

BOARD MEETING

4 NOVEMBER 2015

- Board:** Sir David Bean, Chairman
Elaine Lorimer, Chief Executive
Professor Nicholas Hopkins, Commissioner for Property, Family and Trust Law
Stephen Lewis, Commissioner for Commercial and Common Law
Professor David Ormerod, Commissioner for Criminal Law
Nicholas Paines QC, Commissioner for Public Law
Sir David Bell, Non-Executive Board Member
- Additional attendees:** David Connolly, Team Manager, Public Law Team, for Item 3
Catherine Vine, Head of Strategic Engagement, for Items 4 and 5
Jessica de Mounteney, Parliamentary Counsel, for Item 5
Laura Burgoyne, Lawyer, Commercial and Common Law Team, for Item 5
Sara Smith, Head of Strategic Planning (Secretariat)

Registry

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Item 1: Minutes of the Board meeting on 23 September 2015

1. The minutes of the Board meeting on 23 September 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:

Spending Review

3. Since the Board last met in September, the Commission had been asked to provide some further information in preparation for the Challenge Panels which were being held within MoJ, and included consideration of all its Arms Length Bodies, to determine the approach to the Spending Review. The Chief Executive informed the Board that there would be one such Challenge Panel shortly, after which time it was

felt there would be more clarity on the likely position for the Commission. The Commission had not been invited to attend the panel, but would be represented by Catherine Lee, Director General, Law and Access to Justice Group.

4. The Chairman noted that he and the Chief Executive would be meeting with the Lord Chancellor and Dominic Raab on the 19th November. Later in the month they would also be meeting with Sir Theodore Agnew, lead Non-Executive Director for the Ministry of Justice. The Chairman aimed to use these meetings, in part, to discuss planning for the next law reform programme (the 13th programme). **He asked Commissioners to consider if there were any potential candidates for 13th programme projects in their respective areas, and to send them to him ahead of the meetings.**

Welsh Language Policy

5. The Chief Executive noted that she would shortly be circulating the most recent draft of the policy to the Board for their further comments and approval. There had been some minor amendments to the policy in the light of comments received from the Welsh Language Commissioner. The policy, once implemented, would mean some changes of working practices in the Commission so effective and timely communication with staff would be key.

TW3

6. The roll-out of the new TW3 laptops was almost complete, and had gone relatively smoothly. The new software had raised an issue with the multiplicity of Law Commission templates in use. A project was being set up to consider whether improvements should be made to the templates, and whether they could be rationalised.

Northern Ireland Law Commission

7. At their last meeting, the Board had discussed the ongoing issue with recruitment of a Commissioner to the Northern Ireland Law Commission in order to take forward the work necessary on the Electoral Law reform project. No further news had been forthcoming, and **the Chief Executive noted that she would be speaking to the relevant contact in Cabinet Office to obtain an update.**

Item 3: Planning and Development Control in Wales

8. Mr David Connolly, Team Manager, Public Law Team, joined the Board meeting for the discussion of this item.

9. Mr Paines introduced this item, drawing to the Board's attention the papers which had been previously circulated. Mr Paines noted that this was a 12th Programme project, and had originally been envisaged as a law reform project. However, developments in Welsh planning law now meant that the scope of the project was largely focused on consolidation and simplification, rather than reform. This enhanced consolidation would be welcomed by the Welsh Government, and the Board were asked to consider a revised Memorandum of Understanding for the project which reflected the change in its nature.

10. Professor Ormerod noted that it was important to consider the correct terminology for this project – simplification may be a misleading term, as it had come to be a term of art in the Commission to describe a move away from codification. The

Board agreed, and Mr Paines and Mr Connolly noted that they would ensure the correct terminology was used to describe the project accurately. Mr Connolly also noted that, while this project would no longer formally be a law reform project, there may be some minor elements of law reform within in – however, these would mostly be concerned with minimising complexities in the law, rather than addressing fundamental issues.

11. The Chief Executive asked what affect this project would have on English legislation – would the project result in any adverse impact on English legislation. Mr Connolly noted that the team would be working closely with both the Welsh and Westminster Government's to mitigate any risk, but he recognised that this was a potential issue for the Commission going forward with any Welsh projects.

12. Mr Connolly also drew to the Board's attention an additional review point for the project, suggested by the Welsh Government, after the Scoping Paper had been drafted. The Board were broadly content with this addition, but noted that it was important to be clear that the Commission would still publish the Scoping Paper even if it were decided by the Welsh Government at the review point not to continue with the project.

13. The Board agreed to the draft Memorandum of Understanding. Mr Connolly stated that the views of the Welsh Government would now be sought, and then a final version presented to the Board for approval.

14. Mr Connolly left the meeting.

Item 4: Strategic Engagement

15. Ms Catherine Vine, Head of Strategic Engagement, joined the meeting at this point to present a paper on Strategic Engagement.

16. Ms Vine noted that the last year had provided a number of excellent opportunities for the Commission to engage with a range of new and existing stakeholders as part of the 50th Anniversary celebrations. It was important that the momentum was maintained, and that the Commission now consider how best to leverage stakeholder engagement when considering the form of the 13th Programme, on which the Commission would commence consultation in 2016. Ms Vine had prepared a stakeholder grid, which sought to map out the Commission's key stakeholders assessing their relative impact on our work, and their engagement. It was hoped that this grid would be useful in providing a focus for activities going forward. **Ms Vine sought the Board's views on the grid, noting that she was happy to take those views outside of the meeting once the Board had taken the opportunity to consider.**

17. Sir David Bell asked what analysis of the interests of stakeholders had been undertaken, particularly in respect of Parliamentarians, to better understand which areas of the Commission's work they may be interested in. Ms Vine confirmed that some analysis had been undertaken, and that had informed some of the Commission's work in this area to date.

18. The Chairman brought to the attention of the Board the list of questions set out in Para 1.14 of Ms Vine's paper. The Board then discussed these questions, and in particular:

- noted that, on balance, the current process of agreeing a programme of law reform once every three years felt correct. It enabled the Commission to engage with the full range of stakeholders from the general public to Ministers to develop its work programme; it provided an opportunity to gain the endorsement of the Lord Chancellor to the Commission's work; and it meant that the Commission had a stable of core projects which could then be supplemented with references as appropriate. Some concerns were raised over the resource required to develop the programme, and the Board wished to consider whether there were improvements which could be made to the process to minimise that resource requirement. The timing of individual projects could also be an issue, and the Board wished to consider whether more could be done to sequence projects and prevent bottle necks;
- agreed that it was important when developing the 13th Programme to consider what the priorities for Government were likely to be and to ensure that, where possible, proposals for projects reflected those priorities and that the Commission was proactive in identifying such projects; and
- commented that the suggestion of more thematic programmes was one that warranted further exploration, but that care would need to be taken if any such approach were adopted to ensure that the projects within it remained relevant and had a good chance of implementation.

19. Ms Vine noted that her paper also suggested that the Board could consider inviting external speakers to each Board meeting, as a way of both engaging with key external stakeholders, and also learning from others as to alternative ways of working. **The Board were supportive of this suggestion, and agreed to provide Ms Vine with some suggestions of invitees.**

20. The Chairman commented that he had also asked the Board Secretariat to ensure each Board meeting agenda included an item which focused on the work of one of the law reform teams. For the December meeting, the Criminal Law Team would attend to discuss their work on the Sentencing project.

Item 5: Special Procedure

21. Ms Vine remained in the meeting for this item. Jessica de Mounteney, Parliamentary Counsel, and Laura Burgoyne, Lawyer, Commercial and Common Law Team, also joined the meeting.

22. Ms Vine introduced a paper on the Law Commission Special Procedure which had been circulated with the papers.

23. The Special Procedure had been a success for the Commission, enabling 1-2 non-controversial Bills per year to be debated in Committee, thus freeing up time on the floor of both Houses and ultimately making it more likely that the Commission's work would be implemented.

24. There are, however, some actions that could be taken to support and strength the Special Procedure further. Ms Vine's paper highlighted in particular the occasional lack of understanding amongst Committee members as to how the Procedure works, and the high turnover of officials which itself lead to gaps in knowledge and understanding. Ms Vine suggested that this issues could be rectified by the development of a short guide for Committee members which would set out the key components of the Procedure. She also suggested that this could be supplemented by a more detailed guide for internal Law Commission use.

25. The Board supported this suggestion, and also agreed with the other points set out in Ms Vine's paper, including running a seminar for Law Commission staff on the Special Procedure, and exploring options for greater Commissioner engagement with the Procedure, including holding drop in sessions with Commissioners for Committee Members.

26. The Chairman thanked Ms Vine, Ms de Mounteney and Ms Burgoyne for their work. They then left the meeting.

Item 6: Board Report

27. The Chairman brought to the Board's attention the Board Report which had been circulated with the papers for the meeting. He asked Commissioners, and the Chief Executive, to report on their respective areas paying particular attention to those projects where timetables had moved, or were slipping.

- Criminal Law: Professor Ormerod noted that the timetable for Misconduct in Public Office had been amended since the last report, with the Consultation Paper now due to be published in December 2015, rather than October as originally planned. This had also had a consequential effect on the other dates in the timetable. Given the significant changes in timetabling thus far, the project was rated as an AMBER risk in the report. This may also have resource implications, as the lawyer working on this project is on a fixed term contract. The publication date for the Report on the Fitness to Plead project had also been delayed to December due to a number of external factors, as well as additional legislative drafting being undertaken on the draft Bill;
- Property, Family and Trust Law: Professor Hopkins noted that both the Charities project and the Land Registration project had moved from an AMBER rating in the last report to AMBER/GREEN. These projects had been rated as AMBER as a result of the impact of the change of Commissioner, and the period for which the post was vacant. Now that Professor Hopkins was in post, it was hoped that the timetable for both these projects would be met (although, there was still some risk of delay). There was also potential risk to the delivery timetable of the Wills project, and Enforcement of Family Financial Orders, should the Commission be asked to undertake further work on the Marriage project once the initial scoping phase completes in December;
- Consolidation: The Bail project had been on hold for some time, awaiting a steer from the Ministry of Justice. While the Ministry were now keen for the project to commence, they were not able to offer any resource to support it. Discussions continued as to whether it would be possible to take this project forward without additional funding;
- Corporate: The Chief Executive noted that there was some slippage on the work to refresh the External Relations Strategy, brought about the pressures of other work. She also noted that the work on the Knowledge Management Strategy would now form a priority for the next financial year.

28. All other projects were on track.

Item 5: Any Other Business

29. No Any Other Business was raised.