



# Ministry of JUSTICE

**The Right Honourable  
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Lord Thomas  
House of Lords  
London  
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**Committee - Day 2**

Our ref: 319114

16 January 2012

Dear Martin,

**DIRECTOR OF LEGAL AID CASEWORK**

Following our very lively and interesting debate on the position of the proposed Director of Legal Aid Casework, I thought it may be beneficial to write to you further on this subject. I wish to provide insofar as is possible an overview of how we anticipate the new structure working in respect of the Director and the Agency, as well as the policy imperatives that led to this model.

By way of background, the decision to abolish the Legal Services Commission (LSC) followed a review by Sir Ian Magee, commenced in 2009 and reporting in 2010, that considered the administrative arrangements between the LSC and the Ministry of Justice, as well as policy responsibility between the two organisations. One of the options the Magee Report put forward was the creation of an Executive Agency, which would provide 'one policy voice' (with the policy function resting solely with the MoJ) and improved accountability and financial control by moving the functions of the LSC within the Ministry of Justice. The report was for the previous administration however it has been adopted by this Government.

This is both a popular and sensible change; you will recall Lord Bach welcomed the Government's decision to abolish the LSC during the debate. The key issue therefore is how we protect the independence of the Director in decision-making in individual cases under the new framework.

Following the Magee Report this Government decided to abolish the LSC, which is a statutory non-Departmental Public Body, and bring the administration of legal aid into the Ministry of Justice. It was never intended that the agency should have any independent status from the Department. The Bill creates a statutory office of the Director of Legal Aid Casework. The Director's functions in relation to individual cases are protected from political interference by clause 4(4).

It is important, however, that the Lord Chancellor is able to issue guidance and directions on the Director's functions. The Lord Chancellor may, for example, use directions or guidance to set appropriate limits on the Director's powers of delegation. The Lord Chancellor may issue guidance or directions on the handling of information by the Director. We intend to issue guidance on the provision of exceptional funding under clause 9 of the Bill. This will guide the Director on the legal and other factors that he or she should take into account in making decisions under clause 9. The guidance on exceptional funding will also ensure transparency, so that applicants for such funding and their legal representatives know the criteria that the Director will apply when making decisions about a case.

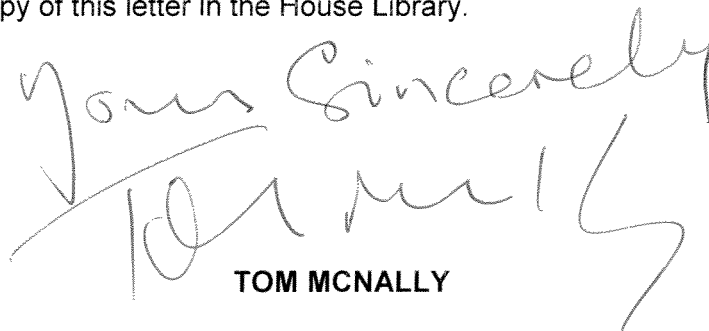
The Lord Chancellor's powers to give directions and guidance are not unfettered, there are a number of safeguards. The Lord Chancellor has no power to give directions or guidance in relation to individual cases. The scope of civil legal aid will be tightly drawn in Schedule 1 to the Bill. Further, there will be regulations under clause 10 of the Bill which will set the merits criteria for cases that are within the scope of civil legal aid and directions and guidance cannot conflict with those criteria. The Bill imposes a duty on the Lord Chancellor to publish guidance and directions, which ensures transparency. I also draw to your attention that the Lord Chancellor is currently able issue directions to the LSC, such as under section 6(6) of the Access to Justice Act 1999 and section 6(8)(a) of that Act.

You specifically asked in debate about guidance and directions on categories of case that are in the scope of civil legal aid, such as judicial review. For in scope cases, the Lord Chancellor will make regulations under clause 10 of the Bill and it is intended that these regulations will set out the merits criteria. The regulations will be a statutory instrument subject to parliamentary oversight. Amongst other statutory factors, such as the public interest, when setting the merits criteria, the Lord Chancellor is expressly required to consider the extent to which they ought to reflect the availability of resources to provide services and the appropriateness of applying those resources to provide the services having regard to present and likely future demands for the provision of civil legal services under Part 1 of the Bill. The criteria under clause 10 is the appropriate place for the Lord Chancellor to reflect the best use of resources amongst other factors.

Against these considerations, we feel that the powers afforded to the Lord Chancellor, when combined with the prohibition on interference in individual cases, strike the right balance between providing the Lord Chancellor with a degree of oversight, and protecting the Director (and their delegates) in making decisions on individual applications for legal aid.

I hope this offers you assurance on this subject, though I would of course be very happy to meet with you to discuss the matter further.

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

  
**TOM MCNALLY**