

# **THE LAW COMMISSION**

(LAW COM No 294)

## **ANNUAL REPORT 2004/05**

### **The Thirty-ninth Annual Report of the Law Commission**

*Laid before Parliament by the Secretary of State  
for Constitutional Affairs and Lord Chancellor pursuant to  
section 3(3) of the Law Commissions Act 1965*

---

*Ordered by The House of Commons to be printed  
14 June 2005*

---

# THE LAW COMMISSION

The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are:      The Honourable Mr Justice Toulson, *Chairman*  
Professor Hugh Beale QC, FBA  
Mr Stuart Bridge  
Dr Jeremy Horder<sup>1</sup>  
Professor Martin Partington CBE

The Chief Executive of the Law Commission is Mr Steve Humphreys.

The Commission is located at Conquest House, 37-38 John Street, Theobalds Road, London, WC1N 2BQ.



The Law Commission: (from left to right) Standing: Sir Roger Toulson (Chairman), Steve Humphreys, Stuart Bridge and Martin Partington. Seated: Hugh Beale and Jeremy Horder.

The terms of this report were agreed on 12 April 2005.

**The text of this report is available on the Internet at:**  
**<http://www.lawcom.gov.uk>**

---

<sup>1</sup> Dr Horder was appointed on 11 January 2005. He succeeds the Honourable Mr Justice Wilkie as Commissioner of the Criminal Law team.

THE LAW COMMISSION  
**ANNUAL REPORT 2004-05**

CONTENTS

	Page
<b>A TRIBUTE TO LORD SCARMAN</b>	1
<b>PART 1: THE COMMISSION</b>	2
Who we are	2
What we do	2
Consultation methods	3
Developing the programme	3
The Law Commission's role and methods	3
Equality and diversity	4
Code of best practice for Law Commissioners	4
What's in this Annual Report	4
<b>PART 2: A REVIEW OF 2004-05</b>	5
Work of the Commission	5
Publications in 2004-05	5
New law reform work	5
Quinquennial Review	5
Targets 2004-05 and 2005-06	5
Major targets and outcomes 2004-05	6
Major targets for 2005-06	7
Commissioners	8
<b>PART 3: IMPLEMENTATION OF LAW COMMISSION REPORTS</b>	9
Introduction	9
Action during this period	9
In summary	9
Implemented reports	10

Business tenancies	10
The Effective Prosecution of Multiple Offending	11
Execution of Deeds and Documents	11
Non-accidental Death of or Serious Injury to Children	11
Mental Incapacity	12
Reports awaiting implementation	12
Aggravated, Exemplary and Restitutionary Damages	12
Company Law	12
Corruption Offences	13
Distress for Rent	13
Fraud	13
Fraudulent Trading	14
Involuntary Manslaughter	14
Limitation of Actions	14
Offences Against the Person	14
Perpetuities and Accumulations	15
Responsibility for State and Condition of Property	15
Reports awaiting Government decisions	15
Compulsory Purchase	15
Damages for Personal Injury	15
Partial Defences to Murder	16
Partnership Law	16
Pre-Judgment Interest on Debts and Damages	17
Publication of Local Authority Reports	17
Third Parties' Rights Against Insurers	17
Unfair Contract Terms	17
<b>PART 4: COMMERCIAL LAW AND COMMON LAW</b>	<b>18</b>
Unfair contract terms	18

Consumer legislation	19
Company security interests	20
Forfeiture and the law of succession	20
Illegal transactions	21
<b>PART 5: CRIMINAL LAW, EVIDENCE AND PROCEDURE</b>	<b>22</b>
Assisting and encouraging crime	22
Codification of the criminal law	22
Partial defences to murder	22
Judicial review of crown court decisions	23
Misuse of trade secrets	24
<b>PART 6: PROPERTY AND TRUST LAW</b>	<b>25</b>
Compulsory purchase project	25
Termination of tenancies for tenant default	25
Easements and analogous rights	26
Trustee exemption clauses	26
Capital and income in trusts: classification and apportionment	27
The rights of creditors against trustees and trust funds	28
Cohabitation	28
Feudal land law	29
<b>PART 7: PUBLIC LAW TEAM</b>	<b>30</b>
Renting homes	30
Resolving housing disputes	30
Housing: ensuring responsible renting	31
Remedies against public authorities	33
Public health	33
Publication of local authority inquiry reports	34
<b>PART 8: STATUTE LAW</b>	<b>35</b>
Consolidation	35

Statute Law Revision	37
<b>PART 9: EXTERNAL RELATIONS</b>	<b>38</b>
Parliament, Ministers and Governmental bodies	38
Consultees and stakeholders	39
Seminars, lectures and conferences, etc.	40
Compulsory purchase orders	40
Contract law	40
Criminal law	41
Personal property security interests	41
Statute law	41
Trust law	41
Public law	42
Socio-legal research	42
Scottish Law Commission	42
International relations	42
<b>PART 10: STAFF AND RESOURCES</b>	<b>44</b>
Recruitment and working patterns	44
Staff	44
Legal staff	45
Research assistants	45
Corporate services team	45
Library staff	46
<b>APPENDIX A: THE LAW COMMISSION'S IMPLEMENTED REPORTS SINCE 1992</b>	<b>47</b>
<b>APPENDIX B: LAW COMMISSION REPORTS AWAITING IMPLEMENTATION</b>	<b>49</b>
<b>APPENDIX C: STAFF</b>	<b>51</b>
<b>APPENDIX D: THE COST OF THE COMMISSION</b>	<b>52</b>

# LORD SCARMAN

Leslie Scarman was a great legal figure of the second half of the 20th century. He was born on 29 July 1911; called to the Bar in 1936; became a QC in 1957; was appointed to the High Court bench in 1961, the Court of Appeal in 1973, and the House of Lords in 1977; and retired as Senior Law Lord in 1986. He died on 8 December 2004.



Unlike his other great legal contemporaries, Scarman will not be remembered principally for his judgments. He will be remembered foremost for his personal qualities and for his contributions to law reform. His most creative period of work was during his chairmanship of the Law Commission from its establishment in 1965 until 1973. He was not only the first chairman of the Commission but was the most outstanding and the longest serving holder of the office. Above all, he was concerned with the impact of the law on the ordinary individual, and he was an early champion of a modern Bill of Rights.

The creation of the Commission by the Law Commissions Act 1965 was viewed with scepticism or distrust by many members of the opposition party. Under Scarman's leadership it acquired a reputation which assured its continued existence and it served as the model for more than 40 similar law reform bodies which are now members of the Commonwealth Association of Law Reform Agencies.

The Commission's first programme set out his manifesto: that the law should be made simpler, more readily accessible, more easily understandable and more certain than it was; that codification and consolidation were to be used to achieve this; that there should be a new and simpler approach to statutory interpretation with an emphasis on common sense; and that if our legal system was to survive as one of the great legal systems of the world, much work needed to be done to bring it in harmony with the social and economic requirements of a modern state. These were bold aims.

Scarman's leadership of the Commission was characterised by openness. Externally, the Commission pioneered the practice of issuing consultation papers before making recommendations, recognising the value of wide consultation in producing wise and acceptable law reform proposals. Internally, Scarman encouraged and enthused all who worked at the Commission to express their views freely. In return, he was greatly loved and admired.

To honour him and to mark the Commission's 40th anniversary this year, the first Scarman Lecture will be delivered on Monday 11 July in Gray's Inn Hall at 5.30pm by Michael Kirby, a Justice of the High Court of Australia since 1996, and first chairman of the Australian Law Reform Commission from 1975 to 1984. All are welcome to attend the lecture, entitled "Law Reform and Human Rights – Scarman's Great Legacy".

# **PART 1**

## **THE COMMISSION**

### **Who we are**

- 1.1 The Law Commission was created in 1965 for the purpose of reforming the law. The Commission is headed by five Commissioners who are appointed by the Secretary of State for Constitutional Affairs and Lord Chancellor.
- 1.2 The current Commissioners are:
  - The Honourable Mr Justice Toulson, Chairman
  - Professor Hugh Beale QC, FBA, Commercial and Common Law
  - Stuart Bridge, Property and Trust Law
  - Dr Jeremy Horder, Criminal Law, Evidence and Procedure
  - Professor Martin Partington CBE, Public Law
- 1.3 The Commissioners are supported by the Chief Executive, Steve Humphreys, and about 20 members of the Government Legal Service, Parliamentary Counsel (who draft the Bills to reform and consolidate the law), and some 15 research assistants (usually recently qualified law graduates), as well as a librarian and a corporative services team. Details of the members of each team and the work that they do is covered in Parts 4 - 8.

### **What we do**

- 1.4 The Law Commission's main task is to review areas of the law and to make recommendations for change. The Commission seeks to ensure that the law is as simple, accessible, fair, modern and cost-effective as possible. A number of specific types of reform are covered by the Law Commissions Act 1965:
  - codification
  - removal of anomalies
  - repeal of obsolete and unnecessary enactments
  - consolidation
  - the simplification and modernisation of the law

### **Consultation methods**

- 1.5 During the 40<sup>th</sup> anniversary year of the Law Commission we are taking forward a number of plans to expand our methods of consultation, and the range of those whom we engage and involve in our work. Plans include a new website, which will have up to date project pages, a user-friendly structure which will enable the wider public to access more relevant pieces of information, and more interactive consultations so that people can respond to particular proposals, or put ideas to Commissioners. We will also be looking at ways to reach out to particular groups who may not otherwise be aware of our work, and its relevance to them.

## **Developing the programme**

- 1.6 In January 2005, we submitted our Ninth Programme of Law Reform to the Lord Chancellor.<sup>1</sup> He approved it, and it was published in March 2005. It came into effect on 1 April 2005 and runs for three years. Decisions on the content of the Ninth Programme were based on the importance of the issues, the availability of resources in terms of both expertise and funding, and whether the projects were suitable to be dealt with by the Commission.
- 1.7 As part of our aim to “take and keep under review *all* the law”, we are currently carrying out a strategic review of the work of the Commission. It is important that the work of the Commission is directed towards areas of the law that most need reform, where change will deliver real benefits to the people, businesses, organisations and institutions to which that law applies. As part of this exercise we are meeting with senior officials in every Government department to identify areas where the Commission might usefully undertake work. The outcome of these discussions will inform the way in which we will consult on projects for the Tenth Programme of Law Reform, due to commence 1 April 2007. We will report further on the outcome of this strategic review next year.

## **The Law Commission’s role and methods**

- 1.8 The work of the Commission is based on thorough research and analysis of case law, legislation, academic and other writing, law reports and other relevant sources of information both in the United Kingdom and overseas. It takes full account of the European Convention on Human Rights and of other European law. It acts in consultation with the Scottish Law Commission, and a number of projects are undertaken jointly with our Scottish counterparts.
- 1.9 Most projects start with a consultation paper which describes the present law and its shortcomings and sets out possible options for reform. The views expressed in response by consultees are analysed and considered very carefully. The Commission’s final recommendations are set out in a report which contains a draft Bill where the recommendations involve primary legislation. The report is laid before Parliament. It is then for the Government to decide whether it accepts the recommendations and to introduce any necessary Bill in Parliament, unless a Private Member or Peer does so. After publication of a report the Commission often gives further assistance to Government Ministers and departments, so as to ensure that the best value is obtained from the effort and resources devoted to the project.
- 1.10 The Commission also has the task of consolidating statute law, substituting one Act, or a small group of Acts, for statutory provisions found in many different Acts. In addition, the Commission proposes the repeal of statutes which are obsolete or unnecessary.

<sup>1</sup> Law Com No 293.

## **Equality and diversity**

- 1.11 The Commission is committed to consulting fully with those likely to be affected by its proposals, including different groups within society, and to assessing the impact of its proposed policies and removing or mitigating any adverse effect on particular groups within society wherever possible. The Commission's full Equality and Diversity Action Statement may be seen on our website at <http://www.lawcom.gov.uk/files/equality.pdf>

## **Code of best practice for Law Commissioners**

- 1.12 In accordance with Government policy for all non-departmental public bodies, there is a written code for Law Commissioners, agreed with the Department for Constitutional Affairs. It incorporates the Seven Principles of Public Life and covers matters like the role and responsibilities of Commissioners. Copies are available from the Law Commission.

## **What's in this Annual Report?**

- 1.13 Part 2 reviews the year 2004-05, and looks at the targets for publication of reports and consultation papers the Law Commission has set for the period 2005-06. Part 3 lists the progress that has been made in getting the Government to accept and implement the recommendations made in our reports. Parts 4 - 8 covers the work of each law team in the Law Commission over the course of the year. Part 9 looks at our relations with external agencies, and Part 10 relates to the Commission's staffing and resources.

# **PART 2**

## **A REVIEW OF 2004-05**

### **WORK OF THE COMMISSION**

#### **Publications in 2004-05**

##### 2.1 Reports:

- In the Public Interest: Publication of Local Authority Reports, July 2004 (LC289)
- Partial Defences to Murder, August 2004 (LC290)
- Towards a Compulsory Purchase Code: (2) Procedure, December 2004 (LC291)
- Unfair Terms in Contracts, February 2005 jointly with the Scottish Law Commission (LC292 and SLC199)

##### 2.2 Consultation Papers:

- Capital and Income in Trusts: Classification and Apportionment, July 2004 (LCCP175)
- Company Security Interests (Consultative Report), September 2004 (LCCP176)

##### 2.3 Discussion paper:

- Monetary Remedies in Public Law, October 2004.

##### 2.4 Electronic versions of the publications listed above can be accessed from the Law Commission website: [www.lawcom.gov.uk/publications](http://www.lawcom.gov.uk/publications).

#### **New Law Reform Work**

##### 2.5 During the period, the Department for Constitutional Affairs and the Office of the Deputy Prime Minister asked us to undertake a review of the law on resolving housing disputes. This work has been started, and we plan to publish a consultation paper later in the year.

#### **Quinquennial Review**

##### 2.6 On 22 March 2004, the Parliamentary Under-Secretary of State for Constitutional Affairs, Mr David Lammy MP, announced by written statement that the Interdepartmental Project Board, which had been responsible for implementing the recommendations of the 2003 Halliday Report, had completed its task. Of the 42 recommendations, 39 have been dealt with; 2 are for the future; and one is being dealt with separately.

#### **Targets 2004-05 and 2005-06**

##### 2.7 Table 2.1 summarises our major targets and outcomes for 2004-05. A summary of our planned publications for 2005-06 follows at table 2.2.

**Table 2.1 – Major Targets and Outcomes for 2004-05**

Target	Outcome	Further Information
<p><b>To complete Reports on</b>                      Assisting and Encouraging Crime                      Partial Defences to Murder                      Publication of Local Authority Reports                      Housing Law – Tenure (Renting Homes)                      Forfeiture and Intestacy                      Unfair Contract Terms                      Company Charges/Registration of Security Interests                      Consultative Report                      Final Report                      Compulsory Purchase – Procedure                      Trustee Exemption Clauses</p>	<p>Current target: Consultative Report - August 2005                      Achieved (LC290)                      Achieved (LC289)                      Current target: August 2005                      Current target: July 2005                      Achieved (LC292/ SLC199)                      Achieved (LCCP176)                      Current target: August 2005                      Achieved (LC291)                      Current target: November 2005</p>	<p>see para 5.1                      see para 7.1                      see paras 4.10-11</p>
<p><b>To complete Consultation Papers on</b>                      Codification of the General Principles of Criminal Law                      Capital and Income in Trusts: Classification and Apportionment</p>	<p>Deferred                      Achieved (LCCP175)</p>	<p>see para 5.2</p>
<p><b>To complete</b>                      Consolidation of legislation on Parliamentary and Local Government elections                      Consolidation of legislation on wireless telegraphy                      Preparation of Ninth Programme</p>	<p>Suspended at request of DCA                      Delayed                      Achieved (LC293)</p>	<p>see para 8.7</p>

**Table 2.2 - Major Targets for 2005-06**

We expect to publish the following reports:

- Assisting and Encouraging Crime
- Company Security Interests
- Forfeiture and Succession
- Illegal Transactions
- Renting Homes
- Termination of Tenancies
- Trustee Exemption Clauses

We expect to publish the following consultation papers:

- Discrete consultations on three of the seven tranches relating to the project on Codification in Criminal Law. These will be on fault, preliminary offences and intoxication
- Easements and Land Obligations
- Judicial Review of Decisions of the Crown Court
- Resolving Housing Disputes

We expect to commence the following projects:

- Cohabitation
- Ensuring Responsible Renting
- Feudal Land Law
- Homicide
- Insurance Contract Law
- Post Legislative Scrutiny
- Property Interests in Investment Securities
- Remedies in Public Law

We expect to introduce the following consolidations:

- Parliamentary Costs
- Wireless Telegraphy

The most up to date projected publication dates for all projects are available from the Law Commission website: [www.lawcom.gov.uk](http://www.lawcom.gov.uk)

## **Commissioners**

- 2.8 In January we welcomed Dr Jeremy Horder, Reader in Criminal Law at Oxford University, as the new Criminal Law Commissioner.
- 2.9 Dr Horder succeeded the Hon Mr Justice Wilkie as Criminal Law Commissioner. We would like to take this opportunity to thank Alan Wilkie for his distinguished work during his time at the Commission.
- 2.10 We are pleased to note that last year Professor Hugh Beale accepted an invitation by the Lord Chancellor, Lord Falconer of Thoroton, to stay on for a second term as a Law Commissioner. The appointment will run from January 2005 to June 2007. During the year, Hugh was also elected as a Fellow of the British Academy.

# **PART 3**

## **IMPLEMENTATION OF LAW COMMISSION REPORTS**

### **INTRODUCTION**

- 3.1 The Law Commission is responsible for a range of publications, including reports, consultation papers, discussion papers, scoping studies, and advice to Government. A law reform project is normally concluded by publication of a final report. Occasionally, a report may not recommend any change to the existing law. However, in the majority of cases, a report will make a number of recommendations for changing the law, and will append a draft Bill to give effect to those recommendations. The report will be laid before Parliament, and Government will decide whether, and if so how, to implement the recommendations.
- 3.2 Recommendations may be implemented by primary legislation (an Act of Parliament) or by secondary legislation (a Statutory Instrument). The Regulatory Reform Act 2001 enables Government to introduce secondary legislation, in the form of a Regulatory Reform Order (RRO), where its purpose is to reform legislation which imposes burdens affecting persons in the carrying out of any activity. It is also sometimes possible for recommendations to be implemented by the courts.
- 3.3 This Part, together with Appendix A, records the implementation status of Law Commission reports. They do not deal with consolidation or statute law revision reports.

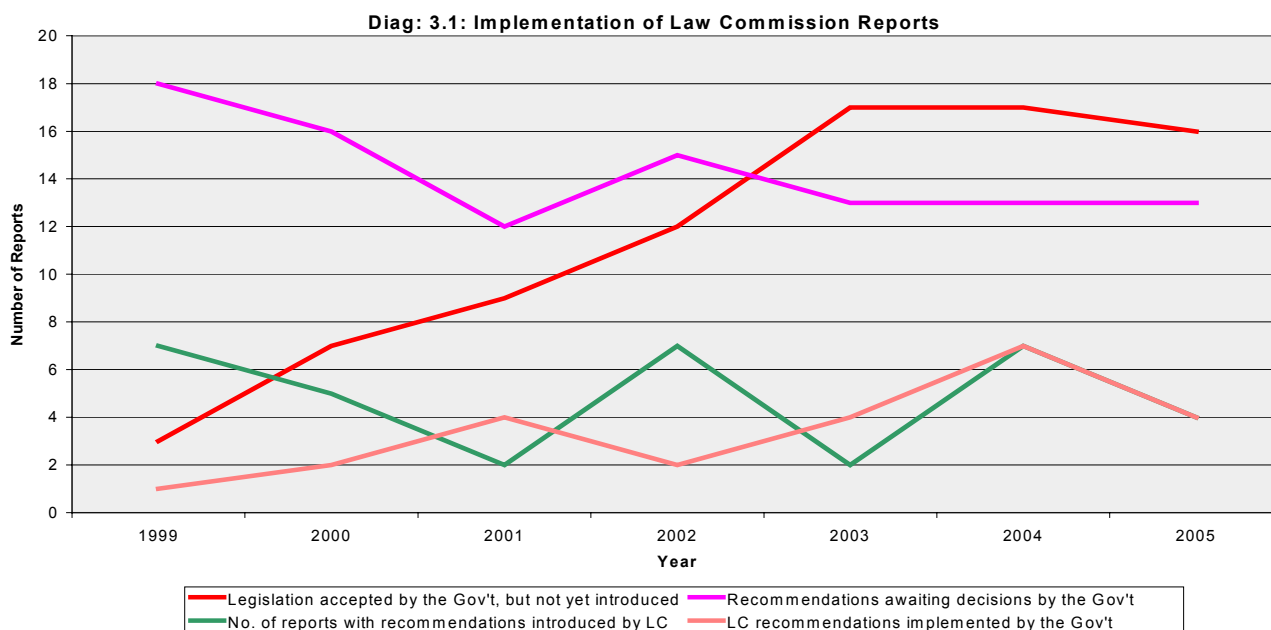
### **ACTION DURING THIS PERIOD**

#### **In Summary**

- 3.4 In the last annual reporting period, that is between 1 April 2003 and the end of March 2004, the Law Commission published seven law reform reports. In the same period, recommendations from seven Law Commission reports were enacted by Parliament.
- 3.5 In March 2004:
  - (1) 17 law reform reports that had been accepted by the Government had not yet been implemented by legislation;
  - (2) 13 other reports still awaited decisions by the Government.
- 3.6 Between 1 April 2004 and the end of March 2005 the Law Commission published four law reform reports. In the same period, recommendations from four Law Commission reports were enacted by Parliament.

### 3.7 In March 2005:

- (1) 16 law reform reports that have been accepted by the Government still await implementation;
- (2) 13 other reports still await decisions by the Government.<sup>1</sup>



3.8 Diagram 3.1 above gives a seven-year overview of the number of Law Commission Reports submitted to the Government; the number agreed by the Government, but where legislation has not been introduced; the number awaiting a decision by the Government; and the number implemented by legislation or through court decisions.

### Implemented Reports

#### BUSINESS TENANCIES

3.9 A Regulatory Reform Order<sup>2</sup> came into effect on 1 June 2004. The Order implements a package of reforms based substantially on our report on business tenancies<sup>3</sup> and amends the provisions of Part II of the Landlord and Tenant Act 1954. RROs are made under the Regulatory Reform Act 2001 and are designed to remove burdens on businesses and others carrying out activities.

<sup>1</sup> For details of all reports that have not received a decision from the Government, or where a decision has been made, but the report has not been implemented, see Appendix A.

<sup>2</sup> The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

<sup>3</sup> Landlord and Tenant: Business Tenancies – A Periodic Review of the Landlord and Tenant Act 1954 Part II (1992) Law Com No 208.

#### THE EFFECTIVE PROSECUTION OF MULTIPLE OFFENDING

- 3.10 The Law Commission published a report in October 2002.<sup>4</sup> We recommended that where a defendant has committed multiple similar offences, there should be a two stage trial procedure. The first stage of the trial would take place before judge and jury in the normal way on an indictment containing specimen counts. In the event of conviction on one or more counts, the second stage of the trial might follow, in which the defendant would be tried by a judge alone in respect of any scheduled offences linked to a specimen count of which the defendant has been convicted. The Domestic Violence, Crime and Victims Act 2004 contains provisions which substantially reproduce the scheme of our recommendations.

#### EXECUTION OF DEEDS AND DOCUMENTS

- 3.11 The Law Commission report, *The Execution of Deeds and Documents by or on behalf of Bodies Corporate*,<sup>5</sup> is being implemented through a Regulatory Reform Order (RRO), rather than by primary legislation. The report, published in 1998, aimed to simplify the formal requirements for deeds and company documents.<sup>6</sup> The order has passed final scrutiny and now awaits the formality of Parliamentary approval. We anticipate that it will be in force by Autumn 2005.

#### NON-ACCIDENTAL DEATH OF OR SERIOUS INJURY TO CHILDREN

- 3.12 In September 2003 the Law Commission published a report and draft Bill relating to criminal liability where a child is non-accidentally killed or seriously injured.<sup>7</sup> The project was concerned with cases where a lack of evidence means that the court is unable to identify which of a limited number of defendants committed the crime, but where it is apparent that one or more of them must have done so.
- 3.13 The report recommended that there should be an aggravated form of the existing offence of child cruelty, punishable by a maximum term of imprisonment of fourteen years, together with a new offence of failing to protect a child, punishable by a maximum term of imprisonment of seven years. It also made recommendations for procedural and evidential reforms. The Domestic Violence, Crime and Victims Act 2004 contains provisions which draw on the concepts in our report and the structure of our recommendations. In important respects, however, the provisions depart from our recommendations.

<sup>4</sup> The Effective Prosecution of Multiple Offending (2002), Law Com No 277.

<sup>5</sup> (1998) Law Com No 258.

<sup>6</sup> For the Government's response, see the Lord Chancellor's Department document *The Execution of Deeds and Documents: A Consultation Paper on the implementation of the Law Commission's report by way of a Regulatory Reform Order*, September 2002; and the Department for Constitutional Affairs document *Response to the Consultation Paper, The Execution of Deeds and Documents*, January 2004.

<sup>7</sup> Children: Their Non-accidental Death or Serious Injury (Criminal Trials) (2003), Law Com No 282.

#### MENTAL INCAPACITY

- 3.14 The Mental Capacity Act 2005 was enacted in April 2005. Although just outside the reporting period of this report, we have included it here as it falls so close to the reporting period. The Act implements the majority of the recommendations in the Commission's 1995 report and draft Bill on this topic.<sup>8</sup> The Commission assisted with the passage of the Bill through Parliament.

#### **Reports awaiting implementation**

- 3.15 The following paragraphs set out the latest position on our reports still awaiting implementation. It is a source of concern that despite the Government having accepted our recommendations, in some cases a decade ago, it has not proved possible for Parliamentary time to be found to bring forward the necessary legislation. We have been discussing our concerns with the Department for Constitutional Affairs (DCA), the Cabinet Office and the Ministerial Committee and we hope to be able to report next year that progress has been made.

#### AGGRAVATED, EXEMPLARY AND RESTITUTIONARY DAMAGES

- 3.16 We published a report on this in 1997.<sup>9</sup> In November 1999 the DCA said that it accepted our recommendations on aggravated and restitutionary damages and would legislate when a suitable opportunity arose. In practice, such an opportunity is unlikely to arise before a decision is taken on our other damages reports (see paras 3.34 – 3.37).

#### COMPANY LAW

- 3.17 We have published reports on Directors' Duties<sup>10</sup> and Shareholder Remedies.<sup>11</sup> Both were endorsed by the Company Law Review Steering Group.<sup>12</sup> In May 2004, the Department of Trade and Industry (DTI) published a consultation document, which confirmed that the DTI intends to draft a new Companies Bill.<sup>13</sup> The Bill will implement recommendations from the Law Commission on a statement of directors' duties and place so-called "derivative actions" by shareholders on a statutory footing. A White Paper was produced in March 2005, including draft clauses on a number of the areas covered by our recommendations.

<sup>8</sup> Mental Incapacity (1995) Law Com No 231.

<sup>9</sup> (1997) Law Com No 247.

<sup>10</sup> Company Directors: Regulating Conflicts of Interest and Formulating a Statement of Duties (1999) Law Com No 261, Scot Law Com No 173.

<sup>11</sup> (1997) Law Com No 246.

<sup>12</sup> *Final Report*, DTI, June 2001.

<sup>13</sup> DTI, *Company Law – Flexibility and Accessibility: A Consultative Document*, May 2004.

## CORRUPTION OFFENCES

- 3.18 In 1998 the Law Commission published a report<sup>14</sup> and draft Bill which recommended the creation of four new offences to replace those in the Prevention of Corruption Acts 1889-1916. The Home Office published its own draft Bill (Cm 5777) in March 2003, giving broad effect to the Commission's recommendations. The Joint Committee was critical of a number of aspects of the draft Bill, however the Home Office has announced it will take into account some of the Joint Committee's recommendations and introduce a revised Bill when Parliamentary time allows.

## DISTRESS FOR RENT

- 3.19 The Commission's report on this subject was published in 1991.<sup>15</sup> It recommended the abolition of distress for unpaid rent for both commercial and residential tenancies.
- 3.20 In March 2003, the Lord Chancellor's Department published a White Paper as part of its Enforcement Review.<sup>16</sup> This confirmed the Government's acceptance of the Commission's recommendations to abolish distress for rent as it concerns residential tenancies, but proposed its reform rather than abolition in commercial cases. The Commission understands that the Courts and Tribunals Bill will contain provisions for distress for rent along these lines. This Bill will be introduced when Parliamentary time allows

## FRAUD

- 3.21 In July 2002 the Law Commission published a report and draft Bill on the law of Fraud.<sup>17</sup> It recommended the introduction of a single general offence of fraud that could be committed in one of three ways to replace the current patchwork of offences. The Commission believes that a single clearly defined offence would make the law more comprehensible to juries, especially in serious fraud trials, and provide a useful tool for the effective prosecution of fraud.
- 3.22 The Commission also recommended that the common law offence of conspiracy to defraud should be abolished and that there should be an offence of obtaining services dishonestly. This is intended to be a "theft-like" offence which would make it unlawful to "steal" services" by simply helping oneself to them. It would not require proof of deception or fraud.
- 3.23 In April 2004 the Home Office issued a paper seeking views on its proposals to reform the law of fraud.<sup>18</sup> The proposals in that paper reflected the Law Commission's recommendations. In October 2004 Baroness Scotland of Asthal QC announced that the Government intended to take the proposals forward in a Fraud Bill when Parliamentary time allows. The Government believes that the offence of conspiracy to defraud should be retained, but in other respects, has accepted the substance of the Commission's recommendations.

<sup>14</sup> Legislating the Criminal Code: Corruption, Law Com No 248.

<sup>15</sup> Landlord and Tenant: Distress for Rent (1991) Law Com No 194.

<sup>16</sup> Effective Enforcement Cm 5744. This followed a consultation exercise in May 2001 (Distress for Rent, Enforcement Review Consultation Paper No 5).

<sup>17</sup> Fraud, Law Com No 276.

<sup>18</sup> Fraud Law Reform: Consultation on Proposals for Legislation

#### FRAUDULENT TRADING

- 3.24 One recommendation in our report on *The Effective Prosecution of Multiple Offending*<sup>19</sup> was that the offence of fraudulent trading by companies contrary to section 458 of the Companies Act 1985 should be extended to non-corporate fraudulent traders, irrespective of whether they are in any relationship such as a partnership. In October 2004 Baroness Scotland of Asthal QC announced that the Home Office proposes to include within a future Fraud Bill a provision creating a new offence of non-corporate fraudulent trading.

#### INVOLUNTARY MANSLAUGHTER

- 3.25 In 1996 the Law Commission published a report<sup>20</sup> and draft Bill which recommended the replacement of the common law offence with statutory offences of “reckless killing” and “killing by gross recklessness”, together with a new offence of corporate killing. The Home Office published a draft Corporate Manslaughter Bill on 23 March 2005 based on our recommendation on creating a new offence of corporate killing. The Bill proposes a new criminal offence of corporate manslaughter that will apply when someone has been killed because the senior management of a corporation is in gross breach of a duty to take reasonable care for the safety of employees or others. The period of consultation lasts until 12 June 2005.

#### LIMITATION OF ACTIONS

- 3.26 In 2001 we published a report and draft Bill on Limitation of Actions, in which we recommended replacing the many complex rules within a single “core regime”. Most claimants would have three years to bring an action, starting when they knew, or ought reasonably to have known, the relevant facts. Except in personal injury claims, defendants would be protected by a “long stop”, preventing claims brought more than 10 years after the relevant events took place.
- 3.27 In July 2002 the DCA accepted our recommendations in principle, saying it “would give further consideration to some aspects of the report, with a view to introducing legislation when an opportunity arises”.<sup>21</sup> We receive many enquiries about whether there has been any more progress on implementing this report.

#### OFFENCES AGAINST THE PERSON

- 3.28 Twelve years ago the Law Commission published a report and draft Bill recommending an overhaul of the current legislation, which dates back to Offences Against the Person Act 1861.<sup>22</sup> In 1998 the Home Office published a consultation paper<sup>23</sup> setting out their initial proposals for reforming the law in this area, based on the Commission’s report. More recently, the Court of Appeal has referred to the “need for radical reform” of section 20 of the 1861 Act.<sup>24</sup>

<sup>19</sup> (2002) Law Com No 277.

<sup>20</sup> *Legislating the Criminal Code: Involuntary Manslaughter* (1996), Law Com No 237.

<sup>21</sup> *Hansard* (HL), 16 July 2002, col 127.

<sup>22</sup> *Legislating the Criminal Code: Offences Against the Person and General Principles* (1993), Law Com No 218.

<sup>23</sup> *Violence: Reforming the Offences against the Person Act 1861*.

<sup>24</sup> *Cort* [2003] 3 WLR 1300, 1304.

## PERPETUITIES AND ACCUMULATIONS

- 3.29 DCA announced its acceptance of the Commission's report<sup>25</sup> on this topic in an answer to a Parliamentary Question in March 2001. Since then, attempts to implement the report in part by way of a regulatory reform order and Private Member's Handout Bill have been unsuccessful. The preferred method of implementation is now a Private Peer's Bill which it is hoped will be introduced during 2005.

## RESPONSIBILITY FOR STATE AND CONDITION OF PROPERTY

- 3.30 The Law Commission's report on Responsibility for State and Condition of Property was published in 1996.<sup>26</sup> The recommendations in that report concerned private law rights, but were dependent upon the criminal enforcement sanctions that existed at that time in respect of unfit properties.<sup>27</sup>
- 3.31 The Housing Act 2004<sup>28</sup> contains provision for a new Housing Health and Safety System. This sets out new criminal sanctions for unfit properties and repeals section 604 of the Housing Act 1985. The Office of the Deputy Prime Minister will reconsider the Law Commission's recommendations in light of the Housing Act.

## Reports awaiting Government decisions

- 3.32 In February 2005, the Ministerial Committee agreed that Government Departments should be in a position to say intelligently how they are going to respond within six months of receiving recommendations from the Law Commission. If, after two and a half years, the Department has still not reached any conclusions, the Committee will stop pursuing them. As stated above,<sup>29</sup> we are currently awaiting a response from the Government on 13 of our reports.

## COMPULSORY PURCHASE

- 3.33 The Law Commission published its report on Compulsory Purchase (Compensation) in December 2003<sup>30</sup> and its report on Compulsory Purchase (Procedure) in December 2004.<sup>31</sup> The Office of the Deputy Prime Minister has indicated that it intends to prepare a formal response dealing with both reports.

## DAMAGES FOR PERSONAL INJURY

- 3.34 During the late 1990s we carried out a major review of damages, which resulted in reports on Liability for Psychiatric Illness,<sup>32</sup> Damages for Non-Pecuniary Loss,<sup>33</sup> Damages for Medical, Nursing and Other Expenses<sup>34</sup> and Claims for Wrongful Death.<sup>35</sup>

<sup>25</sup> The Rules Against Perpetuities and Excessive Accumulations (1998) Law Com No 251.

<sup>26</sup> Landlord and Tenant: Responsibility for the State and Condition of Property (1996) Law Com No 238.

<sup>27</sup> Housing Act 1985, s 604 which defines fitness for human habitation.

<sup>28</sup> Which received Royal Assent on 18 November 2004.

<sup>29</sup> Para 3.6(2).

<sup>30</sup> Towards a Compulsory Purchase Code: (1) Compensation (2003) Law Com No 286.

<sup>31</sup> Towards a Compulsory Purchase Code: (2) Procedure (2004) Law Com No 291.

<sup>32</sup> (1998) Law Com No 249.

<sup>33</sup> (1999) Law Com No 257.

3.35 Some of our recommendations have been implemented. Most notably, in February 2000, the Court of Appeal increased the level of awards for non-pecuniary loss in cases of severe injury.<sup>36</sup> In April 2002, the Lord Chancellor's Department increased the level of bereavement damages from £7,500 to £10,000. The Government has also made provision to extend the recovery of National Health Service costs from road traffic accidents to all personal injury claims.<sup>37</sup>

3.36 However, the remaining recommendations await a decision on implementation. In November 1999, the Government announced that it had carefully considered our reports and would undertake a comprehensive assessment of their individual and aggregate effects. In last year's Annual Report we reported that

this work is nearing completion. The Department for Constitutional Affairs intends to issue a Consultation Paper on the subject in summer 2004.

3.37 No consultation paper has been published.

#### PARTIAL DEFENCES TO MURDER

3.38 In August 2004 the Commission published its report on Partial Defences to Murder,<sup>38</sup> which recommended that the law on provocation should be retained, but in a narrowed form. We proposed that provocation could be pleaded by those who either had a justified sense of being seriously wronged, or feared serious violence towards them or another, provided that a person of ordinary tolerance and self restraint in the circumstances might have reacted in the same or a similar way. Consequently, we did not recommend that there should be a specific partial defence to murder based on the excessive use of force in self-defence.

3.39 The report also recommended that there should be a comprehensive review of the law of murder. In October 2004 the Home Secretary announced that the Government had accepted that there should be such a review.

#### PARTNERSHIP LAW

3.40 Our joint report with the Scottish Law Commission on Partnership Law was published in November 2003.<sup>39</sup> It recommended that a new Partnerships Act should be enacted, under which partnerships in England and Wales would become legal entities. This would reflect the reality of their role in the commercial life of Britain, and bring together the law of partnership across England, Wales and Scotland.

<sup>34</sup> Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits, (1999) Law Com No 262.

<sup>35</sup> (1999) Law Com No 263.

<sup>36</sup> *Heil v Rankin* [2000] 3 WLR 117.

<sup>37</sup> This was raised in Law Com No 262. The Department of Health produced a consultation paper in September 2002 (The recovery of NHS costs in cases involving personal injury compensation) and published a summary of the outcome in September 2003. Provision for the extension is included in the Health and Social Care (Community Health and Standards) Act 2003, s 150.

<sup>38</sup> (2004) Law Com No 290.

<sup>39</sup> (2003) Law Com No 283, Scot Law Com No 192.

- 3.41 The Department of Trade and Industry (DTI) issued a consultation paper as part of its regulatory impact assessment of our proposals in May 2004. That consultation ended in July 2004. We are awaiting Ministers' decisions in light of that consultation.

#### PRE-JUDGMENT INTEREST ON DEBTS AND DAMAGES

- 3.42 Our report was published in February 2004.<sup>40</sup> It recommended giving the courts more guidance on interest rates, by specifying a rate each year, set at 1 per cent above base. We also thought that the courts should have the power to award compound interest in appropriate circumstances. The Government has not yet indicated whether it accepts these recommendations.

#### PUBLICATION OF LOCAL AUTHORITY REPORTS

- 3.43 Our report "In the Public Interest: Publication of Local Authority Inquiry Reports" was published in July 2004.<sup>41</sup> It recommended that local authorities should have available to them a new defence in defamation where the allegedly defamatory statement is contained in the report of a local authority inquiry, provided that the inquiry was itself fair. It also recommended a new statutory power for local authorities to conduct inquiries, which would include a procedure for an application to be made to the High Court to compel a recalcitrant witness. The Government continues to consider its response.

#### THIRD PARTIES' RIGHTS AGAINST INSURERS

- 3.44 In 2002, we published a report jointly with the Scottish Law Commission to strengthen the rights of claimants to seek a remedy against their defendant's insurer where the defendant was in financial difficulties.<sup>42</sup> In July 2002 DCA accepted our recommendations in principle. Then in September 2002 it issued a consultation paper proposing to implement our report by way of Regulatory Reform Order (RRO).<sup>43</sup> In February 2004 DCA published an analysis of responses, which reported that the Law Officers had advised that only certain recommendations could be carried out by way of an RRO. The others did not fall within the scope of the Regulatory Reform Act 2001.<sup>44</sup> There are no further developments to report.

#### UNFAIR CONTRACT TERMS

- 3.45 We published a report and draft Bill jointly with the Scottish Law Commission in February 2005.<sup>45</sup>

<sup>40</sup> Pre-Judgment Interest on Debts and Damages (2004), Law Com 287.

<sup>41</sup> (2004) Law Com No 289.

<sup>42</sup> (2002) Law Com No 272, Scot Law Com No 184.

<sup>43</sup> Lord Chancellor's Department, *Third Parties – Rights against Insurers: A Consultation Paper on the implementation of the joint Law Commission and Scottish Law Commission Report by way of a Regulatory Reform Order*, September 2002.

<sup>44</sup> Department for Constitutional Affairs, *Analysis of Responses to the Consultation Paper, Third Parties – Rights against Insurers* February 2004. For a short summary of which proposals could be implemented by RRO, see last year's Annual Report, pp 12-13.

<sup>45</sup> (2005) Law Com No 292, Scot Law Com No 199.

## PART 4

# COMMERCIAL LAW AND COMMON LAW



Professor Hugh Beale  
Commissioner

### TEAM MEMBERS<sup>1</sup>

#### Government Legal Service

Tamara Goriely (*Team Manager*)  
Joanna Perkins, James Robinson,  
Simon Tabbush

#### Research Assistants

Inewari Diete-Spiff, Simon Forshaw  
Christopher Kelly, Adam Sher

### Unfair contract terms

- 4.1 In February 2005 we published a report and draft Bill jointly with the Scottish Law Commission.<sup>2</sup> At present, two major pieces of legislation deal with unfair contract terms: the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999. They contain inconsistent and overlapping provisions, using different language and concepts to produce similar but not identical effects. An area of law that affects ordinary people in their everyday lives had been made unnecessarily complicated and difficult. The draft Bill rewrites both laws as a single regime, in a way that is much clearer and easier to follow. We have also plugged some gaps in protection.
- 4.2 For consumer contracts, our aim is to produce a single, unified regime that preserves existing levels of consumer protection. Thus, for consumers the draft Bill:
- (1) extends to all the terms currently covered by the Regulations;
  - (2) includes negotiated clauses as well as standard clauses;
  - (3) continues to hold that terms which limit liability for death or personal injury, or which exclude basic undertakings about the quality and fitness of goods are ineffective;
  - (4) states that in claims brought by consumers, the burden of proof lies on the business to show that the term is fair;
  - (5) gives the OFT and other bodies additional powers to take action against notices. For example, the OFT would be able to demand that a sign in a store car-park saying “no liability is accepted for injury” is taken down.

<sup>1</sup> Including those who were at the Commission for part of the period.

<sup>2</sup> Unfair Terms in Contracts (2002) Law Com No 292; Scot Law Com No 199. This follows the Unfair Terms in Contracts (2002) Consultation Paper 166, Scot Law Com Discussion Paper No 119.

- 4.3 The report also recommends improved protection for small businesses. We were told that small businesses frequently find themselves signing contracts that contain unfair terms, that the law does not currently allow to be challenged. This is especially true where a small farmer, manufacturer or builder supplies a much larger business. The small business may be required to indemnify the larger business for losses that are not their fault, or forfeit deposits, or accept variations of price after the contract has been agreed. They may find that the larger business has reserved the right to terminate a contract at will, or for only a minor default, while the small business is bound more rigorously by the contract.
- 4.4 The draft Bill includes special protection for the smallest and most vulnerable businesses, commonly referred to as “micro businesses”, with nine or fewer staff. Under our proposals, these very small businesses will be able to challenge any standard term of the contract that has not been altered through negotiation, and is not the main subject matter of the contract or the price.
- 4.5 However, we do not wish to interfere where contracts are already sufficiently regulated, or where the business is sufficiently sophisticated to look after its interests. We exclude contracts for financial services, contracts over £500,000 and situations where the apparently small business is associated with other businesses, so that overall the group has more than nine employees.

#### **Further work on simplifying consumer legislation**

- 4.6 In July 2004, the Government published a consultative document on consumer strategy, which proposed further measures to simplify consumer legislation.<sup>3</sup> We very much welcome this recognition of how important it is to make consumer law better known and easier to use. In October we sent a response to DTI which identified a particular need to reform the law on the sale and supply of goods and services.<sup>4</sup> We look forward to continuing to work with the DTI and Scottish Law Commission to improve consumer law. Our work on unfair terms is one step, but there is more to do.

<sup>3</sup> Department of Trade and Industry, *Extending Competitive Markets: Empowered Consumers; Successful Businesses*, July 2004.

<sup>4</sup> Simplifying Consumer Legislation: a response from the Law Commission to the DTI's Consultative Document on Consumer Strategy, 29 October 2004.

### **Company security interests**

- 4.7 In August 2004 we published a consultative report, setting out detailed reforms of how the law treats charges and other security interests granted by companies (including draft legislation). We recommended a system of electronic “notice-filing”, which would simplify the current system for registering a company charge, together with a comprehensive scheme for deciding the priority and status of security interests against other secured parties, unsecured creditors and buyers. We proposed that our scheme should apply not just to “traditional security” (such as mortgages and charges) but also to “quasi-security”, such as leases, hire purchase and the sales of receivables. This followed a previous consultation paper, published in July 2002.<sup>5</sup>
- 4.8 We received 69 responses to our consultative report. Most respondents welcomed electronic filing, which will make registering charges cheaper and easier. However, considerable concern was expressed about extending registration to “title-retention” devices such as leases and hire-purchases. We have been persuaded that it would not be appropriate to make fundamental changes to the way that title-retention devices operate only in the context of security interests granted by companies. We have therefore deferred further consideration of title-retention devices until we can look at how the law works for all debtors, including unincorporated businesses and consumers. We are however, recommending a more limited scheme of notice filing to apply to both traditional security and the sale of receivables. There is also a need to introduce greater certainty into how the law treats investment securities and bank accounts when they are used as financial collateral.
- 4.9 We plan to publish a final report in the summer of 2005.

### **The forfeiture rule and the law of succession**

- 4.10 We have been asked to review a particular problem that arose from the case of *Re DWS (deceased)* [2001] Ch 568. The claimant’s two grandparents had been murdered by their only son (the claimant’s father). The grandparents died intestate, and the question was who should inherit their estate. The father was disqualified from inheriting under the “forfeiture rule”, by which a murderer cannot inherit from his victims. The court found that the grandchild could not inherit either, because under intestacy law, grandchildren can only inherit once their parents are dead. In this case, the property went to more distant relatives.
- 4.11 In October 2003 we published a short consultation paper<sup>6</sup> in which we proposed a change to intestacy law, so that where a potential heir forfeits property, it should be distributed as if that person had died. Most consultees agreed with us, and we are currently drafting a short Bill along these lines. We plan to publish a report and draft bill in July 2005.

<sup>5</sup> Registration of Security Interests: Company Charges and Property other than Land (2002), Consultation Paper No 164.

<sup>6</sup> The Forfeiture Rule and the Law of Succession (2003), Consultation Paper 172.

### **Illegal transactions**

- 4.12 We are continuing to review the law of illegal transactions, looking at the effect of illegality on claims in contract and trusts. The law on illegality has been criticised for being complex, uncertain and, on occasion, unjust. We originally proposed that where a contract is held to be illegal, the court should have a statutory discretion to enforce the contract.<sup>7</sup> This proved controversial and we are considering whether the courts could develop a non-statutory solution to the problem. We intend to publish a report in 2005.

<sup>7</sup> *Illegal Transactions: the Effect of Illegality on Contracts and Trusts* (1999), Consultation Paper 154.

## **PART 5**

# **CRIMINAL LAW, EVIDENCE AND PROCEDURE**



Dr Jeremy Horder  
Commissioner

### **TEAM MEMBERS<sup>1</sup>**

#### **Government Legal Service**

David Hughes (*Team Manager*)  
Jayne Astley, Raymond Emson  
Elizabeth Finlason, Clare Wade

#### **Research Assistants**

Ruth Armstrong, Ben Bridge, Jeremy Easton,  
Elizabeth Emery, Helen Law,  
Laura McGowan

### **Assisting and encouraging crime**

- 5.1 In 1999 the Commission considered the scope and structure of the law relating to the liability of those who assist and encourage others to commit offences.<sup>2</sup> This area of law is complicated, uncertain and anomalous, while the policy decisions that it raises are both important and difficult. We are in the process of further simplifying and clarifying the recommendations for a consultative report and draft bill, which we expect to publish in August 2005.

### **Codification of the criminal law**

- 5.2 In its July 2002 White Paper “Justice for All”<sup>3</sup> the Government confirmed their intention to codify the criminal law. In 2001, after discussion with the relevant Government Departments, it was agreed that we would review and revise the Criminal Code of 1989.<sup>4</sup> The project consists of seven tranches. We intend to publish discrete consultation papers on three of the seven tranches during 2005-06. These will be on fault, preliminary offences and intoxication.

### **Partial defences to murder**

- 5.3 In June 2003 the Commission was asked by the Home Office to review, with particular reference to murders committed in the context of domestic violence, the operation of two of the partial defences to murder namely, provocation and diminished responsibility. In addition, the Commission was asked to consider whether there should be a new partial defence to murder where a person kills in circumstances in which the current complete defence of self-defence is not available because the force used was excessive.

<sup>1</sup> Including those who were at the Commission for part of the period.

<sup>2</sup> Assisting and Encouraging Crime (1993) Consultation Paper No 131.

<sup>3</sup> Cm 5563.

<sup>4</sup> Criminal Law: A Criminal Code for England and Wales (1989), Law Com No 177.

- 5.4 We issued our provisional proposals in April 2004 followed by a report in summer 2004.<sup>5</sup> The main recommendation followed from the conclusion that the law of murder “is a mess”. The Law Commission recommended that there should be a general review of the law of murder, including the application of the mandatory life sentence.
- 5.5 In addition, the report recommended that the partial defence of provocation should be reformed in line with principles that are set out in the report. With regard to diminished responsibility, the report recommended that for as long as the law of murder remains as it is and conviction carries a mandatory life sentence, there should be a partial defence of diminished responsibility. Pending a review of the law of murder, the Commission recommended that there should be no change to the statutory provision that governs the defence.<sup>6</sup> The Commission did not recommend a specific separate partial defence to murder based on the excessive use of force in self-defence, as it was felt that the reformed provocation defence would include those cases which involve excessive use of force in self-defence where culpability is sufficiently reduced to warrant a partial defence.
- 5.6 On 28 October 2004 the Government announced that it accepted the Commission’s recommendation that there should be a review of the law of murder, but that it was committed to the mandatory life sentence.

#### **Judicial review of Crown Court decisions**

- 5.7 Following a reference by the Home Office, the Law Commission embarked on this project in September 2004. As a general rule, the decisions of courts are not amenable to Judicial Review. There are, however, exceptions. Decisions of the Crown Court are an illustration. Such decisions can only be reviewed if they are not “matters relating to trial on indictment”.<sup>7</sup>
- 5.8 The rationale for the exclusion is easily identifiable. Judicial Review should not be a means of delaying trials and clogging up the criminal justice process. However, although the rationale is clear, the problem has been in locating the boundary of the exclusion. The expression “matters relating to trial on indictment” has proved to be a fertile source of argument, giving rise on numerous occasions to lengthy, time-wasting and expensive litigation.
- 5.9 In accordance with its terms of reference, the Commission is considering the origin and nature of and the limitations upon the High Court’s criminal jurisdiction over the Crown Court, how the jurisdiction might be simplified and, if appropriate, modified, and the implications for the High Court’s criminal jurisdiction over magistrates’ courts and courts martial.
- 5.10 The Commission intends to issue a discussion paper in the Summer of 2005. This will be followed by a series of meetings with interested parties and organisations. The Commission intends to publish a consultation paper in autumn 2005 followed by a final report in the second half of 2006.

<sup>5</sup> Partial Defences to Murder (2003), Consultation Paper 173 and (2004) Law Com No 290.

<sup>6</sup> Homicide Act 1957, s.2.

<sup>7</sup> Supreme Court Act 1981, s.29(3).

## **Misuse of trade secrets**

- 5.11 The Commission previously considered the possibility of creating an offence of misusing a trade secret.<sup>8</sup> We provisionally proposed that the unauthorised use of disclosure should, in certain circumstances, be an offence. In addition, we provisionally concluded that for the purpose of any new offence of trade secret misuse, it would be necessary to provide a definition of a trade secret. Further work has been postponed, pending the completion of our work on fraud. Since then, other commitments have prevented a return to this topic.
- 5.12 The majority of respondents to the consultation paper in principle supported the criminalisation of the unauthorised use or disclosure of a trade secret. At the same time a minority were very strongly opposed. The Commission has concluded that, despite the majority view, it would not be right to continue with this project. There are a number of reasons:
- (1) Amongst respondents there was considerable criticism of the lack of empirical research to substantiate the Commission's main justification for provisionally proposing a new offence, namely that civil remedies alone are insufficient to discourage trade secret misuse.
  - (2) The Commission is now of the view that a more coherent and principled approach would be to consider the issue in the context of all intellectual property rights.
  - (3) Clause 4 of the draft Bill appended to our report on Fraud<sup>9</sup> covers fraud by abuse of position. This potentially covers certain forms of misuse of trade secrets. If the Government proceeds with a Bill that includes the equivalent of clause 4, forms of misuse of trade secrets will be covered and that is a strong argument for not creating a separate overlapping offence. If the Government decides as a matter of policy not to enact such an offence, it might be thought to be anomalous to propose an offence that would apply to misuse of trade secrets regardless of whether or not there was an abuse of a fiduciary relationship.
  - (4) The Commission is not aware of a widespread feeling amongst business, industry, commerce, the legal profession and government that it should return to the project as a matter of priority. Currently, the Commission's resources are fully committed to the projects that have been outlined. A return to this project, even if it were limited to consideration of trade secrets, is beyond our current resources.

<sup>8</sup> Legislating the Criminal Code: Misuse of Trade Secrets (1997), Consultation Paper No 150.

<sup>9</sup> Fraud (2002), Law Com No 276.

## PART 6

# PROPERTY AND TRUST LAW



Mr Stuart Bridge  
Commissioner

### TEAM MEMBERS<sup>1</sup>

#### Government Legal Service

Matthew Jolley (*Team Manager*)  
Judith Cairns, Julia Jarzabkowski,  
Jonathan Teasdale

#### Research Assistants

Emily Duckworth, Stella Rozanski,  
Joel Wolchover

### Compulsory purchase project

- 6.1 In December 2004 the Law Commission completed its review of compulsory purchase law by publishing a final report on Procedure.<sup>2</sup> This followed on from the Commission's 2003 final report on Compensation.<sup>3</sup> The event was marked by a launch at the House of Lords attended by around 75 experts in the field.
- 6.2 The Procedure report recommends the simplification and modernisation of the rules governing the compulsory purchase of land, and aims to balance the rights of landowners and the public need for redevelopment and regeneration. The new rules outlined in the report address all processes for the compulsory acquisition of land, from how compulsory purchase is authorised and implemented, to the means by which an acquiring authority takes possession and secures title to the property.
- 6.3 It has been clear from the reaction of practitioners and stakeholders, in consultation and in the press, that compulsory purchase law is in desperate need of reform. The Commission hopes that the Government will now find an early opportunity to promote amending legislation in this field, and that such legislation will be substantially informed by the Commission's detailed analysis and recommendations.

### Termination of tenancies for tenant default

- 6.4 This project examines the means whereby a landlord can terminate a tenancy where the tenant has not complied with his or her obligations. This is an issue of practical importance for many landlords and tenants of both residential and commercial properties. The current law is difficult to use and littered with pitfalls for both the lay person and the unwary practitioner.

<sup>1</sup> Including those who were at the Commission for part of the period.

<sup>2</sup> Towards a Compulsory Purchase Code: (2) Procedure (2004), Law Com No 291.

<sup>3</sup> Towards a Compulsory Purchase Code: (1) Compensation (2003), Law Com No 286.

- 6.5 We outlined provisional proposals for reform in a consultation paper<sup>4</sup> published in January 2004. These proposals were based on earlier Law Commission work in this area and take account of the implementation of the Human Rights Act 1998, the Civil Procedure Rules and more recent developments in case law. The provisional proposals relate only to termination of tenancies for tenant default, and apply to fixed term commercial leases and residential leases in excess of 21 years.
- 6.6 The consultation paper attracted interest and comment from practitioners, academics and groups representing both landlords and tenants. We hope to publish a final report and draft bill by the end of 2005.

### **Easements and analogous rights**

- 6.7 The law of easements,<sup>5</sup> analogous rights and covenants is of practical importance to a large number of landowners. For example, many landowners depend on easements in order to obtain access to their property, for support or for drainage rights. The relevant law has never been subject to a comprehensive review, and many aspects are now outdated and a cause of difficulty.
- 6.8 The Commission is therefore examining easements and analogous private law rights with a view to their reform and rationalisation. This work will involve a reconsideration of our earlier work on land obligations.<sup>6</sup> The aim is to produce a coherent scheme of land obligations and easements which is compatible with both the commonhold system and the system of registration introduced by the Land Registration Act 2002.
- 6.9 We are nearing the end of an initial review of this difficult and extensive area of the law, and expect to publish a consultation paper before the end of 2005.

### **Trustee exemption clauses**

- 6.10 A trustee exemption clause is a clause in a trust instrument which excludes or restricts a trustee's liability for breach of trust, either by expressly excluding liability or by modifying the trustee's powers and duties. Case law has established that such clauses are able to relieve the trustee from liability for anything except dishonest conduct. As a result, beneficiaries may find themselves with no remedy against a trustee who has caused loss to the trust fund by its actions or omissions.<sup>7</sup>

<sup>4</sup> Termination of Tenancies for Tenant Default (2004), Law Com No 174.

<sup>5</sup> An easement is a right enjoyed by one landowner over the land of another. A positive easement involves a landowner going on to or making use of something in or on a neighbour's land. A negative easement is essentially a right to receive something (such as light or support) from the land of another without obstruction or interference.

<sup>6</sup> Including Transfer of Land: The Law of Positive and Restrictive Covenants (1984), Law Com No 127.

<sup>7</sup> A state of affairs that has been widely criticised, for example, by Lord Goodhart in the House of Lords during the Second Reading of the Trustee Bill in 2000, and by the independent Trust Law Committee in their consultation paper on the subject.

- 6.11 The Commission published a consultation paper<sup>8</sup> on trustee exemption clauses in January 2003, which included several provisional proposals which would require legislation. The paper also invited the views of consultees on other possible options for reform and on the economic implications of any regulation of trustee exemption clauses. We received 118 consultation responses, including a detailed paper from a Working Group of the Financial Markets Law Committee on the impact of the provisional proposals on trusts in financial markets.
- 6.12 We have now returned to the Trustee Exemption Clauses project after concentrating on other trust work<sup>9</sup> and expect to produce a report and draft Bill towards the end of 2005.

### **Capital and income in trusts: classification and apportionment**

- 6.13 The current law on the classification of trust receipts and outgoings as income or capital is complex and can give rise to surprising results.<sup>10</sup> The complicated rules which oblige trustees to apportion between income and capital in order to keep a fair balance between different beneficiaries are also widely acknowledged to be unsatisfactory. They are technical, rigid and outdated, often causing more difficulties in practice than they solve. As a result their application is often expressly excluded in modern trust instruments.<sup>11</sup>
- 6.14 The distinction between trust income and capital receipts is also an important issue for charities. Many charitable trusts have permanent capital endowments which cannot be used to further the charity's objects; only the income generated can be used and there is generally no power to convert capital into income. This may inhibit performance of the charity's objects and encourage investment practices which concentrate on the form of receipts rather than on maximising overall return.
- 6.15 The Commission published a consultation paper on this subject in July 2004.<sup>12</sup> It provisionally proposed new, simpler rules for the classification of corporate receipts by trustee-shareholders, a new power to allocate investment returns and trust expenses as income or capital (in place of the existing rules of apportionment) and the clarification of the mechanism by which trustees of permanently endowed charities may invest on a "total return". We expect to publish a report and draft Bill in Summer 2006, dependent on the project on trustee exemption clauses.

<sup>8</sup> Trustee Exemption Clauses (2003), Law Com No 171.

<sup>9</sup> The Classification and Apportionment project commenced while waiting for key responses to the Trustee Exemption Clauses consultation paper.

<sup>10</sup> For example, where shares in a new company are issued to the shareholders of an existing company on what is known as an "indirect" demerger, those shares will be treated for trust purposes as capital. Where the demerger is "direct" the shares received will be treated as income in the trustee's hands.

<sup>11</sup> In cases where the rules still apply (generally older trusts and home-made will trusts) the rules are either ignored or require the trustee to undertake complex calculations which are unlikely to have been envisaged by the settlor when setting up the trust.

<sup>12</sup> Capital and Income in Trusts: Classification and Apportionment (2004), Consultation Paper 175.

### **The rights of creditors against trustees and trust funds**

- 6.16 Whenever trustees enter into a contract they do so personally, incurring personal contractual obligations and (subject to express contractual provision) personal liability to the other contracting party. A trustee has a right to be indemnified from the trust fund for obligations properly incurred. However, where the obligation was not properly incurred no such right exists and the trustee will have to make good any liability out of their own pocket (even if the trust fund is sufficient to meet it).<sup>13</sup>
- 6.17 Many trustees and creditors are unaware of these rules, believing that, in effect, the trust itself is entering into the contract and that as a result the trust fund will always be available to meet trust obligations. Even if the contracting party is aware of the true position it will often be difficult or impossible for it to assess with certainty whether the trustee will be able to indemnify itself out of the trust fund.
- 6.18 In considering how, if at all, this situation could be improved the Commission will have to balance the position of creditors with the competing interests of beneficiaries who benefit from the current protection given to the trust fund. This project will commence when both current trust projects have been completed, which we expect to be no later than 2006.

### **Cohabitation**

- 6.19 The Ninth Programme of Law Reform includes an important new project on Cohabitation, which will focus on the financial hardship suffered by cohabitants or their children on the termination of their relationship by separation or death. It will restrict its review to opposite sex or same sex couples in clearly defined relationships. While there need not necessarily be a sexual element to the relationship, at the very least the relationship should involve cohabitation and bear the hallmarks of intimacy and exclusivity, giving rise to mutual trust and confidence between partners. Relationships between blood relatives (such as elderly parents and their adult children, and siblings), "caring" relationships, and "commercial" relationships (landlord and tenant, or landlord and lodger) will be specifically excluded from consideration.
- 6.20 Particular attention will be given to:
- (1) capital and income provision on relationship breakdown;
  - (2) capital provision where there is a dependent child or children;
  - (3) intestate succession and family provision on death; and
  - (4) the Inheritance (Provision for Family and Dependants) Act 1975.
- 6.21 The project will also consider the place of cohabitation contracts and the extent to which cohabitants should be free to make and to enforce agreements concerning their potential liabilities to make capital or income provision following separation.

<sup>13</sup> There are various reasons why a trustee may lose the right to be indemnified out of the trust fund. For example, because entry into the contract was in breach of the trustee's equitable duties. In such circumstances the contracting party will have to rely on the solvency of the trustee.

- 6.22 A number of issues are specifically excluded from the review. Parental responsibility is excluded on the grounds that it has already been recently considered and legislated upon in the Adoption and Children Act 2002. Next of kin rights are excluded on the basis that the Department of Health has recently amended its policy guidance to NHS staff to extend consultation with next of kin to include unmarried partners. The Department for Constitutional Affairs have asked that insolvency, tax and social security should be excluded on the basis that a consideration of these issues would not address the most immediate policy needs.

### **Feudal land law**

- 6.23 The land law of England and Wales contains several residual but significant elements dating from 1066. During feudal times all land was ultimately held “of the monarch” (that is, by grant from the monarch) in return for services, usually of an agricultural or military nature. After various reforms<sup>14</sup> land was no longer held on tenure by service but the concept of tenured landholding survives. The majority of land ownership comprises an estate in land that is held of the Crown because the Crown remains the ultimate or “allodial” owner of the land. In certain circumstances even the fee simple, the greatest estate in land, ends with the land reverting to the Crown in a feudal process called escheat.
- 6.24 Reform is necessary for a number of technical and practical reasons. First, it makes little sense to have a partial retention of feudal land law for 21st century land holdings. Land law has, in most major respects, moved on from ancient concepts and practices and it is inconsistent that remnants remain in operation. Secondly, the remnants that do remain cause uncertainty to members of the public, to practitioners and to the courts due to their complex and archaic nature and their incompatibility with modern case and statute law. Finally, there is an unnecessary and confusing overlap in the main area in which feudal land law finds modern expression: the treatment of ownerless land.<sup>15</sup>
- 6.25 The Commission initially sought to reform this area of the law as part of its project on Land Registration.<sup>16</sup> During the course of the project, however, far-ranging reform of feudal land law was postponed and “stop-gap” measures substituted. It was felt that more time and further research was needed to understand fully both the law and the best means of reforming it and to gain the agreement of interested parties.<sup>17</sup> Nevertheless, the report called in very strong terms for wholesale reform to follow as “the present law is indefensible”.<sup>18</sup> Feudal land law is included in the Ninth Programme of Law Reform, and work is expected to commence following completion of the project on Termination of Tenancies for Tenant Default.

<sup>14</sup> Including the Quia Emptores in 1290 and the Tenures Abolition Act of 1660.

<sup>15</sup> That is, the doctrines of escheat and *bono vacantia*.

<sup>16</sup> Land Registration for the Twenty-First Century – A Conveyancing Revolution (Law Com No 271). This joint project with HM Land Registry was implemented in the Land Registration Act 2002.

<sup>17</sup> Law Com 271, para 11.27.

<sup>18</sup> Law Com 271, para 11.26.

## **PART 7**

### **PUBLIC LAW TEAM**



Professor Martin Partington  
Commissioner

#### **TEAM MEMBERS<sup>1</sup>**

##### **Government Legal Service**

Richard Percival (*Team Manager*)  
Helen Carr, Eleanor Cawte, Charlotte Crilly,  
Elizabeth McElhinney, Raymond Youngs

##### **Research Assistants**

Mike Atkins, Helen Brimacombe,  
Ed Kirton-Darling, Richard Turney

#### **Renting homes**

- 7.1 Renting Homes was published in November 2003.<sup>2</sup> The creation of a wholly new tenure regime has turned out to be a major undertaking. A final report and draft Bill is expected to be published in August 2005.

#### **Resolving housing disputes**

- 7.2 Last year we reported progress towards our undertaking a project on the resolution of housing disputes. In May 2004, we were asked by DCA

To review the law and procedure relating to the resolution of housing disputes, and how in practice they serve landlords, tenants and other users, and to make such recommendations for reform as are necessary to secure a simple, effective and fair system.

- 7.3 Both the Commission and DCA were concerned that we should go beyond considering the narrow issue of whether courts or tribunals should resolve such disputes. The starting points should be the problems that people encounter with housing, and how they can be resolved.
- 7.4 In taking this broad approach, we needed to understand the general policy environment relating to problem and dispute resolution. In July 2004 the Commission brought together officials from DCA, the Office of the Deputy Prime Minister and the Home Office. The meeting provided useful insights into the broad thrust of Government thinking. Of particular importance was DCA's developing policy on the need for more user-focused services. This was demonstrated in the White Paper on the proposed Tribunals Service,<sup>3</sup> published the day after the meeting. Besides emphasising that users should come first, it also stresses that all dispute resolution should be proportionate; and that there should be a focus on improving initial decision making, rather than relying on complaints or redress systems to correct errors.

<sup>1</sup> Including those who were at the Commission for part of the period.

<sup>2</sup> (2003) Law Com No 284.

<sup>3</sup> Transforming public services: complaints, redress and tribunals (Cm 6243, July 2004). Available on the DCA website <http://www.dca.gov.uk>.

- 7.5 To understand better the nature and scope of people's housing problems, work began with a review of existing research and an examination of relevant official statistics. But, to get a better "feel" for the issues, we assembled a small group of front-line housing advisers. This "expert working group" has been meeting since the summer of 2004, and we record our gratitude to those involved. Conversations with this group focused on the inter-relationship between housing and other problems, including debt, family breakdown, benefit problems, the treatment of special needs/community care and discrimination.
- 7.6 In September 2004 we also held a seminar for about 50 people including district judges, ombudsmen, officials, people from the voluntary sector and from landlords' and tenants' groups. Feedback at the seminar stressed the importance of taking a broad view of housing problems. Issues raised ranged from the need for early diagnosis of the nature of problems and the importance of services like mediation and debt counselling, to the role of ombudsmen and the need for a local focus for services.
- 7.7 We have had a number of other discussions with academics, practitioners, advisers and others. A small research exercise has been commissioned to throw light on the experience of tenants involved in court proceedings.
- 7.8 A consultation paper will be published in 2005.

#### **Housing: ensuring responsible renting**

- 7.9 In the Renting Homes report we recommended that we should be asked to undertake two further projects: on promoting landlord responsibility; and on promoting responsible occupier behaviour. The focus of the first was to be on ensuring that landlords complied with their obligations under the rental agreements we proposed in Renting Homes. The second was principally about the control of anti-social behaviour by occupiers in the private rented sector.
- 7.10 The projects were initially conceived of in terms of their subject matter – anti-social behaviour in one case, breach of the terms of the agreement in the other. However, in both cases, the problem to be addressed is how compliance with legal responsibilities can be secured.
- 7.11 As our thinking developed, the similarities between the two became clearer. Following discussions with ODPM, we decided that they could best be considered together as part of the same project. Accordingly, work on both aspects will go forward as a single project, as part of our Ninth Programme of Law Reform.<sup>4</sup>
- 7.12 The terms of reference are:
- (1) To review the relevant housing law, and proposals for reform of the law, and to make recommendations in relation to:
    - (a) the appropriate legal framework necessary to promote and secure compliance by both landlords and occupiers with their existing or proposed legal obligations;

<sup>4</sup> (2005) Law Com No 293.

- (b) the procedures available to landlords, occupiers and affected third parties in relation to such compliance, with particular regard to preventing or remedying anti-social behaviour; and
    - (c) such provisions of the criminal law as may be necessary to reinforce the above.
  - (2) To consider the extent to which the principles and procedures available in connection with anti-social behaviour by rental-occupiers should also apply to similar behaviour by owner-occupiers.
- 7.13 The terms of reference enable the Commission to consider both the law as it currently is, and as it might develop should the proposals in Renting Homes be introduced.
- 7.14 There already exist a wide variety of mechanisms designed to promote good landlord and occupier behaviour. These include: local authority landlord accreditation schemes, local authority tenant accreditation schemes, and private sector industry self-regulation schemes. But these have grown up piece-meal, often without any legislative backing. Our project will, for the first time, provide the opportunity for developing proposals for a coherent regulatory approach for the operation of the rented housing market. In taking the project forward, we will be drawing on the considerable literature on regulation, and considering its application in the housing context. We have already established links with academics working on these issues.
- 7.15 Since July 2004, the Law Commission has had an agreement with the Welsh Assembly Government regulating the relations between the Commission and the devolved institutions. The agreement provides that a project will be a joint project where (among other factors)
- the project is likely to consider matters in relation to which powers have already been devolved to the National Assembly for Wales to a significant extent.
- 7.16 Housing is one of the areas in which the National Assembly has primary policy responsibility. This project has therefore become the first in which the Welsh Assembly Government is recognised, jointly with ODPM, as the lead Government body/department.
- 7.17 Our aim is to publish a consultation paper in the summer of 2006.

## **Remedies against public authorities**

- 7.18 During the process of consultation leading up to the Ninth Programme, our attention was drawn to the way in which the law was developing in relation to *monetary* remedies where public bodies had acted improperly. It was argued that this was unsatisfactory. At present, public law does not, in general, enable the citizen to claim damages against a public body, save where there is a breach of the Human Rights Act or European law. If damages are sought, the citizen must make a claim using principles of private law. It was suggested that this could lead to inconsistency of outcome. Further, seeking to extend the boundaries of liability in negligence might fail to achieve a reasonable balance between public and private interests – the public interest in good administration and the private interest in fair compensation where things had gone wrong. To assist us in considering the desirability of a project to consider these issues, we published a discussion paper in October 2004, and convened a seminar in November 2004.
- 7.19 At the seminar,<sup>5</sup> it was argued that the focus on monetary remedies was too narrow. Many questioned whether awarding monetary compensation was necessarily the best way of making amends for the effects of maladministration. Often, money was not what the wronged citizen wanted. Further, awards to individuals could undermine the ability of public bodies to improve standards of administration. Court action was very expensive, not just to bring, but also to defend, and it was hard to argue for increasing levels of public expenditure on litigation. At the same time, procedural bars prevented, for instance, ombudsmen from dealing with cases where the courts were involved. A project that could be seen as merely creating new liabilities for public bodies to pay compensation was not likely to find favour. On the other hand, there was a case for creating more transparent means for citizen redress. It should be an integral feature of any reformed system of redress that it should enable feedback to be given to service providers.
- 7.20 We concluded that a scoping study could help us to clearly delineate a possible project in this area. A proposal to this effect is contained in the Ninth Programme. We will publish a scoping study around the end of 2005.

## **Public health**

- 7.21 During the consultations on the Ninth Programme, it was put to the Commission that we should undertake law reform work on public health. Following discussion with interested parties, it appeared that a valuable law reform exercise could address the law relating to contagious and infectious diseases. The law, contained largely in the Public Health (Control of Disease) Act 1984, which was itself a consolidation of previous legislation, appeared outdated and unsuited for modern social conditions and scientific understanding of disease. We therefore suggested to the Department of Health that we be asked to undertake a scoping exercise. The Chief Medical Officer concluded that this would not be appropriate. As a consequence we did not pursue the idea. In the Ninth Programme, however, we recommended that the Government should seek to reform the law in this area either directly or through some other agency acting on its behalf.

<sup>5</sup> A summary of the discussion may be found at: [www.lawcom.gov.uk/files/Final\\_report.pdf](http://www.lawcom.gov.uk/files/Final_report.pdf)

## **Publication of local authority inquiry reports**

- 7.22 In February 2000 Sir Ronald Waterhouse published the results of the inquiry he chaired into abuse of children in North Wales. He was concerned that there might be circumstances where local authorities might feel unduly constrained by threat of legal action or loss of insurance cover from making public the results of inquiries conducted by them, or on their behalf. He recommended that we look at the legal issues surrounding the publication of local authority reports.
- 7.23 Our consultation paper<sup>6</sup> concluded that there were three elements to the resolution of the difficulties Waterhouse had identified: an Agreement to be drawn up by the insurers and the local authorities, a Code of Practice for the conduct of local authority ad hoc inquiries, and possible legislative reform for defamation. We focused on the last of these.
- 7.24 In our final report,<sup>7</sup> published in July 2004, we made two principal recommendations: a new defence to claims in defamation, and a new statutory power of inquiry for local authorities.
- 7.25 First, we recommended that there should be a new statutory defence available to local authorities in defamation actions in certain circumstances. Where a local authority makes public a report of an ad hoc inquiry or of an Overview and Scrutiny Committee inquiry into a failure in local authority services, the authority should be able to rely on a defence to any claim in defamation so long as either the publishing authority is satisfied that the inquiry and report were fair, or they were in fact fair. If the authority is not satisfied that the inquiry and report were fair, or it fails to take those reasonable steps necessary to check and they were not fair, then the new defence should not be available, and nor should the existing common law defence of qualified privilege which would otherwise be available.
- 7.26 Secondly, we recommended that principal local authorities should have a new statutory power to establish an inquiry which would itself have power to apply to the High Court for an order compelling a witness to give evidence to the inquiry. The initiative would lie with the local authority in setting up the inquiry and with the inquiry to ask the court for an order; whether the order was in fact made would be subject to the decision of the High Court. This would achieve a balance between enabling democratically elected bodies to account to their electorate for failures in performance through an effective inquiry, but without putting powers of compulsion in the hands of a non-judicial body.
- 7.27 We made this recommendation because there is currently a gap in the system. If witnesses will not co-operate with a local authority ad hoc inquiry, and there is no inquiry instituted by central government, then those immediately affected and the public in general will never have a full account of how things went wrong.
- 7.28 Local authority special inquiries would help the government to meet its duties under the European Convention on Human Rights, and under the European Charter of Local Self-Government. The response of the Government to these recommendations is awaited.

<sup>6</sup> Publication of Local Authority Reports (2002), Consultation Paper 163.

<sup>7</sup> In the Public Interest: Publication of Local Authority Inquiry Reports (2004), Law Com No 289.

# **PART 8**

## **STATUTE LAW**

### **TEAM MEMBERS**

#### **Consolidation<sup>1</sup>**

The Chairman, Sir Edward Caldwell, Francis Coleman, Louise Davies, Jessica de Mountenay, and Chris Packer.

#### **Statute Law Revision**

The Chairman, John Saunders, Jonathan Teasdale, Claire Fox, and Sarah McCosker.

### **CONSOLIDATION**

- 8.1 An important aspect of our work is the consolidation of statute law. Consolidation consists of drawing together different enactments on the same subject matter to form a rational structure and of making more intelligible the cumulative effect of different layers of amendment. Usually this is done by preparing a single statute. However, in the case of a large consolidation, it may be done by means of several statutes. The aim is to make the statutory law more comprehensible, both to those who have to operate it and to those who are affected by it.
- 8.2 Our programme of consolidation measures has over the years reduced in quantity, partly because of changes made in the 1970s to the way Parliament amends legislation. This is now routinely done by textual amendment. With modern electronic sources of legislation and existing reference material, anyone wishing to see the latest version of an Act can readily do so. The need to consolidate simply to take account of textual change has largely gone.
- 8.3 But there is still a need for consolidation, particularly in those areas where there has been a considerable amount of legislative activity. Now, when the Commission comes to consolidate the legislation on a particular subject, it tends to find that the total amount of legislation to be consolidated is large.
- 8.4 Consolidations of this kind are by their nature difficult and call for a considerable amount of work. It is not just a matter of identifying the amendments that have been made to the enactments being consolidated. Changes elsewhere in the statute book, in European law, or resulting from decisions by the courts may need to be reflected in the consolidated text. Provisions that have become obsolete need to be identified and included in the provisions to be repealed by the consolidation. The effect of devolution needs to be worked out. In some cases the law needs to be altered before a sensible consolidation can be produced. This work has to be done with meticulous accuracy so as to avoid inadvertent changes in the substance of the law. It places a serious strain on resources — both within the Law Commission and in the responsible Department. Departments are never short of pressing priorities to which they need to devote scarce resources.

<sup>1</sup> Including Parliamentary Counsel who were at the Commission for part of the period.

- 8.5 Finally, the rate at which the statute book grows is a problem in itself. Parliament enacts several thousand pages of new primary law every year and repeals relatively little. Consolidation cannot be undertaken unless the law remains relatively settled. Several times over the past decade, legislation has been changed radically, just when a consolidation was being prepared. This has inevitably stopped the consolidation. Our attempted consolidation of the legislation on financial services is a good example of the problem. Although well-advanced, the consolidation had to be abandoned when the Government introduced the totally new regulatory regime established by the Financial Services and Markets Act 2000. The work on the consolidation was totally wasted.
- 8.6 During the year, in the absence of a consolidation Bill before Parliament, we have been looking to establish a consolidation programme that will run over the next few years.
- 8.7 Our consolidation of the legislation on wireless telegraphy and the management of the radio spectrum was delayed for some time by the work involved in implementing the new regulatory regime created by the Communications Act 2003. But the consolidation is now well on the way to completion. On 4 August 2004 the Department of Trade and Industry published a consultation paper with a copy of the Consolidation Bill annexed. The period allowed for consultation ended on 28 October 2004. When the results have been assessed and any necessary adjustments made to the Bill it will be ready for introduction in Parliament.
- 8.8 A small consolidation of nineteenth century legislation about parliamentary costs is nearly finished. There is a considerable amount of old legislation in the statute book which is still live and so cannot be removed by a Statute Law (Repeals) Bill but which would benefit from being modernised.
- 8.9 Work on consolidating the legislation about the National Health Service is progressing well. Because of the amount of legislative activity in this area since 1997, the consolidation is difficult and the Bill will inevitably be long. The legislation about the National Health Service has been significantly affected by devolution to the National Assembly for Wales, which is a further complicating factor.
- 8.10 Work is about to start on consolidating the legislation about private pensions. The Department for Work and Pensions has made funds available to enable the Commission to employ a freelance drafter (an experienced drafter who used to be in the Office of the Parliamentary Counsel) to undertake the consolidation. This large and extremely difficult project will take some time to complete.
- 8.11 The only disappointment in the year is the consolidation of the legislation about representation of the people which, although well advanced, remains suspended. Delays were caused on more than one occasion by a reorganisation of Ministerial responsibility for the subject. Work on the consolidation was finally suspended at the request of the Department for Constitutional Affairs pending the Government's decision on the Electoral Commission's report Voting for Change, which recommended significant changes to the law. A decision on when the consolidation can safely be revived has yet to be taken.

## STATUTE LAW REVISION

- 8.12 Statute law revision is the process of removing legislation from the statute book if it is obsolete or if it otherwise has no further practical utility. The work helps to modernise the statute book, leaving it clearer and shorter, and is an integral part of the general process of statute law reform. The vehicle for repealing legislation is the Statute Law (Repeals) Bill. The Law Commission has drafted 17 such Bills since 1965. All have been enacted and have repealed more than 2000 Acts in their entirety and have achieved the partial repeal of thousands of other Acts.
- 8.13 The most recent Bill, annexed to the Seventeenth Report on Statute Law Revision,<sup>2</sup> received Royal Assent on 22 July 2004<sup>3</sup>. This resulted in the repeal of 68 whole Acts and the removal of redundant provisions from over 400 other Acts.
- 8.14 The work of the statute law revision team during 2004 has concentrated on the criminal law. This has been a large project with the team examining enactments dating back many centuries. For example, the project has uncovered several Acts from the reign of Edward III which were intended to protect the citizen from abuses of the judicial powers of the King's Council in determining criminal proceedings. These Acts have been superseded by the Human Rights Act 1998 and are therefore now unnecessary. Other Acts being considered for repeal include the Sale of Offices Act 1551, the Disorderly Houses Act 1751 and the Servants' Characters Act 1792.
- 8.15 Consultation on these repeal proposals started in early 2005. Other repeal projects in 2005 are likely to include town and country planning, the police and the armed forces.
- 8.16 In all statute law revision work the team produces a consultation document inviting comments on a selection of repeal proposals in each area. These documents are then circulated to Departments and other interested bodies and individuals. Subject to the response of consultees, repeal proposals relating to all the projects mentioned above will be included in the next Statute Law Revision report which is planned for 2008.
- 8.17 Much of the Law Commission's work on statute law revision is conducted jointly with the Scottish Law Commission and many of the repeal candidates contained in Statute Law Revision Reports extend to Scotland. Indeed because Statute Law (Repeals) Acts extend throughout the United Kingdom and the Isle of Man, the Law Commission liaises regularly on its repeal proposals not only with the Scottish Law Commission but also with the authorities in Wales (the Office of the Secretary of State for Wales and the Counsel General to the National Assembly for Wales) and with the authorities in Northern Ireland and in the Isle of Man. Their help and support in considering and responding to the repeal proposals is much appreciated.

<sup>2</sup> Joint Report with the Scottish Law Commission (2003), Law Com No 285, Scot Law Com No 193.

<sup>3</sup> Statute Law (Repeals) Act 2004 (c14).

## **PART 9**

# **EXTERNAL RELATIONS**

- 9.1 The Law Commission greatly values its strong links with a variety of organisations and individuals committed to reforming the law. We are indebted to those who give feedback on our consultations papers, and provide input at all stages of the process of making recommendations to Government.
- 9.2 We are particularly proud of the strong links we have built with Government and other law reforming agencies, both in this country and internationally.

### **PARLIAMENT, MINISTERS AND GOVERNMENTAL BODIES**

- 9.3 The Law Commission enjoys productive relationships with Ministers and officials in Government Departments. We particularly benefit from a strong relationship with the Department for Constitutional Affairs (DCA), which is our “sponsor” Department.
- 9.4 The Chairman, Commissioners and staff are grateful for the assistance they have received from a number of organisations, ministers and officials, particularly:
- The Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Falconer of Thoroton.
  - Permanent Secretary at the Department for Constitutional Affairs, Alex Allan.
  - The Home Secretary, the Right Hon. Charles Clarke MP.
  - The Home Secretary, the Right Hon. David Blunkett MP.
  - The Right Hon. Baroness Scotland of Asthal QC.
  - The Deputy Leader of the House of Commons, Phil Woolas MP.
  - The Attorney-General, the Right Hon. The Lord Goldsmith QC.
  - The Solicitor-General, the Right Hon. Harriet Harman QC MP.
  - The Director of Public Prosecutions, Ken MacDonald QC.
  - The Charity Commission, and especially James Dutton.
  - The Inland Revenue.
  - We have maintained strong relations with the Scottish Assembly, mainly through our colleagues in the Scottish Law Commission.<sup>1</sup>
  - We have worked closely with various Welsh Assembly staff. These include Iwan Roberts and Tamlyn Rabey on the Resolving Housing Disputes project. On the Termination of Tenancies project we consulted with Maggie Firth and Maureen Hare (Office of the Counsel General), Steve Long (Housing Directorate) and Julian Dawkins (Estates Division).
  - Alex Clark and Daniel Webb in the Family Justice Directorate, and Mavis McLean in the Research Unit in Consumer Strategy Unit at DCA.

<sup>1</sup> See para 9.9

- Chris Pitt Lewis from the Land Registry.
- Deborah Grice, Roderick Macauley, Paul Stephenson and Rachel Reynolds from the Home Office, and Deborah Garrihy, who works for the DCA but was seconded to the Home Office for a time.
- Richard McDonald, Richard Footitt, Dawn Eastmead and John Daniels at ODPM.
- David Leam and Keith Jackson at the Treasury.
- Judith Marsden from DEFRA.

## **CONSULTEES AND STAKEHOLDERS**

9.5 We want to engage more people in our consultation processes. During the last year we have been working closely with a number of individuals and organisations, for whose help we are very grateful. These include:

- Shirley Ford and Teresa Reynolds from Victim Support.
- Patsy Callinan and Rose Dixon from Support after Murder and Manslaughter.
- The Manchester Law Society.
- The Compulsory Purchase Association.
- All of our working group on tenancy reform, especially: Laura Coode from the Country Land and Business Association; George Dunn from the Tenant Farmers' Association; Barrie Jones from the Farmers' Union of Wales; Alex Madden from the National Farmers' Union; and Geoff Whittacker from the Agricultural Law Association.
- Phil Morgan from the Tenants Advisory and Participation Service.
- Sue Baxter from SITRA; David Hawkes from Gloucestershire Money Advice Service; John Martin from Bradford Resource Centre; Kimi Rochard-Bovell and Phil Walker at Brent Council; Howard Springett from Kingston CAB and Neil Wightman from Camden Council.
- Liz Phelp from Citizens Advice; Bridget Stark from the Camden Federation of Private Tenants; Joe Oldman from Help the Aged; Deborah Garvie from Shelter; Adrian Turner from the Association of Residential Letting Agents (ARLA); Adam Rollins from the National Association of Estate Agents (NAEA); and Andrew Greathead from the Association of Tenants Relations Officers (ATRO).
- Professor David Clarke from the University of Bristol; Professor Elizabeth Cooke from the University of Reading; Michael Croker from Stevenage District Land Registry; Philip Freedman from Mishcon de Reya; Jonathan Gaunt QC and Paul Morgan QC from Falcon Chambers; and Emma Slessenger from Allen and Overy LLP.
- Members of the Property Litigation Association, including: Tim Fogarty from Bevan Ashford; Jason Hunter from Russell Cooke; David Cox from Berwin Leighton Paisner; Jacqui Joyce from Lovells; Alan Langleben from Rochman Landau; Kerry Glanville from Pemberton Greenish; and Lynn Smith from Dechert.

- Martin Davey from the University of Manchester; Graham Ferris from Nottingham Trent University; Peter Luxton from Sheffield University; Susan Bright from Oxford University; Martin Dixon from Cambridge University; David Dennis from the University of Liverpool; Nick Roberts from Oxford Brookes University; Warren Barr from the University of Liverpool; and Alison Clarke from University College London.
- The Family Law Committee of the Law Society.
- Resolution (formerly the Solicitors Family Law Association).
- Camden Federation of Private Tenants; ARLA; the National Association of Estate Agents; Help the Aged; Shelter; Citizens Advice Bureau; Nottingham Private Landlords Forum; the Association of Tenancy Relations Officers.
- Professor David Ormerod from the University of Leeds.
- Professor R A Duff of the Department of Philosophy at the University of Stirling.
- The Wills and Equity Committee of the Law Society.
- The Trust Law Committee, and especially Professor David Hayton, Sir John Vinelott and John Dilger.
- The Institute of Chartered Accountants of England and Wales.
- The Lord Chief Justice, The Master of the Rolls, The Vice-Chancellor, Judge LJ, Carnwath LJ, Rose LJ, Sedley LJ, Beaumont J, Collins J and His Honour Judge John Colyer QC.
- Claire Curtis-Thomas MP, Chair of the All Party Group for Abuse Investigations.

### **SEMINARS, LECTURES AND CONFERENCES, ETC**

- 9.6 Members of the Law Commission are frequently invited to attend and speak at seminars and conferences. While we cannot fulfil every request, we try to be as involved as possible in expanding general knowledge about law reform, and engaging people in the processes by which the law is improved. Events we have taken part in include:

#### **Compulsory Purchase Orders**

- The Chairman, Stuart Bridge and Lord Justice Carnwath launched the report: Compulsory Purchase Order: Procedure (LC290) at the River Room in the House of Lords.

#### **Contract Law**

- Professor Hugh Beale gave a paper to the Society of Legal Scholars conference on European Contract Law in Sheffield.
- Professor Beale also spoke on 'English Law Reform and the Impact of European Private Law' at a conference organised by the Institute of European and Comparative Law at the University of Oxford.

### **Criminal Law**

- The Chairman spoke about Partial Defences to Murder at the Society for Advanced Legal Studies.
- The Chairman talked about the reform of criminal law to the Statute Law Society at the Institute of Advanced Legal Studies.
- His Honour Judge Alan Wilkie QC delivered a series of lectures at the Criminal Justice Reform seminars organised by the Judicial Studies Board.
- Mr Justice Wilkie kindly spoke on Partial Defences to Murder at the Law “A2” Level Student Conference, although he had left the Law Commission.
- David Hughes, Manager of the Criminal Law Team, attended the annual conference of the Society of Legal Scholars and delivered a talk on law reform.
- Julia Jarzabkowski lectured at Anglia Polytechnic University, Cambridge on our recommendations for Partial Defences to Murder.

### **Personal Property Security Interests**

- Professor Beale spoke at the annual Lord Morris Memorial Lecture at the University of Wales, Swansea.
- He also spoke at a seminar held by DLA Piper Rudnick Gray Cary in Manchester
- In addition, he gave a lecture at the University of Wales 2005 Gregynog Conference.

### **Statute Law**

- The Chairman and John Saunders, head of the Statute Law Revision team, attended the annual meeting of the Lord Chancellor’s Advisory Committee on Statute Law in the House of Lords.

### **Trust Law**

- Stuart Bridge spoke with Professor David Hayton at the Institute of Advanced Legal Studies on Capital and Income in Trusts: Classification and Apportionment.
- He also attended the Trust Law Committee Annual General Meeting.
- He spoke on Termination of Tenancies at a seminar at the Manchester Law Society, and at the “Battle of the Sexes” Annual Conference of the Manchester Law Society Family Law Panel.
- In addition, Mr Bridge gave a talk at the Medland Branch of the Society of Trust and Estates Practitioners (STEP) seminar at Nuffield Centre, and at the Economic and Social Research Council on “Changing Social Norms, Changing Family Law”.
- Matthew Jolley, the team manager in the Property and Trust team attended the Society of Trusts and Estates Practitioners Annual Conference.
- Judith Cairns, a lawyer in the Property and Trust team, attended a reception to commemorate the implementation of Part 1 of the Commonhold and Leasehold Reform Act 2002 at the River Room in the House of Lords.

## **Public Law**

- The Public Law team held a seminar on Resolving Housing Disputes, attended by around 70 people, including representatives of charities, local authorities, government departments, universities and various associations.
- The Public Law team also held a seminar for over 40 people on Monetary Remedies in Public Law, which was attended by judges, academics, practitioners, Ombudsmen and representatives from Treasury Solicitors and the Welsh Assembly.

## **SOCIO-LEGAL RESEARCH**

- 9.7 The Commission often uses socio-legal, economic and empirical research to ensure that our recommendations to Government are thoroughly considered with sound evidence. Where possible we use existing research, but where funds permit, we sometimes commission external researchers.
- 9.8 In particular, we commissioned a public opinion research survey in connection with Partial Defences to Murder from Professor Barry Mitchell, and empirical research was conducted into the defences of provocation and diminished responsibility by Professor Ronnie Mackay on behalf of the Nuffield Foundation. The research of both Professor Mitchell and Professor Mackay proved invaluable.<sup>2</sup> We are very grateful to each of them and the Nuffield Foundation.

## **SCOTTISH LAW COMMISSION**

- 9.9 We work closely with the Scottish Law Commission (SLC) on various projects. Over the course of the year, we have collaborated on Unfair Contract Terms, Company Security Interests, our statute law revision work, and are in regular contact with the SLC concerning the two Commissions' trust law work. The Ninth Programme of Law Reform includes three projects where we will need to work jointly.<sup>3</sup>

## **INTERNATIONAL RELATIONS**

- 9.10 We have continued to receive international guests at the Law Commission, and to visit colleagues around the world. Among the guests we have received or met are:
- Jean Kyazee from the Ugandan Law Reform Commission, who stayed with us for two weeks in October.
  - Mr Egidijus Kuris, President of the Constitutional Court of Lithuania.
  - We received two delegations from China. The first was a delegation from the Qingdao Administration Institute. The second was a delegation, largely made up of officials from the Ministry of Justice, and organised by the British Institute for International Comparative Law. Their visit to the Commission made up part of an EU-China Legal and Judicial Co-operation Programme.

<sup>2</sup> See appendices A-C of the report Partial Defences to Murder (2004), Law Com No 290.

<sup>3</sup> On Consumer Law, Transfer of Title to Goods by Non-Owner, and Insurance Contract Law.

- We were visited by Mr Martın Avramov, the Legal Adviser of the Minister of State Administration in Bulgaria and Mr Mustapha Yousef, the Libyan appointed Manager of the Legal Affairs Department.
- Egmont Neubauer, a German PhD student who is undertaking a comparative research study for his PhD into easements in Germany, England and Wales and Scotland visited the Commission in September 2004.
- A delegation of Vietnamese Visitors, headed by the Deputy Head of the Commission for Legislative Affairs.
- The Chairman, the Chief Executive, Dr Horder and David Hughes received a delegation from Penn State University, USA to discuss issues of mutual interest appertaining to the reform of criminal law.
- Professor Partington, Stuart Bridge and Julia Jarzabkowski met the Honourable Reba Meagher, the New South Wales Minister for Fair Trading.
- We were visited by the Hon Justice Bruce Robertson, Chairman of the New Zealand Commission.
- We received a delegation from the Commonwealth Secretariat (Public Administration International Study Programme: “Lawyers and Government – Managing Change”).
- The Chairman visited Harvard University for a series of lectures, seminars and events.
- Professor Beale chaired a session on contract law at a meeting held in Brussels by the German associations of Notaries.
- The Chief Executive and Professor Partington attended the Australasian Law Reform Agencies Conference in New Zealand in April 2004. Professor Partington addressed the conference on Alternative Dispute Resolution.

# PART 10

## STAFF AND RESOURCES

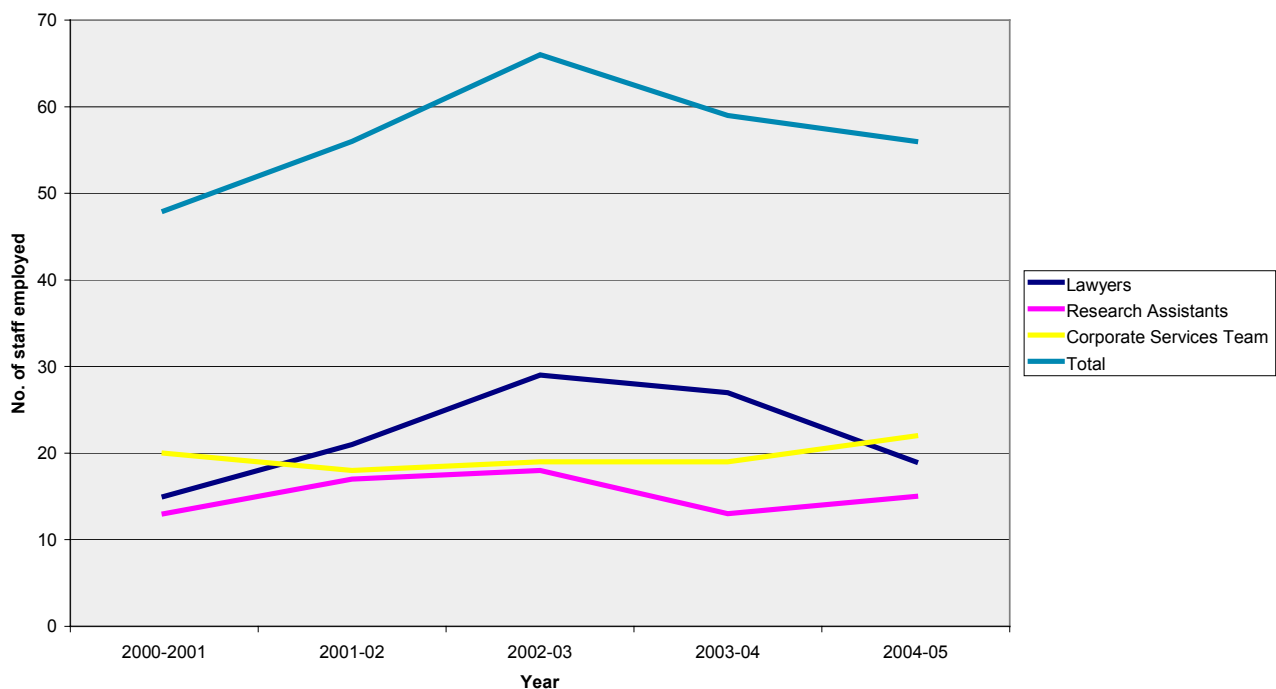
### RECRUITMENT AND WORKING PATTERNS

- 10.1 The Quinquennial Review found that the Law Commission had developed imaginative and successful recruitment policies that fitted its needs well. The Commission has continued refining procedures, and has recruited a Policy and Personnel Officer with this aim in mind. The Commission takes part in regular staff opinion surveys, undertaken by DCA. The most recent figures from 2003 indicate that staff in general liked their work, with 86% saying they were proud to work for the Law Commission. When posts are open to non-civil servants, vacancies are advertised on the Commission's website with brochures and application forms available for downloading. For some positions online application forms are now available.
- 10.2 There are a wide variety of work/life balance arrangements in place, such as home-working and working compressed hours. In addition, permanent appointments, loans, secondments and short-term appointments are also welcomed.

### STAFF

- 10.3 The Commissioners very much appreciate the dedication and expertise of all the staff at the Law Commission. During the period of this Report several members of staff moved on for the sake of career development in the usual way. The Commissioners are grateful for their work and for their contribution to the team effort.

Diag. 10.1: Staffing levels at the Law Commission



### **Legal staff**

- 10.4 The Commission's lawyers are barristers or solicitors from a wide range of professional backgrounds, including academia, private practice and public service. They are recruited usually through public advertisements.
- 10.5 In the summer the Commission welcomed Eleanor Cawte (who joined the Public Law team on secondment from the Office of the Deputy Prime Minister) to cover the absence of a lawyer on maternity leave. The Commission is also very grateful to Jayne Astley, Christina Hughes, Jo Perkins and James Robinson for their valuable contributions to law reform before they moved on to new challenges. The names of all current legal staff are set out at the beginning of Parts 4 to 8 above.
- 10.6 Parliamentary Draftsmen who prepare the draft Bills attached to the law reform reports, and who also undertake the consolidation of existing legislation, are seconded to the Law Commission from the Office of the Parliamentary Counsel. The Commission is very grateful to them for all their expertise and hard work. In the course of the year Catherine O'Riordan and Bernadette Walsh returned to their parent department. In their places, Louise Davies and Francis Coleman came to Conquest House.

### **Research assistants**

- 10.7 Each year a dozen or so well qualified graduates are recruited to assist with research, drafting and creative thinking. They generally spend a year or two at the Commission before moving on to further their legal training and career. The selection process is extremely thorough and the Commission aims to attract a diverse range of candidates at university law fairs and through contact with careers advisers, as well as through advertisements in various newspapers and journals. For many Research Assistants, working at the Commission has been a rung on the ladder to an extremely successful career. The Commission recognises the contribution they make, not least through their enthusiastic commitment to the work of law reform and their lively participation in debate.

### **Corporate Services Team**

- 10.8 The Commission has continued to benefit from the experience, expertise and commitment of its small Corporate Services Team (CST) of administrative staff. The CST is responsible for accommodation, communications, health and safety, human resources, information technology, programme management, publishing, records management, resource accounting, secretarial assistance and security. These support services help the Commission to function effectively and smoothly.
- 10.9 The Quinquennial Review (QQR) of the Law Commission, reporting in March 2003, recognised the need for the Lord Chancellor's Department to initiate a review of the CST. This review looked at the resources needed to meet current and foreseeable expectations, including related skills and expertise.

- 10.10 As a result of this review, the CST has seen the arrival of a new Head of Corporate Services, a Personnel Officer, and a Communications Manager. Some of the existing posts in the team have been upgraded to reflect additional responsibilities. This restructuring exercise will enhance the team's ability to provide a more focused and efficient service to the Commission. The CST has also developed a new Programme Management System for the Commission, again in line with QQR recommendations (Chapter 4). The system has been designed to bring together information relevant to all ongoing Law Commission projects. It provides the Commission with an overview of its entire programme, with the ability to monitor progress against each individual project.
- 10.11 The CST values the help available to them from colleagues in the DCA, in particular from the Civil Law and Justice Division and the Human Resources Directorate. The CST is also very grateful to the Facilities and Departmental Security Division.

#### **Library staff**

- 10.12 The Library service continues to provide a vital information service in support of the legal work of the Commission. The Law Commission makes use, reciprocally, of a number of other libraries and particular thanks are due to the libraries of the Supreme Court, the Department for Constitutional Affairs, and the Institute of Advanced Legal Studies. The Library makes full use of the Internet and other electronic services and databases; where possible, these are also made available via each individual desktop PC. In addition, a large collection of printed sources is available for research. Library staff also provide training and advice in all areas of legal information research. In co-operation with DCA, the Library also provides a one-year library trainee programme for graduates intending to pursue a professional library and information studies course.
- 10.13 The Law Commission library staff are employed by the Library Information Service (LIS), which provides the judiciary and staff in the DCA, HMCS, and associated offices with the information resources and publications needed to carry out their work.

(Signed) SIR ROGER TOULSON, *Chairman*  
HUGH BEALE  
STUART BRIDGE  
JEREMY HORDER  
MARTIN PARTINGTON

STEVE HUMPHREYS, *Chief Executive*  
12 April 2005

# APPENDIX A

## THE LAW COMMISSION'S IMPLEMENTED REPORTS SINCE 1992

Publications which have been laid before Parliament under section 3(2) of the Law Commissions Act 1965 and publications which have been presented to Parliament as Command Papers, excluding reports on consolidation, showing implementation. The date shows the year in which the report was published. Those marked + are the result of a reference under section 3(1)(e).

Law Com No	Title	Implementing Legislation
<b>1992</b>		
205	Criminal Law: Rape within Marriage (HC 167)	Criminal Justice and Public Order Act 1994 (c 33)
207	Family Law: Domestic Violence and Occupation of the Family Home (HC 1)	Family Law Act 1996 (c 27)
208	Landlord and Tenant: Business Tenancies: A Periodic Review of the Landlord and Tenant Act 1954 Part II (HC 224)	Regulatory Reform (Business Tenancies) (England and Wales) Order 2003
209	Clean Air Bill (Cm 2085)	
<b>1993</b>		
211	Statute Law Revision: Fourteenth Report (Joint Report - Scot Law Com No 140) (Cm 2176)	Statute Law (Repeals) Act 1993 (c 50)
212	Pension Schemes Bill (Joint Report – Scot Law Com No. 142) (Cm 2184)	
213	Health Service Commissioners Bill (Joint Report - Scot Law Com No. 143) (Cm 2255)	
214	Probation Service Bill (Cm 2256)	
215	Sale of Goods Forming Part of a Bulk (Joint Report - Scot Law Com No 145) (HC 807)	Sale of Goods (Amendment) Act 1995 (c 28)
216	The Hearsay Rule in Civil Proceedings (Cm 2321)	Civil Evidence Act 1995 (c 38)
217	Family Law: The Effect of Divorce on Wills	Law Reform (Succession) Act 1995 (c 41)
218	Offences Against the Person and General Principles (Cm 2370)	
219	Contributory Negligence as a Defence in Contract (HC 9)	
<b>1994</b>		
220	The Law of Trusts: Delegation by Individual Trustees (HC 110)	Trustee Delegation Act 1999 (c 15)
221	Termination of Tenancies Bill (HC 135)	
224	Structured Settlements and Interim and Provisional Damages (Cm 2646)	In part by Finance Act 1995 (c 4); Civil Evidence Act 1995 (c 38); and Damages Act 1996 (c 48)
226	Administrative Law: Judicial Review and Statutory Appeals (HC 669)	In part by Housing Act 1996 (c 52)
227+	Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments (Cm 2731)	Part implemented – see note below
228	Criminal Law: Conspiracy to Defraud (HC 11)	Theft (Amendment) Act 1996 (c 62)
<b>1995</b>		
230	Legislating the Criminal Code: The Year and a Day Rule in Homicide (HC 183)	Law Reform (Year and a Day Rule) Act 1996 (c 19)

233	Statute Law Revision: Fifteenth Report (Joint Report - Scot Law Com No 150) (Cm 2784) 235 Registration (jointly with HM Land Registry) (Cm 2950)	Statute Law (Repeals) Act 1995 (c 44) Transfer of Land: Land Land Registration Act 1997 (c2)
<b>1996</b>		
240	Consolidation of Certain Enactments Relating to Education (Cm 3251)	
242	Privity of Contract: Contracts for the Benefit of Third Parties (Cm 3329)	Contracts (Rights of Third Parties) Act 1999 (c 31)
243	Offences of Dishonesty: Money Transfers (HC 690)	Theft (Amendment) Act 1996 (c 62)
<b>1997</b>		
245+	Evidence in Criminal Proceedings: Hearsay and Related Topics (Cm 3670)	Criminal Justice Act 2003 (c 44)
<b>1998</b>		
252	Statute Law Revision: Sixteenth Report (Joint Report - Scot Law Com No 166) (Cm 3939)	Statute Law (Repeals) Act 1998 (c 43)
253*	The Execution of Deeds and Documents by or on behalf of Bodies Corporate (Cm 4026)	Regulatory Reform (Execution of Deeds and Documents) Order 2005
<b>1999</b>		
260	Trustees' Powers and Duties (Joint Report - Scot Law Com No 166) (HC 538/SE 2)	Trustee Act 2000 (c 29)
<b>2000</b>		
264	Powers of the Criminal Courts (Sentencing) Bill (Joint Report – Scot Law Com No 175) (Cm 4626)	
<b>2001</b>		
267+	Double Jeopardy and Prosecution Appeals (Cm 5048)	Criminal Justice Act 2003 (c 44)
269	Bail and the Human Rights Act 1998 (HC 7)	Criminal Justice Act 2003 (c 44)
271	Land Registration for the Twenty-First Century (Joint Report with HM Land Registry) (HC 114)	Land Registration Act 2002 (c 9)
273+	Evidence of Bad Character in Criminal Proceedings (Cm 5257)	Criminal Justice Act 2003 (c 44)
<b>2002</b>		
277*	The Effective Prosecution of Multiple Offending (Cm 5609)	Domestic Violence, Crime and Victims Act 2004
<b>2003</b>		
279*	Children: Their Non-Accidental Death or Serious Injury (Criminal Trials) - A Consultative Report (HC 650)	Domestic Violence, Crime and Victims Act 2004
282*	Children: Their Non-Accidental Death or Serious Injury (Criminal Trials) (HC 1054)	Domestic Violence, Crime and Victims Act 2004
285*	Statute Law Revision: Seventeenth Report: Draft Statute Law (Repeals) Bill (Joint Report – Scot Law Com No 193) (Cm 6070)	Statute Law (Repeals) Act 2004 (c.14)

## APPENDIX B

### LAW COMMISSION REPORTS AWAITING IMPLEMENTATION

B.1 Of all the Law Commission's 174 law reform reports, the 29 listed below remain outstanding. 16 of these, marked \* have been accepted by the Government in full or in part, subject to Parliamentary time being made available by the relevant Government department. We await a decision from the Government on 13 further reports.

<i>Year</i>	<i>Law Com No</i>	<i>Title</i>
1991	194	* Distress for Rent
1993	218	* Offences against the Person and General Principles
1994	222	* Binding Over
	226	* Judicial Review and Statutory Appeals
1995	229	Intoxication and Criminal Liability
	231	* Mental Incapacity
1996	237	* Involuntary Manslaughter
	238	Landlord and Tenant: Responsibility for State and Condition of Property
1997	246	* Shareholder Remedies
	247	* Aggravated, Exemplary and Restitutionary Accumulations
1998	248	* Corruption Offences
	249	Liability for Psychiatric Illness
	251	* The Rules Against Perpetuities and Excessive Accumulations
	255	* Consents to Prosecution
1999	257	Damages for Personal Injury: Non-Pecuniary Loss
	261	* Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties
	262	Damages for Personal Injury: Medical, Nursing and other Expenses; Collateral Benefits
	263	Claims for Wrongful Death
2001	270	* Limitation of Actions
	272	* Third Parties – Rights Against Insurers
2002	276	* Fraud
2003	281	Land, Valuation and Housing Tribunals: The Future
	283	Partnership Law
	286	Towards a Compulsory Purchase Code: (1) Compensation
2004	287	Pre-Judgement Interest on Debts and Damages

<i>Year</i>	<i>Law Com No</i>	<i>Title</i>
2004	289	In the Public Interest: Publication of Local Authority Inquiry Reports
	290	* Partial Defences to Murder
	291	Towards a Compulsory Purchase Code: (2) Procedure
2005	292	Unfair Terms in Contracts

# APPENDIX C

## STAFF

C.1 The names of the Commission's legal staff are set out in Parts 4-8. The Corporate Services Team comprises:

**Chief Executive**  
Steve Humphreys

**Head of Corporate Services  
and Budget Manager**  
Phillip Golding  
Chris Porter

**Personnel, Policy  
and Planning  
Manager**  
Celia J Smith

**Policy and Personnel  
Officer**  
Amie Lawrence/ Barbara  
Wallen

**Programme  
Management and  
Finance Officer**  
Jacqueline Griffiths

**Communications  
Manager**  
Jessica Litten

**Editor and Web  
Manager**  
Dan Leighton

**Facilities Manager**  
Anthea L Peries

**Facilities and Records  
Officer**  
Terry D Cronin

**Facilities and Records  
Assistant**  
Cindy Ferguson/ Nicole  
Diaby

**Office Keeper**  
Reta Mabbs

**Messenger**  
Audrey Menditta

**Front Desk Security**  
Edward Bailey

**Secretarial Support**  
Christina Cawe  
Anne Piper

Carmen McFarlane  
Jackie Samuel

Alison Meager

**Librarian**  
Keith Tree

**Assistant Librarian**  
Michael Hallissey

**Library Trainee**  
Katy Davies

**Chairman's Clerk**  
John Peck

### Contact Numbers

- General enquiries: 020 7453 1200
- General fax number: 020 7453 1297
- Website address: [www.lawcom.gov.uk](http://www.lawcom.gov.uk)

### Email addresses:

- General enquiries: [chief.executive@lawcommission.gsi.gov.uk](mailto:chief.executive@lawcommission.gsi.gov.uk)
- Library: [library@lawcommission.gsi.gov.uk](mailto:library@lawcommission.gsi.gov.uk)
- Communications Team: [communications@lawcommission.gsi.gov.uk](mailto:communications@lawcommission.gsi.gov.uk)

## APPENDIX D

### THE COST OF THE COMMISSION

- D.1 The Commission's resources are mainly made available through the Department for Constitutional Affairs (DCA) in accordance with section 5 of the Law Commissions Act 1965.
- D.2 This year, the Commission has adopted a new approach to the method in which it records the cost of the Commission. In previous Annual Reports the Commission has taken into account the cost of its overheads, which are calculated by DCA based on apportionment. The formula used for these calculations has changed on a number of occasions, making it difficult to compare year-on-year expenditure. Figures have therefore, been provided for the last three financial years, so that it is for the first time possible to compare those resources over which the Commission has direct control.
- D.3 Contributions from Whitehall Departments are on occasion received by the Commission to cover resources it requires in order to undertake a particular Law Reform Project. These figures are not included here.
- D.4 Costs such as Commissioners' pensions and Superannuation are also calculated by DCA and, again, are not included.

	2002/2003 (April/March)		2003/2004 (April/March)		2004/2005 (April/March)	
	£000	£000	£000	£000	£000	£000
Commissioner salaries (including ERNIC)*	326.6		346.8		386.0	
Staff salaries**	2314.6		2564.4		2672.3	
		<b>2641.2</b>		<b>2911.2</b>		<b>3058.3</b>
Printing and publishing; supply of information technology; office equipment and books	60.2		69.8		73.4	
Utilities (inc. telecommunications) and postage	180.9		166.4		128.9	
Rent for accommodation	470.4		470.4		470.4	
Travel and Subsidence	15.3		25.8		14.2	
Other administrative costs (inc. recruitment; fees and services)	88.7		89.9		82.8	
Entertainment	4.3		5.5		6.0	
		<b>819.8</b>		<b>827.8</b>		<b>775.7</b>
<b>TOTAL</b>		<b>3461.0</b>		<b>3739.0</b>		<b>3834.0</b>

\* From January 2005 there has been an increase in the number of non-Judicial Commissioners from three to four, and consequently Commissioner's salaries have risen.

\*\* Includes ERNIC, research, consultants, staff (inc. provision of security) and secondees