
WALES COMMITTEE FOR THE CLS

Minutes of the Meeting held on Friday 7th December 2010
The Training Room at Citizens Advice Cymru, Quebec House, Castlebridge,
Cowbridge Road East, Cardiff

Present:

Tom Jones - Commissioner for Wales, LSC (Chair)
Lynne Schofield - WAG
Rhys Evans – Consumer Focus
Sue Finch - WLGA
Alison Rees – Wales Office
Dewi Williams – CAF/CASS Cymru
Phil Jarrold – WCVA
Eleanor Williams and Emma Thomas - Equality & Human Rights Commission
JJ Costello – Shelter Cymru

Legal Services Commission Staff:

Sara Kovach-Clark – Head of Civil Policy
Hilary Williams – Wales Civil Policy Manager
Paul Davies – Wales Director (item 5 only)
Tracy Scott - Secretariat

Apologies for Absence:

Eleanor Marks – Head of Communities Directorate, WAG
Fran Targett – Citizens Advice Cymru
Graham Benfield - WCVA
Naomi Alleyne - WLGA
Jeremy Stephens – SOLACE
Catrin Williams – CAF/CASS Cymru
Hugh Simkiss - HMCS
Anna Buchanan – Office of the Commissioner for Older People

1.	Introductions, Apologies and Welcome
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	<p>Tom Jones welcomed everyone to the meeting and apologised for having to re-arrange the date several times. The meeting had to be postponed until after the Government had published its Green Paper on the legal aid review, to enable the Committee to provide a 'Wales' response to the consultation document. Committee members were reminded that it was an MOJ, not LSC document, and had far reaching implications for the very vulnerable people in Wales who were currently entitled to legal aid and also for advice organisations who were in receipt of legal aid funding. Tom urged all individual organisations who had an interest to also send in their own individual responses. The deadline for responses was 14th February. The Committee was the only forum that engaged all stakeholders on civil justice issues in general, in Wales. When the LSC became an executive agency, it would not be in a position to facilitate the Committee as it would then be an executive delivery agency. The work of the</p>
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	<p>committee involved policy and engagement, and the effect of those policies on Wales. If the Committee was to continue in some form, it was suggested that a possibility would be a forum of stakeholders on civil justice in Wales to advise the MOJ on how changes would impact on Wales. Apart from the Wales Office and WAG, there would not be any forum left in Wales to take up this form of issue.</p> <p>It was noted that apologies had been received from Eleanor Marks, Fran Targett, Graham Benfield, Naomi Alleyne, Jeremy Stephens, Catrin Williams, Hugh Simkiss and Anna Buchanan.</p>	
2.	<p>Minutes of the meeting held on 23rd July 2010</p> <p>Tom Jones commented that as the majority of the Committee members who attended the previous meeting had been unable to attend, this agenda item would be brought forward to the next meeting.</p>	
3.	<p>Matters Arising</p> <p>This item to be brought forward to the next meeting.</p>	
4.	<p>Update on stakeholder engagement</p> <p>Hilary Williams provided Committee members with a paper for this agenda item.</p>	
5	<p>Update on the LSC move to an Executive Agency</p> <p>Paul Davies gave an update on the LSC's move to executive agency status and reported that the MOJ ran and owned the project. Following an announcement in June, the Secretary of State had announced the whole legal aid review following on from the Magee review into the delivery of legal aid. Two specific recommendations had been made:</p> <ul style="list-style-type: none"> • Wales issues should be taken into account • The LSC should change from a Non Departmental Public Body to an Executive Agency of the MOJ. <p>Paul reported that work had been undertaken for some considerable time in terms of what that meant and how it would be achieved. It was therefore important to ensure that Wales was not detrimentally affected by the move to agency status. The MoJ was talking to Carl Sargeant, the Minister for Social Justice at WAG in terms of what was happening and how it worked in practice. The MOJ welcomed the Committee's unique ability to feed back as a group, as well as individuals. There would be official discussions in addition to Ministerial discussions before the end of the consultation, ensuring that any implications of a potential outcome were known in advance at the Assembly. Paul reported that he met with Tim Hemmings, the Director of Policy at the Wales Office every 6 months. The next meeting was due in January. Moving to an executive agency would achieve clear lines of accountability as to where policy making and</p>	

decision making sat, and this was firmly with the MOJ and Ministers. The LSC was a delivery organization and would ensure MoJ policy decisions were implemented accordingly. The project was currently considering the appointment of a statutory officer who had a range of powers. The need for independence within the executive agency, if someone took action against the state, was being taken very seriously.

Paul reported that in terms of the spending review, cuts were being made in relation to administration costs as well as to the legal aid fund. The LSC needed to lose 25-30% in administration overheads in the current spending review period and there would be an implication for the size of the LSC on a staff basis going forward. A joint MOJ & LSC transition programme had already been set up, with a clear steer to the executive agency transition board. Any impact on Wales would be part of the ongoing business as usual requirement of the LSC through ongoing discussion at a forum such as the Wales Committee for the CLS.

The anticipated timetable for transition into exec agency status is April 2012.

Other areas were being looked at as part of the transformation. The pension scheme would need to transfer into a civil service scheme. Pay grades in the LSC were different to those in Government, along with terms and conditions. There was a huge amount of work that was, from an external point of view, invisible. In the interim, it was still business as usual. The Wales Committee, at least for the next 12 months should continue to meet.

The LSC would be looking at a completely new organizational design, which had been announced to staff two days previously by the Chief Executive. Leadership would reduce significantly within the next three years, with 47% of the top three or four grades in the LSC disappearing. The front line was being protected where possible to ensure that the processing time for providers and communications with the external world, were maintained. Shared services, such as Human Resources and Communications would be delivered through MOJ shared services under a service level agreement.

JJ Costello queried whether the split between LSC administration function and the MOJ policy function was to be clearly defined in terms of advice, the process of identifying need, mapping need, mapping provision, evaluating models of delivery etc. Paul confirmed that the Government would drive the agenda as to what was in scope and would also carry out the mapping and quality impact assessment. Staff in regional offices and in the centre also had local knowledge regarding gaps in provision of advice, where there might be a need to run additional bid rounds or where there was over supply. Relationship managers at the LSC had a responsibility to feed into the procurement team, who would in turn be communicating with the policy team. The LSC's role was to implement Government policy.

Phil Jarrold questioned whether there was a formal role of capturing information such as the impact of policies. Sara Kovach-Clark confirmed that this was not an LSC role. The LSC had the Legal Services Research Centre (LSRC) which

	<p>was an independent research arm. Their role was to look at the impact on people. They were currently carrying out rolling research on the causes of action and what kind of problems people were experiencing. They would advise Government on this and Government would be carrying out impact assessments and draft impact assessments for this consultation. A decision would be made after a final impact assessment. Sara reported that although lots of data and information was available regarding stakeholders, more was always being sought with regards to the impact on clients. The LSC and MOJ had to make assumptions in the absence of information and Committee members were asked to consider what information they might have or be aware of. It was not only important to respond to the proposals, but the draft impact assessment also.</p> <p>Lynne Schofield reported that contact with the MOJ so far had been limited. The Minister at the MOJ had written to Carl Sargeant recently and Lynne had been engaged in a brief conversation a few weeks previously with MOJ colleagues. There had been no detailed discussion about the LSC. Reforms had been touched upon, rather than the role of the LSC, about which she had concerns.</p> <p>Hilary agreed to circulate the official paper from the MOJ.</p> <p>Lowri Morgan reported that in this Spring's Welsh Select Committee Report, Gus O'Donnell, Permanent Secretary of the Cabinet Office admitted the need for an impact assessment on any piece of legislation impacting on WAG. The question needed to be asked why this was not being done. Lowri suggested that the Welsh Select Committee be asked for a reason as to why this was not being implemented. Sara Kovach-Clark suggested that this be fed back either as a collective or individual response to the consultation.</p>	
6	<p>Updates on the Government's Green Paper on legal aid</p> <p>Sara Kovach-Clark distributed a handout and asked Committee members for their initial reaction and views on potential impact to the proposals. MOJ officials had recognised that in some ways, the paper raised more questions than it answered and there was still more thinking to be done. Any questions, issues, or views on impact would be fed back to the MOJ.</p> <p>A discussion took place regarding domestic violence in ancillary relief cases, where the proposal was to take a large proportion of out of scope, except where there were issues of domestic violence. Sara Kovach-Clark commented that the idea was for people to resolve their issues either through mediation or negotiation. There was the assumption that more people would choose to go to mediation and there was a desire to see more people at least having considered mediation before issuing court proceedings. Judges were reporting that in at least 50% of cases, people would tick a box saying there had been domestic violence but what they were finding was that there were very few cases where there was any evidence.</p> <p>Eleanor Williams reported that they had recently had a talk by the Women's</p>	

Refuge and it was clear that their definition of domestic violence was defined very broadly. People could be sent for legal advice after being advised to tick the domestic violence box, and then experience a humiliating court experience when then undermined. Under the Women's Refuge definition, every year, one in ten women suffered domestic violence and over a lifetime, this was one in four women. On average, abuse happened 55 times before a woman went to A&E, so domestic violence would have occurred for some time before an injunction was sought. The Committee agreed that in terms of intervention, it would be too late.

JJ Costello commented that the issues were around definition and the level of proof required. In homelessness law, you did not need to demonstrate that you had taken out an injunction or taken legal proceedings because some women would not feel comfortable doing so. On balance it was thought it better to provide the safeguard for those women at risk and risk come other people abusing the system. It was important to look at what was the greatest harm.

The Committee agreed that a huge increase in family instability was expected as a result of the financial pressures. This raised the question as to whether there were sufficient mediation services in existence. When families broke down, there came a point where the parties were unwilling to enter into mediation. If mediation became the only route to resolve issues, it could drive up the number of incidences of domestic violence, as it became the only route to resolve issues. JJ Costello questioned what evidence there was to show that people could resolve their problems with mediation.

Tom Jones asked the Committee to look at how costs could be cut, as savings had to be made somewhere. Evidence showed that a court case was more expensive than mediation. It was important not to simply send back a wish list.

The Committee agreed that unless you got the prevention side right, there would be a bottleneck and an increase in costs further down the line. If others such as Big Lottery or the Assembly had big projects to tackle domestic violence, it had to be considered whether they would be adversely affected if one arm of joined up thinking had been taken away.

The Committee had no questions or issues in relation to Clinical Negligence, Consumer General Contract or, Legal Help Criminal Injuries Compensation.

A discussion took place around debt, which would be taken out of scope where the client's home wasn't at risk. There was the assumption that there were already debt helplines across the country funded by different parts of government and by the financial services industry.

The Committee agreed that clarity of definition was needed as to what was considered immediate risk as providers would always want to help their clients.

Lynne Schofield commented that the problem was not being tackled soon enough, so there came a point where the client's home was at immediate risk. Early intervention was an issue. Many of those organizations that provided

helplines were reliant on contracts funded by Government, so their capacity would be seriously affected. If the proposals were based on the capacity of those services, the impact of the removal of those services and their availability would need to be predicted.

The Committee agreed that it still believed in early intervention to prevent both pressures on individuals and the supporting agencies in Wales. Tom Jones requested that if any stakeholders had any particular initiatives, to help by listing them..

Tom Jones commented that unless there was a signed agreement that advice would be picked up elsewhere, there was a danger that it would not be picked up at all. It was wrong to presume that another part of Government would fill the gap and it was important that it was done by someone consistently.

A discussion took place regarding Education. Sara Kovach-Clark reported that legal aid would no longer be available for Special Educational Needs Tribunals. This was on the basis that they were not legal forums where representation was needed and were designed to be user friendly.

Lowri Morgan commented that the educational policy in Wales was different and there was also the Welsh language dimension. Tom Jones suggested that if a specific case was being made through the Law Society on the impact of changes to the Welsh dimension, it would be helpful for the Committee to be copied into the intended wording being used. It would help to clarify if the Committee shared the point of view made on education.

Eleanor Williams queried whether there was a piece of legislation going through the Assembly called the Welsh Learner Measure and whether it said people other than the parents could bring a claim. Education was already changing, irrespective of a referendum.

Eleanor Williams reported that the Equality & Human Rights Commission would probably be submitting a 'GB' response to the consultation and she would find out who was in charge of responding. **Eleanor agreed to circulate a draft of the 'How Fair is Wales' report to the Committee**, to see what the differences were in Wales.

A discussion took place regarding Employment. Eleanor Williams commented that discrimination would be out of scope, but protection from harassment would remain. If you wanted to plead workplace harassment, the smart lawyer would do so under Section 3 of the Protection from Harassment Act and wouldn't bother with section 16 of the Equality Act, but it would be the same facts giving rise to it.

Sara Kovach-Clark asked for any feedback in taking Housing out of scope. JJ Costello commented that it undermined the work of the private sector to drive up standards.

A discussion took place regarding Welfare Benefits. Sara Kovach-Clark

commented that the LSRC had shown that Welfare Benefits, Debt and Housing were linked.

Tom Jones commented that there was an important impact issue. If benefits and debt were taken out of scope then those who provided advice holistically would lose a very significant part of funding. Tom questioned what would be left in terms of a sustainable sector.

JJ Costello commented that there was a disproportionate effect on not for profit providers in the way that debt and welfare benefit contracts tended to be held in Wales. If they fell or reduced in number, other funding streams could also be lost.

Sara Kovach-Clark reported that there was a proposal to have a scheme to fund individual cases. This would be for those normally out of scope, where some level of legal advice was necessary to meet domestic and international legal obligations. There was also a proposal to establish the CLS helpline as a single gateway to civil legal aid specialist advice in all categories of law that remained within scope.

JJ Costello commented that there was a strong emphasis the telephone service should be able to deal with the majority of problems. There was a place for telephone advice, however JJ had read some evidence showing that only 15% of problems could be dealt with by telephone advice alone. Whilst the theory of a gateway was positive, you had to work with what you already had and it could potentially hamper access.

Tom Jones questioned whether the telephone service was viable and purposeful once everything had been taken out of scope. He questioned what the cost would be to leave those things in scope on the telephone, given some of the arguments made about early intervention. Not all people were comfortable with telephone advice and those such as people with mental health issues or those hard of hearing could be at a disadvantage. If, after calling the helpline, people were to be referred to a face-to-face adviser, there may not be many providers left if they had lost their funding. Advice in Wales would be different to that given in England and there would also need to be someone able to respond in Welsh at all times.

Sara Kovach-Clark reported that there were proposals to restrict eligibility and those who were eligible would probably have to pay a higher contribution. There were proposals to introduce a £100 capital contribution fee for those who had disposable capital over £1000.

The Committee agreed that capital would clearly have to be defined.

Tom Jones commented that he had a problem in principle with this in making poor people pay a disproportionate amount for help. The threshold was extremely low. There was a danger that monitoring costs could far outweigh the original £100.

	<p>Sara Kovach-Clark reported on the proposals to cut remuneration for solicitors and expert's fees.</p> <p>It was reported that there was feedback from solicitors that experts were charging too much and controls were needed but there had to be an awareness that there was a shortage in Wales of experts. Family Justice Council meetings had highlighted a massive shortage of clinical psychologists and psychiatrists to deal with child protection issues. How would the Government ensure there were experts available to give opinions and attend court to give evidence if the costs were too low. Had an impact assessment been carried out?</p> <p>Sara Kovach-Clark reported that there were proposals to get interest from client accounts and introduce a supplementary legal aid scheme with the amounts that were recovered in successful actions, set as a percentage of general damages.</p> <p>Tom Jones commented that the figures showed there would be a reduction of £20million in relation to civil matters alone. Lowri Morgan reported she anticipated that after these changes, 30-35% of high street practitioners would have disappeared. A particular problem in Wales was the percentage of older practitioners who carried out legal aid in Wales as a vocation rather than a business, which was geared to 55+. Younger people would not be tempted by the fees on offer. The younger generation had a more business-like approach and it would be unattractive on all levels.</p> <p>Tom Jones suggested that it would be helpful if individuals could share some of the evidence they were providing.</p> <p>It was agreed that Hilary Williams would draft a paper of responses or comments from the Committee and circulate it to members. It was noted that the Secretary of State would have no problem in going to Jonathan Djonogly before the end of the consultation period if given the ammunition of Welsh specifics. She would not be able to contribute to the consultation as it was not appropriate, but she could put the Welsh arguments forward from her perspective.</p> <p>It was agreed that the Committee would share any impact information they had. Hilary would send round a first draft of the response as soon as possible to help with individual responses.</p>	
7	<p>Updates on initiatives from other agencies and stakeholders</p> <p>This item was not covered due to time restraints</p>	
8	<p>Any Other Business</p> <p>There was none</p>	
9	<p>Consideration of dates for future meetings and also purpose and timing of citizen focused meeting – proposed theme – ‘The ability of older people to</p>	

	<p>access advice, barriers to advice, how older people may be impacted by legal aid cuts and the value of telephone advice.’ The intention is to invite members of organisations that represent older people to attend the meeting.</p> <p>Tom Jones commented that part of the Committee’s remit was to have client engagement every year. Despite resource restrictions, the Committee would like to engage with advice agencies and the Commissioner for Older People. Lowri Morgan reported that there was a dedicated group called Sisters for the Elderly. One of the people involved was Lisa Morgan from Hugh James Solicitors. Lowri would email the name of the other person involved.</p> <p>Tom Jones suggested that points raised at the consultation with elderly people be appended to the Committee’s response.</p> <p>Tom reported that there would be another meeting in March/April and an Annual Report would need to be completed. Committee members would be contacted with suggested dates for the March meeting.</p>	
10	Close of meeting	