

## MINUTES

### COMMISSIONERS' STRATEGIC ISSUES MEETING 15 JULY 2015

- Present:** Sir David Bean, Chairman  
Elaine Lorimer, Chief Executive
- Stephen Lewis, Commissioner for Commercial and Common Law  
Adrian Hogarth – Parliamentary Counsel
- Professor David Ormerod QC, Commissioner for Criminal Law  
Sara Smith – Head of Strategic Planning
- Nicholas Paines QC, Commissioner for Public Law
- Additional attendees:** Phil Hodgson – Head of External Engagement (for Item 2 (part))  
Matthew Jolley – Team Manager, Property, Family and Trust team (for Items 4 and 5)

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#### **Item 1: Minutes of the Strategic Issues meeting on 17 June 2015**

1. The minutes of the Strategic Issues meeting on 17 June were approved with one amendment.

#### **Item 2: Matters Arising**

2. Phil Hodgson joined the meeting to provide Commissioners with an update on a number of issues:

##### Website

3. The new website had been launched, and it had been received very positively with users of the website commenting that it was much easier to locate the information they were seeking, and that the search facility was much improved. There were one or two small teething issues that were being addressed with the help of MoJ Digital Services who had designed the website for the Commission.
4. The Chairman asked whether it was possible to monitor the number of hits to the website, and Phil confirmed that it was, as well as the number of downloads, and that regular monitoring would be taking place.
5. Mr Paines and Professor Ormerod noted that, when the Society of Legal Scholars recently visited the Commission, they expressed their interest to be kept informed on the Commission's projects. Professor Ormerod asked whether they could be invited to sign up to updates via the website, as that facility was available.

**The Chairman noted that he would write to them, providing them with information on the Commission's projects and details of how to sign up.**

#### Law Commission Annual Report

6. The Commission's Annual Report had been sent to the Lord Chancellor, and he had subsequently agreed that the report could be published and had made no comments. The Report would be laid before Parliament on 16<sup>th</sup> July and published on 20<sup>th</sup> July.

#### 50<sup>th</sup> Anniversary

7. So far, seven universities had approached the Commission to note their interest in submitting an entry for the Law Reform University Competition, and a copy of the rules and guidance would be sent to them in due course once it was finalised. The closing date for the competition had been agreed as 20<sup>th</sup> November.

8. The Chairman took the opportunity to update the meeting on the Law Commissions Conference, which had taken place the previous week. The conference had been very good, with excellent presentations given by all speakers and the delegates had provided very positive feedback on both the conference and the Commission. The Chairman expressed his thanks to Commissioners for their work in making the conference a success, and noted that he would be writing to thank the conference organisers.

9. Professor Ormerod noted that the conference organisers were keen to publish, in the book of the conference, the contributions from Commissioners. He would consult with the organisers over the deadline for submissions, but it was likely to be around the beginning of September. The Chairman gave his support for this, and suggested that team Research Assistants could potentially support Commissioners in ensuring their presentation materials were suitably formatted to be included. Commissioners agreed that this was certainly worthwhile.

10. The Chief Executive noted that the Commission had been able to "live tweet" during the conference, and to re-tweet those tweets posted by other delegates. This was seen by Commissioners as an excellent step, and one that could be replicated for events for law reform projects.

11. Ms Hodgson then left the meeting.

#### Recruitment of Law Commissioner

12. The Chief Executive provided an update on the recruitment exercise for a successor to Professor Cooke as Commissioner for Property, Family and Trust Law. Two rounds of interviews had been held, on Monday 6<sup>th</sup> July and Friday 10<sup>th</sup> July, followed by a short teleconference to agree the final recommendation to the Lord Chancellor. A submission had now been sent to the Lord Chancellor by the MoJ sponsor team seeking his decision on the appointment. Once the Lord Chancellor had provided his approval to appoint, the appointment would also be considered by No.10 before any formal announcement could be made. It was also highly likely that the Lord Chancellor would want to meet with candidates before agreeing to the appointment.

13. The Chairman commented that the membership of the recruitment panel had been key to the success of the process – in particular, having another member of the judiciary who was a specialist in the field (in this case, a judge with experience of land law), and having the Chief Executive as a panel member.

#### Framework Document

14. The Chairman reported that, subsequent to the Lord Chancellor's recent agreement of the Framework Document without comment, he and Catherine Lee had now signed the document and it would shortly be deposited in the libraries of the House and published on the Law Commission website.

15. The Chairman also took the opportunity to update Commissioners on his meeting with Catherine Lee, which was the first of the annual performance discussions. The meeting had gone well – with discussions of a range of subjects, including the Commission's law reform projects, the implementation of the Triennial Review, the Commission's budget and the preparations for the Spending Review.

#### Welsh Protocol

16. The Chairman advised Commissioners that he had met the First Minister on 2<sup>nd</sup> July, at which time they had both signed the Welsh Protocol. It had now been formally laid in the National Assembly, and published on the Law Commission website.

17. Mr Paines commented that he had also met with the Welsh Ministers recently to discuss the law reform project on Planning and Development Law in Wales. Subsequent to the initiation of this project, the Planning (Wales) Act 2015 had received Royal Assent. There was a degree of overlap between the Act and the scope for the Planning and Development Law project. Discussions were continuing with colleagues in the Welsh Government as to how this may affect the project.

#### Welsh Language Policy

18. The Chairman advised that he and Justine Davidge from the Criminal Law Team had recently met with the Welsh Language Commissioner to discuss the Law Commission's draft Welsh Language Policy. The Welsh Language Commissioner had welcomed the development of the policy, and had committed to providing any comments she had on the detail of the policy as soon as possible. It was therefore hoped that the policy could be finalised, and launched to staff, over the summer.

#### Resourcing

19. The Chief Executive provided Commissioners with an update on a number of resourcing issues for the Commission. She had been due to have a meeting with David Cooke from the Office of Parliamentary Counsel regarding the Commission's requirements for drafting by Parliamentary Counsel over the next year. Unfortunately, due to completing work, David Cooke had been unable to attend so **the Chief Executive would follow up with him and report back to Commissioners at their next Strategic Issues meeting.**

#### Item 3: Financial Modelling

20. The Chief Executive noted that, due to competing priorities, she had not been able to circulate the paper as planned to inform this agenda item. After a brief

discussion, it was agreed that Commissioners would return to this issue at their next meeting in September.

#### **Item 4: TW3: Changes to Technology in the Commission**

21. Matthew Jolley, Team Manager Property, Family and Trust Law, joined the meeting for the discussions of this item.

22. The Chief Executive presented a short paper to Commissioners which provided some background to the cross-government The Way We Work (TW3) initiative, and noted the impact of this initiative on the Commission.

23. TW3 is a programme of work which aims to modernise the way in which civil servants work, through providing improved technology and more modern workplaces and work practices. In many departments, this meant both the roll out of new technology (i.e. laptops to replace existing desktops) and redesigning office space in order to increase capacity. This latter aspect of the project would not be relevant for the Commission as its space is ring-fenced within the building. For the Commission, this would be purely a technology change. The Chief Executive had asked Mr Jolley to attend the meeting for this item as he and Sara Smith, Head of Strategic Planning, would be leading on the work to prepare the Commission for this change.

24. The Chairman noted that the Commission had been aware for some time that this change in technology would come – and that this should be looked on as an opportunity to provide Commission staff with far superior technology than they have now. He also noted, however, that careful thought should be given to the timing of any change.

25. The Chief Executive noted that the approach suggested in her paper was to convene a small group drawn from the Commission who would move to the technology first and become “champions” of the technology. Professor Ormerod considered this to be a good idea, and offered to be one of the champions.

26. Commissioners agreed that the work on preparing the Commission for the implementation of TW3 should commence, and that the small group of champions be identified.

27. The Chief Executive would provide an update on the implementation as a standing item at Commissioners’ meetings.

#### **Item 5: Work Programme**

28. Mr Jolley remained for the discussion of this item to represent the Property, Family and Trust Team in the current absence of a Commissioner in that area.

29. The Commissioners then provided updates on the projects in their areas:
- Mr Lewis – Commercial and Common Law: All projects remained on track. Bills of Sale was due to be discussed at the Commissioner’s next peer review meeting, and papers had previously been circulated to support that discussion. The Consultation Paper for Consumer Prepayments had now been launched, and some comments were already coming in to the team. On Insurance Law, the consultation had recently closed and the team were analysing the responses.

- Professor Ormerod – Criminal Law: Unfitness to Plead was on track, with a successful meeting having been held with OPC on legislative drafting. Offences Against the Person had been delayed slightly due to policy initiatives which may have a bearing on the work on this project. Two documents had been published since the last Commissioners' meeting (the Sentencing Issues Paper and the Public Nuisance and Outraging Public Decency Final Report), and the Firearms Scoping Consultation Paper would be published before summer recess.
- Mr Jolley – Property, Family and Trust Law: On the Charity Law project, the clauses on Social Investment were currently going through the House of Lords. There had been small amendments to clarify some points, but nothing substantive. The consultation on the remainder of the issues in the Charities project was currently open, and due to close at the end of July. With the lack of a Commissioner for this area, and the additional work being carried by the team, the date for publication of the final report had been pushed back from June 2016 to December 2016. The Commissioners' forward programme has a policy paper on this issue provisionally scheduled for January 2016. That date may need to be reviewed on appointment of the new Commissioner. The consultation on Family Financial Orders would close at the end of July, and then there would be a brief pause until the autumn when analysis of those responses would commence. The provisional date of February 2016 to bring a policy paper to Commissioners could slip, again dependent on the appointment of the new Commissioner. The work on the Wills project was due to commence in January. Should the Marriage project continue, then careful consideration would need to be given to resource as the lawyers due to be working on Wills were currently employed on Marriage. On the Marriage project itself, the team were on course to present orally to Commissioners at their September meeting, with a formal scoping paper then being presented to them in October. Commissioners questioned why there was a need to bring the informal presentation in September as well as the formal paper in October. The Chief Executive and Mr Jolley noted that it was thought Commissioners would appreciate an informal briefing on the project in September ahead of the presentation of the Scoping Paper in October in order to take them through some of the background. It was also thought that this might be useful for the new Chairman on his arrival. Commissioners agreed that this was a sensible approach.
- Mr Paines – Public Law: The team and Parliamentary Counsel were working closely to get the draft Wildlife Bill finalised as soon as possible. The final Report and draft Bill were very substantive, and the July publication date was now looking increasingly difficult. Mr Paines sought Commissioners agreement to a revised publication date of September, subject to the agreement of Defra (the department sponsoring this project). Commissioners agreed that this seemed sensible, and the Chief Executive commented that as this would be a high-profile Report it was important to ensure it was published while Parliament was sitting. On the Electoral Law project, there had been some slippage on both the Report and on instructions to Counsel. However, there was no possibility of amending the timetable, so the rest of the timetable would need to be slightly condensed to ensure the Report and draft Bill were delivered to time. Adrian Hogarth commented that they could instruct in batches rather than wait and instruct on the totality if that would assist the team. On Mental Capacity and Deprivation of Liberty, the Commission had published a Consultation Paper on 7<sup>th</sup> July, and were now awaiting responses.

30. The Chairman noted that the Consultation Paper on Form and Accessibility of the Law Applicable to Wales had been published on the 9<sup>th</sup> July. It had been well received and the Commission now awaiting formal responses (due by October).

31. The Chief Executive then presented a short paper on the Commission's financial position, noting the Commission was currently showing a small underspend to the order of £4,700.

#### **Item 6. Any Other Business**

32. The Chairman noted that he had received a letter from the Minister for Public Services in the Welsh Government inviting the Law Commission to join a new Ministerial Justice Stakeholder Group. While the Chairman and Commissioners did not feel it was appropriate to join this group, awareness of its existence, and the potential interplay between it and the Welsh Advisory Committee, was important to note.

33. Finally, the Chairman commented that he had received a letter from the Australian Law Commission congratulating the Commission on its 50<sup>th</sup> Anniversary. The Chairman was aware that the Australian Law Commission would also be celebrating its 40<sup>th</sup> Anniversary later in 2015, and noted that the Commission might like to write in similar terms to its Australian colleagues at the appropriate time. **The Chief Executive agreed that she would talk to the new Chairman about this on his arrival.**