

Note: The original article to which these letters relate is Document 2010.005 on this website and can be accessed at www.francisbennion.com/2010/005.htm.

Correspondence published in *Criminal Law and Justice Weekly*

Letter to the Editor

Clarification

In the 6 February edition, Francis Bennion wrote a personal piece, 'Ladies of the Law', including a discussion of the office of Attorney General and how it is discharged.

The Attorney General's Office has asked us to point out, for clarity, that while the Attorney herself as a peer can only be questioned on the work of her departments in the House of Lords, full accountability to the Commons is provided by the Solicitor General.

Mr Bennion also states that 'the Attorney has always been able to start or end a prosecution'. Other than in the exceptional cases where the consent of the Attorney is required by law, decisions to prosecute or not to prosecute are taken entirely by the prosecutors. A protocol published last year fully outlines the relationship between the Attorney and Prosecuting Departments. It reflects the fact that, in practice, the Attorney General is not informed of, nor has any involvement in, the conduct of the vast majority of individual cases around the country. The protocol and more on the role of the Law Officers can be found on www.ago.gov.uk

Yours faithfully
Office of the Attorney General
London

Response

On the accountability point, the Solicitor General is not at common law the constitutional equal of the Attorney General, but has an inferior or deputy status. By statute (the Law Officers Act 1997), functions of the Attorney General may be exercised by the Solicitor General, but this does not put the two offices on a level of equality. For example the Attorney General always has power to overrule the Solicitor General. It is an insult to the House of Commons that it should be fobbed off with a mere deputy of the Attorney General. (This is not a personal matter and I mean no disrespect to Ms Vera Baird QC.)

My statement that 'the Attorney has always been able to start or end a prosecution' is correct, whatever the current practice may be. Moreover the Attorney General cannot lawfully ignore the way the CPS works because she is under a statutory duty to superintend it.

The web site mentioned does not in fact set out the terms of the so-called protocol, but merely describes it in brief. There is a current fad for giving the name protocol to what is merely an administrative arrangement within a department. It does not have the force of law, and certainly does not remove or diminish the ancient power of the Attorney General to initiate a prosecution or terminate one by *nolle prosequi*.

The draft Constitutional Renewal Bill, published in March 2008, contained proposals for altering the position I have outlined. They were however omitted when the actual Bill, renamed the Constitutional Reform and Governance Bill, was introduced. This is now before Parliament.

Yours faithfully,
Francis Bennion