

MINUTES

COMMISSIONERS' STRATEGIC ISSUES MEETING 18 MARCH 2015

Present: Chairman
Professor Elizabeth Cooke
Stephen Lewis
Professor David Ormerod
QC
Nicholas Paines QC

Chief Executive
Adrian Hogarth
Sara Smith – Head
of Strategic Planning

Registry

File Ref: COP/001/004/3

Item 1: Minutes of the Strategic Issues meeting on 22 February 2015

1. The minutes of the Strategic Issues meeting on 22 February were approved without amendment.

Item 2: Matters Arising

2. The Chief Executive provided the Commissioners with an update on a number of areas:

50th Anniversary

3. Preparations for the Scarman lecture and the Welsh event were near completion. More than 300 people had booked a place at the Scarman lecture, and there was currently a waiting list of around 40. The Welsh event on the following day was similarly over-subscribed. Phil Hodgson had sent briefings to Commissioners for both events. The Chief Executive reminded Commissioners that the Welsh Advisory Committee (WAC) meeting would be held on the same day as the Welsh event. All Commissioners were due to attend except Professor Cooke who would be represented by her Team Manager.

4. Commissioner's had agreed at a previous meeting to hold a celebratory reception in the summer in the House of Parliament. Planning for that event continued – with the focus of activities on securing a sponsor. Commissioners commented on the importance of ensuring there was no conflict of interest in terms of that sponsor – the Chief Executive confirmed that this was certainly a central consideration when considering potential sponsors.

Framework Document

5. The Chief Executive updated Commissioners on the Framework Document. She reminded Commissioners that, as well as being agreed by the Law Commission and the Ministry of Justice, the Cabinet Office and HM Treasury also had to agree the document. The Cabinet Office had previously provided some queries, which the Commission was able to quickly resolve. HM Treasury had originally provided some comments, on which the Commission had reverted to them with resolutions. HM Treasury had now provided additional comments which the Commission was considering. Many of the comments did not seem relevant for the Commission, as they related to characteristics that would be found in an executive body rather than

an advisory body such as the Commission. For example, HM Treasury had asked for additional text on the responsibilities of the Chief Executive as an Accounting Officer, when in fact the Chief Executive was not an Accounting Officer. Discussions continued, but it was looking increasingly unlikely that the document would be published ahead of recess, as once the HM Treasury comments had been dealt with the document would then need to be sent to the Lord Chancellor for his agreement.

Recruitment of Chairman, Commissioner and Non-Executive Board Members

6. The application period for the role of the Chairman had now closed, the sift had been undertaken, and interviews of the potential candidates would be held on Monday 23 March. The Chief Executive advised Commissioners that she had met with all of the panel members for the recruitment, and also all of the candidates. It was hoped that the announcement of the new Chairman could be made before purdah commenced on the 30 March.

7. Following the recent announcement of Professor Cooke's departure from the Law Commission in the summer, the process had commenced to recruit a replacement Commissioner. As this was a Ministerial appointment, and one which would be ultimately made by the Lord Chancellor, the approval of Ministers needed to be sought before the post could be formally advertised. That approval was currently being sought, and it was hoped that the advertisement would be published before purdah.

8. The Chief Executive provided an update to Commissioners on the recruitment for the Non-Executive Board Members. She reminded Commissioners of the process undertaken to date – the generation by the Commission of a list of potential names who we felt would add value to the Commission, and then approaching candidates directly to gauge their interest. One candidate had expressed a strong interest in the post, and would be interviewed on Monday 30 March. Should the interview panel make a decision to appoint, the agreement of the Permanent Secretary would then be sought. The appointment could then formally be made by the Chairman of the Law Commission. As this is not a public appointment, there is no role for Ministers in the process, and so it would not be affected by purdah.

Item 3: Commissioners' Awayday

9. The Commissioners had before them a short paper circulated by the Chief Executive seeking their views on the format of the upcoming Commissioners' awayday.

10. Commissioners had agreed at their meeting in January to hold an awayday, and had also agreed it would be held on 22 April. The Chief Executive firstly asked Commissioners whether they remained content with that proposal, and if so how they wanted to structure the session to get the most value. The Chairman and Commissioners confirmed that they were content to go ahead, although the time available for the session would now be less than originally envisaged as they would also need to consider the draft report of the Wildlife project that morning.

11. The Chief Executive provided some suggestions for the sorts of topics they could cover. She reminded Commissioners that the original suggestion for an awayday had come partly as a result of the staff awayday held at the end of 2014, which had raised a number of issues that Commissioners had said they wanted to take time to discuss. The Commission was also about to enter a period of change – with a new Chairman joining the Commission in the summer, followed by a new

Commissioner later in the year. There would also be the two Non-Executive Board Members once recruited. Added to this, the outcome of the general election could itself result in change for the Commission, as government's priorities may change which could impact on the Commission's law reform projects.

12. Commissioners agreed to consider the issues they wanted to discuss at the meeting and provide them to the Chief Executive. Professor Cooke also noted that Commissioners had no business to discuss at their meeting on the 1 April, so that might be a good opportunity to have a planning discussion for the awayday. Commissioners agreed that would be a good idea.

Item 4: Work Programme

13. The Commissioners then provided updates against the programme board report and the business plan. Specifically:

- Professor Ormerod noted a slight delay to the publication of the final report on the public nuisance project, which was likely to mean that it would not be published until after purdah. The team were still awaiting comments on the report from the CPS, and as they were a key stakeholder it was necessary to wait for their comments before the report could be finalised.
- Professor Cooke informed Commissioners that the consultation paper for the Charities project would be published that week. She also noted that, due to the increased work in the team caused by the agreement to undertake a scoping project on Marriage for the Ministry of Justice, the dates on which Commissioners were due to consider the other projects in the team (Wills, Land Registration, Enforcement of Family Financial Orders and Charities) would unavoidably be pushed back and new dates would need to be agreed. On the Marriage project itself, it would be likely that Commissioners would need to hold a discussion at their meeting on 23 September of the proposed way forward on the project.
- Nicholas Paines provided Commissioners with an update on the Mental Capacity and Detention project, which they had previously discussed at their meeting on 4 March, noting that discussions continued with the Department of Health. He then provided an update on the Wildlife project, the final report of which would be discussed by Commissioners on the 22 April. He confirmed that the project remained on track to meet that deadline. Conscious of the interplay between the Wildlife project and other projects across the office in terms of drafting resource in Parliamentary Counsel, most notably Groundless Threats and Charities (social investment clauses), he confirmed to Commissioners that the Wildlife project would not need support from Parliamentary Counsel from the date on which the report was sent to Commissioners until the 1st June. Stephen Lewis welcomed that confirmation, particularly in regards to Groundless Threats.

14. All other projects remained on track to be delivered to timetable.

15. The Chief Executive then provided a short update on the corporate aspects of the business plan, and specifically:

- Redesign of the Commission's website: there had been some delays in the MoJ Digital Services team supplying the Commission with the work it had agreed to do to redevelop the website. However, headway was now being made, and the Chief Executive expected to be in a position to launch the new

website early in the new financial year. Ahead of that, Commissioners would be given a demonstration of the site.

- Corporate Services: while this was progressing slower than hoped, it remained a priority to complete this work, although it was now likely to be early in the new financial year.

16. All other corporate projects remained on track.

17. The Chief Executive then introduced the Finance Report. At the last meeting, the Chief Executive had brought to Commissioners' attention an issue that had arisen with the payment of invoices for services of Parliamentary Counsel. Cabinet Office had started charging VAT on those invoices. The Chief Executive was pleased to report to Commissioners that the issue had now been resolved, and that Cabinet Office would not be charging VAT on any invoices, and would reissue the previous invoices that had been submitted to the Commission for payment. The resolution of this issue had resulted in a further increase to the surplus on the Law Commission's budget. The Chief Executive had agreed with the Ministry of Justice that a further £100,000 would be carried over into the next financial year.

Item 7: Any Other Business

18. The Chairman asked for an update on the drafting of the Protocol which would govern the relationship between the Law Commission and the Welsh Government with regards to law reform projects. The Head of Strategic Planning noted that the Commission had received a draft from the Welsh Government. The draft had echoed closely the draft of the original protocol between the Commission and the Lord Chancellor, with some additions. Working level comments were currently being collated, including those from the MoJ Sponsorship Team. The Protocol would formally come to Commissioners at a subsequent meeting for discussion and agreement ahead of it being submitted to the First Minister and the Lord Chancellor.

19. The Chairman advised Commissioners that he had recently met with the Lord Chief Justice. As part of that meeting, they had discussed the membership of the Welsh Advisory Committee. The Lord Chief had suggested that, when the current Chairman steps down in the summer, the membership of the Committee might be reviewed to ensure it remains representative. The Chairman agreed that this seemed an appropriate juncture to undertake such a review.

20. Since the last meeting the Chairman and the Chief Executive had given evidence to the Constitutional and Legislative Affairs Committee of the Welsh Assembly as part of the Committee's enquiry on Making Laws in the Fourth Assembly. The session had gone well, and the Chairman expressed his thanks to those who had been involved in providing briefing.