



House of Commons  
Justice Committee

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# Crown Dependencies: evidence taken

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**First Report of Session 2008–09**

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

*Ordered by the House of Commons  
to be printed 16 December 2008*

## The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

### Current membership

Rt Hon Sir Alan Beith MP (*Liberal Democrat, Berwick-upon-Tweed*) (Chairman)  
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David Howarth MP (*Liberal Democrats, Cambridge*)  
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Rt Hon Alun Michael MP (*Labour Co-op, Cardiff South and Penarth*)  
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Dr Nick Palmer MP (*Labour, Broxtowe*)  
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Andrew Turner MP (*Conservative, Isle of Wight*)  
Andrew Tyrie MP (*Conservative, Chichester*)  
Dr Alan Whitehead MP (*Labour, Southampton Test*)

### 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](http://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/justicecom](http://www.parliament.uk/justicecom)

### Committee staff

The current staff of the Committee are Fergus Reid (Clerk), Dr Rebecca Davies (Second Clerk), Ruth Friskney (Adviser (Sentencing Guidelines)), Hannah Stewart (Committee Legal Specialist), Ian Thomson (Group Manager/Senior Committee Assistant), Sonia Draper (Committee Assistant), Henry Ayi-Hyde (Committee Support Assistant), Gemma Buckland (Public Policy Specialist, Scrutiny Unit) and Jessica Bridges-Palmer (Committee Media Officer).

### Contacts

Correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196 and the email address is [justicecom@parliament.uk](mailto:justicecom@parliament.uk)

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## Crown Dependencies: evidence taken

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1. The Isle of Man, Jersey and Guernsey are self-governing dependencies of the UK. These “Crown Dependencies” have their own directly-elected legislatures together with independent legal, administrative and fiscal systems. UK legislation only extends to them with the consent of the relevant legislatures. The UK Government represents the Crown Dependencies in international and defence matters, a role for which it receives annual payment from each dependency.

2. The Crown has residual responsibilities and powers over the Crown Dependencies, the limits of which have never been tested, but is ultimately responsible for their good government.<sup>1</sup> The UK Government scrutinises legislation from the Crown Dependencies for compliance with international law before passing it for Royal Assent. The Secretary of State for Justice has described the relationship between the UK and the Crown Dependencies as a “subtle” one.<sup>2</sup>

3. The Ministry of Justice is the UK Government department responsible for managing the UK’s constitutional relationship with the Crown Dependencies and the department’s performance in doing so falls within the remit of this Committee.

4. In 2008 problems in the Icelandic banking sector (also affecting subsidiaries of Icelandic banks in, *inter alia*, the UK, Isle of Man and Guernsey)—and the UK authorities’ response—gave rise to a number of issues which, in the opinion of this Committee, merited examination. Many UK-based depositors in banks in the Crown Dependencies fear that they may have lost most or all of their savings and want to know what responsibilities the UK Government has in these matters.

5. Accordingly, the Committee took evidence from Lord Bach, Parliamentary Under-Secretary of State, Ministry of Justice, the Minister responsible for “protecting the role of the Crown Dependencies in UK Government”<sup>3</sup> and received written evidence.<sup>4</sup> Prior to this, in November 2008, the Committee had the benefit of an informal meeting with a delegation from Tynwald, the Isle of Man legislature, led by its President, Hon Noel Cringle MLC.

6. Following the oral evidence from Lord Bach **the Committee believes that some questions over the relationship between the UK and the Crown Dependencies remain to be answered and that further clarity on the way in which the dependencies’ interests are protected by the UK Government is required.** There was a lack of clarity on the respective roles of the Ministry of Justice and HM Treasury which has the financial expertise and was given day-to-day responsibility for representing the dependencies’ interests (as well as those of the UK) in negotiations with Iceland and in negotiations with other countries of an International Monetary Fund (IMF) loan to

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1 HL Deb, 3 May 2006, col. 180W

2 Uncorrected transcript of oral evidence taken before the Committee on 7 October 2008, HC (2007-08) 1076-i, Q14

3 Evidence taken before the Committee on 10 December 2008, Q1

4 See page 7

Iceland. Given the potential divergence between the interests and concerns of UK-based depositors in Icelandic banks in the Crown Dependencies and those of the UK taxpayer, we sought clarity on whether relevant conditions in the terms of the IMF loan had been sought and obtained before the loan was granted to Iceland. The Minister was not in a position to assist us on this point.<sup>5</sup>

7. The situation is further complicated by the relationships between the parent banks in Iceland and their subsidiaries in the UK, the Isle of Man and Guernsey as well as between the financial regulators in each jurisdiction. We are not sure that the arrangements within the Government were adequate to deal with all aspects of the recent crisis.

**8. The role of the Ministry of Justice in relation to the Crown Dependencies is clearly an important issue in current discussions about the implications of the state of the Icelandic banking sector and we therefore agreed to publish, and draw attention to, the evidence we have gathered as a matter of urgency.** We intend to return to the wider issues, and the performance of the Ministry of Justice in these matters, in the New Year. There is also the independent review of the immediate and long-term challenges facing British offshore financial centres in the current economic climate commissioned by HM Treasury. We note that changes to the constitutional relationship between the dependencies and the UK are specifically excluded from the scope of that review.<sup>6</sup>

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5 Evidence taken before the Committee on 10 December, Q15. See *'Agreed guidelines reached on deposit guarantees'*, Icelandic Prime Minister's Office announcement, 16 November 2008

6 *Independent Review into British Offshore Financial centres*, HM Treasury, 130/08, 2 December 2008

# Formal Minutes

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**Tuesday 16 December 2008**

Members present:

Sir Alan Beith, in the Chair

Mr David Heath  
Julie Morgan  
Alun Michael

Mr Andrew Turner  
Andrew Tyrie  
Dr Alan Whitehead

Draft Report (*Crown Dependencies: evidence taken*), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 8 read and agreed to.

*Resolved*, That the Report be the First Report of the Committee to the House.

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

Written evidence, reported to the House on 10 December, was ordered to be printed with the Report.

[Adjourned till Tuesday 13 January 2009 at 4.00 p.m.]

## Witnesses

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### Wednesday 10 December

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**Lord Bach**, Parliamentary Under-Secretary of State, **Patrick Bourke**, Head of European and International Division, and **Mark Taylor**, Head of Legal Aid Analysis, Finance and Performance Division, Ministry of Justice

Ev 1

## List of written evidence

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| 1 | Ministry of Justice                         | Ev 6 |
| 2 | Landsbanki Guernsey Depositors Action Group | Ev 7 |

# Reports from the Justice (previously Constitutional Affairs) Committee since Session 2006-07

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## Session 2007-08

First Report	Protection of Private Data	HC 154
	<i>Government response</i>	<i>HC 406</i>
Second Report	Work of the Committee in 2007	HC 358
Third Report	Counter Terrorism Bill	HC 405
	<i>Government response</i>	<i>HC 758</i>
Fourth Report	Draft Constitutional Renewal Bill (provisions relating to the Attorney General)	HC 698
Fifth Report	Towards Effective Sentencing	HC 184
	<i>Government response</i>	<i>Cm 7476</i>
Sixth Report	Public Appointments: Lord-Lieutenants and High Sheriffs	HC 1001
Seventh Report	Appointment of the Chair of the Office of Legal Complaints	HC 1122

## Session 2006-07

First Report	Party Funding	HC 163
	<i>Government response</i>	<i>Cm 7123</i>
First Special Report	Party Funding – Oral evidence from the Lord Chancellor on the role of the Attorney General	HC 222
Second Report	Work of the Committee 2005-06	HC 259
Third Report	Implementation of the Carter Review of Legal Aid	HC 223
	<i>Government response</i>	<i>Cm 7158</i>
Fourth Report	Freedom of Information: Government's proposals for reform	HC 415
	<i>Government response</i>	<i>Cm 7187</i>
Fifth Report	Constitutional Role of the Attorney General	HC 306
	<i>Government responses</i>	<i>Cm 7355</i>
		<i>and</i>
		<i>HC 242</i>
		<i>(2007-08)</i>
Sixth Report	The creation of the Ministry of Justice	HC 466
	<i>Government response</i>	<i>HC 140</i>
		<i>(2007-08)</i>
First Special Report	Party Funding – Oral evidence from the Lord Chancellor on the role of the Attorney General	HC 222
Second Special Report	Scrutiny of Constitutional Reform	HC 907

# Oral evidence

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## Taken before the Justice Committee on Wednesday 10 December 2008

Members present

Sir Alan Beith, in the Chair

Mr David Heath  
Mrs Siân C James  
Alun Michael

Julie Morgan  
Robert Neill

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*Witnesses:* **Lord Bach**, a Member of the House of Lords, Parliamentary Under-Secretary of State, **Patrick Bourke**, Head of European and International Division, and **Mark Taylor**, Head of Legal Aid Analysis, Finance and Performance Division, Ministry of Justice, gave evidence.

**Q1 Chairman:** Perhaps I may take the opportunity to welcome Lord Bach on his first appearance before the Committee and his officials, Mr Bourke and Mr Taylor. We are very glad to have you on what I understand is the day of Sark's first general election. Although it also has to be noted, of course, that the Government's advice to the Crown on the situation of Sark has been found by the courts to be wrong, in a recent *Times* law report. If you want to explain that, you can do it later. What we want to consider first of all is the Crown Dependency system and the role of the Ministry of Justice in dealing with Crown Dependencies. Briefly, what do you see as the role of the Ministry of Justice in representing the interests of the Crown Dependencies?

**Lord Bach:** The Ministry of Justice is of course the department that is responsible for protecting the role of the Crown Dependencies in UK Government; so we obviously take a residing interest in issues that other government departments may or may not have with the Crown Dependencies. It is a relationship that seems to work pretty well.

**Q2 Chairman:** It did not sound like that when the Chancellor referred to the Isle of Man as "a tax haven sitting in the Irish Sea". It did not sound like a healthy relationship.

**Lord Bach:** The relationship that has worked very well and is working well in regard to the review that the Treasury has now undertaken. I think it important for the Committee to understand that the Ministry of Justice was involved very early on and I was personally, talking to the Treasury about the terms of the review. I met with representatives from the Crown Dependencies, or some of them, and I was present and co-chaired a meeting that Lord Myners, the Treasury minister, held in the Treasury on the day that the announcement was made. It is perhaps worth pointing out that each of the Crown Dependencies put out a press release, warmly welcoming the review. I think that it is quite a good example of how the Ministry of Justice is involved in looking after the interests of the Crown Dependencies that this particular exercise was carried out so successfully.

**Q3 Chairman:** We will come to the review itself later. Let us look at the relationship in terms of recent events, because they do test and illustrate issues around the relationship. If it is the role of the Ministry of Justice to represent the Dependencies in international relationships, which it is, then there is surely a conflict of interest? The Isle of Man Government and the Guernsey Government have an interest in ensuring that the Icelandic Government meets the guarantees upon which depositors in Landsbanki in Guernsey and Kaupthing SE in the Isle of Man depend. The Treasury's interests relate to the United Kingdom public purse, and yet the impression has been given that the Ministry of Justice has simply passed over to the Treasury all responsibility in this area. Is there not an actual conflict of interest, given that the Ministry of Justice should be representing the Dependencies' interests whereas the Treasury is looking after the UK taxpayer?

**Lord Bach:** No, I do not think there is. Her Majesty's Government looks after the interests in international affairs of the Crown Dependencies. The department of state in the UK Government that has prime responsibility for that and for the constitutional relationship is the Ministry of Justice. As far as this issue is concerned, there is no conflict at all between both what HM Government says and, whether it be the Treasury or the MoJ, there be no conflict between the two departments at all as to their role; and I do not think that it has been suggested by the Crown Dependencies that there is somehow a conflict. We work closely with the Crown Dependencies on a day-to-day basis as is necessary and they make representations both to us and of course to other parts of government as well; but I do not see that there is this conflict of interest.

**Q4 Chairman:** But both the Dependencies and the depositors thought that there was a conflict of interest, because the UK Treasury took action to freeze or transfer assets in the interests of UK depositors and UK taxpayers within the UK, and the interests of depositors in the Isle of Man and

Guernsey would have been for that money to stay in the accounts in the banks in the Dependencies, so that the depositors could get their money back.

**Lord Bach:** It may be that the Crown Dependencies themselves, or one of them in particular, was not entirely happy with the course of events but that did not compromise the Ministry of Justice in any sense at all. We are part of Her Majesty's Government primarily of course. However, it may be worth my describing briefly, particularly in regard to Kaupthing and the Isle of Man, how we saw this, because this has obviously been an important issue. As the Committee knows, Kaupthing Bank, the parent company, had at least two subsidiaries that are relevant: one in the UK and one in the Isle of Man. The business model usually used in the Crown Dependencies, as I understand it, is a practice of upstreaming deposits for Treasury management by the parent company. Banks incorporated into the Crown Dependencies therefore deposit a large amount, an amount equal to a significant portion of their deposits, with the parent company; but that is not what happened here. The Isle of Man branch deposited £532 million with its sister company in the United Kingdom, not with its parent company. That was a decision for the Isle of Man branch and resulted, we believe, from concerns that the Isle of Man regulator, namely the Financial Supervision Commission, had about the position of the Isle of Man's parent company—the Iceland parent company—and the Isle of Man branch appear to have determined that placing money with the UK branch was a more prudent thing to have done. That decision followed discussions that the Isle of Man regulator had had with our regulator, but at no time did our regulator advise or require these deposits to be made; the discussion did not extend to the giving of any assurances, by the FSA for example, that the UK would be able to repay the money or that the IoM branch would be treated preferentially. Under our insolvency rules and law, the Isle of Man branch ranks like any other creditor of the bank, and the Isle of Man branch of Kaupthing will have been fully aware of that and it made a choice to put its deposits into the UK branch, when it could have diversified those deposits and put them in a number of different places, as it happens.

**Q5 Chairman:** Was the Ministry of Justice consulted before the freezing took place?

**Lord Bach:** On 8 October, which is the date I believe that the freezing took place, I do not know whether we were consulted first; but it would not surprise me to hear that we were not.

**Q6 Chairman:** Let me take you a stage further, though. The IMF loan was a process in which obviously the Isle of Man's relations with the Icelandic government were of crucial importance. What role did the Ministry of Justice take in representing the Isle of Man's interest to the Icelandic Government, and what conditions have been secured that depositors in the Isle of Man Kaupthing bank will be repaid as a condition of the IMF loan?

**Lord Bach:** That is a matter that is still under discussion, as I understand it, but it is not an issue that the Ministry of Justice has taken a leading role in. As you know, the Treasury has agreed to represent the interests of the Isle of Man in early October—I think on 10 October—and it will be the Treasury that will represent the Crown Dependencies' interests as far as the Iceland Government is concerned, on what it does with the money it has received from the IMF.

**Q7 Chairman:** This is what is puzzling to us, when you said earlier that there is not a conflict of interest. Surely there is a potential conflict of interest here? The Treasury, in discussions about the IMF loan, has as its primary responsibility to secure the interests of the UK taxpayer and depositors in UK institutions for which it has regulatory responsibility. The primary interest of the Isle of Man Government is different. If it came to an issue as to what conditions were attached to the loan, whether they were conditions that suited UK taxpayers' interests or UK depositors, or conditions which suited depositors in the Isle of Man bank, the Treasury's conditions would be different from those which are most important to the Isle of Man Government. That is the point where surely you come in? Your apparent absence from these discussions seems strange.

**Lord Bach:** We represent the interests of the Isle of Man where it is appropriate to do so but we are part of Her Majesty's Government, and of course that is our prime responsibility. The Isle of Man runs its own fiscal affairs, as it runs its own legal system and it runs everything itself; it runs its own parliament. Our position, under this set-up, is to be the department in the United Kingdom Government that has the closest relationship with the Crown Dependencies and looks after its interests where appropriate, particularly in the international forum.

**Q8 Mr Heath:** This does sound extremely strange to me. It seems to me as though the department has abdicated its responsibility on behalf of the Isle of Man completely, has said, "The Treasury is looking after that", and appears to show no interest—or no observable interest from the answers we have had so far—in the outcome of the way in which those interests have been protected or otherwise by the Treasury. Am I being entirely unfair?

**Lord Bach:** Yes.

**Q9 Mr Heath:** Then tell us what has been happening in terms of the Treasury and tell us how the Ministry of Justice has assessed its efficacy in protecting the interests of the Isle of Man.

**Lord Bach:** Mr Heath, I do not think that you are being entirely unfair; I think that you are being a little unfair here. As I said a little earlier, we keep a very close, day-to-day interest in relations with the Crown Dependencies, and we clearly are on this issue as on every other issue. I do not know what you would expect us to do. We are part of Her Majesty's Government. This is an issue that the Isle of Man Government has, and is quite capable of talking to

the Treasury itself. We talk to the Treasury too, of course. In the end, however, we are not dealing here with a sort of colony; we are dealing here with a Crown Dependency that, in the case of the Isle of Man, is self-governing, has its own systems, has its own financial systems. It is not our job to nanny the Isle of Man in any sense. Our job is, in the broadest sense, to have a close relationship with them and to assist. However, it may be that Mr Bourke could improve on that.

**Patrick Bourke:** I think that it is to put it too strongly to say that we have abdicated all responsibility for them. I am quite sure that if you were to ask the Isle of Man whether they felt the same way about the MoJ as the sense that was apparent in your question, I think that they would disagree very strongly. We have facilitated a number of meetings between the Isle of Man and the Treasury. The Justice Secretary himself saw the chief minister, the chief executive and the chief regulator at MoJ headquarters. That meeting was attended by Treasury officials. There are weekly videoconferences between the Treasury and the Isle of Man, which we suggested would be a very good idea, so that the Treasury can update the Isle of Man on the status of negotiations with Iceland.

**Mr Heath:** Thank you. That is a more helpful answer.

**Q10 Alun Michael:** I take it that it is quite difficult to disentangle the different issues here. Can I try to do so, bearing in mind that we are actually looking backwards to a situation that nobody anticipated? The UK Government did not; the Icelandic Government did not; the Isle of Man did not; the financial institutions did not. Therefore, it was not a question of people acting in the knowledge of what was going to happen but being reasonably prudent and making the right checks at the right time. As I understand it, in relation to the Icelandic parent company you then have three jurisdictions: the UK jurisdiction, the Isle of Man jurisdiction and the Icelandic one. We have two regulators that are relevant to our situation, which is the FSA and the Isle of Man regulator to which you have referred. We have three commercial entities: the parent company in Iceland, the UK subsidiary and the Isle of Man subsidiary. We also have, in each of these, investors from the Isle of Man and investors from the wider UK; so the interests of UK citizens are not straightforwardly with the UK institutions; they run across the different ones. Is it not true to say that there was reasonable prudence in the sense that the money went from the Isle of Man bank to the UK bank, there having been some discussion between the two financial regulators about the prudence of dealing with that? What is the relationship and the responsibility between the different financial regulators, therefore, and what is the responsibility of the Ministry of Justice, as the representative of the Isle of Man in effect within the UK Government, in working out what is right, going forward?

**Lord Bach:** There were, as you say, in May 2008 discussions between the Isle of Man regulator and our regulator in the UK, but at no time, I am

advised, did our regulator advise or require the deposits, which were made quite freely by the Isle of Man branch.

**Q11 Alun Michael:** But you would not expect a requirement, though, would you? My point is that there was reasonable discussion, was there not?

**Lord Bach:** There was a discussion, but this was a commercial decision taken by Kaupthing Isle of Man.

**Q12 Alun Michael:** Does it not affect the situation that they, it would seem sensibly, had discussions with the FSA, because of their concerns about the Icelandic bank, about what was the most prudent thing to do? My point being that that prudence was being exercised not on behalf of an institution out there but the interests of UK investors, amongst others.

**Lord Bach:** As I understand it, the FSA offered no advice in relation to what would be prudent or not prudent, save their saying that there were some fears around the parent company. What the Isle of Man branch of Kaupthing then did with its deposits was entirely a matter for it and not a matter for either HM Treasury, let alone the Ministry of Justice.

**Q13 Alun Michael:** Yes, it may be entirely a matter for them and they have the responsibility of taking the decision—as in any situation, the actor has the responsibility of taking the decision—but it does seem sensible, when there is UK investors' money potentially at risk, because as I understand it there was UK investors' money in the Isle of Man sibling of the UK branch, for there to be a precautionary approach taken by everybody concerned.

**Patrick Bourke:** I certainly would not disagree with that. Dialogue between regulators, particularly in neighbouring jurisdictions with significant interests in each other's accounts, if I can put it that way, is obviously to be welcomed. One of the things that will be the subject of the independent review announced by the Chancellor as part of his pre-Budget report will be precisely how to further stimulate and render yet more efficacious the dialogue between Crown Dependencies' regulators and the FSA. It is a self-evident point.

**Q14 Chairman:** We will come to the review in a moment, but I am still puzzled that you seem to have difficulty in answering an absolutely basic question. What was the primary interest of the Isle of Man Government and the Guernsey Government in the negotiations leading to the IMF loan? It was that the Icelandic Government should meet the guarantees which it had previously given to banks domesticated in Guernsey and the Isle of Man. I have asked you if that primary objective of those two governments was satisfied in the international negotiations, for which you are responsible even though you may have delegated the duty, the carrying out of it, to the Treasury. How far was that objective met? If you do not know the answer to that, it suggests that the role of the Ministry of Justice, representing the interests of the island—which in this case happens to be also

the interests of a lot of people in the UK who have deposits in those accounts—is not central to what you are doing.

**Patrick Bourke:** The MoJ, if you like, acts as a focal point for the Crown Dependencies within Whitehall. What the MoJ's role has been to do has been to work with our Treasury colleagues to ensure that the Isle of Man's interests are indeed represented. The application was made by the Isle of Man to us on 10 October; on 14 October, Treasury confirmed that, obviously in line with constitutional principles, it would be representing the Isle of Man's interests in those negotiations. Frankly, I think the Isle of Man would not thank us very much if I personally was negotiating with Iceland on matters which are quite beyond my ability, I am afraid.

**Q15 Chairman:** How successful have you been? News of the IMF loan to Iceland is out. We know that it is happening. Have you been successful between you, you and the Treasury, in securing conditions or not?

**Lord Bach:** As I understand it, negotiations are still continuing. “No results yet”, I think is the best way I can describe it.

**Q16 Mrs James:** Mention was made of the review earlier and we are going to come to some questions about the review. What happens if the Crown Dependencies' administrations refuse to implement any of the changes that the review suggests or proposes to them?

**Lord Bach:** We would very much hope that the Crown Dependencies, and in due course the Overseas Territories, approach constructively the opportunity to work with what is a very credible and heavyweight reviewer on developing their response to these circumstances—very challenging circumstances given economic conditions. We are not proposing any changes to the constitutional scope as a part of this review. That is a very important point and was very important to the Crown Dependencies themselves. It is absolutely up to the Crown Dependencies, as you suggest, to respond as they see fit. We do not think that we will come to the position where the Crown Dependencies refuse to implement the recommendations. If there are issues and problems once the review is out of the way, then I hope that we will be able to act as a kind of honest broker behind the scenes, in order to make sure that it does not come to a question of refusing to carry out what may or may not be suggested in the review. However, we are a very long way from that. As I say, the Crown Dependencies all welcome this review. They do not see it as a kind of threat; they see it as something that is necessary and useful at this particular stage. So the answer to your question is we do not think that this will happen and, if it does, it will be our role to try to make sure that things are kept in line.

**Q17 Mrs James:** We are talking about the regulatory arrangements here, where the Crown Dependencies have had great freedom in the past. The Chancellor did make the comment about the “tax haven in the

Irish Sea”, and this is how the greater public in Britain see it. What levers do we have as a Government to impose reform? Many people, including myself, think that reform is long overdue.

**Lord Bach:** I think the answer is that we do not have levers at the end of the day, in the sense that the Crown Dependencies, as I think I have already said, have their own parliaments, their own legal systems and their own financial arrangements. Frankly, the relationship that there is between the Crown Dependencies and Her Majesty's Government is so good as to make us believe that all sides will act sensibly and that the Crown Dependencies themselves will not be against some reforms, if that is what the reviewer suggests. We do not think that we will get to the stage that the question suggests.

**Q18 Chairman:** Have you not rather understated your power? If legislation is proposed in the Crown Dependencies, you give advice as to whether Royal Assent should be given to legislation, do you not?

**Lord Bach:** Yes, of course we do, and it comes across my desk certainly every week. The Privy Council then signs off, of course. You are quite right to remind me, Sir Alan. That is a hypothetical possibility, but it is not something that we think will happen.

**Q19 Chairman:** Is it not a rather negative power, in that something has to be initiated by the Crown Dependency for you to refuse it; whereas if an action is not taken, you do not have a parallel power to make sure that it is taken?

**Patrick Bourke:** I suppose that is one interpretation you could place on it, but I think that the practical, day-to-day dealing is what we need to focus on. In actual fact, we spend huge amounts of time and effort speaking to the Crown Dependencies, understanding and, if you like, encouraging them to undertake reforms. I have to say that our track record is pretty good. The Edwards review, which my political boss Jack Straw initiated 11 years ago, led to some conclusions which were implemented. I would also say to you, Mrs James, that if you look at the Crown Dependencies' record in terms of international transparency standards, they stand out from the rest of the crowd. The reason why the Crown Dependencies have welcomed this review is so that they can put some clear blue water between themselves and jurisdictions which are perhaps a more legitimate target for the sort of criticism that seems prevalent at the moment.

**Q20 Chairman:** I did say that I would give you a proper opportunity to refer to the Sark issue. What happened was the Court of Appeal ruled that the proposed reform of the Sark constitution, which allowed the Seneschal to be a member of the legislature and the chief judge, contravened Article 6 of the European Convention on Human Rights. You are aware of this?

**Lord Bach:** Yes, I am. If that is what the Court of Appeal decided—on four of the five issues that they had to decide, they decided actually on our side. The most important decision they made of all was that

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10 December 2008 Lord Bach, Patrick Bourke and Mark Taylor

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the elections that you referred to earlier today—the first democratic elections in Sark in its 450-year history—are taking place as we speak, at the moment, with 58 candidates for a population of 600. It would be the equivalent of five million candidates in a British general election. So democracy has certainly broken out in Sark today. I am sorry to have gone on about that, but it is quite an important day and I think that the British Government has played its part in years past in getting to that position. We are considering the Court of Appeal decision, of course, and will come to a view on it. We have to do that fairly shortly.

**Q21 Mr Heath:** May I come back to the core issue of the current situation? Lord Bach, you are then entirely satisfied that the interests, of not only the banking sector in both the Isle of Man and in Guernsey but also of those who deposited monies with the banks in those countries, were safeguarded from the first point of action of the Treasury in freezing the assets of the Icelandic banks and since, and that those depositors' interests are now safeguarded, in so far as any depositors' interests are safeguarded in the UK?

**Lord Bach:** Yes, I am.<sup>1</sup>

**Robert Neill:** My apologies for not being here at the beginning of the discussion but I was delayed by something else on the way. Can I say, Lord Bach, I agree with your points about the willingness of the Crown Dependencies generally to reform themselves, as Mr Bourke was also saying. Against that background, you may be aware that I wrote to the Lord Chancellor earlier on in the year about the question of capacity-building. That was raised in

relation, for example, to reforms and changes in Sark, where a very small number of people, working part-time, are going to have to create new structures to work effectively. It is unlikely that they have the capacity to do that. You get a situation sometimes where they face difficulties from extremely well-resourced individuals or organisations, and there is a certain lack of equality of arms, if I may put it that way. Can you help me as to what further steps are being taken? I know that you have referred it to the Local Government Association to see if they can give any assistance, but I think you were also going to speak to DfID.

**Q22 Chairman:** Perhaps I could just supplement Mr Neill's point, because I think that there is also a wider issue that the Committee itself raised with the Secretary of State. It was in the context of capacity-building being one of the ways in which the British Government can help in situations where it does not have power to do things but it can be of assistance.

**Patrick Bourke:** Following on from Mr Neill's point, I was there when the commitment was made by the secretary of state to look into this issue, and my team is following it up. I cannot give you today an outcome to those discussions, but it was a very useful contribution, a good thought, and we are taking it forward. If I may, I will write to you to tell you what the progress is to date.

**Q23 Robert Neill:** That will be helpful. Obviously, talking in terms of the immediate litigation and consideration of the Court of Appeal's decision, no doubt that sort of quality advice will be made available by Her Majesty's Government to the authorities in Sark, to enable them to come up with whatever solutions are necessary in a timely manner.

**Lord Bach:** Yes, indeed.

**Chairman:** At this point, we will move to the question of legal aid reform.

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<sup>1</sup> *Note by witness:* I am satisfied by the steps taken by the UK Government in the interests of the people whose deposits the UK regulatory authorities are responsible for.

# Written evidence

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## Memorandum submitted by the Ministry of Justice

### GENERAL

The Ministry of Justice is the UK Government Department responsible for managing the UK's constitutional relationship with the Crown Dependencies. The constitutional relationship between the Islands and the UK is the outcome of historical processes and accepted practice. The most recent statement of the relationship is found in Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, published in 1973 and known as the Kilbrandon Report.

The UK Government is constitutionally responsible for the defence and international relations of the Crown Dependencies. In practice this means that it is the UK Department that owns the policy that will be responsible for international representation in that area. Each of the Crown Dependencies makes an annual contribution towards the costs of their defence and international representation by the UK.

- Jersey, Guernsey and the Isle of Man are not part of the UK but are self-governing dependencies of the Crown. They have their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The Crown Dependencies are not represented in the UK Parliament and UK legislation does not extend to them without the consent of the Islands' administrations. They are not part of the EU or EEA and banks established in the Crown Dependencies therefore do not benefit from "passporting" rights under European banking directive.
- The Crown has residual responsibilities, the precise limits of which have never been tested. It is acknowledged that the constitutional relationship between the UK and the Crown Dependencies is complex and that it contains areas of uncertainty.

### KAUPTHING SINGER FRIEDLANDER ISLE OF MAN

- The Kaupthing Bank hf, an Icelandic bank, operated a number of companies including Kaupthing Singer Friedlander UK (KSFUK) and Kaupthing Singer Friedlander Isle of Man (KSFioM). Both KSFUK and KSFioM were subsidiaries of the parent bank in Iceland. KSFioM was a subsidiary of the Icelandic parent company, not a subsidiary of KSFUK.
- The business models of many banking operations in the Crown Dependencies involve the practice of upstreaming deposits for Treasury management by the parent company. In practice this means that banks incorporated in the Crown Dependencies deposit an amount equal to a significant portion of their deposits they receive from customers with their parent company.
- In the case of KSFioM, significant sums had been deposited with its sister company KSFUK. This was a decision for KSFioM and resulted from concerns that the IoM regulator, the Financial Supervision Commission (FSC) had about the position of KSFioM's parent company in Iceland. They appear to have determined that placing money with the UK sister company was more prudent than placing the money directly with the parent.
- This decision followed FSC discussions with the FSA in May 2008 in which certain aspects of the regime applied by the FSA to KSFUK were described. However, at no time did the FSA advise or require these deposits to be made. Furthermore, these discussions did not extend to the giving of any specific assurances by the FSA, for example that that KSFUK would be able to repay the money or that KSFioM would be treated preferentially in the case of an insolvency. Under UK insolvency law, KSFioM ranks like any other creditor of KSF—KSF IOM will have been fully aware of this. It could have chosen to put its money elsewhere and to have diversified the deposits its made rather than making a single large deposit, which concentrated the credit risk they were exposed to.
- On 8 October, the FSA determined that KSFUK no longer met threshold conditions for FSA authorisation based on a consideration of its financial position (including its liquidity) and that it was appropriate to close the firm to new business and that the firm was in default for the purposes of the UK Financial Services Compensation Scheme (FSCS). The Treasury, using powers under the Banking (Special Provisions) Act 2008 transferred certain KSF retail deposits to ING Direct. The transfer was funded by the FSCS and the Treasury. The remainder of KSF UK was placed into administration by the Court on the application of the FSA.
- KSFioM was only one of a number of depositors with KSFUK that was not protected by the FSCS. Other depositors included UK local authorities and building societies. To have given KSFioM advance warning of events would have favoured one group of creditors over another and prejudiced the fair and equal treatment of creditors. Furthermore, there was no regulatory requirement to share this information.

- On 8 October the FSC suspended KSFioM’s banking license. On 9 October the Isle of Man Court made a Provisional Liquidation Order in relation to KSF ioM. A winding up petition was due to be considered on 24 October. However, at the hearing the petition was adjourned to 27 November.
- Deposits with KSFioM that are eligible under the Isle of Man Deposit Compensation Scheme (DCS) are entitled to compensation in line with Isle of Man arrangements. KSFioM’s depositors do not have any entitlement to the UK FSCS and KSFioM’s deposit taking business does not fall within the scope of the UK regulatory regime.
- On 10 October the IoM authorities sought confirmation from the UK that, in accordance with the constitutional relationship, the UK would represent the Isle of Man in negotiations with the Icelandic Government. The UK Government confirmed that, in line with usual constitutional arrangements, it would represent the Crown Dependencies in its negotiations with the Icelandic authorities.

#### UK CONSTITUTIONAL RESPONSIBILITIES FOR THE FOR THE ISLE OF MAN

- In international law the UK Government is responsible for the external relations of the Crown Dependencies. The Crown Dependencies have no international legal personality. They are part of an indivisible Crown and the UK Government in right of the Queen is responsible for any external relations. This means in practice that the Isle of Man could not negotiate and agree anything with the Icelandic Government which would have any force in international law.

*November 2008*

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### **Memorandum submitted by the Landsbanki Guernsey Depositors Action Group**

#### 1. SUMMARY

The Landsbanki Guernsey Depositors Action Group (LGDAG) strongly welcomes the Justice Committee’s hearing on the position of the Crown Dependencies on Wednesday 10 December.

Our particular concern is the constitutional obligation of the UK Government to represent the Crown Dependencies in international negotiations and forums. We do not feel that the Government has fulfilled its duty to represent Guernsey following the collapse of Landsbanki Guernsey.

The group strongly believes that the British Government should fulfil its constitutional obligations and represent the Crown Dependencies in international negotiations when non-UK banks fail. The group also believes that representing UK citizens who invested funds in non-UK jurisdictions which are Crown Dependencies should be made an explicit part of the Government’s obligation.

#### 2. INTRODUCTION

The Landsbanki Guernsey Depositors Action Group (LGDAG) is the legally constituted representative group for people who saved in Landsbanki Guernsey.

The LGDAG was established following the collapse of Landsbanki Guernsey, the Guernsey subsidiary of the Icelandic bank, Landsbanki hf, on 6 October 2008. The over-riding aim of the Group is to ensure the savings of all depositors in Landsbanki Guernsey are returned in full.

To date, the Administrators for Landsbanki Guernsey have agreed to pay the 2,033 depositors in the bank 30p for every pound they saved. Depositors therefore stand to lose 70% of their savings. Depositors in Landsbanki Guernsey are not covered by the Financial Services Compensation Scheme or Iceland’s protection scheme, nor are they part of the EA Compensation scheme. A financial protection scheme was established in Guernsey on 26 November 2008, but it will not be retroactive.

Depositors in Landsbanki Guernsey are ordinary, responsible, hard-working people who face significant hardship and distress following the loss of their life savings. Many are British Citizens residing either in the Channel Islands or the United Kingdom.

The LGDAG estimates that 35% of depositors in Landsbanki Guernsey are British citizens from Jersey and Guernsey. An estimated further 49% of depositors are British nationals who are non-resident in the UK but opted to save with Landsbanki Guernsey as the majority of UK high street banks will not allow a non-UK resident to open a savings account.

Whilst there is no legal bar to expatriates opening a bank account in the UK a survey of 58 banks and building societies found that only two small building societies in the UK were prepared to open accounts for expatriates and then only on personal application at the branch. According to the guidelines of the Joint Steering Committee Money Laundering, the onus is firmly on financial institutions to “Know their

Customer”. Although there is a slight variation between banks’ and building societies’ approach to enforcing and implementing the guidelines, the end result has been to prevent Expatriates from opening bank accounts onshore.

Furthermore, a number of the savers in Landsbanki Guernsey originally opened accounts with the Cheshire Building Society in Guernsey which was subsequently bought by Landsbanki in 2006 and had no option but to switch banks until their account matured.

The LGDAG believe that there are number of ways to help its members which would not impose any burden on UK taxpayers, but which would facilitate the return of their savings and put an end to the immense on-going distress of those who have lost their money. The group suggest the following measures:

- Prior to the collapse of Landsbanki Guernsey, £36 million was transferred from Landsbanki Guernsey to its UK-based sister bank Heritable. We suggest that it may be possible for this money to be returned to help pay depositors.
- Furthermore, the UK Government could persuade the Governments of Guernsey and Iceland to ensure they more fully recompense savers. We believe that thorough and frank discussions between these governments are a necessity if the savings of depositors in Landsbanki Guernsey are to be returned.
- Depositors who opened accounts with Landsbanki Guernsey largely did so due to the Parent Guarantee from its Icelandic Owners, Landsbanki Islands; the group believes that further pressure could be brought to bear on the Icelandic government by the UK government to ensure this parent guarantee is honoured.
- The LGDAG also believes the conditions on the loan given by the UK to the Icelandic Government to support savers who have lost out from the collapse of Icesave could be extended to cover Landsbanki Guernsey.

All of these options depend on the UK Government to fulfil its constitutional obligations to represent the Crown Dependencies, specifically Guernsey, in negotiations with the Icelandic Government in particular. The Government cannot wash its hands of this requirement.

### 3. CONCLUSION

The LGDAG is committed to ensuring that its members’ hard-earned money, saved in good faith in Landsbanki Guernsey, is returned in full.

The group strongly believes that the British Government should fulfil its constitutional obligations and represent the Crown Dependencies in circumstances where non-UK banks fail.

Published evidence to date seems to indicate that the UK government has been remiss in its constitutional responsibilities to protect the States of Guernsey by not securing Icelandic agreement to compensate savers in Landsbanki Guernsey prior to loaning money to the Icelandic government or approving the IMF finance package.

We would ask the Justice Committee to raise this issue during the evidence session on Crown Dependencies.

### 4. PROPOSED QUESTIONS TO LORD BACH, PARLIAMENTARY UNDER SECRETARY OF STATE FOR THE MINISTRY OF JUSTICE

What are the constitutional obligations of the UK government in relation to representing Guernsey in international negotiations?

What protocols are in place for his department to ensure equal treatment of the Crown Dependencies?

What steps have been taken to make representations to the Icelandic Government on behalf of the Crown Dependencies following the Icelandic banking collapse?

What representations his department made to HM Treasury and the Foreign and Commonwealth Office to remind it of the Government’s constitutional obligations to represent Guernsey at an international level?

Why neither his department nor the Treasury ensured that depositors in the Crown Dependencies were compensated by the Icelandic government, or that the parent guarantee given by the Icelandic bank was honoured, prior to approving IMF and UK bail-out packages.

What discussions have taken place within the Ministry of Justice about the implications of the collapse of Landsbanki Guernsey?

Will the Minister agree to meet with representatives of Landsbanki Guernsey to discuss the collapse of the bank?

*December 2008*