

BOARD MEETING

16 DECEMBER 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 QC, Commissioner for Criminal Law
- Nicholas Paines QC, Commissioner for Public Law
- Sir David Bell, Non-Executive Board Member
- Additional attendees:** Jessica Uguccioni, Team Manager, Criminal Law Team, for Item 8 and Special Item
- Karl Laird, Lawyer, Criminal Law Team, for Item 8 and Special Item
- Sarah Taylor, Research Assistant, Criminal Law Team, for Item 8 and Special Item
- Laura McDavitt, Research Assistant, Criminal Law Team, for Item 8
- Jessica De Mounteney, Parliamentary Counsel, for Special Item
- Sara Smith, Head of Strategic Planning (Secretariat)

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Item 1: Minutes of the Board meeting on 4 November 2015

1. The minutes of the Board meeting on 4 November were approved without amendment.

Item 2: Matters Arising

2. The Chief Executive provided an update to the Board on two current issues:

Welsh Language Policy

3. The Chief Executive thanked the Board for their comments on the previous draft of the policy, and noted that she would shortly be circulating an updated draft to the Board for their final approval. The Chief Executive would then write to the Welsh Language Commissioner to thank them for their previous comments, and to provide them with an update on the finalisation of the policy.

Northern Ireland Law Commission

4. The Board briefly discussed the continuing issue of the recruitment of a Commissioner to the Northern Ireland Law Commission. A way forward had been agreed on the Electoral Law reform project, to enable the Interim Report to be published to deadline in January 2016.

Item 3: Quarterly Board Report

5. The Chairman introduced the Board Report, and asked Commissioners and the Chief Executive to update the Board on progress in their respective areas:

- **Commercial and Common Law:** Mr Lewis noted that all the projects in his area were on track. He did, however, note a potential risk to the implementation of the Insurance project. Clauses for damages for late payment were introduced into Parliament as part of the Enterprise Bill in September, and, while the Law Commission's clauses are uncontroversial, other more controversial clauses in the Bill may result in delays in it passing through the House.
- **Criminal Law:** Professor Ormerod noted that the Criminal Team would be joining the Board meeting under a subsequent agenda item in order to discuss current projects in more depth.
- **Property, Family and Trust Law:** Professor Hopkins advised the Board that good progress had been made on the Charities project over the past quarter, and the team were on track to circulate the majority of the policy paper to Commissioners in January. Commissioners had previously agreed that the remaining sections of the policy paper would be circulated to them in March for consideration. On the Marriage Law project, the scoping paper would be published as planned before the House rose for Christmas recess – a Government response was expected early in the new year. Work on the Land Registration project continued, with the drafting of the consultation paper on track for a March publication. The Chancellor has announced, in the Spending Review document, that the Government would consult on options to privatise the Land Registry. This could impact on the delivery of the law reform project, and the team were liaising closely with BIS to understand the issues.
- **Public Law:** Mr Paines reported that the final report of the Wildlife project was published on 10 November. There had been some interest in the press and from special interest groups. All other projects remained on track.
- **Corporate:** The Chief Executive provided the Board with an update on the Universities Law Reform Competition, part of the celebrations of the 50th Anniversary of the Commission. The date for entries had now closed, and the process of sifting and judging had begun. A winner would be announced by February 2016.

Item 4: Spending Review

6. The Chief Executive provided the Board with an oral update on the Spending Review. The Chancellor had announced that the Ministry of Justice would be subject to a reduction of 50% in terms of its admin budget. As the Law Commission was funded from this budget, there was likely to be a resultant reduction in the Commission's budget. The level of any reduction in the budget was unknown as yet, and negotiations continued with the Ministry. The Board would continue to be kept up to date on developments.

Item 5: 13th Programme Planning

7. The Chief Executive introduced a short paper setting out a high level proposal for the planning of the 13th Programme of Law Reform. The paper proposed that the planning for the Programme should commence in January, with a more detailed project plan to be presented to the Board at their January meeting. The Chief Executive noted that it was important to start planning early, both as there were a number of current law reform projects coming to completion, and as part of the preparation for implementing the Spending Review settlement. The Chief Executive recommended that a small project group be set up to lead the work, which would report to the Board regularly. She also noted that the engagement of the Commissioners would be key. **The Board agreed with the approach set out in the paper, and that a more detailed plan should be presented to them at their January meeting.**

Item 6: Staff Survey and the Law Commission Awayday

8. The Chief Executive introduced the paper that had been circulated ahead of the meeting, which summarised the results of the recent staff survey in relation to the Law Commission. She noted that the Commission continued to be a high-performing organisation, with a high staff engagement index. There were some areas of concern, and the Chief Executive planned to set up a small working group, on which she would sit, in order to address those areas. The Board agreed that this was the correct approach.

9. There was a brief discussion of reflections from the awayday, with an overall view that it had gone well. There was some debate over preparations for the Commissioner panel session, and whether the questions should have been shared with the panel members in advance. It was agreed that the Board should hold its own awayday, with a focus on vision and strategy, in the Spring.

Item 7: Team Focus: Criminal Law Team

10. Ms Jessica Ugucconi, Team Manager, Criminal Team, joined the meeting along with Mr Karl Laird, Ms Sarah Taylor, and Ms Laura McDavitt, all from the Criminal Law team.

11. Professor Ormerod provided a general overview of the work of the Criminal law team. He highlighted the diversity of the work, the particular strengths of the team and the innovative approaches including the use of symposia and consultants. Professor Ormerod also noted that although the criminal law team has traditionally received work from the MoJ, they are increasingly working with other departments, including the Home Office. The team is particularly proud of the iterative manner in which it engages with stakeholders.

12. Professor Ormerod then highlighted three current projects:

- **Firearms:** The final Report of the firearms project had just been published. The project had been completed in under 12 months, and was a part funded project sponsored by the Home Office. Professor Ormerod indicated the benefits in undertaking projects with other departments – the Commission spreads risk, is exposed to a wider range of departments, attracts more diverse work and enhances implementation prospects because there is less dependence on a suitable MoJ programme bill. Mr Laird, who had led on the

project, then provided an overview of the recommendations in the Report and indicated that press coverage so far had been positive.

- **Fitness to plead:** Professor Ormerod noted that the final report of this project was due to be published in January 2016 along with a 70 Clause draft Bill. Ms McDavitt explained the background to the economic impact assessment, its development and how there had been numerous challenges in relation to the available data. The team has gathered its own data in collaboration with HMCTS. Ms McDavitt noted that the challenges posed by the IA had meant that the team had been required to reach out to different departments, including DCLG.
- **Sentencing:** Professor Ormerod introduced the project and explained the progress made since the project began in January 2015. Two Issues Papers had been published, one on transitional issues and one consisting of the 1300 pages of current statute law. Ms Uguccioni indicated that the development of the project now required amendment to the current Memorandum of Understanding with the MoJ. There was also a need to amend the approach to Issues Paper Two. The plan was now to produce a number of short documents on potential policy issues raised by the project. This would allow for greater flexibility pending clarity on the government's own sentencing reform review. These would be drafted into a full issues paper later in the spring of 2016. The revisions to the Memorandum of Understanding, and the new approach to Issues Paper Two, were approved by the Board.

13. Professor Ormerod then brought to the Board's attention two new projects:

- A potential project on **criminal records** which if it is agreed will be funded by the Home Office. The Home Office approached the team with the idea for this project on the basis of our growing reputation for codification based on our work on the sentencing and firearms projects; and
- **Protection of government information:** to be announced shortly.

Special Item: Misconduct in Public Office

14. Ms Jessica De Mounteney, Parliamentary Counsel, joined the Board for this item.

15. Professor Ormerod introduced this item, and provided a brief overview of the Misconduct in Public Office project, noting that reform of this area of the law had been a law reform priority for a number of years. He then mentioned a number of specific points:

- **The proposed new plan:** Professor Ormerod referred the Board to the memorandum circulated by Ms Uguccioni on 11 December 2015, outlining the new plan to publish the project in two issues paper, rather than one formal consultation paper:
 1. Issues Paper One: current law;
 2. Issues Paper Two: the law reform options.

The former to be published on 20 January 2016 and the latter in spring 2016. The Board discussed this recommendation, and Mr Paines suggested that this change and the production of Issues Paper One should be explained on the basis of providing an opportunity to ask consultees to comment on whether they agree with our analysis of the current position and whether there

were any problems we had not identified. Mr Paines also noted that the draft of Chapter 6 of Issues Paper One did not address the issue of leaks to journalists. Professor Ormerod agreed this should be added. The Chairman agreed, and said that the purpose of Issues Paper One must be to show the current state of the law, not an assessment of law reform potential. The Chief Executive indicated that publishing as an issues paper will provide the opportunity to push back the date to send to the printers, as we could use in house services. This suggestion was also approved by the Board.

- **Chapter 6:** The Chairman referred to the response minute circulated to the Board on 15 December 2015 and sought comments. Mr Paines suggested that two pages of discussion on the Kwok case was unnecessary, particularly discussion of whether misconduct in public office would apply. It was agreed that the team would consider reduction of this discussion.
- **Public opinion survey:** Professor Ormerod provided background to the public opinion survey, as developed to date. Including, the approval of the project at the Commissioners' meeting in July and the commissioning of Dr David Ellis as an empirical consultant in developing the draft questions. Sir David Bell questioned whether the idea of using focus groups, rather than the survey, had been considered. The Chairman noted that he had fundamental issues with draft questions 1 to 9, but thought that the example-based questions in 10 to 15 might be more useful. Professor Hopkins and Mr Lewis agreed. Ms Taylor explained that the team's original draft consisted only of example-based questions, but after consultation with Dr Ellis that the preliminary empirical questions were added in order to allow proper scrutiny of the results. Mr Paines stated that he felt that the question of "public office" is irrelevant to a new offence, that it should be based on a concept of "abuse of public trust". Professor Hopkins suggested that the purpose of the survey for the team may not be compatible with general empirical research methodology. It was agreed that the YouGov survey will not run as planned, but that the team will look into using the example questions at the upcoming symposium and would consider using focus groups.

Item 8: AOB

16. The Chief Executive informed the Board that she would be leaving the Commission in March, and taking up a position as Chief Executive of Revenue Scotland. A recruitment for her successor would commence in due course.