

BOARD MEETING

26 APRIL 2016

- Board:** Sir David Bean, Chairman
- Matthew Jolley, Acting 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:** Phil Golding, Chief Executive appointee, as an observer
- Megan Lee, Research Assistant, Public Law Team, for Item 3
- Julia Jarzabkowski, SLR Lawyer, for Item 6
- Jessica de Mounteney, Parliamentary Counsel, for Item 6
- Catherine Vine, Head of Strategic Engagement for Item 3 (Secretariat)

Registry

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Item 1: Minutes of the Board meeting on 25 February 2016

1. The minutes of the Board meeting on 25th February were approved with two minor amendments.

Item 2: Matters Arising

Recruitment: Chief Executive

2. The Chairman informed the Board that the interviews for the vacant Chief Executive role had taken place on the 22 March and the panel had recommended the appointment of Mr Phillip Golding. Mr Golding's appointment had been approved by the Permanent Secretary at the beginning of April and work was underway to finalise the appointment and agree a start date. The Chairman welcomed Mr Golding to the Board Meeting as an observer.

Item 3: 13th Programme Preparations

3. Mrs Vine introduced the paper that had been circulated ahead of the meeting, which summarised the Commission's approach to the 13th Programme, progress made to date and highlighted general questions about how the Programme funding would be structured which fall to be addressed by the new Chief Executive, when in position.

4. Mrs Vine shared copies of the Departmental grid providing a historical record of meetings with relevant Government departments and contacts. The Chairman asked Commissioners to provide any updates on this grid directly to Mrs Vine.

5. The Board approved a timetable for preparation for the 13th Programme of law reform. The Commission will go out to consultation in July, seeking replies by October. In the first half of next year the Commissioners will select proposals for a Programme to be submitted to the Lord Chancellor for approval.

6. The Board agreed that the consultation will launch in July 2016, irrespective of the outcome of the June EU referendum and invited Mrs Vine to identify a suitable venue for the launch event which they agreed could be sponsored by a law firm or other suitable organisation. Further thought will be given as to the format of the launch event in Cardiff, but in principle both events will take place at the start of the Programme consultation period.

7. Megan Lee distributed copies of the templates which will be used for stakeholder communication during the consultation and sifting processes. The Board agreed with the general approach proposed for handling consultation responses and that the templates would be signed off by the Chief Executive.

Item 4: Business Plan 2016-17

8. The Acting Chief Executive shared a copy of the draft Business Plan with the Board. The Chairman recommended three small changes to the draft which were agreed.

9. Mr Lewis noted that the interim report on Transfer Fees would not be completed by the end of June as the project had now been formally extended and so that date should be updated. Mr Ormerod noted that he was awaiting confirmation on DBS. The Acting Chief Executive confirmed that all project milestones would be updated prior to the Plan being finalised.

10. The Board agreed that there was no need to review the business plan again in its entirety but invited the new Chief Executive to circulate his draft introduction to the document once in post.

Item 5: Quarterly Board Report

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

- **Commercial and Common Law:** Mr Lewis asked for the dates on Event Fees to be updated in light of the extension to the project. He informed the Board that he had a provisional meeting with the Minister on 11 May and agreed to speak with the Team Manager of the Property, Family and Trusts Law team before that meeting. He noted that all the projects in his area were on track. The IPO are hopeful that the Unjustified Threats Bill will be

introduced on 19 May, the Enterprise Bill is in line for Royal Assent and the provisions enacting the Commission's recommendations on third party rights against insurers were likely to be brought into force in August.

- **Criminal Law:** Professor Ormerod updated the Board that the clauses required to progress the Sentencing project would be included in the forthcoming Prisons and Courts Reform Bill. He reported that the Home Office and Ministry of Justice have a shared interest in expediting the DBS project and that discussions about the cost implications of that were underway; he hoped to be in a position to invite Commissioners to consider a draft MOU at the next meeting. The Police and Crime Bill was taking forward the Commission's initial recommendations on firearms reform and the Home Secretary appeared supportive of further work on codification.
- **Property, Family and Trust Law:** Professor Hopkins advised the Board that a number of resource issues were putting pressure on the team's work. These issues included Professor Hopkins' impending jury service, the team manager acting as Chief Executive, a team lawyer with project responsibilities acting as Team Manager and a team member's extended sick leave following surgery. The team's Charity Law project was particularly affected, but there was also pressure on the Land Registration project which is at the consultation stage. Professor Hopkins reported that the Family Financial Orders project is on track and that the Wills project is progressing, though the lawyer leading that project is also engaged in other work.
- **Public Law:** Mr Paines reported that he had presented the Wildlife project to the EFRA Committee and that the work had been well received. He confirmed that the future of the Electoral Law project was still awaiting a decision from the Cabinet Office and was the subject of ongoing discussions with the Department. The Mental Capacity and Detention project was moving forward as planned and the team was working to try to keep the Form and Accessibility project to timetable. The Welsh Planning law project was being considered in the Peer Review meeting following the Board Meeting.
- **Statute Law Repeals:** the Chairman noted with regret that the date for introduction of the bill had been put back as a result of the need to obtain consent motions.
- **Corporate:** The Acting Chief Executive outlined progress on the corporate items, noting that work on how the Law Commission presents itself to audiences and maximising the potential of its online presence had been rolled forward into the forthcoming business plan as a result of competing priorities.
- **Risk register:** The Board noted the significant red and amber red rated risks affecting the organisation. They discussed the potential impact of Risk 4 (loss of key members of staff). They recognised that it was difficult to put in place contingencies to deal with project delivery risks when there was no spending flexibility although good record keeping and project documentation could help in this regard. The Board acknowledged the resource challenges currently affecting the PFT team.

The Acting Chief Executive confirmed, in relation to Risk 5, that additional Parliamentary Counsel support was expected to be available from September.

The Board debated whether the risk register should be updated to include the risk that cuts to policy staff in external departments pose to implementation and engagement on projects. The Board noted that in the case of some other Departments with lead policy responsibility for areas affected by our reforms it is difficult for Commission staff to find anyone tasked with thinking about law

reform, and informed about our proposals, to give a response to our reports. The Chairman invited Commissioners to share examples with him of where this had been problematic and expressed an intention to raise this more widely.

- **Completed projects – implementation table:** The Board considered the status of completed projects awaiting a response or implementation. Commissioners agreed to consider whether there were any pre-protocol projects that the Commission could not now reasonably expect to be implemented in which case there might be merit in requesting formal confirmation of the rejection of our recommendations.

Professor Hopkins reported on a recent meeting with officials from DCLG who were considering the Commission's recommendations on Rights to Light. He was concerned that it appeared that this work was being taken forward by a junior member of staff with apparently little knowledge of the area. The Chairman reported that he had arranged to meet with Lord Faulks, the MoJ Minister responsible for civil law, to discuss how best to deal with this sort of issue, and more generally how to promote civil law reform across Government during preparations for the 13th Programme.

Item 6: Consolidation and SLR

12. The Chairman highlighted that there was currently no departmental demand for traditional consolidation and that he was drafting text for the annual report to this effect. The Board discussed what non-traditional consolidation looks like, in the context of our current law reform projects.

13. Mrs Jarzabkowski shared a short paper on the future of SLR. It was agreed that the Commission should invite submissions on general acts which might benefit from repeal or consolidation and that this would be included in the 13th programme consultation. Mrs Jarzabkowski agreed to produce a form of words for this.

14. There was some discussion of where the SLR should focus its limited resources in the future. Local Acts (which are no longer being laid but which can raise some perpetuity issues) featured predominantly in the 2012 draft SLR bill. Local Acts rarely cause problems for those who come across them, either in their work or a private capacity, because of their restricted subject matter. It was agreed that it was not appropriate for the resources of SLR to be spent on updating the Local Act table in the next 12 months when such an exercise did not meet the criteria for relevant and useful work as outlined in the short paper at para 1.4. Only those Local Acts that met the criteria would be considered.

Item 7: Any Other Business

15. The Chairman encouraged Commissioners to support the London Legal Walk and said that he would be emailing the staff to encourage participation.

16. The Chairman noted that arrangements were being put in place for a visit to the Commission by members of the Chinese Legislative Affairs Commission who performed a law reform function in their jurisdiction.

17. The Acting Chief Executive reported that significant changes to the MoJ library are expected over the summer which would have an impact on the Law

Commission collection which is housed there and, potentially, library services. eLIS online resources would not be affected. He confirmed that Mr David Connolly was leading the Commission's response to the MoJ library reduction.

Special Item: The Winners of the Law Commission University Law Reform Competition from Sheffield University

18. The winners of our law reform competition from the University of Sheffield attended the meeting to present their project, "A meeting of minds: denouncing 'parasitic liability' in joint enterprise", and talk about their work with the Board. They were accompanied by Professor Claire McGourlay and Dr Andrew Green. The Chairman formally presented the winners with their award.