



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

No.29 JULY/AUGUST 2004

THE PRESIDENT'S COLUMN



EDWARD SOLOMONS

It has been a busy period since the last edition of the report. The social highlight must, of course, be the Legal Charities Garden Party. The north lawns were practically full, with a record turn out. The weather was kind (after earlier forecasts that it would rain) and a good time seemed to be had by all (apart from the non-legal couple who walked out after five minutes, disgusted that the drinks were not included in the admission price).

Next, jointly with the Law Society, we had a risk management seminar, in conjunction with Alexander Forbes Professions. Much of interest was learned there including, for me, the interesting statistic that although insurers expect to make only 5p for each £1 of premium income, 65p goes to claims. There were a number of tips for structuring cover to the type of practice, and as to presentation of information when seeking quotations, so as to minimise premiums.

Also with the Law Society, we had a reception for international lawyers. Nearly 200 turned out and a very enjoyable and productive networking evening ensued. Our thanks to our International Committee and to colleagues at the Law Society for organising this.

At that reception I spoke of the links that bind international lawyers, in particular our proud independence and the importance of our ethical values and the stringent rules and disciplinary procedures which apply to each of us. These issues were topics addressed by our Society in its

response to the Clementi review, and again our thanks to the Professional Matters Committee for all of the work they did in preparing this.

By the time you receive this, Peter Williamson (who has done so much for our Society) will have stood down as President of the National Law Society. He has not forgotten us, having found time in the course of a most busy year to attend some of our committee meetings and to maintain touch with a number of Westminster & Holborn members. We have very good reason to be proud of Peter and the contribution he has made to our profession. I was very pleased to learn that he has been re-elected to the Council unopposed, and that he has agreed to serve on the Finance & Resources Board. He will be an enormous support to his successors as President.

As Peter leaves the main board, Westminster & Holborn obtains a replacement representative by the election of Sue Nelson as a new member. Our best wishes to her and our knowledge that she will continue searchingly to question, and represent her constituents, and the wider constituency of solicitors, in the management of the Law Society.

But the management of the Law Society is not our only interest by any means and it was with huge pleasure that I learned of the very deserved award to our Senior Vice-President Jeffrey Forrest of the first Lifetime Achievement Award for pro bono work. My only reservation is the thought that for such a youthful man it was considered time to make an award

reflecting the work done in his lifetime: but he has done more than many of us would manage were we to be cats and blessed with nine lives. He is modest and unassuming (most of the time) and many may be unaware of the work he has done for the benefit of the community and less well-off, from when he was newly qualified up to date, within the voluntary sector and without charge in his own practice. The Society should be very proud that next year it will be led by a solicitor of this calibre.

DIARY 2004

SEPTEMBER

- 23 Lecture: Avoiding and Handling Service Complaints
- 29 Committee meeting followed by dinner

OCTOBER

- 14 Lecture: European Litigation
- 20 Society's A G M
- 27 Committee meeting

NOVEMBER

- 11 Lecture: Employment Tribunals
- 24 Committee meeting followed by dinner

DECEMBER

- 9 Lecture: Planning Law Update

Any member who would like to attend the dinners after Committee meetings would be very welcome. Please contact the Administrator not later than the Friday beforehand.

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REPORT ON INTERNATIONAL RECEPTION



STEPHEN RAYNER

Champagne, nibbles and a taste of international legal luminaries were the order of the evening. The occasion was the annual International Reception held at the Law Society on 1st July. The Reception was originally given by the former Holborn Law Society principally for foreign lawyers practising in London, then adopted by CWHLS. Then, some four years ago, over an informal discussion at a Law Society International Issues committee meeting, I learned from the Head of International that the Law Society would like to copy what we were doing. My suggestion that it should be a joint venture to avoid overlap and to obtain economy of scale, was accepted, and this year was the third Reception given jointly by the Law Society and CWHLS – it was also the best ever in terms of attendance and otherwise.

The long list of guests included, not only foreign lawyers practising in London, but representatives from the commercial sections of British Embassies and High Commissions in 17 jurisdictions, Herr Jan Fiedler, the Vice President of the Berlin Bar with whom we are twinned and who made the journey specially for the occasion, as well as members of the legal press, our own members and other guests.

It is normal at the International Reception for there to be a keynote speaker, and hitherto, they have all been home grown. On this occasion, we had a distinguished visitor from Canada, namely Frank Marrocco QC, who is the Treasurer of the Law Society of Upper Canada. This needs some translating. The Treasurer is the equivalent of the President, and the Law Society of Upper Canada in fact covers Ontario and in particular Toronto, the main commercial city.

Although Frank Marrocco did not speak at any length about his Society's particular achievement, it is worth nothing that they challenged in three

Provincial courts in Canada the application of money laundering regulations to his profession. They were awarded injunctions in each of the three cases, as a result of which the Federal Government backed off and the Canadian lawyers succeeded where we have all failed. Quite an achievement. Possibly one of the reasons is that in Canada the concept of the supremacy of Parliament (or, in our case, Brussels) is not one that the courts recognise.

Frank Marrocco also stated that Canadian lawyers were recognising the need to face international competition and requirements from their globally active clients. To this end, lawyers in any Province could now practise in any other Province. Furthermore, he stated that they were prepared to open Canada, or at least Upper Canada, to foreign lawyers who wished to practice there subject to "reasonable" restrictions, which were not defined. He went on to say that Canada had learned from the United Kingdom systems originally, and now realised that it was no longer possible to remain insular, and that international progress was being made.

To prove that two Eds are better than one, we then had the benefit of short addresses by Edward Nally, Vice President of the Law Society, and our own President, Edward Solomons.

The Vice President was pleased to co-host a celebration of the contribution that international lawyers make to our legal life in England and Wales. He said that international relations teach humility. Although we boast about the age and long-standing of the Law Society, the Law Society of Upper Canada is much older, having been founded in 1797, whilst we had to wait until 1831 to set up our own professional body. Although the Canadians had originally modelled themselves on us, their subsequent

development was such that we carefully and shamelessly borrowed from them. The roots of the Law Society's approach to education and training can be detected in the system in Ontario, which pre-dates ours. Thankfully, both we and the Canadians have moved on from the Canadians' initial entrance tests, which required applicants to translate extracts from Cicero! The Vice President also mentioned how differences of opinion in Council were currently settled, and they have not yet taken the sort of extreme dispute settlement route followed by one Canadian lawyer who in 1800 shot dead the founding Treasurer of the Law Society of Upper Canada in a duel.

The CWHLS President wound up proceedings. He underlined how much there was to divide international lawyers in differing legal systems, but how much mutual understanding could benefit us all. He stated that we as lawyers are the third constitutional pillar in our societies and increasingly we are the third pillar in the international world order. This, in spite of the fact that the general public does not always agree, as a result of which lawyers are often derided in humour. He went on to ask what one would call 5,000 lawyers at the bottom of the ocean. The answer to which is "a start".

The President ended by saying that the overriding feature that binds us together is our independence and shared belief in professional ethical values. We are the most regulated of professions, as a result of which we can be relied upon and be trusted. He emphasised the need to support fellow lawyers in countries where those values and their critical independence were being attacked by governments, and that we should remember always the contribution we make to civilisation and society, as much if not more in the international arena as domestically.

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY

REVENUE COMMITTEE

Ms Angela Roach,
Revenue Policy, Cross Cutting Policy,
Room S23, West Wing, Somerset House
Strand, London WC2R 1LB

3 June 2004

Dear Ms Roach

Draft Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004

The Society's Revenue Committee has considered the proposed scope of the derogation from the very wide potential scope of the statutory concept of promoter contained in these draft regulations.

While it is appreciated that the Government and the Commissioners would wish to have the widest possible compass to the statutory concept at this stage, it is felt that it would be possible to narrow this in the first instance on a trial basis through these regulations.

In arriving at this view, the Committee has taken into account both:

- (i) the very short time scale envisaged; and
- (ii) the degree of knowledge of the totality required to comply with the draft Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004, as well as:
- (iii) the degree of commercial understanding of the totality involved in, inter alia, the reasons given in the Explanatory Notes for double benefit leasing being on one side of the line and pure vanilla finance leasing on the other.

The reality is that some of those within the statutory concept are neither:

- (a) going to be aware whether the documentation last seen by them has in fact been used unamended – as in particular we have in mind Counsel, who do not of course have direct contact with the public and have in the past (for instance by Rossminster) been treated on a bus stop basis, i.e. first the promoter goes to Mr A who finds some lacuna, this is papered over and sent to Mr B who finds another, this is “corrected” and sent to Mr C, and so on; nor
- (b) likely to be in a position to know that the five day period has started – in reality only the commissioning accountant or IFA is going to know this; nor
- (c) perhaps be aware of sufficient either:
 - (i) to be able to supply the particulars required by the regulations; or
 - (ii) to be able to judge whether an objective tax avoidance aspect predominates over the economic reality on to which it has been tacked.

Our principal concern here is for non-tax professionals who have been asked to provide or advise on component parts, such as conveyancers, company lawyers, employment lawyers, insurance brokers (or perhaps even companies) and banks.

As to these people:

[A] Barristers

Insofar as they are practising as such, they cannot offer their services except through designated professions (usually but not exclusively solicitors).

It follows that not only

- will aspect (a) above be relevant, but also,
- inevitably, (b) and
- perhaps (c) – since non-tax Counsel are sometimes instructed for discrete parts of a totality relating to the general law.

Moreover, as those instructing them will, inevitably,

- know more than them and,
 - in particular, what use has been made of the advice given, it is far from clear why the disclosure obligation (at any rate within the timescale envisaged) should not be confined to those instructing them,
 - provided that the Instructions have been issued from a genuine UK business address of the instructing professional.
- The Committee is concerned that, unless the statutory obligations are mitigated in this way, at least initially, all solicitors instructing barristers (and not just those in Tax Chambers) will be faced with “full disclosure” undertakings.
- Already the advent of POCA has resulted in certain declarations having to be made when Counsel are instructed.
 - While those do not create difficulties (as opposed to delay and administrative cost), having to take the responsibility of evaluating something which is not in one's normal line of business would be a very different obligation.

[B] other professionals

Similar relationships to those between Counsel and the relevant instructing professional also arise outside the confines of the Bar, such as where

- documentation has to be provided which is outside the professional capacity of that particular professional, especially in relation to companies;
- aspects cannot be addressed except through a FSA-authorized person; or
- work, such as conveyancing, cannot be done otherwise than by the professions authorised by Parliament.

Those providing such specialist input are:

- very likely to be in the same position as the Counsel in (a) above;
- almost inevitably not know when the five day period has started; and
- very unlikely to be conversant with the fiscal aspects and accordingly neither:
 - in a position to explain how it works; or
 - judge the extent to which the avoidance element is commercially essential.

It seems to us very likely that professional firms who provide advice on only limited aspects of transactions (and such relationships are now a significant percentage of total instructions) may need to change their terms of business to oblige those instructing them to declare if the transaction to which they are contributing is a potentially notifiable transaction.

But even if they did, they would not necessarily be in a position to judge, from the information in their possession, upon which side of the line it fell. The result would be likely to be the submission of protective notifications based (inevitably) upon an incomplete knowledge and understanding of the whole, resulting in either

- a larger number of staff than really needed having to be employed by the Commissioners; or
- the same scheme being given a multiplicity of reference numbers, itself giving rise to considerable confusion; or
- both.

The Committee considers that it would be far better if such professional participants were dealt with, initially, on the same basis as proposed for Counsel.

[C] The equivalent circumstances would be those in which the first approach was through the master mind, who had subsequently been either the addressee of all material correspondence or copied in it all.

Furthermore, it should be noted, in the context of the prospect of multiple reporting, that, on the basis of the Commissioners' published view of the legal professional privilege exemption, any indication as to the client or source of instructions would have to be removed from the paperwork. This would, inevitably, create considerable scope for official multiplication of registration numbers for the same arrangement.

Yours sincerely

W J de Souza
Chairman

REVENUE COMMITTEE – PRE-OWNED ASSETS

JEREMY DE SOUZA



The 42 amendments to Schedule 15 put down by the Government in Committee answer a large number, although not all, of the concerns expressed by professional bodies. Uncertainties still remain and these will need to be clarified.

But it is important to realise quite how far the scheme at present before Parliament differs from that unveiled on 10 December. Instead of having a year to extract themselves as best they can, donors are to be given the option to cancel the gift without the consent of the donee. But what has happened is not to be regarded as a nullity for any purposes other than inheritance tax. In particular, there will be double taxation on the capital gains front since the Government has not agreed to allow the donee (who now has to pay inheritance tax on the value at death) to have the revaluation for capital gains tax which would have occurred had the gift never been made.

Although this will not be the case for the clientele of many members of the Society, in the country at large one end product of this legislation should be beneficial. Giving away one's home never was a course of action which traditional practitioners were keen to recommend. The pending income tax charge will, hopefully, have cut the ground from beneath outsiders who have been pressuring the next generation to agitate for this.

KOKOTT'S CORNER

This Advocate-General has produced another Opinion, in C-242/03 [Weidert and Paulus] which might have far reaching consequences if adopted by the ECJ. The Chancellor seems likely to be faced with the option of extending EIS to companies in all member states or, which seems more likely, abolishing it altogether. For those who wish to participate in such relief, it may be advisable to subscribe earlier than usual.

SDLT COMPLIANCE

Practitioners have been experiencing considerable difficulty in obtaining rulings which are consistent with those obtained by their competitors. This causes uncertainty for the client and embarrassment for the adviser.

I have been shown two letters issued by Somerset House on 8 March to a barrister and a solicitor respectively saying that tax is payable when a property is assented subject to a charge to a nil rate band discretionary trust. This was confirmed to the former on 26 April. Yet I have also seen one dated 6 April from Manchester to a well-known training provider (for such use) saying that it is not.

Also the subject of confusion is the position in relation to landlords' costs indemnities on the grant of a lease. The Law Society's website records a Revenue response of 16 January to the effect that they are taxable as

if a premium, but, on a visit to Somerset House on 15 May, I was told by the signatory that consideration was being given to the possibility that Finance Act 2003, Schedule 17A, paragraph 10(1)(c) meant that it was not.

TAX AVOIDANCE REGISTRATION

In the April/May issue, I referred to the Government's proposals for the registration of tax schemes. Draft regulations have now been made available. Although, initially, the new requirements will only apply to employee share schemes and quasi-loans for businesses, it is to be expected that, over the years, they will be extended more widely. Concern has been expressed that, with almost anybody involved on the periphery being equally liable to both declare how the scheme works and to do so within five days of it first being shown to a client, problems will arise for professional advisers concerned only with one part of it (and very often not on the tax side either). The Inland Revenue's consultation has therefore been responded to in the terms copied on p.4. Since that date, there has been some movement, with the Paymaster-General making it known on 22 June that professionals dealing with the non-tax aspects of a scheme will not be within the disclosure regime and that the financial products test will be revised and finance leasing included in a list of non-disclosable "products".

THE CLEMENTI REVIEW

OF THE REGULATORY FRAMEWORK FOR LEGAL SERVICES
IN ENGLAND AND WALES

URSULA TAYLOR

The Society responded to the consultation paper, and its response can be seen on the Society's website: www.cwhls.org.uk. In brief, the points made by the Society were as follows.

The consultation paper addressed matters of broad principle and was vulnerable to misinterpretation, especially as to the practical consequences. It was therefore vital that there be further consultation on the detail of any proposals before they were finalised.

The involvement of the legal profession in its own regulation was crucial to any effective quality supervision, particularly if standards of advice and service were to be maintained. We therefore preferred option B+ as the way forward.

An important omission from the consultation paper was that it did not seek

to define legal services, and therefore did not provide a solution to the question of regulatory gaps. Any Legal Services Authority or Board should determine the range of legal services for the purpose of regulation. The issue of what comes within the definition of legal services and therefore what is regulated is of great importance, both for practitioners in the legal professions and for the public. The Regulator would need to address the question of what protections are needed for the public, and whether the benefits of lower costs in any given area of work outweigh the disbenefits of lack of independent quality control.

The standards set and maintained by the Law Society for solicitors are at a high level, with regulatory powers vested in the Master of the Rolls and the Lord Chancellor. No

replacement regulatory system should have the effect of tying the legal professions to government or Parliament, but must guarantee the independence of practice of the law and protect the interests of the individual. As a profession we are more likely to be in a position of defending the rights of an individual against government than any other group, and this freedom must be maintained.

We drew attention to the important role played by the Law Society in maintaining the Roll of Solicitors and associated records; the issue of practising certificates and the imposition of, variation of and release from conditions on practice; the monitoring of the provision of indemnity and the back up in the form of a compensation fund.

PRO BONO WEEK – 7-11 JUNE 2004



The Wig and Pen Prize Winner, Clare Norris, with David Wyld, Chairman of the City of London Law Society, and Edward Solomons, President of CWHLS.



John Mortimer with Judy and Jeffrey Forrest



The Wig and Pen Prize Winner, Clare Norris with Edward Solomons, The Master of the Rolls, and David Wyld.



Jeffrey Forrest, winner of the Solicitors Pro Bono Group's award for a Lifetime Contribution by an Individual

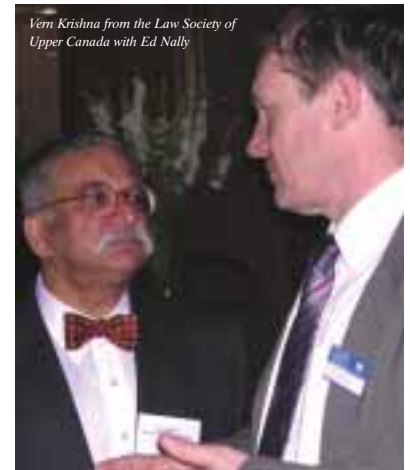
INTERNATIONAL RECEPTION – 1 JULY



Principal Guest, Frank Marrocco, Treasurer of the Law Society of Upper Canada



Al-Mukhtar Sabah, President of the Arab Lawyers Association with Evelyne Gilvary



Vern Krishna from the Law Society of Upper Canada with Ed Nally



Jann Friedler, Vice President of the Berlin Bar, Stephen Rayner, Chairman of the Society's International Committee, and Christian Wisskirchen.



John Davies and David Morgan



Nigel Mayhew and Michael Franks



Edward Solomons and Jeffrey Forrest

THE LEGAL CHARITIES GARDEN PARTY – 16 JUNE 2004



Tim Drabble, Jacqui and Edward Solomons



Robert Venables and David Long



Peter Williamson



Eirian and Norman Bonham Carter and Fay Landau



Nick Lorimer



Edward Solomons, Jeffrey Forrest and Charles Fraser



David Morgan, James Furber and Fraser Whitehead



Arthur Weir



Jacqui Solomons and Carolyn Kirby



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HIS HONOUR JUDGE PAUL COLLINS CBE

SENIOR RESIDENT JUDGE

DESIGNATED CIVIL JUDGE FOR LONDON GROUP OF COUNTY COURTS

I am very grateful to your President for offering me some space in The Report for the Central London Civil Justice Centre and the London Group of County Courts. All readers of The Report will have their own stories from the front line about things that have gone amiss in their dealings with the courts but I hope that readers will set off those experiences against the large majority of business that is despatched by the London county courts without incident. Everyone will know that Her Majesty's Court Service (as it is now to be known) works within the financial straitjacket of government policy for the whole cost of the civil justice system (including a pro rata proportion of judicial salaries and soon to include the running costs of the new Supreme Court also) to be met from court fees. Since government policy is also to reduce the volume of civil litigation by 12% by 2006 from 2003 levels and government will have to continue increasing court fees to cover the consequent shortfall in revenue, a vicious circle may be envisaged of ever declining litigation and ever increasing fees. The worst case (although to the Treasury this might seem the best case) is for the public civil justice system to be reduced to the bare minimum calculated not to outrage decency. Against this background readers will appreciate the heroic efforts by court managers to provide an acceptable level of service with a staff base which is inevitably volatile given pay levels and a grossly inadequate IT infrastructure which will only be mildly relieved by programmes being implemented currently.

What may be expected in the near future? The new Unified Administration, bringing together Crown, County and Magistrates Courts with the High Court should produce a much needed rationalisation of the court estate in London, with savings which might be beneficially used elsewhere. Rumours are already appearing which involve the Central London Civil Justice Centre, the Commercial Court and the Principal Registry of the Family Division, though moves would undoubtedly take some years to effect. A change involving Shoreditch and, perhaps, Clerkenwell County Courts will be forced soon because of lease considerations. This might be a spur for other, linked, rationalisations. There is a powerful movement in the direction of bringing together the family work of county and magistrates' courts where possible, which has obvious implications for the county courts with family jurisdiction. The newly appointed Regional Director for London Nicola Bastin, who comes from a non Court Service background, is well aware of the constraints on the civil justice system in London and is committed to doing her best to maintain and improve levels of resourcing.

It is not boastful to point out that whatever the mismatch between the levels of service City and West End solicitors can provide for paying clients and levels of service that can be provided by public service, the quality of decision making at District and Circuit judge levels remains enviably high. This is why we retain your custom through thick and thin and I hope will continue to deserve your confidence. The specialist Mercantile Court at Central London Civil Justice Centre is a resource for the whole of South East England which should be more widely used. Judge Brian Knight QC has been joined by Judge David Mackie CBE QC, head of litigation at Allen & Overy for many years. Solicitors might wish to think twice before litigating in the Commercial Court when there is an excellent alternative opposite Regent's Park! We shall be looking at ways of improving and modernising the support for our Mercantile Court. The court also has a specialist Chancery list with two District judges, District Judges Langley and Lightman handling this work and two specialist Circuit judges sitting every day. District Judges Price and Fine specialise in clinical negligence work, a new focus which has been welcomed among those practising in this field. Meanwhile Circuit and District judges at Central London and across the group continue to deal with your litigation, of every kind, shape and size with a dedication and competence reflected in the small number of appeals.

I do not wish to say anything about mediation in this piece; that will warrant an article of its own. But I conclude by expressing the hope that the London Group of County Courts and its manager, Linda Lennon, will continue to attempt to provide you with the service you are entitled to. Please let me know of any serious problems you encounter or any constructive suggestions you may have for improvements.

ELECTIONS

ELECTION OF OFFICERS

Would you like to be an officer of this Society?

Under the Rules of the Society the officers, including the Junior Vice President, are chosen by the Committee at the last meeting of the year – this year on 29 September 2004. If more than one person stands, there will be an election at the meeting. The officers are the President, Vice

President and Junior Vice President, the Honorary Secretary and Treasurer (each with a deputy) and the Editor of the Report.

All the Presidential team are on the Committee of the Society. The Vice Presidents assist the President in his duties during the year, and it is expected that Vice Presidents will use the experience gained in these 2 years to prepare for the role of President.

If you would like to put your name forward, please write to me at 25 Rotherwick Road, London NW11 7DG or DX 33801 Golders Green before 1 September 2004 confirming that you are a member of the Society and that you will take up the position, if elected.

Ursula Taylor,
Honorary Secretary

NOMINATION OF COMMITTEE MEMBERS

Elections take place at the Society's Annual General Meeting to be held on Wednesday, 20 October. Nominations must be lodged with the Honorary Secretary by 1 September.

These are to be made in writing, signed by two members of the Society and are to be accompanied by the written undertaking of the candidates to serve if elected.

WE (Name) _____

(Address) _____

Signature of proposer _____

and (Name) _____

(Address) _____

Signature of seconder _____

HEREBY NOMINATE:

(Name) _____

(Address) _____

FOR ELECTION AS A COMMITTEE MEMBER

I hereby undertake to serve as a Committee member

Signature of nominee _____ Date _____

Please return to the Honorary Secretary at 25 Rotherwick Road, London NW11 7DG or DX 33801 Golders Green

ANNUAL GENERAL MEETING

The third Annual General Meeting of the City of Westminster and Holborn Law Society will be held at
The Law Society's Hall, 113 Chancery Lane, London WC2
at 6.15 pm on Wednesday, 20th October 2004

THE MEETING WILL BE FOLLOWED BY A RECEPTION AND DINNER, DETAILS OF WHICH
WILL BE GIVEN IN THE NEXT ISSUE

MANAGING THE WHOLE FIRM'S RISK

THIS COLUMN WAS PREPARED BY **AFP CONSULTING**, A DIVISION OF **ALEXANDER FORBES RISK SERVICES UK LTD.** A MEMBER OF THE GENERAL INSURANCE STANDARDS COUNCIL.



The culture of a law firm will impact on the level of risk exposure, and risk management is as much a matter of getting the culture right as of implementing a particular risk management strategy. However, firms frequently have cultures which are averse to risk management and one of the most commonly observed features of this is the fragmented firm. It is common across all types of business from large to small firm. It is where separate partners or departments operate within their own fiefdoms, paying little attention to firm-wide strategies and justifying this on the grounds that their work is of such a specialised or distinct nature, that general policies for running the business do not apply to them.

A couple of examples will serve to illustrate this mind set. A firm recently introduced anti-money laundering procedures for identification across the firm to include relevant business and other business, considering that identification of clients was a good risk management policy regardless of the strict requirements of the Money Laundering Regulations 2003. However one department dealing with international litigation objected strongly to its being included in the new regime. Its

clients frequently required anonymity and used various vehicles and devices such as off-shore companies to achieve this. It was felt, because this was habitual in this sector, an exception should be made to the rule for identification. The lawyers in the litigation department did not feel a need to concern themselves with the reasons why anonymity was standard practice in their field. What they also failed to consider was whether this type of client or risk was acceptable to the other partners in the firm; what they saw was a threat to their sector alone.

By contrast, consider the firm with a bulk conveyancing business in trouble through lack of investment and poorly trained staff. This firm also offered a high quality private client service with bespoke conveyancing for high net worth clients. Premiums were rising dramatically because of the claims and complaints from the bulk business, and everyone recognised the problems, but no one from the private client sector would step in temporarily to help out the bulk business, preferring to see claims rise and the reputation of the firm suffer than to be associated with the lower end of the conveyancing market.

Both these different examples illustrate lawyers treating their own work as of greater importance than the business of the firm as a whole. In both cases the reputation and commercial success of the whole business stood at risk but the staff were unable to take into account the bigger picture.

This is not a question of blaming individual members of staff; it is a matter of getting the culture right so staff feel rewarded for their efforts when they put the firm's interests first.

Risk management is therefore intimately linked to the firm's culture: it is not a separate add-on to the business, but at the heart of it. So all those cultural aspects which make the firm a commercial success will contribute to successful risk management; good leadership which gives the staff a strong sense of direction and purpose; team development which helps people to identify with others and support their efforts; and a good HR policy to reward the efforts of those who make the most contribution to the whole business. No risk strategy can succeed if the firm's culture is ignored.

PRO BONO WEEK 2004

HANNAH WISKIN

PRO BONO BUS

Over 30 events were organised across England and Wales to publicise the third national pro bono week, from 7 to 11 June, but surely the most innovative and eye-catching was the Pro Bono Bus full of solicitors eager to provide training sessions and legal advice as it toured the country. The brainchild of a Law Society employee the bus was a showcase for the pro bono work of the legal profession and was praised by the Attorney General who "got on board" at its launch in Trafalgar Square.

WIG AND PEN PRIZE

Life as a young solicitor in a busy practice does not often lend itself to volunteering at the end of the day, which is why those who do commit themselves to regular pro bono work should be celebrated all the more. This is the aim of the Society's Wig and Pen Prize and the winner, Clare Norris of

Beachcroft Wansbrough in London, is testament to this objective. Described by Edward Solomons as an "outstanding individual who has impressed the judges with her dynamism, commitment, energy and enthusiasm for pro bono work", Clare won the prize for her work for Wandsworth and Merton Law Centre and for establishing not only its Tooting advice surgery but also a surgery based in the Royal Association for Deaf People, to whom her prize award of £1000 is to be paid. The presentation was made in conjunction with the YSG Pro Bono Awards at the Law Society on the evening of 7 June, which heralded the opening of national pro bono week.

LIFETIME ACHIEVEMENT AWARD FOR SENIOR VICE-PRESIDENT

Later that week saw the Law Society Common Room packed again, this time

for the Solicitors Pro Bono Group Dinner and Awards. Aimed at the pro bono commitment demonstrated by firms rather than individuals, an exception was made this year with the introduction of the Lifetime Achievement Award. The recipient was the Society's own Senior Vice President, Jeffrey Forrest in recognition of his involvement in pro bono work stretching back to his student days in the 1960s when he attended advice sessions in Islington known as the "Poor Man's Lawyer". More recently Jeffrey has advised at the City of London CAB and he is currently Honorary Legal Adviser at the Pimlico CAB. Jeffrey, typically, accepted his award without fuss: "I accepted on behalf of many solicitors who do pro bono work without expecting recognition," he told a reporter afterwards. His words could not have described better the spirit of pro bono week.

PETER'S LAST COUNCIL MEETING AS PRESIDENT

(REPORT ON JULY COUNCIL MEETING)

RICHARD HENCHLEY



This was Peter Williamson's last council meeting as President. He has discharged the office with charm and distinction. How the Society regulates the profession has dominated all else during the year - initially by appointing its own Governance Review Group and then with the appointment by the Government of Sir David Clementi to "Review the Framework of Legal Services". The response has been intellectually honest.

During Peter's year of office Council Debates have been cordial, objective and disciplined. Difficult points of procedure have been addressed and resolved. Relationships with stakeholders have been constructive. A huge amount of business has been despatched. He has also found time to promote the interests of the profession internationally.

Its association with Peter distinguishes our Society.

COUNCIL ELECTIONS

Several were announced:

Charles Fraser re-elected to represent Westminster

Peter Williamson re-elected to represent Holborn

Michael Franks to represent West London (Michael is a member of our committee).

WITHIN THE COUNCIL

Sue Nelson to the Main Board

Peter Williamson to Chair the International Issues Committee.

THE SOCIETY'S WEBSITE

It looks better and should be significantly more responsive. In time its functionality should enable the Society to provide

tailored information to members who want it.

THE LEGAL SERVICES OMBUDSMAN'S ANNUAL REPORT

It criticizes the Society's performance in complaints' handling from which she is the appeal. The Senior Management Team is to prepare a response. The author of this report has suggested that the Council's Audit Committee should also review the Ombudsman's report. Whatever the report may say, there is no doubt that the Society now deals with complaints quicker and better and more is to come, but it takes time. The London office in Holborn has helped significantly (as one would expect!)

THE NEW RULES ON CONFIDENTIALITY AND CONFLICT OF INTEREST

The Council approved new rules. They are written in plain English and are accompanied by guidance. They provide a definition of conflict and are consistent with international standards. Most of the case law is concerned with deciding whether confidential information has been adequately protected. These cases usually involve "information barriers" and the extent to which the court believes them to be secure. The new rules are intended to permit clients to share the services of a single firm of solicitors in the interests of convenience and economy and to ensure that clients receive impartial and independent advice untainted by conflicting loyalties or interests on the part of the solicitor. They will now be submitted to the Master of the Rolls for approval.

EQUALITY AND DIVERSITY IN THE SOCIETY

Lord Ouseley is a former chair of the Commission for Racial Equality and has been conducting an evaluation for the last eighteen months. The Society has collected information, developed criteria, addressed rule-making and now created an action plan. This contains measurable targets and also expects the policies adopted by the Society to be applicable to those with whom it contracts. There will continue to be external input.

PRACTISING CERTIFICATE FEE

The annual fee will increase by 5% to £830. The increase is mainly caused by the need to offset some of the fall in the value of the pension fund's investments and additional demands of the Legal Services Ombudsman. There will be a reduced rate of £415 for those whose annual income is less than £20,000. The Finance Board is to investigate income banding.

COMPENSATION FUND CONTRIBUTIONS

The contribution rate is to be reduced to £700 from £824; there have been no huge defaults in 2003 and only one intervention leading to a payment of over £1m. The Finance Board will consider the merits of a review of funding by a firm of actuaries.

GOVERNANCE REVIEW GROUP

There is to be a discussion of Governance issues at the September Council meeting. Members of the Group are working with representatives of the Society's Boards on the Group's original proposals in anticipation of the discussion.

NEW MEMBERS

Silvercoin & Co: Mrs Lydia Srebernjak

William Sturges & Co: Mrs S M Collins,
Miss Elizabeth Tear

Thomas Eggar: Jean-Paul da Costa

**Department for Work
& Pensions/Depart
of Health:**

A A Barham

Miss Chi Nwabuokei

ASSOCIATE MEMBERSHIP -

Field Fisher Waterhouse: Mark Lewis

TRAINEES:

Carter Lemon Camerons: Miss Kelly Fleming

Lee & Pembertons: Miss C P Williamson

J A Forrest & Co: Miss Y M Butt

Silvercoin & Co: Ms Montserrat Casadevall

FROM OUR RHONE CORRESPONDENT

JEFFREY FORREST REPORTS FROM THE FBE IN LYON JEFFREY FORREST



They say that if York had been chosen to be England's capital, instead of the southern town of London, the history of these islands would have been different. Similarly, if the southern Gallic capital of Lyon had been chosen instead of Paris, the history of France would have been different too. Lyon is now more than ever in a strategic position at the crossroads of the enlarged Europe and was a fitting place for this year's main meeting of the FBE, on 28th and 29th May.

The principal topic of this year's FBE meeting was chosen some time ago but it could not have been more topical - the future of the legal profession in Europe and, in particular, the proposals for the profession's liberalisation. Both the "C" word and the "M" word were much heard. "C", of course, for the Clementi review and "M" for Commissioner Mario Monti's draft proposals for the liberalisation of professional services from the Competition Directorate of the European Commission.

The same issues faced by English lawyers, initiated by our government, not least the issues in the Clementi review, are faced by all EC lawyers, by Commissioner Monti's proposals. For a clear exposition of the way of thinking of Commissioner Monti and the Competition Directorate, readers are recommended to view the text of a speech he gave in Berlin in March

2003.* In that speech, he suggested that professional services constitute a large part of the EU economy, with a knock-on effect on the competitiveness of a wide range of other sectors, and that highly restrictive regulation in the professions might be having a negative impact on employment and growth generally.

Following a brief subsequent consultation process on lawyers' professional rules, at a conference in Brussels in October 2003, Mr Monti formally announced his intention to issue liberalisation proposals, saying that he would be making a comparison of the regulatory rules in different EU states, in order to discover the minimum level of regulation needed to safeguard the public interest.**

David Morgan gave the FBE delegates a lucid exposition of the state of affairs in England & Wales and indicated the political agenda behind the Clementi Review. Other delegates from Italy, Germany, Spain, Switzerland and France reported on the current position of the profession in their own countries. There are marked differences between states as to the extent in which rights to practise legal disciplines are regulated but the various bars share a common awareness there will always be a presumption that arguments in favour of work being provided only by regulated professions are special pleading by professionals, seeking to

preserve their monopolistic rights.

In other business, the FBE passed a resolution on Legal Aid. "Legal Aid" may not be a concept with an identical meaning in every translation, but the resolution, as passed, provided that there should be a uniform approach to access and funding for justice, for all EU citizens.

A resolution calling for fair and open justice for the Guantanamo detainees, proposed by Mirko Ros (of the Zurich Bar) and seconded by David Morgan (of CWHLS) was passed unanimously. One might wonder cynically what effect it will have upon Messrs Bush and Rumsfeld. But a few days later, during Pro Bono Week, having heard on the same subject from Clive Stafford-Smith, the tireless fighter for justice for Death Row and Guantanamo detainees, one was reminded that there are times when lawyers must stand up and be counted. The unanimous resolution of 145 European bars, calling for justice, is not to be ignored.

The meeting ended with the election of the FBE's new President for 2004/2005, Ulrich Scharf, of Celle (near Hanover), Germany.

Details of the FBE's activities can be found on its website: www.fbe.org - although the site could do with some updating!

*http://europa.eu.int/comm/competition/speeches/text/sp2003_007_en.pdf
 **http://europa.eu.int/comm/competition/liberalization/conference/mmonti_final_speech_cabinet.pdf

AUTUMN LECTURES

AVOIDING AND HANDLING SERVICE COMPLAINTS: MIKE FIRTH - 23 SEPTEMBER

Are you happy to pay £840 costs for every complaint that gets to the OSS? Are you aware of the common factors that give rise to complaints? Are you aware of all the things you must avoid if you are to have a chance of dealing with a complaint in a way the client will find acceptable? Unless your answer to all those questions is "YES", then this lecture is a "must" for you.

EUROPEAN LITIGATION: TBC - 14 OCTOBER

EMPLOYMENT TRIBUNALS: JOHN WARREN - 11 NOVEMBER

PLANNING LAW UPDATE: MARTIN EDWARDS - 9 DECEMBER

These lectures will be held at the offices of Lawrence Graham, 190 Strand, WC2. They begin at 6.15 pm with a drink available from 6.00 pm. One hour of CPD is available (ref: JC/CWHLS) - please give your roll number when attending.

TO: Mrs E J Beesley, CWHLS, 25 Rotherwick Road, London NW11 7DG DX 33801 Golders Green

Please send tickets for the following lectures: £20 per ticket for members and £30 per ticket for non members

	Member	Non member
AVOIDING AND HANDLING SERVICE COMPLAINTS
EUROPEAN LITIGATION
EMPLOYMENT TRIBUNALS
PLANNING LAW UPDATE

I enclose a cheque for £ payable to the City of Westminster and Holborn Law Society

Name

Name of Firm

Address

..... DX

Signature Date