



# Ministry of JUSTICE

Coroners and Burials Division

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24 February 2011

*Dear Kevin*

## DR DAVID KELLY

I refer to your letter of 25 November to [REDACTED] regarding the Memorial that has been submitted to the Attorney General in connection with the application by a group of doctors, under section 13 of the Coroners Act 1988, for a fresh inquest into the death of Dr David Kelly.

You asked the Ministry of Justice to respond to the points raised from paragraphs 25 to 32 of the Memorial. I am sorry for the delay in so doing, but this matter has only recently been passed to me for reply.

Contrary to the arguments made in the Memorial, no difficulty is posed by the fact that Lord Falconer was both Secretary of State for Constitutional Affairs and Lord Chancellor. Although the two offices are distinct, there is no bar which prevents the same person being a Secretary of State and the Lord Chancellor. For example, the current Justice Secretary - Kenneth Clarke MP - is also appointed Lord Chancellor. His predecessor, Jack Straw MP, similarly held both the office of Secretary of State and of Lord Chancellor.

The procedure set out in s17A of the Coroners Act 1988 was entirely properly engaged and followed in the Dr Kelly case. In accordance with the provisions of section 17A, the then Lord Chancellor - Lord Falconer - informed (via his Private Office) the Oxfordshire coroner that an inquiry had been established to investigate Dr Kelly's death.

Section 17A allows a coroner to adjourn an inquest when he is informed by the Lord Chancellor that a public inquiry conducted or chaired by a judge is being, or is to be, held into the events surrounding the death, and the Lord Chancellor considers that the cause of death is likely to be adequately investigated by the inquiry. A coroner cannot, however, be compelled so to adjourn. An inquest can continue if the coroner finds there is an exceptional reason for doing so.

Under section 17A there is no requirement that the inquiry has to be statutory. It merely has to comply with the requirements of being conducted or chaired by a judge and being held in public. In this instance, a non-statutory inquiry could be set up quickly and its terms of reference mirrored the necessary scope of the inquest.

Under section 17A, after the completion of the Hutton Inquiry the coroner could have resumed the inquest, again if he had considered there was exceptional reason for doing so. This would have included any concerns as to the scope of the Inquiry and if he was of the view that it had not adequately dealt with the issues and answered the questions that the inquest would have addressed. In this case, having been sent the Hutton Inquiry Report - again, in accordance with section 17A - the coroner was satisfied with the scope and conclusions of the Inquiry, and he did not consider it was necessary to resume the inquest.

Section 17A was introduced by section 71 of the Access to Justice Act 1999. The intention behind it was simply to prevent duplication of proceedings, which can cause unnecessary distress to the bereaved and other witnesses.

Lord Hutton was selected as a senior judge to investigate the death of Dr Kelly impartially and completely separately from Government. As a serving judge at the time of his appointment and for the duration of the hearings, as Inquiry Chair he clearly satisfied the requirements of section 17A.

I hope this information is helpful. If you require anything further, please do not hesitate to let me know.

Yours sincerely

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[REDACTED]  
[REDACTED]