

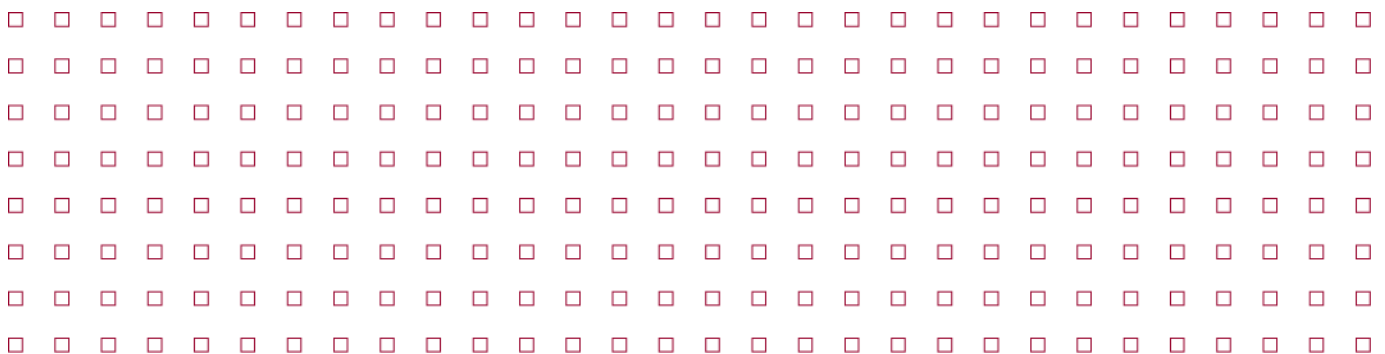


Triennial Review

Law Commission

Report of Stage Two

March 2014





Ministry of
JUSTICE

Triennial Review

Law Commission

Report of Stage Two

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Introduction

1. The Law Commission for England and Wales ('the Law Commission' or 'the Commission' hereafter) was established by the Law Commissions Act 1965 (LCA 1965) and is an independent Advisory Non-Departmental Public Body (NDPB).
2. The Law Commission was established for the purpose of promoting reform of the law.¹ Its organisational structure and functions are set out in its founding statute. This statute was later amended by the Law Commission Act 2009, which introduced a statutory Protocol² governing ways of working between the Law Commission and the Government (section 2), and the requirement that the Lord Chancellor report annually to Parliament on the implementation of Law Commission reports by Government (section 1).
3. The LCA 1965 also established a very similar Commission in Scotland (the Scottish Law Commission). However, the Scottish Law Commission is responsible to the Scottish Government and, as such, is outside the scope of this review. Similarly, the Northern Ireland Law Commission (established separately) is also not the subject of this review, reporting as it does to the Northern Ireland Assembly.
4. The Commission is being reviewed as part of the Triennial Review programme, set up following a Government commitment to triennially review NDPBs. The first stage of the Triennial Review examined the form and functions of the Law Commission, recommending that the Commission remain an Advisory NDPB with no alteration to its functions. A report of the outcome of that Review was published on 16 July 2013 and is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226315/law-commission-triennial-review-stage-1.PDF. This Report focuses on Stage Two of the Review: an assessment of the Law Commission's governance arrangements against best practice standards. This report does not repeat the conclusions of the Stage 1 report. It should be read in conjunction with that report.

Public Bodies Reform Agenda

5. The Public Bodies Reform Agenda is led by the Cabinet Office, using HM Treasury rules and standards. In 2010, over 900 bodies were subject to a cross-Government review undertaken by all departments. This included all NDPBs, along with a number of Non-Ministerial Departments and public corporations.
6. The Secretary of State for Justice considered the Ministry of Justice's (MOJ's) public bodies, applying the Coalition Government's test on whether the function should be carried out by the state. It was decided in June 2010 that the Law Commission would be retained on the grounds of performing a technical function which requires impartiality. The Triennial Review process was then established in 2011 to ensure that all NDPBs remaining in place following these reforms were regularly reviewed.

¹ Law Commissions Act 1965 s1(1) available at www.legislation.gov.uk/ukpga/1965/22/section/1

² Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission (Law Com No 321, 29 March 2010). Available at <http://lawcommission.justice.gov.uk/publications/940.htm>

Scope and Purpose of Triennial Reviews

7. The Cabinet Office has identified two principal aims for Triennial Reviews:
 - to provide robust challenge to the continuing need for individual NDPBs – both their functions and their form (Stage One); and
 - where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance (Stage Two).
8. All reviews are to be conducted in line with the following principles:
 - i. **Proportionate**: not overly bureaucratic; appropriate for the size and nature of the NDPB.
 - ii. **Timely**: completed quickly to minimise disruption and reduce uncertainty.
 - iii. **Challenging**: robust and rigorous, evidencing the continuing need for functions and examining and evaluating a wide range of delivery options.
 - iv. **Inclusive**: open and inclusive. Individual NDPBs must be engaged, key users and stakeholders should have the opportunity to contribute. Parliament should be informed about the commencement and conclusions.
 - v. **Transparent**: all reviews should be announced and reports should be published.
 - vi. **Value for Money**: conducted to ensure value for money for the taxpayer.
8. In line with Cabinet Office principal aims for triennial reviews, Stage One was a robust challenge to the continuing need for the Law Commission, and Stage Two has been a review of the control and governance arrangements of the Commission to ensure that as a public body it is complying with recognised principles of good corporate governance.

Process and Methodologies

Cabinet Office guidance

9. As the outcome of the first stage of the review was that the Law Commission should remain in its present form (an Advisory NDPB), the MOJ and the Commission completed a joint review of the control and governance arrangements in place for the Commission in accordance with the information below which is taken from the Cabinet Office guidance. This included requirements in relation to openness, transparency and accountability.
10. Good corporate governance is central to the effective operation of all public bodies. As part of the review process, therefore, the governance arrangements in place should be reviewed. This should be led by the sponsoring Department, working closely with the Chair and Chief Executive who have a key responsibility for ensuring that strong and robust corporate governance arrangements are in place. As a minimum, the controls, processes and safeguards in place should be assessed against the principles and policies set out below. These reflect best practice in the public and private sectors and, in particular, draw from the principles and approach set out in the draft Corporate Governance in Central Government Departments: Code of Good Practice and as set out in Annex B of the Cabinet Office's Guidance on reviews of Non Departmental Public Bodies.
11. The Department and NDPB will need to identify as part of the review any areas of non-compliance with the principles and explain why an alternative approach has been adopted and how this approach contributes to good corporate governance – this is known as the “comply or explain” approach, the standard approach to corporate governance in the UK. Reasons for non-compliance might include the need for structures and systems to remain proportionate, commercial considerations or concerns about cost and value for money.

The principles of good corporate governance

| Principle | | Descriptor |
|-------------------------------------|-----------------------------------|--|
| Accountability | | The Minister is ultimately accountable to Parliament and the public for the overall performance of the public body. |
| Roles and Responsibilities | Role of the Sponsoring Department | The departmental board ensures that there are appropriate governance arrangements in place within the public body. There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the public body. |
| | Role of the Board | Board members should provide independent, expert advice. |
| | Role of the Chair | The Chair is responsible for leadership of the board and for ensuring its overall effectiveness. |
| Communication and Engagement | | The public body should be open, transparent, accountable and responsive. |
| Conduct and Propriety | | Board members should work to the highest personal and professional standards. They should promote the values of the public body and of good governance through their conduct and behaviour. |

The Ministry of Justice approach

12. To ensure consistency of approach to the programme of MOJ Triennial Reviews, guidance was issued for use by all the review teams to be set up for each NDPB. The MOJ programme of reviews is overseen by a central Senior Responsible Officer. The Law Commission is the fifth MOJ body to be reviewed in this way.
13. The review has been governed by a Project Board and supported by a Critical Friends Group. The Project Board is comprised of officials from the review team as well as representation from the legal, finance and communications directorates and the Arm's Length Body Governance Division. The Chief Executive of the Law Commission also has observer status on the board. There have been some minor changes to Project Board membership since Stage One, reflecting the consequences of internal staff changes in the MOJ.
14. The Critical Friends Group provides robust challenge to the review and includes representation from the MOJ's triennial review programme, the Department for Business Innovation and Skills (BIS), the Department of Health (DH), Cabinet Office and the Nuffield Foundation, and is chaired by the Deputy Director from MOJ responsible for Triennial Reviews. A full list of members of the Critical Friends Group is at Annex A.
15. A Peer Reviewer was appointed to assist with Stage Two of the Triennial Review. Claire Bassett is the Chief Executive of the Parole Board. As the former Chief Executive of the Criminal Cases Review Commission and Operations and Services Director at Nacro she has significant experience in running ALBs and of the way they interact with third sector and other stakeholder organisations.

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16. The MOJ has prepared general guidance on the process to be followed when completing Stage Two of a Triennial Review into one of the MOJ's NDPBs. This Review was conducted in line with that guidance. The MOJ devised a questionnaire for Stage Two to be used for all triennial reviews in the Department's programme, which follows the Cabinet Office guidance and incorporates the comply/explain format for each principle. The Law Commission and the MOJ sponsor team jointly completed the questionnaire relevant to Advisory NDPBs, collecting evidence to support the responses. Each principle was then rated on a four point RAG rating (Red, Amber/Red, Amber/Green, Green) for compliance with the principles set out above.
17. Neither Cabinet Office nor MOJ guidance mandate the form the Stage Two report must take, but the report must include a compliance statement for each Control and Governance principle identified in the Cabinet Office guidance. The evidence from the questionnaire and follow up visit forms the basis for this report.

Compliance with principles of good governance

18. The Law Commission and its MOJ sponsor team jointly completed the questionnaire and provided comprehensive supporting documentation. These included policies available to the public on the Commission's website and internal documents where relevant to governance and accountability issues.

Accountability

19. The Law Commission complies with all the detailed requirements associated with this principle. In particular, it has close relationships with the MOJ at Ministerial and official level, with twice-yearly meetings between Ministers and the Commission. All Commissioner appointments are made in line with the Law Commissions Act 1965 and with the Code of Practice issued by the Commissioner for Public Appointments. Commissioners' Terms of Appointment provide that Commissioners can be removed from office on the grounds of incapacity or misbehaviour. The Commission makes an annual report to Parliament. The Commission complies with the Data Protection Act 1998 and the Public Records Acts 1958 and 1967. The Commission operates under a range of spending controls, and MOJ spending and accounting policies are adhered to. The 1965 Act provides that the expenses of the Commission are to be met from moneys provided by Parliament. In practice, the Commission operates on a mix of core funding from Parliament via the MOJ and additional funding from other Departments willing to provide additional contributions to the Commission for particular projects. This model has evolved over time and is not underpinned by an agreed set of principles. The Commission expects a reduction in additional contributions from other Departments in coming years. The Commission will need to adjust its expenditure in future years to deal with this change.

Roles and Responsibilities

20. The Roles and Responsibilities principle covers several separate themes, each of which is dealt with separately below.

Role of the Sponsoring Department

21. The Law Commission complies with some of the requirements under this theme. In particular, there is regular and ongoing dialogue between the MOJ sponsor team and the Commission at various levels within both organisations including monthly meetings between the Chief Executive and the sponsor team.
22. The Commission and its MOJ sponsor team deviates from the requirements in several areas:
- While the Law Commission has a clear purpose in relation to law reform, its terms of reference are not set out in a single document. They are spread across several documents, including the Law Commissions Act 1965, the Protocol made under that Act and the Code of Best Practice for Law Commissioners. There is no Framework Document between the Law Commission and the MOJ.
 - Although the relationship between the Commission and the MOJ operates well in practice, roles and responsibilities are not clearly articulated. This includes the roles and responsibilities of the sponsor team, of the MOJ's ALB Governance Division in relation to the Law Commission, and the role of the Commissioners in relation to the management and governance of the Commission.
 - There is no formal evaluation of the performance of the Commission as a Board, except through the Annual Report. Individual Commissioners are annually appraised by the Chairman, but there are no arrangements in place for the appraisal of the Chairman.

Role of the Board Members

23. The Commission complies with most of the requirements under this theme. The independence of the Commission is integral to its work on law reform and this is a theme that came through strongly in the results of the Call for Evidence carried out during Stage One of this Triennial Review. Commissioners are drawn from academia and the legal professions and they are recruited for their expertise in the area of the law they are charged with reforming. This knowledge and expertise is particularly prized by those who work with the Commission and it makes a significant contribution to the Commission's reputation for excellence.
24. Commissioners are required to comply with a Code of Best Practice, which sets out expectations of them in relation to corporate governance. The Commissioners and Chief Executive meet as a Board once a month to set the Commission's strategic direction and future work plan, discuss strategic issues, review the financial position and oversee delivery. They adopt a risk-based approach to their consideration. However, the meetings are not as effective as they could be. Lack of clarity over the role of the Commissioners as a Board means that it is unclear whether the Commissioners are fulfilling a decision-making function, or are advising the Chief Executive.
25. The Commission has no Non-Executive Board Members. The Chairman and all of the other Commissioners have executive responsibilities in relation to law reform under the 1965 Act.

Role of the Chair

26. The Commission complies with the requirements under this theme in so far as the law governing the Commission allows. For example, the Law Commissions Act 1965 gives the Chairman of the Commission executive responsibilities in relation to law reform, and he must be a holder of high judicial office. So the Chairman cannot currently be a non-Executive Chair in any normal sense.
27. The strongest theme that came through Stage One of the Triennial Review is that the Commission is valued for its independence from Government, and having a senior judge as Chairman who is directly responsible for areas of law reform was seen as a vital component of both its credibility as an independent law reform organisation and its success in delivering effective law reform projects. Evidence from the Home Office was typical: "the fact that it is chaired by a senior judge gives it a certain credibility and independence." Moving to a non-Executive Chair at this stage would damage the Commission's credibility; and inhibit its influence and its access to practitioners and experts. This would seriously compromise the Commission's ability to perform its core functions: the effective reform of the law.
28. The Chairman of the Commission was appointed through open competition, and that competition was administered in line with the Code of Practice issued by the Commissioner for Public Appointments. His duties, role and responsibilities, term of office and remuneration are all set out in Terms of Appointment and the Code of Best Practice for Law Commissioners.
29. Some of the responsibilities listed under this principle are held by the Chief Executive rather than the Chairman, such as responsibility for ensuring the Board takes proper account of guidance provided by the Sponsor Department when taking decisions, and ensuring that the Commission carries out its business efficiently and effectively. These responsibilities are clearly set out in the Chief Executive's job description and the Code of Best Practice for Law Commissioners.

Communication and Engagement

30. The Law Commission complies with all the requirements of this principle. Openness and engagement with stakeholders, the professions and the general public is at the core of the Commission's work and this was a theme that came through strongly in the responses to the Call for Evidence as part of Stage One of this Triennial Review. The Commission is particularly praised for its efforts to engage with those whose interest in a particular project is less obvious, and for the way it builds relationships with the Departments responsible for the policy area covered in each project. It goes to great efforts to engage on the development of its Work Programmes as well as at all stages of individual projects, including in the development of recommendations and supporting Law Commission Bills through Parliament.
31. The Commission's commitment to openness was one of the key themes coming through in the responses to the Call for Evidence during Stage One of the Triennial Review, where it was greatly welcomed by the Commission's stakeholders.
32. The Commission is listed as a public authority for the purposes of the Freedom of Information Act 2000. The Commission has adopted the Information Commissioner's Office model publication scheme and has developed its own guidance on discharging the duties under that Act. It publishes a wide range of information, including financial data and expenditure, a Register of Commissioners' Interests, details on the progress of each of the Commission's projects, and the minutes of Board meetings.

Conduct and Propriety

33. The Law Commission mostly complies with the requirements on conduct and propriety. The Commission's Code of Best Practice forms part of the Terms of Appointment of Commissioners. It is based on the Cabinet Office Code and sets out the standards of personal and professional behaviour expected of Commissioners. It contains rules about handling conflicts of interest and political activity by Commissioners. A Register of Commissioners' Interests is published on the Commission's website. Commissioners claim expenses in accordance with the policy applying to MOJ civil servants.
34. There are no restrictions on the acceptance of appointments or employment after resignation or retirement beyond the MOJ rules for civil servants that apply to the Chief Executive and other Commission staff. MOJ policy is that whether such conditions are required depends on the nature of individual public appointments. Given the requirement for Law Commissioners to be holders of a judicial office, barristers, solicitors or teachers of law in a university it is likely that they will return to these posts on leaving the Commission. Set rules on taking appointments or employment after retirement or resignation have been considered unnecessary.

Agreed rating assessment

35. The joint assessment concluded that compliance with each principle was green, except for the roles and responsibilities of the Sponsor Department and the Role of the Board, which is both rated amber/green. This is because the relationship with the Department is not properly codified; there are no formal arrangements in place to evaluate the performance of the Commission as a Board; and the Commission has no non-Executive Board members. The evidence provided by the Law Commission and the MOJ supports these assessed ratings.

| Principle | Theme (where relevant) | Theme Rating (where relevant) | Principle Rating | Overall Assessment |
|-------------------------------------|-----------------------------------|--------------------------------------|-------------------------|---------------------------|
| Accountability | | | Green | Green |
| Roles and Responsibilities | Role of the Sponsoring Department | Amber/ Green | Amber/Green | |
| | Role of the Board | Amber/ Green | | |
| | Role of the Chair | Green | | |
| Communication and Engagement | | | Green | |
| Conduct and Propriety | | | Green | |

Peer Reviewer's conclusions

36. The role of Peer Reviewer within Stage Two of this Triennial Review focused on governance and the relationship between the Law Commission and its sponsors. In order to do this the Peer Reviewer met with sponsor leads within MoJ, attended a Commission meeting and spoke with individual Commissioners, the Chairman and the Chief Executive.
37. As has been identified elsewhere, there is a clear sense of purpose at the Law Commission and this is shared by sponsors, who value the work it does, and more widely by its stakeholders. The Triennial Review coincided with consultation on the Commission's 12th programme of work and this did highlight a number of the challenges facing the Commission.
38. The absence of an agreed funding model has added to the complexity of the process for identifying the 12th programme and all those spoken to in the Commission were very aware of the need to maintain the integrity of the Commission's work and not allow it to be unduly influenced by where funding might come from. This is a legitimate concern given the uncertainty surrounding it and the Commission would benefit from clarity of its funding model, particularly given the overall scarcity of public funds. The Commission and its MOJ sponsor team will need to work together to achieve this.
39. The role of the Commission as a Board was something that many of those spoken to identified as unclear. Commission meetings are in two parts; Peer Review and operational matters. The latter has been developed recently and has functioned well on a day to day basis but there was a concern that lack of clarity over the respective roles of the Commission Board, Commissioners, the Chairman and the Chief Executive could give rise to confusion which would make organisational decision making hard. The majority of those spoken to also felt Non Executive Directors would add value to the Board, particularly if drawn from areas of expertise the Board has highlighted as needed, and that NEDs would also support the Chief Executive.
40. The Commission continues to fulfil an important function within the justice system and the commitment of those working at the Commission to continue doing this despite various pressures was impressive. Thank you to all those who gave their time to contribute to this part of the review and who gave their views so clearly and frankly.

Conclusions and Recommendations

41. The Law Commission was established in 1965. It's founding legislation and the structures that flow from it pre-date current norms for public bodies. This means that its corporate governance arrangements do not fully map onto best practice principles and significant legislative change would be required for full adherence with these principles. For example, the 1965 Act gives the Chairman and Commissioners executive responsibilities for law reform which directly conflict with the best practice of having a non-executive Chair. However, as the outcome of Stage 1 of the Triennial Review demonstrates, the structures of the Commission are key to its credibility and its success as an organisation. Legislative change to bring the Commission in line with best practice arrangements would significantly impede the effectiveness of the Commission's law reform work and it is not recommended at this time.
42. Within the constraints imposed by law the Commission generally complies well with corporate governance best practice, but there is clearly room for some improvement. Improving the Commission's corporate governance will also help it to be more effective in its core work of law reform.
43. The Law Commission faces many difficult challenges at the moment. It is currently developing its 12th Programme of Law Reform in an uncertain climate. The Protocol governing the Commission's work provides that before approving the inclusion of a project in the overall programme the Lord Chancellor will expect the relevant Minister to give an undertaking that there is a serious intention to take forward law reform in this area. With the timescale for the 12th Programme spanning the next General Election, the Commission and Ministers will be making decisions in a context where there is a great deal of uncertainty about whether the incoming Government will support any project.
44. The continuing pressures on public finances will add to these challenges. This has brought to the fore the need to clarify the Commission's funding model so that clear principles are established. To live within its means the Commission will need to be flexible and agile and will have to make difficult choices about the projects it takes on. Underpinning the funding model with a clear set of principles will ensure that the Commission enjoys greater financial certainty over the long term, enabling it to focus on its strategic statutory duty to keep all the law under review with a view to its systematic development and reform.
45. This context has guided the conclusions below. Both the good practice that has been identified, and the recommendations made, should help the Law Commission meet these challenges effectively.

Good practice

46. The review has identified a number of areas of particularly good practice by the Law Commission and its sponsor team:
 - a) Openness and engagement with stakeholders, the professions and the general public are at the core of the Commission's work. It goes to great efforts to engage on the development of its Work Programmes as well as at all stages of individual projects, including in the development of recommendations and supporting Law Commission Bills through Parliament. The Commission's commitment to openness was one of the key themes coming through in the responses to the Call for Evidence during Part 1 of the Triennial Review, where it was greatly welcomed by the Commission's stakeholders. Its open and transparent approach to law reform and policy making is an exemplar of the kind of open policy making championed in the Civil Service Reform

Plan. Maintaining that approach will be key to the Commission's success in meeting the challenges facing it.

- b) There is very regular contact between the Commission and its sponsors at all levels, on a wide range of issues relating to strategic issues, individual law reform projects and sponsorship issues. This is underpinned by regular meetings between the Commissioners and Ministers, at which any issues of concern can be raised.
- c) The Law Commission has a clear purpose, set out in statute. That purpose is not just understood by the Commissioners and the Commission staff, but by the wide range of people the Commission works with, inside and outside Government and Parliament, including the general public and the legal professions.
- d) The introduction of Strategic Issues Meetings for the Commissioners is a welcome recent development. It ensures that Commissioners meet regularly as a Board and provides the opportunity to take a systematic and comprehensive approach to the consideration of strategic issues. However, the meetings are not as effective as they could be. Lack of clarity over the role of the Commissioners as a Board means that it is unclear whether the Commissioners are fulfilling a decision-making function, or are advising the Chief Executive.
- e) The close involvement of the Board in developing and overseeing the Business Plan is an area of good practice, as is engagement with the staff both in developing the plan and accounting to the Board for its delivery. The Board is provided with detailed management information and this is reviewed on a regular and systematic basis. Compiling the information requires engagement across all the teams. Good practice, risks and issues are identified and shared across the organisation.

Recommendations

47. Although the sponsors and the Law Commission identify few problems or difficulties in practice with the sponsor relationship or the corporate governance of the Commission, there is scope for improvement in a number of areas. The Project Board for this Triennial Review have made several recommendations to improve the corporate governance arrangements in place in relation to the Law Commission:
- a) The sponsor team, in conjunction with the Law Commission and the ALB Governance Division in the MOJ should create and agree a Framework Document to codify the Commission's terms of reference and the sponsor arrangements with the MOJ. A Sponsor Support Agreement should be developed to set out the respective roles and responsibilities of Sponsor, Business Support Team and the ALB Governance Division more clearly.
 - b) The Law Commission should ensure that documents such as the Code of Best Practice are reviewed regularly and updated to ensure they are in line with current guidance and best practice.
 - c) The sponsor team should consider what arrangements should be in place to evaluate the performance of the Commission Chairman and put those arrangements in place.
 - d) The Commission would benefit from 2-3 Non-Executive Board Members. This would provide a level of support, independent challenge and expertise to the Commission when it is meeting as a Board. This will be particularly valuable given that the Chairman and Commissioners have executive responsibilities in relation to law reform under the 1965 Act. Non-Executive Board Members should have a role relating to the strategic management of the Commission but should not have a role in individual law reform projects.
 - e) The roles and responsibilities of Chairman, Commissioners and Chief Executive in relation to the governance of the organisation should be more clearly defined, in order to ensure they continue to reflect best practice guidance. The role of the Board should also be clearly defined. This will create clearer accountability and decision-making,

enabling the Commission to be more effective. These role descriptions should be set out in the Framework Document.

- f) Once the roles are more clearly defined, the sponsor team and the Commission should consider what arrangements should be put in place to evaluate the performance of the Law Commission's Board.
- g) Given its implications for the Commission's work, including the agreement of the Commission's work programme for the coming period, agreeing the future funding model for the Commission should be an urgent priority, and the new model should also be reflected in the Framework Document. In order that the Commission's choice of law reform projects continues to be based on the principles set out in the statutory Protocol, the funding model should continue to be based on core funding from Parliament via the MOJ with additional contributions from other Departments and the Welsh Government where appropriate.

48. The Commission and its MOJ sponsor team should aim to complete all these actions within six months of the publication of this report.

Conclusions

49. Taken together, the changes recommended above should better equip the Commission to meet the challenges facing it and provide greater assurance about the way the Commission operates. The Sponsor Team in the MOJ will be responsible for monitoring implementation of these recommendations through the regular sponsorship meetings. Progress towards implementation will be reviewed six months after the publication of this report.

Annex A: Critical Friends Group

This Triennial Review, like all others, has benefited from the advice and support of a Critical Friends Group, who provide comment and challenge on the conclusions reached by the Review Team in order to ensure a robust approach.

The members of the Critical Friends Group for this review are listed below, and the Review Team and Programme Board are grateful for their support throughout this process:

Alison Wedge (Head of Arm's Length Body Governance Division, Ministry of Justice) – Chair

Claire Crawley (Department of Health)

Alan Evans (Department for Business, Innovation and Skills)

Sharon Witherspoon (Director, Nuffield Foundation)

Ben Connah (Ministry of Justice)

Tony Bellringer (Cabinet Office)

Annex B: Governance Compliance Summary

The table below summarises the results of the Law Commission “comply or explain” assessment against each of the governance statements in the self-assessment questionnaire. The questionnaire was drawn up in accordance with Cabinet Office guidance and adapted as required by the MOJ. Documentation and evidence was compiled by the Law Commission and its sponsor team in the MOJ to support the assessment.

| Compliance Statement | |
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| Accountability | |
| 1. The Minister and sponsoring department should exercise appropriate scrutiny and oversight of the public body. This includes oversight of any public monies spent by, or on behalf of, the body. | Comply. Regular dialogue between the MOJ and Commission provide oversight. MOJ spending and accounting policies are adhered to, with returns completed accurately and in a timely fashion. |
| 2. Appointments to the board should be made in line with any statutory requirements and, where appropriate, with the Code of Practice issued by the Commissioner for Public Appointments. | Comply. Section 1 of the Law Commissions Act 1965 sets out the statutory requirements for appointments. All Commissioner appointments are made in line with the Code of Practice issued by the Commissioner for Public Appointments. |
| 3. The Minister will normally appoint the Chair and all board members of the public body and be able to remove individuals whose performance or conduct is unsatisfactory. | Comply. Section 1 of the 1965 Act provides that the Lord Chancellor appoints the Chairman and other Commissioners. Terms of Appointment provide that Commissioners can be removed on the ground of incapacity or misbehaviour. |
| 4. The Minister should meet the Chair on a regular basis. | Comply. The Chairman and Chief Executive meet MOJ Ministers at least every six months. |
| 5. There should be a requirement to inform Parliament and the public of the work of the public body through publication of an annual report (or equivalent publication). | Comply. Section 3 of the 1965 Act provides that the Commission must report annually to the Lord Chancellor on its proceedings. The Lord Chancellor lays this report before Parliament. |
| 6. The public body must be compliant with Data Protection legislation. | Comply. The Law Commission is included within the MOJ’s registration as a Data Controller. MOJ policies and guidance are applied. |
| 7. The public body should be subject to the Public Records Acts 1958 and 1967. | Comply. The Law Commission adheres to MOJ policies and guidance relating to public records. |
| Role of the Sponsoring Department | |
| 1. The departmental board’s regular agenda should include scrutiny of the performance of the public body. | Comply. Each year the MoJ commissions a risk analysis of all of its ALBs. The outcome of this exercise is reported to ExCo, together with a paper describing the consequent governance and controls that sponsors have put in place to manage the relationship - this will always be proportionate to the risk posed by the ALB. In addition the ALB Governance Division provides ExCo with a monthly report on ALB performance. While this report usually focuses on the high risk ALBs, it will also feature updates on other ALBs on an exception basis. |

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| 2. There should be a document in place which sets out clearly the terms of reference of the public body. It should be accessible and understood by the sponsoring department and by all board members. It should be regularly reviewed and updated. | Explain. The Commission's terms of reference are spread across the 1965 Act, the statutory Protocol made under the Law Commission Act 2009 and the Code of Best Practice. There is no Framework Document in place. The Code of Best Practice says it should be reviewed annually, but it is unclear when the last review took place. |
| 3. There should be a dedicated sponsor team within the parent department. The role of the sponsor team should be clearly defined. | Explain. There is a dedicated sponsor team within the MOJ, but its role, and that of the ALB Governance Division in relation to the Law Commission is not clearly documented. |
| 4. There should be regular and ongoing dialogue between the sponsoring department and the public body. | Comply. There is regular and ongoing dialogue between the Department and Commission at all levels, including regular fortnightly and monthly sponsorship meetings. |
| 5. There should be an annual evaluation of the performance of the board and its committees – and of the Chair and individual board members. | Explain. Individual Commissioners are appraised by the Chairman. There are no arrangements for evaluation of the performance of the Chairman, or of the work of the Commission as a Board, though the Commission's Annual Report provides a regular assessment of the Commission's performance as a whole. |
| Role of the Board Members | |
| 1. There should be a formal, rigorous and transparent process for the appointment of non-executive members of the board. This should be compliant with the Code of Practice issues by the Commissioner for Public Appointments. | Explain. The Law Commission does not have any non-executive board members. |
| 2. Board members should be properly independent of the Department and of any vested interest (unless serving in an ex-officio or representative capacity). | Comply. Independence is a key element of the Law Commission's external identity and its work. This is reinforced in the statutory Protocol governing the Commission's work. |
| 3. Board members should be drawn from a wide range of diverse backgrounds. The board as a whole should have an appropriate balance of skills, experience, independence and knowledge. | Comply. The 1965 Act provides that Commissioners must be holders of judicial office, barristers, solicitors or teachers of law in a university. Within those constraints, the Commissioners are reasonably representative of the candidates eligible to apply to be Commissioners. |
| 4. The duties, role and responsibilities, terms of office and remuneration of board members should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. | Comply. Terms of Appointment cover these matters. Terms are in accordance with Cabinet Office guidance and statutory requirements. |
| 5. All board members must allocate sufficient time to the board to discharge their responsibilities effectively. | Comply. Commissioners are appointed on a full-time basis, though they may on occasion take on other work, including judicial service, with the agreement of the Lord Chancellor. |

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| <p>6. There should be a proper induction process for new board members. This should be led by the Chair. There should be regular reviews by the Chair of individual members' training and development needs.</p> | <p>Comply. New Commissioners are given an induction to the Commission led by the Chairman and the Chief Executive. This is supported by a comprehensive written guide. Commissioners' training needs are considered in their annual appraisals.</p> |
| <p>7. All board members should ensure that high standards of corporate governance are observed at all times. This should include ensuring that the public body operates in an open, accountable and responsive way.</p> | <p>Comply. Commissioners' Terms require them to comply with the Code of Best Practice. This sets out expectations in relation to corporate governance. The minutes of the Commission's monthly Board meetings are published on the Commission's website.</p> |
| <p>Role of the Chair</p> | |
| <p>1. The Board should be led by a non-executive Chair.</p> | <p>Explain. The 1965 Act provides that the Chairman is one of five Commissioners with executive responsibilities in relation to law reform.</p> |
| <p>2. There should be a formal, rigorous and transparent process for the appointment of the Chair. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments. The Chair should have a clearly defined role in the appointment of non-executive board members.</p> | <p>Comply. The appointment of the Chairman is compliant with the Code of Practice issued by the Commissioner for Public Appointments. The Chairman sits on the appointment panel for the other Commissioners, but there are no non-executive board members.</p> |
| <p>3. The duties, role and responsibilities, terms of office and remuneration of the Chair should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The responsibilities of the Chair will normally include:</p> <ul style="list-style-type: none"> • representing the public body in discussions with Ministers; • advising the sponsoring Department and Ministers about board appointments and the performance of individual non-executive board members. • ensuring that non-executive board members have a proper knowledge and understanding of their role and responsibilities. The Chair should ensure that new members undergo a proper induction process and is normally responsible for undertaking an annual assessment of non-executive board members' performance. • ensuring that the board, in reaching decisions, takes proper account of guidance provided by the sponsoring department or Ministers. • ensuring that the board carries out its business efficiently and effectively. • representing the views of the board to the general public. | <p>Comply. The duties, role and responsibilities, term of office and remuneration of the Chairman are set out in his Terms of Appointment and the Code of Best Practice for Commissioners. The Chairman holds some, but not all, of the responsibilities listed: the Chief Executive, rather than the Chairman, is responsible for ensuring that the board, in reaching its decisions takes proper account of guidance provided by the sponsoring department, and that it carries out its business efficiently and effectively.</p> |

| Communication and Engagement | |
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| 1. The public body should operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000. | Comply. The Law Commission is listed as a public authority for the purposes of the Freedom of Information Act 2000, and complies with statutory requirements. The Commission has adopted the Information Commissioner's Office's model publication scheme and has developed its own guidance on discharging the duties under that Act. |
| 2. The public body should make an explicit commitment to openness in all its activities. Where appropriate, it should establish clear and effective channels of communication with key stakeholders. It should engage and consult with the public on issues of real public interest or concern. This might include holding open meetings or annual public meetings. The results of reviews or inquiries should be published. | Comply. Openness and engagement with stakeholders, the professions and the general public is at the core of the Commission's work. It goes to great efforts to engage on the development of its Work Programme as well as at all stages of individual projects. The Commission's commitment to openness was one of the key themes coming through in the responses to the Call for Evidence during Stage One. |
| 3. The public body should proactively publish agendas and minutes of board meetings. | Comply. The agendas and minutes of board meetings are published on the Commission's website. |
| 4. There should be robust and effective systems in place to ensure that the public body is not, and its not perceived to be, engaging in political lobbying. There should also be restrictions on board members attending Party Conferences in a professional capacity. | Comply. The Code of Best Practice contains guidance for Commissioners on handling conflicts of interest. It states that Commissioners should abstain from all controversial political activities. MOJ Party Conference guidance is shared with the Commission each year, and is complied with. |
| Conduct and Propriety | |
| 1. A Code of Conduct must be in place setting out the standards of personal and professional behaviour expected of all board members. This should follow the Cabinet Office Code. All members should be aware of the Code. The Code should form part of the terms and conditions of appointment. | Explain. The Law Commission has its own Code of Best Practice, which is based on the Cabinet Office Code. However, the Code of Best Practice has not been reviewed on a regular basis to ensure it is in line with current Cabinet Office guidance. Compliance with the Code is part of Commissioners' Terms. |
| 2. There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for board members. This is regularly updated. | Comply. Rules and procedures on handling conflicts of interest are contained in the Code of Practice. |
| 3. There must be clear rules in place governing the claiming of expenses. These should be published. Effective systems should be in place to ensure compliance with these rules. | Comply. Commissioners' Terms require them to comply with MOJ rules and policies on the claiming of expenses. |
| 4. There are clear rules and guidelines in place on political activity for board members and that there are effective systems in place to ensure compliance with any restrictions. | Comply. Commissioners' Terms require them to show political impartiality. The Code of Best Practice requires that Commissioners must abstain from all controversial political activities. |

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| <p>5. There are rules in place for board members and senior staff on the acceptance of appointments or employment after resignation or retirement. These are enforced effectively.</p> | <p>Explain. MOJ policy is that whether such conditions are required depends on the nature of the public appointment. Set rules are considered unnecessary. As civil servants, the Chief Executive and other Commission staff are bound by the normal MOJ rules on taking appointments or employment after retirement or resignation.</p> |
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