

BOARD MEETING

23 SEPTEMBER 2015

- Board:**
- Sir David Bean, Chairman
 - Elaine Lorimer, Chief Executive
 - Stephen Lewis, Commissioner for Commercial and Common Law
 - Professor David Ormerod QC, Commissioner for Criminal Law
 - Nicholas Paines QC, Commissioner for Public Law
 - Sir David Bell, Non-Executive Board Member
- Additional attendees:**
- Professor Nicholas Hopkins, incumbent Commissioner for Property, Family and Trust Law
 - Matthew Jolley – Team Manager, Property, Family and Trust Law Team (for Item 3 and special item on Marriage)
 - Marriage Review Team: Professor Rebecca Probert, Spencer Clarke, Amy Perkins, Rebecca Huxford, Elizabeth Welch
 - Sara Smith, Head of Strategic Planning (Secretariat)

Registry

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Item 1: Minutes of the Strategic Issues meeting on 15 July 2015

1. The minutes of the Strategic Issues meeting on 15 July were approved with one amendment.

Item 2: Matters Arising

2. The Chief Executive provided an update to the Board on a number of current issues:

Welsh Language Policy

3. The Chief Executive noted that the Board had last discussed the draft Welsh Language Policy at their June meeting, at which time they had been presented with a paper by Justine Davidge who had been developing the draft policy for the Commission.

4. Since that meeting, the Commission had approached the Welsh Language Commissioner, and shared the draft policy with her for comment. She had provided a number of comments, which the Commission were currently considering.

The Chief Executive would circulate a draft response to the Welsh Language Commissioner to the Board in correspondence for their agreement.

5. In related matters, the Chairman commented that he would be Chairing the Welsh Advisory Committee meeting on the 8th October and attending the Legal Wales conference on the 9th October, along with a number of other members of the Commission.

TW3

6. The Chief Executive reminded the Board that they had taken a paper on the TW3 initiative at their July meeting. Work had been continuing, with the implementation timetable now agreed, and a small group of Champions in place, including Professor Ormerod and the Chief Executive, who would be early adopters of the technology. Feedback so far had been on the whole positive.

7. The issues for the Commission in terms of flexible working remained – however, the Commission already had a clear policy in terms of flexible working, including home working, and it had previously been agreed that this would not change in the short term. The Chairman noted his support for this approach.

8. The Chief Executive also explained that there was no immediate pressure to redesign the Commission’s work area, or to give up any space (unlike the majority of the Ministry of Justice estate who were moving to a decreased work space model). Sir David Bell asked whether the Commission expected that position to change in the medium to longer term. The Chief Executive responded that this could potentially be the case, but that we also might seek to take up the opportunity offered by redesigning our work area.

9. Sir David Bell commented that the cultural issues were key – suggesting that a piece of work be undertaken to understand the work flows of the Commission, including the stages of a law reform project, to better understand the points at which it was crucial for staff to be present in the office, and when more flexibility could potentially be offered.

Resourcing: Legislative Drafting

10. The Chairman asked the Chief Executive to provide an update on securing additional resource from the Office of Parliamentary Counsel to undertake work on legislative drafting.

11. The Chief Executive confirmed that she had spoken to David Cooke, acting First Parliamentary Counsel, and he had confirmed that there would be one additional Parliamentary Counsel who would be made available to join the Commission from January on a full-time basis. This was welcomed, however it was also noted by the Board that even with this additional resource, there would still be an issue next year with a lack of resource for the amount of drafting that needed to be undertaken.

Northern Ireland Law Commission

12. The Chairman asked Mr Paines to raise an issue regarding the ongoing uncertainty with regards to the Northern Ireland Law Commission (NILC). Mr Paines noted that, while assurance had been given by officials in the Northern Ireland Government of the continuation of the NILC as a skeleton body, there had been little progress in recruiting a Commissioner to the body. Mr Paines was concerned that this called into question the delivery of the Electoral Law reform project – the draft Interim Report of which was due to be considered by Commissioners in November, and on which the NILC would need to be consulted in mid-October.

13. The Chairman asked that the minute note the concern of the Law Commission at the lack of an appointment of a Commissioner, and the resultant risk to the delivery of the Electoral Law project.

The Chairman asked the Chief Executive to follow up on the issue and to provide an update to the Board at their next meeting.

Item 3: Quarterly Board Report

14. The Chairman brought to the Board's attention the Quarterly Board Report which had been circulated with the papers for the meeting.

15. Matthew Jolley, Team Manager Property, Family and Trust Team, joined the meeting to represent the team until such time as the new Commissioner took up his post.

16. There followed a discussion of some of the substance of the report, including:

- Statute Law Repeals: Mr Paines asked what the current position was in terms of recruiting for the Head of Statue Law Repeals. The Chief Executive noted that this was an issue that was being considered within the wider context of forward planning for the Commission. The Chairman noted that a future Board meeting would take a paper on the strategy for SLR and Consolidation and that a substantive discussion would be held at that point.
- Commercial and Common Law: Mr Lewis brought to the attention of the Board an issue with the Third Parties (Rights Against Insurers) project, the recommendations of which were implemented by the Third Parties (Rights Against Insurers) Act 2010, but were yet to be brought into force. He expressed concern that progress in the Ministry of Justice was generally proving to be quite slow. **The Chief Executive agreed to contact a more senior official in the Ministry to try and expedite the situation.**
- Criminal Law: Professor Ormerod noted that all Criminal Law projects were on course, with no substantive issues to report. The Chairman commented on the success of the recent Firearms symposium, and that this was a model that could potentially be deployed for other projects in future.
- Property, Family and Trust Law: Mr Jolley attended this part of the meeting on behalf of the team. He noted that all of the PFT projects with the exception of Marriage were rated as AMBER in the Board Report. However, with the new Commissioner, Professor Nicholas Hopkins (who was attending the meeting as an observer) now due to take up his post on 1st October, Mr Jolley was confident that new timetables for the projects would be agreed in short order and that the projects would return to a GREEN rating shortly. Mr Jolley also noted that there had been good progress in the implementation of the

Easements project, and while its place in the Special Procedure would now likely be taken by the Groundless Threats project, Easements remained the next project in the pipeline for the Special Procedure.

- **Public Law:** Mr Paines noted that the Report of the Wildlife Law project would now be published on 22 October. A “black lined” copy of the Report would be circulated to Commissioners shortly. Commissioners had previously agreed that the Mental Capacity project be completed to an accelerated timetable – the Department of Health had now asked the Commission to prepare an Interim Report by Spring 2016. Commissioners would return to this issue at a subsequent meeting. Finally, on Welsh Planning Law, a revised Terms of Reference would be presented to Commissioners in October to reflect the changes which had been made to the project.
- **Risk Register:** The Chief Executive introduced and invited comments – in particular, she asked the Board whether they considered there were any key strategic risks which hadn’t been captured. She also drew the Board’s attention to risks relating to the future pipeline of projects, and how the Commission should seek to attract new projects. **The Chairman agreed that this was an important issue for the Commission, and asked the Chief Executive to prepare a paper to be brought to a future Board meeting for discussion.**
- **Resource Reporting:** The Chief Executive presented the financial report to the Board, noting that a small underspend of just under £10k was currently forecast.
- **Staff Survey:** The Chairman and Board members commented on the very positive results from the last staff survey. The Chief Executive noted that the next staff survey would run throughout October, and that the results would be presented to the Board in due course.

17. Mr Jolley left the meeting at this point.

Item 4: Law Commission Financial Model

18. The Chief Executive introduced a short paper on the Commission’s Financial Model. The Board noted the contents, and agreed to return to a number of specific points at future meetings.

Item 5: Any Other Business

19. No Any Other Business was raised.

Special Item: Marriage Law Reform Project

20. Professor Rebecca Probert, Mr Jolley, Team Manager of the Property Family and Trust Team, and members of the team working on the Marriage Project, joined the Board meeting to provide the Board with details of the work to date on this scoping project.

21. Professor Probert gave a detailed presentation to the Board. She provided an overview of the history of the project and outlined the research and stakeholder engagement undertaken during the scoping phase. She summarised the reasons for reform: the law is not fair, modern, simple, nor effective. She outlined the potential concerns which could be raised by some stakeholders, and suggested responses to them. Finally, Professor Probert set out a proposed way forward for the work, should the Government decide that they wished the Commission to continue working on this

area following the completion of this initial scoping stage. She noted that there would be a meeting with the responsible Minister on 9 November.

22. There followed a brief discussion of the project. The Board were not asked to make any decisions at the meeting as the project would be taken for formal discussion at the Commissioner's next peer review meeting on 21 October.