

NORTHERN IRELAND LAW COMMISSION

MINUTES OF COMMISSIONERS' MEETING THURSDAY 25 MARCH 2010 AT 10.15 AM

PRESENT: Bernard McCloskey (Chairman)
Sean Doran (SD)
Neil Faris (NF)
Bobby Hunniford (BH)
Venkat Iyer (VI) (*minute taker*)

APOLOGIES: Judena Goldring (JG)

PROLOGUE

At the outset, the Chairman thanked everyone concerned for their preparations and contributions regarding the meeting. The Chairman noted with regret the absence of the Chief Executive. Following some discussion, it was agreed unanimously that the meeting must proceed in the Chief Executive's absence, given the quantity and importance of the business to be transacted and the distant date of the next scheduled Board Meeting.

1. Minutes of last meeting

ACTION BY

The minutes of the last Commissioners' meeting held on 15 February 2010 were agreed as an accurate account of the meeting.

2. Matters arising

The following matters were discussed:

- (a) The Chairman noted with satisfaction that there was an increased exchange of information in the period between Commissioners' meetings. The Chief Executive was thanked for responding to queries and requests for information from Commissioners since the last Board meeting. The Chairman expressed himself optimistic that this highly desirable practice would continue and grow, to the benefit of all concerned.
- (b) The Board noted that as a result of some current IT problems (arising from the migration to NIGOV), some e-mails, including in particular a communication from Patricia Sweeney about legislation concerning older people, (see separate note to be prepared by Chairman) had not been received by Commissioners. It was noted that these problems will be resolved without delay on completion of the NIGOV migration project.
- (c) The Chairman informed the Board that he had, on reflection, decided not to write to the Department of the Environment in relation to the Environmental Law Scoping Report as the issue had become stale and had not been followed up earlier. The net issue here is the Chairman's concern about the

manner in which the Department received the benefit of the Commission's expertise and resources. The ensuing lack of communication from the Department was noted with some surprise and concern. The Commission will, of course, learn from this experience. The Chairman will, if necessary, revive this issue should it become necessary or appropriate to do so in the context of the Commission's Second Programme of work.

- (d) All present expressed satisfaction regarding the recent programme of engagement between the Commission and public representatives, bearing in mind important pending political and legislative developments. This is linked to the imminent commencement of the exercise regarding the Commission's Second Programme. The Chairman proposed that the Commission should act on the suggestion made by Alban Maginnis MLA about the desirability of a long gallery event in Stormont being organised by the Commission, as part of the exercise of continuing to raise its public profile within Northern Ireland. It was envisaged that the Commission would make a presentation about itself and its projects, with the first one taking place ideally by around mid-May. The Board agreed that the matter be progressed by the Chief Executive with due despatch.

JG

- (e) The Chairman briefed the Board about his recent discussions with the Chairmen of the Law Commissions of England & Wales and Scotland. He expects to visit the Irish Law Reform Commission in Dublin shortly for similar discussions. (See separate note to be prepared by Chairman in the wake of the forthcoming Irish Law Commission event in Dublin, scheduled for 29 March 2010.)

Chairman

- (f) In relation to Governance Issues, the Board noted that the Chief Executive had undertaken to prepare a paper for discussion at the present meeting. A document relating to Governance was included in the papers circulated for the meeting, but there were a number of issues in it that needed clarification (see below). In the absence of the Chief Executive, the matter could not be discussed further.

- (g) In relation to office accommodation, SD underlined the need for the arrangements that had been agreed at the last Board meeting to be purely temporary in nature and that any sharing of offices by Commissioners will end with the departure of the Land Law team in December 2010. It was agreed that no new allocations will be made without full consideration of this matter by the Board.

3. CEO Report

The Board considered the written report furnished by the Chief Executive, and highlighted the following:

(a) Implications of devolution in April

A copy of the NIO paper referred to under the above heading needed to be circulated to Commissioners as soon as possible. JG

(b) Training and development

The reduction in the budget allocation under the above head from £16,000 to £10,000 for the financial year 2010-11 required elaboration. JG

BH noted that the Equality training offered to Commissioners and staff could be organised better and more cheaply – through, for example, getting the trainer/s to run block sessions on NILC premises.

SD noted that it would be advisable for a one- or two-day induction programme to be run for future cohorts of Commissioners so that they are better prepared for their duties. The Chairman strongly supported this, observing that this would also enhance good working relationships.

The Board underlined the need for all Commissioners to be provided with Project Management training – this had been discussed previously but no action appears to have been taken so far. Both the desirability and the viability of undertaking this at this stage require further information and reflection. The Chief Executive will be requested to report further on this discrete issue. JG

(c) Budget

The Board was concerned about the reduction in the budgetary allocation for drafting fees in 2010-11 and noted that this required clarification, particularly given that at least two projects – Bail and Vulnerable Witnesses – would need significant drafting support during this period. The Chairman will request the Chief Executive to consider the implications of this as quickly as possible. (If appropriate, a further Chairman's note will follow.) Chairman

The Board noted that the allocation of £10,000 for library publications/materials needed revisiting. It would be most helpful to have the breakdown of this figure, with a working assumption that it is substantially consumed by electronic resources. It was felt that there was some scope for a reduction under this head. JG

Likewise, the Board felt that the allocation of £1,000 made for newspapers could be saved through cancellation. JG

(d) Governance issues

The Board discussed the note headed 'Northern Ireland Law Commission – Proposed Review of Governance Arrangements' and noted that a number of matters arising from it needed clarification. It was decided that no action should be taken under this head before the matter had been discussed thoroughly by the Board. The Chairman agreed to send out a Memorandum to the Chief Executive seeking the necessary clarifications as a matter of urgency.

Chairman

4. Draft Second Programme of Law Reform

This matter was discussed at some length, and the following points emerged:

RH suggested that work on the Second Programme could be carried out without the need to create a Project Initiation Document (PID), Risk Register and other documentation traditionally associated with a substantive project of law reform. The Board agreed.

As to the contents of the announcement for the Second Programme, various options were discussed. As emphasised in a previous memorandum from the Chairman, it is essential that the Commission consult with an open mind and with no predetermined positions or views. Simultaneously, duplication of significant previous assessment/scoping work must be avoided if possible. The Commission has previously formed the view that certain of the unsuccessful projects proposed for the First Programme could be suitable candidates for the Second Programme. These should be highlighted in the consultation documents being prepared. Final decisions on matters of detail and presentation (including, for example, the option of an appendix) will be deferred.

BH, NF

BH agreed to re-draft the document, with some assistance from NF. The Chairman undertook to make his drafting contributions when the second draft version becomes available. It was resolved that, if at all possible, that this matter should be finalised by the Board at its May meeting. The Chief Executive is requested to give consideration at this stage to the logistics regarding printing. It would be desirable for the published version to be launched – in hard copy – at a suitable event thereafter. One option to consider is that this should coincide with the envisaged Long Gallery Event, which would seem desirable.

Chairman

JG

5. Calendar of Events

In the discussion of this document, the following points emerged:

(a) SD would put together a draft programme for the proposed conference on 30 September 2010 and would make this available for consideration at the next Board meeting in May;

SD

(b) The Chairman will make the introductory presentation at the event. Another speaker is required and the Chairman

Chairman

undertook to give this immediate consideration. The Lord Chief Justice may also be requested to make a presentation. It is envisaged that the main speaker will be Professor David Ormerod;

- (c) The Commission would organise a dinner for David Ormerod, the guest speaker at the conference, on either the 29 or 30 September, depending on Mr Ormerod's convenience;
- (d) Following discussion, it was agreed that the conference would commence with a light buffet lunch during which registration would take place.

6. Projects – Landmark Dates

- (a) The draft consultation paper for the Bail project, which was noted in the Calendar of Key Events as scheduled for presentation to the Board in August 2010 may be ready earlier, in which case it will be presented to the June meeting of the Board; SD, BH
- (b) The draft final report for the Vulnerable Witnesses project has been wrongly listed in the Calendar of Events as likely to be ready for presentation to the Board in September 2010 and for publication in October 2010. The correct dates – as reflected in the amended Gantt chart – are February and March 2011 respectively
- (c) Noted that the date for completion of the Business Tenancies Project Report for approval by Board is December 2010 (rather than August 2009) with publication scheduled for early 2011 (rather than September 2009).

7. Chairman's communications

- (a) The Memorandum circulated by the Chairman on 24 March about dissemination of reports, etc. received by him between meetings was discussed, and it was agreed that the Chairman would henceforth lay copies of any such documentation in the Board Room as and when they became available, with e-mail alerts to Commissioners, so that anyone interested may peruse the documents at their convenience. Chairman
- (b) It was also agreed that the Commission would not ordinarily send substantive responses to consultation papers and other similar documents issued by other law reform bodies, although exceptions may be made where necessary, e.g. in relation to matters that the Commission had direct experience of or a compelling interest in, or where the proposals being mooted were likely to have a significant effect on the functioning of the Commission – subject to being satisfied that this is consistent with the Commission's statutory remit.

8. Commonwealth Law Conference

It was agreed that the Chairman would attend this event, scheduled for February 2011 in Hyderabad (India), and would represent the Commission at this event. One option is that this representation would be focused on the meeting expected to be organised by the Commonwealth Association of Law Reform Agencies (CALRAs). This meeting and its outworkings are probably the most important aspects of the Conference from the Commission's perspective. Moreover, this focus would have positive budgetary implications. Agreed also that booking of airline tickets should proceed immediately to gain benefit of more cost effective rates obtainable by early booking.

9. Business Tenancies consultation paper

The draft consultation paper submitted by NF was discussed, and it was agreed that, subject to some minor additions and/or amendments to be carried out by NF, the paper would proceed to publication as scheduled. The Chairman undertook to comment particularly on two discrete sections of the draft. The Board expressed satisfaction with the progress of this project.

Chairman,
NF

10. Drafting services

BH agreed to prepare a note on the issue of drafting services which would be required in the next financial year. It was envisaged that any tender that would be floated for this purpose would include both the Bail and Vulnerable Witnesses projects.

BH

11. Date of Next Board Meetings

It was agreed that the next two Commissioners' meetings will take place on:

13 May 2010; and
15 June 2010.

The provisional start time for these meetings would be 10.15 am, although this may be changed, if necessary.

The Board noted that, since the Chief Executive was unable to attend the present meeting, the Chairman would take an early opportunity on her return to work to discuss with her the issues raised and decisions taken. Given the Chief Executive's leave arrangements, this will not be feasible until week commencing 12 April 2010.