings, summon witnesses or guard defendants—this is carried out by bodies under the Ministry of Defence.
3. The Committee focused on the operations and future role of the Office of the Judge Advocate General and its relationship with the Department for Constitutional Affairs. In the course of its inquiry the Committee received written evidence from: the Judge Advocate General, His Honour Judge Jeff Blackett; the Department for Constitutional Affairs; and the Ministry of Defence. It also took oral evidence from Judge Blackett on 29 November.
4. The Government has now published its Armed Forces Bill, which makes significant changes in the court martial system and deals with a number of issues raised in the written and oral evidence the Committee received during its inquiry.¹ **The Committee considers that it would be helpful to Members, if, as well as publishing the evidence in time for the debates on the Bill, it presented this short report drawing attention to some of the issues which were raised, particularly those which are unresolved.**

¹ Background on the system of military justice and the Armed Forces Bill can be found in: *Background to the Forthcoming Armed Forces Bill*, Library Research Paper 05/75, 11 November 2005

2 Comments of the Judge Advocate General

5. In evidence to us, Judge Blackett commented on the Armed Forces Bill as follows:

The main themes of the Bill and the amalgamation of the law across the three Armed Services and the modernisation of Courts Martial are welcome and I strongly support them. There are, however, some areas in the Bill which I believe could be improved further.²

6. Judge Blackett raised the following main points:

- The Military Justice System calls for ‘improvement and reform’ of the current situation, but the military justice system overall is a good system;³
- The Military Court Service, currently run by the Ministry of Defence, should be brought under and resourced as part of the Department for Constitutional Affairs;⁴
- The prosecution should no longer be allowed to choose what type of court martial (District or General—roughly analogous to magistrates or crown court) a defendant should face—it should be in the hands of Judge Advocates;⁵
- The delay from charge to end of trials remains too long;⁶
- Judge Advocates should as far as possible be seen as fully on a par with their civilian counterparts and should be similarly qualified;⁷
- Judge Advocates should automatically be appointed recorders;⁸
- The panels of officers and warrant officers who are the closest analogy to a jury in a Court Martial should be increased from their current number of 3 or 5 members to at least 5 or 7;⁹
- Where service panels of only 3 are used they should not hear cases of greater severity than summary offences (or magistrate level);¹⁰
- The service panels should not be involved in the sentencing of those found guilty as is currently the case;¹¹

2 Q 4

3 Q 4

4 Q 4–6 and Ev 13, section 7

5 Q 69

6 Qq 4 and 91

7 Q 34

8 Q 36

9 Qq 69–74 and Ev 13, section 8

10 Q 71

- The abolition of the automatic Review Process (under which the Reviewing Authority of the service itself reviews all guilty verdicts) following a European Court of Human Rights judgement needs to be replaced with the 'slip rule' which exists in Crown Courts for the correction of mistakes.¹²

11 Q 39

12 Q 99

3 Further issues relevant to the Bill

7. The Committee also identified certain further issues that it feels could be usefully explored during debate on the Bill.

Double Jeopardy

8. At present, when a person subject to military law has already been tried for an offence, either summarily or by court martial, a civil court is unable to try him/her for the same offence. This position is also true in reverse.

9. However, the rules relating to ‘double jeopardy’ were revised under the Criminal Justice Act 2003. The Act made provision for a defendant to be retried for an offence, even where he had been acquitted, in certain limited circumstances. Judge Blackett explained that the military justice system could be consistent with this change if the Secretary of State made a rule to this effect if required.¹³ However, it has not been done and so the system is not in line with Crown Courts. The House may wish to establish when, if at all, the Secretary of State intends to make such an order.

Appointment of Judge Advocates

10. The role of the Judicial Appointments Commission in the appointment of Judge Advocates should be raised for further clarification, particularly in the light of the serious lack of diversity in the current list of Judge Advocates.¹⁴

Extension of military law to the UK for the trial of service personnel for certain serious non-military offences

11. The Armed Forces Bill extends the scope of Courts Martial to the United Kingdom for the trial of military personnel, but not civilian employees or dependants, accused of the most serious offences (namely Treason, Murder, Manslaughter, Treason-felony, Rape, or Genocide), which currently are not dealt with by military courts. Under the Armed Forces Bill, Courts Martial in the UK will have jurisdiction concurrent with the civilian jurisdiction for all offences in respect of military personnel.

12. This change is significant because it means that a member of HM Forces charged with murder or manslaughter could be tried by a military court consisting of a military panel (of five members) capable of a majority verdict of three to two. In a civilian court the accused would face a jury of 12 and a simple majority verdict would never be accepted by a judge, who in most cases would require a unanimous or a very substantial majority verdict. The Bill exacerbates this position by not specifying that larger five member panels must try any offence that is punishable by imprisonment of 14 years or more, leaving it to later specification by Rules (negative resolution). Judge Blackett observed that:

13 Q 86

14 Qq 40–49

in the civilian system Parliament would be unlikely to leave it to the Home Office to determine in Rules what size Crown Court juries should be; no more should MOD do so in the military system.¹⁵

13. There is no right at present for the Criminal Cases Review Body to consider Court Martial judgements and, as noted above, the Reviewing Authority which currently has the power to quash convictions or reduce sentences is to be abolished under the Bill.

Witness

Tuesday 29 November 2005

His Honour Judge Jeff Blackett, Judge Advocate General

Ev 1

List of written evidence

Judge Advocate General	Ev 12
Department for Constitutional Affairs	Ev 15
Ministry of Defence	Ev 17

Formal minutes

Tuesday 6 December 2005

Members present:

Mr Alan Beith, in the Chair

Barbara Keeley
Mr Piara S Khabra
Jessica Morden
Julie Morgan

Keith Vaz
Dr Alan Whitehead
Jeremy Wright

Draft Report [The Office of the Judge Advocate General], 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 13 read and agreed to.

Resolved, That the Report be the Second 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 Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Tuesday 13 December at 3.45pm]

Reports from the Constitutional Affairs Committee

Session 2004–05

First Report	Freedom of Information Act 2000 — progress towards implementation <i>Government response</i>	HC 79 <i>Cm 6470</i>
Second Report	Work of the Committee in 2004	HC 207
Third Report	Constitutional Reform Bill [<i>Lords</i>]: the Government's proposals <i>Government response</i>	HC 275 <i>Cm 6488</i>
Fourth Report	Family Justice: the operation of the family courts <i>Government response</i>	HC 116 <i>Cm 6507</i>
Fifth Report	Legal aid: asylum appeals <i>Government response</i>	HC 276 <i>Cm 6597</i>
Sixth Report	Electoral Registration (Joint Report with ODPM: Housing, Planning, Local Government and the Regions Committee) <i>Government response</i>	HC 243 <i>Cm 6647</i>
Seventh Report	The operation of the Special Immigration Appeals Commission (SIAC) and the use of Special Advocates <i>Government response</i>	HC 323 <i>Cm 6596</i>

Session 2005–06

First Report	The courts: small claims	HC 519
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