

## **BOARD MEETING**

**26 JANUARY 2016**

**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:** Tammy Goriely, Team Manager, Commercial and Common Law Team, for Team Focus  
Sarah Witchell, Lawyer, Commercial and Common Law Team, for Team Focus  
Fan Yang, Lawyer, Commercial and Common Law Team, for Team Focus  
Rowena Collins Rice, Director-General Attorney General's Office & Legal Secretary to the Law Officers (External Speaker)  
Sara Smith, Head of Strategic Planning (Secretariat)

Registry

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### **Item 1: Minutes of the Board meeting on 16 December 2015**

1. The minutes of the Board meeting on 16 December were approved with two amendments.

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

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

#### **Recruitment of the New Chief Executive**

3. The Chairman was pleased to be able to inform the Board that approval to recruit for the Chief Executive's position had been granted by Catherine Lee, Director General, Law and Access to Justice Group. A submission had now been sent to the Permanent Secretary of the Ministry of Justice to seek their final approval. It was

hoped that, subject to that approval, the recruitment campaign would be launched shortly. The Recruitment Panel would be Chaired by Scott McPherson, Director of Law, Rights and International and Head of the Sponsorship Team, and would be made up of the Chairman, Sir David Bell, Non-Executive Board Member to the Law Commission, and Michelle Crotty, Director, Attorney General's Office.

4. Mr Lewis asked what contingency arrangements were being put in place to manage the Chief Executive's role should there be a gap between the current Chief Executive leaving post and their successor joining the Commission. The Chief Executive noted that it was hoped that any period without a post holder would be kept to a minimum, but should that not be the case appropriate arrangements would be made – including potentially appointing an interim post holder.

#### Lord Chancellor's Implementation Report

5. The Chief Executive advised the Board that the Sponsorship Team had begun preparations for this year's Lord Chancellor's Implementation Report, which would report on progress on implementing Law Commission recommendations from all outstanding Reports. The Commission had had sight of the first draft of the Report, and had provided factual comments to the Sponsorship Team. While the Commission has no formal role in agreeing the report, the final draft would be sent to the Commission for comment and would be reviewed by both the Chief Executive and the Chairman. The Sponsorship Team hoped to be in a position to publish the report in early March, ahead of which the approval of both the Lord Chancellor and the Home Affairs Committee would be sought. The Report would then be laid before Parliament.

6. There followed a brief discussion of how the Commission may wish to respond to the Report once it is laid. The Chairman noted that there were a number of ways in which the Commission may chose to respond, including through the publication of a written statement from the Chairman, which had precedent.

#### Welsh Language Policy

7. The Chief Executive noted that a short paper was being prepared for the Chairman, following his comments on the draft. It was hoped that it would be possible to circulate the draft Welsh Language Policy to the Welsh Advisory Committee shortly, and to then launch it before the end of the financial year.

#### Northern Ireland Law Commission

8. The process of gaining the approval of the Northern Ireland Law Commission to the Elections Interim Report continued, however this had proved to be a slower process than had been hoped. The Board noted their collective concern over the delays to the publication of this Report, and asked the Chief Executive and Mr Paines to consider what steps might be taken to alleviate these delays.

#### **Item 3: Spending Review**

9. The Chief Executive introduced a short paper which had been circulated prior to the meeting, and which set out the current position with regards to the agreement of the Commission's Spending Review settlement.

10. The Commission was engaging in two processes 1) to agree the Commission's budget for 2016-17, and 2) to agree the overall settlement for the

Spending Review period. The Chief Executive had submitted a proposal to the Ministry of Justice for the 2016-17 budget, but as yet had received no indication as to whether that proposal had been accepted. In any case, the Commission would need to seek to make savings in the coming financial year, and the Chief Executive would be setting up a number of reviews of discretionary corporate spending, for example on travel and subsistence, and subscription services, to deliver those savings. Agreeing the savings target for the Spending Review period as a whole continued to be a point of discussion between the Chief Executive and the Sponsorship Team.

11. Sir David Bell noted the importance of developing a strategy for how any savings over the Spending Review would be delivered, and to obtaining some certainty in the near future as to the overall target. The Chief Executive agreed, but commented that planning for the Spending Review was also interwoven with preparations for the 13<sup>th</sup> Programme, which the Board would be discussing under a separate item.

#### **Item 4: 13<sup>th</sup> Programme Planning**

12. The Board had before them a paper authored by Catherine Vine, which set out a proposal for the approach to planning the 13<sup>th</sup> Programme. The Chairman introduced the paper, and sought the Board's views on its content.

13. The Chief Executive noted that the preparations for the 13<sup>th</sup> Programme were likely to be more challenging than that for previous programmes, due to the context of the Spending Review.

14. The Board then discussed the paper in some detail, and provided the following comments:

- Paras 1.2 – 1.4: The Board agreed the membership of the project team, and Catherine Vine as Project Manager. They also supported the assertion that staff from across the Commission would need to take an active role in the programme's development;
- Para 1.5: The Board agreed the role of Commissioners in the process.
- Para 1.6: The Board agreed that high-level timetable which had been attached to the paper as Appendix One, and the process for providing reports back to the Board on progress;
- Paras 1.7 – 1.9: The Board noted the importance of ensuring that the three criteria set out in Para 1.9 incorporated all of the criteria set out in Paragraph 5 of the Law Commission Protocol and in particular should note the importance of considering whether there were issues that would require the involvement of the Scottish or Northern Irish Law Commission, or the Welsh Assembly Government.
- Paras 1.10 – 1.11 and following table: The Board noted that the Department for Work and Pensions, and HM Treasury, should be added to the table of departments to target initially for potential projects;
- Paras 1.12 – 1.13: The Board agreed that there should be two launch events, one in England and one in Wales, and that the Legal Education Foundation should be approached to see if they would be prepared to provide sponsorship/funding for these events.
- Paras 1.14 – 1.17: The Board were concerned about the level of resource that the approach to the public consultation may take, and asked the project team to consider ways in which that process may be streamlined to enable more effort to be focused on targeted stakeholder engagement, including with

- departments. The Chairman suggested that Professor Ormerod also be involved in this work, as the longest serving Commissioner and thus the Commissioner with the most experience of the process;
- Paras 1.18 – 1.21: The Board agreed with the project team’s proposal for areas of immediate focus, but noted that approaches to the Welsh Government at official level could take place earlier than that proposed in the paper (i.e. of waiting until after the National Assembly elections in May), although the Board noted that Ministerial approaches would have to wait; and
  - Appendix Two: The Board commented on the usefulness of the template attached at Appendix Two, which sort to capture information on current contacts in departments. The Chairman asked that this be completed by all teams ahead of the next Board meeting in February.

### **Item 5: Board Report**

15. 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 his team would be joining the meeting for the Team Focus item, and would provide a detailed update on their projects then. However, in summary he noted that all projects remained rated as GREEN and were on course to be delivered to timetable. The exception was Groundless Threats where there remained a degree of uncertainty as the introduction of the draft Bill had been delayed at the request of the Whips who were concerned about the pressure of business in the House of Lords;
- **Criminal Law:** Professor Ormerod brought to the Board’s attention a number of decisions which were included in the Board Report, and on which he sought the Board’s views:
  - A revision to the approach to the Sentencing project, providing for publication of a short report in respect of transition issues in April 2015, the merging of Issues Paper 2 with the ongoing consultation on the current law, with a short report on findings in the summer, and the hiring of a consultant on a part-time basis to expedite instructions to Counsel;
  - Some further changes to the timetable for Misconduct in Public Office, with the publication of the second consultative document in June; and
  - The continued exploration of a potential reference from the Home Office on the Disclosure and Barring Service.

The Board agreed with all these points, but on the recruitment of the consultant noted that would also be subject to MoJ approval.

- **Property, Family and Trust Law:** Professor Hopkins advised the Board that the government had not yet come to a decision on the potential for further work on the Marriage project. Advice from officials was that it may be some time before such a decision was forthcoming. The team would now be working on the assumption that there would be no need to work on the Marriage project in the short term, and as such resources would be deployed to make progress on other projects – specifically, Family Financial Orders and Wills (where, on the latter, there would be a Consultation Paper in the Spring of 2017). On Land Registration, the Commission had been advised that the Government consultation on the potential privatisation of land registration operations would be launched in early spring and thus would have little impact on timings of the Commission’s ongoing work on the project (although, the impact of any decision to privatise such operations was as yet unknown).

- **Public Law:** Mr Paines reported that the final report of the Wildlife project was published on 10 November, and that he would be appearing before the Environment and Rural Affairs Committee on the 24<sup>th</sup> February to give evidence on the Report. All other projects remained on track. Mr Paines also reported that the Renting Homes (Wales) Act 2016 had now secured Royal Assent.
- **Corporate:** The Chief Executive noted that the substantive corporate issues had already been covered under separate agenda items.

#### **Item 6: AOB**

16. The Chairman commented that he, and the Chief Executive, would be meeting the following day with Dominic Raab MP, Minister for Civil Liberties and the Minister with overall responsibility for the Law Commission. These meetings with the Minister take place twice a year as part of the sponsorship relationship between the Commission and the Ministry of Justice, and are set out in the Commission's Framework Document.

#### **Item 7: Team Focus: Commercial and Common Law Team**

17. Ms Tammy Goriely, Team Manager, Commercial and Common Law Team, Ms Sarah Witchell, Lawyer, Commercial and Common Law Team, and Ms Fan Yang, Lawyer Commercial and Common Law Team, then joined the meeting to provide the Board with an update on their current projects.

#### **External Speaker**

18. Rowena Collins Rice, Director General, Attorney General's Office and Legal Secretary to the Law Officers joined the Board to give a brief talk on the strategic challenges facing the Attorney Generals' Office.