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Lord Beecham  
House of Lords  
London  
SW1A 0PW

**Committee - Day 2**

Our ref: 319114

16 January 2012

Dear Jeremy,

**CLAUSE 2: LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL  
(PUBLIC DEFENDER SERVICE)**

Further to our debate during the second day of Committee on amendment 7, I undertook to write to you concerning some of the questions raised in relation to Clause 2 of the Bill and the Lord Chancellor's powers to make arrangements.

The primary question in debate sought to establish the Government's thinking behind Clause 2(2)(c), concerning the Lord Chancellor's powers to establish and maintain a body to provide services or facilitate the provision of services. As you know, the Legal Services Commission (LSC) also has powers under the Access to Justice Act 1999 to establish and maintain bodies to provide, or facilitate, the provision of services (see section 6(3)(d), 13(2)(d) and 14(2)(d) of that Act).

As I explained during the debate, the intention behind this provision is to allow for the continued presence of the Public Defender Service (PDS), a body established by the LSC to provide criminal defence services. The PDS is in essence a salaried though independent service, and is deployed in areas where historically there have been issues with criminal defence service supply under the LSC's contracting regime.

To continue to ensure independence in the future, clause 28(1) of the Bill provides that the Lord Chancellor must publish a code of conduct to be followed by civil servants and by employees of any body established and maintained by the Lord Chancellor when they are providing legal aid services to an individual under arrangements made under Part 1 of the Bill. There is a code of conduct currently in place for the PDS which is required by section 16 of the Access to Justice Act 1999. Clause 28(2) of the Bill provides that the code of conduct is to include the same range of duties currently listed in section 16(2) of the Access to Justice Act 1999. Clause 28(4) provides that the persons to whom the code applies are not subject to the direction of the Lord Chancellor when they provide services. The code prepared under clause 28, and any revision to it, must be laid before Parliament (clause 28(3)).

During debate you queried whether the Bill should simply refer to the PDS in name rather than the more generic construction currently used. The PDS is not mentioned by name as there is no intention to give the body a separate statutory footing, with all that such a step would entail. The PDS is a discrete service operating in very few parts of the country; it may well be that it is not required in future.

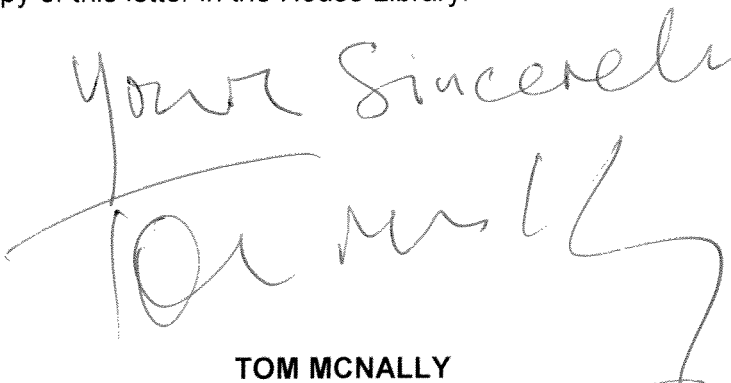
In terms of the administrative arrangements the Lord Chancellor may enter into, it is important that a degree of flexibility is maintained to meet future eventualities. It would be highly undesirable if the Lord Chancellor were unable to address a future issue, for example relating to supply in a given geographical area, as a result of drafting that led to unintended restriction on his ability to respond to unfavourable circumstances. As such, I believe it desirable to continue with the current construction seen in the Bill.

I also wanted to touch on another question that you raised in relation to amendment 7, namely the Lord Chancellor's powers at Clause 2(5) concerning making different arrangements for different geographies, cases and persons. These are powers that the LSC also has in the Access to Justice Act 1999 (see for example section 6(5), section 13(4) and section 14(6) of that Act), and are present as they provide the Lord Chancellor with the flexibility including, where appropriate, the ability to pilot new arrangements with a view to developing service provision. These powers are important; the legal services landscape is changing, more so than at any time in its history. Coupled with changes in technology and the way people live their lives, it is essential that the Bill provides the Lord Chancellor with this flexibility in relation to novel and innovative purchasing and delivery methods to reflect our changing times and support the overarching aims of delivering an efficient and effective justice system for the modern age. It is under these provisions that the Lord Chancellor would be able to trial, for example, price competitive tendering for criminal defence services.

The provisions at Clause 2(5) also anticipate being able to respond urgently to a given need. For example, current arrangements for criminal defence work are, in some respects, geographically bound. In the past it has been necessary to set these arrangements aside for a given period of time in a given geography, where for example a police station has been closed unexpectedly, and this flexibility helps ensure the smooth running of the scheme.

I hope this helps address the concerns you have raised in relation to the powers in Clause 2, though I would of course be happy to meet you to discuss any concerns further.

I am placing a copy of this letter in the House Library.

Your Sincerely  
  
**TOM MCNALLY**