

MINUTES

BOARD MEETING 28 MARCH 2018

Board: Sir David Bean, Chair
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 and Welsh Law
Phil Golding, Chief Executive
Bronwen Maddox, Non-Executive Board Member
Sir David Bell, Non-Executive Board Member

Attendees:

Matt Jolley
Laura Burgoyne
Henni Ouahes
David Connolly
Jessica de Mounteney

Apologies: Gulzar Gill

Item 1: Approval of Minutes of the Meeting of 28 February 2018

1.1 The minutes were approved.

Item 2: Matters Arising

1.2 The Chair said interviews for his replacement are scheduled to take place in early May and he hoped the outcome would be known soon after.

Item 3: Board Report and Forward Look

1.3 The Board discussed forthcoming peer review dates.

1.4 Commissioners provided updates on each of their projects. SL said the Commission had been asked for comments on the proposed HMT response to the Goods Mortgages consultation. These had been provided, with particular comment made about clarity being needed in relation to the Bill being suitable for the Special Procedure.

- 1.5 SL said that the team had prepared a paper for MHCLG on how a project on Managing Agents could be structured, but there is still considerable uncertainty about this strand of the Residential Leasehold project.
- 1.6 On a potential Arbitration project, PG noted that letters were being exchanged between relevant Permanent Secretaries about potential machinery of Government changes but, as things currently stand, it is not possible for the Commission to start work.
- 1.7 DO noted that the Youth Justice element of the Sentencing Code had been published for consultation the previous week.
- 1.8 The Board noted that Commissioners have approved a revised timetable for the Land Registration project but this would not delay publication prior to Summer recess.
- 1.9 The Board discussed whether the Making Land Work Bill was likely to progress. PG and NH noted that PBL had been informed that it would be impossible – for both the Commission and OPC – to finalise a draft Bill for introduction this side of Christmas. Introduction in early 2019 might well be possible, but this may require carry over. Discussions are ongoing.
- 1.10 NP said that the team are currently considering the next steps in relation to the elections project and were hoping to secure drafting resource so as to push forward with the draft Statutory Instrument.
- 1.11 PG said that he was seeking approval to defer £434k into 2018/19. The Commission would have an overspend of £372k, very close to the predicted £400-450k overspend. As previously noted, MoJ accepted that the overspend was due to circumstances beyond the Commission's control.
- 1.12 PG noted that 13 out of 20 corporate targets set at the start of 2017/18 had been fully achieved. He outlined the progress made on the other seven objectives, noting that strong progress had been made.

Item 4: Work of the Law Commission

- 1.13 PG said he had followed a similar approach to this document as before, particularly in relation to the project-by-project approach. He had, however, altered the introductory sections, as well as the more general information. The Board provided comments and undertook to reconsider a revised draft out of Committee.

Item 5: Business Plan

- 1.14 The Board considered an early iteration of the Business Plan so as to provide initial strategic input. The Board discussed the detail about the suggestion of closer links between the Board and staff. The consensus was that communications ought probably to be improved so that staff are clearer about the Board's functions. More thought would be given to this and a revised form of words submitted for consideration. Direct oversight and ownership of the Business Plan was also felt desirable. The Board agreed that Team Managers would talk to their teams about the issue and PG would draft a paper for a future Board meeting.

Item 6: Role of the Commissioner

- 1.15 The Board discussed whether Team Managers are expected to consider all draft documents submitted to Commissioners. A revised form of words was requested. PG agreed to circulate a redraft for the next Board meeting.

Item 7: Requests to join Advisory Groups

- 1.16 The Board considered NH's paper on this topic, agreeing the general principle that membership of a group considering any existing Law Commission project was not desirable. The Board did note potential difficulties with identifying potential future projects and therefore whether membership of a group could be accepted. The consensus was that the matter should be considered on a case-by-case basis with approval sought from the Chair for any Commissioner invited to join and from the CEO for members of staff. In relation to staff, the Team Manager and lead Commissioner would also need to approve membership. NH agreed to revise the draft policy.
- 1.17 The Board also discussed whether a general statement should be made publicly to the effect: "the Commission does not tend to accept invitations to join Advisory Groups considering work relating to any existing or publicly announced future project. This is to avoid any perceived conflict with the Commission's independence. We may consider accepting invites for Advisory Groups looking at areas of work on which the Commission is not actively engaged." NH said he would consider this aspect further.

Item 8: Welsh devolution

- 1.18 The Board discussed the extent to which the Commission could reflect potential policy divergence on both reserved and devolved matters. It was agreed that this ought to be a consideration, on a case-by-case basis, whenever Commissioners and teams are considering MoU documents. The key was to ensure strong relationships with Wales to ensure that matters are discussed at the earliest stage. MJ was asked to include a section in the Law Reform manual.

Item 9: AOB

- 1.19 The Chair wondered whether Sir James Munby might be willing to be a future guest speaker at a Board meeting.
- 1.20 PG said that the RA campaign had not yielded a Welsh-speaker. He said that the RA recruitment process could not guarantee that outcome and said other avenues ought to be explored.
- 1.21 The Board approved the suggested list of consultees for the Tailored Review being undertaken on the Law Commission.