

NORTHERN IRELAND LAW COMMISSION
MINUTES OF COMMISSIONERS' MEETING
7 DECEMBER 2009

Present: Bernard McCloskey (Chair)
Neil Faris
Bobby Hunniford
Venkat Iyer
Judena Goldring
Sean Doran (minute taker)

1. Minutes of last meeting

The minutes of the meeting of 10 August 2009 were agreed as an accurate account of the meeting.

2. Matters arising

The following four matters were discussed:

(i) Car parking

JG reported that there was no scope for further places being made available by the owners of the building. She suggested that the current approach where Commissioners park elsewhere and be reimbursed was the option which seemed most suitable for combining the flexibility required by Commissioners and best use of the spaces. However other options could be considered. If, for example, there was an agreed committed day for Commissioners the provision of spaces on that day should be considered. VI indicated that there was a need for a policy on the issue and noted that it had been agreed to find out about arrangements in other similar organisations. VI further noted that there was a value-for-money issue as well. He pointed out that Commissioners often needed to get into the office at times when it was difficult – or impossible – to find spaces in public car parks within a reasonable distance from the NILC premises. The chairman suggested that we should find out what arrangements were in place in the other Law Commissions. NF raised the query of whether the allocation was tied to the lease. It was agreed that JG would obtain details of the lease or licence arrangements and report to the Board on practice and policy in other departments and in other similar organisations.

(ii) Updates to Commissioners

The chairman noted the desirability of the Chief Executive providing regular updates to Commissioners in respect of matters that arise in Board meetings. It was agreed that this practice would be adopted; for example, the information about car parking might be disseminated by the end of December.

(iii) Multi-unit development project

The recent debate in the Assembly had prompted the question of whether this project needed to be accorded attention by the Commission sooner than had been anticipated. The Minister had announced in the Assembly debate his intention to take the lead in the area by establishing an inter-departmental group to look at the subject. It appears that no final decision has been taken by the Minister on the matter and that the planned work on the subject by the Commission is being brought to his attention. There was a detailed discussion on, first, the inter-relationship between the Minister's intention and the Commission's programme, which had itself been approved at ministerial level and, secondly, the appropriate approach to be adopted to this matter by the Commission. It was agreed that the Commission should in principle be willing to respond to evident public concern on this issue by expediting – if practicable – this Project in the Commission's programme. NF further agreed to put together a brief paper setting out the key points arising for consideration in the project. The chairman voiced concern about the lack of clarity that now existed over the handling of this project, that is, whether it was to proceed as a Commission project or whether it was to be taken forward by the Department of Finance and Personnel. He requested the CEO to pursue this matter vigorously with the Department. The Board was of the clear view that it wished the work on multi-unit developments to go ahead as a Commission project (in accordance with the First Programme of Law Reform which has been formally approved by the Secretary of State in compliance with the relevant statutory requirements) supported by the Department, if necessary through an inter-departmental group.

(iv) Appointment of new lawyer

The discussion on multi-unit developments led to discussion of the matter of appointment of the new lawyer, as it had been anticipated that the appointee would work on multi-unit developments following completion of the business tenancies project. It was agreed that (on the basis of work on the multi-unit developments project starting in the New Year) the lawyer would now be required to step in immediately to the work on that project. JG and NF had agreed a job profile; the contract would be a three year one. Draft documentation had been exchanged with HR Connect. Amended documentation had been sent to HR Connect on Thursday 3rd December 2009, comprising job description, information about the post and terms and conditions. A response was awaited. The Chief Executive confirmed to the chairman that, from the perspective of expediting this process, nothing further remains to be done by NILC at this stage. JG was hopeful that an appointment would be made before Easter. The chairman noted that an appointment post-Easter might not be unrealistic given the various steps that had to be followed including the availability of the successful candidate. The matter of composition of a recruitment board for the purpose of making this appointment remains outstanding. It is expected that two of the board members will be the Chief Executive and a Commissioner. Further information on the credentials required for the third board member is to be obtained. The chairman is anxious that the recruitment board should be established as quickly as possible, in order to minimise delays in what appears to be a far from rapid process.

(v) Raising awareness of role of Commission

In addition to the issue noted above concerning work on multi-unit developments, BH drew attention to the possible intention of the Alliance Party to put together a working group on bail. At a recent meeting with NIO representatives, the bail project team had offered to give a presentation on the project at Stormont in order to raise awareness of the Commission's work in the area. This in turn raised the question of the lack of responses by political parties to earlier correspondence that had been sent out offering a general presentation on the Commission's work. It was agreed that further correspondence should be sent out to remind the parties of the Commission's work. Also the Commission could organise a presentation day at Stormont for the benefit of all political parties there and which could also introduce our new chairman. Such an exercise could also provide a welcome opportunity to copper fasten the NILC's position concerning reform of the law governing multi-unit developments. Furthermore, public awareness of NILC should be significantly enhanced by a well planned and publicised annual conference (the provisional date agreed being September 2010).

3. CEO report

There was discussion of the written report furnished to Commissioners in advance of the Board.

The NIO had accepted that the statutory accounting demands placed on the Commission with respect to the furnishing and auditing of accounts are proving unduly burdensome and disproportionate. The Commission is a cost centre within the NIO and is therefore subject to an audit process through the NIO systems. The NIO had agreed with the CEO that the legislation relating to the provision of accounts needed to be amended. The chairman raised the issue of whether we should be proposing the terms of any amendment; JG indicated that the NIO would take the lead and that the NIO have agreed that they will liaise with the Commission on the proposed terms of any amendment. The chairman emphasised the desirability of the terms of any proposed statutory amendment being brought to his attention timeously, to ensure that any appropriate representations are fully made and, if necessary, to facilitate an opportunity for internal NILC discussion. Further advice was being sought by the NIO on the appropriate Chair for the Audit Committee.

Regarding budgetary matters, BH raised the issue of the £70K surrender from programme staff costs and whether it was anticipated there would be an underspend in the present financial year. JG stated that there would be no issue of underspend this year and that tight management would be required to ensure that there was no overspend.

A question arose over the nil figure for consultancy in 2010-2011. JG indicated that the Commission may have to ask the Department for a one-off allocation of programme money to fund legislative drafting for the bail and vulnerable witnesses (and other future) projects.

One possible source of saving for 2009-2010 was in the conference allocation of £25K (given that it is now envisaged that the Conference will not take place during this financial year). SLS had successfully handled the last conference and it was agreed

that they would be contacted about handling administrative arrangements for future events. A provisional idea was that next year's annual conference would be on the subject of bail in September 2010.

4. Draft Land Law Supplementary Consultation Paper ('draft SCP')

NF presented a detailed report to the Board on the issues arising from the draft SCP. Three substantive matters are addressed in the draft SCP: adverse possession, ground rents and covenants. The section on adverse possession does not raise issues of policy. The other two issues do, however, raise issues of policy and NF put forward suggestions – detailed in his said Report – that would hopefully ensure that the broadest range of policy options would be canvassed in the draft SCP.

It was agreed that the draft SCP was an excellent piece of work and the Board was minded to sign it off, subject to two issues being raised with the senior lawyer. First, the suggested additional questions on ground rents (that had been raised at the Steering Group Meeting) should be suitably adapted and incorporated. Secondly, there was discussion about whether it would be desirable that a "do nothing" option be appropriately formulated and incorporated within the section on covenants. The rationale of the latter was to avoid the possibility of the entire project foundering on rejection of the proposals on covenants because of the potential difficulty or impossibility of framing model covenants acceptable to all interests: should potential respondents be made aware of a "do nothing" option in the area of covenants while proceeding with abolition of ground rents and should they be asked for their views on the desirability or otherwise of such option? The chairman undertook to discuss this matter with the senior lawyer and to liaise further with NF (and, thereafter, if necessary, all Commissioners).

5. Proposed appointment of lawyer

Discussed at 2(iv) above.

6. Possible appointment of Director of Research

There was a general discussion of this idea and the question of whether it was desirable or would fit easily with the existing structures. In any case, the reality at present is that resources would not be available to finance such a post. It was agreed that information would be sought on whether this post exists in other commissions and how their structures compare with that of NILC. The matter can then be considered further at the February 2010 meeting.

7. Legislative drafting services

There was need arising for drafting services in the business tenancies, bail and vulnerable witnesses projects.

A number of possible models were discussed for fulfilling drafting needs within the Commission:

- (i) Full-time appointee.
- (ii) Appointment on project by project basis.

- (iii) Panel of consultants “on call”.
- (iv) Single consultant “on call”.

The first model was clearly inappropriate given that the need for drafting services did not arise on an ongoing basis calling for any full time appointment and taking into account resource limitations. The final model was generally accepted to be the most attractive.

Following discussion, it was agreed that the potential saving in this year’s conference allocation could properly be directed to a short term appointment for the purposes of the business tenancies project within the present financial year. Built into the specification would be preliminary advisory work on bail and vulnerable witnesses, if feasible. Furthermore, it would be desirable for the Commissioners to consider the proposed terms of engagement and whether such terms would be compatible with the objects of the envisaged appointment. Commissioners should have an opportunity to contribute to this important issue. At the same time, additional funding would be sought for drafting services for the bail project. JG is to initiate urgently the procurement arrangements so that the appointment may be made as soon as possible.

8. Steering group meetings – frequency, structure, reporting

The main issue here concerns the absence of departmental witnesses from the steering group membership of two projects. There would appear to be stagnation and the chairman undertook to pursue this matter immediately with the Departmental Solicitor, upon whom the importance of this discrete issue has been impressed in a recent letter from the Chief Executive. The assurances mentioned in the next succeeding paragraph appear frail and unreliable at present.

9. Departmental representative for vulnerable witnesses steering group

It was noted that while steering group meetings can function without a departmental representative, it was essential for the appointment of a representative to be made to all projects. The rationale was to ensure that the Department was kept informed of the development of each project and would hopefully in turn engage positively in carrying the project forward. VI and NF observed that no appointment had been made in the vulnerable witnesses and business tenancies projects respectively. JG indicated that a reassurance had been given by the Department that this matter would be settled in the context of the vulnerable witnesses project and that similarly such representative was also to be appointed to the business tenancies project.

In the context of this discussion, reference was made to an issue that had arisen in the course of the project reports prior to the Board meeting concerning the delays in recruitment of personnel for the vulnerable witnesses team. The CEO set out the reasons behind the timing of the appointment of the lawyer and new legal researcher. VI acknowledged that he was aware of the reasons and explained that the project report was simply a statement of fact with no criticism intended.

10. Document security

An exercise to review arrangements for document security was to be conducted by the NIO. The matter would be revisited at a suitable time.

11. The Commission's Second Programme

Of the 47 projects considered in the consultation exercise for the first programme, 14 were regarded as suitable for possible inclusion in the second programme. JG stated that correspondence could not issue from the Commission to proposers until after the first programme had been laid before Parliament and the Assembly on 11th December 2009. The chairman requested the documentation relating to decisions made concerning proposals for the first programme and noted that he would consider the wording of the draft response to be issued to proposers. The precise status of the 14 proposers in question and the projects proposed by them for inclusion in the NILC First Programme remains unclear. In particular, will they have some kind of preferential (or distinct) status vis-à-vis the Second Programme? What if they wish to modify their proposals or withdraw them altogether, to reflect changed future circumstances? When the chairman has received the relevant report and the contemplated letters to these agencies *in draft*, this topic will be considered further (almost certainly at the January 2010 monthly meeting).

It was also agreed that the NILC website should now be updated with details of all the projects.

12. Date of next meeting

Monday 11 January 2010 at 11am.

This will be a Commissioners' Board meeting only; the next project meeting would be prior to the February Board.