

The Law Commission's Review of Trustee Exemption Clauses

19 July 2006—Speech by Lord Falconer

Good morning. I am very pleased to be here today to welcome the publication of the Law Commission's Report on trustee exemption clauses.

My thanks to everyone involved in the production of the report.

But let me take this opportunity to say a few words of tribute to Sir Roger Toulson, the Chairman of the Law Commission. Since taking up the post of Chairman in August of 2002, Sir Roger has been outwards looking and innovative. He has been willing and confident in embracing new ideas.

Under his guidance, the Commission has grown into a stronger public body, looking to develop beyond its traditional means of operation. Sir Roger has done a great service in making the work of the Commission more accessible to the public, developing methods other than consultation to gather the views of the Commission's stakeholders and making the standard consultation process all the more accessible to non-experts by simplifying the language and providing overview papers.

In this same egalitarian spirit, Sir Roger has opened up the post of Chief Executive of the Law Commission to non-lawyers, as well as lawyers, for the first time. This has allowed for the Commission to choose from a wider pool of applicants with a more diverse range of skills.

In my view, Sir Roger's tenure has made the Law Commission not only a more modern institution, but also a much stronger one to him. I extend my thanks to him and wish him all the best for the future.

Introduction

I turn now to the report. As you will all know, this project arose out of the passage of the Trustee Bill in 2000. At that time concerns were expressed that the measures before the House of Lords did not restrict the use of trustee exemption clauses. My predecessor,

Derry Irvine, undertook to the House that he would refer their concerns to the Law Commission. As Derry's successor it is my great pleasure to be here today at the culmination of this project.

The Report

I must confess that I have not yet had an opportunity to consider the recommendations of the report. But it is absolutely evident to me that this has been a very challenging project and that it has been carried out in an extremely thorough and balanced manner.

In particular, the Commission has gone to great lengths to attempt to address the improper use of trustee exemption clauses without giving rise to disproportionate adverse consequences.

This is essential as the trust is one of the greatest creations of English law and trust business is a very important part of the UK's professional service industry. Trust law is a multi-faceted industry dealing with varied subject matter in charitable, pensions, commercial and family contexts. I believe that it is vital that the UK trust industry continues to innovate, and that it retains the flexibility that so often provides it with a competitive advantage.

Stakeholders

In forming its views, the Law Commission has been significantly influenced by the opinions of a number of experts. The quantity of consultation responses to what is a very technical subject is a real testament to the efforts of the Commission in raising interest. And it also highlights the responsiveness of the trust industry. This gives a good sign that the industry will engage equally strongly when it comes to consider the recommendations in this Report. I hope that this will be the case.

Early indications - in particular, as we have heard, in the form of the work of STEP, the Law Society and the Institute of Chartered Accountants - suggest that various organisations are already doing just that. It is refreshing to see self-regulation, instead of statutory reform being put forward and being taken up.

Of course, non-statutory regulation will not always be possible or appropriate, but in moving from provisional proposals for legislative intervention to a rule of practice approach, the Law Commission has shown the type of flexibility that we hope in due course will be standard across Government.

Conclusion

I recognise that the Law Commission has put a great deal of hard work into formulating these reform recommendations and engaging representatives of the trust industry. Such efforts are to be commended, and all indeed all who have worked on this project have my sincere thanks.

I look forward to seeing the outcomes of the Law Commission's other work on trusts: in particular, on the classification and apportionment of capital and income in trusts. I have every faith that these projects will be run as efficiently and reach as successful a conclusion as this present report. And I am sure, too, that the trust industry will continue to acknowledge and support the work of the Law Commission as they go forward. I am certain that such good partnership can only yield positive results.

Thank you very much.