

## **CODE OF BEST PRACTICE FOR LAW COMMISSIONERS**

1. The Law Commission is a statutory body, created by the Law Commissions Act 1965 ("the 1965 Act"). It is an advisory non-departmental public body, sponsored by the Ministry of Justice, and is independent of Government.
2. This code sets out the responsibilities of the Law Commissioners in regards to their role as public servants. This code should be read alongside the Cabinet Office's 'Code of Conduct for Board Members of Public Bodies'<sup>1</sup> published in June 2011.

### **Public service values**

3. The Government expects all holders of public office to work to the highest personal and professional standards. The Law Commissioners are expected at all times to:
  - observe the highest standards of impartiality, integrity and objectivity in relation to the work of the Commission; and
  - be accountable to the Lord Chancellor, to Parliament and to individual citizens. for the activities of the Commission, the proper use of public funds and the achievement of objectives.

### **Relationship with the Ministry of Justice**

4. The Lord Chancellor is accountable to Parliament for the activities and performance of the Law Commission.
5. The Lord Chancellor has a number of statutory duties and powers set out in the 1965 Act in relation to the Law Commission, including:
  - appointing the Chairman and other Commissioners;
  - appointing the Chief Executive and other Commission staff;
  - laying before Parliament programmes of law reform prepared by the Law Commission and approved by him;
  - laying before Parliament proposals for law reform formulated by the Law Commission pursuant to such programmes, under section 3 of the 1965 Act;
  - laying before Parliament the Law Commission's annual report; and
  - reporting to Parliament on an annual basis on the implementation of the Law Commission's proposals.

### **The role of the Chairman and other Commissioners**

6. Responsibilities of the Chairman include:
  - taking the lead in formulating the Commission's strategy for discharging its statutory duties;
  - leadership of the team of Commissioners;

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<sup>1</sup> [http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/code-of-conduct\\_tcm6-38901.pdf](http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/code-of-conduct_tcm6-38901.pdf)

- overseeing the delivery of planned results by receiving regular reports on progress from Commissioners;
- regularly appraising the performance of the other Commissioners;
- representing the views of the Commission to those outside, including the general public, and promoting the role and work of the Commission;
- proactively working to secure the acceptance and implementation by Government of Law Commission reports;
- being the main channel for communications between the Commission and the Lord Chancellor;
- ensuring excellent relations with other UK Law Commissions, especially with regards to joint law reform projects; and
- special responsibility for oversight of the Commission's consolidation and statute law revision work.

Responsibilities of the Chairman and other Commissioners include:

- ensuring that the Commission operates within the limits of its statutory authority;
  - establishing the overall strategic direction of the organisation;
  - liaising with the Chief Executive (who is the budget holder) in his or her responsibilities for the Commission's overall organisation, management, staffing, allocation of resources and financial matters;
  - liaison with the team manager who has management responsibility in his or her team;
  - ensuring that the Commission observes high standards of governance at all times;
  - complying with the obligations under the Data Protection Act 1998, the Environmental Information Regulations and the Freedom of Information 2000 Act, including prompt response to public requests for information; and
  - ensuring that the Commission properly takes account of the diverse needs of all those affected by its proposals.
7. Normally, communications between the Commission and the Lord Chancellor will be through the Chairman except where the Commission has agreed that an individual Commissioner or the Chief Executive should act on its behalf. Nevertheless, an individual Commissioner has the right of access to the Lord Chancellor on any matter, which he or she believes raises important issues relating to his or her duties as a member of the Commission. In such cases the agreement of the rest of the Commission should normally be sought. The main point of contact between the Commission and the Ministry of Justice on day-to-day matters will be the Chief Executive or another member of staff who is authorised to act on behalf of the Commission.
8. The Chairman and Chief Executive will ensure that all other Commissioners, when taking up office, are fully briefed on their duties and responsibilities. The Chairman and other Commissioners will each have a copy of this Code of Best Practice and other relevant background material such as the Commission's latest Programme of Law Reform and Annual Reports.

## Strategic planning and governance

9. Commissioners are responsible for the development of the Commission's programme of work and the delivery of law reform projects. They assist the Chief Executive in establishing the Commission's overall strategic direction. One of the key ways in which they do this is through input into the production of strategic plans, including the Commission's programme of law reform and its annual business plans. The process of preparing these documents provides an opportunity for determining the Commission's key strategic objectives, both in terms of law reform work but also in regards to corporate initiatives. The Programmes of law reform are approved by the Secretary of State and laid before Parliament. Each programme usually spans three years. The Commission's business plans are prepared annually, and are published on the Law Commission website.
10. Commissioners also liaise with the Chief Executive in respect of her responsibilities for the Commission's overall organisation, management, staffing, allocation of resources and financial matters.
11. Collectively and individually, Commissioners are responsible for ensuring that the Commission maintains high standards of governance at all times and operates within the limits of its statutory authority.

## Delegation

12. The Commission may decide to delegate responsibility for specified matters to individual Commissioners or groups of Commissioners. Decisions taken by individual Commissioners or groups of Commissioners under delegated powers should be recorded in written minutes available to the Commission as a whole.

## Responsibilities of individual Commissioners

13. Individual Commissioners should be aware of their wider responsibilities as members of the Commission. Like others who serve the public, they should follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life. The Principles are printed at **appendix 1**.

In addition, Commissioners must:

- undertake on appointment to comply at all times with this Code of Best Practice;
  - act in good faith and in the best interests of the Commission;
  - not misuse information gained in the course of their appointment to the Commission for personal gain or for political purposes, nor seek to use the opportunity of the appointment to promote their private interests (see **appendix 2**); and
  - ensure that they comply with the rules on the acceptance of gifts and hospitality (see **appendix 2**).
14. Commissioners should abstain from all controversial political activities. Commissioners should not occupy paid party political posts or hold particularly sensitive or high profile unpaid roles in a political party.

## **Handling conflicts of interests**

15. The Chairman and other Commissioners should declare any personal or business interests which may conflict with their responsibilities as Commissioners as they arise. Rules of conduct are drawn up and maintained to ensure that such conflicts are identified at an early stage and that appropriate action can be taken to resolve them. The current rules are at **appendix 2**.
16. The rules of conduct include the keeping of a register of interests appropriate to the Commission's activities. The register will list direct or indirect pecuniary interests which members of the public might reasonably think could influence them in the performance of their official duties. The register of interests may include also non-pecuniary interests of Commissioners which relate closely to the Commission's activities.
17. The register of interests will be made open to the public. Details of how access can be obtained are to be made available widely and will be included in the Commission's annual reports. Commissioners in any case will be required to update the register as changes occur.

## **Openness and responsiveness**

18. Generally, it is the Commission's policy to be as open as possible with those who have a legitimate interest in the operation of the Commission and the Commissioners' role.
19. Commissioners will need to act consistently with the nature of the Commission's business. With the Chief Executive, they should ensure that the Commission can demonstrate that it is using resources to good effect, with propriety, and without grounds for criticism that public funds are being used for private, partisan or party political purposes. Subject to the possible need for confidentiality, Commissioners and the Commission's staff should conduct all their dealings with the public in an open and responsible way and ensure compliance with the principles of the Freedom of Information Act 2000.
20. The agendas and minutes of Commissioners' meetings are made available on the Law Commission website. Occasionally items may be redacted prior to publication due to their sensitive nature. This will be agreed with Commissioners at the relevant meeting.
21. All other minutes/notes of meetings, discussion papers, draft reports etc relating to law reform projects will usually remain confidential until after the publication of the final report. This is to allow uninhibited and candid discussion (e.g. about the formulation of policy) while projects are 'live'. Even after the publication of the final report, there will be documents that remain confidential – for example, minutes discussing different policy proposals and protectively marked documents received from government departments. In addition, any information that has been provided by the public and which contains personal data must be handled sensitively and in line with the requirements of the Data Protection Act 1998.

22. Other information will be released/published as detailed in the Law Commission's Publication Scheme and/or as determined by the Chief Executive. This includes information on our organisational structure, our budget and spending, and our performance against our objectives.

### **Evidence to Select Committees**

23. Commissioners may on occasion be invited to give evidence to Select Committees. Departmental Select Committees have an important role in examining the expenditure, administration and policies of NDPBs. Guidance on what to do should you be asked to appear before a Select Committee is provided at **appendix 3**.

### **Accountability**

24. Commissioners are responsible for ensuring that the Commission does not exceed its powers or functions, whether defined in statute or otherwise, and must accept any limitations on the authority given to the Chief Executive to incur expenditure. Advice on these matters is provided by the Chief Executive.
25. The Chief Executive has a duty to ensure the safeguarding of public funds and the proper custody of assets which have been publicly funded. The Chief Executive should ensure that the Commission at all times conducts its operations as economically, efficiently and effectively as possible, with full regard to the relevant statutory provisions.

### **The role of the Chief Executive of the Commission**

26. The Chief Executive has responsibility supporting the Commissioners in determining the strategic direction of the Commission, for the overall organisation, management, staffing and allocation of resources of the Commission and for the Commission's procedures in financial and other matters, including conduct and discipline of the Commission's staff. He or she is responsible for promoting the efficient and effective use of staff and other resources throughout the organisation. The Chief Executive is expected to consult Commissioners when appropriate in fulfilling these responsibilities. Commissioners are expected to support the Chief Executive in undertaking them.
27. The Chief Executive is designated by the Ministry of Justice as the budget holder for the Commission. He or she is responsible to the accounting officer of the Ministry of Justice for the resources under his or her control.
28. The Chief Executive should ensure that the Commission has timely and regular meetings throughout the year and that the minutes of meetings accurately record the decisions taken and, where appropriate, the views of individual Commissioners.

### **Employees**

29. The Civil Service Code covers arrangements for members of staff to raise concerns about propriety with a nominated official in the Law Commission in the

first instance and subsequently, if necessary, with a nominated official in the sponsor department (the Ministry of Justice).

Last updated December 2014

## Appendix 1

### Committee on Standards in Public Life: The Seven Principles of Public Life

The Committee has set out '**Seven Principles of Public Life**' which it believes should apply to all in the public service. These are:

#### **Selflessness**

Holders of public office should act solely in terms of the public interest.

#### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

#### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

#### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

#### **Honesty**

Holders of public office should be truthful.

#### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

**RULES OF CONDUCT FOR LAW COMMISSIONERS: CONFLICTS OF INTERESTS**

**General Principles**

1. Commissioners are expected to avoid taking part in activities which might cause a conflict with their membership of the Commission. The general principle to be applied is that Commissioners must not make use of their appointment to the Commission to further their private interests, or receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity.
2. It is possible for a conflict of interest to arise for any Commissioner. Should such a conflict arise, the Commissioners would need to take appropriate action at an early stage to ensure that the integrity of the Commission is maintained.
3. Each Commissioner has a personal duty to ensure that his or her actions uphold the highest standards and should immediately raise any concerns of conflict either at, or preferably before, a meeting. The facts raised will be recorded in the minutes. It may mean that a Commissioner with a conflict of interest will need to withdraw from the discussion on the particular issue concerned. Interests disclosed at meetings in relation to the matters being discussed include other interests besides pecuniary interests. They also include the interests of immediate family members and persons living in the same household. The Commissioners will want to minimise the instances of conflicts arising, or appearing to arise, between Commissioners' private interests and their public duties. If instances of conflict arise, the Commissioners will ensure that the conflicting interest neither has, nor appears to have, any influence upon their decision making.

**Political Activities**

4. Any Commissioner who is doubtful about the propriety of any political activity, should seek guidance in the first instance from the Chief Executive.

**Declaring Financial or Other Interests**

5. All Commissioners are required to declare details of those financial or other interests, where those private interests relate to their duties as Law Commissioners. The register will list direct or indirect pecuniary interests which members of the public might reasonably think could influence them in the performance of their official duties. The details of financial interests will be updated each year and kept by the Chief Executive in a Register of Interests. Commissioners in any case will be required to update the register as changes occur. The categories of those financial interests to be declared include:
  - Remunerated office or profession;
  - Directorships (whether remunerated directly or indirectly);
  - Shareholdings and other financial interests should be declared if the value of the Commissioner's interest is likely to be affected by the work of the



Commission or if the fact of the interest is likely to give rise to the perception of a conflict of interests. As well as financial interests, non-pecuniary interests should be recorded in the Register where they relate closely to the Commission's activities. Some interests may become relevant only unexpectedly and, although they should be declared if relevant business arises, may be omitted from the Register.

### **Rules on acceptance of gifts and/or hospitality**

6. Commissioners should not accept any gift/hospitality or services from anyone which would, or might appear to, place him/her under an obligation. Offers of gifts/hospitality or services, save those which are excepted such as conventional hospitality, isolated gifts of a trivial character or inexpensive seasonal gifts, such as calendars, should be reported to the Chief Executive and recorded in a hospitality register maintained by the Chief Executive. The Register will be open for public inspection upon request.

### **Application of Rules of Conduct**

7. Any Commissioner who is doubtful about the application of these rules should seek guidance from the Chief Executive.

### **Revision of Rules of Conduct**

8. The Chief Executive, in consultation with the Commissioners and the Ministry of Justice, shall consider whether any amendment is required to the terms of these Rules on an annual basis.

### EVIDENCE TO SELECT COMMITTEES

1. Departmental Select Committees have an important role in examining the expenditure, administration and policies of NDPBs. The Government fully supports this role. Lords Committees and other Committees may also seek evidence from NDPBs from time to time.
2. Commissioners may, on occasion, be invited to give evidence to Select Committees. When they do so, they should be as helpful as possible in providing accurate, truthful and full information refusing to provide information only when disclosure would not be in the public interest. This should be decided in accordance with the Freedom of Information 2000 Act. Commissioners should bear in mind in this context the need to respect legitimate confidences.
3. Before giving evidence, Commissioners may find it helpful to consult the guidance issued by Cabinet Office 'Giving Evidence to Select Committees, Guidance for Civil Servants'<sup>2</sup> (also known as the Osmotherly Rules). This gives general advice on dealing with Select Committees including their powers to summon witnesses and papers and responses to Select Committee reports.
4. Similarly, the Chief Executive of an NDPB may be called, as an Accounting Officer, to give evidence to the Public Accounts Committee (PAC). Guidance on giving evidence to the PAC is set out in the Accounting Officer Memorandum which can be obtained from the Treasury Officer of Accounts in HM Treasury.
5. Commissioners wishing to give evidence should, as a matter of courtesy, advise the Chairman, Chief Executive, other Commissioners and the sponsoring department (Ministry of Justice ) of their intention. They should discuss with them the handling of any oral or written evidence they want to submit and whether they expect to be giving evidence on behalf of the NDPB or in a personal capacity. The Select Committee should be advised of the status of the witness.
6. Subject only to a Committee's power to decide to require the attendance of a witness, the decision on whether to give evidence is solely for the individual concerned. There must be no pressure placed on individuals to deter them, or action taken against them as a consequence of giving evidence to a Select Committee. Any such actions might be regarded as a contempt of the House, with potentially serious consequences for those involved.

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