



## **LAW COMMISSION – FREEDOM OF INFORMATION ACT**

### **Previously released information / disclosure log**

Logs are updated at the end of each quarter

### **FY2012–2013**

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## Quarter 1

<b>Topic</b>	1) Law Commission's Report on the Illegality Defence
<b>Date of Response</b>	03 April 2012
<b>Details</b>	I wondered whether the responses from practitioners and academics to paper No 160 and paper No 189, mentioned in appendix B of Consultation Paper No 189 and in appendix D of LAW COM No 320, are available for the public, too. Especially since the Law Commission's view on the subject has considerably changed due to the responses to Consultation Paper No 160, it would be very interesting and inestimably helpful for my research to study these responses. Therefore, unless these documents are confidential, I would be very grateful if you could tell me where I could find these sources.

### Answer

Thank you for your email. We have not published the responses to the Consultation Papers that you have referred to. However, I have treated your request as a freedom of information request. As a result I am able to send you copies of all the responses for the Consultation Papers you refer to. There are many pages, as you can probably imagine. Therefore, I suggest that I email you .pdf files containing all the responses. Would this be acceptable? If so, I will have to send several emails due to the size of the documents. Please let me know if you have the space available in your inbox. In order to remove any confidential information from the documents they have been redacted. However, the amount of redaction completed is minimal at most, and does not prevent a thorough reading of the content of the responses. I have emailed you six pdf documents. Please let me know if you have any trouble opening the documents.

<b>Topic</b>	2) Response from the Government to the Report on High Court Jurisdiction
<b>Date of Response</b>	28 May 2012
<b>Details</b>	On 27 July 2010 the Commission published its Report "The High Court's Jurisdiction in relation to Criminal Proceedings" (LC324). I see from the relevant page on the Commission's website that, despite the fact that over 21 months has elapsed since publication, the Government has still to issue a response to the Report. I make the following request under the Freedom of Information Act 2000: Please detail all the steps that the Commission has taken to secure a response from the Government to the Report.

### Answer

The criminal law team were in email contact with MOJ officials on the decision on the implementation of the report on High Court's jurisdiction between July 2010 and May 2011. It was raised by the Chairman in a letter to the Lord Chancellor in March 2011 and by the manager of the criminal law team and the Commissioner for criminal law at meetings with officials in August and September 2011. A further meeting is planned with MOJ officials next month.

<b>Topic</b>	3) Project on Insanity and Unfitness to Plead
<b>Date of Response</b>	28 May 2012
<b>Details</b>	1) How many responses did the Commission receive to its Consultation Paper? 2) Which organisations submitted responses? 3) What was the length (in terms of pages) of each response? 4) How many hours were spent on the project between 1/2/11 - 31/12/11 by (a) Professor Ormerod; (b) Lawyers attached to the Criminal Law Team (c) Research Assistants attached to the Criminal Law team (d) The Manager of the Criminal Law Team? 5) Same question as question 4 above for the period 1/1/12 - 30/4/12?

### Answer

Using your numbering, the answers are: 1) 59.

2) and 3) Please find attached a table of all the organisations that responded to the Unfitness to Plead CP with the length of their responses in pages.

4) The following information is recorded: Between 1/2/11 - 31/12/11: RA time: Feb 30%, Mar 20%, Apr 20%, May 20%, Oct 10%

5) The following information is recorded: Between 1/1/12 - 30/4/12: Manager of Criminal Team Jan 5%.

Please note that the Commission does not record the proportion of Commissioners' time spent working on individual projects.

<b>Topic</b>	4) Project on Insanity and Automatism
<b>Date of Response</b>	28 May 2012
<b>Details</b>	For many months, the Commission's website stated that the Commission intended to publish a Consultation Paper. It now states that the Commission plans to publish a Scoping Paper. In its Business Plan for the period 1/4/11 – 31/3/12, the Commission stated that, as a Milestone, Commissioners were to approve a Consultation Paper in June 2011 with a view to publication in September 2011. I have the following questions. a) Did Commissioners approve a Consultation Paper in June 2011 or at any prior or subsequent meeting? b) If "no", why not? c) If "yes", why has it not been published? d) When was the decision made to publish a Scoping Paper? e) Who made the decision? f) Why was the decision made?

### Answer

Using your numbering, the answers are:

a) Yes, in February 2012

c) The decision has been taken to publish a scoping paper ahead of a consultation paper to ascertain whether, and the extent to which, the current shortcomings with the law result in problems in practice.

d) In March 2012

e) The decision was made by the criminal law Commissioner and the team following consultation with the other Commissioners.

(f) The decision was made because although it was clear to us on the basis of our research, academic criticism and previous reform proposals that there were many cogent criticisms that could be made of the current law there was less evidence that the defence causes significant problems in practice. The purpose of the scoping paper is to ascertain whether the current law is causing significant problems in practice, what these problems are and their prevalence.

<b>Topic</b>	5) Current criminal law projects
<b>Date of Response</b>	07 June 2012
<b>Details</b>	<p>I have a number of questions under the Freedom of Information Act in relation to current Law Commission projects</p> <p>1) Contempt  On 19 July 2011 the Law Commission published "The Work of the Law Commission 2011-2015". With regard to "Contempt", the document stated that work would commence in autumn 2013 with a final report in 2016. Reading the relevant page on the Commission's website, I see that work has already begun.</p> <p>My question is: why has the Commission decided to commence work on the project at least 18 months earlier than the date stipulated in the 19 July 2011 document?</p> <p>2) Simplification of the Criminal Law: Kidnapping</p> <p>In the 19 July 2011 document, the Commission states that its aim is to produce a final Report in spring 2014. The relevant page on the Commission's website states that no date has been set for the final report.</p> <p>My question is: why is there a contradiction between the 19 July 2011 document and the relevant page on the website?</p> <p>3) Misconduct in Public Office</p> <p>My question: is it still the Commission's intention to commence work on this project in early 2014? If the answer is "no", when does the Commission intend to start work on the project?</p>

## Answer

I apologise for the delay in responding.

Following your numbering, the answers are:

1. Commissioners decided to bring work on the project forward following a request made by the Attorney General in a letter to the Chairman.
2. Following the re-prioritisation of the team's work earlier this year it was not possible to give a firm date for the publication of this report.
3. The Commission intends to start work on the consultation paper on misconduct in public office in early 2014.

<b>Topic</b>	6) Submission for inclusion in 11th programme of law reform
<b>Date of Response</b>	01 June 2012
<b>Details</b>	A request for the minutes of the Commissioners' meeting which rejected proposal for inclusion

## **Answer**

I am emailing in connection with the freedom of information request contained in your email to me of May 14. By that email, you confirmed that you were requesting the minutes of the meeting of the Commission which rejected your proposal for inclusion in our 11th Programme of law reform.

I am afraid that, following a number of searches, we are unable to find any submission made by you for inclusion in our 11th Programme of law reform. I was personally surprised by this, as I had thought that you had made a submission, and had had conversations and email exchanges with you on the basis that you had made one. I apologise for my error, and hope it has not misled you. If we are mistaken, and you did make such a submission, we would be very grateful if you could forward details of the submission now.

You also mentioned that you would be faxing a further request. We have to date not received any further request for information. As I have said before, we are very happy to discuss any request you would like to make, and to try to assist you to formulate the request in such a way that we can satisfy it.

I did receive a further email from you on 14 May, in which you requested that a number of statutory provisions should be amalgamated. I am going to take that as a request for us to undertake a law reform exercise in relation to that legislation, and I will accordingly file it for consideration in our 12th programme of law reform.

As I have said above, do please contact us further if we can help in any way to satisfy any requirements for information you may have.

<b>Topic</b>	7) Reports on Land Registration
<b>Date of Response</b>	18 May 2012
<b>Details</b>	Please send me the minutes of all meetings of the Joint Working Group, comprising representatives of the Law Commission and of H M Land Registry, which was set up in 1994 with the approval of the then Lord Chancellor to consider implementation of the Commission's Third and Fourth Reports on Land Registration. Please also send me any reports, papers or correspondence relating to these meetings or the issues considered by them.

## Answer

Further to your freedom of information request of 22 April and our email of 30 April 2012, we are pleased to report that we have obtained from our off-site archives the bulk of the files that may contain the information that you have requested.

We have identified 26 potentially relevant folders, representing a very large volume of documents. We have received all but two of these folders and have spent a considerable amount of staff time locating, retrieving and extracting the information that you have requested. We will continue this work when the two remaining folders arrive and revert to you as soon as possible.

From the 24 folders we have so far been able to review we have extracted (and saved as .pdf documents):

All minutes of the Joint Working Group's meetings (saved as "JWG meeting [date of meeting] - minute.pdf").

The documents which are stated in those minutes to have been under consideration in each meeting (saved as "JWG meeting [date of meeting] - associated document - [description of document] [date of document].pdf").

Other correspondence referring to meetings for which no minutes exist in the files we have so far obtained (saved using the above naming conventions).

These files, more than 70 in all, are listed on the attached schedule. Please let us know if you would prefer to receive these documents as email attachments (we would propose to send them in batches to avoid problems with excess file size) or on paper.

We believe that this meets your request for the minutes of all meetings of the Joint Working Group, comprising representatives of the Law Commission and of HM Land Registry, which was set up in 1994 with the approval of the then Lord Chancellor to consider implementation of the Commission's Third and Fourth Reports on Land Registration (albeit that there appear to be 10 meetings for which no minutes have yet been located, these may be contained in the two folders we are still waiting for). We trust that this also meets your request for any reports, papers or correspondence relating to these meetings or the issues considered by them.

<b>Topic</b>	8) Joint Working Group on Land Registration
<b>Date of Response</b>	30 May 2012
<b>Details</b>	Please send me the minutes of all meetings of Law Commissioners relating to the establishment and reports, internal or published (particularly LAW COM No.254 and LAW COM No.271) of the Joint Working Group referred to in my initial request dated 22 April 2012 (see below). In addition, please send me the instructions to Parliamentary Counsel to draft the Bill attached to the First Report of the Joint Working Group (implemented as the Land Registration Act 1997) as well as the instructions to Parliamentary Counsel to draft the Bill contained in the Joint Report called 'Land Registration for the Twenty-First Century – A Conveyancing Revolution' (2001 LAW COM No.271), which was implemented as the Land Registration Act 2002. Please also send me any responses, papers or correspondence relating to Law Commissioners' meetings and the instructions Parliamentary to Counsel or the issues raised by them. Whilst it is understandable that my initial request should not be treated as extending to the information now more specifically requested, I am afraid I do require this extra information in order to be completely informed as to the subject-matter.

## Answer

The Law Commission's Property, Family and Trust Law team has considered your second request for information received by email on 22 May 2012.

The information you have requested includes:

the instructions to Parliamentary Counsel to draft the Bill attached to the First Report of the Joint Working Group (implemented as the Land Registration Act 1997);

the instructions to Parliamentary Counsel to draft the Bill contained in the Joint Report called 'Land Registration for the Twenty-First Century – A Conveyancing Revolution' (2001 LAW COM No.271), which was implemented as the Land Registration Act 2002; and

any responses, papers or correspondence relating to ... the instructions Parliamentary to Counsel or the issues raised by them.

The team can confirm that the Law Commission holds this information. Our provisional view, however, is that this information is exempt from disclosure under section 42(1) of the Freedom of Information Act 2000 and should therefore be withheld.

Section 42(1) provides that information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt. A claim to legal professional privilege could be maintained in legal proceedings in relation to information contained in papers relating to the drafting of a Bill (see *Three Rivers DC v Bank of England* (No 4) [2004] UKHL 48, in particular at [41]).

The Information Commissioner has confirmed that the relationship between the Law Commission and Parliamentary Counsel is that of client and legal advisor (see the Information Commissioner's decision notice dated 16 January 2008 (Reference: FS50100137), a copy of which is attached, at [46]).

Section 42 is a qualified exemption. Information can be withheld under section 42 if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (section 2(2)(b)).

**(More)**

## **Answer to (8) continued**

In weighing these competing public interests we have been assisted by a decision of the Information Commissioner set out in a decision notice dated 8 May 2012 (Reference: FS50424157). The Information Commissioner decided that the Cabinet Office was entitled to withhold drafting papers (including instructions to Parliamentary Counsel, correspondence with Parliamentary Counsel and unpublished draft clauses or draft amendments), regarding specific provisions within the Finance Acts of 1994 and 2008. We attach a copy of the decision notice.

As the Commissioner notes (at [32]), there is a clear public interest in disclosure of information which would allow the public to assess the degree to which legislation has been produced on the basis of sound legal advice. We accept this and accept too that there is a strong public interest in public authorities being accountable for the quality of their decision making; disclosure can allow people to assess whether or not decisions made by public authorities have been made for sound reasons and on the basis of good quality advice (see [18]).

The Commissioner also accepted that, as time passes the principle of legal professional privilege diminishes (see [34] and [35]). However, he noted the Cabinet Office's argument that those involved in requesting and providing this advice would have an expectation that it would be kept confidential until it became a historical record. He concluded that in the circumstances of the case the principle of legal professional privilege had not diminished significantly, if at all, despite the age of the withheld information (some dated from 1993).

The Information Commissioner was satisfied that disclosure of the information would be very likely to lead to a loss of candour by officials requesting advice from Parliamentary Counsel and those charged with providing such advice (see [36]). He concluded that this potentially "chilling" effect on the Parliamentary drafting process adds considerable weight to the public interest in maintaining the exemption; fullness of instructions for the purpose of drafting legislation is essential to the legislative process, which itself is essential to the legal system in a parliamentary democracy (see [37]). He said that: "... it is vital to recognise that the rationale underlying legal professional privilege therefore attracts particular and considerable weight when applied to instructions to, and advice from, Parliamentary Counsel."

Our provisional view therefore is that the public interest in maintaining the exemption outweighs the public interest in disclosing the information you have requested insofar as it relates to instructions to Parliamentary Counsel (including correspondence with Parliamentary Counsel and unpublished draft clauses or draft amendments).

Nevertheless if you believe that there are other circumstances that we should take into account before reaching a final view on this issue, I should be grateful if you would let us have a note of them.

In the process of considering this part of your second request information we have realised that some potentially exempt information was sent to you in error among the papers we provided in response to your first request. We would ask that you please delete any instructions to Counsel, correspondence from Counsel or draft clauses or amendments. These files were sent in error and there was no intention to waive legal professional privilege in respect of this information.

With regard to the remainder of the information that you have requested, our preliminary assessment is that in order to provide you with the information on the scale that you have requested would take more than 18 hours of staff time.

This estimate is based on the 19 hours of staff time it took to locate, retrieve and extract the information that you previously requested. Your current request is potentially even broader and the team therefore anticipates that it will take even longer to complete the same process.

**(More)**

## **Answer to (8) continued**

Section 12 of the Freedom of Information Act 2000 makes provision for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit, which for the Law Commission is set at £450. This represents the estimated cost of one person spending 18 hours in determining whether the department holds the information, locating, retrieving and extracting the information.

We therefore cannot process your request without further clarification. Under section 1(3) of the Act, a public authority need not comply with a request unless any further information reasonably required to locate the information is supplied. If a request is too broad or general in nature, then public authorities have a duty to provide advice and assistance to the applicant in order to focus the request.

You may wish to refine your request by narrowing its scope by being more specific about what information you particularly wish to obtain, including any dates or period of time relevant to the information required. In particular, can you be more specific by what you intended to cover by the request for "any responses, papers or correspondence relating to Law Commissioners' meetings ... or the issues raised by them". This request potentially extends to a very wide range of material over a considerable period of time.

Your request for "all meetings of Law Commissioners relating to the establishment... of the Joint Working Group" is also potentially very wide; we would have to review a large number of Commissioners' meeting minutes which pre-date the establishment of the Working Group to determine if they contain information relating to the establishment of the group. Are you able to be more specific about the dates or periods of time to which your request relates?

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Email: [lawcom.foi@lawcommission.gsi.gov.uk](mailto:lawcom.foi@lawcommission.gsi.gov.uk)

**(Ends)**

<b>Topic</b>	9) Joint Working Group on Land Registration (more)
<b>Date of Response</b>	28 June 2012
<b>Details</b>	<p>Although disappointed by the reply from the Property and Trust Law team, I do understand and accept what is said, in particular as to instructions to and advice from Parliamentary Counsel. Accordingly, I would like to resubmit my second FOI request in amended and limited terms, as follows:</p> <p>Please send me the minutes of all meetings of Law Commissioners in the years 1994 to 2001 inclusive which contain information relating to the Joint Working Group referred to in my initial request dated 22 April 2012.</p> <p>I trust that it will be able to confirm that the team has found it found practicable to comply with this focussed request.</p>

### Answer

We refer to your FOI request made on 22 May 2012. Following our response on 30 May you amended your request, asking for:

"... the minutes of all meetings of the Law Commissioners in the years 1994 to 2001 inclusive which contain information relating to the Joint Working Group referred to in my initial request dated 22 April 2012."

We have retrieved and reviewed the files that contain the minutes of meetings of the Law Commissioners for the period requested. We attach minutes for the relevant items of the following Commissioners' meetings:

- (1) 3 February 1994
- (2) 29 March 1994
- (3) 18 October 1994
- (4) 15 November 1994
- (5) 12 July 1995
- (6) 9 August 1995
- (7) 28 January 1998
- (8) 24 June 1998
- (9) 23 May 2001

We also attach the following:

- (1) Agenda dated 11 March 1994 for the Commissioners' meeting on 17 March 1994
- (2) Agenda dated 8 March 1999 for the Commissioners' meeting on 10 March 1999

We have not been able to locate the minutes of these meetings; we are enclosing the agendas to indicate that the meetings may have been relevant to your request.

<b>Topic</b>	10) Miscellaneous Requests
<b>Date of Response</b>	a) 27 April 2012; b) 04 May 2012; c) 30 May 2012
<b>Details</b>	a) Why cannot a patient choose their own solicitor? b) Enforcement mental law c) Mental health legislation

## Answer

a) Two letters from the Chief Executive both dated 27 April 2012.

b) Thank you for your email of 28 April 2012, concerning your sister. As you will know from our answers to your previous correspondence, the Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. We do not hold the information that you have requested. We also cannot provide you with legal advice. For advice about a specific case or point of law, you may find it helpful to seek the advice of a solicitor who specialises in mental health law. If you are experiencing difficulty finding a solicitor I suggest you contact the Law Society who will be able to recommend local firms of solicitors with the relevant expertise. The Law Society has a Find a Solicitor page on their website: <http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law> or they can be contacted by telephone on 020 7242 1222. Alternatively, you can contact your local Citizens Advice Bureau, who may themselves be able to assist or who may be able to refer you to other sources of free legal advice. Information on the location and contact details of your local Citizens Advice Bureaux can be obtained from their website: <http://www.citizensadvice.org.uk>, a telephone directory service, or your local library. Another source of information and assistance is provided by Community Legal Advice (which is supervised by the Legal Services Commission). Information is available through their website: [http://www.direct.gov.uk/en/DI1/Directories/UsefulContactsByCategory/Governmentcitizensandrightscontacts/DG\\_195356](http://www.direct.gov.uk/en/DI1/Directories/UsefulContactsByCategory/Governmentcitizensandrightscontacts/DG_195356), or by calling 0845 345 4345.

c) Thank you for your email of 4 May 2012. Your email raises a number of questions, many of which we have already answered in response to your other recent correspondence. First, you have asked “why has the Law Commission not acted to remove all the Mental Health legislation both the Mental Health Act 1983/2007 and the infamous Mental Capacity Act 2005”. As we have previously explained, the Law Commission is a statutory body tasked with keeping the law of England and Wales under review and recommending reform when it is needed. The projects that we undertake are set out in programmes of law reform that are agreed with Government following a public consultation process. Our current programme, the Law Commission’s 11th Programme of Law Reform, can be downloaded free of charge from our website at <http://lawcommission.justice.gov.uk/publications/programmes-law-reform.htm>. We are not currently conducting any project to review mental health legislation. In 2013 we will begin consulting on our next programme of law reform. We would be pleased to consider your proposal for a review of mental health law at that time. You also ask some specific questions about the “the actual legislation and case law regulating MHRT”. I understand your reference to MHRT to be to the Mental Health Review Tribunal. The procedures regulating the tribunal are the First Tier Tribunal (Health, Education and Social Care Chambers) Rules 2008. These are available to download for free from the website <http://www.legislation.gov.uk/>. Further guidance can be found in the Code of Practice to the Mental Health Act. This is available from the Department of Health website at: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_084597](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084597). I can confirm that we hold copies of these materials in our library. They are however exempt from disclosure under section 21 of the Freedom of Information Act (FOIA), because the information is reasonably accessible to you through the online resources referred to above. Some case law on this subject is available via the British and Irish Legal Information Institute (BAILII) at: <http://www.bailii.org/>. This is an online source of free legal materials. In addition, there are a number of textbooks which consider mental health law. Some are aimed at legal practitioners but others are more accessible for members of the public. You should consult a legal bookseller such as Hammicks, who have an online service at <http://www.hammickslegal.com/live/>.

## Answer (continued)

Alternatively these may be available to consult or borrow from a public library. You may also find it helpful to visit the websites of organisations dealing with mental health issues. For example, the charity Mind has a section on its website dedicated to frequently asked legal questions. This can be found at [http://www.mind.org.uk/help/legal\\_unit/faqs](http://www.mind.org.uk/help/legal_unit/faqs). I can confirm that we hold copies of some of these cases and textbooks in our library. They are however exempt from disclosure under section 21 of the Freedom of Information Act (FOIA), because the information is reasonably accessible to you. In addition, to answer your specific questions would require us to analyse and interpret the legislation and case law. This would involve the creation of new information that we do not currently hold. It would also require us to provide legal advice, which we cannot do. You then ask a series of specific questions about your sister's case. You also asked questions about your sister's case in your email dated 28 April 2012. As we explained in response to that request, we do not hold this information. The Law Commission has no involvement whatsoever in your sister's case. We also cannot provide you with legal advice on your sister's case or any particular case or point of law. For advice about a specific case or point of law, you may find it helpful to seek the advice of a solicitor who specialises in mental health law. If you are experiencing difficulty finding a solicitor I suggest you contact the Law Society who will be able to recommend local firms of solicitors with the relevant expertise. The Law Society has a Find a Solicitor page on their website: <http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law> or they can be contacted by telephone on 020 7242 1222. Alternatively, you can contact your local Citizens Advice Bureau, who may themselves be able to assist or who may be able to refer you to other sources of free legal advice. Information on the location and contact details of your local Citizens Advice Bureaux can be obtained from their website: <http://www.citizensadvice.org.uk>, a telephone directory service, or your local library. Another source of information and assistance is provided by Community Legal Advice (which is supervised by the Legal Services Commission). Information is available through their website: [http://www.direct.gov.uk/en/DI1/Directories/UsefulContactsByCategory/Governmentcitizensandrightscontacts/DG\\_195356](http://www.direct.gov.uk/en/DI1/Directories/UsefulContactsByCategory/Governmentcitizensandrightscontacts/DG_195356), or by calling 0845 345 4345.

## Quarter 2

<b>Topic</b>	11) Law of Property (Misc Prov)Act 1989
<b>Date of Response</b>	05 July 2012
<b>Details</b>	We were after information on the true purpose of section 2 of the Law of Property Misc.Prov Act 1989. Must a contract exist for sale/disposition of land, or does a Deed suffice without any contract, especially one that conforms to section 2.

### Answer

The Law Commission's view on the purpose of the 1989 Act is as expressed in the Report [the Working Paper and Report, published by the Law Commission in 1985 and 1987 respectively, which led to the introduction into Parliament of the Bill which later became the 1989 Act], which I sent to you in my email of 19 June. We have files for the project in off-site storage, which may contain notes of background policy discussions, but the Commission's authoritative view of the Act is as expressed in the Report. Other sources which may assist in interpreting the Act include Hansard and the cases which have dealt with its provisions.

With regard to your specific question, contained in the second line of your email, I mentioned previously that the Law Commission is unable to give advice on the interpretation of the law. However, you may find it helpful to consult the latest edition of Megarry and Wade: The Law of Real Property (8th ed 2012). At paragraph 15-046 (the reference is the same for the 7th edition of the text) the authors deal with typical dispositions for which a contract will often be used, and then go on to discuss cases (such as some mortgages) where a contract is rarely used.

As your query appears to arise in an academic context, rather than in the context of a legal dispute, it is difficult to point you to others who may be able to offer an opinion on the interpretation of the Act (the usual sources would be a solicitor or another provider of legal advice). In the circumstances, as mentioned above, I would suggest that your best sources of information would be Hansard, cases which deal with the provisions of the Act, the Law Commission's Report, and the main legal textbooks.

I hope that this is of some assistance.

<b>Topic</b>	12) Reforming the Law of Taxi & PHV Services
<b>Date of Response</b>	25 June 2012 (B/F from previous quarter's disclosure log)
<b>Details</b>	<p>The document 'Reforming the law of Taxi &amp; PHV Services' refers to a 'market'.</p> <p>1) Please show (by précis of all or some documents if voluminous) relevant documents / notes / records explaining (defining?) how the Commission decided what is intended when describing a 'market' in this context.</p> <p>2) Please, show (by précis of all or some documents if voluminous) the records of material intended by the Commission to show regulation of taxi markets</p> <p>3) If no regulation of 'market' is intended précis (if needed) relevant material considered by the Commission to demonstrate such consideration</p> <p>4) Please (by précis if necessary) disclose notes / documents relevant to the adequacy of taxi 'stands' by reference to existing numbers of taxis</p>

## Answer

1 and 2) In considering the market for services provided by taxis and private hire vehicles, we followed an approach taken from existing documents in the field. We did not consider the definition of the market as a specific issue, and do not hold any information relating to a specific approach to the idea of a "market" for the purposes of the project. We do at times distinguish between rank, hail and private hire markets, by which we meant simply that the mode of engagement with the public was distinct. We think that in this, as in other references to the word "market". We use the term in its ordinary English language senses.

We explain what we mean by the term "market failure" and discuss its consequences at paragraphs 7.2 to 7.34 of the consultation paper. We believe this usage is broadly in accordance with the technical meaning it is given in economics. If you believe we have made errors in our analysis of the market or markets comprising taxi and private hire services, do please give us your views by responding to the consultation paper.

Any documents we referred to are noted in footnotes through the consultation paper. We either hold or have access to all of those sources. These sources are publicly available, and so we believe fall within the exemption in section 21 of the Freedom of Information Act 2000 to the duty to disclose, as being reasonably accessible by other means. The only exception to this is a paper given by Professor Anthony Ogus given at a symposium at Warwick University in September 2011, which I attach to this letter. Although we believe the information contained in our footnoted sources to be exempt from our duty to disclose, we would be happy to give you reasonable assistance to access documents you are particularly interested in, if you would find that helpful.

3) You spoke with [REDACTED] on 12 June and confirmed that by regulation, you here meant quantity regulation. The material and research we considered in reaching this conclusion is dealt with in Chapters 9 and 17. The materials are set out in the footnotes. As such, the information we hold is exempt under section 21 of the Freedom of Information Act 2000, as it is reasonably accessible by other means. I am happy to make the same offer as above, however.

4) We hold no formal evidence or other information relating to this. I add by way of comment that the issues of the adequacy of ranks have come up during consultation and that we are alert to this. As a result, we have been given a great deal of oral, anecdotal evidence relating to the inadequacy of rank provision in various areas, and have seen this for ourselves, in visits arranged by taxi drivers and others. Again, do please give us the benefit of your own views in a response.

<b>Topic</b>	13) Cost of consultation period
<b>Date of Response</b>	19 July 2012
<b>Details</b>	I am at present trying to ascertain the total cost of the consultation process into Taxi & Private Hire. This would involve all consultants, be those internal and external relative to this project as legal fees applicable to the research necessary for the completion of the consultation document. This is of course, a freedom of information request and I would appreciate your advices in due course. I would like to ascertain the total cost of the project as a complete whole, including the period of consultation right until its production – all costs relative to the inception right to the completion. Also, correct me if I'm wrong somewhat, that relevant parties are invited to comment upon the consultation document, I believe before 31 August 2012 and thereafter there may be some amendments until it is presented as an Statutory Implementation Number and thus presented to Parliament for approval.

### Answer

You made a request for information under the Freedom of Information Act 2000. Your request has been handled by the Public Law Team. Your first request for information [was] contained in an email of 4 July 2012. We requested clarification, and on 9 July you again emailed.

We do not hold detailed information on the overall costs of the project. We do hold some information which is explained below.

#### Overall costs of the Law Commission

The project is one of a number of projects the Law Commission is undertaking. It effectively started with the publication of our 11th Programme of Law Reform in July 2011. There were some costs that predated that associated with developing the proposal. The overall budget allocated to the Law Commission for the financial year 2010/2011 was £3,442,930. The budget for 2011/2012 was £3,400,000. Our current annual report summarises the costs of the Commission as a whole: please see appendix B of the report, which is available here: [http://lawcommission.justice.gov.uk/docs/lcar11-12\\_web.pdf](http://lawcommission.justice.gov.uk/docs/lcar11-12_web.pdf)

#### Costs of time of Team Manager, Team Lawyer and Research Assistant

We do have information on the approximate amount of time spent on the project by those working on it within the Public Law team. These time returns are worked out as follows: a return is made in respect of each month by team managers, team lawyers and research assistants. The returns for team managers include a return for administrative and corporate tasks, while those for team lawyers and research assistants are limited to time spent on law reform projects. The relevant percentage returns for 2011/2012 and 2012/13 are as follows (TM is team manager, TL is team lawyer and RA is research assistant): Some figures are over 100% – that indicates that more than one person at the relevant grade was working on the project that month.

2011/12	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
TM	5	10	10	10	15	20	15	20	15	15	15	15
TL				50	85	100	100	100	100	100	100	100
RA				150	200	225	200	100	100	100	100	130

2012/13	Apr	May	Jun
TM	20	20	20
TL	100	100	100
RA	100	100	100

We hold, but will not disclose, information on the individual salaries of the officers concerned. The pay ranges for each grade are as follows:

Grade	Minimum	Maximum
TM	£53,059	£71,368
TL	£55,587	£74,766
RA	£24,007	£28,000

Other staff costs are not apportioned by project. These include the contributions made by Commissioners, the Chief Executive, the Communications Officer, the Editor, and other administrative staff. We therefore do not hold that information.

Other costs such as overheads other than staff costs and general administrative expenditure are also not apportioned to the project but are included in the overall costs of the Commission.

#### **Consultancy costs**

We retained a consultant to assist with drafting the Consultation Paper. The total cost of the consultancy was £19,092, all of which fell in the year 2011/12.

#### **Publication costs**

The total cost of printing the consultation paper was £1,046. We have yet to receive invoices for the printing of the summaries of the paper, or for the production of audio and easy read versions of the summary. However, based on the appropriate scale charges and quotations, we estimate the costs to be £455 for the summaries, £900 for the audio file and £1,540 for the easy read version.

#### **Travel and subsistence costs**

The travel and subsistence costs so far incurred relating to the project amounted to £1,987 in 2011/12 and £1,704 so far in 2012/13. This is a slight overstatement, as four claims under this heading apply to travel for mixed purposes (ie in relation to more than one project), but all have been included in this total.

As will be apparent, we do not hold information on the future costs of the project. It might be helpful if I explain what the future stages of the project will be. Consultation closes on 10 September. After that date, we will analyse all of the responses received and come to a view on what we consider would be the right way forward. The written analysis of responses will be published at some time before the end of the project. We will then draft our final report, and the draft legislation that will accompany it. We aim to publish both the report and the draft bill before the end of 2013. Once we have completed our report, it will be for the Department for Transport to decide whether to accept our recommendations, which they may do in whole or in part, and to introduce legislation in Parliament to implement that which they do accept.

<b>Topic</b>	14) Local authority bylaws
<b>Date of Response</b>	13 July 2012
<b>Details</b>	Would it be possible for your office to tell me how a local authority goes about repealing a bylaw? From where does the authority come for a bylaw to be repealed?

### **Answer**

We are not sure whether your request is one for legal advice or a request for information held by us under the Freedom of Information Act 2000. In the former case, then I am sorry but that is not the function of the Law Commission, which is a statutory body whose function is to keep the law under review and to make recommendations for its reform. The Commission does not give advice on individual cases or points of law.

If your request is a formal one under the Freedom of Information Act 2000, then I am sorry but we cannot help here either. Unfortunately, the particular questions you are asking require legal research and presenting the answers in a form that would be helpful to you would involve creating new material, not disclosing existing information.

We would like to highlight that the answers you are seeking are reasonably available to you, either on payment (such as to a solicitors' firm) or not (such as in a public reference library or [www.legislation.gov.uk](http://www.legislation.gov.uk)), and accordingly we are not required to disclose the material to you (in accordance with section 21 of the Freedom of Information Act 2000).

You may find it helpful to contact a solicitor. If you are experiencing difficulty finding a solicitor I suggest you contact the Law Society who will be able to recommend local firms of solicitors with the relevant expertise. The Law Society can be contacted via its website at [www.lawsociety.org.uk](http://www.lawsociety.org.uk) which has a useful section on finding a solicitor, including a search facility. They can also be contacted by telephone on 020 7242 1222.

I hope this is of some assistance.

<b>Topic</b>	15) Request for redacted responses to Adult Social Care consultation
<b>Date of Response</b>	03 August 2012
<b>Details</b>	I have followed with interest your work on Adult Social Care, and as a researcher in the field I welcomed the proposals the Law Commission put forward to offer greater clarity on public law community care obligations. I was interested to read that during its ASC consultation, the Law Commission received many consultation responses which 'were of the view that the Law Commission's proposal should have included proposals on complaints and redress. Several consultees suggested the introduction of a community care tribunal.' I apologise, as this will probably be a troublesome request, but I would be very grateful if the Law Commission were able to share copies of those responses, to see the arguments and suggestions put forward. I appreciate that they will need to be redacted. There may also be no simple way to extract the responses that discuss this issue from those which do not. In which case, I wonder if you might be able to provide redacted copies of the responses I have listed below this email. I recognise that you may be unable to supply redacted versions of all these responses within the resource limit of the FOIA, so I have listed them in order of preference.

## Answer

Thank you for your email and your request for information from the Law Commission.

You asked for copies of some consultation responses which the Law Commission received during our consultation on adult social care. In particular, you asked for copies of those responses that were of the view that the Law Commission should have included proposals on complaints and redress.

I have been able to identify those responses, and include them as attachments to this email. The responses are from:

Hull City Council  
Hampshire Personalisation Expert Panel  
Baroness Hale  
Local Government Association  
Disability Law Service  
Vale of Glamorgan Older Peoples Strategy Forum  
An individual response [Alywn Davies]  
Camphill Family and Friends  
National Family Carer Network  
Inclusion South West  
National Valuing Family Forum  
Welsh Institute for Health and Social Care  
Henry Spink Foundation  
Pauline Thompson  
Citizens Advice

I should add that the attached documents should not be taken to represent the views of the Law Commission.

<b>Topic</b>	16) Funding and staff time given to trade unions
<b>Date of Response</b>	02 August 2012
<b>Details</b>	<p>I am writing to obtain information about the total amount of money paid to trade unions by Law Commission, the amount of staff time spent on trade union duties and / or activities and the payment of subscriptions. To outline my query as clearly as possible, I am requesting:</p> <p>(1) The total amount of money paid to all trade unions for financial years a) 2010-11 and b) 2011-12. Where possible please provide a list of total payments made to each different trade union. However if this disaggregated information is not available please continue to provide a total figure for trade union payments. In response to this question, please only include direct payments to the unions from your organisation, not membership dues deducted from staff salaries.</p> <p>(2). Please state: (a) Which trade unions your organisation provide staff time to work on trade union duties and / or activities (sometimes called 'Trade Union facility time') in i) 2010-11 and ii) 2011-12. (b) The number of full time equivalent staff that were provided for each trade union in i) 2010-11 and ii) 2011-12.</p> <p>(3) Does your organisation automatically deduct trade union subscriptions from staff salaries in the payroll process in order to pass them on to the union? If so, how much did your organisation charge each union for this service in a) 2010-11 and b) 2011-12? If the information is not recorded, there is no way of ascertaining whether the time off provided is reasonable. I therefore do not expect the response that the organisation does not hold this information. If a formal record is not kept then I will accept a reasonable estimate.</p> <p>Please also note that all of the questions are separate requests for information; question one refers to any direct payments to trade unions whereas question two relates to any staff time spent on trade union duties / activities and finally question three relates to the deduction of member dues by the organisation on the trade unions' behalf. If the response to any of the questions is 'nil' then please continue to respond to the other questions.</p>

## Answer

The answers to your questions are as follows:

Zero

a) None b) None

No (Individual employees contact the trade union, who forward an enrolment form to them to complete. This form is then sent to payroll provider for processing and they do not charge the trade union for this service).

<b>Topic</b>	17) Law Commission lawyer posts
<b>Date of Response</b>	07 August 2012
<b>Details</b>	Please could you let me know the overall number of applicants there were for the post and the number shortlisted for interview as well as (if possible) whether the ultimate appointment made was an internal or external applicant?

### **Answer**

We have asked the agents responsible for the recruitment process to provide you with feedback you have requested about the panel's assessment of your interview performance. We hope that is helpful.

The details of the number of applicants, interviews and the nature of the appointments is as follows:

10 candidates applied for the 12 month position

13 candidates applied for the 36 month position

2 candidates were interviewed for the 12 month position only

4 candidates were interviewed for both the 12 month and 36 month position

The successful candidates for both positions were external candidates

Finally, you ask in your email if you could be informed about future vacancies which may arise at the Law Commission. We regret that it isn't feasible for us to undertake to alert candidates who are interested in our posts of future vacancies. All future vacancies will be advertised on the working for us - jobs section of our website in the same way as the post you applied for.

Thank you again for your interest in working at the Law Commission.

<b>Topic</b>	18) Powers of attorney
<b>Date of Response</b>	10 August 2012
<b>Details</b>	<p>I have been asked to obtain a copy of the following Memorandum in response to a 1967 Law Commission Report. I have tried the Law Society Library and they do not have a copy. I was just wondering whether it may be something you have available in your archive? I have also checked BAILLI website to no avail.</p> <p>Law Society Memorandum (c. 1967)-The Law Society, Powers of Attorney, Memorandum of the Law Reform Committee of the Council commenting on Law Commission Working Paper on Powers of Attorney (1967)</p>

**Answer**

Please find attached a photocopy of the document that you requested.

<b>Topic</b>	19) Breaches of the Data Protection Act
<b>Date of Response</b>	13 August 2012
<b>Details</b>	I am writing to request details of incidents when the Data Protection Act has been breached, including data lost, by your employees and contractors over the past three years.

**Answer**

There have been no incidents when the Data Protection Act has been breached during he period 1 July 2009 to 1 July 2012.

<b>Topic</b>	20) Supervision orders
<b>Date of Response</b>	11 September 2012
<b>Details</b>	I don't know whether this information is freely available. I am trying to find out for my own interest how many supervision orders are made per year in England and Wales. To be more specific I mean supervision orders made following a finding of unfitness to plead. The relevant piece of legislation is the Domestic Violence, Crime and Victims Act 2004 which made some alterations to the Criminal Procedures (Insanity and Unfitness to Plead) Act 1964/1991. This allows the courts to make a supervision order following a finding of unfitness. I know this whole area has been the subject of a recent Law Commission consultation. Interestingly, the recent consultation mentions the number of hospital orders made 2002-2008 but not supervision orders. I wonder whether figures about the latter are kept? I am a Consultant Forensic Psychiatrist and this is where my interest comes from.

### Answer

Thank you for your recent request for information regarding the number of supervision orders made following a finding of unfitness to plead. The information you requested is available at page 225 of our consultation paper, in Table 10c: <http://lawcommission.justice.gov.uk/areas/unfitness-to-plead.htm>. I hope you find this information useful. If you require any further information, please do not hesitate to contact us.

The supply of information in response to a freedom of information request does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purposes of private study and non-commercial research without requiring permission.

For other forms of re-use, for example publishing the information, you would need the permission of the organisation or person who owns the copyright. In the case of information produced by government departments and agencies you can re-use the information under the Open Government Licence. For information about this please see <http://www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm>. If, however, the copyright is identified as belonging to somebody else, you will need to apply for permission. For information about how to obtain permission from a third party, please go to Intellectual Property Office's website at [www.ipo.gov.uk](http://www.ipo.gov.uk)

<b>Topic</b>	21) Wedding car legislation opposition
<b>Date of Response</b>	12/09/12
<b>Details</b>	I wish declare my total opposition to this proposed legislation concerning wedding cars. It is absolute LUNACY to try to impose this kind of legislation on wedding cars. They are not used with the same kind of frequency as a taxi nor do they do the same kind of high mileage as taxis nor do they run around in the small hours of the morning picking up lone drunken females. I would request under THE FREEDOM OF INFORMATION ACT what number of wedding cars have been involved in serious accidents due to lack of maintenance, also how many brides or bridegrooms have been killed or seriously injured. Also how many brides have been seriously assaulted by sex maniac wedding car drivers. IF SOMETHING ISN'T BROKE DON'T FIX IT. What Lunatic thought this legislation up????? because it is exactly that kind of idiot that is not only adding unnecessary costs and rules to business but it is holding back this country's recovery. THIS IS ONE SUCH PIECE OF TOTALLY UNNECESSARY GOVERNMENT INTERFERENCE that will put many wedding car businesses OUT OF BUSINESS in these hard times. WE DO NOT NEED THIS.

### Answer

Many thanks for your response to our consultation on the regulation of taxis and private hire vehicles. We appreciate your comments and they will be considered as a formal consultation response. We treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish.

You requested information from the Commission under the Freedom of Information Act 2000. I hereby acknowledge your request. I write to advise you that we have made a search of our records and have concluded that the Commission does not hold the information which you are seeking.

We are not proposing changes to wedding car regulation due to safety concerns; rather, we simply propose that the exemption be moved from primary legislation to licensing framework. You can find more information in our consultation paper, which is available on our website: [www.lawcom.gov.uk](http://www.lawcom.gov.uk).

<b>Topic</b>	22) Responses to consultation on reforming the law of taxis and private hire services
<b>Date of Response</b>	28 September 2012
<b>Details</b>	I write to the Law Commission, a Public Authority as defined under the Freedom of Information Act 2000, requesting that all Responses to Consultation Paper 203, Reforming the Law of Taxi and Private Hire Services, be communicated to this association by either E-Mail or Writing. Alternatively this association will be content should the Law Commission place all received, and future, Responses on the Law Commission Web Site for all to read and digest.

### Answer

Thank you for your letter sent by email, dated 14 September and addressed to my colleague. Our usual practice following consultation is to publish an analysis of the responses received. The policy of the Commission is to always publish this analysis no later than publication of the report. In this team, we usually publish the analysis within a few months of the close of the consultation period. However, we have had a very substantial response to this consultation. We are also acutely aware of the high level of interest and engagement in the project from the taxi and private hire trades. In the exceptional circumstances of this project, therefore, the Commission had decided that the proper course of action would be to make all of the responses publicly available in due course, thus satisfying the request in the last paragraph of your letter. This will enable us to publish all responses at the same time, and for publication to be accompanied by our analysis.

<b>Topic</b>	23) Mental health legislation and practice
<b>Dates of Response</b>	Various, between 29 June 2012 and 1 October 2012
<b>Details</b>	Series of requests which, so far as they were directed at the Law Commission, related to or were consequential upon the FoI request in the FoI Log 2012 1st Quarter (Topic 10: Miscellaneous requests)

<b>Topic</b>	24) (a) Consent to be governed (b) State rules (c) Definition of Freemen
<b>Date of Response</b>	(a) and (b) 01 August 2012 / (c) 06 September 2012
<b>Details</b>	<p>(a) and (b) Please provide me with the recorded information relating to the procedure for consenting to being subject to statute law. Logically, there must be a procedure, otherwise 'statute law' is merely state rules enforced upon State-owned Slaves. We are punished for not following state rules that we have apparently never agreed to follow. Therefore, please provide recorded information which evidences how/when/where we (anyone in the UK) agreed/consented to follow state rules. If there is no recorded information held by yourselves, please state where that information resides. Without this information, we are, all of us (you too!), Slaves; State-owned-property with no autonomy whatsoever. That constitutes fascism: where the state claims to own everyone and everything. Law would therefore mean nothing more than lawful, than force.</p> <p>(c) The Magna Carta 1297 in 'Confirmation of Liberties' ,SI states amongst other things} "We have granted also, and given to all the Freemen of our Realm, for Us and our Heirs for ever, these Liberties under-written, to have and to hold to them and their Heirs, of Us and our Heirs for ever" In addition, in SXXIX 'Imprisonment, &amp;c. contrary to Law. Administration of Justice' it states "NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor [X1condemn him,] but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right." Therefore, in accordance with the FOI Act, please provide me with your recorded definition of "Freemen" as mentioned in this act."</p>

## Answers

### (a) and (b)

We have received your two e-mail requests for information: one relating to consent to be governed (20 July) and one relating to state rules (25 July).

The position in English law is that citizens of the United Kingdom and persons physically within the legal jurisdiction of the United Kingdom are bound by the laws of the United Kingdom, whether those laws are statute-based or form part of the common law. Consent to be bound is implicit not explicit. This circumstance is an integral part of the rule of law as it applies in the United Kingdom.

To the best of our knowledge there is no one statute which deals with the situation you describe, nor is there a prescribed means by which an individual or body can withdraw consent. To seek to withdraw consent would breach the rule of law. The existence of the continuing constitutional principle of the rule of law is recognised in statute: see the Constitutional Reform Act 2005 (c.4), s 1 (available at <http://www.legislation.gov.uk/ukpga/2005/4/contents>).

The Commission does not hold information directly on the points you raise. However, your researches may be assisted by referring to the following sources –

- (1) A W Bradley and K D Ewing, Constitutional and Administrative Law (13th ed 2003)
  - (a) The majority of this book is available online following the link below. Chapter 6 refers specifically to the history of the rule of law and its implications today
  - (b) [http://books.google.co.uk/books?id=HT\\_GS2zgN5QC&printsec=frontcover&dq=constitutional+and+administrative+law&hl=en#v=onepage&q=constitutional%20and%20administrative%20law&f=false](http://books.google.co.uk/books?id=HT_GS2zgN5QC&printsec=frontcover&dq=constitutional+and+administrative+law&hl=en#v=onepage&q=constitutional%20and%20administrative%20law&f=false)
- (2) C Turpin and A Tomkins, British Government and the Constitution (11th ed 2011)
<http://books.google.co.uk/books?id=PcbsEjAzcX4C&printsec=frontcover&dq=british+government+and+the+constitution&source=bl&ots=H0fM5WBJfC&sig=QMrNgpNI6ZmSVBBhLEVrlwOf43M&hl=en#v=onepage&q=british%20government%20and%20the%20constitution&f=false>

(3) H Barnett and R Jago, Constitutional & Administrative Law (8th ed 2011)

<http://books.google.co.uk/books?id=LYc1tSYonrQC&printsec=frontcover&dq=Constitutional+%26+Administrative+Law&source=bl&ots=CDdr68DDcE&sig=ItHrtNCtLIbly5GFLMtbrF6Bhyl&hl=en#v=onepage&q=Constitutional%20%26%20Administrative%20Law&f=false>

We hope this information is of assistance. Nothing in this response should be taken to be legal advice, nor should you seek to rely on it in any legal proceedings. Should you require legal advice you should approach an independent legal practitioner for help.

**(c)**

I refer to your FoI request of 23 July 2012 which you re-sent to us on 29 August. We apologise for the delay in responding to your earlier communication.

You asked the Commission for any information which we hold relating to the definition of 'freeman' in the Magna Carta Act 1297 (which was a re-enactment with some variation of the Magna Carta 1215).

We have made enquiries within the Commission and do not believe that we have ever undertaken research work in this field or that we hold any relevant documentation produced by the Commission. We do, however, hold various secondary source texts on legal history in our law library.

In order to be helpful we have undertaken some brief research based on the texts we do hold (which texts should be available to you through other publicly accessible libraries). This research does not pretend to be definitive, and you should not take the contents of our note (which is attached to this response) as amounting to legal advice. In summary we conclude, based on sparse evidence, that 'freeman' in the context of Magna Carta denoted an individual who was either a freeholder (of land), being in status less than a mesne lord and greater than a villein (These hierarchical distinctions were recognised in feudal society of the Middle Ages).

## Quarter 3

<b>Topic</b>	25) Legislation governing the ability of a person to choose their own solicitor
<b>Date of Response</b>	23 October 2012
<b>Details</b>	<p>I confirm that what I am seeking is the actual legislation governing the actual ability of a person - anybody - to choose their own solicitor.</p> <p>I gave as example the problems that I and my family have faced that my sister was stripped of her choice of solicitor when the doctor treating her stated she was mentally incapacitated.</p> <p>To me, this seems like the mental health trust being able to be "judge and jury in its own case" as uniquely I aver the people detaining the patient are also the ones who assess the capacity of the patient to consent to treatment or not or to have their own solicitor.</p> <p>I believe that the law must exist and if not, then how can any mental health trust prevent a patient from both instructing and choosing their own solicitor in order to seek release from the detention imposed upon them by the said detaining authority - the mental health trust and the employees of the mental health trust including the Responsible Clinician and Ward Team members?</p>

### Answer

Thank you for your e-mail message dated 1 October, in which you respond to our request that you clarify the information you are seeking in your e-mail messages dated 15 and 19 September.

As clarification you confirm that what you are seeking is the actual legislation governing the actual ability of a person – anybody – to choose their own solicitor. So far as we are aware, there is no legislation which specifically governs the ability of people in general to choose their own solicitor. However, we have conducted no research on this point and we are not in a position to provide you with legal advice.

We note that in your e-mail dated 4 February 2012 you requested information in the following terms: ‘Why are [mental health] patients denied access to solicitors of their own choice’. You repeated similar questions in e-mail messages dated 9 and 20 June 2012. This request is more specific as it refers to the ability of a mental health patient to choose a solicitor. In answer to this we refer you to our letter dated 27 April 2012 where we complied with this request for information in accordance with the Information Commissioner’s decision notice dated 26 March 2012.

Finally, we should just reiterate that it is not the role of the Law Commission – whose terms of reference are ring-fenced by statute – to investigate the appropriateness of detention of patients under mental health legislation.

<b>Topic</b>	26) (i) Act of Praemunire 1351; (ii) Repealing legislation
<b>Date of Response</b>	(i) 11 October 2012; (ii) 05 October 2012
<b>Details</b>	You have been notified that acts of treason have occurred and the common law places you under a legal obligation to assist me to the best of your ability to deal with this treason, or you commit the major crime at common law of misprision of treason, and because you will seek advice on this, the major crime collectively with anyone involved in those discussions the major crime of compounding treason at common law, I would also like the minutes of meetings to discuss this request.

### Answer (i)

You asked us for the full minutes of meetings held to discuss the repeal of five Acts of Parliament. I understand my colleague ■■■■ has written to you about four of these Acts; the repeal of praemunire offences falls within the province of the criminal law team and is the subject of this letter.

I have not been able to find any Act of Praemunire passed in 1351. I assume that you are referring to the Statute of Praemunire 1392 (on which we wrote to you on 23 April 2010) though in this letter I will refer to the class of praemunire offences more generally.

In response to your letter, I, via a research assistant, requested the following three files from our registry:

- 1) Obsolete Crimes – 17/143/01, Part 1;
- 2) Proposals for Law Commission's First Programme – 10/1/01(1);
- 3) Minutes of Commissioners' Meetings 1965-1969 – 1/6/01, Part 1.

Unfortunately, the third file, the one containing the minutes of Commissioners' meetings held in the period 1965-1969, is missing. We have tried to track it down but it appears to have gone missing some time ago, before the Law Commission compiled a spreadsheet of all the files held in our off-site storage facility.

The assistant looked through all the documents in the two files which were sent to us. The files do not contain any minutes of meetings discussing the repeal of praemunire offences. However, we understand that you wish to know why repeal was thought appropriate, and have therefore extracted the following correspondence and drafts which may shed some light on your query:

- 1) Memorandum, First Programme: Item 15E, Section E – Obsolete Crimes (dated 16 July 1965);
- 2) Letter from J S Fiennes to Mr Turner (dated 13 September 1965);
- 3) Explanatory note, Abolition of Obsolete Crimes;
- 4) Letter from the Lord Chancellor's office to J S Fiennes (dated 2 November 1965);
- 5) Letter from Kenneth Jones of the Home Office to H Boggis-Rolfe (dated 7 February 1966);
- 6) Law Commission First Programme: Item XV.E – Obsolete Crimes; draft by J S Fiennes (dated 16 February 1966) and draft bill (dated 11 February 1966).

I am afraid that the notes do not always indicate the exact role or status of the sender or the recipient, and we do not know who they were.

As noted by ■■■■ in her letter to you of 23 April 2010, the Law Commission report Proposals to Abolish Certain Ancient Criminal Offences (1966) was preceded by the Seventh Report of the Criminal Law Revision Committee (CLRC). This report (Cmnd 2659, published May 1965) stated at paragraph 70 that the praemunire offences were obsolete and, with the exception of section 11 of the Habeas Corpus Act 1689, should be abolished "in the interests of modernising the statute book".

I enclose copies of the relevant sections from both reports, as well as a copy of Fiona Alexander's letter.

The reasoning of the CLRC appears to have been accepted by the Law Commission. I note in particular the memorandum of 16 July 1965 which opens by saying that "the state of the criminal law is notorious to all practitioners having regard to the manner in which it is encumbered by the statutory and common law debris of the past." Please see further paragraph 4 of J S Fiennes' draft which states that after consideration, the Law Commission had accepted the CLRC's suggestion of repeal.

I also draw your attention to paragraph 2 of Law Commission First Programme: Item XV.E. This states that the Commissioners decided on 28 July 1965 not to consult with the Bar Council, the Law Society and the Society of Public Teachers of Law. It was assumed that because there had been no prosecutions for any of the obsolete crimes for a number of years these bodies would not oppose the repeal proposals.

It was also thought by the Law Commission that some of the earlier praemunire offences might no longer be punishable. This was because they had been converted into treason by the Act 13. Eliz.1.c.2 and that Act had been repealed, insofar as it imposed any punishment, by section 1 of the Religious Disabilities Act 1846 (see

page 2 of the Explanatory note; see also paragraph 7 of J S Fiennes' letter to Mr Turner dated 13 September 1965). This further supports the suggestion that the praemunire offences were repealed because they were thought obsolete.

I also enclose the correspondence between Kenneth Jones and H Boggis-Rolfe which at pages 2 to 3 explains why section 11 of the Habeus Corpus Act 1679 was not included in the Law Commission's proposal for repeal.

I hope this letter helps to answer some of your questions.

You asked also for minutes of meetings held to discuss your request. We do not make minutes of that kind of discussion. I am happy to tell you that I have discussed your request with ■■■■, the team manager, and with the research assistant, and those discussions were about the content of the request and how to respond to it. We decided to respond by (a) looking at the earlier correspondence with you; (b) finding out which stored files might contain relevant information; (c) requesting those files; (d) reading the contents; (e) copying relevant contents; and (f) writing this letter.

## **Answer (ii)**

You have requested copies of the minutes of meetings held to discuss the repeals of the five Acts of Parliament listed below.

### **Statute of Provisors of Benefices 1350 (25 Edw 3 st 4)**

Since the Statute of Provisors 1351 was repealed by the Repeal of Obsolete Statutes Act 1856, and not the Statute Law Revision Act 1948, I assume you are referring to the Statute of Provisors of Benefices 1350. This statute was repealed in 1948 on the recommendation of the Statute Law Committee. The Law Commission is not a successor to this Committee and has no special access to its records. However, they are available in the National Archives (catalogue reference: GB/NNAF/C182570), where you should be able to consult them if you wish to do so.

### **Statute of Praemunire 1392 (16 Ric 2 c 5)**

Since there was no Act of Praemunire passed in 1351, I assume you are referring to the Statute of Praemunire 1392. This was repealed by the Criminal Law Act 1967, following the Law Commission's recommendation in its 1966 report *Proposals to Abolish Certain Ancient Criminal Offences*. (I apologise for not noticing this earlier: I had been confining my attention to the files of the statute law repeals team.) One of my colleagues in the criminal law team is currently searching their records on this Act and should have a response for you in due course.

### **Act of Supremacy 1558 (1 Eliz 1 c 1)**

#### **Bulls etc from Rome Act 1571 (13 Eliz 1 c 2)**

The Act of Supremacy 1558 and the Bulls etc from Rome Act 1571 were laws passed following the accession of Elizabeth I, in order to quell the religious turmoil of the preceding decades. Her predecessor Mary had sought to restore the Roman Catholic Church in England. The Act of Supremacy re-enacted the anti-papal statutes that Mary had repealed; re-established the Crown's supremacy over the Church of England; and repudiated the Pope's jurisdiction in matters of ecclesiastical law. It also instituted severe punishments, including the death penalty, for those who refused to accept the new settlement.

In response, Pope Pius V issued a bull, *Regnans in Excelsis*, which excommunicated Elizabeth and declared her deposed from the throne. It also excommunicated anyone who obeyed her laws. The Bulls etc from Rome Act 1571 was passed as a response to this, making it high treason to circulate papal bulls or to act in accordance with them. The persecution of Roman Catholics that followed resulted in several hundred executions.

These two statutes were passed in response to a particular political crisis. They were therefore subject to some partial repeals once the situation in question had passed, beginning with a repeal of part of the Act of Supremacy in 1640. This process gained pace throughout the nineteenth century, following Catholic emancipation. By 1969, only parts of ss 1-3, 5-8 and 19 of the Act of Supremacy and ss 1-3 of the 1571 Act remained on the statute books.

The remnants of the two Acts (save for s 8 of the Act of Supremacy, which remains in force) were ultimately repealed by the Statute Law (Repeals) Act 1969. This Act was passed following the Law Commission's first Statute Law Revision report, which recommended the repeal of certain obsolete statutes. This was undertaken as part of the Law Commission's statutory function of keeping the statute book up-to-date.

During the late 1960s, the Law Commission undertook a systematic chronological review of ancient statutes, including ecclesiastical enactments. This work was begun by Sir John Fiennes and continued by Mr Henry Huxham, who was responsible for examining ecclesiastical statutes from 1531 onwards. It was Mr Huxham who originally proposed these two Acts for repeal, and his suggestion was taken up by the Law Commission.

In its Notes on Clauses, the Law Commission explained that the statutes were aimed at a particular mischief (the Pope's attempt to depose an English monarch) which no longer existed. Furthermore, the repeal of the statutes would not revive any papal jurisdiction in England. To do that, a separate Act would have to be passed to positively grant such jurisdiction.

Because they concerned ecclesiastical laws, these two proposed repeals were discussed by an independent committee appointed by the Archbishops of Canterbury and York, and chaired by the Rt. Hon. Sir Henry Willink QC. The committee approved the repeal of the two Acts; its conclusions are detailed in the Law Commission's Notes on Clauses. These conclusions were also discussed by the Joint Committee on Consolidation Bills during Parliament's examination of the 1969 Bill.

I have attached all of the relevant records that I have been able to find. These are as follows:

- 1) Mr Huxham's memoranda proposing the repeals;
- 2) Letter of 1 February 1968 on the establishment of the Willink committee;
- 3) Minutes of the Willink committee meeting on 21 February 1968;
- 4) Minutes of the Willink committee meeting on 17 July 1968;
- 5) Notes on Clauses: Part II, Ecclesiastical Enactments; and
- 6) Attendance list and minutes of the Joint Committee on Consolidation Bills for 25 June 1969.

I have marked the relevant sections for your convenience.

#### **Treason Act 1795 (36 Geo 3 c 7)**

The Treason Act 1795 was repealed by the Crime and Disorder Act 1998. In its 1977 report on Codification of the Criminal Law: Treason, Sedition and Allied Offences, the Law Commission had recommended that the Treason Act 1795 be repealed and replaced with new offences. However, this proposal was never implemented by the government. The 1795 Act seems to have been repealed in 1998 as a corollary of the abolition of the death penalty for treason, rather than on the basis of the Law Commission's recommendation. We therefore would not hold information about the repeal of the 1795 Act. A record of the relevant Parliamentary debate can be found in Hansard (HL Deb 31 March 1998 vol 588 cc 208-211).

For the record, I have not held any meetings to discuss your request for information.

<b>Topic</b>	27) Evidence of bad character in criminal proceedings
<b>Date of Response</b>	16 October 2012
<b>Details</b>	I would like to request the responses to the Commission's law reform report on "Evidence of bad character in criminal proceedings", (Law Com No 273).

## Answer

Further to your freedom of information requests, I attach the abstracts of responses to our consultation paper on previous misconduct of a defendant (Law Commission Consultation Paper 141).

I have grouped all the abstracts together into a single pdf - we hope this will make it easier for you to download and navigate through the information. If you require the abstracts as separate documents (52 documents in total) please let me know.

The consultation paper is available here: <http://www.bailii.org/ew/other/EWLC/1996/c141.pdf>

Our proposals are at page 257 - 271 of this consultation paper. Each of the abstracts which I am sending to you collates the responses we received for a particular proposal. So, for example, the document "01 ABS" is the abstract of the responses we received on proposal 1, which is on page 257 of the consultation paper. Not every proposal has its own abstract document.

In some of the abstracts the respondents are named. However, you will see that in some abstracts, they are referred to only by a number. The numbers which were allocated to each respondent are detailed in the second file which I am sending to you.

As well as the abstracts of comments on the proposals which are at the end of the consultation paper, we include abstracts of comments on the "options" which are on pages 140-154 of the consultation paper. These are in the document I am sending you, at pages 268-295.

We also include three miscellaneous documents at pages 296-304 of the pdf. These include comments about jury research, general comments about changing the law, and comments about the defendant testifying and the 1994 Act.

Our analysis of the responses is laid out clearly in our report on this issue, which is available on our website (<http://lawcommission.justice.gov.uk/areas/evidence-in-criminal-proceedings-previous-misconduct-of-a-defendant.htm>).

It is our policy to provide the following information in response to requests falling under the Freedom of Information Act 2000.

The supply of information in response to a freedom of information request does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purposes of private study and non-commercial research without requiring permission.

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If, however, the copyright is identified as belonging to somebody else, you will need to apply for permission. For information about how to obtain permission from a third party, please go to Intellectual Property Office's website at [www.ipo.gov.uk](http://www.ipo.gov.uk).

<b>Topic</b>	28) Law Commission Report No 76
<b>Date of Response</b>	15 October 2012
<b>Details</b>	<p>I do not need direct advice on my case or points of law. I am simply trying to clarify my understanding of a point in the Law Commission Report No 76. As the author of this report, your organisation is best placed to clarify the position. I have copied 2 of the relevant pages from the report:</p> <p>Appendix A – Point 1.16 claims conspiracy to defraud and conspiracy to cheat are common law conspiracies, which is accurate in my view.</p> <p>Appendix B – Abolitions 6(2) which eventually became section 5(2) of the Criminal Law Act 1977 preserves conspiracy to cheat and defraud as common law conspiracies.</p> <p>Even two articles by a leading barrister of a well known chamber confirms this position.</p> <p>Based on above, conspiracy to cheat and defraud will not fall under section 1 of the Criminal Law Act 1977 and are common law conspiracies. Please confirm your report number 76 is as stated and my interpretation is valid.</p>

### **Answer**

I am sorry if I misunderstood your earlier request. I am dealing with your letter as a request for information under the Freedom of Information Act. You have asked us to do two things: to confirm whether our report Law Com 76 is as you state and to confirm whether your interpretation of the Criminal Law Act 1977 is correct. I will address these in turn.

### **Law Com 76**

You are right that at paragraph 1.16 in our report Law Com 76 we refer to “the common law offence of cheating the revenue” and to “the common law offence of conspiracy to defraud”. You are also right that clause 6(2) of the draft Bill that accompanies our report provides that the abolition of the common law offence under clause 6(1) “shall not affect the offence at common law so far as [sic] relates to conspiracy to cheat and defraud.”

### **Your interpretation**

You state “Based on above Conspiracy to Cheat and defraud will not fall under Section 1 of Criminal Law Act 1977 and are Common Law Conspiracies” and ask for confirmation of this interpretation of the law. However, the Act, although based on our recommendations, is likely to be different from our draft Bill in certain respects since it has been considered and debated through the parliamentary process. In addition, its interpretation and application are likely to have developed through case law in the 35 years since it was passed.

A research assistant in my team has run searches of our consultation papers and reports to check whether the application of this aspect of the Act has been the subject of any of our publications but it has not. However a number of our publications include references to conspiracy to cheat and to common law conspiracies which you may find helpful:

### **CP 193, Simplification of Criminal Law: Public Nuisance and Outraging Public Decency (2010)**

Footnote 32 on page 52 contains reference to a statutory conspiracy to cheat the Revenue.

### **CP 183, Conspiracy and Attempts (2007)**

Footnote 4 on page 137 contains reference to the common law conspiracies preserved by the Criminal Law Act 1977.

**Law Com 102, Attempts, and Impossibility in relation to Attempt, Conspiracy and Incitement (1980)**

Footnote 9 on page 5 states “The Criminal Law Act 1977, ss.1 and 5 now restricts conspiracy to agreements to commit specific crimes, save in regard to conspiracy to defraud and conspiracy to outrage public morals and decency”

Paragraph 3.1 on page 74 states “Conspiracy at common law survives in the areas of conspiracy to defraud and perhaps also of conspiracy to corrupt public morals and outrage public decency.”

I enclose copies of the relevant pages of these publications with this letter. The whole of these publications can be obtained from the bailii website (<http://www.bailii.org/>). I am afraid that this is the only relevant information that our searches have uncovered on this point. In order to provide you with more information we would need to carry out legal research and then provide you with our opinion as to the position. However, we are a statutory body set up to reform the law and cannot provide advice or opinions on points of law to individuals. As a consequence we cannot confirm the interpretation you give in the final paragraph of your letter.

We would recommend consulting a solicitor for legal advice and the opinion on the interpretation of the law that you are seeking. I provided you with the contact details for the Law Society in my last letter. If you would nonetheless like to carry out your own research, the Criminal Law Act 1977 is accessible online at <http://www.legislation.gov.uk/ukpga/1977/45> and it is possible to carry out a search of its application in case law on <http://www.bailii.org/>. It is also possible to consult criminal law text books such as Simester and Sullivan or Smith and Hogan, or practitioner works like Archbold and Blackstone’s Criminal Practice. Although the Law Commission has access to these and other legal resources which might, following research, provide us with the information on which to base an opinion on your interpretation of the law, this information is exempt from disclosure under section 21 of the Freedom of Information Act because it is accessible to you by other means, as it is already in the public domain.

<b>Topic</b>	29) Assault
<b>Date of Response</b>	06 November 2012
<b>Details</b>	When an innocent civilian is assaulted and deprived of their liberty by a public servant, does UN resolution A/RES/61/177 (or equivalent legislation of Signatory Nation) apply; In the UK, when charging the offender (as per question 1), should the charge be handled by police as assault or the more severe charge of "Deprivation of Liberty"?

### **Answer**

I am writing now to advise you that we have made a search of our records and have concluded that the Commission does not hold information in relation to UN Resolution A/RES/61/177. However, we have produced documents on kidnapping and assault. I have attached links to the relevant documents.

<http://www.bailii.org/ew/other/EWLC/1993/218.pdf>

<http://lawcommission.justice.gov.uk/consultations/1674.htm>

If you are looking for legal advice, you may find it helpful to contact a solicitor. If you have difficulty finding a solicitor, we suggest that you contact The Law Society via their website [www.lawsociety.org.uk](http://www.lawsociety.org.uk). They can also be contacted by telephone 020-7242 1222.

We hope that this is of some assistance. If we can be of further help or if we have misunderstood your request please let us know.

<b>Topic</b>	30) Law Commission Report No 270
<b>Date of Response</b>	25 October 2012
<b>Details</b>	<p>I do hereby make a request that:-</p> <ol style="list-style-type: none"> <li>1. You should confirm whether or not the (Law Com No 270) A Parliament Act had been enacted with regards to the Law Commission Report.</li> <li>2. I request that you should kindly check from your Law Reports Books, whether you have the report on Millson Versus Braid: in the Court of Appeal Before Lord Justice Nourse, Beldham LJJ and Sir John Stocker) which has been reported in the Independent Law Report Case Summaries. Since this List of Authority has either not been published in the White Book Service which does cause some problems to us and many other Litigants in Person. A Defendant was not Estopped by Res-Judicata from raising by way of Sett-Off and Counter Claim a cause of action that could have been combined with a similar but distinct causes of action arising from the same facts which the defendant had pursued to judgment against the same party in an earlier action where it was unjust to do so.</li> <li>3. You should kindly inform the reasonable charges for providing me with a copy of the Law Report for the year 1992.</li> </ol>

### Answer

Thank you for your email, which I have treated as a request under the Freedom of Information Act 2000. The answers to your questions are as follows:

1. The Government has rejected the recommendations made in Law Com 270. You can find more details on our website here <http://lawcommission.justice.gov.uk/areas/limitation-of-actions.htm>.

2. I attach a copy of the judgment in Millson v Braid.

3. I am not quite sure whether your request for the law reports is linked to the request for Millson and Braid. If so, perhaps it is not relevant, given that we are supplying you with the transcript. However, if not, there are numerous series of law reports, including several by the semi-official ICLR. All are commercially available. They would also be available to you in a good reference library. Accordingly, they are exempt from disclosure under section 21 of the Freedom of Information Act.

<b>Topic</b>	31) Commissioning an external organisation (for instance, a private investigator) to undertake surveillance
<b>Date of Response</b>	14 November 2012
<b>Details</b>	<p>I am writing to you to request the following information under the terms of the Freedom of Information (FOI) Act.</p> <ol style="list-style-type: none"> <li>1. The number of external organisations (for instance, private investigators) commissioned to undertake surveillance under the provisions of RIPA for the Organisation and all executive agencies. Please provide disaggregated information if possible.</li> <li>2. The number of non-public bodies or private investigators commissioned to undertake surveillance for the Organisation and all executive agencies. Please provide disaggregated information if possible.</li> <li>3. The names of the contractors commissioned to undertake surveillance</li> <li>4. Total paid to the contractors commissioned to undertake surveillance</li> <li>5. For what reason(s) these external organisations (for instance, private investigators) were commissioned to carry out such surveillance.</li> </ol> <p>Please provide answers to each question for the financial years 2010-2011 and 2011-2012.  Note that I am not seeking operational details or knowledge of techniques, nor am I seeking personal information.</p>

**Answer**

I am answering your FOI request in the order of the paragraphs in your email. The following answers cover the financial years 2010-2011 and 2011-2012.

1. None.
2. None.
3. Not applicable.
4. Nil.
5. Not applicable.

<b>Topic</b>	32) Mentally incapacitated adults
<b>Date of Response</b>	09 November 2012
<b>Details</b>	<p>I am sorry to put you to any trouble, but I was hoping you might be able to help me obtain (suitably redacted) responses to the Law Commission's research on mentally incapacitated adults from the 1990's (Law Commission Nos 119, 128, 129, 130 and 231). In particular, I am interested in any responses that have a bearing on the Law Commission's comment that:</p> <p>'There was also a very loud and clear call for the jurisdiction to be locally based and easily accessible. A number of respondents favoured tribunals for these reasons. Few, however, asserted that the Mental Health Review Tribunal could deal with the requisite range of issues.' (Law Com No. 231, paragraph 10.3)</p> <p>I realise it may not be possible to locate those responses discussing tribunals, and that the responses may not be in a form which is easy to share electronically, so I have compiled a list of those respondents whom I think may have discussed this topic. I have ordered them by those which I would be most interested in seeing, so if this request takes up too many resources you can exclude them from the bottom of the list upwards. I am also uncertain whether you are able to include the responses of particular individuals for data protection reasons, but I've put them on the list just in case you can:</p> <p>The Law Society (Mental Health and Disability Sub-Committee, and also the Group for the Welfare of People With a Mental Handicap)  Independent Tribunal Service  Council of Her Majesty's Circuit Judges  Official Solicitor's Department  Mental Health Act Commission  Family Law Bar Association  Solicitors' Family Law Association  Institute of Legal Executives  Alzheimer's Disease Society  Mencap  MIND  Carers National Association  ■■■■  ■■■■  The National Autistic Society  The Patient's Association  Department of Health  Association of Directors of Social Services  Royal College of Psychiatrist's  Royal College of Physicians  Age Concern England  British Medical Association  Independent Advocacy and Support Services Ltd  ■■■■  ■■■■  ■■■■</p>

	If you are able to share these with me electronically, I would be grateful if you could indicate whether you would be happy for me to share these as on online archive as others may also be interested in the historical background to the development of the Mental Capacity Act 2005. I am particularly interested in these materials as I am currently designing a project exploring dispute resolution mechanisms for the MCA.
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### **Answer**

1) Thank you for your email of 5 November 2012 and for your interest in our work on Mental Incapacity. I work in the Property, Family and Trust law team at the Commission and your email has been passed to me. The files containing the information you have requested are held in off-site deep storage. Records suggest that there are a large number of files relating to the project. We are immediately recalling the files which look most likely to contain the information you are looking for. Once we have identified the correct files we will be able to assess how best to deal with your request. Given the time it will take to recall the files from storage, to assess the information and, possibly to request further files, I should flag that it may be difficult to complete your request within 20 days. It would be very helpful if you were able to give us an indication of when you require the material. If it is easiest to discuss your request on the phone, please feel free to give me a ring (number below) or let me know when I could call you.

2) Thank you for your email. I am so sorry to put you to all this trouble, I can only emphasise that I do appreciate it. I don't know if it would be any help to you, but the reason I want to look at the files is for some research I am hoping to undertake next year (funding allowing) - in which case, I wonder if it would be easier if I came to look at the responses myself in the New Year to save you the time of trawling through them? I appreciate that might be problematic for data protection reasons though. I am in no immediate rush for this information; I'd be quite content to wait until the new year or even into early spring if that is more convenient.

3) Don't worry! We are happy to help in so far as we can. I think the best thing is for us to have a look at the files when they come in from storage and take it from there. The first thing to do is to see how long it will take us to track down the information - then, as you say, we will need to think about redaction for data protection. Thank you for letting us know about your timetable which takes the pressure off us to rush this process. We'll aim to press ahead at our end, but it is very helpful to know that a substantive response can wait if necessary.

<b>Topic</b>	33) Decency
<b>Date of Response</b>	08 November 2012
<b>Details</b>	I am looking to define the actual meaning of decency as used above. I have looked in the codes of practice and various other publications but cannot find its definition. Decency relates to a wide variety but i am sure there is a literal definition. Please can the reply be sent to this address.

#### Answer

Thank you very much for your email regarding the definition of decency in Code G of the Police and Criminal Evidence Act 1984 (PACE). The Law Commission is a law reform body and our statutory purpose is to advise on reforms to the law. Unfortunately, the definition of decency in PACE is not an area that we have researched under one of our projects. As such, we do not have the information you requested. I am sorry that we could not be of more assistance. Please do not hesitate to contact us if you require any further information.

<b>Topic</b>	34) Insanity
<b>Date of Response</b>	20 November 2012
<b>Details</b>	I am currently researching my undergraduate dissertation on the development of the insanity defence and if it is in need of reform and what ideas have arisen in terms of change. I have read the plea for information by the law commission and have seen that the desire for information has now closed. I wanted to know if it was possible to see what ideas have arisen through this discussion and what other people believe needs to change. Look forward to hearing from you.

#### Answer

1) After we have received responses to our paper, we analyse those responses (see, for example, our summary of responses to our paper on the offence of scandalising the court, published last week <http://lawcommission.justice.gov.uk/>) and it occurs to me that you might find that summary of responses to the insanity scoping paper more helpful than the individual responses.

I am wondering within what kind of time you would need a substantive response to this, as our summary/analysis is not written yet, but you might think it worth waiting for.

The other point is that our scoping paper was, in a sense, a call for evidence as to current practice, and it did not in fact ask for ideas for reform, so suggestions for reform would be more of an incidental part of the responses. There are, as I expect you know, plenty of articles in legal journals about possible reform of the defence. We refer to many of them in the supplementary material we published alongside our scoping paper.

2) I'm interested in any information you could possibly offer me please. Ideally I need the information by the end of the year, mid-January at the very very latest so I am able to include it in my dissertation. So whatever you can send me I would be extremely grateful.

3) I shall be reading the responses soon, so shall hope to get back to you soon on this.

<b>Topic</b>	35) Contracts for the International Sale of Goods
<b>Date of Response</b>	30 November 2012
<b>Details</b>	<p>I am a PhD Researcher at the University of Leicester working on the 1980 UN Convention on Contracts for the International Sale of Goods (CISG) and English Sales Law. In 1980 the United Kingdom's Department of Trade and Industry (DTI) solicited views from interested parties as to whether or not the United Kingdom should ratify the CISG. Can you please inform me whether the Law Commission provided the DTI with such a response and if yes, can I please request a copy?</p> <p>I would also like to request a copy of the responses the Law Commission gave to the 1989 and 1997 Official Consultations, and/or to any other requests for an opinion/positive action as to whether the United Kingdom should ratify the CISG. This matter was initially being handled by the DTI and then by the Department for Business, Enterprise and Regulatory Reform (BERR) (now the Department for Business, Innovation and Skills (BIS)).</p>

**Answer**

Please find enclosed copies of the documents you requested. I am sure there will be some material in here that you already have or that is not relevant but I thought it best to include everything that wasn't obviously irrelevant.  
If you require anything else or think that there may be something else we hold then please do let me know.

<b>Topic</b>	36) Process of Repealing Acts
<b>Date of Response</b>	28 November 2012
<b>Details</b>	I am unable to find information that explains the process required for government executive to repeal legislation, either totally or in part. Information is freely available about the process of creating legislation, but what I want to know is the process of removing it! Therefore, under the FOI Act, please would you provide me with your recorded information regarding the process required?

### **Answer**

Thank you for your enquiry of 20 November 2012, in which you asked for information about the process of repealing legislation. The doctrine of Parliamentary sovereignty means that Parliament can create any law that it chooses. This also means that it can alter or repeal any law made by a previous Parliament. There is no special procedure for passing an Act that repeals legislation: the process is exactly the same as for any other Act of Parliament. Usually, any repeals to previous legislation will be expressly listed in the repealing Act. However, most legislation is also susceptible to implied repeal: that is, it will be deemed to be repealed if it conflicts with another statute passed later.

Under section 3 of the Law Commissions Act 1965, the Law Commission has a role in recommending the repeal of obsolete legislation to Parliament. This work is carried out by the Statute Law Repeals team. We only propose candidates for repeal if they have clearly ceased to have any effect, usually because they are now spent or unnecessary. We are happy to receive suggestions for the repeal of laws which meet these criteria, but we do not recommend the repeal of Acts if they are still in use, or if their repeal might be controversial. To date, our proposals have resulted in eighteen Statute Law (Repeals) Acts; the nineteenth is currently being considered by Parliament. More information about the team's procedures and recent work is available on our website, at <http://lawcommission.justice.gov.uk/areas/statute-law-repeals-team.htm>.

<b>Topic</b>	37) Remedies in Administrative Law
<b>Date of Response</b>	23 November 2012
<b>Details</b>	Do you have working paper; Remedies in Administrative Law (October 1971) Working Paper No 40?

### Answer

Thank you for your request. I attach a copy of the publication you have requested.

<b>Topic</b>	38) Limitation period in sexual abuse cases
<b>Date of Response</b>	03 December 2012
<b>Details</b>	<p>A) I'm working on my thesis about the limitation statute on the icelandic criminal law and the right to bring charges for a sexual abuse of a child under the age of 18. I'm looking into other European countries and their legislation. I'm reading this document by ■■■■; <a href="http://www.parliament.uk/briefing-papers/SN04209.pdf">www.parliament.uk/briefing-papers/SN04209.pdf</a> - and there it says that the Law Commission had recommended that rules on limitation periods be replaced with a single "core regime" which would apply to most civil actions. In personal injury claims, there would be an extendable limitation period of three years, whether the claim concerned was made in negligence or in respect of an intentionally caused injury. - In November 2009, the Government announced that reform of the law of limitation of action would not be taken forward. - so I ask: Has there been any changes to the limitation period in sexual abuse cases since this document was written in May 2010? This e-mail is probably not the right e-mail to send above question but I hope that, whoever receives this e-mail can help me with this problem of mine, and if not, then be so kind to forward it to someone who can, like for ex. ■■■■.</p> <p>B) Thank you very much for taking a time to answer my questions. They were very helpful and will definitely come in handy for my thesis. There is one thing though that is still confusing me and I must admit that it probably because I do not know much about English law nor legislation. In the Standard Note on Limitation period in sexual abuse cases says that the limitation period is considered to be six years. But when I read judgement A v Hoare (<a href="http://www.bailii.org/uk/cases/UKHL/2008/6.html">http://www.bailii.org/uk/cases/UKHL/2008/6.html</a>), it's then like the limitation period is three years.</p> <p>Is this the difference between "negligently caused injury" and "intentionally caused injury"? Does the limitation period start from the day of knowledge of person injury in both terms?</p>

### Answer

A) To our knowledge, there has not been any change to the limitation period applicable to civil actions for sexual abuse since May 2010.

The decision of the House of Lords in A v Hoare [2008] UKHL 6, [2008] 1 AC 844 remains the leading case on this point and courts must therefore consider each case on its merits.

As to the exercise of the court's discretion, you may be interested to see the decision by the High Court in A v Hoare [2008] EWHC 1573 (QB) following the House of Lord's decision in Hoare permitting the claim to proceed. You may also be interested to read the guidance offered by the Court of Appeal in B v Nugent Care Society [2009] EWCA Civ 827, [2010] 1 WLR 516 on how to exercise the discretion to permit claims to proceed.

As part of your research you may also wish to consider the article below. Unfortunately we do not have access to a full copy of this but your university may be able to obtain it for you.

Extending time limits in sexual abuse cases: a critical comparative evaluation. Anthony Gray C.L.W.R. 2009, 38(4), 342-384. [Common Law World Review]

Abstract: Compares the approaches adopted in Australia, England, the US, Canada and New Zealand for extending normal limitation periods to permit claims brought by the alleged survivors of childhood sexual abuse. Reviews psychological research on the reasons why these survivors may delay disclosure of their experiences for many years. Considers how the concept of discoverability, the rule that the limitation period commences when the complainant might reasonably be expected to have "discovered" their injuries, is applied in the jurisdictions. Discusses what form of limitation regime for these cases would be optimal.

Cases cited: Glennie v Glennie [2009] NSWSC 154 (Sup Ct (NSW))  
S v G [1995] 3 N.Z.L.R. 681 (CA (NZ))  
Stubbings v Webb [1993] A.C. 498 (HL)  
Brown v New South Wales [2008] NSWCA 287 (CA (NSW))  
Tusyn v Tasmania (No.2) [2008] TASSC 76 (Sup Ct (Tas) (Full Ct))  
A v Hoare [2008] UKHL 6; [2008] 1 A.C. 844 (HL)  
M(K) v M(H) [1992] 3 S.C.R. 6 (Sup Ct (Can))  
SDW v Church of Jesus Christ of Latter-Day Saints [2008] NSWSC 1249 (Sup Ct (NSW))

The position under criminal law remains the same since May 2010. At common law, there is no time limit within which a prosecution must be commenced (see P J Richardson (ed), Archbold: Criminal Pleading, Evidence and Practice (2012), para 1-270). There are no statutory limitations which apply to the prosecution of sexual offences (see section 132A of the Sexual Offences Act 2003).

I hope this answers your question.

B) Thank you for your reply. I am glad that you found our answers helpful. With regard to your first question, may I refer you to section 2 of the Limitation Act 1980? This states that no actions founded on tort shall be brought after six years. For personal injuries caused by negligence, nuisance or breach of duty only, the period is three years. Hence the distinction between intentional and non-intentional injury. Your second question, on when the limitation period starts to run, is less straightforward. Unfortunately, we don't have this information to hand, and don't at this time have any members of staff who are free to research this point. You may wish to look up the point in a textbook or practitioner's text such as Clerk and Lindsell On Torts (20th ed).

<b>Topic</b>	39) Kidnapping consultation
<b>Date of Response</b>	05 December 2012
<b>Details</b>	I would appreciate it if you could tell me the results of your "Kidnapping" consultation, carried out last year, on 28 September 2011.

#### Answer

Further to your request for information, please find attached the responses to our consultation on kidnapping.

<b>Topic</b>	40) Dead and obsolete laws
<b>Date of Response</b>	07 December 2012
<b>Details</b>	<p>We believe that Sir Terence Etherton when as Chairman of the Law Commission he had made a Statement about:</p> <p>1) Dead Law can lead to false expectations and Consequent Costs People need to be clear about what is in force and what is not.</p> <p>2. The Law Gazette Created 07-02-08 Obsolete Laws often seem quaint and redundant, but, if left untouched in the Statute Book, can still prove dangerous. This is the 18th such list published since the Commission was set up some 40 years ago. Each of them has resulted in an Act of Parliament, passed under a unique procedure: Lawyers from the Law Commission must attend a Joint committee of both Houses of Parliament to be grilled on their proposal repeals. Some 2,000 unwanted Acts have been abolished since the commission started work- which sounds pretty good until you realise there are still 8,000 public General ACTS Left as well as 11,000 personal Acts and 25,000 local Acts of Parliament. <a href="http://www.lawgazette.co.uk/print/2349">http://www.lawgazette.co.uk/print/2349</a> Since the Law Gazette Editors can publish what they like, whilst they do leave out other words. We have requested the Information from the Law Commission-</p>

### Answer

Thank you for your email of 6 December 2012. You requested information about Sir Terence Etherton's statement which was quoted in the Law Gazette on 7 February 2008. This statement seems to have been excerpted from the Law Commission's press release on the publication of our 18th Statute Law Repeals report in January 2008. These reports recommend the repeal of statutes which have become obsolete, usually because they are now spent or unnecessary. We do not recommend the repeal of Acts if they are still in use, or if their repeal might be controversial. The recommendations in the 18th report were subsequently implemented by the Statute Law (Repeals) Act 2008. I have attached a copy of the original press release, which includes Sir Terence Etherton's full statement, to this email. I hope that you find this information useful.

<b>Topic</b>	41) Exemplary damages
<b>Date of Response</b>	10 December 2012
<b>Details</b>	I was wondering if you could advise me if there is any new publication/information concerning exemplary damages. It has been a while since you published your last report on this topic (1997 - rep. no. 247) and English law (administrative, criminal and tort) has apparently changed. I would therefore like to know if there is currently any new (either non-official) report or paper dealing with this subject as I am writing my dissertation on exemplary damages.

**Answer**

To the best of our knowledge, there have not been any further publications by the Law Commission on this area of law. I hope that this is of some assistance.

<b>Topic</b>	42) Limitation actions
<b>Date of Response</b>	14 December 2012
<b>Details</b>	<p>IFAs are the only profession that have no entitlement to the protection of a limitation defence of 15 years from act or omission under section 14(b) of the Limitation Act 1980, commonly known as the longstop provision, due to the Financial Services and Markets Act 2000 which was effective from December 21st 2001. Consequently, claims can be made in perpetuity beyond retirement and demise. On Monday of this week, during the 4th Day of Report Stage on the Financial Services Bill, Lord Flight moved Amendment 83A to correct this position but subsequently withdrew it following the concern expressed on the long term nature of financial products and the need to protect consumers. The Treasury spokesman Lord Newby stated the long-term nature of some financial services products means that it can take many years for consumers to be made aware that they may have suffered detriment (Hansard November 26th Column 19).</p> <p>The extensive work by the Law Commission on Limitation of Actions, where proposals were approved by the Blair Administration in 2002 but rejected by the Brown Administration in 2009, would undoubtedly have considered this point, not only in relation to the Limitation Act 1980 but also to the Prescription and Limitation(Scotland) Act 1973 which reflects the legal position in Scotland.</p> <p>I would be grateful if you would search your archived records on the consultation process and provide any references you consider would be appropriate to counter the expectation of a longstop of 15 years or more for financial services products.</p>

### Answer

Our work on limitation periods may be found here: <http://lawcommission.justice.gov.uk/areas/limitation-of-actions.htm>

The Prescription and Limitation (Scotland) Act 1973 is discussed in our consultation paper (No 151), which is available for download from the "Project documents" box on the right-hand side of the website above, along with our final report. The subsequent history of our report is also set out on the website.

I have now had an opportunity to look through the relevant files from our archives and I can confirm that, as we suspected, the Law Commission did not consider the Financial Ombudsman Service limitation periods under the FSMA 2000 when formulating the policy put forward in our report on limitation. It also does not appear that this was an issue raised as part of the consultation process. My guess is that this is because our limitation proposals were aimed at general civil claims rather than the specific statutory dispute resolution/compensation scheme which is operated by the FOS. I am sorry I was unable to find anything more relevant. I trust that you now consider your enquiry adequately dealt with.

<b>Topic</b>	43) Result/response on Consultation Paper No 177
<b>Date of Response</b>	18 December 2012
<b>Details</b>	<p>I am a law student in Hong Kong and are currently working on my Criminal Law assignment (Topic: defence of duress by threat). I've noted that The Law Commission has proposed the defence of duress as the full defence of first/second degree of murder and attempted murder in the consultation paper no. 177. As learnt from your website the project was completed and some of your recommendations on partial defences have been implemented in large part by the Coroners and Justice Act 2009 and the remainder of our recommendations have been rejected by Government.</p> <p>Since I wish to know whether the government has accepted your recommendations for "the defence of duress as the full defence of first/second degree of murder and attempted murder". Therefore, I've made the searching via the internet and have found the attached file named "Response to the Law Commission Consultation Paper - A New Homicide Act for England and Wales? A Consultation Paper No 177".</p> <p>Would you please advise me if the attached file is the response from the government so that I can use and cite it in my assignment. If not, would you please advise me for the sources of response from the government regarding the above-mentioned subject.</p>

### Answer

The Law Commission publication no 177 which you mention is a consultation paper. It sets out the law of murder, manslaughter and infanticide, makes provisional proposals for reform of the law, and invites responses from interested parties on these proposals.

The document you have attached is one such response, from the London Criminal Courts Solicitors' Association. As noted at page 2 of that document, the London Criminal Courts Solicitors' Association represents the interests of specialist criminal lawyers in the London area. It is not connected to the government.

After taking into account responses to the consultation paper, the Law Commission published its final report on the law of murder, manslaughter and infanticide on 29 November 2006 (report no 304). One of the recommendations made in that report is that duress should be a full defence to first degree murder, second degree murder and attempted murder; see paragraph 6.36 and following of the report, available here:

[http://lawcommission.justice.gov.uk/docs/lc304\\_Murder\\_Manslaughter\\_and\\_Infanticide\\_Report.pdf](http://lawcommission.justice.gov.uk/docs/lc304_Murder_Manslaughter_and_Infanticide_Report.pdf)

At page 261 of the final report you will find a list of individuals and organisations who participated in and contributed to the consultation process.

The recommendation you are interested in – duress as a full defence – has not been implemented by the government. The Law Commission's Annual Report of 2010-11 notes at paragraph 3.64:

"Although our recommendations on partial defences were implemented to a substantial extent in the Coroners and Justice Act 2009, in January 2011 the Government informed us that it would not implement the remainder of the recommendations in this report, stating that the time was not right to take forward such a substantial reform of the criminal law."

This report is available here:

<http://lawcommission.justice.gov.uk/publications/annual-reports.htm>

I hope this helps to answer your question.

## Quarter 4

<b>Topic</b>	44) Responses to Wildlife Law Consultation Paper
<b>Date of Response</b>	15/01/13
<b>Details</b>	I am writing to you in regards to the 'Wildlife Law Consultation Paper' and its responses. I would like to inquire when the responses you have received will be available to the general public. I am aware the closing date is 30 November and would be interested in gaining access to organisations opinions on the proposal, to appreciate the complexity of proposals. I ask, as I am currently studying at the Royal Agricultural College and am looking to do a dissertation topic on the proposal. I would like to do an analysis of the responses you receive as primary data, I would not be looking at all the responses you receive but in fact a dozen or so of the key groups/associations to give a broad range of opinions. Do you think you would be able to assist?

### Answer

The consultation period has formally come to an end. However we would like to let you know that we are still expecting to receive a couple of late replies within the next week (we have not yet received the consultation response from DEFRA for example). We have also extended the consultation period for representatives of the fishing industry by three weeks (21 December) as we felt they had been insufficiently involved in the consultation process. As we have received more than 100 consultation responses in the last few days of the consultation period at the moment we are still busy filing them in our system. As a result realistically we will be able to provide you with an updated list of consultees early next week (the updated list of course will not include eventual future responses from the fishing industry). Once you have selected the relevant organisations we would have a preference in sending you a copy of their submissions electronically. However let us know whether this would be a problem for you.

In response to your request dated 17 December 2012 to access to the consultation responses from “of all the organisations that have replied” to the Wildlife Law consultation paper, we have just posted to the address you have provided to us [REDACTED] one CD-ROM with the 114 relevant consultation responses, which are contained in 136 PDF files. An index of relevant consultation responses has also been attached to the letter. In order to comply with the Freedom of Information Act 2000 and data protection law, addresses, phone numbers and other identifying information have been redacted. Potentially defamatory statements have always been redacted from the documents. Please do get in touch if you would like any further information. We hope the material will prove useful for your dissertation

<b>Topic</b>	45) Scope of the wildlife project
<b>Date of Response</b>	14/01/13
<b>Details</b>	What is the name of the DEFRA official who instructed you that Hunting with Dogs was not part of your remit.

**Answer**

We have taken your request to relate to the exclusion of the Hunting Act 2004 from the wildlife project's scope. We were not instructed by a DEFRA official to exclude the Hunting Act 2004 from the project. The project arose from a proposal by DEFRA in response to our consultation on our 11th programme of law reform. The submission of the proposal by DEFRA was preceded by informal discussions between us and officials at DEFRA. From the very earliest discussions, it was a common understanding that the Hunting Act 2004 would not be part of the project. We hold no record which shows whether the issue was first raised by us or by DEFRA officials, but, regardless of DEFRA's view, it was and continues to be our view that the Hunting Act 2004 should not be included in the project, for the reasons set out in paragraph 1.27 of our Consultation Paper. In that paragraph we state that the Hunting Act 2004 is excluded from the project owing to its political sensitivity, the level of controversy attached to it and the Coalition Agreement commitment to hold a vote on its repeal.

In 1997 the Law Commission published "Legislating the Criminal Code: Misuse of Trade Secrets consultation paper (LCCP150)" but I am unable to find any mention of findings from that consultation or any reports of the outcome.

Please provide a copy of any reports of findings or indeed any findings from the consultation, even if only in draft form

<b>Topic</b>	46) Misuse of trade secrets
<b>Date of Response</b>	23/01/13
<b>Details</b>	In 1997 the Law Commission published "Legislating the Criminal Code: Misuse of Trade Secrets consultation paper (LCCP150)" but I am unable to find any mention of findings from that consultation or any reports of the outcome. Please provide a copy of any reports of findings or indeed any findings from the consultation, even if only in draft form.

## Answer

By way of background, it is normal practice at the Law Commission to approach a project of law reform by way of an initial consultation paper to which the public can respond and subsequently, following an analysis of those responses, we publish a final report. The Government then considers the recommendations of the report and determines whether to implement those recommendations. As you know, the Law Commission did not go on to publish a final report on the subject of misuse of trade secrets following its consultation.

In 2000, the Commission decided to postpone further work on this project pending the publication of its report on fraud in 2002 (LC No 276). However, following the conclusion of the project on fraud it was decided that the project on misuse of trade secrets would not be pursued. Our annual report of 2004-2005 (available from Bailii at <http://www.bailii.org/ew/other/EWLC/2005/294.html>) sets out the reasons for this decision (see paras 5.11 and following). The relevant parts of the annual report read:

"The Commission previously considered the possibility of creating an offence of misusing a trade secret. We provisionally proposed that the unauthorised use of disclosure should, in certain circumstances, be an offence. In addition, we provisionally concluded that for the purpose of any new offence of trade secret misuse, it would be necessary to provide a definition of a trade secret. Further work has been postponed, pending the completion of our work on fraud. Since then, other commitments have prevented a return to this topic.

The majority of respondents to the consultation paper in principle supported the criminalisation of the unauthorised use or disclosure of a trade secret. At the same time a minority were very strongly opposed. The Commission has concluded that, despite the majority view, it would not be right to continue with this project. There are a number of reasons:

- (1) Amongst respondents there was considerable criticism of the lack of empirical research to substantiate the Commission's main justification for provisionally proposing a new offence, namely that civil remedies alone are insufficient to discourage trade secret misuse.
- (2) The Commission is now of the view that a more coherent and principled approach would be to consider the issue in the context of all intellectual property rights.
- (3) Clause 4 of the draft Bill appended to our report on fraud covers fraud by abuse of position. This potentially covers certain forms of misuse of trade secrets. If the Government proceeds with a Bill that includes the equivalent of clause 4, forms of misuse of trade secrets will be covered and that is a strong argument for not creating a separate overlapping offence. If the Government decides as a matter of policy not to enact such an offence, it might be thought to be anomalous to propose an offence that would apply to misuse of trade secrets regardless of whether or not there was an abuse of a fiduciary relationship.
- (4) The Commission is not aware of a widespread feeling amongst business, industry, commerce, the legal profession and government that it should return to the project as a matter of priority. Currently, the Commission's resources are fully committed to the projects that have been outlined. A return to this project, even if it were limited to consideration of trade secrets, is beyond our current resources."

You may find it helpful to read the attached document, which is the Commission's analysis of the responses to the consultation paper on misuse of trade secrets. The analysis is in draft form and was never published. I have also attached the Annex referred to in the analysis.

<b>Topic</b>	47) R v Manchester Stipendiary Magistrates ex parte Hill
<b>Date of Response</b>	17/01/13
<b>Details</b>	To provide a transcript of the judgment in R v Manchester Stipendiary Magistrates ex parte Hill

#### Answer

After an internal review of the first reply to this enquiry, the following reply was sent:

I apologise for responding to your previous email in short form. I now appreciate from your paragraphs 1 and 6 that you are making a Freedom of Information Act 2000 request for us to provide you with a transcript of the judgment in R v Manchester Stipendiary Magistrates ex parte Hill. I can confirm that the Law Commission holds this information. The information is exempt under section 21 of the Freedom of Information Act, because the information is reasonably accessible to you. In respect of the other matters in your email, I do not think any action is required by us by anything in your paragraphs 1 to 6, except in respect of your freedom of information request, which I have dealt with. The Commission is not under a statutory duty in relation to the welfare of children.

<b>Topic</b>	48) Report on Illegitimacy
<b>Date of Response</b>	01/02/13
<b>Details</b>	Please could you release your report no 118 "Family Law: Illegitimacy (HC 98).

#### Answer

I acknowledge receipt of your Freedom of Information request. I am glad that you have found the publication you were looking for on the Bailii website. We have a link to the Bailii website on the Publications page of our website at <http://lawcommission.justice.gov.uk/publications.htm>. As we have an extensive back catalogue of publications dating from 1965, it would take up too much capacity on our website to keep them there. On the Publications page, we invite anyone who wishes to have a copy of an old publication to contact us and we will supply the PDF version. The question of storage capacity on our website affects the speed of downloading documents, the running of the website and other accessibility issues. In practice, we find that storing large PDFs on our internal network is a more efficient use of limited capacity. I am afraid the capacity of the website is controlled by our service provider and is not within our direct control.

<b>Topic</b>	49) Scope of wildlife project (see also (2) above)
<b>Date of Response</b>	12/02/13
<b>Details</b>	<p>My Freedom of Information request still stands for the names of those involved in the decision not to include hunting in your wildlife management legislation remit, and in particular the Senior Defra executive responsible. From what you are saying I have no evidence that this decision was made and approved by Ministers, which it should have been. The 150,000 workers in the wildlife management industry have a basic right to know the names of those who are putting them out of business, beyond the hostile attacks from Natural England, the RSPB and the RSPCA. This also applies to Upland farmers on 50% of the land area of the British Isles. They all see themselves going the same way as the Fishing industry and vulnerable farmland and upland bird species, particularly as senior Defra staff are recommending cuts to CAP Pillar 1 direct payments, which currently allow British farming to just survive the vast quantities of heavily subsidised food dumped on our British markets. Environmental payments are wasted without the full range of measures needed to control predators. Eighty to ninety % of ground nesting birds losses are due to predation, resolved by the wide range of private sector wildlife management skills. Labours's Elliott Morley lost his temper with me at a Defra Partnership Against Wildlife Crime seminar and said that wildlife do not need managing, a view firmly entrenched within Government organisations and animal rights activists. We must all have a clear directive from Government - Wildlife Management or no Wildlife Management - A biologically diverse countryside or a barren wilderness. This is what I am asking you to sort out at the highest level. Calls for a repeal of the Hunting Act is a red herring. There never was a serious prospect of that happening, as we can now see from a current statement from the Minister. The facts clearly state that Parliament voted by a majority of 479 over 413 against a hunt ban. The Labour Government broke the law on several counts as demonstrated in my submissions to you. My letter LC.5 was very clear on the serious nature of the position we find ourselves. All the points I raise are solutions to wildlife management problems and should be welcomed by all who want to promote kindness and prevent animal suffering, and to reduce Government spending. No need to waste any more Parliamentary time, the facts can now be presented clearly and the due processes of the law put in place to drive out the current corruption and fraud. My last additional e-mail point 3 may seem insignificant to the unknowledgeable, but our overriding moral duty of care to wild and domesticated species is to provide the best prospect of an instantaneous death, provide a clean edible carcass free from stress hormones and blood, and follow up and dispatch casualties. This is enshrined as our most ancient best practice tradition. Hunting methods are unique in being able to deliver at no cost to the taxpayer. Defra have demonstrated their failings in this area by allowing fish to be killed and thrown back dead into the sea, and healthy badgers to be shot at night without any prospect of being able to follow up a wounded animal, whilst the sick super-excreters, the carriers of the TB bacilli, remain undetected.</p>

## Answer

Thank you for your request for information dated 15 January 2013, which asked for the names of those involved in the decision not to include hunting in your wildlife management legislation remit, and in particular the Senior Defra executive responsible. Consideration of the Hunting Act 2004 is excluded in the terms of reference of the wildlife project. However, not all hunting is excluded from the wildlife project. All hunting of game birds under the current Game Acts is included in the wildlife project's scope. The hunting exclusion relates solely to the Hunting Act 2004. DEFRA were advised from the outset by, in the first instance, Richard Percival, Team Manager of the Public Law Team, that any project that required consideration of that Act would be very unlikely to pass the Law Commission's test that a proposed project be suitable to be considered by a non-political body composed of lawyers. For further assistance, general information on our work can be found at: <http://lawcommission.justice.gov.uk/about/how-we-work.htm>. Your question presupposes that a decision was taken by DEFRA independently of a shared assumption based on the Law Commission's advice. So far as we are aware, that was not the case, and accordingly we hold no information on it. The final decision on the inclusion of the project in our 11th Programme of Law Reform was made by the Lord Chancellor.

<b>Topic</b>	50) Level crossings project
<b>Date of Response</b>	06/03/13
<b>Details</b>	I wonder if you have any standard wording about the Law Commission review and Report to Ministers, as you will see we are being asked by several MPs about a duty to co operate and wanting to get something moving. If you have anything (which needs to include something on timescales) this will save me time in pulling something together,

#### Answer

Thank you for your request. We are treating this as a request for information under the Freedom of Information Act 2000. You have asked for a copy of the draft Bill we are preparing for publication together with our report on level crossings law. We are still in the midst of the drafting process, with the team providing additional instructions in response to Parliamentary counsel's queries and advice and counsel updating their drafts. The draft Bill is a constantly changing document. Once a final draft has been prepared and approved by both sets of Commissioners, we will publish the draft Bill, together with our report. Having considered the public interest, we think it will be best served by releasing the Bill once it is in a fixed and agreed form, not when it is in a state of flux and also in releasing the Bill to all stakeholders at the same time, together with the report and explanatory note which explain the Bill, rather than piecemeal. We have therefore decided not to release a draft of the Bill to you at this stage as it is information intended for future publication (Freedom of Information Act 2000, s22) and also because the information is subject to legal professional privilege between Parliamentary counsel and the Law Commission (Freedom of Information Act, s42). However, we are more than happy to discuss the policy as it stands at the present time, as we have done at various stages in the project.

<b>Topic</b>	51) Responses to Post-Contract Duties consultation paper
<b>Date of Response</b>	19/02/13
<b>Details</b>	Having read the summary of responses to the Post-Contract Duties consultation paper, we're interested in obtaining the full responses to the December 2011 Post-Contract Duties consultation paper, which we understand are available under the Freedom of Information Act. Could you please email through all those which are available to view and just let me know how many (and if possible, the type of respondent, e.g. lawyer, broker, insurer) remain confidential for whatever reason?

#### Answer

Thank you for your email of 12 February requesting requested copies of the responses received to our second consultation paper on insurance contract law, "Post contract duties and other issues". Please find enclosed 50 responses as detailed on the included list. In addition to the responses enclosed, two consultees gave responses which they requested remain confidential. One of these consultees was an individual who related a personal experience which they did not want disclosed. The other was an entity connected with the insurance industry which sought confidentiality for commercial reasons. We consider that both of these responses constitute information received in confidence, and therefore are subject to the section 41 Freedom of Information Act exemption to the normal requirements of disclosure.

<b>Topic</b>	52) IT related questions
<b>Date of Response</b>	21/03/13
<b>Details</b>	<p>I would be grateful if you could supply the following information which I would like to receive by email. The information should be as up-to-date as possible but not older than 3 months.</p> <ol style="list-style-type: none"> <li>1. If your IT is not totally Outsourced then how many individual Staff – NOT whole/full time equivalents – are employed within your IT Department?</li> <li>2. To which Company or Companies are the following areas of IT Outsourced: Infrastructure? Desktops/Laptops/Thin Clients? Systems Development / Applications Management? (Can you please answer the questions 3 to 8, even if your IT is Outsourced)</li> <li>3. How many Desktops are in use?</li> <li>4. How many Laptops are in use?</li> <li>5. How many Thin Clients are in use?</li> <li>6. Which Server Platform(s) and Operating System(s) do you use?</li> <li>7. How many Physical Servers are in use?</li> <li>8. How many Virtual Servers are in use?</li> <li>9. What is the name and job title of the most senior person in IT?</li> <li>10. What is the name and job title of your Senior Information Risk Owner/Officer (SIRO)?</li> </ol>

### Answer

We have obtained the information you requested from the Ministry of Justice, as follows:

1. It is outsourced.
2. Infrastructure is ATOS ORIGIN, Desktops/Laptops/Thin Clients is ATOS ORIGIN and Systems Development/Applications Management is LOGICA.
3. 60.
4. 9.
5. No.
6. Windows NT, 2000, 2003 and 2008. HP-UX 11-23. RHEL 3, 4 and 5. Solaris 2.3, 8, 9 and 10. SuSE Linux 10. Tru 64 4.0.
7. None specifically are dedicated to the Law Commission but the number for MoJ is 4,274.
8. None specifically are dedicated to the Law Commission but the number for MoJ is 1,245.
9. [                    ], Chief Information Officer for the MoJ (interim).
10. [                    ], Chief Executive of the Law Commission.

<b>Topic</b>	53) Personnel questions
<b>Date of Response</b>	21/03/13
<b>Details</b>	<p>I would like to make a freedom of information request, Please can you send me the direct contact details of the following job titles (ICT (Information, Communication and Technology) can also mean for IM&amp;T (Information Management and Technology), IS (Information Systems), IT (Information Technology),</p> <p>Director of Finance  Head of Procurement  Director of ICT  Head of ICT  ICT Manager  Application Manager  Infrastructure Manager  Network Manager  Telecoms Manager</p>

**Answer**

Thank you for your Freedom of Information request. All of the posts mentioned sit within the Ministry of Justice: MoJ ICT (HQ). I have forwarded your FOI request to the FOI branch within MoJ HQ for them to answer.

Since writing to you, I have been notified by the Ministry of Justice that I should have advised you to contact them direct with your request for information. Would you please send your original request to [data.access@justice.gsi.gov.uk](mailto:data.access@justice.gsi.gov.uk). I am sorry for any inconvenience or slight delay in dealing with your request

<b>Topic</b>	54) Law Commission Report on Defences of General Application
<b>Date of Response</b>	08/03/13
<b>Details</b>	Could you provide me with a copy of The Law Commission (1977) Defences of General Application (Law Com No.83)

#### Answer

Thank you for your request. I attach the report you refer to.

<b>Topic</b>	55) Aggravated, Exemplary and Restitutionary Damages
<b>Date of Response</b>	22/03/13
<b>Details</b>	Has there been any legislation pursuant to the recommendations of the following report: (1997) Item 2 of the Sixth Programme of Law Reform: Damages: Aggravated, Exemplary and Restitutionary Damages?

#### Answer

Our report was rejected by the Government and, accordingly, was not implemented. (Implementation status of Law Commission law reform reports, Law Commission Annual Report 2011-12, Appendix A: [http://lawcommission.justice.gov.uk/docs/lcar11-12\\_web.pdf](http://lawcommission.justice.gov.uk/docs/lcar11-12_web.pdf)). The Leveson Inquiry Report on the culture, practices and ethics of the press cited our 1997 report. Leveson LJ recommended that our proposals on aggravated damages be adopted. His lordship also recommended that exemplary damages should be available in actions for breach of privacy, breach of confidence and similar media torts as well as for libel and slander. We were not involved in this process. Amendments were passed to the Crime and Courts Bill currently going through Parliament to implement some of the Leveson Report's proposals. These include provisions relating to exemplary damages. The Law Commission is not involved with these amendments. The amendments may be viewed here: <http://www.publications.parliament.uk/pa/bills/lbill/2012-2013/0090/2013090.1-7.html>. Further information about the passage of the Crime and Courts Bill is available on Parliament's website: <http://services.parliament.uk/bills/2012-13/crimeandcourts.html>.