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**Constitutional reform**  
**What Benefits for the Justice system?**

Lord Shaftesbury's motto that "Reputation is the secret of all government" can be applied to the judiciary in the latest government reform. New legislation aims to provide an improved and more open judiciary, benefiting the justice system by increased public and professional confidence, better systems of appointment and greater political independence.

To achieve this the government proposes firstly the introduction of a Supreme Court and secondly reform of the judicial selection process. Replacing the House of Lords Appellate committee, the Supreme Court would act as the highest appeal court in the UK; thus severing connections with the legislature. The benefits are deemed to be twofold; first the independence of the judiciary, from both the legislative and executive, is affirmed and second the highest court of appeal becomes clearly identifiable to the public.

By separating the branches of government, fears of judicial bias are lessened and public confidence improved. Increased separation removes concerns that either the executive, or legislature may politically influence the Law Lords in their judgements. This separation would bring the British system of government more firmly into line with EU Human Rights legislation and demonstrate the government's commitment to a fair and impartial justice system.

The current selection process will be replaced with the Judicial Appointments Committee (JAC). Consisting of members from the judiciary, legal profession and wider society, the JAC would be responsible for all future appointments to the judiciary. It aims to benefit the justice system by increasing transparency and reducing discrimination in the selection of the Judges.

The JAC will benefit the system by promoting increased accountability and rectifying an area previously lacking in clear documentation and procedure. Reform will retain the current Commission for Judicial Appointments and its role as an Ombudsman, to provide external inspection of judicial selection. By a combination of internal reform and external scrutiny the JAC would exhibit considerable accountability, inspiring popular confidence in the justice system.

Although confidence promoting, are these reforms to the justice system as beneficial as has been alleged?

While the JAC may provide a better-documented selection process than its predecessor, a much better judiciary as a consequence is not assured. Certainly good candidates who may have been discriminated against will be given a fairer chance to obtain an appointment, however the number of these situations is likely to be few. The judiciary will not be vastly superior than at present simply because it has been openly selected. Reform to practice and powers, which directly affect the workings of the justice system, would be of far greater benefit.

Although appearing entirely new, the JAC will use selection criteria, which closely resemble current standards. Consequently the JAC is unlikely to select many judges who would not have been chosen anyway under the current system. Worse still, the criteria used in selection will continue to be stipulated by the Government. A body aiming to demonstrate democracy and impartiality in judicial selection while retaining executive criteria to do so is oxymoronic.

As yet the precise powers of appointment the JAC will hold have yet to be defined. Ministers favour a "recommending committee" which would suggest two to three applicants to the Home Secretary, who would then decide. In my view public

confidence will only be won if the JAC is seen to work as an independent body, with full power to appoint its own candidate and devoid of executive influence.

Ministerial selection of candidates is flawed, as firstly it gives the image of a judiciary selected for political allegiance and compliance rather than for merit. Secondly ministers are less qualified than the JAC to make the final choice of candidate, not necessarily having any experience in the legal field nor having participated in the selection process, and it is consequently inappropriate to give them the final decision. Thirdly the reasons for the minister's final decision would remain confidential, undermining the aim of a transparent and open system.

Equally unclear is the power that the JAC will exercise in disciplinary matters. As an impartial body comprising elements both of the judiciary and society, the JAC would provide a democratic and fair disciplinary body. Yet current suggestions are to invest the Lord Chief Justice with the disciplinary powers once held by the Lord Chancellor. This would dispel public confidence in the procedure as judiciary judging judiciary cannot possibly be deemed just or fair. If the JAC is to benefit the justice system it must be given real and useful powers; not the image of hollow spin.

Reform of the Appellate Committee is also open to allegations of spin. Law Lords have affirmed their intention to minimise involvement with the legislative aspect of the Lords, in order to avoid claims of bias. Why then is a separation of powers needed, other than for purposes of spin? The Supreme Court would not provide better justice than the Appellate Committee as no reform to working practices, procedures or powers is proposed. By changing the committee's identity, the justice system gains little other than increased expense and a PR makeover.

The Government's hopes that the justice system's integrity will be improved by the formation of new organisations are misguided. Integrity is to be found in personal conduct not in institutions, a distinction, which the proposed reform has failed to take into account. Confidence in the Hutton inquiry was obtained by the unprecedented availability of evidence and information; a consequence of the Judge's conduct not the inquiry systems design. If the justice system's integrity is to be similarly regarded wider and substantial reform is required.

The underlying aim of reform to improve public confidence in the justice system is admirable and worthwhile. However these reforms achieve that aim rather superficially. While both the appointments procedure and the Appellate Committee have been remodelled into more transparent and open institutions, little of the working practices and powers of either bodies would change in a manner which would improve either the speed or quality of justice.