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The Law Commission

As you may be aware, the Justice Committee recently heard oral evidence on the work of the Law Commission from its Chairman, the Rt Hon Sir David Bean; and its Chief Executive, Phillip Golding. This evidence session has prompted us to write to you to raise important concerns relating to (1) the independence of the Commission; and (2) the future of its flagship Sentencing Code project. We would be grateful if you could also accept this letter as our submission to the tailored review of the Law Commission that is currently in progress.

1. The Independence of the Law Commission

We heard from Phillip Golding that the Commission’s core funding stood at £4 million in 2010. In 2019-20, the organisation’s headline budget is set to be reduced to £1.9 million – meaning that it will have sustained a funding reduction of 54% over a ten-year period. Mr Golding pointed out that £1.3 million of this will be needed for core running costs and that the remaining £600,000 “does not buy many lawyers and staff to do core-funded projects.”

We understand that, in these circumstances, the Law Commission is only able to survive because of its reliance on references from Government departments – that is, separately funded projects that often need to be completed within a tight time scale imposed by the Department in question. As Sir David explained to us, if the Commission were unable to supplement its core funding by this means, it “would have gone out of business by now”.

As you will be aware, the Law Commissions Act 1965 places a duty on the Commission to keep the law under review with a view to its simplification and modernisation – whether by codification, revision or repeal. Further to that duty, the Commission must submit programmes of work to the Minister. The Thirteenth Programme of Law Reform, published in December 2017, consists of 14 projects, of which four are funded by Departments and the other 10 are reliant on core funding.

Sir David told us that, perhaps for the first time in the Law Commission’s history, there may
be elements of its Programme that are not undertaken because of insufficient core funding. He explained that there had been “a tendency, which will accelerate, for the paid work to elbow aside the unpaid work”; he cited as examples the Commission’s important projects on reforming the early Victorian law on wills and the common law offence of misconduct in public office, both of which have faced delays because of competing (Department-funded) work. Sir David went on to say that, while in his view the Commission’s independence had not yet been unacceptably curtailed, it would be compromised were the organisation confined to taking up topics attracting Departmental funding – a situation that might arise if further budget cuts were to be impose.

We consider it critical to the Law Commission’s independence and to the fulfilment of its statutory duties that it retains the capacity to propose its own projects and follow them through to conclusion. The Commission is in a unique position to offer an expert and neutral overview of law reform issues that merit prioritisation – even if these are not on the current policy agenda of the relevant Department and/or lack political appeal. The Commission’s work is of clear benefit to the whole Government, much of it offering the prospect of savings to public bodies, private businesses, the third sector and to individuals, as well as improving access to justice by making the law more accessible and transparent. Many of its projects also assist Parliament by providing ready-drafted Bills. Finally, its work upholds the rule of law by promoting a statute book that is modern and commands public confidence.

We therefore urge you to ensure that increasing the Law Commission’s core funding, or at the very least maintaining current levels, becomes a central consideration in your discussions with HM Treasury about the Ministry of Justice’s settlement under the 2019 Spending Review.

2. The Sentencing Code

We also wish to emphasise that the effectiveness of the Law Commission’s work is critically undermined if Parliamentary time cannot be secured to introduce reform proposals that emerge from its projects. Our concerns are illustrated by the problems facing the Commission’s Sentencing Code project, in which the Justice Committee has taken a keen interest. This project seeks to address the long-recognised problem of sentencing legislation being dispersed across dozens of statutes, without any logical structure. The Commission’s aim is to produce a Code embodied in a single Act of Parliament, making the existing law comprehensible and accessible, as well as increasing confidence in the criminal justice system and helping it to operate as efficiently as possible: a Code could be expected to simplify the sentencing process in the criminal courts, bringing financial benefits and avoiding wasted court time.

As you will know, the Law Commission has received strong support for this project, reflecting wide agreement that sentencing law is in urgent need of reform. The former Lord Chief Justice of England and Wales, the Rt Hon Lord Thomas of Cwmgiedd, described this
project as “a valuable and long-overdue stepping stone in the process of the rationalisation and clarification of the criminal law”; and Lord Justice Treacy, the Chairman of the Sentencing Council, has recognised that it would help promote fairness and consistency in sentencing.

When giving evidence to us, Sir David Bean explained that the Commission had had great difficulties in securing the introduction of the paving clauses needed for this important consolidation Bill, because the current Parliamentary session has no criminal justice Bill as a potential vehicle for the clauses. He suggested that consideration should instead be given to using the “special procedure” that allows uncontroversial Law Commission Bills to be introduced into the House of Lords and be given substantive consideration in Committee rather than on the floor of the House, thus alleviating the pressure on Parliamentary time.

We are aware that the Government unexpectedly declined to use the special procedure for the Law Commission’s Goods Mortgages Bill, the product of another uncontroversial but important law reform project that had been announced as forthcoming legislation in the Queen’s Speech in June 2017. We hope that this does not indicate a diminished appetite for using the special procedure, which in our view is ideally suited for the Sentencing Code. We would ask you to give urgent consideration to introducing this Bill via the special procedure as soon as possible after the Commission has published its draft Bill, which is expected towards the end of 2018. If the special procedure is not thought appropriate in this case, we invite you to set out why; and to bring forward paving legislation at the earliest opportunity.

We look forward to receiving your response on both these issues, and to seeing the findings and recommendations of the tailored review. For ease of reference, you will find the transcript of our evidence session on 3rd July here.