

PERSONAL



12 April 1989

THE CLERK OF THE HOUSE
HOUSE OF COMMONS
LONDON SW1A 0AA

01-219 3300

Dear Mr Waddington,

WITNESSES BEFORE THE DEFENCE COMMITTEE

You asked about the status of certain potential witnesses if they were asked to give evidence to the Defence Committee. (I gather that the present mood of the Committee is seven to two in favour of asking Sir Leon Brittan to confirm his televised remarks, with a view to re-opening with Lord Armstrong the adequacy of his account of events. The Chairman did not express a view.)

The Committee would proceed by way of inviting evidence. If Sir Leon declined, he could be summoned when in the UK. If he refused to answer questions, he could be reported to the House. It would be a matter for the House whether to take any further action, but refusing to give evidence when summoned is prima facie a contempt, so it would be difficult to avoid a debate. (I believe those Members who wish to pursue the matter simply want to ask him to confirm his TV Statement.)

If Lord Armstrong declined an invitation, he could not be summoned because of his status as a member of the House of Lords. The Lords normally give consent to peers to attend Commons Committees as a matter of course, but it is conditional on the willingness of the peer himself.

The position of serving Civil Servants is well established. Although they may be summoned to a Committee as individuals, if they inform the Committee that they are not authorised to reply to questions about their work, a relevant Minister will subsequently attend to take responsibility for this decision, if required. I attach a fuller note on this point.

Yours sincerely,

Clifford Boulton

C J BOULTON

The Rt. Hon. David Waddington QC MP
House of Commons

Evidence from civil servants

3.7 A memorandum exists within the Civil Service to give guidance to officials appearing as witnesses before select committees. This memorandum is an internal paper, and has never been accepted or approved by the House or its committees. It is published in the Procedure Committee's First Report of 1977-78, HC 588-I, at page 38.

3.8 In October 1986 the Government proposed to amend the memorandum in the light of its opinion that a select committee "was not a suitable instrument for inquiring into or passing judgement upon the actions or conduct of an individual civil servant". The point was explored in an interchange of reports and correspondence between Ministers and committees. The Government promised that if a civil servant was unable to answer a departmental committee's question because he was inhibited by his duty to or the instructions of Ministers, the relevant departmental Minister would himself be prepared to attend the Committee. Secondly, if the conduct of a civil servant was called in question, the Government argued that the committee should pursue the matter with the Minister concerned, who would look into the matter and inform the committee of the result.

3.9 The Government duly added material along these lines (see Cm. 78, pages 4-5) to the Memorandum of Guidance. The Liaison Committee made clear in a letter that committees were not a party to the memorandum which, so far as they were concerned, could not alter the traditional rights of select committees to send for persons. If disputes arose about a witness's refusal to answer questions properly put to him, the matter should be resolved on the floor of the House.

3.10 Both sides were agreed in thinking that it was not the function of a select committee to act as a disciplinary tribunal. But it was acknowledged by the Government that the Committee of Public Accounts and several other committees had special responsibilities with regard to civil servants, and that the new instructions would accordingly only be directed to witnesses before the departmental committees.