

The role of Law Commissioner

A. Key characteristics of a Law Commissioner

- Commitment to the importance of delivering effective law reform.
- An open-minded approach with a willingness to think flexibly and consult widely before reaching firm conclusions.
- Awareness of the diverse needs and backgrounds of those affected by the work of the Commission and of colleagues and staff within the Commission.
- A desire to learn about and engage with Whitehall, Parliament, Ministers and a diverse range of stakeholders.
- A keen interest in leadership, both of people and the strategic direction of the organisation.

B. Conditions of appointment

The following is a brief overview of the terms of office, although they are not exhaustive and are subject to change:

- Commissioners are appointed on a full-time basis.
- The appointment is made by the Lord Chancellor for an initial period of five years.
- Re-appointment may be considered for a further term of up to five years, subject to the discretion of the Lord Chancellor.
- Commissioners will be expected to spend a majority of their time at the Commission's offices in Central London.
- The salary is currently £123,460.
- Annual leave, excluding public holidays, is 30 days per year.
- As the office of Commissioner is full-time, paid outside work may be undertaken only with the agreement of the Lord Chancellor.

The role of Commissioner is a demanding full-time position, however, we are keen to offer flexibility wherever possible, for example through compressed hours, competitive annual leave and elements of home-working.

C. Background

The Law Commission was established in 1965 and is an independent arm's length body operating under the sponsorship of the Ministry of Justice. Our statutory function is to keep the law of England and Wales under review and to recommend reform where it is needed. The aim of the Commission is to ensure that the law is fair, modern, simple, and cost effective. We achieve this by conducting law reform projects looking at areas of law that are causing problems to individuals, businesses, the third sector or Government. We examine the law, consider options for reform in consultation with stakeholders, and finally make recommendations to Government and Parliament.

We have produced more than 350 sets of law reform recommendations over more than 50 years. Less than 10% of our reports have been rejected in that time. More recently, only 3 reports have been rejected in the last 15 years. We tackle any area of law that is suitable for consideration by an independent body of legal policy experts. Our work ranges from the highly technical, such as the repeal of obsolete enactments and the streamlining of over-complicated law, to formulation of new

legal approaches to high-profile social and economic policy issues. Our projects generally address relatively broad and complex areas of law rather than narrow legal issues.

We employ, and work with, some of the best legal minds in the country and have an excellent track record of building consensus so that Government and Parliament can have confidence that our recommendations can be implemented effectively.

The archetypal Law Commission end-products are our detailed law reform reports. Our reports are often accompanied by draft legislation and are backed up by impact assessments. We also have experience in providing advice to Government, and in proposing draft regulation or non-legislative solutions including official guidance and explanatory legal clarification, often for a non-legal audience. The Law Commission is not really suitable for projects where the answer is required in weeks. Our commitment to thorough research and analysis, in-depth consultation and the Law Commissioners' detailed peer review of our law reform teams' work means our projects are likely to take in excess of twelve months.

The Commission has five statutory Commissioners. The Chair is a serving Court of Appeal Judge. Each of the other four Commissioners is a leading legal expert and oversees a team of lawyers and research assistants working in one of four teams, currently: Criminal Law; Property, Family and Trust Law; Public Law and Welsh Law; and, Commercial and Common Law.

A full list of current Law Commission projects is available on our website (www.lawcom.gov.uk).

D. Consultation

The Commission is asked to consider some of the most challenging areas of the law. We have the capacity to work through the issues and understand the differing perspectives before we put forward recommendations for reform. The Commission is wedded to the principles of genuine public consultation with the widest possible audience. This enables thorough scrutiny of our proposals, which will often be developed or adjusted in light of the contributions of stakeholders, both in the UK and overseas. Our approach invariably involves a significant amount of face-to-face engagement with expert individuals and representative bodies, as well as formal public consultation. This process is time consuming, but it leads to well-considered recommendations which can be demonstrated to be based on the best possible evidence. The process gives the best possible opportunity for consensus to emerge.

E. Independence

One of the reasons the Government asks the Law Commission to undertake work is because we are independent. Our recommendations are based on a balanced analysis of options, and our view of the best way to reform the law. To demonstrate our independence, the Commission always publishes its conclusions at the end of a project, laying our final reports in Parliament. The Lord Chancellor has a duty to make an annual statement to Parliament about the implementation of Law Commission reports.

We are, however, responsible in the exercise of our independence. We are acutely aware of the need to put forward realistic and workable solutions. We are often able to frame terms of reference in a way which focuses our work within particular parameters avoiding controversies or the opening of issues where Government policy is fixed. We have developed Protocols with the UK and Welsh Governments which record that we will only undertake work where Government has a "serious intention" to take forward law reform in the area.

F. Staff

The Law Commission is a small organisation of approximately 60 staff, the majority of whom are legal experts, many specialising in a particular area of law. Each team is led by a Commissioner and a Legal Team Manager, overseeing a number of lawyers and Research Assistants. Our staff have policy, legislative and legal expertise, which results in our recommendations demonstrating not just strong legal analysis but also a deep understanding of policy development and the mechanics of changing the law, and experience of what will work in practice. We bring in external expert lawyers where necessary for particular specialist projects where we do not already have suitable staff. We also have in-house Parliamentary Counsel (legislative drafters) who not only draft any legislation accompanying the project but also offer advice as to the legislative workability of our proposals from the outset of the project. We also employ an economist who ensures that the costs and benefits recommendations are accurately and robustly assessed through the provision of accompanying Economic Impact Assessments. There is a small Corporate Services Team, providing communications, HR and Finance advice.

G. Budget

The Law Commission receives approximately £2million annually from the Ministry of Justice but also secures funding from Whitehall Departments for specific projects (on a not-for-profit basis). Our overall costs are approximately £4million. This mix of funding enables us to take on high priority law reform projects for Government. Project-specific funding enables a department to secure a dedicated resource and firm timetable for its work and for that work to be taken on in addition to other commitments, rather than competing with them for priority. The core funding which we receive is also vital in covering fixed costs and enabling us to undertake work which, even if it is not a key priority for Government at that moment, is nonetheless important and capable of affecting citizens and business.

H. The appointment process

The following indicative timetable is based on previous appointment processes, however, it is a guide only:

- Advert date: Spring 2019
- Closing date: 4-5 weeks later
- Sift: early Summer 2019
- Interviews: September 2019
- Appointment start date: January 2020 (subject to negotiation with the successful candidate)

Previous application processes have involved candidates submitting a CV together with a supporting letter of no more than two sides. That letter should evidence how the candidate meets all of the essential criteria for the role. Candidates should provide examples of where their knowledge and experience matches the essential criteria. The letter should provide specific and detailed examples.

This is a Public Appointment so candidates also need to complete disclosure forms providing details of any political activity, conflicts of interest, public appointments currently held and the names and contact details of two referees. Referees will only be contacted for those candidates shortlisted for interview.

Candidates selected for interview will be seen by a panel comprising the Chair of the Law Commission; a Ministry of Justice representative; an independent member; the Chief Executive of the Law Commission; and, possibly another member of the judiciary.

Interview panels will question candidates about their experience and expertise and ask specific questions to explore how candidates meet the specified essential criteria. Candidates may be asked to make a short presentation as part of the process.

The names of successful candidates will be submitted to Ministers for their consideration. The Lord Chancellor may ask to meet each appointment candidate.