



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

NO.33 JANUARY/FEBRUARY 2005

THE PRESIDENT'S COLUMN



JEFFREY FORREST

No man is an island entire of itself; every man is a peecce of the continent, a part of the maine; if a clod be washed away by the sea, Europe is the lesse, as well as if a promontorie were, as well as any manner of thy friends or of thine own were; any man's death diminishes me, because I am involved in mankind. And therefore never send to know for whom the bell tolls; it tolls for thee.

Never were John Donne's words truer than when the huge underwater earthquake and the ensuing tsunami devastated so many coastal areas of the Indian Ocean on 26 December. Those of us in the comfort and safety of Europe could relate to the tragedy because so many of our own people were among the victims. Satellites and the internet mean that we can be instantly aware of events wherever they occur and ordinary people were much quicker than governments to understand and react to the scale of the tragedy. The financial generosity displayed was an inspiring demonstration of human solidarity and a reminder that we really do inhabit a global village.

There may be other ways in which we, as lawyers, can help. The Solicitors Pro Bono Group received various requests for legal help after 9/11 and, this time, they were quick to put out a call for those willing to put their names on a list of available advisers. If you can offer your help, please e-mail volunteer@probonogroup.org.uk with your contact information and details of your particular expertise.

As expected, Sir David Clementi delivered his Report shortly before Christmas and the profession has since been digesting his findings and recommendations. Clementi has proposed that the Law Society will retain day to day regulation, overseen by a Legal Services Board. The Law Society's initial stance was to welcome this change. Ed Nally, the President, was quoted as saying: "We have no problem with independent scrutiny." Clementi proposes that complaints should be divided between the Office for the Supervision of Solicitors (last year renamed the Consumer

Complaints Service), and a new body, the Office for Legal Complaints. As anticipated, Clementi has recommended the ability to establish Legal Disciplinary Practices, multi-disciplinary bodies comprising accountants, barristers, lawyers and other professionals. The government has indicated its intention to act on the Report's recommendations and, as ever, the devil will be in the detail. This Society, in particular its Professional Matters Committee, will be looking carefully at that detail when it is published.

On Tuesday 22 February we are organising an event, jointly with the Greater London Regional Office of the Law Society, entitled "*Pro Bono: Who Really Benefits?*" Details are on page 6 of this Report. This follows a very well attended social evening in December, which confirmed that there is a great deal of enthusiasm among trainees and young solicitors in Westminster and Holborn for pro bono work and it is for us all to identify and indeed to create the opportunities. It is also up to partners to find time for members of their firms to undertake pro bono work and to give them encouragement. Just in case you cannot make it to the event on 22 February, I will give you now the answer to the question "*Pro Bono: Who Really Benefits?*" We all do.

The Society's first CPD lecture of 2005 was given by Michael Burgess, HM Coroner for Surrey and Coroner to the Royal Household. He gave a fascinating and comprehensive talk on the work of coroners and the changes that are happening. The next talk will be a matrimonial lecture on 16 February by Nicholas Francis QC, the head of 29 Bedford Row Chambers. He is one of the crème of family barristers and his lecture should not be missed.

Talking of unmissable events, the official start of spring this year will be on Tuesday 1 March, the date of the Society's Annual Dinner. Those who attended last year's very successful dinner in Middle Temple Hall will be pleased to hear that we are

going back there this year. It is a magnificent historic setting for any legal event and this year's dinner should be a memorable one. Among the guests will be the Master of the Rolls, the DPP and the Lord Mayor of Westminster. The main speaker will be Tom Bower. He trained as a barrister but has worked mainly in television, as a documentarist and as a writer. In recent years he has written biographies of Maxwell, Branson, Fayed and, most recently, Gordon Brown. He should prove to be a fascinating speaker. If you haven't already booked for the Dinner, there is a booking form in this Report. Don't forget that your colleagues from other professions and your clients will also be welcomed. I look forward to seeing you in Middle Temple Hall.

DIARY 2005

FEBRUARY

- 16 Lecture: Recent developments in matrimonial law
- 21 Committee meeting
- 22 Pro Bono evening

MARCH

- 1 Joint seminar with the Berlin Bar
- 1 ANNUAL DINNER
- 16 Lecture: Attracting and keeping profitable clients
- 23 Committee meeting

APRIL

- 13 Lecture: Employment Law Update
- 27 Committee meeting

MAY

- 11 Lecture: The Finance Bill
- 25 Committee meeting

JUNE

- 15 LEGAL CHARITIES GARDEN PARTY
- 22 Lecture: Trust and Probate Update
- 29 Committee meeting

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JOINT SEMINAR WITH THE BERLIN BAR on Tuesday 1 March

A number of guests from the Berlin Bar will be attending the Annual Dinner on the evening of 1 March. We are organising a joint seminar at the Law Society that afternoon on the topic of the Clementi Report and its aftermath.

All are welcome. Please contact Gordon Adam
(gordon.adam@wrightsonandpepper.co.uk) for more information.
Further details will be posted on the website (www.cwhls.org.uk).

The deadline for all copy for the
March edition of THE REPORT,
is **Monday, 21 February 2005**

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REPORT OF DECEMBER 2004 LAW SOCIETY COUNCIL MEETING

The four most exciting items on the Council agenda for December were:

- The Report of Sir Stephen Lander, the Independent Commissioner, and the response of the Compliance Board
- the review of the referrals code changes
- the budget
- the staff pension scheme

Papers relating to governance changes, the review of the regulation of legal services and of the Law Society's law reform and representational role were on the agenda. They were due to be considered at a one day Council meeting in January so the December meeting did not dwell on these matters despite Sir David Clementi's report being published on the day of the Council meeting.

There are only three Council members on the Compliance Board so the Independent Commissioner's annual report provides Council members with an invaluable insight into operations at Leamington Spa. While there was much good in his report, it did raise issues (again) about the slowness of the organisation to take action following decisions of the Council to make changes for the better. More worryingly, his report highlights once again the poor record keeping and file management practices of the Consumer Complaints Service. The Council has been repeatedly advised about poor quality control mechanisms in complaints handling but the context in 2004 has changed.

We have spent a very large sum of money indeed on IT in the past three years. When we agreed to increase the PC to fund this work, we understood that those who would benefit most would be CCS caseworkers. The major IT work for the CCS under Programme Engineer will not even commence until the second half of 2005. Sir Stephen's annual report recognises that the performance of the Society has been commendable overall – perhaps, however, given what was riding on the better management of consumer

complaints, we should have aimed for and achieved a First Prize, rather than merely a 'Commendable'.

The problem for the Compliance Board and the Society is that during, in particular, 2002 too little progress was made at the CCS – the budget was under spent. The work in progress/backlog of complaints was allowed to double and while the number of open files is now falling, it has not fallen fast enough to clear the 2002 pile-up. This means that in April 2005 we will start our first year of being overseen by the LSCC hopelessly behind. As an organisation, we are almost doomed to fail to meet the ever increasing demands of our stakeholders. We just can't play 'catch up' fast enough – but 2002 was the year it slipped away... The profession, however, isn't doing badly. When one considers the increase in the number of solicitors practising and the number of complaint files being opened, we are all due a pat on the back.

Next, on to the vexed matter of referrals. The Master of the Rolls asked the Society to review the operation of the liberalised referral regime once it had been in operation for a year. The Council had a lengthy and excitable debate over how this might be done. The review will be more extensive than that originally planned by the Standards Board.

The big debate was the budget but, regrettably, by then only 68 out of 105 Council members were present – well, it was after 3p.m. and there had been a dinner the night before! The headline figures are bad enough – a cash requirement of £94.8 million producing a PC fee of £1006 but the real scandal is the process. Apparently the heads of business units had originally asked for a 20% higher cash requirement but they had been beaten down by the CE in what was described elsewhere as a 'star chamber-like exercise'. It is good to know that someone beats the figure down, but surely the elected members should

decide which 20% of the Corporate Plan they wish to forego to suppress the PC fee? We continue to use commercial income, which might be ring fenced for law reform and representational activities, for regulatory purposes. The development of the network of regional offices appears not to have been held back despite concerns raised about the level of expenditure by the Finance and Resources Board. If we separate, who wants the chain of regional offices, fitted out and staffed up?

The reality is that the Council approves papers and agrees action all too often without a clue about the price of the work. The vote on the budget was telling and should have sent a shockwave through the Main Board (had its members all been present – which they weren't): 35 for, 27 against and 6 abstentions. The budget will be reviewed in February but we started spending against it on 1 January.

To end on an upbeat note – the staff pension. This has finally been closed to new members from 1 January 2005. The Finance and Resources Board first recommended this 3 years ago but the message never got to the Main Board, who left the fund open. This time, with the pension shortfall greater than the value of our London premises, the message got through. This is good news for the profession even though they will see a whopping 27% (up from 18%) employers contribution being made this year.

The view of the staff is unrecorded. Perhaps we should go a step further and see if the Society could bear outsourcing some of its work?



Sue Nelson

REVENUE COMMITTEE

JEREMY DE SOUZA



One of my wife's ancestors was a certain John Wilkes. According to the history books, his main achievement was challenging the issue of General Warrants, i.e. permission to enter any property and remove anything which looks interesting. Lord Mansfield held that they were contrary to Common Law. But we should not forget that, for historical reasons relating to 18th Century smuggling, HM Customs & Excise have accumulated wider powers to operate without a warrant than the police.

With the merger of Customs and the Inland Revenue might one therefore have expected the powers of the merged body to be pared down to the lower denominator? Not under this Government: Customs' powers are preserved by clause 5 of the Commissioners for Revenue and Customs Bill. While clause 6 prevents "the Inland Revenue" using "Customs" powers directly, information which "happens" to have been obtained under the latter may be provided to the former without any further authorisation. Although a "consultation" as to the final solution to the "powers" problem has been put in hand, one lives in hope that the House of Lords will bite the bullet and amend this Bill. Or will Mr Speaker Martin be "expected" to certify it as a Money Bill?

THE CTO BEFORE THE SPECIAL COMMISSIONERS

There have been two major reverses for the Revenue.

In the two test cases on the 1998 abolition of the V&A List, SpC.439, Stephen Oliver QC ruled against the official proposals for the compulsory public opening of Grade 1 Listed Buildings to enable wider access to be obtained to significant collections of exempted chattels kept within them where (in each case) the family had not opted for conditional exemption for the building when this had been open to them. In addition, the proposals in question were both onerous and intrusive, involving "a real disruption to the lives of the families". In the light of this development, it may very well turn out to be the case that the 1998 legislation cannot be put into effect in the vast majority of cases.

In *Executors of the 8th Marquess of Hertford*, SpC.444, business property relief was awarded for the whole of a mansion house of which 78% was open to the public. The excluded areas were those occupied by the donor (under a lease at a full rent) and the donee as their private quarters. The CTO

may, in consequence, find it very difficult to continue with their recent policy (reported in the December issue) of disallowing the residential parts of farmhouses from this relief. It is understood that they have subsequently been challenged by one of the taxpayers who were the object of the official "U"-turn on this point.

ADMINISTRATIVE MATTERS

There have been developments both ways.

On the "plus" side, the publication, on 23 December, of official guidance on how *Valtema* out-of-time assessment problems can be avoided by the use of the "white space" on the SAR is welcome. One has to wonder whether a rising tide of CG34 property valuation agreement applications may have created a situation in which the need for the Revenue to pay the VOA in cases in which the inspector would not have made a reference helped speed up the formulation of this document. If so, then it is legitimate to speculate as to the effect an increasing number of SDLT 1-linked COP10s might have on the extraordinary compliance problems now being encountered in relation to SDLT (see below).

And the "minuses" yet again outweigh the pluses. First, it is legitimate to ask why Customs came to decide to take *Lester Aldridge*, VAT appeal No.18,864, to a hearing. Professional firms with more than four partners have to use some form of intermediary to hold land. In this case, to prevent retiring partners continuing to be bound by original tenant liability, the firm used a nominee company as the tenant of record, with the partners for the time being guaranteeing its obligations to the landlord. Customs conceded that this was not an unusual procedure and that no tax avoidance was involved. They lost their attempt to deprive the firm of input tax credits on its rental payments. What is puzzling, and has not been explained, is why this meretricious point was pursued to a tribunal hearing. It is very far from being a new one - a nominee conveyancing arrangement had been accepted by a Scots tribunal 18 years ago: see *Bird Semple & Crawford Herron*, (1986) VATTR 218.

Second, the SDLT form situation is getting out of hand again. A two-page SDLT 4 has been replaced by a four-page one. The increase in pages is hardly welcome, and the practitioners' lot has not been assisted by official completion instructions which are, in some respects, extremely hard to follow. Coupled with this is the latest guidance on what has to be done (within the original 30

day period, of course) where one of the answers to the questions on SDLT 1-4 is not to the OCR machine's liking. Some deficiencies can be answered on the telephone (provided of course that one can get through, which, I understand, can be difficult), others have to be dealt with in writing. We have now been told that, in some of the latter cases, the corrections must be signed by the client. This is likely to make it extremely difficult to "complete" the forms within the statutory period. Failure seems to generate an automatic £100 penalty even if no tax is payable. One has to wonder whether, when the draft legislation was before Parliament, it occurred to any MP (quite apart from the majority) that this sort of situation might result from FA 2003, s.82 permitting the Revenue to disregard a return where it "has been lost or destroyed, or been so defaced or damaged as to be illegible or otherwise useless"?

SDLT APPLICATION

The Society has not been successful in the President's request that the Revenue should declare its hand where it thinks that SDLT might be payable in circumstances in which a conveyancer or probate practitioner would not normally take the view that "consideration" could possibly be involved. The line being taken by the Policy Unit is that no announcement will be made until a final decision has been made in each case. An example of such a case is the charging of nil rate band discretionary trusts on the matrimonial home, where correspondence was first entered into in January 2004 and an announcement not made until November.

Issues currently awaiting clarification include:

- (a) whether the usual landlord's costs indemnity on the grant of a lease falls to be taxed as if a premium - an everyday issue on which there has been no progress since May;
- (b) whether a specific devise in a Will subject to IHT creates a SDLT charge on the IHT paid on Assent - the Revenue's provisional view is that it does;
- (c) whether the CGT payable when a beneficiary becomes absolutely entitled to trust property may be the subject of a similar charge - this is an everyday issue arising logically out of (b), but no indication of official thinking has yet been given;
- (d) a large number of points on the new partnership code, including:
 - whether the stamp duty charge

imposed on transfers of shares applies to other assets if no securities are held;

- how one calculates the “income profit shares” where it is allocated in slices by reference to an accounting period;
- whether SDLT is payable if a professional firm accepts a cash injection from an institution but, otherwise, without any change in personnel; and
- whether land provided to a farming partnership on a *Harrison-Broadley v. Smith* basis is to be treated as if a partnership asset owned by the partners in their “income profit shares”; and

(e) what the position is when assets are shifted between funds of a single settlement under a power of appropriation – the official story for the

whole of 2004 has been that the holder of a life interest in the land-acquiring fund has to make a return within 30 days and pay on the value of that interest, even though neither a party to nor aware (in advance) of the transaction.

SIPE

New Year’s Day has passed without DEFRA initiating any English secondary legislation on the single farm payment. It is becoming more and more difficult for Somerset House to contend that its existence started on that day when this prerequisite was absent. The last throw of the dice from that quarter, to the effect that, under the European Legislation, SIPE could not be transferred before 1 January 2005, runs into the difficulty that the fiscal transfer immediately before death has always been a hypothetical one and to depart from that would be inconsistent with

three House of Lords authorities, namely *IRC v. Crossman* [1937] AC 26, *Winter (Sutherland’s Trustee) v. IRC*, (1961) 40 ATC 361, and *Duke of Buccleuch v. IRC* [1967] 1 AC 506, which had recourse to that principle in order to disregard, respectively, pre-emption rights, balancing charges and sale expenses.

STATUTORY INTERPRETATION

For those not accustomed to giving priority to studying the latest sayings of Lord Hoffmann, may I draw attention to the fact that the whole “Committee” in *Barclays Mercantile Business Finance Ltd v. Mawson* [2004] UKHL 51, declared that the Ramsay doctrine was of general (rather than just fiscal) application and that, under it, one must apply a purposive (i.e. *McGuckian*) approach to the construction of all legislation from now on.

INLAND REVENUE AND CUSTOMS AND EXCISE CORRESPONDENCE

Ms Gill Price
Inland Revenue
Room 1C-04
1 Parliament Street
London SW1A 2BQ

7 January 2005

Dear Ms Price

H M Revenue & Customs powers

This Society includes amongst its membership 151 firms of solicitors and 21 other organisations, mainly operating from Central London.

We are very disappointed that the draftsman of the Bill to amalgamate the Inland Revenue with Customs & Excise was not instructed to level down the powers of the two organisations.

At a time when draft legislation requires certification as to its consistency with the European Convention on Human Rights, it is not immediately apparent how one can possibly justify the retention of powers felt to be appropriate for Customs Officers in the 18th Century, when the smuggling of goods through remote coves was rife and obtaining a warrant from a magistrate not a realistic option.

At that time, there was no police force. There now is, and it is very difficult indeed to conceive of any reason for seeking to retain for any officers of the amalgamated body powers greater than those available to the police.

The fact that the opportunity was not taken, at the time of the introduction of VAT in 1973, to limit those powers to taxes concerned with goods should not be seen as an excuse to avoid addressing the issue now.

Whatever the intentions of the Commissioners elect, if put into operation, the Chinese Wall proposal will lack credibility in the real world. And with justification, because the driving force behind the amalgamation has been a perceived need for both the tax collection authorities and taxpayers to be enabled to operate both sets of taxes from a single office.

It must follow from this that the powers of both parts need to be the same and that there should be a levelling down. In particular, under no circumstances should there be any continuation of the authorisation of Customs Officers to enter premises and remove items without a warrant.

In case it is argued that 9/11 “security” considerations militate in favour of the retention of these powers, let it be said that security issues are the responsibility of the police. Customs Officers should disclose any suspicions they have to the police, just like any other members of the public. They do not require powers which Parliament has withheld from the police to perform that function.

Finally, we would draw attention to the fact that it was in the 18th Century that Lord Mansfield declared that the General Warrant issued to try and curb the publishing activities of John Wilkes was contrary to common law. There can surely be no role whatsoever for the officials to be given similar powers without prior authorisation from a magistrate in the 21st Century.

In the circumstances, we would express the hope that Ministers will be advised to propose amendments to the Bill currently before Parliament to deal with this point, rather than to await the outcome of the promised post-legislative Consultation.

Yours sincerely

W J de Souza
Chairman of the Revenue Committee,
The City of Westminster and Holborn Law Society

Any members who have experienced what they consider oppressive treatment in the above areas are invited to contact Jeremy de Souza at jeremy.desouza@wandb.co.uk.

PRO BONO: WHO REALLY BENEFITS?

The City of Westminster and Holborn Law Society and the Greater London Regional Office of the Law Society invite you to an exhibition and drinks reception

PRO BONO: WHO REALLY BENEFITS?

Tuesday, 22 February 2005 – 6.00pm to 8.00pm

The Common Room at the Law Society

- Who really benefits from pro bono work and how do we measure it?
 - What difference does it make?
 - How can I get involved – and how do I persuade others?

Find out where and how your skills and talents can make a difference!

Meet other volunteers and staff from pro bono projects across London.

Visit the exhibition stands to find out more about LawWorks, the Solicitors Pro Bono Group, Citizens Advice Bureau Clinics, Law Centres Federation, London Law Centres and others.

Panel Speakers include:

Chair: Jeffrey Forrest – CWHLS President

Hannah Wiskin – Law Society Council member, Young Solicitors

Clare Norris – Winner of the 2004 YSG Pro Bono Award and the Wig & Pen Prize

Student volunteers, young solicitors, clinics and projects sharing their experience of forming strong and successful pro bono partnerships and demonstrating the benefits of their work.

CWHLS, jointly with the City of London Law Society, sponsors the annual Wig & Pen Prize, recognising the particular achievement of young solicitors and their commitment to pro bono work from the outset.

You will also find out more about the YSG Pro Bono Awards – register your interest at their stand.

Exhibition opens 6.00pm. Panel presentation followed by drinks reception until 8 pm.

To book your place, please use the faxback form below to **020 7320 5971**
or email: anika.cantell@lawsociety.org.uk by Wednesday, 16 February.

I will attend : Pro Bono : Who Really Benefits? at The Law Society, 113 Chancery Lane, London WC2A 1PL on Tuesday, 22 February from: 6.00 p.m. to 8.00pm

Surname: _____ First name: _____ Mr/Mrs/Ms _____

Firm: _____ Address/DX: _____

Tel No.: _____ Fax No.: _____

Email address _____

A confirmation letter or email will be sent to all delegates with the final programme.

THE ANNUAL DINNER

THE ANNUAL DINNER of The City of Westminster and Holborn Law Society

Tuesday, 1 March 2005 6.45 for 7.30 pm
in Middle Temple Hall

The highlight of the Society's year is its annual dinner. This year we are again holding the dinner in Middle Temple Hall. We are very grateful to Alexander Forbes for their sponsorship of this dinner.

The principal speaker will be the documentarist and writer Tom Bower, whose biography of Gordon Brown was published recently. Our other guests will include the Master of the Rolls Lord Phillips of Worth Matravers, the Lord Mayor of Westminster, the Director of Public Prosecutions Ken Macdonald QC, Professor Michael Zander, the President of the

Law Society Edward Nally, Mr Justice Michael Peart, as well as presidents of leading local law societies.

We are pleased to say that the ticket price for the meal, including drinks at the reception beforehand and three course meal with wine and port or brandy, is being held at last year's level of £68 per person. After dinner drinks will be available from a cash bar. The dress code is black tie.

Come and bring your colleagues, clients, spouses and friends! Apply for your tickets now.

ANNUAL DINNER: TUESDAY, 1st MARCH 2005

Please return to: Mrs E J Beesley, 25 Rotherwick Road, NW11 7DG (DX 33801 Golders Green)

Please send me ____ tickets @ £68 per ticket: a cheque for £_____ is enclosed payable to CWHLS

Name: _____

Name of firm: _____

Address: _____

DX

Dietary requirements: _____

Seating requirements (if any) _____

NEW MEMBERS

Beattie & Co: J D G Curtis
Bircham Dyson Bell: Miss Ester Birnbaum,
N A K Brown, Miss R J Carter, Ms Rachel
Enderby, Mrs A C Harle, Miss N K A
Hickman-Robertson, J S Hugall, Mrs J
McAteer, Miss R B C Meller, Miss R H A
Morrell, S O'Neill, Mrs F J O'Shea, Miss C J
O'Sullivan, J E G Parker, Miss V C Ralph,
M J Smith, Miss S E Wotton
Currey & Co: Miss S M Greville
Dawsons: Stephen Adshead, Andrew
Greenfield, Miss Angela Gregson, Guy
Hurst, Mrs Susan Kelly, Richard Linskill,
Neil Morris, Miss Amanda Nelson, Miss
Rachel Nelson, Ian Rumens, Ms Emily
Watson, Michael White
E D F Energy plc: Ms Rachel O'Hagan,
T S Moreton
Farrer & Co: Miss L K Hall, Richard Lane,
S H J MacDonald
Glovers: Richard Gilchrist, Paul Gilks,
Philip Shotter
Hunters: Miss L A Ellis, Mrs E M Haworth,
Mrs K I Martin, Miss L J C McLaren

Maples Teesdale: Mrs L E Cotton
Moon Beever: Julian Hay, Paul Sheils,
R J Weetch
Payne Hicks Beach: J C M Dunlop
Peters & Peters: O N Brooks, Miss Joanne
Collins
Preston-Rouse & Co: K A J Coughtrie
Ridley & Co: Miss R R Afzal
Vincent French & Browne: V M N Browne,
Mrs G R Mehrji
Witham Weld: A E Godfrey
Wedlake Bell: Andrew Pitcairn
Wontner & Sons: A G I Wontner

ASSOCIATE MEMBERSHIP:

John Zani
Licensed Conveyancer: Lee Bolton & Lee:
Ms Sandra Shadrack

Trainees:

Arnold Fooks Chadwick: Marc Traube
Bircham Dyson Bell: Miss Suzanne Barrett,
Alexander de Meyer, Miss S A Gatley, Miss
Kathryn Goater, A P D Hallatt,

Miss N J Klinkenberg, Nicholas Le Riche
Collyer-Bristow: Miss Mary Daws,
Miss P C Lin, R W H Thompson
Dawsons: Tom Hardman, Miss Katharine
Oliver, Chris McIntosh, Miss Sarah Rees
E D F Energy plc: Miss Jessica Swain
Gregory Rowcliffe Milners: Miss K J Gould
Hunters: Ms Z S Cumberland, Ivan Ho,
David Taylor
Maples Teesdale: Miss C L Atkins,
J S Bhandal
Moon Beever: Miss Rajah Abusrewil,
Miss L C McCabe
Payne Hicks Beach: T J Atkinson, Richard
Manyon
Peters & Peters: Ms J M Clelland,
Miss A L Forbes
Wedlake Bell: Richard Brooks, Ms Sinead
O'Brien
Winckworth Sherwood: Miss A C J Luckin,
Miss K E New
Witham Weld: R J Sims

OUT OF OFFICE CONFIDENTIALITY ISSUES



How many of us have seen our legal colleagues grabbing papers out of briefcases for a quick read before the day starts? It is quite a common sight during rush hour. And how many of us resist the temptation to lean over and read at least the names of the parties if not details of the case?

The risk in taking papers to read on public transport is threefold. First of all there is the real danger of losing the documents. The person who needs to read the papers on the train is likely to be stressed and careless of his or her surroundings. Whilst the documents could doubtless be replaced in due course, this would have resulted in delay. There would also have been a gross breach of client confidentiality as papers floated round the public transport system. How to explain this to the client does not bear thinking about! The risk of such a disastrous accident far outweighs any temporary gains from last-minute preparation.

Secondly, those who need to read papers on their journeys have serious problems with managing their time. Quality work cannot be done on a crowded bus or train. Such preparation is likely to be a

last resort for the disorganised solicitor; and the client, who is entitled to full attention to the work, is short-changed. The chances of overlooking an important point or argument are high, leading to an unacceptable risk of claims.

Thirdly, there is of course the question of who else is watching. Clients or people interested in clients, such as business rivals, or journalists or other lawyers will be travelling by public transport around Westminster and Holborn during the morning and evening rush hours. Journeys are boring, so fellow travellers will read over the shoulders of others. Any name that is faintly recognisable will instantly spring out from the page and demand attention. There is no way of checking who, in the immediate vicinity, may have an interest in the case, so the assumption has to be that someone is always interested, even if they are just busybodies.

Clients are entitled to confidentiality, and however convenient for the solicitor to have an opportunity to peruse papers in a public place, it is a major breach of that duty.

Firms need to have strict rules about the removal of clients' papers from the

office. Remember that the papers belong to the client not the firm. A policy of when and where papers can be read needs to be established, bearing in mind that it is not just client confidentiality but the Data Protection legislation that may be at issue. Staff who persist in removing papers for work at home or in transit need to be supported by assistance in time management so that the need for last-minute work is eliminated.

The policy on removal of material from the secure office environment should also extend to the use of discs and downloads. The risks here are of a slightly different order as the very public display of material is avoided, but in an increasingly IT-based environment, proactive firms need to ensure that their lawyers are both assisted in making material available and prevented from causing damaging breaches in the firm's security systems.

This column was prepared by AFP Consulting, a Division of Alexander Forbes Risk Services UK Ltd, which is a member of the General Insurance Standards Council and a Lloyd's Broker.

CWHLS LECTURES 2004/05

**RECENT DEVELOPMENTS IN MATRIMONIAL LAW:
ATTRACTING AND KEEPING PROFITABLE CLIENTS:
EMPLOYMENT LAW UPDATE:**

Nicholas Francis, QC	16 February
Rod Sloane	16 March
Andrew Blake	13 April

These lectures will be held at the offices of Lawrence Graham LLP, 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

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EMPLOYMENT LAW UPDATE	_____	_____

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

Name	Name of Firm
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