



House of Commons
Welsh Affairs Committee

Legal Services Commission Cardiff Office

Seventh Report of Session 2008-09

*Report, together with formal minutes, oral and
written evidence*

*Ordered by the House of Commons
to be printed 21 April 2009*

The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales).

Current membership

Dr Hywel Francis MP (*Labour, Aberavon*) (Chairman)
Mr David T.C. Davies MP (*Conservative, Monmouth*)
Ms Nia Griffith MP (*Labour, Llanelli*)
Mrs Siân C. James MP (*Labour, Swansea East*)
Mr David Jones MP (*Conservative, Clwyd West*)
Mr Martyn Jones MP (*Labour, Clwyd South*)
Rt Hon Alun Michael MP (*Labour and Co-operative, Cardiff South and Penarth*)
Mr Albert Owen MP (*Labour, Ynys Môn*)
Mr Mark Pritchard MP (*Conservative, The Wrekin*)
Mr Mark Williams MP (*Liberal Democrat, Ceredigion*)
Mr Hywel Williams MP (*Plaid Cymru, Caernarfon*)

Powers

The committee is one of the Departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm.

Committee staff

The current staff of the Committee is Dr Sue Griffiths (Clerk), Georgina Holmes-Skelton (Second Clerk), Judy Goodall (Inquiry Manager), Carys Jones (Committee Specialist), Christine Randall (Senior Committee Assistant), Annabel Goddard (Committee Assistant), Tes Stranger (Committee Support Assistant) and Rebecca Jones (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Welsh Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6189 and the Committee's email address is welshcom@parliament.uk.

Contents

Report	<i>Page</i>
Summary	3
1 Introduction	5
The Legal Services Commission	5
Structure of the Commission	6
Our inquiry	7
2 Consultation	8
3 Legislative divergence	10
4 Level of Service to Welsh Clients	11
Regionalisation	11
Local networks	12
Leadership	12
Welsh language	13
5 Job Losses	15
6 Conclusion	16
Conclusions and recommendations	16
List of Reports from the Committee during the current Parliament	21
Formal Minutes	19
Witnesses	20
List of written evidence	20

Summary

In November 2008, the Legal Services Commission announced that it would be restructuring its operations by centralising operational support and administrative work in five business support centres by 2012. The change includes a significant reduction in the operations of the Commission's Cardiff office, with functions being transferred to processing centres in England.

The Legal Services Commission failed to include the Wales Office in any form of consultation regarding the proposed changes to its Cardiff office. This is unacceptable and betrays a poor understanding of the devolution settlement on the part of the Commission.

The extent of consultation with the Welsh Assembly Government and other stakeholders prior to the announcement of the restructuring was also extremely limited. To exclude these parties from consultation on a decision that could have a serious impact on the quality of the legal aid service to the Welsh population is not only unwise, it is evidence of an inward-looking and metropolitan attitude that is insensitive to the needs of a devolved administration. We are left with the distinct impression that a decision was made first, and a form of 'consultation' was an afterthought.

We are particularly concerned that the proposed changes have been put forward in the context of continuing legal divergence post devolution. The Legal Services Commission must ensure there is adequate expertise for interpreting Welsh legislation, particularly after the Government of Wales Act 2006. Measures are expected in areas including carers' rights, housing, vulnerable children, mental health and environmental protection. All of these areas are likely to have an impact on legal aid cases. The Commission will also need to ensure that high quality bilingual services continue to be provided. Despite the Commission's assurances, we are not confident that the quality of Welsh services can be maintained from outside Wales.

We recommend that no change to the functions of the Cardiff office should be implemented until thorough and genuine consultation has taken place to determine its likely impact on levels of service.

It appears that Whitehall guidance on devolution has now been misunderstood on a number of occasions. We recommend that the guidance should be amended in order to clarify and strengthen references to the key role of the Secretary of State for Wales and the Wales Office from the start and throughout any process. We also recommend that the Ministry of Justice should undertake a review of the protocols relating to the devolution settlement and its observation throughout government.

1 Introduction

The Legal Services Commission

1. The Legal Services Commission was established under the Access to Justice Act 1999, to establish, maintain and develop two services: the Community Legal Service and the Criminal Defence Service. The Act prescribes the overriding objectives of the two services as follows:

- the Community Legal Service exists to ensure that “individuals have access to services that effectively meet their needs within the resources made available and the priorities set”;
- the Criminal Defence Service exists to ensure that “individuals involved in criminal investigations or criminal proceedings have access to such advice, assistance and representation as the interests of justice require”.¹

2. The Legal Services Commission contracts solicitors and not-for-profit organisations to provide legal aid services. It is overseen by the Ministry of Justice. It currently has 12 offices in England and one in Cardiff. The Commission’s expenditure on legal aid and advice services was about £2 billion in 2007–08. In the same financial year, it provided over 752,000 acts of assistance through legal aid, including to 51,500 clients in Wales.² The services it provides under civil legal aid are:

- initial advice and assistance with any legal problem;
- a solicitor who can speak on someone’s behalf at court hearings without formally representing them;
- help and advice on family disputes, including assistance with family mediation;
- legal representation in court proceedings.³

3. The Ministry of Justice told us that the role of the Minister with responsibility for legal aid was “for the strategic policy for legal aid and ensuring that the Legal Services Commission carries out its functions, as set out in the Access to Justice Act 1999, of establishing, developing and maintaining the Community Legal Service and Criminal Defence Service”.⁴ It stated that the role of the Chief Executive of the Legal Services Commission was to operate at arm’s length from the Minister, “to ensure that money, assets, equipment and staff are used economically, efficiently and effectively—and as Chief Executive [she] has discretion over how to achieve this provided the objectives set out in

¹ Ev 7

² Ev 22

³ www.legalservices.gov.uk

⁴ Ev 8

the Act, and defined by Ministers, to provide a Community Legal Service and Criminal Defence Service are maintained”.⁵

Structure of the Commission

4. In recent years, attention has been focused on reforming the Legal Services Commission in response to the growing cost of legal aid. In 2005, the Government began studying possible reforms and later commissioned Lord Carter of Coles to carry out a review of legal aid procurement, so as “to deliver a system that would achieve maximum value for money, whilst ensuring quality and the fairness of the justice system”.⁶ The key recommendations emanating from the review advocated a change of procurement methods along the principles of market-based best value competition.

5. In 2006, the Treasury and the (then) Department of Constitutional Affairs asked the Legal Services Commission to re-examine its internal administration. This resulted in a target to reduce the administrative budget by £30m by 2012. The Legal Services Commission decided that the reduction would be achieved by improving electronic working, reducing staff numbers, and centralising and simplifying work processes. In November 2008, the Legal Services Commission announced that as part of the budget reduction strategy, it plans to centralise operational support and administrative work for legal aid in five Business Support Centres by 2012.⁷ The five Business Support Centres will be at South Tyneside, Liverpool, Nottingham, London, and Bristol.

6. The proposed restructuring includes transferring civil legal aid functions away from the Commission’s Cardiff office to processing centres in England. The Legal Services Commission states that Cardiff was not chosen as one of the central business support sites as it is a relatively small office and the move would therefore have the least overall impact on staff. The exact impact of this change for the staffing of the Cardiff office is not yet clear, but it is likely that around 30 posts would be lost or relocated.⁸ Following the reduction, a team of relationship managers, policy staff, communications staff, and human resources staff would be retained in the Cardiff office, whereas other “operational support work”,⁹ including decisions on the issuing of legal aid certificates, would be relocated to England. The Commission is currently reviewing the business cases for each of its offices, before making a final announcement concerning the restructuring. In oral evidence, its Chief Executive said that a final decision would be made at a meeting of its board in May.¹⁰ Changes are expected to be implemented in the second half of 2009.

7. The Legal Services Commission states that it regrets the reduction of services in Wales but that many sites in England are seeing similar reductions, which it argues will ultimately

⁵ Ev 9

⁶ *Legal Aid Reform: The Way Ahead*, Department for Constitutional Affairs, Cm. 6993, p 6.

⁷ Ev 22

⁸ Q 36

⁹ Ev 24

¹⁰ Qq 20 and 37

lead to higher quality management services to the providers and better outcomes for the client.¹¹

Our inquiry

8. The Legal Services Commission's restructuring plans were raised in Parliament by Julie Morgan MP in an adjournment debate in Westminster Hall on 21 January 2009. The debate was attended by Welsh MPs from all political parties who expressed concern about the impact of these plans on the legal aid service in Wales. Opening the debate, Julie Morgan said:

I am concerned about this decision on several counts. First, the Legal Services Commission did not consult the Welsh Assembly Government before it made its decision. Secondly, the decision will result in a great loss of experience and expertise to the LSC, and to Cardiff and Wales. Thirdly, it is estimated that the decision will lead to the loss of 40 quality jobs across south Wales. Fourthly, the decision has failed to have any proper regard to the effect of schedule 5 to the Government of Wales Act 2006, which paves the way for the Welsh Assembly to seek primary law-making powers in 20 fields of law.¹²

We congratulate Julie Morgan on securing her debate and for raising this important issue.

9. A number of members of the Welsh Affairs Committee attended Julie Morgan's adjournment debate. Given the importance of the issues raised, the Committee agreed to undertake an inquiry examining the decision by the Legal Services Commission to reduce its operations in Cardiff. On 11 February 2009, we announced that we would be taking evidence from the Legal Services Commission and the Ministry of Justice, which sponsors the non-departmental public body, in a session to be held on 24 March 2009. We invited written evidence on this subject and received eleven submissions, which are appended to this Report.

10. On 24 March, we took evidence from Carolyn Regan, Chief Executive of the Legal Services Commission, Phil Lambert, Executive Director, Business Support and Paul Davies, Director for Wales. We also heard from Lord Bach, Parliamentary Under Secretary of State at the Ministry of Justice. The transcript of the session is appended to this Report. In the interests of contributing to a rapidly developing situation, we decided to issue our recommendations on this matter as soon as possible after the evidence session.

¹¹ Ev 25

¹² HC Deb, 21 January 2009, col. 294WH.

2 Consultation

11. The Government has given a commitment to consult the devolved administrations on the cross-border implications of any new policies. A series of Devolution Guidance Notes is published by the Ministry of Justice to help officials fulfil this commitment. The principle of timely consultation on policy matters that may affect Wales is described in Devolution Guidance Note 4:

...it is essential if there is to be no delay in reaching decisions that the Secretary of State [for Wales] and the Assembly Government are consulted at an early stage in the development of policy. [...] Colleagues are asked therefore:

- that officials should take soundings of Assembly officials as soon as possible. If these indicate that there may be clauses in the legislation dealing specifically with Wales or particular issues relating to Wales, officials in the Wales Office should be alerted.
- that whenever possible the relevant Assembly Minister should be asked for his or her views on a proposal at the same time as policy clearance is sought from Cabinet colleagues. It would not be appropriate for the Assembly Cabinet to be aware of internal UK Cabinet discussions, so the most useful way of achieving this is to write to the Assembly Minister in similar terms asking for comments rather than agreement. However, in setting deadlines, colleagues should recognise that the Secretary of State for Wales will wish to know the Assembly's view before writing himself, whether or not he supports that view.

While this is particularly important for proposals for primary legislation, the principle should be applied to any Government initiative that affects Wales.¹³

12. It appears that Whitehall guidance has been misunderstood on a number of occasions. We recommend that Devolution Guidance Note 4 should be amended in order to clarify and strengthen references to the key role of the Secretary of State for Wales and the Wales Office from the start and throughout any process.

13. It had been the practice of the Legal Services Commission to carry out extensive consultation at major junctures of its recent reform programme. For instance, in conjunction with Lord Carter's review, 2,372 written consultation responses were collected from the public, while over 2,000 legal aid professionals attended a series of meetings in late 2006 to express their views of the reform proposals.¹⁴ There has been a commitment to external consultation when there were significant impending changes to the Commission's work.

¹³ Available at <http://www.justice.gov.uk/guidance/devolutionguidancenotes.htm>

¹⁴ *Legal Aid Reform: The Way Ahead*, Department for Constitutional Affairs, Cm. 6993, November 2006, p 6.

14. In written submissions to the Committee, Julie Morgan MP¹⁵ and Dr Brian Gibbons AM,¹⁶ Social Justice Minister in the Welsh Assembly Government, told us that neither the views of the Welsh Assembly Government nor wider stakeholders were effectively sought in this instance. The letter from Dr Gibbons states that internal restructuring was last mentioned as a possibility during a regular meeting in April 2008. The GMB and FDA unions add that they were given less than a day's notice prior to the announcement of the Legal Services Commission's reorganisation plans in 2008 and encountered difficulties engaging the Commission in normal levels of consultation.¹⁷

15. In oral evidence, we asked representatives of the Legal Services Commission to describe the process by which the decision to relocate the business support team in Cardiff was taken. The Commission stated that the prospect of reductions in staffing levels had been raised over the past two or three years and that it had been the subject of ongoing discussions with stakeholders. The Commission acknowledged that the last meeting it had held with the Welsh Assembly Government was in April 2008 with Brian Gibbons AM, Social Justice Minister.¹⁸

16. Given that legal aid is not devolved, we asked the Legal Services Commission and the Ministry of Justice how the Wales Office had been involved in consultations on this matter. We were shocked to learn that there had been no contact with the Wales Office at all. Lord Bach, Parliamentary Under Secretary Of State at the Ministry of Justice, admitted that this was a mistake and said that both the Commission and the Ministry would "learn a lesson" from the experience.¹⁹

17. After our evidence session, we received a letter from the Wales Office, notifying us that Lord Bach has asked the Legal Services Commission to delay its decision on the future of the Cardiff office until late July "in order to allow them, and him, more time to have further discussions with interested parties and formally consult on the issue".²⁰ We welcome this step.

18. The Legal Services Commission failed to include the Wales Office in any form of consultation regarding the proposed changes to its Cardiff office. This is unacceptable. It runs counter to explicit guidance given to government officials and betrays a poor understanding of the devolution settlement on the part of the Commission. It is essential for the Secretary of State for Wales to be fully in the picture at the outset and at every stage in the process. This is not the first time that the Ministry of Justice (or in this case one of its agencies) has demonstrated a surprising lack of awareness about the devolution settlement and the protocols which are in place in relation to legislation, and, as the Department has overarching constitutional responsibilities, we find this disturbing.

¹⁵ In a letter following the adjournment debate in Westminster Hall. HC Deb, 21 January 2009, Col. 294WH [not printed].

¹⁶ Ev 29

¹⁷ Ev 16

¹⁸ Q 4

¹⁹ Q 8

²⁰ Letter from Wayne David MP to the Chairman, 8 April 2009. Ev 32

19. We are also concerned that the extent of consultation with the Welsh Assembly Government and other stakeholders prior to the announcement of the restructuring was extremely limited. Local MPs were not consulted until the issue had been raised in Parliament in early 2009. To exclude these parties from consultation on a decision that could have a serious impact on the quality of the legal aid service to the Welsh population is not only unwise, it is evidence of an inward-looking and metropolitan attitude that is insensitive to the needs of a devolved administration. We are left with the distinct impression that a decision was made first, and a form of ‘consultation’ was an afterthought.

20. While changes to the structure of the Legal Services Commission are an operational matter and thus the responsibility of the Chief Executive, taken at arm’s length from the Minister, the Minister does fulfil an important oversight function. We appreciate the Minister’s acknowledgement that mistakes were made in this case and note his apology. However, we are disappointed that the Ministry of Justice did not appear to know about the scale of the changes proposed or the lack of any consultation. We recommend that the Ministry of Justice undertake a review of the protocols in relation to the devolution settlement and its observation throughout government. We intend to return to this issue in the near future.

21. We recommend that no change to the functions of the Cardiff office should be implemented until thorough consultation has taken place to determine its likely impact on levels of service. We request that a report be made to this Committee on the outcome of such consultation and subsequent changes in the proposals.

3 Legislative divergence

22. The lack of consultation on the part of the Commission is even more worrying in the context of rapidly developing legislative divergence in Wales. Under the Government of Wales Act 2006, the National Assembly for Wales may pass legislation in the form of Measures as long as they fall into the domains (“Fields”) within Schedule 5 to the Act. These fields include diverse areas such as local government, social welfare, housing, environment, culture, and economic development. Of these, social welfare and housing are among the three most common reasons for which clients sought help from legal aid in 2007–08.²¹ Divergence in practices can already be seen in the NHS Redress Scheme, the Children’s Advocacy Service, and the Mental Health Review Tribunal. New legislation is also expected in the areas of community care, education, housing, and debt. As new legislation continues to be passed by the Assembly, the Legal Services Commission will need staff who are familiar with these laws and the local conditions in which they are implemented.

23. In its written evidence, the Legal Services Commission states that it will increase the Welsh Policy Team in Cardiff to liaise with the Welsh Assembly Government so that the Commission remains fully informed of Welsh law-making issues and considerations.²²

²¹ *Annual Report and Accounts 2007/08*, Legal Services Commission, HC 841, July 2008, p.20.

²² Ev 23

However, Dr Brian Gibbons AM, Minister for Social Justice and Local Government in the Welsh Assembly Government, states in his submission that the proposal to reduce services “goes against the spirit and direction of devolution”.²³ Written evidence from Shelter Cymru adds that “The proposal to remove any Wales-based administration capacity runs counter to the devolution process and actively undermines any future devolution of the legal aid scheme”.²⁴

24. In oral evidence, Carolyn Regan, Chief Executive of the Legal Services Commission told us that there would still be a “strong presence” of frontline staff in Cardiff. She added that the scale of the policy team in the office would be kept under review in the coming months and years, and increased if necessary, to ensure that the Commission had adequate expertise for the interpretation of legislation made by the National Assembly for Wales.²⁵ We were not reassured by her evidence and believe that she had seriously underestimated the significance of these issues.

25. The Legal Services Commission must ensure there is adequate expertise for interpreting Welsh legislation post devolution, particularly after the Government of Wales Act 2006. Measures are expected in areas including carers’ rights, housing, vulnerable children, mental health and environmental protection. All of these areas are likely to have an impact on legal aid cases. The Committee is not convinced that an English office would have the resources or expertise to cope with this evolving and growing legal context.

4 Level of Service to Welsh Clients

Regionalisation

26. Lord Carter’s review of legal aid procurement underlined the importance of providing a supply of legal service that meets diversity requirements and local needs:

Suppliers of civil legal aid should provide a more efficient client-focussed service concentrated around meeting differing local needs through the establishment of community legal advice centres and community legal advice networks, in line with the Legal Services Commission’s strategy for the Community Legal Service.²⁶

It is in the same spirit that legal aid is provided via regional groupings of local offices, of which Cardiff is one.

27. Many of those who submitted written evidence to our inquiry referred to the desirability of providing legal aid services to the Welsh population from an office based in Wales. In his evidence, the Chairman of the Legal Aid Practitioners Group, Mr Ray Morgan, argues that the reduction of services in Cardiff is contrary to increasing regional legal autonomy more generally. He notes in particular that Cardiff is an important centre

²³ Ev 29

²⁴ Ev 27

²⁵ Qq 3 and 32

²⁶ *Legal Aid: A Market-based Approach to Reform*, Lord Carter’s Review of Legal Aid Procurement, July 2006, p 4.

for civil justice and is also where the Court of Appeal sits.²⁷ The letter from Dr Brian Gibbons AM, Minister for Social Justice and Local Government in the Welsh Assembly Government, highlights the intention of the UK Government to establish a regional Administrative Court in Cardiff in April this year to handle judicial review claims.²⁸ He argues that the Legal Services Commission's decision to reduce services is ill-advised in this context.²⁹

28. This view is supported by Professor Dermot Cahill, Dean of Bangor University School of Law, who argues in his memorandum that the level of services in Wales needs instead to be strengthened. Professor Cahill notes that for the first time "listing and case management will take place in Cardiff, not administered centrally from London" and predicts that the number of Welsh legal aid applications could increase as a result. He concludes that:

...the rationale for regionalisation is that judicial review cases should be listed, administered and heard close to the people and places they concern. Removing decisions whether to grant legal aid and in what amount, from the regional centre, would undermine the regionalisation reforms and access to justice more generally.³⁰

Local networks

29. Another aspect of service provision is the collaborative networks between the Legal Services Commission, local service providers, and the Courts. In their evidence, the Citizens Advice Bureaux and the Chairman of the Legal Aid Practitioners Group express concern that the timing of the reduction of administrative capacity in Cardiff coincides with the next round of bids for Legal Aid Contracts.³¹ Changes in the contracting system in this coming round, in anticipation of the implementation of Community Legal Advice Networks (CLANs) in Wales, are expected to increase the administrative complexity of administering the contracts. They argue that a reduction of administrative capacity will disrupt existing working relationships between the Legal Services Commission and the service providers, risking payment delays and discontinuity of services for clients. The Chairman of the Legal Aid Practitioners Group also told us that existing working relationships between local judges and the certificate section of the Wales office could be lost, creating inefficiencies in service response.³² **While it is beyond the scope of this inquiry, we note a general concern that the contribution of Citizens' Advice Bureaux and other not-for-profit providers appears to be undervalued by the Commission.**

Leadership

30. Within the leadership structure of the Legal Services Commission, the Wales Director has specific responsibility for engaging with Welsh stakeholders. This has been lost as a distinct role under the reorganisation. Instead, the work of the Director for Wales is now

²⁷ Ev 27

²⁸ In April 2009 four new regional centres of the Administrative Court will be established, including in Cardiff.

²⁹ Ev 29

³⁰ Ev 10

³¹ Ev 15; Ev 27

³² Ev 27

part of the responsibilities of one of three National Relationship Directors responsible for medium-sized firms. In its submission, the Law Society in Wales questions the decision to merge the Wales Director role with other responsibilities and in particular the time commitment that will be available for the Wales responsibilities.³³

31. In its written evidence, the Legal Services Commission states that the Wales Director is a unique role in its wide remit, and the only senior role in the Commission with a specific geographic responsibility within the new structure:

The LSC has taken this decision because it acknowledges the differences between England and Wales and has a clear remit of engaging with all the key stakeholders in Wales, including the National Assembly and the Welsh Assembly Government, the courts, Law Society in Wales and other umbrella and representative bodies. The LSC acknowledges that the role has a wider remit than in the previous structure, but believes that this is appropriate and in line with other changes being made to the senior roles in the organisation.³⁴

32. The present Director for Wales appeared before the Committee to give oral evidence. We asked him what proportion of his time he expected to spend on Welsh issues. He estimated that this would be a minimum of 20%, although he cautioned that the level was at times much higher and that time spent on the “English” part of his job was often also relevant to Wales.³⁵ Members of the Committee found this evidence unconvincing.

Welsh language

33. The bilingual provision of services is an important part of the Commission’s work in Wales. Under the 1993 Welsh Language Act, public bodies operating in Wales have a legal duty to provide services in the Welsh language. In his evidence, the Chairman of the Legal Aid Practitioners Group drew attention to the existence of Crown Courts, Magistrates Courts, and Country Courts in Wales, with facilities for proceedings to be conducted in Welsh. A number of those who submitted evidence to the inquiry noted that the Welsh Language Legislative Competence Order currently being considered both at Westminster and in Cardiff Bay will, if passed, empower the national Assembly to create further legislation in this area. To avoid disrupting the level of service to Wales, any change to the structure of the service in Cardiff will need to take language into consideration.

34. In its memorandum, the Legal Services Commission assures the Committee that the services retained in Cardiff will continue to be offered bilingually at the current levels.³⁶ The Chairman of the Legal Aid Practitioners Group, however, expressed concern that the level of service will inevitably be affected and that disadvantaged people may be further discouraged to seek help. He was also concerned that personal callers at the Cardiff office

³³ Ev 20

³⁴ Ev 23

³⁵ Q 26

³⁶ Ev 23

would no longer be able to receive assistance from business support staff in the Welsh language.³⁷

35. In oral evidence, representatives of the Legal Services Commission said that there were very few personal callers to its office and that one of the main elements of the restructuring was to automate a number of processes with the aim of achieving faster turnaround times for paper-based transactions. It was confident that the new systems would be able to operate bilingually.³⁸ Its written evidence states that the relationship managers retained in the Cardiff office would continue to ensure a sustainable legal aid market in Wales and maintain the current level of service management for legal aid providers.

36. The Commission also notes that its various offices have been sharing processing work even under current working arrangements, and that operational support for North Wales had been provided successfully out of the Chester office in England for many years.³⁹ This is disputed in the memorandum we received from the GMB and FDA trades unions, which states that, at present, 75% of the complaints that the Legal Services Commission receives regarding Welsh language provision arise from the work done in England. The unions suggest that a possible alternative to the current plans for reorganisation would be for the Cardiff office to take over all Welsh work, including that currently undertaken by English offices.⁴⁰

37. In oral evidence we asked representatives of the Legal Services Commission whether it would be possible for the Cardiff office to take on work from elsewhere, as an alternative to the current restructuring plans. The Commission told us that there was no reason in principle why this could not be done, but that the Cardiff office had not been thought large enough to act as one of its main Business Support Centres.⁴¹

38. The Commission also told us that an improved telephone service would be available to offer advice to clients in Wales, both in English and Welsh. We were concerned to ensure that the advice given via this telephone line is not only available bilingually, but is also appropriate to the Welsh legal context. We were told that this would be achieved by means of contractual obligations on the companies providing the telephone service, of which one will be based in Swansea.⁴²

39. After our oral evidence session, we received a letter from Professor Iwan Davies, Pro-Vice Chancellor and Hodge Chair in Law, Swansea University, suggesting that the current Legal Services Commission restructuring could provide the opportunity for a more general review of how Legal Aid is commissioned and delivered in Wales.⁴³ We recommend that the Ministry of Justice undertake such a review, in the interests of

³⁷ Ev 27

³⁸ Q 29

³⁹ Ev 24

⁴⁰ Ev 18

⁴¹ Q 31

⁴² Q 35

⁴³ Ev 31

ensuring that services are provided in the most effective and accessible manner possible for the people of Wales.

40. The Commission and the Ministry of Justice have previously recognised that services are most effective when they are provided in close proximity to the population concerned. The Legal Services Commission's proposal to provide services to Wales from England presents a serious risk to the quality of those services. In the case of Wales, there are specific local needs, not only regarding provision in the Welsh language but also the need to provide accurate advice that is tailored to the specific legal context in Wales. Despite the Commission's assurances, we are not confident that the quality of these services can be maintained from outside Wales. We recommend that the Legal Services Commission urgently consider alternatives to the present restructuring plans, including the option of the Cardiff office taking on the services currently provided to Wales from English offices, as an alternative to removing functions.

5 Job Losses

41. The Legal Services Commissions anticipates that 29 posts will become at risk of redundancy due to the reduction of services in Cardiff, while about 20 staff will remain. It states that "Cardiff is a relatively small LSC site and the move will have the least overall impact on staff, which is a commitment agreed with the recognised trade unions".⁴⁴ Based on the agreed redundancy policy with the trade unions, the Commission will explore all possible alternative employment opportunities and relocations for any affected staff three months prior to a final decision on their positions. It is currently working on the detail of these plans.

42. Currently, the team in the Cardiff office is highly experienced. 40% of the staff have worked there for more than 20 years and 50% for more than 15 years.⁴⁵ Written submissions argued that this loss of jobs therefore also represents a significant loss of specialised expertise to both the Commission and Wales, and raises questions about meeting the same standard of service using a new team assembled in England.

43. In oral evidence, the Commission estimated that just over half of the positions that would be lost might be relatively junior posts, with around ten experienced case workers being affected. It acknowledged that these were skilled posts, but commented that a large proportion of its employees were highly qualified and that these jobs would inevitably be at risk if budgetary cuts were required.⁴⁶

44. The relocation of services away from Cardiff office will result in the loss of skilled people with significant experience. We are concerned that England-based offices may not be able to meet the need for staff who are knowledgeable about Welsh legislation and issues, particularly given the speed of the transition to the new arrangements, which are due to be implemented later this year.

⁴⁴ Ev 22

⁴⁵ See Adjournment debate in Westminster Hall. HC Deb, 21 January 2009, col. 294WH.

⁴⁶ Q 36

6 Conclusion

45. We are disturbed that the Legal Services Commission has decided to make significant decisions affecting access to justice in Wales without consulting the Wales Office and with only limited engagement with the Welsh Assembly Government and other stakeholders. To exclude these parties from consultation on a decision that could have a serious impact on the quality of the legal aid service to the Welsh population is unwise and unfair and is evidence of a fundamental misunderstanding of the devolution settlement. We are left with the distinct impression that a decision was made first, and consultation was an afterthought. We recommend that no change to the functions of the Cardiff office should be implemented until thorough consultation has taken place to determine its likely impact on levels of service.

46. We are particularly concerned that the proposed changes have been put forward in the context of continuing legal divergence post devolution. The Legal Services Commission must ensure there is adequate expertise for interpreting Welsh legislation, particularly after the Government of Wales Act 2006. Measures are expected in areas including carers rights, housing, vulnerable children, mental health and environmental protection. All of these areas are likely to have an impact on legal aid cases. The Commission will also need to ensure that high quality bilingual services continue to be provided. Despite the Commission's assurances, we are not confident that the quality of Welsh services can be maintained from outside Wales and urge that the decision be changed.

Conclusions and recommendations

1. It appears that Whitehall guidance has been misunderstood on a number of occasions. We recommend that Devolution Guidance Note 4 should be amended in order to clarify and strengthen references to the key role of the Secretary of State for Wales and the Wales Office from the start and throughout any process. (Paragraph 12)
2. The Legal Services Commission failed to include the Wales Office in any form of consultation regarding the proposed changes to its Cardiff office. This is unacceptable. It runs counter to explicit guidance given to government officials and betrays a poor understanding of the devolution settlement on the part of the Commission. It is essential for the Secretary of State for Wales to be fully in the picture at the outset and at every stage in the process. This is not the first time that the Ministry of Justice (or in this case one of its agencies) has demonstrated a surprising lack of awareness about the devolution settlement and the protocols which are in place in relation to legislation, and, as the Department has overarching constitutional responsibilities, we find this disturbing. (Paragraph 18)
3. We are also concerned that the extent of consultation with the Welsh Assembly Government and other stakeholders prior to the announcement of the restructuring

was extremely limited. Local MPs were not consulted until the issue had been raised in Parliament in early 2009. To exclude these parties from consultation on a decision that could have a serious impact on the quality of the legal aid service to the Welsh population is not only unwise, it is evidence of an inward-looking and metropolitan attitude that is insensitive to the needs of a devolved administration. We are left with the distinct impression that a decision was made first, and a form of ‘consultation’ was an afterthought. (Paragraph 19)

4. While changes to the structure of the Legal Services Commission are an operational matter and thus the responsibility of the Chief Executive, taken at arm’s length from the Minister, the Minister does fulfil an important oversight function. We appreciate the Minister’s acknowledgement that mistakes were made in this case and note his apology. However, we are disappointed that the Ministry of Justice did not appear to know about the scale of the changes proposed or the lack of any consultation. We recommend that the Ministry of Justice undertake a review of the protocols in relation to the devolution settlement and its observation throughout government. We intend to return to this issue in the near future. (Paragraph 20)
5. We recommend that no change to the functions of the Cardiff office should be implemented until thorough consultation has taken place to determine its likely impact on levels of service. We request that a report be made to this Committee on the outcome of such consultation and subsequent changes in the proposals. (Paragraph 21)
6. The Legal Services Commission must ensure there is adequate expertise for interpreting Welsh legislation post devolution, particularly after the Government of Wales Act 2006. Measures are expected in areas including carers’ rights, housing, vulnerable children, mental health and environmental protection. All of these areas are likely to have an impact on legal aid cases. The Committee is not convinced that an English office would have the resources or expertise to cope with this evolving and growing legal context. (Paragraph 25)
7. While it is beyond the scope of this inquiry, we note a general concern that the contribution of Citizens’ Advice Bureaux and other not-for-profit providers appears to be undervalued by the Commission. (Paragraph 29)
8. After our oral evidence session, we received a letter from Professor Iwan Davies, Pro-Vice Chancellor and Hodge Chair in Law, Swansea University, suggesting that the current Legal Services Commission restructuring could provide the opportunity for a more general review of how Legal Aid is commissioned and delivered in Wales. We recommend that the Ministry of Justice undertake such a review, in the interests of ensuring that services are provided in the most effective and accessible manner possible for the people of Wales. (Paragraph 39)
9. The Commission and the Ministry of Justice have previously recognised that services are most effective when they are provided in close proximity to the population concerned. The Legal Services Commission’s proposal to provide services to Wales from England presents a serious risk to the quality of those services. In the case of Wales, there are specific local needs, not only regarding provision in the Welsh

language but also the need to provide accurate advice that is tailored to the specific legal context in Wales. Despite the Commission's assurances, we are not confident that the quality of these services can be maintained from outside Wales. We recommend that the Legal Services Commission urgently consider alternatives to the present restructuring plans, including the option of the Cardiff office taking on the services currently provided to Wales from English offices, as an alternative to removing functions. (Paragraph 40)

10. The relocation of services away from Cardiff office will result in the loss of skilled people with significant experience. We are concerned that England-based offices may not be able to meet the need for staff who are knowledgeable about Welsh legislation and issues, particularly given the speed of the transition to the new arrangements, which are due to be implemented later this year. (Paragraph 44)
11. We are disturbed that the Legal Services Commission has decided to make significant decisions affecting access to justice in Wales without consulting the Wales Office and with only limited engagement with the Welsh Assembly Government and other stakeholders. To exclude these parties from consultation on a decision that could have a serious impact on the quality of the legal aid service to the Welsh population is unwise and unfair and is evidence of a fundamental misunderstanding of the devolution settlement. We are left with the distinct impression that a decision was made first, and consultation was an afterthought. We recommend that no change to the functions of the Cardiff office should be implemented until thorough consultation has taken place to determine its likely impact on levels of service. (Paragraph 45)
12. We are particularly concerned that the proposed changes have been put forward in the context of continuing legal divergence post devolution. The Legal Services Commission must ensure there is adequate expertise for interpreting Welsh legislation, particularly after the Government of Wales Act 2006. Measures are expected in areas including carers rights, housing, vulnerable children, mental health and environmental protection. All of these areas are likely to have an impact on legal aid cases. The Commission will also need to ensure that high quality bilingual services continue to be provided. Despite the Commission's assurances, we are not confident that the quality of Welsh services can be maintained from outside Wales and urge that the decision be changed. (Paragraph 46)

Formal Minutes

Tuesday 21 April 2009

Members present:

Dr Hywel Francis, in the Chair

Nia Griffith
Mrs Siân James
Mr David Jones

Alun Michael
Hywel Williams

Draft Report (*Legal Services Commission Cardiff Office*) proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 46 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 10 and 17 March 2009.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 28 April at 10.00 a.m.]

Witnesses

Tuesday 24 March 2009

Page

Lord Bach, a Member of the House of Lords, Parliamentary Under-Secretary of State, Ministry of Justice, **Ms Carolyn Regan**, Chief Executive, **Mr Phil Lambert**, Executive Director, Business Support, **Mr Paul Davies**, Director, Wales, Legal Services Commission

Ev 1

List of written evidence

1	Memorandum submitted by Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice	Ev 7
2	Memorandum submitted by Bangor University School of Law	Ev 10
3	Memorandum submitted by Citizens Advice Cymru	Ev 12
4	Memorandum submitted by GMB and FDA Trade Unions	Ev 15
5	Memorandum submitted by the LSC Wales office GMB and FDA Union Representatives	Ev 17
6	Memorandum submitted by the Law Society	Ev 19
7	Supplementary memorandum submitted by Carolyn Regan, Chief Executive, Legal Services Commission	Ev 21
8	Memorandum submitted by the Ministry of Justice	Ev 22
9	Memorandum submitted by Mr Roy Morgan	Ev 26
10	Memorandum submitted by Shelter Cymru	Ev 27
11	Memorandum submitted by Brian Gibbons, AM, Minister for Social Justice and Local Government, Welsh Assembly Government	Ev 29
12	Memorandum submitted by the Welsh Refugee Council	Ev 29
13	Memorandum submitted by Professor Iwan Davies, Pro-Vice-Chancellor and Hodge Chair in Law, Swansea University	Ev 31
14	Letter from Mr Wayne David MP, Parliamentary Under-Secretary, Wales Office, to the Chairman	Ev 32

List of Reports from the Committee during the current Parliament

Session 2008-09

First Report	Cross-border provision of public services for Wales: Further and higher education	HC 57
Second Report	Globalisation and its impact on Wales	HC 184 –I, II
Third Report	Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008	HC 5
Fourth Report	Work of the Committee 2007-08	HC 252
Fifth Report	The provision of cross-border health services for Wales	HC 56
Sixth Report	Proposed National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009	HC 306
Seventh Report	Legal Services Commission Cardiff Office	HC 374
First Special Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008: Government Response to the Committee's Seventh Report of Session 2007–08	HC 200
Second Special Report	Cross-border provision of public services for Wales: further and higher education: Government Response to the Committee's First Report of Session 2008-09	HC 378

Session 2007-08

First Report	Energy in Wales: follow up inquiry	HC 177
Second Report	The proposed Legislative Competence Order in Council on additional learning needs	HC 44
Third Report	Work of the Committee in 2007	HC 325
Fourth Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008	HC 257
Fifth Report	The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008	HC 576
Sixth Report	The provision of cross-border health services for Wales: Interim Report	HC 870
Seventh Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008	HC 812
First Special Report	The proposed Legislative Competence Order in Council on additional learning needs: Government response to the Committee's Second Report of Session 2007-08	HC 377
Second Special Report	Energy in Wales – follow-up inquiry: Government	HC 435

	Response to the Committee's First Report of Session 2007-08	
Third Special Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008: Government Response to the Committee's Fourth Report of Session 2007-08	HC 715
Session 2006-07		
First Report	Work of the Committee in 2005-06	HC 291
Second Report	Legislative Competence Orders in Council	HC 175
Third Report	Welsh Prisoners in the Prison Estate	HC 74
First Special Report	Government Response to the Committee's Second Report of Session 2006-07, Legislative Competence Orders in Council	HC 986
Session 2005-06		
First Report	Government White Paper: Better Governance for Wales	HC 551
Second Report	Proposed Restructuring of the Police Forces in Wales	HC 751
Third Report	Energy in Wales	HC 876-I
Oral and written Evidence	Energy in Wales	HC 876-II
Fourth Report	Future of RAF St Athan	HC 1129
Fifth Report	Current Restructuring of the Police Forces in Wales	HC 1418
Oral and written Evidence	NHS Dentistry in Wales	HC 771-i
First Special Report	Government Response to the Committee's Second and Third Reports of Session 2004-05, Manufacturing and Trade in Wales and Public Services Ombudsman (Wales) Bill	HC 433
Second Special Report	Government Response to the Committee's Fourth Report of Session 2004-05, Police Service, Crime and Anti-Social Behaviour in Wales	HC 514
Third Special Report	Government Response to the Committee's First Report of Session 2005-06, Government White Paper: Better Governance for Wales	HC 839
Fourth Special Report	Government Response to the Committee's Second Report of Session 2005-06, Proposed Restructuring of the Police Forces in Wales	HC 1431
Fifth Special Report	Government Response to the Committee's Third Report of Session 2005-06, Energy in Wales	HC 1656
Sixth Special Report	Government Response to the Committee's Fourth Report of Session 2005-06, Future of RAF St Athan	HC 1657
Seventh Special Report	Government Response to the Committee's Fifth Report of Session 2005-06, Current Restructuring of the Police Forces in Wales	HC 1695

Oral evidence

Taken before the Welsh Affairs Committee

on Tuesday 24 March 2009

Members present:

Dr Hywel Francis, in the Chair

Nia Griffith
Mrs Siân C James
Mr David Jones

Alun Michael
Hywel Williams
Mark Williams

Witnesses: **Lord Bach**, a Member of the House of Lords, Parliamentary Under Secretary of State, Ministry of Justice, **Ms Carolyn Regan**, Chief Executive, **Mr Phil Lambert**, Executive Director, Business Support, **Mr Paul Davies**, Director, Wales, Legal Services Commission, gave evidence.

Chairman: Good morning and welcome to the Welsh Affairs Committee and this special inquiry into the Legal Services Commission Cardiff Office. Before I invite you to introduce yourselves, could I invite the Committee to declare any interests?

Mr Jones: I refer to my declaration in the Register of Members' Interests.

Q1 Chairman: Could you now please introduce yourselves?

Lord Bach: I am Lord Bach; I am the Minister for Legal Aid in the Ministry of Justice and the Minister in the House of Lords for the Ministry of Justice.

Ms Regan: Good morning. I am Carolyn Regan, the Chief Executive of the Legal Service Commission.

Mr Lambert: Good morning. I am Phil Lambert; I am the Executive Director for Business Support in the Legal Services Commission.

Mr Davies: Good morning. My name is Paul Davies; I am the Wales Director for the Legal Services Commission.

Q2 Chairman: I understand, Lord Bach, that you wish to make a very brief statement. Select committees are not great enthusiasts for ministerial statements but you have reassured us that this will be a very brief one.

Lord Bach: It will indeed, Chairman; thank you very much. As you know I am appearing before the Committee as the Minister responsible for legal aid. The Lord Chancellor and I are ultimately accountable to Parliament for the activities and performance of the Legal Services Commission and my role in relation to the LSC is explained in the memorandum I supplied to you. The Legal Services Commission is an executive non-departmental public body and as such operates at arm's length from Ministry of Justice ministers and with a degree of autonomy over the operational decisions it makes. I am therefore very grateful to Carolyn Regan, the Chief Executive, and her colleagues, including Paul Davies—who is the Director for Wales and, I should add, the only director based on a geographic area in the whole of the United Kingdom—for appearing alongside me today. She and the others are frankly in a better position both

constitutionally and in terms of operational knowledge to answer most of your detailed questions about the future of the Commission's office in Cardiff. I do want to stress that the Commission is committed to delivering a reduction of some 30% in its administration budget, approximately £30 million over the next two years. This was an integral part of the MOJ settlement in the last spending review and formed part of the Government's wider efforts to ensure maximum value for the tax payer whilst safeguarding frontline services. I would invite the Committee to have its discussions around the future of the Cardiff office in that context. Thank you very much for allowing me the chance to make an opening statement.

Q3 Chairman: I am most grateful to you for that statement. I must say, however, that I am somewhat surprised that there is no acknowledgement in that statement of the developing devolution settlement and that is the beginning really of my questioning. Could you explain, Ms Regan, the actual process whereby the decision was taken to relocate the business support team in Cardiff against that background of devolution?

Ms Regan: We have had plans to meet our financial commitments which have been well-known to all our partners and also to our staff for about three years. As the Minister said, the administrative budget for the Legal Services Commission is reducing by some 30% over the current spending review period and therefore our plans are to maintain a strong presence in Cardiff which includes the director for Wales, and increased policy team and the front line of relationship managers working with the large number of providers, both legal aid solicitor firms and also not for profit organisations. What we are planning to do—partly in response to financial pressures but also, I have to say, in response to the need to automate a lot of our processes—is to centralise those support functions by which I mean the processing of claims and payment of bills.

Q4 Chairman: Clearly there is a great deal of concern in Wales not only about the apparent outcomes of your decision but also perhaps more importantly the

process. Could you actually give details of the ministerial involvement in this decision? I come back once again to the point I made at the beginning about the devolution settlement; what is the nature of the ministerial involvement in all of this?

Ms Regan: Can I start by responding to the part about the process in terms of how we took the decision? The decision was made by the Commission, the chair and commissioners, the non-executive directors who form the board of the Legal Services Commission. It was also discussed on a number of occasions with the Welsh Assembly Government for, I think I am right in saying, a couple of years, most recently in April 2008. We have also had on-going discussions with other bodies and stakeholder groups in Wales and I will ask Mr Davies to come in in a moment. As I said, our plans have been known for about two or three years. What we are not proposing to do is to close the Cardiff office. In fact we will be, as I said, developing an increased policy team which will keep us in touch with the devolution issues and obviously inform the processing of bills and payment.

Q5 Chairman: Are you familiar with the role of the Secretary of State for Wales in this situation? There is a mantra that we have used since democratic devolution namely that whilst we have devolution the Secretary of State for Wales has a role to play in Whitehall and Westminster. Could you reassure us that you are aware of that and in that context what processes you have been involved in in engaging with the Wales Office?

Ms Regan: I am aware of the role and the issues involved. That is in fact why we have had a number of discussions. I have mentioned the Welsh Assembly Government but I know there has been contact via the Ministry of Justice and I know there has also been contact with Tom Jones who is a commissioner with specific responsibility for Wales on the board of the Legal Services Commission. Can I ask Mr Davies to add to that because he was party to those discussions?

Q6 Alun Michael: I am sorry; this has been a major issue with the Ministry of Justice and its agencies for a considerable time now, of not understanding the devolution settlement. You said that you had contact with the Welsh Assembly Government which is appropriate; did you or did you not have contact with the Secretary of State?

Ms Regan: I personally did not have contact with the Secretary of State.

Q7 Alun Michael: But you did with the Welsh Assembly Government.

Ms Regan: We did with the Welsh Assembly Government, yes.

Alun Michael: It sounds to me as if you do not understand the devolution settlement.

Q8 Chairman: Just to pursue that particular point, could I ask Lord Bach if your department had any discussions at all in relation to this decision with the Secretary of State for Wales and the Wales Office?

Lord Bach: This decision was the decision of the Legal Services Commission as has been explained, I think. As the Chief Executive has just said, they talked to ministers in the Welsh Assembly for some years past, starting probably in 2006 and finishing off in 2008 with the decision announced. I do not believe that the department did have conversations with the Welsh Office. Can I say that it should have done. I put that on the record; it should have done either itself or through the Legal Services Commission. If we did not, we will learn a lesson from that.

Q9 Chairman: Mr Davies, you were going to say something following an earlier question.

Mr Davies: Yes, I just wanted to add some context around the conversations with the Welsh Assembly Government. When the original decision was announced to reduce our back office workforce in 2006 my predecessor actually had a discussion with the Welsh Assembly Government at that time to highlight that particular point. I also had conversations in April 2008 before any announcement was made.

Q10 Chairman: I am somewhat surprised by this word "conversations". It is slightly sliding from consultation to conversation; it sounds as if it is a chat over a cup of tea. What does that mean? Can you actually catalogue those conversations? Can you say when they occurred and what was discussed?

Mr Davies: I can from the time that I was involved with them which was April 2008 when I had a meeting at the Assembly Government with the Minister for Social Justice and Local Government. There was myself and officials from the Legal Services Commission and also his officials where conversation was about the fact that we were looking to remove the back office processing from the Legal Services Commission, that in all likelihood it would be moved to Bristol. The impact of that would be that there would be staff who potentially could be at risk of redundancy should that actually move on. That full discussion with the Minister started in April 2008 before our announcement to staff in November.

Q11 Chairman: Listening to what you have just said, it seems to us that a decision appears to have been made and then some sort of consultation happened afterwards. That is clearly the impression we get from stakeholders and the Welsh Assembly Government (we received a letter from the current Minister of Social Justice which clearly implies that). What are your observations on that?

Mr Davies: It was announced at the time that the business cases needed to be fully written to investigate before the final decision would be made. We were advising the staff very early of our decisions that this was a likely way forward but it was certainly not the final decision. Indeed the business case for Cardiff is still under consideration within the Commission as we speak. No firm and final decisions have yet been taken on that particular aspect.

24 March 2009 Lord Bach, Ms Carolyn Regan, Mr Phil Lambert and Mr Paul Davies

Q12 Mr Jones: Why did you light upon the Minister of Local Government to have your discussions with? Did you consider that he was the most appropriate individual?

Mr Davies: The government minister in the assembly that we talked to was Brian Gibbons who is the Social Justice Minister. He was the one we always go to because legal aid is part of the social justice system and the implications for that and as such is our key point of contact within the Assembly Government. We have meetings every six months with him to update him with all aspects of legal aid.

Q13 Mr Jones: I must reiterate what the Chairman has already said. I find it quite incredible that you had no discussions with the Secretary of State for Wales. Did it never occur to you to do so?

Mr Davies: It is something, as Lord Bach said, that we did not do and we will learn from this.

Mr Jones: I understand you did not do it but what I cannot understand is that it never appears to have occurred to you that he was the appropriate person to speak to.

Q14 Chairman: We are now in a situation where you are acknowledging before us that a decision may not have been made, that you are now reviewing it in the light of what the Minister has said and his apology to us. Legal aid is one thing, but the fact is that we are now in a period of growing devolution, increasing amounts of Welsh only regulation and yet I am surprised that none of you have actually made any reference to the situation of a growing body of Welsh only regulations. When are we going to hear your response to that?

Mr Davies: Our Chief Executive has already hinted at that particular aspect because it is something we acknowledge is growing and that is why, within the Welsh policy team, we are increasing the number of people. One of the things we are looking to do is to make sure that we actually capture all increasing bodies of law and make sure that we, as a Commission, are fit for purpose in terms of processing and understanding that. That is something that is very much on our radar at the moment.

Q15 Chairman: We are only ten minutes into this session and we have already had an acknowledgement and an apology from the Minister. It sounds to me as if you are in the process of actually saying that you are going to start again and reflect on what is being asked of you.

Ms Regan: Can I just clarify the point that Mr Davies was making about the business cases? What we are charged with doing is making sure we have an administration that supports the various issues that you have raised and it is able to process about £77 million of legal aid currently spent in Wales, split between crime and civil. We are doing that by keeping very much the front end, the contact with

clients (which I have to say is minimal on a weekly and monthly basis) and the significant contact we have with the 263 contracts in Wales with solicitors firms and with not for profit organisations. As Mr Davies said, we announced early on to our staff the direction of travel in terms of centralising the processing functions, but as we get nearer to each decision we are required to develop and to present a business case for each of the component parts, one of which is the changes proposed to the Cardiff office.

Q16 Alun Michael: There is another element that you do not seem to have considered. Given that this is not a devolved issue, has it occurred to you to consult the members of Parliament, particularly of Cardiff but also the other areas affected, and also particularly perhaps those of us who are members of the Justice Select Committee?

Ms Regan: Just to clarify, we have not formally consulted but we have had on-going discussions. I just want to clarify that point. Can I also add that with hindsight we should, as the Legal Services Commission, have spoken to the Welsh Office as the Minister has indicated.

Q17 Alun Michael: Sorry, we have moved on from the Welsh Office; that has been acknowledged. I was asking about the members of Parliament, particularly those who are members of the Justice Select Committee, which includes two of us.

Ms Regan: Yes, I am very aware of that. When I was in Cardiff we did go and meet with Mrs Julie Morgan and had this conversation about a month ago.

Q18 Alun Michael: Presumably after she raised the concerns, as she and I have both done.

Ms Regan: In the light of the early concerns at the beginning of the year.

Q19 Alun Michael: Did it not occur to you to do that yourselves, in the same way that it did not occur to you to consult the Wales Office?

Ms Regan: Can I answer the point about the Justice select committee as well? My chairman has also made contact with the chairman of the select committee with a view to having that discussion. He has not actually arranged a meeting but that is very much on his agenda for the reasons you outlined.

Q20 Alun Michael: So rather belatedly you are coming to that.

Ms Regan: If I go back to the previous point, what we announced was a direction of travel but we have not got to the stage of signing off the individual business cases and indeed that will go to the Commission at its May meeting. I have been asked to prepare a paper not just on this aspect but also on all the issues relating to Wales.

Alun Michael: I will just comment that Mr Davies' predecessor did take the initiative to contact

24 March 2009 Lord Bach, Ms Carolyn Regan, Mr Phil Lambert and Mr Paul Davies

members of Parliament and explain the work of the office. I think that would be welcome.^{1 2}

Q21 Mrs James: My question is very similar to Mr Michael's. I know that we have met with Mr Davies and Julie Morgan, myself, Jessica Morden (MP for Newport East) and have all expressed our concerns to you. What I do find surprising is that you were perfectly prepared to come and talk to us as members of Parliament but you did not think the process through to actually take it to the Secretary of State for Wales. We would have made it quite clear to you in those discussions that we were part of the Westminster set up and very separate in this from the Assembly.

Mr Davies: We have acknowledged the shortcomings.

Lord Bach: Could I just say that I am due to meet Mrs Morgan again this afternoon. I had a very brief chat with the First Minister some time ago; he approached me at a cabinet committee meeting which he was present at. I am meeting the Parliamentary Under-Secretary, Mr David, tomorrow, among other meetings. Whilst we have acknowledged on our fault on this particular occasion and you can be quite sure it will not happen again, we are trying to make up for any mistake we made in the past. I have a series of meetings on this issue and I am hoping myself to visit Wales soon as well.

Q22 Chairman: We certainly welcome your statement, Lord Bach, and one assumes in the light of that it is not a cosmetic exercise and that the consequence of these meetings will be that you will take very seriously everything that has been said here and elsewhere, in the adjournment debates and what has been written to you, and that you are in effect saying that you are unpicking the mistakes that have been made and that you may well reverse the decision.

Lord Bach: I think I have to be very careful not to agree with you too much. Certainly I have put in a limited apology for not having approached the Secretary of State. I have done that. As far as the decision is concerned, I think you are going too far in suggesting that that draft decision might be reversed. The Legal Services Commission will obviously have a view about that and decide, and because of the nature of this particular issue of course I will be taking a very large role in looking at the proposal. I do not want the Committee to be under the assumption that this decision is going to be reversed.

Chairman: I recognise that, but I take from your statement that your involvement will be fair and robust and the problems with process which we have already identified will be corrected. Mrs James, do you wish to ask any further questions?

Q23 Mrs James: I would like to ask some questions about the level of service to the clients of Wales. We have certainly expressed our concerns and our doubts and I would like to home in on that. What impact on service quality does the Commission anticipate by providing services to Wales from England? Will the service capacity be affected?

Ms Regan: I will start and maybe Mr Lambert will want to come in. It is very important to say that we have very little direct contact with clients on a weekly or monthly basis. We have about ten visits of clients coming into the office in Cardiff and we can adequately cope with that and obviously we will continue to do that. We have a number of telephone calls a day mainly from providers, by which I mean solicitors and not for profit organisations, some of whom want to speak to us in Welsh and indeed we will continue to honour that commitment. Most of our transactions are paper based at the moment although we are moving towards automating a lot of the processing work on line. Currently a large volume of work is done in our Chester office; that has been so for a number of years. In answer to your question, I am not anticipating any reduction in service; indeed, I would anticipate an improvement in service by which I mean that we can process forms and claims much faster than we have done in the past and in fact in recognition of the current financial situation we now make weekly payments to all our providers which has been very well received for obvious reasons. I will ask Mr Lambert to add to that.

Mr Lambert: I think there are three watchwords, if you like, for what we need to achieve and those are productivity, service and value for money. That is where I am trying to drive the back office processing. The key thing is to get it all together and we do not have that at the moment within the Legal Services Commission. It is disparate, spread all over the place, and the objective is to bring that together where we can set some more robust key performance indicators and drive the level of service. That, on the back end processing, we will do. What we will also do is increase the use of technology and hopefully if we can get more stuff going through we can improve on the current level of performance that we are actually giving. That is our big objective across the Legal Services Commission at the moment. There is that important split between front end and the back office which I am responsible for. Carolyn has obviously talked about that front end and the relationship with the providers. The key thing for myself with the back end operation is to make sure we have that strong link with any changes and how legal aid needs to be delivered and that is also something we will do. Another factor is that we will maintain our ability to provide services in the Welsh language as well through the new systems we introduce, continue to operate as we do on a paper

¹ Note by witness: Mr Davies made contact with Members of Parliament, rather than Mr Davies' predecessor.

² *Alun Michael:* Chairman, before we start, could I put something on the record from the previous session? I thought Mr Davies must look very much like his predecessor because of the timing that he referred to of his appointment. It was actually Mr Davies I met last year and I think the timing was slightly different than both of us thought. I would like to say that the positive things I said about his predecessor should actually apply to Mr Davies.

Uncorrected transcript of oral evidence taken before the Welsh Affairs Committee on 24 March 2009, HC (2008–09) 58-iii.

24 March 2009 Lord Bach, Ms Carolyn Regan, Mr Phil Lambert and Mr Paul Davies

base and also, where appropriate, to be able to take calls and speak in the Welsh language as well. Hopefully we can cover all three angles of increasing the productivity, giving it a better service and therefore value for money as well.

Q24 Mrs James: Are you confident with the Welsh language services? Can you provide an adequate service and build on what you are already providing?

Mr Lambert: There are two aspects here, one is the technology and I am confident that we can build the service offering to mirror the English offering effectively. I am confident on that. The second aspect is having people who are able to speak Welsh. At the moment we have people in Bristol who can speak Welsh and also people in the Cardiff office. Our strategy going forward is to maintain people in the Cardiff office who can speak Welsh who will support my back end processing wherever that is done. As Carolyn has also mentioned, the volumes coming through are not great in terms of people needing to speak in Welsh, therefore two or three people who can speak fluent Welsh in the front end office we think will suffice and therefore we can maintain that level of service.

Q25 Mrs James: Given the status of the language and what is happening at the moment, are you hoping to build on those services? You have talked about few people using the services but obviously the more people you promote it to the greater the awareness and therefore figures should increase.

Mr Davies: We have been liaising with the Welsh Language Board recently. We had a very, very positive report from them last year about the aspects of the Commission to put in place and we are now working with them to renew our Welsh language scheme which actually has started to look at some of the new powers that Cardiff Bay have requested to make sure that we actually include those in our new scheme and also to look at how we can engender that across the whole of the justice system. My office is working with the courts, with the probation service, with the prison service and actually trying to make sure that we look at end to end Welsh language services out there. There is not a great take up at the moment but we are making sure that we have campaigns and posters in all of the courts and in the police stations so that people do know that the Welsh language provision is there. We have over 100 firms of solicitors across Wales who have a dedicated Welsh language speaker who can actually provide that sort of Welsh language service in the language of choice to any client that walks in. It is something we have at the moment and we are looking to build upon and include in our contract. It is a requirement for every contractor in Wales—whether that be solicitor or not for profit organisation—to have a Welsh language medium available.

Q26 Mrs James: I understand that your role will be changing and you will be taking on another role as one of the regional directors. What I am not certain about is what percentage of your time will you be

allocating within the broader scope of the job to Welsh issues? Will there be a distinct percentage that you are allocating?

Mr Davies: I think there will be a minimum percentage but I would not want to limit it to just that. At the moment I look after England and Wales nationally but decisions made in England will have an equal impact in many, many cases to Wales. To say I would only spend, let us say, a day a week or two days a week on Welsh issues is hiding the fact that of the other three I am also making decisions that have an impact on both England and Wales. I would certainly be looking to spend no less than 20% of my time regularly dealing with Welsh and Welsh only issues, whether that be through consultation with the Welsh Assembly Government, WLGA, the CAB Cymru and the various bodies we have there. I would make sure that at least 20% of my time is dedicated to Welsh and Welsh only areas.

Q27 Mrs James: Will it definitely get the attention that it requires; it will not be limited in any way?

Mr Davies: No. I have been doing this combined job since January and I would say that I have spent at least 40% of my time on average on Welsh only issues during that period. There is no limitation whatsoever, nor is it my brief to have any defined limitation. It is as the job requires, so Wales will get its requirement.

Q28 Chairman: Presumably, in light of earlier questions, the percentage you mentioned will increase simply because it is in the public domain, there are increased Welsh only regulations, we have the legislative competence Order going through now; the Welsh language will impact itself. One assumes then that that percentage will increase.

Mr Davies: It may well do. That is why I have people in the Cardiff office who will stay there, who will grow with me; there are extra policy people to make sure that the support we need in Wales is maintained. Just to emphasise, it is not just me with a Welsh title, there is an office that will be sustained and grow with me to make sure that the supply and services are maintained and grown.

Q29 Hywel Williams: Mr Lambert, you mentioned earlier on automation; I assume that is the generation of correspondence. Do you know how HMCS has coped with it? There is a long and miserable history of complete inability to generate letters in Welsh. I am just worried that people in Chester who might not speak Welsh are merely pressing a button to generate correspondence and might not be particularly successful.

Mr Lambert: My Chief Executive tells me regularly that we cannot possibly afford to make any slips with that technology. I am very, very aware of the need to get this absolutely right. It is a big programme for us; it is a big cost for us, but it will actually make a massive difference. This is on my radar, very much flashing all the time. Let me give you that reassurance. I think the important thing is to know how to manage the exceptions in our processing. That is the key to how we handle anything that is

 24 March 2009 Lord Bach, Ms Carolyn Regan, Mr Phil Lambert and Mr Paul Davies

going to be done in the Welsh language. We have other specialist parts of our processing, for example mental health asylum and those kinds of things where we have specialist teams. We will do something similar to cover the Welsh issues in terms of processing. It will not just run through a factory process; we will manage it as an exception to make sure we do the job that is required.

Ms Regan: The civil applications, I think I am right in saying, for North Wales are currently already processed in Chester and we have not had any of those problems you have alluded to.

Mr Davies: The Welsh Language Board has very kindly agreed to work with us in terms of our new processing. They have already helped us with our website and they have offered their assistance in terms of any due process. We are also working with HMCS so that any legal terms that need to be translated into Welsh will be consistent across the criminal justice system. Between all of us we believe that this is something we can actually make work.

Q30 Alun Michael: I would like to turn now to the organisation of matters in the wider area. With the current proposal, if it were to be pursued, the reduction of administrative capacity in Cardiff would coincide with the next round of bids for legal aid contracts. You will be aware that there is very considerable concern about the introduction of the Community Legal Advice Networks. That was already a concern when I met Mr Davies's predecessor some time ago and I should perhaps mention that I am Honorary President of Cardiff's Citizen Advice Bureau because of the importance I place on the advice received by my constituents. What are the plans for ensuring that there are adequate and immediate responses at the administrative level within the area?

Mr Davies: When we met about a year ago to talk about the plans in Cardiff, one of the things that we did talk about was the need to make sure that we are slick with our processes. We acknowledge that. However, the administrative staff in Cardiff would not be the staff who would actually administer any bid rounds. The administration staff in Cardiff would be the ones who would process the bills and payments and what have you. All the administration for bid rounds will be done by the relationship teams and the central procurement teams. I am looking after the relationship teams so we will still be in Cardiff going forward; they are not impacted by any decision we make. With the bid rounds coming the administration is being done in the same way as it always has been and will continue to be successful. It is not part of a reduction for the administration back office work that Mr Lambert just mentioned.

Q31 Alun Michael: Would it be possible for the Cardiff office to take on some of the work that is being moved rather than seeing it moved to concentrations elsewhere?

Mr Lambert: Yes it would. There are a number of options as to how we could play things. The important thing for us as a business is to maximise our productivity and our efficiency and ensure that

quality of service. What we do have are a number of large centres where we can actually do that maximisation which happen to be in Liverpool, Newcastle and Nottingham. Our strategy is to build on those. Unfortunately Cardiff does not have the capability to take the work from Liverpool, Nottingham, Newcastle *et cetera* in the scale that would be necessary to build into the kind of centre that we need to create. That is why we are running with those three centres and then a couple of other centres in Bristol and London for support.

Q32 Hywel Williams: Mr Davies, you referred to a growing policy team in Cardiff and clearly the Committee has concerns that there should be adequate expertise for interpreting Welsh legislation, post devolution, particularly the Government of Wales Act 2006. Can you reassure us on this?

Mr Davies: Absolutely. The additional person that we will be putting into Wales for the policy role is specifically dedicated to having a link into the Assembly for an early discussion on any changes in the law, making sure that they feed that back in through the Commission into the processing side so that we can get our back end ready for any potential changes. They will also link into members like the Law Society and the justice system to make sure there is a joined up approach so that we actually can understand the divergence and we can support that. Of course most changes will be dealt with for clients by our provider base—the solicitors and the not for profits organisations—and it is their responsibility under the contract to know those changes themselves. We, as a policy team, will make sure that that is brought back into the Commission to support all of the client processing that we need to do.

Ms Regan: If I might just add, we will keep the scale of the policy team under review as things develop and obviously we can increase it if Mr Davies says there is a need to. We will do that.

Q33 Nia Griffith: Welsh legislation is expected in a number of areas including carer rights, housing, vulnerable children, mental health, environmental protection and so forth. How would a Bristol office cope with this?

Mr Davies: I would look at the way that we are going to set up our policy person to make sure that all changes in the law are fully understood, the decisions as to what processes need to change. Mr Lambert's teams would then actually put that into practice and make sure that the processing side is dealt with. In terms of the client and the client care that is affected by these changes in the Welsh law, those will be provided face to face by the providers, by the solicitors and the not for profits and by our national telephone line who have dedicated Welsh language speakers on there as well. The client will actually get a full service, knowing the changes in law that go on through our provider base. We will make sure that we inwardly support that in terms of the processes that support the applications.

24 March 2009 Lord Bach, Ms Carolyn Regan, Mr Phil Lambert and Mr Paul Davies

Q34 Nia Griffith: It is not just the Welsh language. The fact of the matter is that we are dealing with separate systems. We have announcements that are pertinent to England but we know things are done in a slightly different way in Wales. I worry about a phone line being sure that appropriate people are available and are not giving incorrect advice.

Ms Regan: As well as the phone line that has been referred to, there will still be Mr Davies's staff in the Cardiff office. They will be doing the liaison, the interpretation of policy and assessing the impacts. From a client perspective, someone walking into the Cardiff office, they will not see any difference. They will continue to deal with their list of firms or their not for profit organisations like the CAB so they will not actually see a difference. It will be for Paul's team to do the liaison and the interpreting and making sure that we can respond appropriately.

Q35 Nia Griffith: I can understand about the Cardiff office but what about the business of the phone line? People do not always remember necessarily that things are different. I am worried that with phones you often get a whole range of people dealing with people. They are just taking the calls and the wrong information could actually be given to people.

Ms Regan: One of the pieces of good news is that we are actually increasing the telephone help line and we are creating 20 additional new specialist posts to meet that need in Swansea. That is operational as of next month. That is part of extending our responsibilities. Those people will be based in Swansea and will be able to respond for an increased time than is currently the case; that will include evenings and Saturday mornings.

Lord Bach: Could I just say that these telephone lines—the one that already exists and the one that is going to be set up in Swansea—are both contracted out in Cardiff to a very well known firm of solicitors and I believe it will be the same in Swansea. Part of the conditions of these contracts, as I understand it, is that the quality of the advice is an essential part of the phone line. As you quite rightly said the danger with phone lines is that you get someone who does not understand what the problem is and then does not give good advice. The quality side of this is something I know the Legal Services Commission is very keen on and I have to tell you that I, as Minister, am particularly keen on making sure that the advance in phone lines advice is quality driven rather than anything else.

Q36 Hywel Williams: You mentioned earlier on that there was a 30% cut. In Cardiff you have people who are highly experienced and highly skilled. Did you consider the skills profile of your staff in Cardiff before you decided to relocate parts of the office?

Ms Regan: We are fortunate in having a very experienced staff in all our 12 offices, including Cardiff, and that was one of the considerations. We also looked at the volumes of work and the quality of work. The aim is indeed to improve our turnaround times and to actually speed up our processing which we are working on now. We did very much take the experience and the expertise of skilled staff into account in all our decisions.

Mr Lambert: I will try to give you some numbers which might help in that respect. We have 26½ positions that we propose to remove as a result of this. Obviously it is difficult to be totally precise, but a couple of those positions will be supervisory roles. Of the rest approximately 50% is actually going to be removed through the technology, through the improvements that we are going to make there and they are very much junior roles. What it loses is about ten positions that you would call really experienced case workers. There will be opportunities elsewhere within the organisation possibly, but equally, as Carolyn has just explained, we do have significant numbers of very experienced staff elsewhere. We have tried to take all of that into account. It has been a very difficult decision as you will appreciate but on balance that is why we decided what we did.

Q37 Chairman: I have one final question. Given the acknowledgements today that there have been gaps in the process—serious gaps from the perspective of this Committee—could you, Ms Regan, reassure the Committee that you are now looking at other options?

Ms Regan: I come back to the first point. I think there are things that we have learned and we need to take forward in terms of the process. I acknowledge that. In terms of the final decision, as I said earlier that will be subject to further discussion at the board in May. Clearly I will be feeding back tomorrow from this discussion and we will be taking these points and others made into consideration.

Chairman: As Chairman of this Committee I welcome that statement. We will, as a Committee, be monitoring very carefully what is happening over the coming two or three months and we will be seeking further evidence, not oral evidence but written evidence, before we complete our report. Thank you very much for your attendance.

Memorandum submitted by Lord Bach, Parliamentary Under Secretary of State, Ministry of Justice

THE ROLE OF THE LEGAL SERVICES COMMISSION

1. The Legal Services Commission was established under the Access to Justice Act 1999, to establish, maintain and develop two services: the Community Legal Service and the Criminal Defence Service. The Act prescribes the overriding objectives of the two services as follows:

- the Community Legal Service exists to ensure that “individuals have access to services that effectively meet their needs within the resources made available and the priorities set”; and

- the Criminal Defence Service exists to ensure that “individuals involved in criminal investigations or criminal proceedings have access to such advice, assistance and representation as the interests of justice require”.

2. The Act grants the Legal Services Commission with a range of functions relating to the delivery of the two services. It states that the Commission “may do anything which it considers (a) is necessary or appropriate for, or for facilitating, the discharge of its functions, or (b) is incidental or conducive to the discharge of its functions”. It also grants ancillary and support functions, which in particular include entering into contracts, making grants or loans, investing money, engaging in promotional activities, or undertaking inquiries or investigations.

THE LEGAL SERVICES COMMISSION AS AN EXECUTIVE NDPB

3. The Legal Services Commission is an executive NDPB in the sense that it:

- was established by an Act of Parliament;
- carries out administrative, commercial, executive or regulatory functions on behalf of Government;
- has a board whose members are appointed by Ministers, and which meets on a monthly basis;
- employs its own staff, who are not civil servants; and
- manages its own budget.

4. The Legal Services Commission therefore carries out its work at arm’s length from Ministers, although Ministers are ultimately responsible to Parliament for its activities and ensuring that it fulfils its objectives as set out in paragraph 1 above.

5. As an executive NDPB, the Legal Services Commission must operate in accordance with the relevant statutory provisions as laid out in the Access to Justice Act. However, it also operates with an ‘appropriate degree of delegation and independence’ as set out in the Cabinet Office guidance *Public Bodies: A guide for Departments* (and summarised in Annex A of this memorandum).

6. The “degree of delegation” with which the Legal Services Commission operates is set out in the current version of the Framework Document that exists between it and the Ministry of Justice. The Framework Document sets out the respective responsibilities of Ministers, The Chair of the Commission, Commissioners and the Chief Executive. The existing Framework Document is currently being reviewed with the aim of publishing and laying an updated version before the 2009 summer recess, but the roles as they currently stand are set out below.

ROLE OF MINISTERS

7. The Lord Chancellor, and the Minister to whom he has delegated his responsibilities, are accountable to Parliament for the activities and performance of the Legal Services Commission. Lord Bach is the current Minister with responsibility for legal aid, and the current Framework Document states that his responsibilities therefore specifically include:

- approving the Legal Services Commission’s strategic objectives and the policy and performance framework within which it will operate;
- keeping Parliament informed about Legal Services Commission’s performance;
- approving the amount of grant and grant in aid to be paid to Legal Services Commission; and
- carrying out responsibilities including appointments to the Commission, approving the terms and conditions of Commission members and laying the annual report and accounts before parliament.

8. In practice, Ministers are therefore responsible for the strategic policy for legal aid and ensuring that the Legal Services Commission carries out its functions, as set out in the Access to Justice Act 1999, of establishing, developing and maintaining the Community Legal Service and Criminal Defence Service.

9. The Act prescribes the overriding objectives of Legal Services Commission for which Ministers are responsible. For the Community Legal Service it is to ensure that “individuals have access to services that effectively meet their needs” within “the resources made available and the priorities set”. For the Criminal Defence Service this is similarly prescribed as ensuring that “individuals involved in criminal investigations or criminal proceedings have access to such advice, assistance and representation as the interests of justice require”.

ROLE OF THE CHAIR OF THE COMMISSION AND COMMISSIONERS

10. As Chair of the Commission, Sir Bill Callaghan is responsible for ensuring that the Legal Services Commission’s policies and actions fulfil its statutory public functions as set out in the Access to Justice Act, and summarised in paragraph 9 above. Sir Bill Callaghan also leads on formulating the Legal Services Commission’s strategy, and must promote the efficient and effective use of people and resources.

11. The Commissioners are collectively responsible for ensuring that the Legal Services Commission fulfils the aims and objectives set by Ministers, and also for promoting the efficient and effective use of staff and other resources. They are also responsible for appointing the Chief Executive, and ensuring that he or she gives due weight to the proper management and use of public money.

ROLE OF THE CHIEF EXECUTIVE

12. As Chief Executive, Carolyn Regan has a number of roles including Accounting Officer, Consolidation Officer and Principal Officer for Ombudsman Cases. Her day to day role includes planning and monitoring performance and activities, advising the Commissioners, accounting for the Legal Services Commission's activities, and managing risks and resources.

13. In relation to the management of resources (and in this particular case in achieving the required administrative budget savings as directed by Ministers, of which the proposal to remove processing in the Cardiff office is a part) as Chief Executive, Carolyn Regan has a responsibility to:

- ensure that money, assets, equipment and staff are used economically, efficiently and effectively— and as Chief Executive has discretion over how to achieve this provided the objectives set out in the Act, and defined by Ministers, to provide a Community Legal Service and Criminal Defence Service are maintained.

14. In relation to its own staff, the Legal Services Commission has responsibility for the recruitment, retention and motivation of its own staff within the arrangements approved by Ministers and HM Treasury. Again in relation to the particular issue of staffing in Wales, the Chief Executive is responsible for:

- the level and structure of its staffing, including grade and number of people, is appropriate to its functions and the requirements of efficiency, effectiveness and economy, including budgetary constraints.

Annex A

CABINET OFFICE DEFINITION OF AN NDPB

1. The Cabinet Office guidance *Public Bodies: A Guide for Departments* describes an NDPB as:

“A body which has a role in the processes of national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers.”

2. NDPBs are described as having a national or regional remit and carrying out a wide range of important functions. Their distance from government means that the day-to-day operational decisions they make are independent as they are removed from ministers and Civil Servants. Ministers are however ultimately responsible to Parliament for a NDPB's effectiveness and efficiency.

3. The Cabinet Office guidance states that an NDPB fulfilling executive functions needs to be able to lead a separate existence. So, for example, it needs to be able to:

- make decisions in an autonomous way;
- enter into contracts;
- own assets and dispose of them;
- employ staff;
- make payments from its own bank account; and
- draw up accounts.

4. The relationship between each NDPB and its sponsoring Department must be clearly defined in a way that supports the appropriate degree of delegation and operational independence of the NDPB. However, the accountable Minister and Department must be assured that financial management arrangements ensure propriety, regularity and value for money, and that risks will be managed.

5. NDPBs are accountable to Parliament and to the public for the way in which they carry out their functions.

Memorandum submitted by Bangor University School of Law

This note relates specifically to legal aid funding of public law, judicial review claims, failure of consultation, human rights and equality framework for Wales, and the deployment of appropriate expertise.

Recourse to judicial review (JR) facilitates the vindication by citizens of their most basic rights, for example to housing, welfare, social care and education, against Government authorities. Often applicants are vulnerable and socially disadvantaged people for whom legal aid funding is essential.

1. 21 April 2009 represents a landmark date in the history of JR litigation, on this date the High Court in London will lose its monopoly over JR actions. Four new regional centres of the Administrative Court will be established, including one in Cardiff. The case for regionalisation was based on enhancing access to justice. In relation to Cardiff, many JR claims involve complex devolution issues and there is to be a “strong expectation” that Welsh cases will be heard in Wales. Listing and case management will take place in Cardiff, not administered centrally from London.

2. The proposals to move legal aid “business support” functions out of Cardiff clearly goes against the grain of the regionalisation reforms. At present JR applications originating in Wales constitute only 3% of the total number of JR claims, but this is set to rise significantly. The advent of the regional court in Cardiff will catalyse public law legal service provision in Wales; already practitioners are developing and expanding their specialist teams in this field. JR applications originating in Wales are likely to increase considerably in response to the improved quantity and quality of public law legal services. Therefore applications for legal aid certificates will also increase.

3. In implementing the regionalisation reforms HMCS and the relevant Judicial Working Group, recognised the need for regional administration of JR cases. Previous attempts to allow cases to be heard in Wales, but with administration centralised in London, have not been successful. Further, in the case of regionalisation the policy objective of access to justice outweighed any cost effectiveness analysis.

4. At a time when Wales via the new Administrative Court in Cardiff, has the opportunity to be at the forefront of seminal reforms in relation to administrative justice, it seems perverse that the Cardiff Legal Aid Office should be set to lose some of its functions. The rationale for regionalisation is that JR cases should be listed, administered and heard close to the people and places they concern. Removing decisions whether to grant legal aid and in what amount, from the regional centre, would undermine the regionalisation reforms and access to justice more generally.

5. It is in relation to public law JR claims that some of the most complex and intricate devolution issues will be played out. The corresponding need to have such cases listed, administered and heard in Wales has clearly been recognised (see final para below). Related legal aid decisions will be equally complex and specialist and should therefore remain within Wales.

6. It is important that the administration of justice in Wales is not geographically removed or distanced from Wales. The intention to provide “business support” functions to Welsh applicants from offices outside Wales will necessarily turn North Wales applicants to offices in the North West of England and turn South Wales applicants to offices in the South West of England. This is a clear throwback to the mid-twentieth century and clearly goes against recent developments, not least the formation of the Wales-only court circuit.

7. Important questions should be asked about the sustainability of the decision. It is highly probable that the number of Welsh legal aid applicants will increase (especially with regard to public law actions). It is extremely doubtful whether it is feasible to expect the LSC’s services in relation to Welsh affairs to develop in line with this increase. Notwithstanding Mr Malik’s arguments in the House of Commons debate about the increase in the use of the internet and telephone services, it is clear that the increased travel between the Cardiff seat of the administrative court and the regional office in the South West of England will also have an adverse environmental impact.

8. Our submission is that the functions of the Cardiff office should not only be preserved but also developed in order to deal effectively with all Welsh applicants. Where necessary, it should also continue to handle excess applications from other regions.

9. Again, notwithstanding Mr Malik’s submission, we have concerns about the potential impact of the move on the LSC’s Welsh language service in this respect. Whilst one would expect the LSC to continue abiding by its Welsh language scheme, the removal of the business support functions from Wales will, at the very least, provide at least some disruptions and inconveniences for the Welsh-speaking applicants.

10. The proposed reform is completely at odds with such the significant constitutional transformations brought about by devolution and is a purely cost-effectiveness approach. Regardless of its outcome, it is very unfortunate. Any modification of this new constitutional settlement must bear the common good of the citizenship in mind and it seems to me that the new proposals will be highly detrimental to Welsh citizens.

11. The cost effectiveness rationale cannot be applied to the Cardiff situation in the same way that it would apply to business support functions in say a comparable size office in England. In this context, the parallels with the regionalisation of the Administrative Court are very interesting, because with those reforms it was made very clear that the case for transferring greater legal functions to Cardiff had nothing to do with cost-efficiencies or even predicted demand for those services. It was about access to justice in light of the particular circumstances of devolution. These reforms of the LSC are therefore completely inconsistent. In our view, it is a case of giving with one hand and taking away with the other.

12. Furthermore, the lack of consultation and the very poor explanation of the nature of these arrangements on the part of the minister is very disappointing, to say the very least. The establishment of new Administrative Courts across the United Kingdom, as vehicles of justice for the citizenship, is blatantly ignored by such a decision.

13. It should be emphasized that we are fortunately living in a period of development of constitutional conventions, according to which the Welsh (or Scottish or Northern Irish) institutions must necessarily be consulted if central/State decisions have an effect on their devolution settlements. Whilst not directly affected, common courtesy if nothing else would deem that the Welsh Assembly and WAG should be consulted in good time, not five months after the decision was conveyed to the workers involved.

14. The decision to remove the support service from Wales seems misguided when considered in the context of the equalities and human rights agenda. It should be emphasised that section 77 of the Government of Wales Act 2006 requires WAG to make appropriate equality arrangements. The duty is couched in broad terms but goes beyond the legal equalities framework applying to the government in Scotland and England. Similarly, the legislation requires the National Assembly to implement formal partnership schemes with local government and the voluntary sector, and schemes of co-working with police authorities, fire authorities and national parks in Wales, and to carry out consultations (and legislative impact assessments relating to future legal enactments) with organisations representative of business. Again, these arrangements have no direct equivalent in Scotland or England. It therefore seems strange that such legal imperatives are not seemingly acknowledged in practice by the provision of designated Wales based support staff who are familiar with the statutory framework and have developed the requisite expertise. Moreover, the removal of any specialist provision is all the more surprising given the strong evidence that Wales to date has a poor historical record on equality of opportunity. Indeed, research suggests that “advice deserts” are all too common in Wales. Current network arrangements for advice provision across the equalities and human rights agenda are fragmented and under-developed. The evidence suggests that the advice community needs more support and sustenance not less.

15. So far as deployment of appropriate expertise is concerned, the proposed transfer of functions from the Cardiff Office raises several serious issues. If the functions are to be relocated, will staff with appropriate Welsh legal, linguistic and geographical expertise be appointed and placed in the proposed relocation centre, and will any budgetary savings thereby be negated? Have replacement staff already been identified, and their skills deemed appropriate, or is it envisaged that existing LSC staff in other centres will be redeployed to perform the functions proposed to be transferred?

16. Other serious questions also arise. For example, the LSC’s Welsh Language policy: what assurances can be given that its implementation in an operational context be assured or adversely affected by the proposed transfer of functions?

17. Why has there been no consultation with the Council of Circuit Judges in Wales, either individually or corporatively?

18. Has the LSC taken into account the disproportionate effect that the proposed transfer of functions will have on Welsh residents in mid and north Wales, who are already dislocated geographically from Cardiff by difficult terrain, and now the proposed move will exacerbate this dislocation?

19. In conclusion has the LSC not considered that this proposed transfer, and the manner of the lack of consultation between Whitehall and the National Assembly, gives this proposal the appearance of a purely budget-driven measure which with its hallmark of a serious lack of consultation, demonstrates a worrying lack of appreciation of the new Constitutional Settlement that is now in operation. In this regard refer to the Menai Strait mussel fishery litigation where HHJ. Higginbottom in the High Court ruled that such judicial review cases arising in Wales should be held in Wales unless good reasons exist for dictating otherwise. Indeed, Mr Justice Davies subsequently described this decision as “salutary”, stating that, in the case in question, it had “achieved a practical reality of access to local justice” (*Isle of Anglesey County Council and another v Welsh Ministers and others* [2008] EWHC 921 (QB), paragraph 8). The LSC proposal is ignoring this clear jurisprudential operational trend, as well as ignoring the fact that personnel expertise, knowledge of geography and ability of both Welsh residents and the staff of the Cardiff office requires that the decision makers and the client body be proximate to one another.

Bangor University School of Law Public Law Research Group

Professor Dermot Cahill, Head of Law School;

Mr Aled Griffiths, Senior Lecturer in Law;

Mr Dewi Jones, Lecturer in Law;

Ms Sarah Nason, Lecturer in Law;

Dr Javier Oliva, Lecturer in Law; and

Dr Osian Rees, Lecturer in Law;

27 February 2009

Memorandum submitted by Citizens Advice Cymru

Citizens Advice Cymru welcomes the opportunity to respond to the inquiry by the Welsh Affairs Committee into proposals to reduce capacity at the Legal Service Commission's Cardiff Office.

1. BACKGROUND: ROLE OF THE CITIZENS ADVICE SERVICE

1.1 The Citizens Advice Bureaux (CAB) service is the largest integrated network of independent advice agencies in Wales with service delivered from 50 main offices and 154 secondary advice outlets. Each CAB offers access to services by telephone, which is available 670 hours per week and the CAB service have arrangements in place to provide home visiting where necessary in every county. The local CAB service is delivered by the efforts of a variety of people. There are 1,574 people involved in the CAB service in Wales. Of these, 75% are volunteers.

1.2 The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

The twin aims of the Citizens Advice Bureau service are:

- to provide the advice people need for the problems they face; and
- to improve the policies and practices that affect people's lives.

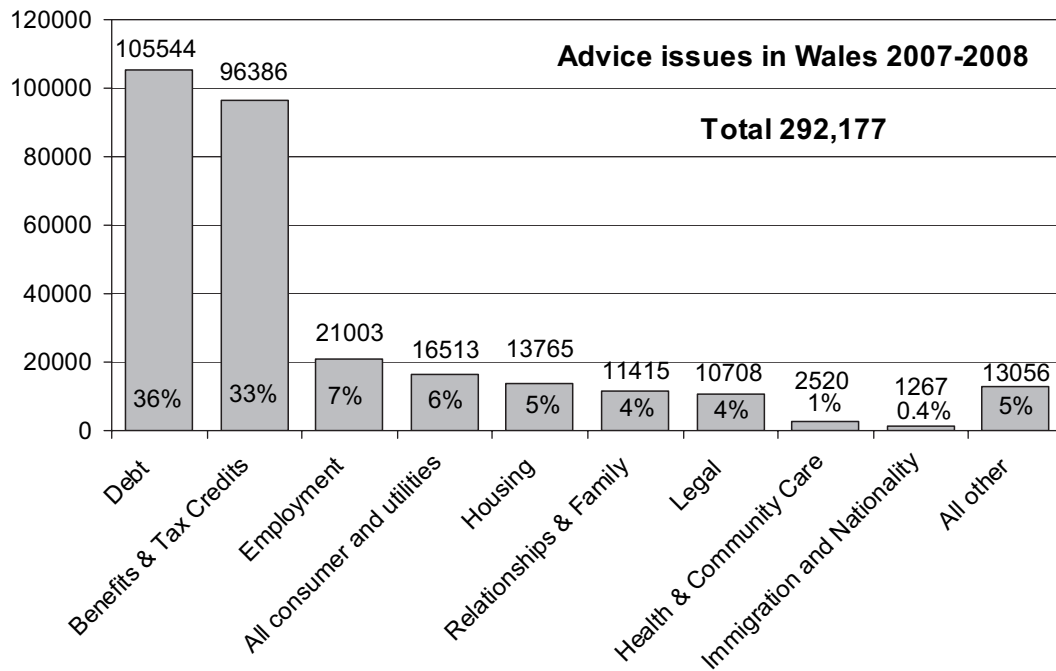
1.3 Local Bureaux, under the terms of membership of Citizens Advice (the operating name for the National Association of Citizens Advice Bureaux), provide core advice based on a certificate of quality standards on consumer issues, welfare benefits, housing, taxes, health, money advice, employment, family and personal matters, immigration and nationality and education. There are 31 Member Bureaux in Wales.

1.4 In addition to open door and appointment sessions on the widest range of advice, Bureaux's across Wales provide:

- 97 specialist debt advisers, including 36 Financial Inclusion Funding advisers;
- 59 advisers offer specialist advice sessions for benefits cases;
- eight advisers offer specialist advice sessions for employment;
- five advisers offer specialist advice sessions for discrimination cases; and
- five advisers offer specialist advice sessions for housing cases.

2. EVIDENCE FROM CITIZENS ADVICE CLIENTS: KEY ISSUES

2.1 In the year 2007–08, Wales Citizens Advice Bureaux dealt with 292,177 client issues. These included 105,544 enquiries related to debt; 96,385 enquiries in relation to welfare benefits and tax credits; 21,003 related to employment; 13,765 housing issues and 10,708 legal issues. See table below for full breakdown of main headline enquiry areas.



2.2 As can be seen from the table, the majority of these queries were concerned with debt and benefit. Citizens Advice Bureaux in Wales dealt with a combined total of 201,930 debt and benefits client issues in 2007–08.

2.3 The 2007–08 client statistics indicate that for the first time debt queries have surpassed those based on benefits and tax credits. We expect demand on Bureaux debt related services to increase substantially in the current economic climate; however it is unlikely that existing capacity will be sufficient to service extra need.

2.4 2007–08 Client statistics for Welsh Bureaux indicate a 16% increase in fuel debt problems compared to the previous year.

3. LSC CONTRACTED SERVICES PROVIDED BY THE CAB SERVICE IN WALES

3.1 CABs tender for contracts from the LSC in the field of Community Legal Services which aim to help people with civil legal problems in relation to family breakdown, housing, debt, welfare benefits and employment.

3.2 The following Welsh CABs provide Community Legal Services contracted by the LSC:

- Aberswyth and District CAB
- Rhydaman CAB
- CAB Gwynedd and De Ynys Mon CAB
- Caerphilly County Borough CAB
- Canolfan Cyngori Ynys Mon CAB
- Cardiff CAB
- Cardigan and District Citizens Advice Bureau
- Conwy District CAB
- Cynon Valley CAB
- Denbighshire CAB
- Flintshire CAB
- Merthyr Tydfil Citizens Advice Bureau
- Neath CAB
- Newport CAB
- Pontypridd CAB
- Port Talbot CAB
- Powys Citizens Advice Bureau
- Swansea CAB
- Torfaen CAB
- Vale of Glamorgan Citizens Advice Bureau
- Wrexham and District CAB

4. BACKGROUND

4.1 The Legal Services Commission is a non departmental public body sponsored by the Ministry of Justice. The LSC is responsible for administering legal aid schemes throughout England and Wales. The LSC provides information, advice and legal representation to around 2 million people in England and Wales each year.

4.2 The LSC commissions and administers contracts to legal service suppliers who come from both the private and not for profit sector.

4.3 The Legal Services Commission also decides whether individuals should get full legal representation in civil court proceedings paid for by public funds in legal aid certificates.

4.4 Citizens Advice welcomed and played an active part in the creation of the Community Legal Service, and the implementation of many of the Access to Justice Act reforms.

4.5 Staff at the Cardiff LSC office were informed on 4 of November 2008, that the LSC intended centralising the business side of its operation from 13 Offices in England and Wales to five. This would mean that Wales would be left with a skeleton LSC service with jobs moved from Cardiff to one of the five new centralised offices. Proposals are due to be implemented in the second half of 2009.

4.6 In the last Comprehensive Spending Review the Ministry of Justice received a cut of 1.7% in its budget. We recognise the pressures on the budgets of the Ministry of Justice and the subsequent need to cut costs. We acknowledge that these proposals are a result of those efficiency savings.

4.7 Cardiff is an important centre for civil justice. Civil cases are dealt with in Cardiff and the Court of Appeal sits in Cardiff.

4.8 We are concerned at reports that neither the Government of Wales nor the Wales Office were consulted in detail on these proposals and its effect on the machinery of government in Wales.

5. CITIZENS ADVICE CYMRU CONCERNS

5.1 *Legislative Position in Wales*

The decision to remove resources from Wales goes against the grain of growing Welsh political autonomy. The 2006 Government of Wales Act allows for the very first time for the Government of Wales via the National Assembly for Wales to seek Legislative Competence over current devolved policy fields on a case by case basis. Once granted the National Assembly is free to pass its own laws via Assembly Measures. This means that Welsh law will increasingly become distinct from English law. Current devolved fields include housing; education; health and social welfare. With the growth of Welsh democracy we would expect the LSC to react by increasing its capacity in Wales rather than diminishing it. A skeleton service in this context may lead to an inferior service in Wales for people accessing Community Legal Services (CLS).

5.1.1 In categories of civil law for which public funding is available there are already substantial differences in Wales in the law and its administration, and these differences are growing. This would seem to indicate the need to expand and not diminish LSC expertise in Wales and to develop Welsh law expertise.

Examples:

- clinical negligence—the NHS redress measure;
- public law—there are different bodies in Wales, and the exercise of devolved powers may need to be challenged;
- community care—new regulations expected for paying for care and rights for carers;
- mental health—new Welsh legislation expected;
- education—new Additional Learning Needs legislation expected;
- housing—new legislation expected about the right to buy; and
- debt—specific Mortgage Rescue Scheme for Wales.

5.2 *Welsh Language*

Under the terms of the 1993 Welsh Language Act, public bodies operating in Wales have a legal duty to provide services in the Welsh language. The *One Wales* programme of Government contains a commitment to seek legislative competence over the Welsh language and to pass subsequent legislation aimed at designating Welsh an official language of Wales and enhanced rights for Welsh speakers in accessing services. The LSC should consider whether or not its proposals have factored in the growing responsibilities it will be required by law to conform to, if it centralises staff resources away from Cardiff. Bilingual staff based in Wales will be able to deal with English and Welsh language queries from Wales and beyond, whilst staff in LSC offices in England are unlikely to be able to provide a Welsh language service.

5.3 Prompt Payments

One of our major concerns in relation to the proposals is the ability of the LSC to process prompt payments for contracted work to Bureaux. Many Bureaux operate on a very limited cash flow basis and therefore any delay in payments can pose great difficulty for CABs in how they manage their finances. We are very concerned that any proposed reduction of capacity in the LSC could have an adverse effect on the speed of payments to Bureaux.

5.4 LSC 2010 Civil Bid Round

The proposals to reduce LSC capacity within Wales are due to be implemented at a time of radical change in the delivery of CLS contracts in Wales. Bids for the 2010 Civil Round are required by July 2009. LSC bid requirements envisage procurement on a larger geographical area, based on the proposed 8 Community Legal Advice Network boundaries in Wales, with potential contractors expected to deliver larger bundles of social welfare law categories. This is a radical departure from the current tendering system and alter the provider map significantly, with most providers bidding as part of consortia partnerships. In Wales contracts are likely to be complex with multiple partners in consortia. In such circumstances it is not difficult to envisage delay in payments. Any provider, placed in risk because of delays in payment or errors, could jeopardise the contracts of their partners within a consortia, inevitably risking the continuation of service to clients. We would argue that whilst this new system is embedding it would be unhelpful in the very least to reduce capacity in Cardiff and to lose the established contacts that providers have with LSC staff within Wales.

5.5 CLANs

5.5 The LSC aims to create Community Legal Advice Networks in Wales (CLANs). The LSC aims to divide Wales into 8 procurement zones, and form CLANs consisting of CLS contracts and moneys currently provided in grant to independent advice providers by Local Authorities.

5.5.1 Bearing in mind our concerns in relation to the CLAN proposals we have proposed that Wales develop a collaborative model which safeguards and develops the services of providers with the best interests of clients and potential clients in mind. In this instance it seems inconceivable that the LSC would reduce capacity in Wales considering that there could be two distinct models for delivering CLS work in England and Wales.

5.6 We would seek reassurance therefore that if centralisation of staff capacity away from Wales is to take place that our concerns are taken into account and that the important posts essential for responding to the realities of devolution such as relationship managers, policy posts and the post of Director and their support staff are retained.

February 2009

Memorandum submitted by the GMB and FDA Trade Unions

INTRODUCTION

1. The two recognised trade unions GMB and FDA represent the bulk of employees at the Legal Services Commission. Our joint memberships are held in the majority of the LSC grades and we are offering a joint submission to the Welsh Affairs Committee.

2. The LSC has a fundamental responsibility to vulnerable people in England and Wales. People need assistance, legal support and representation to access their fundamental human right to justice. This service has never been in greater need as Britain faces a difficult and turbulent economic outlook.

3. The GMB and FDA have serious concerns about the impact of the LSC announcement to restructure the organisation both on potentially redundant staff and those staff that the LSC may wish to retain.

4. The GMB and FDA recognise that a restructure could offer an opportunity to refocus resources. However, the GMB and FDA believe that the current proposed restructure sets unrealistic timescales in order to quickly realise savings, as opposed to a genuine consideration of the skills which the LSC needs to retain in order to take the organisation forward.

CONSULTATION

5. The announcement, detailing the restructure was made on 4 November 2008. The GMB and FDA were given less than 24 hours notice of the details of this announcement, primarily detailing plans to re-organise the business delivery section of the organisation. One of the major consequences of the manner and timing of the announcement was the lack opportunity to discuss the details of the proposal, which contained many untested assumptions as opposed to describing a clear and structured plan to take the organisation forward. The basis of the proposal is that in order to make efficiency and financial savings the LSC will concentrate the work of the current business delivery section in five business delivery centres. These centres will be in London, South Tyneside, Nottingham, Bristol and Liverpool and this will entail the removal of business delivery work from all other regional LSC offices including Cardiff.

6. The LSC, initially, failed to share with the GMB and FDA the basic Medium Term Financial Plan that they had agreed with the Ministry of Justice and which formed the basis for their plan for headcount reductions. The GMB and FDA believed that early access to this could have provided them with some clarity on the LSC's decision to re-organise. After much lengthy debate and discussion with the LSC the GMB and FDA are now in receipt of the Financial Plan for 2008–09 to 2011–12. However we were recently advised that due to the continuous pressure from the MOJ to realise further savings this plan could be subject to change.

7. Once the announcement was made the Trade Unions invoked their union protocols and secured the support of the media, lobbied the relevant government department and the general public to draw attention to the matter. As a result of bringing this issue to public attention the trade unions were accused of diverting unnecessary LSC resources to respond to media and Parliamentarians' enquiries. The trade unions had to reiterate in the strongest terms to the LSC on numerous occasions that as a public sector agency responsible for delivering services to the public this level of scrutiny was not only right but to be expected.

8. The GMB/FDA has encountered on at least a further three occasions difficulties with the LSC where normal levels of consultation and engagement have proved problematic. In addition it is unclear why the Commission is not following its own stated policy of seeking to achieve headcount reductions through voluntary redundancies, as collectively agreed with its trade unions only last year.

BUSINESS DELIVERY PROPOSAL

9. Since the announcement both GMB/FDA have continued with their efforts to understand the business case and where necessary requested further information from the LSC in order to evaluate the logic of the proposal. For ease we have divided the proposal in to four key areas; the Financial and Business case, the introduction of New IT Systems, Employee Training arrangements and the Capacity of the LSC to operate with a reduced headcount.

10. The Financial and Economic case is central to the proposal and has been closely scrutinised. The concern with the financial plan is that it seems subject to constant revision as the MOJ seeks an ever greater level of savings from the LSC. This constant movement of the goal posts has created uncertainty for the trade unions and their members and caused them difficulty in their efforts to establish the true position.

11. The full impact on employees is unclear other than an ambition to reduce the overall headcount by 600.

12. The GMB/FDA is still seeking clarification on how a new IT arrangement will realise massive efficiency savings. In particular the cost of new IT applications has not yet been announced, including the cost of training employees and legal aid providers in its use.

13. The LSC is yet to outline how employees retraining will take place in the sites retained. In particular there is an issue for sites to which some of the work is to be relocated, where this work is not currently carried out.

14. Where work is to be transferred it is unclear where and how the capacity will be realised to undertake the extra work.

CONCLUSION

15. We welcome the request of the Welsh Affairs Committee for the submission of evidence on the LSC proposal to restructure its business and would very much appreciate an opportunity to outline the GMB/FDA experience of the process thus far.

16. The goal of the GMB/FDA is to ensure any job losses are kept to a minimum and therefore we welcome any intervention by the Committee to further scrutinise the LSC proposal, which may assist in job losses being kept to a minimum.

17. This submission is a national overview of the GMB/FDA position and needs to be read in conjunction with the specific submission from the trade union representatives based in the LSC Cardiff Office.

February 2009

Memorandum submitted by The Wales Office GMB and FDA Union Representatives

The recognised trade union representatives based in the Cardiff Wales office of the Legal Services Commission (LSC) make these submissions to the Welsh Affairs Select Committee. A separate submission will be provided detailing the overall union position regarding the LSC proposals. Both unions have been seeking to persuade the LSC to reconsider its decision of 4 November 2008 to remove all Business Support work from the Wales office in 2009 and we have put forward an alternative proposal that would allow all Welsh civil Legal Aid to be administered in Wales.

Our main concerns are broadly twofold. First the principle of removing Business Support work from Wales without any meaningful consultation just at a time when a body of Welsh law is starting to develop as a result of the devolution settlement. Secondly the loss of between 30 and 40 skilled quality public sector jobs from Wales (a large proportion of staff affected are educated to at least degree level) when the trend in the public sector is to ensure Welsh issues are dealt with in Wales and against the background of the growing economic crisis, which will doubtless see the demand for Legal Aid increase in many areas. We have stated a figure of between 30 and 40 jobs, as the LSC has not made its detailed plans public yet.

Although we will use the term Business Support throughout these submissions, as that is the term given to the work by the LSC, we consider that it is a misleading term as the work involves highly skilled decision-making. Business Support includes making decisions whether to grant funding, managing the case thereafter in terms of the work that can be done and costs incurred under a certificate, withdrawing funding if the case does not meet the funding criteria and dealing with appeals in respect of those decisions, assessing and paying costs at the end of the case.

Julie Morgan MP, in the Adjournment Debate on 21 January 2009, has already expertly identified the main issues but we consider it helpful to the Committee for us to elaborate on a number of points that are detailed below.

DIFFERENCES BETWEEN WELSH AND ENGLISH LAW

The LSC proposal means the removal of decision making on Welsh Legal Aid cases just at a time when a distinct body of Welsh law is developing. Whilst we recognise that the administration of justice is not devolved, the LSC deals with funding issues in respect of cases where the subject matter has been devolved. The current differences are illustrated below and are relevant throughout the case, from the initial decision to grant funding through to the assessment of the suppliers' costs:

Health (Clinical negligence)

We already have the Speedy Resolution Scheme. It is a form of Alternative Dispute Resolution that seeks to resolve clinical negligence claims valued at £5,000–£15,000 without claimants having to go to Court. The Welsh Assembly Government sponsors the Scheme. We fund cases where the scheme criteria are met and the client is financially eligible. It has now been made permanent. It only applies to NHS trusts in Wales and has no equivalent in England. We have issued around 100 certificates in the last four years. The evaluation of the pilot scheme says it has been successful in widening access to justice. Presently, all applications for funding [including claimants living outside Wales but bringing a claim against a Welsh NHS Trust] are dealt with by the Wales office.

Education

This is also devolved to the Assembly and is a very active area in which there are continuing developments. There is a separate Special Educational Needs Tribunal for Wales (SENTW) dealing with SEN and Disability Discrimination issues involving children in Wales, which acts independently of the equivalent English Tribunal. There are different policies on Exclusions and Appeals set by the Welsh Assembly.¹ Legal aid funding is available to challenge these decisions by means of Judicial Review (see Administrative Law below).

There are other practical differences eg the Assembly has not authorised Academies to be established in Wales. Special groups such as SNAP Cymru also deal specifically with Welsh education issues.

Housing

There is a Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness, published by the Assembly to assist Local Authorities in carrying out their duties. There are a number of specific Welsh Orders specially enacted in relation to housing issues in Wales. Shelter Cymru deals with specifically Welsh issues in Housing.

¹ Circular 01/2004 Exclusion from Schools, and PRU's-Education (Pupil Exclusion and Appeals) (Wales) (Miscellaneous amendments) Regulations 2004 and Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003.

Family

CAFCASS Cymru is a separate body to CAFCASS with a number of different policies and procedures. There are also specific Welsh Orders eg the Special Guardianship (Wales) Regulations 2005.

Planning

Wales has its own planning policy and procedures, which in turn are capable of giving rise to funding applications challenging planning decisions. There is a separate Public Services Ombudsman for Wales, dealing with Welsh issues.

Administrative Law

The Administrative Court [part of the High Court] now sits in Cardiff and all Judicial Review challenges to decisions of Welsh public bodies should now be brought in Wales. It follows that there is an argument that funding decisions on these cases ought also to be made in Wales.

PREMISES

The LSC stated that part of the reason for the removal of Business Support from Wales was that the office would seek to move to smaller premises upon the lease break option in December 2009. However, since that announcement there has been no indication of any office move and were that to remain the case the office would remain as it is. If this happens any anticipated savings would not be realised and a large proportion of the current floor space would become unoccupied. We also understand our premises are one of the cheapest the LSC has.

The LSC has stated they will retain a presence in Wales to manage the relationship with Welsh suppliers but, along with the removal of the decision making roles on individual cases, they intend to remove the managers' support staff to offices in England. No detail as to why this would be more economic than keeping them in the same office as the managers has been provided to us. The lack of Business Support in the office will also mean that our clients cannot visit us to discuss their case, as the staff remaining will not have the knowledge to deal with the day to day running of the client's case. The cases often involve complex issues and significant amounts of documentation.

Even if there was the possibility of a limited number of staff relocating to Bristol, it would mean the LSC would be funding travelling expenses under its relocation policy for three years. Approximately 50% of the space in the Cardiff premises would remain unoccupied and would still have to be paid for. The physical layout of the office means it is unlikely to be able to be sub-let due to the need to maintain emergency exits and the need for data security. In addition the third floor is currently unoccupied should any expansion be required later.

AN ALTERNATIVE PROPOSAL

Following the Adjournment Debate on 21 January 2009 we sought a meeting with Carolyn Regan, the Chief Executive of the LSC to discuss the proposals and put forward our alternative. This meeting was not granted; we were only given a telephone conference with Rachel Jerram, the person responsible for drawing up the draft detailed business case for the Wales Office. Paul Davies, the LSC's National Director for Wales was present at the meeting. In that meeting we put forward a proposal that would provide a means of addressing our concerns over the lack of decision making in Wales. Our proposal was for the Wales office to immediately take over administration of all Welsh civil certificated Legal Aid work. At the present time, for historic reasons only, the work for the northern half of Wales is undertaken in England. We have calculated that this amounts to no more than 25% of the total Welsh funded work.

We recognise the LSC's need to reduce its administrative budget and our proposal would be possible without any increase in staff required, as we are confident it can be easily achieved by the cessation of the work we do for other offices and by the savings anticipated by the LSC in changing work practices. If the LSC accepted our proposal, they could be confident that their statutory obligations under the Welsh Language Act were being met, as our staff are committed to the promotion of the Welsh language. By way of illustration we understand that around 75% of the complaints the LSC receives regarding Welsh language provision arise from work done in England, which is not surprising given that their focus is not on Wales and it represents only a small fraction of their total work. It is difficult to see how the Welsh Language service could be maintained without a full complement of staff able to deal with the most complex work. Our proposal would also put us in an excellent position to manage the increasing divergence between English and Welsh law and allow all funding decisions affecting Welsh citizens to be made in Wales.

Despite the uncertainty over our future, the Wales Office has continued to exceed all the targets set by the LSC and performs consistently above the national average of all LSC offices. The increased responsibility will only motivate staff more to provide a high quality service for the whole of Wales.

Looking towards the future, the LSC proposes a wholesale move to electronic working in 2010 with increased decision making by suppliers. The LSC intends to retain the complex decision making in-house and we consider that this would then give us the ideal opportunity to regain the other areas of work that have been moved out of Wales in the past. We have the skilled staff to do this, with over 50% of our colleagues having more than 15 years experience.

We understand the LSC is considering taking over assessment of all civil Legal Aid bills from the Court. The majority of bill assessment is already done by the LSC with the remainder currently undertaken by District Judges in the local Court. We think this is another illustration that these are skills the LSC proposes to remove from Wales and it makes little sense in our view to make staff redundant when the need for those skilled staff may well increase.

CONSULTATION

We are not aware of any meaningful consultation with either the Welsh Assembly Government or the Wales Office of the UK Government over the decision to remove Business Support work from Wales announced on 4 November 2008. Since that time the LSC has been preparing a detailed business case for the Wales office. Again we are not aware of any consultation with the Welsh Assembly over this. The LSC initially indicated it would share its draft detailed business case for the Wales office with the national officers of the unions before publication. The national union representatives told the LSC that we, as representatives in the Wales office, would also need to see the document as we would be better placed to comment on the detailed proposals. Very shortly after the select committee inquiry was announced on 11 February 2009 it was indicated to us that that the draft plan would not now be shared and would be finalised on 25 March 2009, the day after the inquiry. In view of the lack of information provided to us we have to assume that the only consultation that will be offered is a 30 day statutory period of consultation ahead of issuing notices of redundancy.

We in Cardiff have continued to press unsuccessfully for disclosure of the draft business case. As a result we are unable to know whether our concerns have been addressed or whether the proposed future service in Wales will be adequate for now and the future.

CONCLUSION

We want to be able to continue to provide a high quality decision making service in Welsh and English to Welsh citizens and be in a position to manage the increasing divergence between English and Welsh law. Whilst recognising the skills of the staff in the other LSC offices, we are confident that staff in the Wales office are best placed to meet the increasing challenges for the provision of Legal Aid in Wales. We have illustrated the current differences in law and procedure and we consider these will continue to develop, as will the need to have increased specialised knowledge of it to provide justifiable decisions affecting Welsh clients. We understand the LSC intends to deal with this issue by investing in a Wales policy team feeding into the rest of the LSC. We think that a far better solution would be to allow the current staff to manage the changes, as we have the skills and legal experience required.

If the Committee would find it helpful to hear oral evidence from us, we have been given permission by the LSC to provide this.

March 2009

Memorandum submitted by the Law Society

The Law Society is the representative body for over 130,000 solicitors in England and Wales. The Society represents and supports solicitors, negotiates on behalf of the profession and lobbies regulators, government and others.

In Wales, the Law Society has an advisory committee dedicated to legal issues both stemming from devolution of law-making and consequent upon a developing legal community. The committee is both proactive and reactive and includes specialist solicitors and academics drawn from across Wales who volunteer their time. The Wales Committee is supported by a dedicated staff based in Cardiff.

1. BACKGROUND AND INTEREST

1.1 We take this opportunity to thank the Welsh Affairs Committee (“the Committee”) for inviting the Law Society to submit written evidence to the Committee’s inquiry examining the decision by the Legal Services Commission (“the LSC”) to reduce its operations in Cardiff.

1.2 The LSC's Wales office is affected by the establishment of a new "Business Support" directorate under the LSC's transformation of legal aid. We understand that all case work will move to five sites in England and that the continuing operations in Cardiff will be relationship management.

1.3 The impact of the proposals is a concern to our members as devolution is a reality in Wales and affects not only the law but the way we work in the law.

1.4 Members of the Committee will appreciate the legal landscape in Wales is now developing and diverging from that of England. There are immediate concerns about decision-making on applications and cases in the devolved areas of law. Our members need to have confidence that those dealing with cases understand the context: procedures and even tribunals can be different in Wales eg the Mental Health Review Tribunal is a devolved tribunal and CAFCASS Cymru operates in a very different way from its counter-part in England.

1.5 Members of the Committee will further be aware that the Wales office suffered a reorganisation in 2007 when the Planning and Partnership team was reduced. A consequence of lobbying against changes at that time was the retention of a policy post in Cardiff. However, we understand that this post became responsible to the policy unit in London and not to the Wales Director. It had also been proposed that the LSC's Wales Committee be abolished but the decision was reversed.

2. PARTICULAR CONCERNS

The Wales Director role

2.1 The LSC's senior management is reorganised under the transformation resulting in three National Relationship Directors covering firms across England and Wales according to contract size. The Wales Director Role has been lost as a distinct role and the former Director for Wales is now the National Relationship Director for medium-sized firms. In addition to this role the Director now has a specific responsibility as Wales Director. It is not clear whether the other National Relationship Directors are full time roles or include other additional responsibilities. We wish to know what time commitment will be available for the Wales responsibilities within the England and Wales role.

Welsh policy

2.2 The LSC has a policy "developer" presence in Cardiff but it is the Law Society's understanding that policy is directed from London. The Law Society is concerned that for reasons of both public acceptance and proportionality, linked to knowledge of what is happening on the ground that the LSC is not only able to develop policies which are relevant to Wales, but is also able to engage at the right level, with the right people, within Wales.

2.3 Engagement within Wales requires participation in, and not merely attendance at meetings with the National Assembly and Welsh Assembly Government. The network of stakeholders in Wales is broad and engaged and we are deeply concerned that the LSC should use this resource to develop solutions which serve Wales and its people.

2.4 It is only with the capacity to deliver all of its services through the Wales office that the LSC will be equipped to deliver a legal aid service which is appropriate to Wales in the 21st century.

Delivering services in Welsh

2.5 The LSC's public facing services are delivered bilingually according to their Welsh Language scheme. However, it is only very recently that the LSC has developed to a point where our members can correspond with the LSC about casework in Welsh.

2.6 How can the LSC deliver a bilingual service to our members and the public if its only "Business Support" sites are all located in England?

2.7 The Committee will further be aware that the Welsh Language Legislative Competence Order now being considered both at Westminster and in Cardiff Bay will, if passed, empower the National Assembly to create legislation with the effect that Welsh will be placed on a basis of equality with English. This will require an equivalent service from the LSC; not one where it is possible to "use" Welsh for example, with delays in correspondence because of translation work.

2.8 Finally, it is particularly disappointing that the impact on the Wales office of the current transformation follows a period when the LSC has begun to demonstrate its commitment to the delivery of legal services to the people of Wales. What now appears is a withdrawal from such a previous commitment.

3. SUMMARY

3.1 *LSC Wales Director*

We should like to know what time commitment will be available for the Wales Director responsibilities within the new National Relationship Director role.

3.2 *Wales policy*

We are anxious that the LSC's Wales Policy staff, whilst working in conjunction with the LSC's policy staff in London, should work with and under the direction of the Wales Director.

3.3 *Provision of services in Welsh*

We are very much concerned that any changes to the internal administration of the LSC should not impact on the delivery of services through the medium of the Welsh language.

We trust our comments will be of assistance to the Committee. We should be pleased to expand on our comments and provide further evidence to the Committee as required.

27 February 2009

Supplementary memorandum submitted by Carolyn Regan, Chief Executive, Legal Services Commission

I am writing to provide you with an update following our recent appearance before the Welsh Affairs Committee.

The Legal Services Commission (LSC) aims to commission high quality access to services for local citizens in Wales, that recognise the different devolution arrangements between England and Wales.

It is important to remember that the majority of clients in Wales deal solely with their legal aid provider, and it is the providers of legal services in Wales who retain the primary responsibility for understanding different Welsh laws and their application to individual cases.

To improve the services for clients, in April of this year, the existing Community Legal Advice national telephone helpline service will expand to offer people advice on weekday evenings and Saturday mornings. This will help more people facing debt and housing problems due to the recession.

Of the 13 providers who deliver specialist telephone advice on a national basis, two are based in Wales:

- Morgans (based in Cardiff) is currently a legal aid provider, which employs 14 staff to provide this advice and is now able to expand its existing work; and
- Ty Arian (based in Swansea) is a new provider and the contract has created 20 new jobs in the Swansea area.

Both providers offer advice on debt, employment, welfare benefits and housing for English and Welsh speaking clients. All telephone advice providers are subject to the LSC's rigorous quality assurance processes including Peer Review, at a higher level of assurance than for face-to-face advice.

The proposal to relocate the LSC's processing work is part of a wider consolidation of processing work that is part of our People and Estate's strategy. This aims to ensure quality, efficiency and value for money.

Under the proposals to consolidate the processing work into fewer centres, we are aiming to improve the service that clients and providers will receive in England and Wales. The emphasis of this re-organisation is to maintain frontline services that are paid for from the legal aid fund whilst reducing the LSC's running costs—the administration budget—which is an integral part of ensuring that the legal aid fund and the frontline service remains sustainable.

The LSC has always intended to maintain a significant policy and relationship management presence at the Cardiff site, to ensure a high level of service for its Welsh providers and clients.

We have been consulting informally on this proposal, and remain committed to effective consultation. To this end, the LSC signed up voluntarily to the Government Code of Practice on Consultation from 1 November 2008.

We have made contact with the Welsh Assembly Government to set up a meeting with Rhodri Morgan, the First Minister in Wales, involving Phil Lambert, Executive Director of Business Support, Paul Davies, Director for Wales and myself, to discuss progress on our business case, including those measures we will put in place to ensure that the service to clients and providers will be maintained.

I am also arranging a meeting for Sir Bill Callaghan, Chair of the LSC and myself to meet with Rt Hon Sir Alan Beith MP, Chairman, Justice Committee, and separately we will arrange to meet with the Welsh Office.

Finally, I would like confirm that the Commission will be considering issues relating to Wales at its May Board meeting.

I trust this additional information is helpful to your members.

31 March 2009

Memorandum submitted by the Ministry of Justice

BACKGROUND

Legal aid provided over 752,000 acts of assistance during the financial year 2007–08, of which 668,000 were delivered on a face-to-face basis and 85,000 were delivered through specialist support telephone advice. Of this figure, 51,500 people were helped in Wales. The Government aims to ensure the legal aid system is flexible enough to cope with changing circumstances, for example, as a result of the current economic turbulence. Ensuring people have access to advice on issues such as debt and housing is crucial to helping them find the best way through their difficulties, and to reducing as much as possible the financial and personal impact.

Legal aid has been one of the fastest growing areas of public sector spending over the last 25 years, growing at an annual average rate of 5.7%. More is spent per head on legal aid in England and Wales than in any other country. Spending has increased from £536 million in 1982 (in today's prices) to around £2 billion today. More recently, between 1997–98 and 2005–06 the cost of legal aid rose by 10% in real terms.

Lord Carter's review of legal aid procurement in 2006 made recommendations regarding the way legal aid was procured. The response to this *Legal Aid Reform: The Way Ahead*, published in November 2006, set out the reform programme. At the time, as part of this challenge, the Treasury and (then) Department of Constitutional Affairs asked the Legal Service Commission (LSC) to use these external changes to also re-examine the internal administration of the organisation. The result was a target to reduce the administrative budget by £30 million by 2012. This would be achieved through an improvement in electronic working with providers and the reduction of staff numbers across England and Wales from 1,700 to 1,100 over the same period. This was announced in 2006, and the position has not changed since that time. Indeed, on the financial side, Secretary of State for Justice and Lord Chancellor the Rt Hon Jack Straw MP recently announced that the Ministry of Justice needs to cut £1bn from their spending plans, to which the LSC will contribute.

CONTEXT

Currently, operational support and administrative work is spread across 13 local LSC offices, one of which is Cardiff. The other 12 are based in England (please see Annex 1 for further details). As discussed above, one of the ways the LSC will achieve the required savings is by embracing automation of routine processes resulting in the need for fewer processing staff. The LSC is determined to maintain current volumes of people helped through legal aid services and so has identified practical ways of improving the efficiency of its administration through a combination of centralisation, simplifying processes and electronic working with providers. As a result the LSC is proposing to centralise operational support and administrative work into five Business Support Centres by 2012.

We intend to locate five centres in existing large LSC sites where staff will take work from other offices as centralisation and improved workflow management progresses at South Tyneside, Liverpool, Nottingham, London and Bristol. Cardiff is a relatively small LSC site and the move will have the least overall impact on staff, which is a commitment agreed with the recognised trade unions.

Under current working arrangements the LSC regularly shares processing work between its sites to maximise processing efficiencies and economies across England and Wales. The LSC has experienced no significant issues in managing the workload in this way and is confident the expansion of this operating model will drive the savings required to meet the financial challenges ahead.

The LSC does not own any of its property, and like the rest of the estate, the Cardiff office is leased. The terms of the lease at the LSC office in Cardiff provide the option of a break clause at the end of 2009 and an expiry in 2012. However, this had no bearing on any decision to remove the business support work from the Cardiff office.

The LSC is currently preparing the business cases for reviewing each office, including that for Cardiff. The points raised within this memorandum will form an integral part of the decision-making process for the Commission on the future of all sites and we would hope to publish our decision in the near future. At this stage we are about to formally announce our decision to remove operational processing from Brighton and Cambridge by mid 2009. We are currently evaluating our transition and sequencing plans for the second half of 2009, which will include Cardiff. We expect to make a formal announcement in this connection in the next month or two.

DEVOLUTION AND DIVERGING LAWS IN WALES

The Legal Services Commission is fully aware of the Government's commitment to devolution and the importance of the National Assembly and the Welsh Assembly Government. This is an important reason why the LSC is retaining a strong presence in Wales. The LSC's team of relationship managers, who will remain in the Cardiff Office, will continue to be the point of contact for all Welsh solicitors, Third Sector agencies and any other practitioners offering legal aid services. They will focus on commissioning the best possible service for Welsh legal aid clients and work with providers to ensure a sustainable legal aid market is maintained across Wales. They will also continue to work with key stakeholders to ensure that the LSC has a good understanding of client needs.

The LSC will maintain strong links with representative and umbrella bodies, Criminal Justice Boards, Family Justice Councils and local government. In particular, the LSC values its good working relationship with the National Assembly and the Welsh Assembly Government, which they intend to strengthen further by increasing the Welsh Policy Team in Cardiff. One of their key functions will be to liaise with the Welsh Assembly Government to ensure that the LSC remains fully informed of Welsh law-making issues and considerations. A clear understanding of the diverging Welsh law issues is a priority for the organisation so that it can put in place appropriate measures to support legal aid clients in Wales.

SUPPORT FOR SOLICITORS AND THIRD SECTOR AGENCIES

While the business support elements of the Commission's work will be carried out in England, the levels of service that can be expected by Welsh providers will be the same or better than is currently experienced. The LSC intends to work closely with their provider base in Wales, and will build on current experience to develop the new centres as centres of excellence in business processing.

WHOLE SYSTEM WORK

Remaining in Wales there will be dedicated LSC staff that will liaise with other parts of the Criminal Justice System and Family Justice System. Their role is to continue to build a partnership approach to new joint initiatives and a closer working relationship to ensure that inefficiencies in the justice system are identified and resolved.

The LSC has membership of all Local Criminal Justice Boards in Wales and has developed a partnership approach with key stakeholders including HMCS, police, CPS, Prisons and Probation in delivering new initiatives.

In addition, the LSC sits on all Family Justice Councils in Wales and works closely with key stakeholders including CAF/CASS Cymru, HMCS, Family Mediation Services, Children's Commissioner for Wales, Judiciary and Women's Aid in delivering new initiatives.

All this work will continue under the new arrangements.

DIRECTOR FOR WALES

The role of the Commission's Director for Wales is unique in the LSC, as it is the only senior role that has a specific geographic responsibility within the new structure of the organisation. The LSC has taken this decision because it acknowledges the differences between England and Wales and has a clear remit of engaging with all the key stakeholders in Wales, including the National Assembly and the Welsh Assembly Government, the courts, Law Society in Wales and other umbrella and representative bodies. The LSC acknowledges that the role has a wider remit than in the previous structure, but believes that this is appropriate and in line with other changes being made to the senior roles in the organisation.

WELSH LANGUAGE SERVICES

The Legal Services Commission is fully committed to providing a Welsh Language service in Wales in line with its Welsh Language Scheme. The transformation programme will not affect this commitment. As at present the Cardiff Office will continue to provide a fully bi-lingual service to clients and providers. This will include letters, emails, a dedicated telephone line and face-to-face provision. Throughout the changes, the numbers of fluent Welsh speakers will continue to be employed in the Cardiff office to maintain services handled in the Welsh language at the current levels. The LSC takes its statutory responsibility very seriously in this regard and will ensure that they can deliver the service required in the future. Indeed, the Commission has recently (December 2008) received a positive report from the Welsh Language Board commenting on the good progress that has been made in implementing their Welsh Language Scheme and the positive efforts that continue to be made for improvement.

CARDIFF STAFFING POSITION

There are currently 29 support posts where the work will either disappear due to automation or will be transferred to one of the larger LSC sites and where the incumbents will become at risk of redundancy. However, the LSC has an agreed redundancy policy with its recognised trade unions to explore all possible alternative employment opportunities and relocations for any impacted staff, and to exhaust these possibilities before making any decision on redundancy. The LSC is currently working on the detail of these plans, and individual consultations with the staff have not yet commenced. These will usually take place three months prior to a final decision being made. Therefore, it is not possible to give any exact numbers to the redundancy position at this moment in time, although as currently communicated the LSC is looking to centralise the operational support work from Cardiff during the latter half of 2009.

The LSC will retain a presence of relationship management staff in Cardiff. These will be the point of contact for all Welsh solicitors and Third Sector agencies and will help them to grow their businesses and to ensure a sustainable legal aid market is maintained across Wales. There are currently 263 contracts with providers for delivering legal aid services to clients across Wales. In addition, Cardiff will retain a local policy presence to ensure that the differing aspects of Welsh law and culture are understood and built into the Commission's plans in Wales. Additionally, there will be a local presence of communications and human resources staff. The LSC anticipates that there will be an ongoing presence of approximately 20 staff located in Wales.

It is worth noting that operational support work for North Wales solicitors in a number of counties (Gwynedd, Conwy, Denbighshire, Flintshire, Wrexham, Anglesey and the North part of Powys) has for many years been dealt with in England (in LSC's Chester office) and that this has not caused any issues relating to the quality of service, nor in the provision of Welsh Language facilities, which are available only in the Cardiff office. This was part of the solution to service the former North Wales and Chester circuit. Therefore, we have seen a success in delivering good quality work from outside Wales (excluding the dedicated Welsh Language facilities).

WALES COMMITTEE

Tom Jones, the Wales LSC Commissioner, chairs the Wales Committee for the Community Legal Service in Wales. This supports information sharing and partnership working with stakeholders and other advice funders such as HMCS, National Assembly and the Welsh Assembly Government, Welsh Local Government Authority, Welsh Council for Voluntary Action and the Children's Commissioner. It also facilitates better policy making, provision of civil advice and funding across Wales. This body will continue to bring together these key organisations and work for improvements for Welsh legal aid clients.

OTHER ACTIVITIES IN WALES

Public Defender Service

There are two Public Defender Services Offices based in Wales, one in Pontypridd and the other in Swansea, employing seven salaried defence lawyers with supporting office staff. The PDS provides criminal defence advice to clients.

Community Legal Advice Telephone Contracts

In April the national telephone helpline service will expand to offer people advice on weekday evenings and Saturday mornings. This will help people facing problems such as debt and housing problems as a result of the recession. As a result of the longer hours, two Welsh providers have been awarded a contract. For one provider (Morgans in Cardiff) it was an expansion of their existing work, but the other, Ty Arian (based in Swansea), is a new provider and the contract has created 20 new jobs in the Swansea area.

Debt Advice in Prisons

In 2008, the LSC created bespoke contracts in partnership with the National Offender Management Service to provide debt advice in all Welsh prisons. The aim is to help reduce re-offending and assist families of prisoners through sorting out the offender's debt problems. These contracts were awarded to two Welsh providers based in Cardiff and Swansea. In addition, the Commission has an informal arrangement with local contracted providers to provide advice on a range of issues to offenders and families of offenders at Parc prison in Bridgend.

Housing Duty Solicitor Schemes

The Commission has one contracted and 12 voluntary schemes in all of the courts across Wales with high volumes of cases regarding rent arrears and mortgage repossessions. In addition, working collaboratively with two providers in Carmarthenshire, the District Judge and the Local Authority, a new early intervention scheme has been set up to prevent clients from getting as far as a court through early debt advice and legal advice on debt. Where appropriate, clients are referred to the Welsh Assembly Government's Mortgage Rescue Scheme.

SUMMARY

The LSC is committed to delivering a quality service to disadvantaged clients across Wales and to deliver this in the language of their choice. A team of relationship managers and other policy staff will be retained in Cardiff to ensure that a sustainable market for legal aid services flourishes in Wales and that the quality of services for clients and practitioners providing them is maintained and improved. The LSC regrets that the operational support aspects of the organisation in Wales need to be reduced, but this is in line with an overall package of measures being introduced that were announced in 2006. Many sites in England are seeing similar reductions. The LSC believes that the changes will strengthen their ability to deliver quality management services to the solicitors, third sector agencies and other providers of legal aid services, and hence provide a better and speedier outcome for the client. In addition, the LSC will continue to look for opportunities to introduce innovative services that meet client needs in Wales, such as those highlighted above.

As mentioned previously, the LSC is currently preparing the business cases for reviewing each office, including that for Cardiff. We expect to make a formal announcement in this connection in approximately one month.

Annex 1**Location of LSC Offices in England and Wales**

<i>Office</i>	<i>Address</i>
Chester	Pepper House, Pepper Row, Chester CH1 1DW.
Eastern	62-68 Hills Road, Cambridge CB2 1LA.
East Midlands	Fothergill House, 16 King Street, Nottingham NG1 2AS.
London	Exchange Tower, 2 Harbour Exchange Square, London E14 9GE.
Merseyside	Cavern Court, 8 Mathew Street, Liverpool L2 6RE.
North East	Berkley Way, Viking Business Park, Jarrow, NE31 1SF.
North West	2nd Floor, Lee House, 90 Great Bridgewater Street, Manchester M1 5JW.
Reading	Dukesbridge House, 23 Duke Street, Reading, Berkshire RG1 4SA.
South East	3rd and 4th Floors, Invica House, Trafalgar Place, Brighton BN1 3RE.
South West	33-35 Queen Square, Bristol BS1 4LU.

<i>Office</i>	<i>Address</i>
Wales	4th Floor, Marland House, Central Square, Cardiff CF10 1PF.
West Midlands	1st Floor, Cannon House, 18 The Priory Queensway, Birmingham B4 6BS.
Yorkshire and Humberside	Harcourt House, Chancellor Court, 21 The Calls, Leeds LS2 7EH.

February 2009

Memorandum submitted by Mr Roy Morgan

The invitation to give evidence has been addressed to Mr Roy Morgan, Chairman of the Legal Aid Practitioners Group at Morgans Solicitors. The information contained in this response is therefore presented by Roy Morgan, drawing upon his experience as Head of Morgans Solicitors. Although he is Chairman of the Legal Aid Practitioners Group, this is not presented as a collective view of the group.

Roy Morgan welcomes the invitation to respond to the enquiry by the Welsh Affairs Committee into the proposals of the Legal Services Commission (LSC) to reduce its operations in Cardiff.

BACKGROUND OF THE LEGAL AID PRACTITIONERS GROUP

LAPG is an independent membership organisation representing several hundred firms and organisations working under LSC contracts.

Members are spread throughout England and Wales. They range from sole practitioners to large legal aid firms, from firms with a contract in one area of law to firms with contracts in all or almost all areas. We have an increasing number of not for profit members.

LAPG is represented on numerous government and other stakeholder and advisory groups and meets regularly with both the LSC and The Ministry of Justice.

BACKGROUND TO MORGANS SOLICITORS

Morgans is one of the largest legal aid providers in Wales, and it is probably the fastest growing as well. We have provided legal services in crime, family, social welfare law (welfare benefits, housing and debt) and civil litigation for many years, and are developing into new areas of law all the time, including mental health, community care, employment, property, wills and probate.

Morgans has grown from small beginnings, in Ely in Cardiff, into the expanding firm it is today with a presence across south Wales, with offices in Cardiff, Swansea, Sketty and Milford Haven and has outreach centres throughout most parts of Wales. In addition it provides telephone advice and casework under the LSC telephone advice service (CLA) in Debt, Housing, Welfare Benefits and Employment law.

REPRESENTATIONS

1. It is important to note that the "Cardiff" office in the title to the inquiry is actually the Wales office and services the population of the whole country of Wales. A significant geography and population with an increasingly large Welsh speaking segment.

2. It is incongruent and anachronistic to reduce the presence of the enabler of legal representation from Wales at a time when the Assembly is acquiring greater law making powers.

3. The LSC Wales office has always briefed Head Office on the local idiosyncrasies of access to justice driven by the topography and local culture in the hills and valleys of Wales. The reduction in size of the office would lead to the dilution of this intelligence flow and would be likely to lead to a London Centric view of what is best for Welsh Legal Services.

4. The Wales office has an established and experienced workforce which is able to operate in the medium of English and Welsh. At a very basic level, callers would no longer be automatically greeted bi-lingually on calling the Legal Aid Call Centre in England and is unlikely to encounter someone who would understand local conditions in Wales.

5. The effect of the above would be likely to make the eligible and disadvantaged people of Wales even less inclined to seek justice given their already acknowledged passive acquiescence to live in more poverty than they need to.

6. The regional office receives a significant number of personal callers at their offices seeking information on legal aid. That access to vital face-to-face and sometimes emotional contact would be lost.

7. The local judges often communicate by letter and phone with the legal aid certificate section of the Wales office reporting instances of inefficient use of public funds. They do this readily as they know personally and by name the regional Wales office lawyers and staff from their days as solicitors/barristers in private practice.

8. The decision to reduce or remove services from Wales is contrary to an increasing Welsh political and legal autonomy. Wales has several Crown Courts and a number of Magistrates Courts and County Courts with facilities for proceedings to be conducted in Welsh. Cardiff is a significant centre for both civil and criminal justice. It has an Administrative Court and the Court of Appeal sits in Cardiff. Courses have been conducted to improve the skills of Advocates and court users, conducting proceedings in Welsh to keep abreast of court language.

9. The suggestion to reduce LSC capacity within Wales will come at a time when there is ongoing and substantial change to the delivery of LCS Contracts in Wales.

10. The next bid round for Legal Aid Contracts will commence in July 2009, in readiness for the 2010 New Contracts.

11. Wales has already been segmented into a proposed eight Community Legal Advice Network boundaries. Those providers contracting to deliver legal services will be expected to do so in much larger procurement areas and on a much larger scale for the delivery of social welfare law categories.

12. The proposals for the future delivery of legal services in Wales brings with it a need for the understanding of the geographic difficulties of Wales, the language difficulties within Wales and the nature of the diverse provision of legal services throughout Wales. Staff within the Cardiff Office of the LSC have the experience and background knowledge that can assist the transition required to effectively implement the proposed changes envisaged by the LSC in the next contract bid round and its plans for the implementation of Community Legal Advice Networks in Wales. The latter will involve organisations coming together to deliver social welfare law services.

13. It is also significant that Lord Bach, on behalf of The Ministry of Justice, is embarking upon a review of the provision of legal services at a local level. Roy Morgan, Chairman of LAPG and others within the group have already engaged with Lord Bach and it seems incongruous to make decisions in relation to the LSC resources in Wales, prior to such a review being completed.

February 2009

Memorandum submitted by Shelter Cymru

EXECUTIVE SUMMARY

- Proposals may leave insufficient staffing capacity to maintain working relationships with stakeholders in Wales.
- The changed role of the LSC Director for Wales may dilute the leadership of Legal Aid in Wales.
- The proposal to remove any Wales-based administration capacity runs counter to the devolution process and actively undermines any future devolution of the legal aid scheme.
- The reduction of the LSC's operations in Cardiff would appear to reduce their ability to implement alternative policies in Wales regarding the development of integrated social welfare advice services.

1. BRIEF INTRODUCTION TO SHELTER CYMRU

1.1 *Our Vision*

1.1.1 Shelter Cymru's vision is that everyone in Wales should have a decent home.

1.1.2 We believe:

- a home is a fundamental right and essential to the health and well-being of people and communities; and
- there must be major changes to law, to the culture and delivery of services and the level of resources if homelessness and housing need are to be finally eradicated in Wales.

1.1.3 Shelter Cymru places great value on the qualities of independence and respect, working without fear or favour in the interests of homeless and badly housed people.

1.2 *Our Mission*

1.2.1 The organisation improves people's lives through advice and support services and through training, education and information work. Through policy, research, campaigning and lobbying, we help to overcome the barriers that stand in the way of our vision.

1.3 *Shelter Cymru, Specialist Advice and the LSC*

1.3.1 Shelter Cymru provides a national network of specialist housing advice services in 21 of the 22 Welsh local authority areas. The network is funded by the Welsh Assembly Government, the Legal Services Commission and some local authorities. The network is a key preventative component of the National Homelessness Strategy for Wales.

1.3.2 Shelter Cymru also receives funding to undertake debt advice work through the Financial Inclusion Fund and has a number advice projects assisting particular client groups such as prison-leavers or those at risk of losing their homes through anti-social behaviour.

1.3.3 In 2007–08, Shelter Cymru helped over 13,000 people in housing need in Wales, including almost 6,000 dependent children. Homelessness was prevented in over 86% of relevant cases.

1.3.4 Through participation in local and national strategic forums, Shelter Cymru has played an active role in the developing establishment of a Community Legal Service in Wales.

2. ISSUES

2.1 Shelter Cymru has delivered advice services in Wales for over 28 years. During this time, the organisation has worked with partners to best meet people's needs and to tackle the root causes of homelessness. The organisation has been a witness to political devolution in Wales and has seen the additional opportunities that devolved government has provided to promote social inclusion.

2.2 Shelter Cymru has actively supported efforts made to establish a Community Legal Service in Wales. By this we mean a network of advice provision, working to a common quality assurance system, providing a seamless advice service to people in need, strategically planned to achieve maximum impacts with the finite funds available. We also see a Community Legal Service as an entity that extracts the learning from the experiences of individual people and uses it to improve law, policies and on-the-ground services.

2.3 The observations made by Sir Jeremy Beecham in the foreword to his public service delivery review report *Beyond Boundaries: Citizen-Centred Local Services for Wales* accurately captures one of the most significant differences to be taken into account when delivering services to Wales. He said: "Our fundamental conclusion is that Wales has a marvelous opportunity, emanating in part from its traditions and in part from its scale, to lead the way in what we call 'small country governance', achieving for, but also with, its people excellent, responsive, accountable citizen-centred services in a way that its larger neighbours may find more difficult."

2.4 We believe that the LSC's approach to policy development and implementation in Wales must take full account of this difference. To do this, the LSC must maintain both a sufficient presence in Wales to maintain relationships with all of the key stakeholders, must maintain a strong Welsh leadership and policy development capability and must maintain sufficient administrative infrastructure to implement any policies that differ from those in England.

2.5 Shelter Cymru is concerned that the current proposals to reduce the operations of the LSC in Cardiff may leave insufficient staffing capacity to maintain working relationships with stakeholders.

2.6 We are also concerned that the expanded role of the Director for Wales, now to include a responsibility for medium-sized providers across England and Wales, may dilute the leadership of Legal Aid in Wales.

2.7 The post-devolution divergence between English and Welsh law is now firmly established and, with the Government of Wales Act 2006, looks set to accelerate in the coming years. A legal aid scheme designed for Wales needs to have the infrastructure to deliver such a scheme. The proposal to remove any Wales-based administration capacity runs counter to the devolution process and actively undermines any future devolution of the legal aid scheme.

2.8 Shelter Cymru criticised the LSC's strategy for the development of the Community Legal Service, *Making Legal Rights a Reality* (March 2006), for failing to consider the different policy context of Wales. This omission was acknowledged by the LSC and a joint WAG-LSC strategy *Making Legal Rights a Reality in Wales* (September 2007) was published. Although the strategy made reference to an alternative collaborative approach in Wales, concerns over European procurement law have subsequently meant that LSC policy in Wales has in practice been indistinguishable from that in England. The WAG Social Justice Minister, Brian Gibbons, has now asked providers and funders to consider a more collaborative approach for the development of integrated social welfare legal advice services in Wales. The reduction of the LSC's operations in Cardiff would appear to reduce their ability to implement alternative policies in Wales.

3. KEY RECOMMENDATION

3.1 We would ask that the LSC be invited to re-examine its proposals to reduce its operations in Cardiff to ensure that any change maintains strong leadership in Wales and includes sufficient capacity to maintain existing stakeholder relationships and to deliver a future legal aid scheme that best meets Welsh needs.

February 2009

Memorandum submitted by Brian Gibbons, AM, Minister for Social Justice and Local Government, Welsh Assembly Government

I am writing in response to the invitation by the Welsh Affairs Select Committee for submissions to an inquiry into the decision of the Legal Services Commission (LSC) to re-structure its operations in Cardiff and to transfer its operational and administrative functions to processing sites based exclusively in England,

Whilst I recognise that this is a non-devolved matter, these plans are of particular concern to the Welsh Assembly Government. The First Minister and I have raised the issue in discussions with the Secretary of State for Wales and Wales Office Minister, Wayne David MP. I have also written to Lord Bach, Parliamentary Under Secretary of State for Justice, and met Tom Jones, Commissioner for Wales, and a number of LSC representatives over recent months.

I believe that this proposal disregards the reality of devolution and that the views of neither the Welsh Assembly Government nor wider stakeholders were effectively sought. LSC representatives mentioned the possibility of an internal restructuring in one of our regular meetings on 9 April 2008 but I do not consider that this in any way constituted adequate or formal consultation on this very important issue.

We are very concerned that the proposals will result in an LSC service which will be unable to respond to the differences between England and Wales which are likely to increase over time as we pursue our own legislative priorities over the coming years. I specifically raised with Lord Bach the increasing distinctiveness of Welsh policy and the growing incompatibility with practice in England, citing our NHS redress scheme and Children's Advocacy Service as two examples. In addition, in areas such as youth justice and court administration, it is hoped that further devolution may take place.

We believe, therefore, that it is vital to maintain a strong presence in Cardiff not only at a policy level, where a thorough understanding of these differences and of devolution is required, but also to provide effective contract management and administration with Welsh providers and support to Welsh customers so that they do not suffer a weakening of the support they have received in recent years. Without this knowledge of the Welsh context, which I firmly believe could not be provided from outside Wales, we believe it will become increasingly difficult for the LSC to respond effectively to future developments.

We also have a number of further concerns including the loss of local jobs and of skilled staff. In addition to the obvious impact on the individuals whose positions are under threat, at a time when alternative employment opportunities are at a premium, there is no doubt that the loss of their experience and expertise at the very time the LSC is moving ahead with the proposed establishment of Community Legal Advice Networks is likely to have an adverse effect on advice delivery. Indeed, in view of the intention of the UK Government to establish a regional Administrative Court in Cardiff in April 2009, the proposed restructuring of the LSC presence in Cardiff goes against the spirit and direction of devolution.

It seems to my mind far more rational to have a Wales-based office working across Wales and part of England, rather than an English office providing a service to Wales. I have therefore offered to the Ministry of Justice and to the LSC the Assembly Government's support in facilitating this process.

It is my belief that the decision to restructure the Cardiff office is a wholly erroneous one, I would urge the LSC to withdraw its plans and to accept the assistance of the Assembly Government to maintain its current presence in Wales so that it can continue to deliver the valued service that we in Wales value so highly.

26 February 2009

Memorandum submitted by the Welsh Refugee Council

1. The Welsh Refugee Council which was established in 1990 provides services to on average of 650 asylum seekers and refugees in total across the four dispersal areas of Wales every week. In addition we have a policy and campaigning function and work collaboratively with our UK partners including the Scottish Refugee Council, Refugee Action and the Refugee Council on a range of issues which affect asylum seekers and refugees. We as a partnership have raised our concerns over many years on lack of access to legal advice for Asylum Seekers and our most recent publication is detailed in the footnote below.²

² Asylum Support Partnership: *Impact report—access to legal advice for dispersed asylum seekers*, July 2008.

2. We are pleased to respond to the inquiry set up by the Welsh Affairs Select Committee into the business planning arrangements for the Legal Services Commission (LSC) in Wales. Broadly we would like to present two issues to the committee, firstly our views on the impact of the changes proposed by the LSC to its business unit in Cardiff and secondly, broader issues relating to the availability of legal advice for asylum seekers within the immigration system itself.

3. As a recent report of the Joint Committee on Human Rights³ has focussed on this supply issue and especially on legal advice for those asylum seekers in detention, some of whom are from Wales, we will not further outline the issues here in detail. It does however continue to be an issue for concern for us, as we often see people who are detained in England having their legal representation withdrawn by Welsh suppliers once they go into detention. We will often see their representation being taken over by BID.⁴ In our opinion the regulatory regime that LSC operate should be improved so that suppliers can no longer withdraw representation from appeal hearings or when clients go into detention literally overnight. Recently a number of clients arrived in court to find that their legal representation has been withdrawn without any prior warning.

4. We have maintained an ongoing relationship with the LSC as we have had to raise concerns with them about the availability of legal advice for asylum seekers over a number of years. We continue to disagree with them about the availability of supply of legal advice in Wales and have seen a significant deterioration over the last five years in the amount of "supply" available in Wales, with at least five practices we are aware of, no longer offering legal representation etc. As an organisation because of our concerns we have been in dialogue with the Refugee Legal Centre so that they can have a presence in Wales. Obviously this will depend on commissioning arrangements but we believe that further supply is needed now and we cannot wait until the new contracts are issued in 2010. We have been clear about this issue with the LSC.

5. We have concerns about the proposed changes as we feel that services should be commissioned as closely as possible to the identified need so that it can respond to changing demands and needs. We therefore have concerns about the commissioning being done from outside Wales. We fail to see how services can be commissioned which fall short of taking account of the direction of travel of social policy generally in Wales and social justice policies specifically as we see a divergence on these issues between the UK Government and the Welsh Assembly Government (WAG).

6. In our opinion where these differences exist they need to be acknowledged by the Legal Services Commission and built into any delivery plans, so that services are delivered which reflect the policy positions within Wales. Obviously we understand that immigration is a non devolved matter, however we would argue that as the Welsh Assembly Government in its *Inclusion Strategy for Asylum Seekers* argues that inclusion starts on the day you arrive in Wales, this position needs to be understood and acknowledged within the commissioning arrangements. We see no evidence of the LSC either understanding or utilising this position within its commissioning arrangements in Wales.

7. We as an organisation have welcomed the positive impact which regionalisation has had for the UK Borders Agency. However as we and the Scottish Refugee Council have concerns about the London centric nature of some of the UKBA operations [similar to that proposed by the LSC] we presented a joint paper at the November National Asylum Seeker Stakeholder Forum in November 2008. Whilst UKBA has and is attempting to address our concerns, we see no evidence that the LSC has done so. For us this proposal is a retrograde step and now we are clear about the commissioning arrangements which the LSC have we would not want them to change again. Whilst obviously new relationships can be re-established if the changes go ahead it is generally acknowledged that asylum legislation is complex hence the current Simplification Process by UKBA. The proposed changes by the LSC are hardly helpful at this time of increased complexity, new commissioning arrangements etc and in our opinion should not take place.

8. We have welcomed the introduction of the New Asylum Model as was, now the Asylum Model, as it is making quicker decisions for many clients in the asylum process. However we also have concerns that people are being dispersed from Cardiff to Wrexham and Swansea, and because of lack of supply in those cities are having to return to Cardiff for legal advice travelling several times for the interviews which they need. It is acknowledged that the decision making process of the asylum system is often stressful for clients. However we see this lack of legal supply as being severely damaging and is adding to the stresses of the asylum system for many asylum seekers who are in it.

9. We continue to see evidence that if we get legal advice for clients for the initial application, we often and I might say usually, do not get advice for appeals. This appears to be especially true for some legal practices. This concerns us for a number of reasons to do with both natural justice and our experiences that our clients are being targeted by loan sharks so that they get legal representation at the appeal stage. However it cannot be right that asylum seekers are having to depend on loan sharks to pay for their legal representation at the appeal stage.

³ Joint Committee on Human Rights, Tenth Report of Session 2006–07, *The Treatment of Asylum Seekers*, HL 81-I/HC 60-I.

⁴ Bail for Immigration Detainees.

10. It might be opportune to emphasise that the WRC is not an open migration organisation we are for a fair and effective immigration system and accept that asylum seekers whose claim has no merit should not be accepted. However the changes proposed which will lead, we feel, to the LSC continuing to commission services in an ineffective way will not serve to produce the fair and effective system that we feel is needed and are taking place at a time of increased complexity within the system. We feel as an organisation that until this issue in the system is resolved it will lead to a lack of confidence of those who go through the system, organisations such as ours and the broader public at large. We are clear that system failure within the immigration system leads to bad decision making and we see these proposals as having the potential for further system failure within the immigration process.

25 February 2009

**Memorandum submitted by Professor Iwan Davies, Pro-Vice-Chancellor and Hodge Chair in Law,
Swansea University**

I have recently had sight of a transcript of the evidence in respect of the Legal Services Commission Cardiff Office. As an academician with a research interest in the phenomenon of what a previous Welsh Counsel General has referred to as “Legal Wales” I offer the following necessarily brief observations which may assist the Committee in its deliberations.

1. Whilst legal services are non-devolved, the Ministry of Justice and the Legal Services Commission have acknowledged that they must play a key role in developing more collaborative and citizen centred services in the context of Welsh public service. Before a major re-structuring takes place to meet the efficiency savings expected, it would seem sensible for the Commission to pause so as to review its current provision in Wales as well as working up possible options in terms of future provision as to how Legal Aid is best commissioned in Wales;

2. It is critical that vulnerable citizens are not put at risk and that any review should focus upon this in terms of administration of justice. It is confusing, disjointed and sometimes frustrating for such citizens to have to seek help from different sources at different times and at different locations. This will be highlighted further by the reductions planned of the Cardiff Office. Put simply it is unwise to move specialists from Cardiff before considering governance issues in respect of the provision of legal aid in Wales;

3. The essential point revolves around the need to consider the administration of legal aid in Wales. The increasing separate legislation for Wales in devolved fields highlights the difference between the detail of advice necessary for Wales clients (including bi-lingual clients) as compared to England especially in the context of health, education, employment, transport and housing;

4. A review setting out options is now timely. The challenge would be to focus upon the governance and accountability for commissioning and delivery of Legal Aid in Wales. The options will include inter alia scoping the possibility of establishing a commissioning board for Wales—a statutory committee appointed by the Justice Minister with involvement of the Secretary of State for Wales. Such a Board could be chaired by a dedicated LSC Commissioner for Wales and accountable either through the LSC or directly to the Minister and Parliament for the commissioning and impact of that commissioning on the people of Wales. Delivery of services would have to be scoped in any options appraisal as would the role of the current Wales Legal Services Commission Committee. Should it remain purely advisory or should it be put on a statutory basis and, if so, how should the membership be determined?

In summary, the issue surrounding the future of the Cardiff Office of the LSC provides an ideal opportunity to adopt a prospective review of the options available for the administration of legal aid in Wales. It raises capacity enhancement opportunities which could ensure a keener policy focus for Wales fit for the purpose of responding to Welsh socio-economic conditions.

April 2009

Letter from Wayne David MP, Parliamentary Under-Secretary, Wales Office, to the Chairman

LEGAL SERVICES COMMISSION AND THE CARDIFF OFFICE

Lord Bach has today (8 April 2009) issued the following statement:

“The LSC were due to make a decision on the future of the Cardiff Office in late May, when the business case to remove processing work was due to be signed off by the Commissioners.

Lord Bach has asked the LSC to delay that decision until late July in order to allow them, and him, more time to have further discussions with interested parties and formally consult on the issue.

The LSC are currently considering that request and will be confirming their approach by 17 April, including the assessment of how any revision to their plans would affect their anticipated savings.”

I consider this to be a helpful and positive statement, bearing in mind that the LSC is a non-Departmental Public Body.

8 April 2009
