

Our ref: RMF/MC

Your ref:

11 December 2007

Consultation on the Role of the Attorney General
Attorney General's Office
20 Victoria Street
London
SW1H 0NF

Dear Sirs

Your Consultation on the Role of the Attorney General

I write on behalf of the London Solicitors Litigation Association ("LSLA"), and in response to your Consultation in respect of the role of the Attorney General.

First I should say that the role of the Attorney General is not central to the day-to-day experience of many of our members (most of whom practise in the fields of commercial and civil litigation in London). That having been said we have read your proposals with interest.

We do not consider it would be appropriate for us to respond in any detail to your paper, but we would make the following points:-

1. We recognise that the office of Attorney General has been with us for many centuries, and that there is much sense in reviewing its position, constitutionally in the current political climate. Indeed there are other offices and issues that have fallen to be examined in recent times (such as the office of the Lord Chancellor, the role of the judiciary and the judicial appointments system, court dress etc.) and we are very supportive of that process.
2. We understand the complex and multi-various roles performed by the Attorney General has undoubtedly been brought into sharp focus by the recent controversy over the legal advice given by the previous Attorney General to the Government on the legality or otherwise of taking military action against Iraq in 2003.
3. That issue has also drawn attention to the question of legal professional privilege, something, which certainly does affect our members, and is a privilege they would protect ordinarily, most carefully. There is, however, a political issue here (which is not for our members to comment upon) concerning who exactly is the "client" for these purposes. In that context we understand the view taken by some that the "client" may in some respects be regarded as

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the public, particularly if it is the public who are being asked to pay for, and send themselves or family members to dangerous parts of the world to fight for Queen and country.

4. Undoubtedly those who have occupied the office of Attorney General have been of the highest calibre both in terms of legal ability, and integrity, and this has doubtless helped to ensure potential difficulties that might otherwise have arisen because of the various interests that the Attorney General now has to protect, have been kept to a minimum. Nonetheless, as we have seen in other areas, the question of “perception” seems to us to be of significant importance. This was, of course, an issue brought to the fore by the case of *Lawal v. Northern Spirit Limited* [2003] UK HL35 in which ultimately the House of Lords had to consider the public perception in having a part-time Employment Appeal Tribunal Judge appearing subsequently as an advocate before an Employment Appeal Tribunal which might incorporate a wing member who had previously sat with that advocate whilst he or she was chair. The “advocate” in that case was someone of the highest calibre whose integrity could not be open to any doubt, but it was the “public perception” that was regarded as being key.
5. We can see that in some circumstances, having someone from inside the Government, providing “independent” advice, which cannot, save in rare circumstances, be open to public scrutiny, might be an issue. That is not something upon which we would want to comment in detail, although we might observe in the case of large companies/organisations, with potentially substantial “in-house” legal departments, there can come a time when it is important to seek the very best advice outside that company or organisation, with a different perspective, albeit in circumstances in which that independent adviser would be asked to become fully acquainted with all relevant considerations (which in the case in point, may of course include political factors). In those circumstances we would presume the most trusted first Treasury Counsel could be called upon to advise, as an alternative to whoever occupies the office of Attorney General at any particular time.

We look forward to considering the results of this consultation, but as we have said, felt it was not appropriate for us to contribute to the detail, as it is running its course.

Yours faithfully

Simon Davis