Neutral Citation Number: [2014] EWHC 488 (Admin)

Case No CO/9841/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Cardiff Civil Justice Centre
2 Park Street, Cardiff,
CF10 1ET

Date: 06/03/14

Before :

MR JUSTICE HICKINBOTTOM

and

HIS HONOUR JUDGE MILWYN JARMAN QC
(SITTING AS A JUDGE OF THE HIGH COURT)

- -

Between :

THE QUEEN ON THE APPLICATION OF
THE WELSH LANGUAGE COMMISSIONER

Claimant

- and -

NATIONAL SAVINGS AND INVESTMENTS

Defendant

- and -

THE WELSH MINISTERS

Interested Party

- -

Gwion Lewis (instructed by **Morgan Cole LLP**) for the **Claimant**
Emyr Gweirydd Jones (instructed by **the Treasury Solicitor**) for the **Defendant**
The Interested Party did not appear and were not represented

Hearing date: 19 February 2014

- -

Approved Judgment

Mr Justice Hickinbottom:

Introduction

1. This is the judgment of the court to which we have both contributed.

2. In this claim, the Welsh Language Commissioner ("the Commissioner") seeks to challenge the decision of National Savings and Investments ("NS&I") to withdraw its Welsh language scheme ("the Scheme"); and its on-going failure to resume the Scheme despite the recommendation of the Commissioner that it should do so.

3. On 10 September 2013, I ordered the application for permission be set down for hearing with the substantive claim being heard immediately afterwards if permission be given; expressly on the basis that, whilst I considered the claim arguable, a rolled-up hearing would fully preserve the Defendant's position in relation to the Claimant's alleged delay in bringing the claim. We heard the application on that basis.

4. This is the first claim in the Administrative Court of which we are aware in which submissions have been made in the Welsh language, most documents and all of the written submissions being lodged in Welsh, and Counsel using Welsh or English as they chose during the course of the hearing, at which Gwion Lewis appeared for the Claimant and Emyr Jones for the Defendant. We are grateful for their clear and thorough, but focused, contributions.

The Law

5. NS&I is a state-owned savings bank established under the National Savings Bank Act 1971, as successor to the Post Office Savings Bank. It enables individual savers to lend money to the UK Government in return for interest, returns based on the stock market or prizes, and a capital guarantee. It has more than £100 billion invested by over 25m customers, 1.5m of whom live in Wales. It operates as a non-governmental Executive Agency of the Chancellor of the Exchequer, autonomous in day-to-day management and formally independent of (but ultimately accountable to) HM Treasury. It employs about 140 members of staff at its headquarters in London, but has no physical presence in Wales.

6. The office of the Commissioner was created by the Welsh Language (Wales) Measure 2011 (2011 nawm 1) ("the Measure"), legislation passed by the National Assembly for Wales ("the Assembly") on 7 December 2010 and approved by Her Majesty in Council on 9 February 2011. Whilst not affecting the status of the English language (section 1(4)), the Measure grants the Welsh language official status in Wales (section 1(1)); and, without prejudice to that general principle, gives effect to that status by requiring the setting up of a regulatory system setting standards of conduct relating to (amongst other things) the use of the Welsh language, and the treatment of the Welsh

language no less favourably than the English language, in delivering services, making policy and exercising functions or conducting undertakings (section 1(3)(e)). The Measure also creates a regime which requires particular bodies and persons to comply with those standards of conduct, including appropriate sanctions for default. The bodies to which the obligation of standards of conduct applies include Ministers of the Crown (and, expressly, HM Treasury) and government departments (section 33 and Schedule 6). However, the establishment of relevant standards is currently at an early stage – the first set were published for consultation in January 2014 – and it is not suggested in these proceedings that NS&I were in breach of any these aspects of the Measure. Nevertheless, the instigation of that system of regulation is important background to the office of the Commissioner.

7. The Welsh Language Act 1993 ("the 1993 Act") established the Welsh Language Board ("the Board") (section 1), with the function of promoting and facilitating the use of the Welsh language (section 3(1)). Specifically, in carrying out that function, the Board was required to:

> "advise persons exercising functions of a public nature on the ways in which effect may be given to the principle that, in the conduct of public business and the administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality" (section 3(2)(b)).

8. Section 5 required every "public body" which provides public services in Wales, when given notice so to do by the Board:

> "… to prepare a scheme specifying the measures which it proposes to take, for the purpose mentioned in subsection (2) below, as to the use of the Welsh language in connection with the provision of those services, or of such of them as are specified in the notice."

"The purpose" specified in subsection (2) is:

> "… that of giving effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated equally".

9. Sections 9-16 within Part II of the 1993 Act provides for the preparation, approval and revision of a language scheme. Section 9 imposes a duty on the Board to issue guidelines as to the form and content of language schemes made under the Act (section 9(1)), those guidelines requiring the approval of the Secretary of State for Wales (section 9(2)). Section 16, under the cross-heading "Amendment of schemes", provides:

> "(1) Where a scheme prepared by a public body has been approved by the Board, either the public body of the Board may at any time by notice in writing to the other propose amendments to the scheme.
>
> (2) The Board shall not exercise the power conferred by subsection (1) above except where it is satisfied that amendments of the scheme are appropriate because of changes in the functions of the public body or in the circumstances in which those functions are carried out.
>
> (3) If the amendments of the scheme are agreed by the public body and the Board, either as proposed or with modifications, the scheme shall have effect subject to the amendments
>
> (4) If the amendments are not agreed, either the public body or the Board may refer the matter to the Secretary of State.
>
> (5) …
>
> (6) On a reference under subsection (4) above, the Secretary of State may-
>
> (a) determine that no amendments should be made, or
>
> (b) himself decide upon the amendments to be made to the scheme (which may be the amendments proposed, either with or without modifications, or other amendments."

10. Sections 17-20 make provision for compliance with language schemes, as follows:

> "17 Investigations
>
> (1) Where it appears to the Board, whether on a complaint made to it under section 18 below or otherwise, that a public body may have failed to carry out a scheme approved by the Board, the Board may conduct an investigation in order to ascertain whether there has been a failure.
>
> (2) The procedure for conducting an investigation under this section shall be such as the Board considers appropriate in the circumstances of the case, and in particular an investigation may be conducted in private.
>
> …
>
> 18 Complaints of non-compliance
>
> (1) This section applies where –

> (a) a written complaint is made to the Board by a person who claims to have been directly affected by a failure of a public body to carry out a scheme approved by the Board,
>
> (b) the complaint is made within the period of twelve months beginning with the day on which the complainant first knew of the matters alleged in the complaint, and
>
> (c) the Board is satisfied that the complainant had brought the matter complained of to the notice of the public body concerned and that that body has had a reasonable opportunity to consider it and to respond.

(2) Where this section applies, the Board shall either investigate that complaint under section 17 above or shall send to the complainant a statement of its reasons for not doing so.

19 Reports on investigations

(1) Where the Board undertakes an investigation under section 17 above, it shall send a report of the results of the investigation to the public body concerned, to the Secretary of State and, where the investigation is conducted on a complaint made under section 18 above, to the complainant (whether or not the complaint is withdrawn before the investigation is completed).

(2) Where the Board considers that it would be appropriate for a report of the results of an investigation to be published, either in the form of the report made under subsection (1) above or in some other form, the Board may arrange for publication in such manner as it thinks fit.

(3) Where on completing an investigation the Board is satisfied that the public body concerned has failed to carry out the scheme, the Board may include in its reports recommendations as to action to be taken by the public body in order to remedy the failure or to avoid future failures.

20 Directions by the Secretary of State

(1) If at any time it appears to the Board that a public body has failed to take any action recommended in a report under section 19 above, the Board may refer the matter to the Secretary of State.

(2) If on a reference under this section the Secretary of State is satisfied, after considering any representations made to him by the Board and by the public body concerned, that the body

> has failed to take any action recommended in the report, he may give such directions to the public body as he considers appropriate.
>
> (3) Any directions given by the Secretary of State under subsection (2) above shall be enforceable, on an application made by him, by mandamus."

11. Section 21 of the Act refers to the Crown, and is of particular importance to the issues in this claim. It provides:

> "(1) References in this Part of this Act to public bodies do not include references to any person acting as the servant or agent of the Crown, but the following provisions of this section shall apply where such a person has adopted or proposes to adopt a Welsh Language scheme.
>
> (2) A person who has adopted a Welsh language scheme before the commencement of the Act shall send a copy of it to the Board.
>
> (3) A person preparing a Welsh language scheme after the commencement of this Act shall have regard to any guidelines issued by the Board under section 9 above, and shall before adopting it send the proposed scheme to the Board.
>
> (4) Where the Board suggests amendments to a scheme or proposed scheme sent by any person to the Board in accordance with subsection (2) or (3) above, that person shall, if he does not give effect to the amendments, send to the Board a written statement of the reasons for not doing so.
>
> (5) Sections 17 to 19 above shall apply in relation to persons to whom this section applies and to Welsh language schemes adopted by them as they apply to public bodies and schemes approved by the Board.
>
> (6) In this section "Welsh language scheme" means a scheme specifying measures which the person preparing the scheme proposes to take as to the use of the Welsh language in connection with the provision of services to the public in Wales by that person, or by others who are acting as servants or agents of the Crown or are public bodies."

Thus, a Crown body is under no obligation to adopt a Welsh language scheme, and, if it does, it is subject only to the provisions of section 17-19 and 21.

12. The powers of the Secretary of State under the above provisions were transferred to the Assembly by the National Assembly for Wales (Transfer of Functions) Order

1999 (SI 1999 No 672). The Assembly's statutory powers were transferred to the Welsh Ministers under section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006. The Welsh Ministers have been joined as an Interested Party to this claim, but have played no active part in it.

13. The Measure abolished the Board, and transferred its functions under Part II of the 1993 Act to the Commissioner. Paragraph 4 of Schedule 12 to the Measure provides that any reference to the Board in the 1993 Act is to be construed so far as it relates to a function of the Board that is transferred to the Commissioner, as being a reference to the Commissioner. This includes the specific provision for Welsh language schemes referred to above (paragraph 6). Consistent with the principles and purpose of the 1993 Act, section 3 of the Measure provides that the principal aim of the Commissioner in carrying out those duties is the promotion and facilitation of the use of the Welsh language.

The Facts

14. As we have indicated, the duty imposed on public bodies to prepare a Welsh language scheme does not apply to government departments or Crown bodies. However, during the Welsh Language Bill's second reading in the House of Lords, the then Minister of State at the Home Office (Earl Ferrers) said:

> "Both government departments and Crown bodies will produce schemes, and their schemes will be prepared in exactly the same way and to the same standards as those of other public bodies….
>
> Government departments will also submit schemes to the Welsh Language Board just as if the legislation places them under an obligation to do so. These schemes will have regard to the same guidelines as those which will apply to all other public bodies. " (Hansard HL, 19 January 1993).

15. The Board took the Government at its word. In March 1996, under section 9 of the 1993 Act, it issued guidelines, "Welsh Language Schemes: Their preparation and approval in accordance with the Welsh Language Act 1993". They said (at paragraph 1.4):

> "Government departments, Crown bodies and public bodies (who are referred to collectively as 'organisations' in the remainder of this document) are therefore under an obligation to prepare Welsh language schemes".

In other words, the Board considered that government departments and Crown bodies were under an obligation to prepare schemes as a result of the Government's commitment that they would do so, whilst other public bodies were under the obligation as a result of the statutory provisions. That policy guidance must have

been approved by the Secretary of State under section 9(2) of the 1993 Act (see paragraph 9 above). It is still in effect.

16. In accordance with the Ministerial statement made during the passing of the 1993 Act and that guidance, after obtaining approval from the Board for a proposed scheme, NS&I adopted its first Welsh language scheme in 1998. In July 2007, that was replaced by the Scheme with which we are concerned, which was also approved by the Board.

17. The Scheme was expressly prepared under section 21 of the 1993 Act, and in accordance with the guidance issued by the Board to which we have referred. The foreword states that NS&I's overall remit is to help reduce the cost to the tax-payer of Government borrowing, and thus its "single strategic objective it to provide Government with cost-effective retail finance compared with raising funds on the open market." It refers to the duty under the 1993 Act imposed on public bodies to prepare a language scheme, but also makes clear that "public bodies" here does not include those who act in a capacity which is representative of the Crown. It says that this is the scheme which NS&I has nevertheless prepared, which outlines measures to promote awareness of services provided and to improve accessibility to a wide range of services in accordance with the principle of the 1993 Act that, in the conduct of public business in Wales, the Welsh and English languages should be treated on an equal basis. The Scheme is intended to reflect the values of NS&I, namely, "Security, straightforwardness, integrity, all delivered with a human touch", when dealing with the public in Wales. It is further stated that NS&I will support the use of Welsh and will, whenever possible, help the public in Wales use Welsh as part of their day-to-day lives.

18. The Scheme then goes on to set out the detail of the way in which NS&I will deal with the Welsh-speaking public, which includes a Welsh telephone enquiry service in office hours, replying to correspondence in Welsh in the same language by employing a translation agency, facilitating the use of Welsh in public meetings in Wales, bilingual advertisements in Wales, and providing information on the NS&I website regarding its Welsh language services. It is said that the website is seen as a key channel to communicate with customers, and that NS&I would ensure that the Welsh website would include at least information then specified, which includes the Scheme, downloadable forms normally available over the counter at Post Offices, Premium Bonds checker information and product information.

19. In terms of implementation, NS&I says it will prepare and continuously update a detailed action plan to be agreed with the Board, setting out how NS&I will ensure that it will operate in accordance with the Scheme, and will monitor the progress in implementing the Scheme against the targets set out in such a plan.

20. Under the heading, "Reviewing and amending the scheme", it says:

> "We will review this scheme within four years of its coming into effect.
>
> Also, from time to time, we may need to review this scheme, or propose amendments to this scheme, because of changes to our functions, or to the circumstances in which we undertake those functions, or for any other reason.
>
> No changes will be made to this scheme without the Welsh Language Board's approval."

21. There is no direct evidence before us as to how this passage came to be included in the Scheme. However, both parties accept that in all likelihood it was proposed by the Board and agreed by NS&I; and it is likely that this was the case with most if not all schemes approved by the Board for public bodies and those Crown bodies which prepared schemes.

22. The Commissioner makes no complaint about NS&I's implementation of the Scheme in the period to 2013. In 2010, the Board wrote to NS&I about the monitoring and reporting arrangements for the Scheme. NS&I replied it would not respond substantively while it was carrying out a spending review. In response to a follow-up letter from the Board, in a letter dated 12 April 2011 NS&I said:

> "While we review our options, we'll need to make sure that the services we're able to provide to our customers is based on an assessment of relative priorities and customer take-up.
>
> We'll continue to work within the current agreed Welsh Language Scheme and we'll be in a position to confirm our longer term approach in the latter part of 2011"

23. By letter dated 13 May 2011, the Board invited NS&I to consider whether the Scheme should be amended in accordance with section 16 of the 1993 Act; but that invitation was declined in these terms:

> "As we have previously outlined, we're currently undertaking a strategic review of how we implement the outcomes from the Spending Review. This is proving a much longer and more difficult process than originally expected, and there are a wide range of issues that we need to consider in relation to many aspects of our customer offer. This includes the future shape of our commitment to the Welsh language scheme."

We know from the later correspondence that NS&I's review of its commitment to the Welsh language was prompted by the Measure, and the resulting transfer of functions from the Board to the Commissioner.

24. The Chief Executive of the Board responded promptly on 27 May 2011, stating:

> "I understand that for the reasons outlined in your letter that you are unable to consider amendments to the Welsh language scheme at this time. When it is appropriate to consider revising the scheme, the commitments in the scheme to provide Welsh language services should not be reduced. While NS&I may wish to consider the way in which those services are provided, it is important that the level of service to the public is maintained."

25. NS&I's detailed strategic review of all its operations, including the provision of Welsh language services, took some time. On 4 February 2013, its Chief Executive wrote to the Commissioner (who had by then taken over the functions of the Board), summarising the evidence it had acted on, as follows:

> "… [I]n 2012, and after 14 years of offering a Welsh Language Scheme, NS&I had 107 customers who corresponded with us in Welsh, representing 0.007% of the 1,549,577 customers who live in Wales, and only 0.06% of Welsh deposits. At an annual cost of £899 per Welsh speaking NS&I customer, or an additional cost of 3.78% for every pound of their deposits, our Welsh Language Scheme is not an effective use of public funds."

The letter also referred to the withdrawal of NS&I products for sale in all UK Post Offices which meant that NS&I no longer had any physical presence in Wales at all. It had, of course, never had offices in Wales.

26. The letter concluded as follows:

> "The conclusion [of the review] was that we should cease offering the service and NS&I has had approval from the Commercial Secretary to HM Treasury that NS&I shall cease its Welsh Language Scheme from 1 April 2013.
>
> NS&I was never under a statutory duty to prepare a scheme under the Welsh language Act (Sec 21): it prepared a scheme because of a statement made by the government of the day that bound every government department or other body under the Crown to honour the Welsh Language Act. NS&I was one of the few who took the direction from the then government at its word.
>
> In 2011, the then Economic Secretary to the Treasury, Justine Greening, in response to a question to the Chancellor of the Exchequer, told the House of Commons that: 'HM Treasury along with other government departments is not considered a

> "public body" under the provision of the Welsh language Act (Section 21), meaning that it is not required to prepare Welsh Language Schemes'. NS&I is an Executive Agency of the Treasury.
>
> …
>
> I will be writing to the Welsh First Minister, the Welsh Secretary of State and of course to our Welsh speaking customers to inform them of the planned change. "

27. The Commissioner's reply of 8 February 2013, whilst accepting the point that NS&I was under no statutory duty to prepare a scheme, said that, once a scheme had in fact been adopted by a Crown body, it became a statutory scheme and sections 17-19 of the Act were applicable where there had been a failure to comply. The letter continued:

> "There are no provisions within the Act that allow a Crown body, or any other person on its behalf, to decide not to implement an approved Welsh Language Scheme. I am not aware of any provision in any other legislation that authorises you or any other person to abolish your statutory duty to implement your Welsh Language Scheme.
>
> I am not therefore prepared to accept that your Welsh Language Scheme will cease on 1 April this year.
>
> Section 21(4) of the Act makes provision for amending Welsh Language Schemes and should you wish to do so please contact us."

28. NS&I responded on 20 March 2013, in the following terms:

> "We appreciate that the Welsh Government's vision is to see the Welsh language thrive in Wales, and that your role as Commissioner is to help achieve that vision.
>
> Therefore we have carefully considered the points you raised in your letter, and paid particular regard to their reference to the Welsh Language Act 1993. However, we have decided that NS&I will continue with its intention to cease its Welsh Language Service for the reasons stated in my letter to you dated 4 February 2013.
>
> NS&I will be informing all customers who currently deal with us in Welsh and give them due notice as specified under public law."

29. Between the date of that letter and 29 April 2013, the Commissioner received four complaints or enquiries from NS&I customers who had received the notification that their Welsh language services would no longer be offered, as well as a letter from a Member of the National Assembly for Wales expressing concern and a letter from Merched y Wawr (a substantial women's movement in Wales, with 250 branches throughout the country) expressing disappointment. The Commissioner replied to these letters, advising the correspondents to contact NS&I directly.

30. On 31 October 2012, the Secretary of State for Wales had written to the Commissioner, indicating that he was to give a lead in the UK Government on matters relating to the Welsh language. So, on 26 March 2013, the Deputy Commissioner wrote to the Secretary of State asking him to discuss the matter with the relevant Minister, saying that, even if (contrary to the Commissioner's view) NS&I could bring the Scheme to an end, the Commissioner ought to have been consulted before it did so. By letter dated 15 April 2013, the Secretary of State replied as follows:

> "As you note in your letter Crown body schemes are prepared on a voluntary basis, and, once consented to and adopted, are subject to the statutory enforcement regime set out in the Welsh Language Act 1993. However, Ministers of the Crown are able to withdraw consent for Crown body scheme at any time and, in such circumstances, the relevant Crown body would cease to be bound by the statutory requirements of the scheme.
>
> I recognise that the small number of NS&I customers who use the Welsh language service consider it valuable, and not all of NS&I's Welsh-speaking customers may have been aware of the service.
>
> I am, therefore, raising this matter with Sajid Javid, Economic Secretary to the Treasury, who is responsible for NS&I. In doing so, I have emphasised my concern that NS&I should have in place services to fulfil the requirements of NS&I customers who wish to make enquiries, or undertake transactions, through the medium of Welsh.
>
> Once NS&I have clarified their position, I will write to you again."

31. On 17 May 2013, the Commissioner wrote again to NS&I, asking for further information about the decision, namely (i) the information considered by or relied upon by NS&I prior to making their decision, other than that already disclosed in the letter of 4 February; and (ii) an explanation of the legal provision which enabled NS&I or the Commercial Secretary to HM Treasury to make a decision to revoke a scheme of a Crown body once it is in place. She sent a second letter to NS&I that day, informing them that, on the basis of the contents of NS&I's letters of 4 February and 20 March 2013 together with complaints and enquiries by the public, she had decided to undertake a statutory investigation into the implementation of the Scheme by NS&I, under section 17 of the 1993 Act.

32. NS&I replied on 24 May 2013. They said that "it was not clear" whether the Commissioner had legal powers to conduct such an investigation "as NS&I had already revoked its Welsh Language Scheme"; but NS&I would be happy for the Commissioner to conduct any such investigation on the basis of the information that she already held. With regard to the legal power to revoke the Scheme, the letter added the following:

> **"**Section 21 of the Welsh Language Act 1993 does not require NS&I to adopt a Welsh Language Scheme. As a Crown body, NS&I has a power to decide whether or not it is appropriate for it to adopt such a scheme.
>
> If it was the 1993 Act which gave NS&I that power then, in the absence of provision disclosing the contrary intention, the effect of section 12(1) of the Interpretation Act is to allow NS&I to revisit the matter 'from time to time as the occasion requires'. There is nothing in the 1993 Act which removes this default position and, therefore, it is NS&I's view that it did have the power, as a matter of law, to revoke its former Welsh Language Scheme…
>
> We did of course consider the impact of this decision on the customers affected by this change, looking closely at the number of customers using the service (see above) and whether there were viable alternatives to the scheme. In considering the impact, we recognised that there are many alternative financial services providers with a physical presence in Wales who offer full Welsh Language services. We considered at length whether it is possible to offer a partial scheme but did not believe this to be the case, given the complexity of the full operational service offering. In reaching and communicating our decision we discussed the matter with HM Treasury Minister and the Wales Office, as well as writing to the First Minister of the Welsh Government, Welsh Language Commission and to all customers affected by the change. We note that two months after sending this notification, we have received three complaints from previous customers of the service. Please rest assured that we will continue to keep the viability of re-introducing a low cost Welsh language solution under review."

33. The Commissioner duly carried out her investigation. On 18 June 2013, she sent a final report to NS&I ("the Report"), in which she concluded that NS&I had failed fully to implement the Scheme in its entirety, and had purported to revoke the scheme without the authority to make such a decision (paragraph 5.1). Express reference was made to the failure to implement two specific provisions of the Scheme, namely:

> "Policies and Initiatives: [NS&I] will support the use of the Welsh language, and wherever possible, they will help the public in Wales to use Welsh as part of their everyday lives.

> Reviewing and revising the scheme: No changes will be made to this scheme without the approval of the Welsh Language Board."

34. The following recommendations were made in section 6 of the Report:

> "[NS&I] should resume the implementation of their current Welsh Language scheme forthwith. Correspondence confirming their willingness to resume compliance with their language scheme is requested within 5 working days from receiving the Welsh Language Commissioner's final investigation report."

35. On 24 June 2013, the following response was received by the Commissioner, by email, from Ms Sarah Tebbutt, NS&I's Director of Corporate Services:

> "Thank you for your letter to Jane Platt [NS&I's Chief Executive], enclosing your final investigation report on NS&I's Welsh Language Scheme implementation. As the Director responsible, I am replying on her behalf:"
>
> In the light of your report, we are keeping the situation under review."

36. The Commissioner considered this response to a statutory investigation to be wholly inadequate; and, on 25 June, she wrote to NS&I again requesting them to state clearly by 28 June 2013:

> "… whether NS&I, in view of the Welsh Language Commissioner's investigation report, has changed its mind as to its legal power to revoke its Welsh language scheme. Secondly, does NS&I continue to rely on the legal interpretation it provided in its letter to the Commissioner on 24 May 2013…".

37. No reply from NS&I was received by that deadline; but, on 2 July, the Commissioner received a further short email from Ms Eugenie Biddle on behalf of Ms Tebbutt saying:

> "Thank you for your letter to (sic) of the 25 June. NS&I continue to keep the situation under review. We are not in a position to respond to you immediately, but hope to do so in the next two weeks."

38. The Commissioner took the view that this reply did not provide a proper time scale in which a substantive reply would be provided, and concluded that, again, NS&I had not responded to the statutory investigation appropriately. She therefore sent a pre-

action protocol letter to NS&I on 5 July 2013, stating her intention to make an application for a judicial review of NS&I's failure to resume compliance with the Scheme, unless an adequate reply to the letter was received by 16 July 2013. Her letter set out, in some detail, the legal grounds for such an application, including the failure of NS&I to consult the Commissioner or obtain her approval before deciding to revoke the Scheme.

39. A letter in reply was sent by Ms Tebbutt on that date. It said this:

> "Until now NS&I was not in a position to definitively disclose any update on our decision to close our Welsh Language Service. However, I am now able to do so.
>
> The Economic Secretary, a Treasury Minister, is the minister responsible for NS&I. He has considered the matter and decided that NS&I should publish information about its savings and investments products in Welsh. The extent of the information offered will be to inform customers about the range of products, and will be proportionate to the use of NS&I Welsh language material more generally. In addition NS&I will adhere to its Treating Customers Fairly principles.
>
> I hope you will understand that we wanted to establish our position clearly before responding to you.
>
> I will write to you by 2 August 2013 with details of the proposed Welsh information."

40. Mr Jones on behalf of NS&I does not suggest that that letter was in compliance with the requirements of Part B of the CPR Pre-Action Protocol for Judicial Review – nor could he. The reply does not begin to address the contentions in the pre-action letter, and indeed does not refer to the Scheme or NS&I's challenged decision to revoke it, at all.

41. Consequently, the Commissioner filed this claim for judicial review on 25 July 2013.

The Grounds

42. Three grounds were advanced by Mr Lewis as to why the revocation of the Scheme was unlawful:

Ground 1: Having adopted a Welsh language scheme under the 1993 Act, NS&I has no legal power to revoke it.

Ground 2: NS&I's decision to revoke the Scheme frustrates the legislative purpose of Section 21(5) of the 1993 Act.

Ground 3: In the face of NS&I's agreement in the Scheme not to make any changes to it without the approval of the Commissioner, the failure of NS&I to consult with the Commissioner and/or obtain her approval before the decision to withdraw the Scheme was unlawful because (i) it was in contravention of the procedural legitimate expectation of the Commissioner, (ii) in making the decision, NS&I failed to take into account that agreement as a relevant consideration, and (iii) it rendered the decision irrational.

43. Mr Lewis readily accepted that Ground 2 is in substance one facet of Ground 1 – because they are both concerned with statutory interpretation, and he submits the terms of section 21(5) are important support for the proposition that, as a matter of construction, the statutory scheme does not allow a Crown body to revoke a language scheme it has adopted. Grounds 1 and 2 can therefore conveniently be dealt with together.

Grounds 1 and 2

44. Two relevant principles of statutory interpretation were not in dispute between the parties, and are uncontroversial. First, a public body created by statute can only do that which it is authorised to do by positive law (see, e.g., R v Secretary of State for Health ex parte B [1999] 1 FLR 656 per Scott Baker LJ at 668G). Second, statutory provisions should be interpreted in accordance with the purpose and intention of Parliament as expressed in the words they used. As Lord Bingham said in R (Quintavalle) v Secretary of State for Health [2003] UKHL 13 at [8]:

> "The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions to be construed… Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose."

Lord Steyn at [21] emphasised that there was a "shift towards purposive interpretation", adding:

> "... statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning".

45. As we have indicated, the 1993 Act does not impose a *duty* on Crown bodies to adopt a Welsh language scheme (see paragraph 11 above). It was correctly common ground before us that, although the Act does not expressly give Crown bodies a *power* to adopt a scheme, such a power is implicit: by section 21(5), sections 17-19 apply to

Crown bodies and those sections can only apply if the relevant body can adopt and has adopted a scheme under the Act.

46. However, Mr Lewis and Mr Jones there part company, Mr Lewis submitting that, once a Crown body has adopted a scheme, it has no power to revoke it; and Mr Jones contending the contrary.

47. For a "public body" (not, of course, including a Crown body), once given notice to do so, it is required to adopt a scheme; and, once it has done so, there are detailed compliance provisions in sections 17 onwards. There is no ability to revoke the scheme, only to amend it under the provisions of section 16.

48. Mr Lewis submitted that section 21(5), which applies section 17-19 to Crown bodies which adopt a scheme, is inconsistent with the proposition that a Crown body, once it has adopted a scheme, is free to revoke it when it wishes; because such a body could thereby frustrate the compliance provisions to which it is subject, by simply revoking the scheme in the face of a Commissioner's investigation. That cannot have been the intention of Parliament. Therefore, the power to revoke a scheme cannot be implied. You cannot imply a power where that power would contrary to the express statutory provisions involved.

49. Mr Jones submitted that section 21(5) has to be read in the context of Part II of the 1993 Act read as a whole. Crown bodies must be able to adapt the way that they carry out their continuing functions; and the Act clearly intends that they are to be the subject of a less onerous regime than other public bodies. Importantly, Parliament has excluded them from the detailed provisions relating to amendment of schemes (section 16), and the possibility of (now) the Welsh Ministers having the power to give enforceable directions to a Crown body in relation to recommendations of the Commissioner after an investigation (section 20). Section 21(4) enables the Commissioner to suggest amendments to a Crown body scheme and that body must explain to the Commissioner why they do not take in such amendments, if that be the case – but the Commissioner has no power to require the body to amend its scheme. As section 16 does not apply, there is no mechanism in the Act for a Crown body scheme to be amended. The only way in which change can be made to such a scheme is by the body putting forward a new scheme, to be adopted under the provisions of section 21 relating to new schemes. Once it is accepted that Crown bodies have the right to adopt new schemes, he submitted, it must follow that there is an implied power to revoke existing schemes because the two cannot co-exist. If Parliament had intended that an exercise of the implied power to adopt a scheme should give rise to a duty to maintain a scheme permanently, it would have expressly said so. There is good practical reason why it did not do so; because such entrenchment might deter Crown bodies from adopting schemes at all, and so frustrate the purpose of the 1993 Act. The purpose of section 21(5) is to make Crown bodies accountable, rather than to limit their powers in the way suggested by Mr Lewis. Whilst the Commissioner may propose amendments to a proposed new scheme, or to an existing scheme, the contents of the scheme are always a matter for the Crown body to decide.

50. In support of that contention, Mr Jones relied upon section 12(1) of the Interpretation Act 1978, which provides:

> "Where an Act confers a power or imposes a duty it is implied, unless the contrary intention appears, that the power may be exercised, or the duty is to be performed, from time to time as occasion requires."

The purpose of section 12(1) is to ensure that those charged with using powers and performing duties of a public nature are aware of the continuing nature of those powers and duties (see, e.g., In Re Wilson [1985] AC 750, R v Ealing LBC ex parte McBain (1985) 1 WLR 1351, R (Francis) v Secretary of State for the Home Department [2004] EWHC 2143 (Admin)). Mr Jones submitted that, by virtue of this provision, the implied power to have a Welsh language scheme is permanently available for Crown bodies to use as required.

51. Of these opposing submissions, we prefer those of Mr Jones. There are clear differences in the way in which the 1993 Act treats public bodies on the one hand, and Crown bodies on the other. Whilst the purposes of promoting use of the Welsh language and the principle of equality are applicable to all such bodies, the regime for fulfilling those purposes in respect of public bodies is different from – and far more stringent than – that in respect of Crown bodies. Under the provisions of the 1993 Act, the latter need not adopt a scheme at all. If they choose to do so, it is clearly desirable that it is a scheme which fulfils those purposes; and that is what sections 21(3) and (4) are designed to achieve, by giving the power to the Commissioner to suggest amendments. However, she has no power to force a Crown body to accept her suggestions. Her role here is one of guidance, encouragement and persuasion. Ultimately, however, it is for the Crown body to decide whether or not to accept any amendments. We consider it is quite clear that the statutory regime is as Mr Jones contends; and the flexibility a Crown body has in respect of Welsh language schemes is not lost if and when that body adopts a scheme. Such a body retains the ability to dictate the contents of the scheme, including whether or not to maintain a scheme, in the future; although, of course, in the light of the suggestions and guidance given by the Commissioner under section 21. Whilst we do not consider it necessary to rely upon it – because we consider the wording of the statute is sufficiently clear without – we note that section 12(1) of the Interpretation Act 1978 also supports Mr Jones' submission.

52. We do not consider that section 21(5) of the 1993 Act is inconsistent with that interpretation. Once a scheme is adopted by a Crown body, section 21(5) gives to the Commissioner powers of investigation and recommendation in respect of apparent failures to implement the scheme, but no further powers. The exercise of those powers enables the Crown body, and the public, to be made aware of any failures as found by the Commissioner and of any recommendations by the Commissioner as to actions to be taken in order to remedy the failure or (if the scheme is still extant) avoid future failure. It is then left to the Crown body to decide whether or not to implement those recommendations.

53. Whilst, for a Crown body, the section 20 procedure for requiring compliance does not apply (see paragraph 10 above), the Commissioner holds a statutory office, and Parliament has given to her the statutory function to advise, give guidance and make recommendations in relation to the offering of services in the Welsh language. No Crown body could properly fail to give substantial weight to her views, and particularly her recommendations following a statutory investigation. Nor can a Crown Body avoid the compliance provisions of sections 17-19 of the 1993 Act by simply revoking a scheme, and thereafter relying upon the proposition that the powers of the Commissioner under sections 17-19 are defeated by the fact of that revocation. Even where a Crown body revokes its scheme, those provisions remain in place to enable the Commissioner to investigate complaints etc and make recommendations in relation to the scheme. Those powers are clearly not vitiated by revocation of the scheme. They continue, just as disciplinary procedures continue after an individual has left his or her employment or profession. It is inconceivable that Parliament could have intended otherwise.

54. For the reasons we have given, the power which is implied into the 1993 Act for a Crown body to adopt a Welsh language scheme carries with it an implied power for that body also to withdraw or revoke such a scheme.

55. For those reasons, Ground 1 and 2 fail.

Ground 3

56. Grounds 1 and 2 turn on statutory interpretation. Ground 3 focuses on the terms of the Scheme itself; and particularly the following sentence, under the heading, "Reviewing and amending the scheme":

> "No changes will be made to this scheme without the Welsh Language Board's [now, of course, the Commissioner's] approval."

Mr Lewis submitted that that amounted to a firm and unequivocal promise by NS&I to the Commissioner that it would not change the Scheme without her approval; or, at least, a promise not to do so without consulting her. It was a promise dishonoured.

57. The law is again well-settled: in short, "a public authority is bound by its undertakings as to the procedure it will follow, provided they do not conflict with its duty" (Attorney General for Hong Kong v Ng Yuen Shiu [1983] 2 AC 629 at page 638G).

58. Where a promise as to how a public body would behave in future when exercising a statutory function is in issue, the role of the court was considered by the Court of Appeal in R v North East Devon Health Authority ex parte Coughlan [2001] QB 213 at [55] and following, a case relied upon by both parties before us. In [57], Lord Woolf MR identified three possible outcomes. The court may decide that (i) the

public body is only required to bear in mind its previous policy, giving it the weight it considers appropriate, before deciding whether to change course; (ii) the promise induces a legitimate expectation of a procedural benefit, e.g. being consulted before a decision is taken; and (iii) the promise has induced a legitimate expectation of a substantive benefit, and to frustrate that expectation is so unfair as to amount to an abuse of power.

59. Mr Lewis submitted that the Scheme in this case gave rise to (ii), namely a procedural expectation that, prior to NS&I making any change to the Scheme, it would consult the Commissioner and obtain her approval. His primary case was based upon consultation. He accepted that his case with regard to approval was more challenging; but he nevertheless submitted that the NS&I had unequivocally promised not to change the scheme without the Commissioner's approval, and it should be kept to that promise. That would not be impracticable, because, if the Commissioner withheld her approval unreasonably, then that could be subject to challenge by way of judicial review.

60. NS&I through Mr Jones conceded that the Scheme did give rise to a legitimate expectation that the Commissioner would be consulted before any change to it was made, but he submitted there was no wider legitimate expectation. For the following reasons, we agree.

61. In Coughlan, Lord Woolf expanded on procedural legitimate expectation, as follows:

> "57. ... [T]he court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontentious that the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it... in which case the court will itself judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires.
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> …
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> 62. There has never been any question that the propriety of a breach by a public authority of a legitimate expectation of the second category, of a procedural benefit – typically a promise of being heard or consulted – is matter for full review by the court. The court has, in other words, to examine the relevant circumstances and to decide for itself whether what happened was fair…
>
> …
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> 64. It is axiomatic that a public authority which derives its existence and its powers from statute cannot validly act outside those powers…. Since such powers will ordinarily include

> anything fairly incidental to the express remit a statutory body may lawfully adopt and follow policies (British Oxygen Co Ltd v Board of Trade [1971] AC 610) and enter into formal undertakings. But since it cannot abdicate its general remit, not only must it remain free to change policy; its undertakings are correspondingly open to modification or abandonment. The recurrent question is when and where and how the courts are to intervene to protect the public from unwarranted harm in the process.…
>
> 65. The court's task in all these cases is not to impede executive activity but to reconcile its continuing need to initiate or respond to change with the legitimate interest or expectations of citizens or strangers who have relied, and have been justified in relying, on a current policy or an extant promise. The critical question is by what standard the court is to resolve such conflicts.
>
> …
>
> 82. The fact that the court will only give effect to a legitimate expectation within the statutory context in which it has arisen should avoid jeopardising the important principle that the executive's policy-making powers should not be trammelled by the courts… Policy being (within the law) for the public authority alone, both it and the reasons for adopting or changing it will be accepted by the courts as part of the factual data – in other words, as not ordinarily open to judicial review."

62. The undertaking made by NS&I not to change the Scheme without the approval of the Commissioner – made with government blessing, and on the basis of then-current government policy – was clear and unequivocal. It effectively incorporated promises to consult with the Commissioner over any change, to seek her approval and not to make any change without that approval. However, in our judgment, the government's policy upon which the promise not to change the Scheme without the Commissioner's approval was made was not and could not be entrenched: in light of the statutory provisions, the government was entitled to change it. Entrenchment would have been inconsistent with NS&I's obligation to keep policies under review. As Lord Woolf said in Coughlan (at [73]):

> "[T]he individual can have no higher expectation than to have his individual circumstances considered by the decision-maker in the light of the policy then in force'"

We do not consider that the theoretical possibility of judicial review of a decision by the Commissioner to withhold approval is sufficient to reconcile that inconsistency: public bodies, including government departments and Crown bodies, must be able to change policy to fit changing circumstances, including changes in political priorities.

63. Therefore, we do not accept Mr Lewis's submission that the Scheme created a legitimate expectation that NS&I would not make any changes to it without obtaining the approval of the Commissioner.

64. However, Mr Jones conceded that it did properly lead to a legitimate expectation in the Commissioner that NS&I would not make any changes to the Scheme before consulting her. In our view, that concession was very properly made.

65. If NS&I wished to alter the terms of the Scheme as to the requirement for Commissioner approval on the basis of a change of policy, then that change itself was, in our view, clearly one that fell within paragraph 57 of Coughlan as requiring prior consultation. By its promise in the Scheme, and its subsequent actions and correspondence, NS&I had created circumstances in which the Commissioner was reasonably entitled otherwise to rely on the continuance of the Scheme. However, there was no attempt by NS&I to consult with the Commissioner over that important change of policy, about which, it is equally clear, the Commissioner would properly have had something to say. Certainly – and obviously – it required NS&I to consult the Commissioner if it wished to make any substantive change to the Scheme, in terms of level of Welsh language service provided, let alone revoking the Scheme all together.

66. As we have said, NS&I through Mr Jones accepts that it had a duty to consult the Commissioner before making any change. However, Mr Jones submitted that (i) such consultation in fact took place, and (ii) if it did not, any lack of consultation was immaterial, because NS&I well-knew the Commissioner's stance (i.e. she was unwilling to accept a reduction in Welsh language services) and NS&I, backed by a decision from HM Treasury, were determined to bring the Scheme to an end.

67. However, we cannot accept those submissions.

68. With regard to the suggestion that adequate consultation in fact occurred, again the law is well-established, being formulated by Stephen Sedley QC in argument in R v London Borough of Brent ex parte Gunning (1985) 84 LGR 168, as follows:

> "First… consultation must be made at a time when proposals are still at a formative stage. Secondly… the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Thirdly… adequate time must be given for consideration and response and, finally, fourthly… the product of the consultation must be conscientiously taken into account in finalising any… proposals."

That formulation has been approved as "the classic statement of the basic requirements of consultation" by Auld LJ in R v London Borough of Barnet ex parte B [1994] ELR 357 at page 370H-371A, and in many cases since.

69. Mr Jones relied upon the correspondence between NS&I and the Commissioner and her Deputy, to which we refer above (paragraphs 22 and following). He further submitted that the Commissioner was given an opportunity to express a view on the decision during the period between NS&I's letter of 4 February 2013 and the implementation of that decision on 22 April 2013. He also referred to the fact that NS&I obtained legal advice in respect of its proposed course of action, which he also prays in aid.

70. However, that does not arguably come anywhere near satisfying the procedural requirements for consultation. Mr Jones, frankly, conceded that a decision to revoke the Scheme had been taken by (or with the approval of) HM Treasury before the 4 February 2013 letter was sent, i.e. before any possible consultation could have taken place. Mr Jones, again frankly if euphemistically, accepted that NS&I "did not cover itself in glory" in the way in which it then engaged with the Commissioner, and responded to the Commissioner's concerns, advice and recommendations, set out in her correspondence, the report following her statutory investigation and in reply to the pre-litigation letter written on behalf of the Commissioner. On any view, NSI's engagement with the Commissioner was wholly inadequate. At a time when the Commissioner was attempting to perform her statutory functions, and trying to engage with NS&I, the responses she received from senior executives within NS&I were brusque, inappropriate, discourteous and disrespectful of the Commissioner's office and her functions. It is in our view disappointing – others might use stronger terms – that, in exercising its statutory functions, one statutory body would treat another statutory body, attempting to exercise its own statutory functions, thus. Good government requires mutual respect between arms of government and bodies tasked by the elected government to perform public functions, that appears to have been totally lacking on the part of NS&I in this case.

71. In any event, in our view the correspondence relied upon by Mr Jones clearly did not amount to sensible consultation. As Mr Lewis submitted, NS&I did not say in the 2010 and 2011 correspondence that it intended to withdraw the Scheme, but if anything gave the contrary impression. The period from February to April 2013 was not a consultation period as NS&I had already stated that the decision would be implemented in April, and NS&I were set against engagement with the Commissioner. Whatever comments the Commissioner might have made, there was no intention on NS&I's part to reconsider its stance in a "fair, open-minded and comprehensive" manner (see R (Banks) v Secretary of State for the Environment, Food and Rural Affairs [2004] EWHC 416 (Admin)); and it did not do so. Insofar as any opportunity was provided to the Commissioner to volunteer her views to NS&I, that was not tantamount to any form of consultation at all. Any advice NS&I received upon its ability to revoke the Scheme could not alter the nature of any legitimate expectation that had been engendered in the Commissioner.

72. In all the circumstances, the process fell very far short of proper and lawful consultation; and, after introducing a Welsh language scheme for the provision of its important and valuable services in Wales in which it promised to make no changes without the approval of the Commissioner, and maintaining that Scheme successfully for some 14 years, the conduct of the NS&I in giving some two months' notice of its

decision to withdraw that scheme, without consulting the Commissioner and without engaging with her in a meaningful way, falls substantially below her legitimate expectation that she would be consulted on any proposed change.

73. Nor, in our view, does Mr Jones' submission that any failure to consult was immaterial have more force. As is clear from Coughlan, the court's task is to consider whether what happened was fair. In the absence of proper consultation, it was not. In those circumstances, the resulting decision – to revoke the Scheme – is unlawful irrespective of prejudice.

74. But in any event, it is not at all clear on the evidence that the failure was, as a matter of fact, immaterial. Although the Commissioner initially indicated that no reduction in the level of Welsh language services would be accepted, that was never properly tested because of the failure of NS&I to consult properly. If NS&I had engaged with the Commissioner as it should have done, it may be that a compromise between it and the Commissioner might have been reached, e.g. in the form of other ways of providing its services in the Welsh language. We do not know: but we are not satisfied that, but for the unlawfulness, NS&I's decision would necessarily have remained the same. If the consultation had been genuine, the outcome might have been different. That is the whole point of consultation, and the procedural requirement for it.

75. The two other ways in which Mr Lewis sought to put this third ground provide alternative bases for the same ground. Having found as we have with regard to legitimate expectation, it is not necessary for us to consider those alternatives further, except to say that we agree that, in the circumstances of this case, no reasonable public body would announce such a substantial change as that announced by NS&I without at least consulting the body statutorily responsible for supervising such schemes. That cannot be overcome by arguing that other aspects of the decision are reasonable.

Delay

76. By CPR Rule 54.5(1), a claim for judicial review must be issued promptly, and "in any event not later than 3 months after the grounds to make the claim first arose". NS&I's decision to revoke the Scheme was notified to the Commissioner by the letter of 4 February 2013, and confirmed (following the Commissioner's representations) by the letter of 20 March 2013. NS&I ceased operating the Scheme from 22 April 2013. The claim was issued on 25 July 2013.

77. Mr Jones submitted that the claim was thus issued out of time, and the court should not extend time. He said that the letter of 4 February 2013 was, contrary to the submission of Mr Lewis, more that just a preparatory step: it was the announcement of a decision which had been made, albeit one which involved delayed implementation. The subsequent investigation of the Commissioner was, in proper context, "meaningless" – because the Scheme had by then been brought to an end, and

the only point taken by the Commissioner was the legality of NS&I's decision to bring it to an end as it did. There is no justification for the delay; and NS&I have suffered prejudice because of that delay, because it will now be more expensive to re-gear the Scheme than it would have been if the claim had been brought promptly.

78. Mr Jones accepted, rightly, that the merit of the claim is an important consideration when the court is considering exercising its discretion to extend time for a person to issue a judicial review. We consider the Commissioner's challenge on the basis of lack of consultation to have been a strong one: NS&I accepted that it had a duty to consult the Commissioner, and in our view the suggestion that it had satisfied that obligation was very weak.

79. In any event, we must look at the cause of the delay. In this case, as the chronology we have set out shows, the time between the decision and the issue of this claim was spent by the Commissioner trying to engage with NS&I. Judicial review is a remedy of last resort, and in our view it was reasonable for the Commissioner to conduct a statutory investigation and wait to see if her recommendations would be accepted, before filing a claim. Having received complaints, the Commissioner was required either to investigate those complaints under section 17, or to inform the complainants why no such investigation would be carried out by the Commissioner. Although a Crown body can be put under no compulsion to accept any recommendations, the Commissioner was right to assume that a statutory body such as NS&I would consider her formal recommendations with respect and care; and that might have led to a resolution of the issues between NS&I and her, at least to the extent that NS&I would properly engage with the Commissioner. It was not the Commissioner's fault that NS&I set its face against such proper engagement, and failed properly to consider her recommendations and failed properly to respond to the pre-action letter. Furthermore, when it became apparent that NS&I was not going to take the recommendations seriously, there was a need for the Commissioner to discuss the case at appropriate level, and to take legal advice. We do not consider it can be said that the Commissioner acted unreasonably in any of this. The unreasonable conduct stemmed from NS&I.

80. Applying the principles for the exercise of such discretion set out by Maurice Kay J (as he then was) in R v Secretary of State for Trade and Industry, ex p. Greenpeace [2000] Env LR 221 at pages 261-4, in our view there was a reasonable objective reason why the application was not instigated within three months, namely the Commissioner's reasonable decision to hold a statutory investigation into the matter under section 17; and we consider the claim was lodged with reasonable promptness in all the circumstances of the case.

81. So far as any prejudice is concerned, we do not accept that the position is as bleak as NS&I contend. The Scheme itself indicated that no changes in IT would be required to implement it, that a full Welsh language telephone service would not be offered, and the only commitment in respect of the recruitment of Welsh speaking staff was the need to re-evaluate staff who are Welsh speakers according to customer need. The reinstatement of the provision of Welsh forms and the Welsh web site has not been

shown to be a difficult task. Mr Jones did not suggest that the Commissioner was bound to issue proceedings prior to NS&I withdrawing the Scheme, which it did on 22 April 2013. Reinstatement of the Scheme was therefore always going to be required. We are entirely unpersuaded that NS&I have suffered any real prejudice by virtue of the delay – a few months at most – in issuing this claim.

82. Finally, it is a matter of public interest and importance, especially to those who use the Welsh language services of this and other Crown bodies, that issues raised in this case are considered and determined by the court.

83. For those reasons, we are persuaded that we should exercise the court's discretion and extend the time for lodging this claim so that it was in fact lodged in time.

Conclusion

84. In conclusion, we have found the decision of NS&I to revoke its Welsh language scheme from 22 April 2013 to have been unlawful. This being a rolled-up hearing, we shall therefore grant permission to proceed out of time; allow the substantive application; enter judgment for the Claimant; and quash that decision. That leaves the Scheme in operation, unless and until NS&I decides to change it, after a process which is lawful within the terms of this judgment.