

MINUTES OF A MEETING
OF THE CROSS-PARTY LEGAL GROUP
OF THE NATIONAL ASSEMBLY FOR WALES
HELD AT TY HYWEL
ON TUESDAY 19TH JUNE 2018 AT 12 NOON

Present:
Mark Reckless AM, Chair
Matthew Richards, Head of Legal Services
Craig Lawton (for Suzy Davies AM)
Catriona Brown, Secretary

1. Apologies were received from Michelle Brown AM, Simon Thomas AM, Llyr Gruffydd AM, Mick Antoniw AM and Neil McEvoy AM.
2. Matthew Richards as Head of Legal Services at the Assembly, presented to the Meeting about the extensive and challenging role played by the Assembly's legal team.
3. Matthew Richards provided a team structure diagram of the lawyers in the Assembly's legal team, showing its fourteen lawyers.
4. Matthew Richards explained that leadership for provision of legal advice is shared between: (1) Matthew Richards (Head of Legal Services) who manages matters such as the team, the budget, recruitment, work allocation, and ensuring legal advice and support is provided day-to-day, and (2) Elisabeth Jones (Chief Legal Adviser) who is the definitive source of legal advice for the Assembly, notably on complex and novel questions of law.
5. Matthew Richards explained that much of his department's expertise and work was in relation to the law governing the Assembly's constitution, and the law devolved to Wales. Whilst the department might undertake relatively straightforward ancillary legal work, given his team of fourteen lawyers could not be expected to hold up-to-date expertise across all areas of law, most general legal work such as commercial work (and all employment law) would be outsourced to specialist external solicitors.
6. Matthew Richards explained that identifying "Who is our client?" was not entirely straightforward. Primarily, his team had to advise the institution of the Assembly. That included advising the Commissioners in relation to their powers as set out, notably, in the Government of Wales Act 2006 (Schedule 2). Matthew Richards gave an example of advising the Commissioners on questions around powers in relation to the Youth Parliament. Matthew Richards also noted that proposals for Assembly reform (such as, for example, increasing the number of Assembly Members, changing voting rules, introducing voting from 16 years of age, etc.) could be introduced as a Commission Bill which would be likely to

require substantial complex legal advice from his department. Mark Reckless AM noted that the Llywydd had written to each of the political parties requesting their views on Assembly reform.

7. On the subject of “Who is our client?”, Matthew Richards explained that the Llywydd was also a client. This would include advising the Llywydd on whether Bills were within the Assembly’s competence, typically providing the Llywydd with the advice at least one week in advance of a Bill’s introduction. By way of example, the recent Bill seeking to regulate letting agents, had generated substantial work for his department on questions of competence due to the large number of other areas of law with which the Bill interacted. Mark Reckless AM noted the possibility of the Supreme Court ruling touching on what the Assembly’s legal function had advised the Llywydd (in the proceedings being taken by the UK Government as regards the Bill passed by the Scottish Parliament which seeks to provide for continuity of EU law post-Brexit. This was done contrary to the view of the Presiding Officer of the Scottish Parliament on the competence of the Scottish Parliament).
8. Matthew Richards explained that questions of legal competence for the Assembly were becoming increasingly complex over time as divergence in respect of the growing body of Welsh law increased. Matthew Richards explained that in some respects his department was facing greater challenges in this area than the Scottish Parliament, as (i) Wales had more reservations (i.e. areas of law reserved to Westminster and outside the competence of the Assembly) than Scotland, and (ii) Wales did not have its own separate criminal and civil jurisdiction. It was noted that the Llywydd might submit formal evidence relating to these matters to the Thomas Commission. Mark Reckless AM agreed that if he had the opportunity to speak with Lord Thomas again, that he would make a suggestion to Lord Thomas of engagement with the Assembly’s legal function on these matters.
9. Matthew Richards noted that his department had an annual conference with their counterparts in Westminster, the Scottish Parliament and Northern Ireland Assembly, as well as the Irish Republic, to discuss matters of common interest relating to their legal systems and the particular role of parliamentary lawyers.
10. Matthew Richards noted that his department’s role includes advising on politically charged and sensitive matters, with Plenary typically being more politicised than Assembly Committees. An example was given of providing legal advice to the Llywydd in relation to whether the disclosure of Government papers relating to the dismissal of Carl Sargeant AM could be debated in the Assembly. One Assembly Member had, in fact, referenced the advice in the debate which is a rare example of the advice being used, directly, in plenary. Matthew Richards’ view was that his team had to date not come under inappropriate political pressure within the Assembly to side with a particular view.
11. With regard to “Who is our client?”, Matthew Richards explained that Assembly Members were also clients. Legal advice that his department would provide to Assembly Members would include advice on Bills, including drafting amendments to Bills, and drafting Bills to be introduced by Assembly Members. The example was given of drafting an autism Bill to be introduced by Paul Davies AM. The meeting was interested to learn that it would be a decision for the Llywydd as to whether there would be sufficient Assembly time available to enable any further such Bills to be introduced.

12. Matthew Richards explained that his team delivers in-house training at the Assembly about relevant issues of devolved law, as there are not many external courses providing the technical information available. On occasion, academics come to the Assembly to train lawyers on areas of constitutional law.
13. Matthew Richards noted that his team had provided legal support to Assembly Members around the new General Data Protection Regulation 2016/679 (GDPR), and provided training.
14. Matthew Richards explained that his team had filled a possible gap and provided judges in Wales with training on some matters relating to devolved law with a single jurisdiction. This may now have changed but in the past, the Ministry of Justice had not provided such training, and so far as he was aware, the Welsh Government had not stepped-in to make such training for judges available.
15. The legal department embraced bilingual working with five lawyers having advanced Welsh language skills. Matthew Richards explained they were currently seeking to recruit a lawyer with advanced Welsh language skills, to replace a member of the team who planned to retire. Given most lawyers in private practice are not expert in constitutional and devolved law (and the small number with such expertise are likely to be already working for the Welsh Government and may not be motivated to move), the recruitment strategy was to recruit for attitude and willingness to learn, and then provide those lawyers with training, and specifically on-the-job training.