



# THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

NO.37 SEPTEMBER 2005

## THE PRESIDENT'S COLUMN

JEFFREY FORREST



*"What we call the beginning is often the end. And to make an end is to make a beginning. The end is where we start from."*

Time is relative. As a child, it seemed to me that the longest conceivable period of time was from the first day of school until half term. Yet, when my own children went to school, there seemed to be no measurable interval between when they started school and their half term. So, although it feels as if I have only just started my Presidential year, I am informed that this is my final column.

We do not exist in a vacuum and, as we go about our daily business, we cannot have been unaware this year of huge events – weather disasters we would have called “natural” if we did not suspect that our actions had caused or contributed to them – and terrible incidents for which only malign mankind can be blamed.

I have greatly enjoyed my presidential year. I have been to – *inter alia* – Berlin and Birmingham, Chancery Lane and Chigwell, Drapers Hall, Dresden and Dublin, Liverpool and London Bridge, Manchester and Middle Temple, Piccadilly and Parliament Square, Sandown Park and South Devon. Everywhere I have gone I have been greeted with much warmth and reminded of the great respect in which our Society is held.

One of the memorable highlights of my presidential year was the talk Robin Cook gave to the Society last November, in support of the Mary Ward Legal Centre. Having secured his agreement to speak, we had to sell tickets for his talk. *"Not everyone agrees with him"* warned someone, with suitable understatement, and no doubt not all of those who attended his talk at the Palace of Westminster were his natural constituents.

But I think we were all privileged to experience at first hand something of what it was that caused many, after his untimely death, to remember him, in

Gordon Brown's words, as *"the most accomplished parliamentarian of our generation"* whose eloquence *"could not only bring people to their feet but could – and did – bring opponents to their knees and sometimes even to their senses"*.

Our dinners are also a perennial highlight and I believe that this year's was no exception. One local president said to me beforehand that he'd been told that ours was one not to be missed. I don't think he was disappointed.

In August we learnt with sadness of the passing of two distinguished judges, Lords Lane and Donaldson, former Lord Chief Justice and Master of the Rolls respectively. The current Lord Chief Justice, Lord Woolf, retires at the end of this month. That office is frequently a thankless one but it is reassuring to have an LCJ who has a real interest in penal issues and who does not feel a need to pander to the tabloid press. We wish him well in retirement – although we may not yet have heard the last of him.

We welcome Lord Phillips as the new Lord Chief Justice. Nicholas Phillips, a good friend of this Society, will be a worthy successor, who will surely follow Harry Woolf's recent plea for a new approach to law and order, involving an appreciation of the problems that generate crime and an understanding and acceptance that the principles of sentencing are not just founded on punishing offenders.

By the time these words are seen, the Law Society's Annual Conference will have passed. No doubt the future of the profession will have been the main agenda item. Last December the Clementi Report was published. The government promptly accepted its recommendations and the White Paper is now expected within a matter of weeks. As a Society, we are very much involved in exploring the future roles and structures both of the national Law

Society and of our own and other local societies. I urge you and your colleagues to take an active part in those discussions.

Alert readers (if I have any, alert or otherwise) may have noted that each of my columns over the past year has started with a quotation. In the festive December Report (pay attention at the back!) you will be invited to identify the quotations.

Thank you for allowing me the real privilege of serving as your President. Thank you, of course, to our Administrator for her constant support. My thanks to Mr Secretary, Mr Treasurer and Madam Editor and to all committee members and sub-committee chairs for their support during my term of office. I am delighted soon to be passing the presidential badge to Charles Fraser, who will be an excellent President, having the dual advantages of youth and of considerable experience of professional issues as a Council member. I am sure you join me in wishing him as happy a year as I have had.

## DIARY 2005

### SEPTEMBER

- 21 Lecture: Charity Law Update
- 28 Committee meeting followed by dinner

### OCTOBER

- 4 TYSG drinks
- 11 AGM and dinner
- 26 Committee meeting
- 27 Lecture: Civil Litigation Update

### NOVEMBER

- 9 Lecture: Contract and the Conflict of Laws
- 30 Committee meeting

### DECEMBER

- 7 Lecture: Landlord and Tenant Update
- 14 Committee meeting

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The deadline for all copy for the  
October/November edition of THE REPORT,  
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# TWO DAY STUDY VISIT TO BRUSSELS

21 AND 22 NOVEMBER 2005

The City of Westminster and Holborn Law Society is planning a two day educational trip to the European Institutions in Brussels, including visits to:

- The European Commission
- The European Parliament
- The Law Societies Brussels Office
- The CCBE offices

There will also be presentations from an MEP, the Law Society Council member for EU matters, representatives from the CCBE and UK Rep - the UK permanent representation to the European Union

The United Kingdom currently has the Presidency of the Council of the European Union, so this is an excellent time for us to visit Brussels.

The plan is to travel out on Sunday (or earlier if you want to make a weekend of it); the educational part begins Monday morning and ends Tuesday evening, in time to return home. The visit should qualify for 10 CPD hours (subject to confirmation). The expected cost should not exceed approximately €500 (less than £350), to include the educational visits, a reasonable quality hotel and

various meals. Eurostar travel would be extra but, with early booking, should be less than £100.

**For the visit to be viable we need to have expressions of interest NOW. You are not entering into any commitment at this stage by responding.**

If you are interested in this visit, please indicate your interest to Morag Goldfinch at the Law Society's Greater London Regional Office on 020 7316 5556 or by email: [morag.goldfinch@lawsociety.org.uk](mailto:morag.goldfinch@lawsociety.org.uk)

Please do it NOW, so we can start the detailed planning.

## ANTI-MONEY LAUNDERING



If a partner is involved in a high profile prosecution under the money laundering regulations, could your firm survive the resulting damage to its reputation?

While employees and partners could face prosecution if they are unable to prove that they had no knowledge of a suspicious activity, firms should remember that the risk is not just that of being a money launderer or committing an offence.

One of the most significant threats posed by the regulations is the potential long term damage to the reputation of the firm caused by association with a high profile case. A solicitor may technically not fall foul of the money laundering regulations but no firm would want to find itself embroiled in a money laundering scandal.

The sums involved in money laundering in Britain alone are considered to be anything between £19 billion and £50 billion. Given the size of the problem, it is likely that, at some time, many firms handling money have dealt in dirty money, even if inadvertently.

To prove that no members of staff had any knowledge or suspicion of money laundering is notoriously difficult. In order to protect the integrity of the firm, partners need to ensure that all

employees are up to speed on money laundering regulation as covered in three pieces of legislation – the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003.

To effectively manage the reputational risk and minimise any potential damage, firms need to keep abreast of all their clients' business interests as well as carrying out detailed checks before taking on any new clients. In addition to fee earners who deal with clients on a regular basis, partners need to make sure that all support staff understand what money laundering is and what to look for as well as knowing when and how an unusual activity should be reported.

It is necessary for firms to consider the type of work they carry out and where the risks lie, and, as with all risk management, put the greatest resources and protective measures into those areas where there is the highest risk. At the same time, it is also important to assess the resources available to ensure that adequate support is provided to employees should they have any misgivings about any client.

A useful way of breaking down the risk of money laundering, which is used by the financial services industry, is to look at attributes and activities of a client. It is a combination of high risk in both of

these areas that triggers attention and may lead to reporting. Attributes are defined as characteristics of the client such as their country of residence, occupation, or even age and sex. Activities meanwhile focus on what the client is engaged in doing.

As an example, a client from a former Soviet state engaged in a claim for a road traffic accident is of low to negligible risk. However if he were to be purchasing a high value property in the name of an off-shore company, the activity indicates a high risk and it would become necessary to investigate the client's circumstances further.

Building a real understanding of the underlying risks can be an effective way of identifying problem situations at an early stage. Compliance with the anti-money laundering regulations should be used as an opportunity to consider how risk management best practice is implemented and understood at all levels of the firm. This is ultimately the best way of safeguarding the reputation of the firm in the long term.

*AFP Consulting is a Division of Alexander Forbes Risk Services UK Limited which is authorised and regulated by the Financial Services Authority. A Lloyd's Broker. Tel: 0845 600 2729. [www.afpconsulting.co.uk](http://www.afpconsulting.co.uk)*

# TRAINING FRAMEWORK REVIEW

Reproduced below is Part Three (Summary of Conclusions) of the CWHLs Response (July) to the Law Society's Third Consultation Paper (March). Part One was the structured response to specific questions and Part Two dealt with international considerations. As stated in the last issue of The Report, the entire response is on the CWHLs website: [www.cwhls.org.uk](http://www.cwhls.org.uk)

## PART THREE

### Conclusions

The Society welcomes the TFR and the discussions taking place within and beyond the profession regarding the criteria and qualifications needed to produce future entrants to the profession of the highest standard and who will be best equipped to practise. The Society entirely agrees that there should be the widest possible accessibility to the profession, consistent with producing entrants of the necessary quality.

The Society believes that the following safeguards should be retained or introduced:

- (a) A core of compulsory examinations or assessments to be set and marked by the Law Society which would have to be passed by all candidates, subject to very limited exceptions or special arrangements. The Society strongly recommends the continuation of the current Legal Practice course in substantially its present form;
- (b) Publication and regular revision of syllabuses by the Law Society for all parts of the qualification process but with a particular importance attached to the compulsory elements;
- (c) The continuation of an accreditation system for courses and teaching institutions but with more scope for part time, distance learning and other flexible methods of qualification;
- (d) A mandatory training contract of at least two years for all candidates, subject to very few


exceptions or rights to minor waivers of time;

- (e) A modest amount of work based assessment but on the understanding that the burden for assessing trainee solicitors should not fall to a significant extent on practising solicitors in a candidate's own firm or employer. Work based projects assessed by external examiners would raise issues about client confidentiality which have not been covered in the Law Society's proposals or yet satisfactorily resolved;
- (f) Any reforms to the qualification process must ensure that the recognition of the Solicitors' qualification by other professional institutions in this country and abroad is maintained. The Law

Society should consider very carefully and compare the existing qualification regimes of English barristers, Scottish solicitors and advocates and English accountants before departing significantly from those models.

- (g) Ways should be found to reduce the cost of the course fees for the current Legal Practice course and care should be taken not to introduce yet further cost barriers to those seeking to enter the profession;
- (h) Re-introduce the excellent system which allowed non-graduates to serve five years' articles, pass professional examinations and qualify as solicitors.


City of Westminster & Holborn  
Law Society



Trainee & Young Solicitors Group

Drinks &  
Nibbles

October 5th at 6.30  
All trainees and  
young solicitors  
welcome



Venue:  
Hodgsons  
115 Chancery Lane  
London WC2A 1PP

email to: [zc@hunters-solicitors.co.uk](mailto:zc@hunters-solicitors.co.uk)

# ANDREW JOHN HIND SHAW

WILLY BANKES

Andrew, who was President of the Holborn Law Society in 1997/8, died in July at the age of 62 after a long fight with cancer, which was described in *The Times* on the 30 July 2005 as "a battle nearly won".

A renowned conveyancer, he became President in an exceptionally difficult year for the country and for the profession. One of the objects he set himself for his year of office was "to get closer to the City of Westminster Law Society", then presided over by Robert Venables. His aim was indeed successfully accomplished very soon thereafter.

He was a realist who understood the need for the profession to work with those whom the electorate had seen fit to appoint to be our rulers.

Shortly after his presidency he shook the dust of London from his feet and went to live and work in peaceful Dorset.

He had a quiet, delightful sense of humour of which those of us who were with him and Diane, his wife, at the Cardiff conference, saw a good deal. Those who read *THE REPORT* of January 1998 will

never forget the incomparable description of the Shaw family's Spanish Christmas which included, *inter alia*, a turkey which arrived alive and well, led by its peasant vendor by a piece of string on the afternoon of Christmas Eve. There followed a panegyric of praise for corned beef hash as an alternative substitute for more traditional Christmas fare.

Andrew will be sadly missed by his family, colleagues and many friends.

# JOHN ROY WYNTER BEE

WILLY BANKES

John Wynter Bee, who died in August aged 80, is not listed in *The History of the Holborn Law Society* among the founder members. This appears to his many friends to be an error, for if not physically present at the famous foundation meeting, he was certainly there in spirit. He was President in 1976-77 and for years thereafter rarely missed the AGM, the Law Society Conference, the Annual Dinner or the Legal Charities' Garden Party. Whenever he was telephoned on Holborn Law Society business, he invariably took the call or returned it at the earliest opportunity because, paraphrasing his words, "we all give our time voluntarily and as such are entitled to the utmost consideration and courtesy from one another".

Educated at Sherborne, he served in the RAF where he was stationed in Southern Rhodesia and Palestine, before going up to

Durham and finally joining his father's old firm, Walker Martineau of Gray's Inn. In due course he became senior partner and whilst specialising in trust and probate work, was active in the foundation of Multilaw, a worldwide organisation of lawyers, of which he remained the doyen for many years.

Like many really busy men devoted to their work, he found time for many outside interests and activities. Hill walking with his family was his favourite relaxation. His other interests included military history and archaeology and many holidays were spent visiting sites of battles both in Europe and Africa. As recently as May, he and Peggy, his wife, spent a splendid week in the Ardennes, ending up at a legal dinner in Luxembourg. He was much looking forward to becoming a great-grandfather later this year.

A kindly man and a delightful companion, he never compromised his principles. Above all, he could not abide disrespect to the Sovereign and was equally outraged by such behaviour whether emanating from the political left or right.

A Service of Thanksgiving for his life was held on 22 August at Holy Trinity Church, West End, where he had been Church Warden for many years. The church was packed and all the many activities in which he was involved were represented. There were present no fewer than eight Past-Presidents and a Past-Secretary of Holborn Law Society. It was a very moving occasion – a celebration of the life of a much loved husband, father, grandfather and colleague.

John will be sadly missed by his family and all who knew and worked with him.

# SOLICITORS BENEVOLENT ASSOCIATION

## CHRISTMAS CARDS 2005 (PLEASE SUPPORT YOUR CHARITY)

I would like to thank local law society members for their support of the Association and one of the many ways that you can continue to help is by buying the SBA Christmas cards. Leaflets and sample cards are available from the SBA office, telephone 020 8675 6440. The leaflet may also be viewed on our website: [www.sba.org.uk](http://www.sba.org.uk)

The CCA Group continue to cover all printing and despatch costs and this year they have agreed to pay the Association 9p royalty for every card sold (8p has been

paid in previous years). All monies made go towards helping necessitous solicitors and their dependents. Awards made in 2004 included:

- A substantial one-off payment to a solicitor paralysed from the neck down following a horrific riding accident. The grant was used to purchase a specially adapted vehicle and a sophisticated mouth-operated wheelchair.
- Help with living expenses for a solicitor unable to work following the breakdown of her marriage. The SBA provided assistance for the children and a leisure award for the family.

- Temporary assistance to a disabled solicitor and his family until he was able to secure employment.

- A loan to clear debts was offered to a young solicitor who had been forced to give up work following illness. She subsequently recovered sufficiently to find fresh employment.

You can also help the Association by letting us know about any potential beneficiaries who may be in need of assistance.

Martin de Bertodano  
Chairman

# SUB COMMITTEE ANNUAL REPORTS

## EDUCATION AND TRAINING

The Committee helped to draft the written response of the Society submitted in July to the Third Consultation Paper of the Law Society on Qualifying as a Solicitor – a framework for the future. Our Society recommended the establishment of a core of centrally set and marked examinations by the Law

Society, syllabuses containing the requirements for vocational training and the retention of a training contract of at least two years.

The Committee continued to help to arrange the Society's monthly evening lecture programme at Lawrence Graham. During the year the Committee provided

a judge for the Wig & Pen prize and the Gamlen law prizes. The Wig & Pen prize is awarded jointly with the City of London Law Society to a recently qualified solicitor for pro bono legal work. The Gamlen law prizes are awarded to trainee solicitors undertaking training contracts in the area of our Society.



NIGEL MAYHEW

## INTERNATIONAL

With the summer recess bringing much of our work to a halt, there is little to report after the very successful reception hosted jointly with the Law Society of England and Wales on 5 July. A special meeting of the committee was held in June, however, to discuss concerns expressed over the international aspect of the impact of the proposed changes to the qualification requirements being put forward by the Law Society's Training Framework Review. Genuine fear had been expressed by members of the committee that qualification as a solicitor would be discounted by many foreign bars, particularly those in the US and Canada, making it more difficult to register as a lawyer in their jurisdictions. While this may seem somewhat esoteric to those not in private practice, solicitors wishing to develop their skills on the international stage believe that there is a real threat to the transportability of their professional skills.

These were reflected in a paper prepared separately by the committee which was attached to the main CWHLS submission.

The other subject of debate has, of course, been the proposal approved by the Law Society Council to split its

regulatory role from its representational role. The possible loss of the profession's power of self-regulation is viewed with considerable alarm by our colleagues on the continent, if only because what happens here might happen there. That would itself have all sorts of repercussions, especially in those countries where the obligation to report suspicious transactions under money laundering obligations is performed by reporting to the lawyer's professional organization, i.e. his bar association.

The real surprise to other European lawyers is that the Law Society has jumped before it was pushed. As one French lawyer put it to me, it seemed to him that in its desire to please the Government, the Society is "plus royaliste que le roi". Of course, this is not just a philosophical question; European lawyers practising here will also fall under the gaze of any Government-appointed regulator.

The European profession is still smarting from what it sees as an attack on its ethical rules by the former competition Commissioner, Signor Monti, and has succeeded in obtaining some recognition that such rules are desirable for the

protection of "the consumer" and that the profession provides competition from within its ranks. Some of its members remain concerned that this will be undermined by the pre-emptive action proposed by the Law Society, seen by some as the Judas goat leading its colleagues down the path of self-destruction.

However, if you think we face difficult times, spare a thought for Russian lawyers, whose Government decided in the last days of August to deliver legal aid in civil litigation through Government-employed lawyers and other officials (such as ex-policemen). During my meeting with the President and Vice President of the Federal Chamber of Lawyers of the Russian Federation, they complained that they had not been consulted at all on the proposals. I could only reply that, while both Government and our national Law Society went through the steps of consultations, there was a feeling amongst many solicitors that only lip service was paid to the procedure. "Anyway", the President added looking at me accusingly, "we are told this is a Western idea". This I denied, but I wasn't too sure that I was right!



DAVID MORGAN

# LAND LAW AND CONVEYANCING



ADAM MABERLY

Among our principal concerns this year have been:

1. Land Law Consultation Paper – presentation of prescribed information in registerable leases.

We submitted a detailed response to the Land Registry, identifying two important reservations. Firstly we queried the implication that prescribing information at the front of each lease would enable anyone, including tenants, to see the key points of the lease at a glance. In our view it was simplistic to maintain that anyone, professional or layman, could establish, from a front sheet format, the legal effect and consequences of the totality of the provisions of a lease, particularly a commercial lease. Our second reservation concerned the suggestion in the Consultation Paper, given the indicated imperative that the Land Registry should be able to rely upon the information in the form L1 (essentially the front sheet) or the prescribed clauses, that the details in such form or clauses would prevail over the other provisions of the lease. If implemented literally, this could mean that if there was no mention in form L1 of a tenant's option to determine, when the lease itself contained such an option, then the option would be void. The Land Registry has now published its response to the Consultation and (as is rarely the case with HMRC), they seem genuinely to have considered some of the points raised by respondents.

2. SDLT

SDLT was introduced in some haste and without due consideration of the observations made by the profession, including those by members of the Society, regarding the format of the SDLT forms, contributed in the spirit of co-operation and a given acceptance of the inevitable introduction of SDLT. In this respect particular mention should be made of the contributions made by Gerald Moran, a stalwart in presenting the case for simplification and stoical in the light of the Revenue's responses.

Particular problems we identified were:

- (a) the inability of the computer to

“read” correctly completed forms with the result that SDLT 8s are sent to the client in addition to the agent, thus creating the impression to the client that the agent is to blame for errors;

- (b) delay in issuing the Stamp Duty Land Tax Land Transaction Return Certificate (Form SDLT5) (or the issue of defective forms), causing extra work for practitioners and a burden on the Land Registry;
- (c) delay in publishing a new SDLT6, the Land Transaction Return Guidance Notes “amended to make the instructions clearer”. This necessity was recognised by HMRC in a Practitioners Newsletter issued in January 2005 but the new guidance notes are still awaited;
- (d) also in January, HMRC confirmed that the heading reference to questions 16/25 inclusive on form SDLT1 “about new leases” was misleading, because details were actually both for the new lease which had been granted and for existing leases being assigned. HMRC confirmed that it was intended to change this heading to “About Leases” to avoid confusion, but we are not aware that this change has been effected.

We have registered our support for the Law Society's SDLT initiatives.

3. Home Information Packs.

We considered the ODPM circular regarding the recommendations of the HIP Planners Project Board. A statutory instrument detailing the formal requirements is awaited, the expected date for the introduction of Compulsory HIPs being January 2007. The circular refers to “required” and “authorised” documents, the implication being that other documents might be “unauthorised” and therefore should not be included in an HIP, although this interpretation may be tortuous and should anyway be clarified in the SI.

While solicitors should be the obvious people to prepare HIPs, they will face opposition from agents in particular. Solicitors should try to retain as much information as possible when completing a purchase, to facilitate production of an HIP on the subsequent sale of the property, and should consider advertising this fact to the client. The availability of electronic distribution of HIPs will be important and solicitors will need to install the appropriate software.

On cost, the Government fondly hopes that HIPs will be supplied on a “no sale/no fee” basis, optimistic given that approximately 2 million properties are put on the market each year and 1.5 million actually sell. On the basis of each HIP costing £750 (the much more realistic industry assessment, compared with that of the Government at £450) the industry would have to support £450 million (including VAT). Solicitors are unlikely to be able to underwrite this level of costing and the public may well be reluctant to pay, particularly if the HIP (including the Home Condition Report) has to be revised at additional cost every three months or so. If the costs are not underwritten, the scheme may well collapse altogether. There are rumours that the Government may drop the requirement for an HCR, which will greatly reduce the costs but would result in an HIP containing little more than is currently supplied (by solicitors at least) at the inception of a sale.

4. Tenant Deposit Schemes (details contained in chapter 4 of the Housing Act 2004) are apparently scheduled to come into force in July 2006. Opinion is divided as to the need and effectiveness of such legislation but experience does not favour the status quo.
5. Land Registry E-Conveyancing working model.

Members should note that it is still intended to arrange a demonstration of the Land Registry's working model for the benefit of members.

## LAW REFORM

The Law Reform Committee was one of the original committees of the old Holborn Law Society. A principal object of the Society, re-enacted in the new constitution, is “to consider questions affecting the profession at large, including the alteration or administration of the law, and to take such action thereon as shall be decided”.

### INCOMPETENT

Of major concern this year was the mass of incompetent revenue legislation, and in particular Stamp Duty Land Tax. The Revenue Committee, which like the Conveyancing Committee reports to Law Reform, effectively took the lead from all other groupings of solicitors. Almost single-handed it managed to introduce a few elements of common sense into burgeoning revenue law. Likewise the Conveyancing Committee was struggling with the nonsenses of Stamp Duty Land Tax. Much of the Law Reform

Committee’s time this year was also spent on these topics.

### ABSURD

The Committee’s own major paper this year was about trust accounting. The Law Commission published last autumn a consultation paper No 175 – ‘Capital And Income In Trusts – Classification And Apportionment’ (<http://www.lawcom.gov.uk/docs/cp175.pdf>). Many will remember the problem for trustees eleven years ago, when ICI demerged part of its operation as Zeneca, issuing to its shareholders fully paid shares in the new company, to be allotted in satisfaction of a dividend to be declared by ICI. Decisions of the Lords in 1887 and the Privy Council in 1930 seemed to show that trustees must deliver the Zeneca shares to the income beneficiary, because they derived from a dividend and dividends were income. Fortunately trustees were saved by a

decision of the Vice-Chancellor in *Sinclair v Lee* [1993] Ch 497. He held that such a result would be absurd, but was unable, sitting in a court of first instance, to undertake a revision of the principles derived from the earlier cases.

### THE ONLY ONE

The Society’s paper (<http://cwhls.org.uk>) disagreed with the Law Commission’s tentative solution to the problem. It did so by analysing the nature of the trustee’s accounting function, and explaining the fallacy that had led to the decisions in the nineteenth and early twentieth centuries. Our response, it is understood, is the only one to have done so. The Commission resumes work on the project in the autumn, and we expect to be involved in further discussions.

Rosemary Lester, Editor of the Report, is warmly welcomed as a new member of the Committee.



ARTHUR WEIR

## LITIGATION

The Litigation Sub-Committee has not been as active in the course of this year as has been the case in the past because the speed of change in litigation has slowed down a little at least as far as general litigation practitioners are concerned.

We did however do the following:

1. Organise a lecture on the major differences between the Swiss and German legal systems and the English legal system with specific reference to cross border litigation.
2. The Chair of the Sub-Committee, Joanna Kennedy, attended on behalf of that committee meetings of the Central London County Court User’s committee and reported back to members on that subject by way of The Report.
3. We prepared an article for The Report in respect of higher rights of audience.
4. We offered to Central London County Court the use of the CWHLS website for the purposes of posting listings. Although this was agreed in principle the Court never took it up and now publishes its listing on a central court site.
5. We have continued to discuss developments in the Court’s attitude towards mediation on a regular basis.
6. We submitted to the training officer of the Society ideas for a lecture which would be of use to litigation practitioners and this has culminated in a talk to be given by Judge Collins of Central London County Court in October this year.
7. The Chair of the Committee, Joanna Kennedy, has had various discussions with representatives employed by The Law Society to deal with litigation-related issues including Anna Rowland and her successor Martin Heskins. She understands that her contributions will form part of a report on the current issues in litigation which will be produced by The Law Society Civil Litigation Committee.
8. The views of the members of the Litigation Sub-Committee have been fed through to committee meetings of the LSLA who have passed on joint comments of both committees in various consultations with the Lord Chancellor’s Department and Judges on the subject of costs and other issues.



JOANNA KENNEDY

## PLANNING AND PARLIAMENTARY SUB-COMMITTEE

MARK CHALLIS



2005 has been another busy year for planning and Parliamentary lawyers, not least on account of the major changes to the planning system made by the Planning and Compulsory Purchase Act 2004. Many of the provisions of that Act have now come into force and they make wholesale changes to the system of development plans, important changes to the system of development control and

significant, if not root and branch, adjustments to compulsory purchase law.

Alongside these changes, the influence of European law continues to make its presence felt with matters such as strategic environmental assessment, the Environmental Information Regulations and continuing developments in the law on environmental impact assessment giving practitioners plenty of issues to get to grips with.

The Planning and Parliamentary Sub-Committee meets approximately 3 to 4 times a year to discuss proposed changes to the law and policy and what effects they are likely to have in practice. Those who would be interested in participating in such discussions are very welcome to contact Mark Challis at Bircham Dyson Bell, 50 Broadway, London, SW1H 0BL. Tel. 020 7227 7000.

## PROFESSIONAL MATTERS

JULIAN AYLMEYER



Many of the issues of concern to us this year are ones on which I have reported in previous annual reports. However there are three new ones that I would like to refer to initially:-

- The Bar's attempt to impose a standard contract for services on solicitors dealing with barristers unless its terms were expressly varied by agreement. Part of the problem was that the Law Society appeared to have decided not to treat failure to pay barristers' fees as a disciplinary offence. Accordingly, barristers would have great difficulty in enforcing their fees because of the tradition that they cannot sue for them. This could impact particularly harshly on junior barristers. Whilst sympathetic to this undoubted problem, we felt that some of the terms that the Bar was seeking to impose were impractical, or could operate unfairly towards solicitors. Our primary concern was to maintain a proper dialogue between the Bar Council and the Law Society, which was felt to have largely broken down. We were able to direct our comments to the relevant Council members. At our suggestion Geoffrey Vos QC, Chairman of the Bar Council, attended a dinner following a main Committee meeting. If it achieved nothing else this should have indicated that dialogue was still possible. We are moderately optimistic that it will now be possible to reach an acceptable solution.
- A short point arose out of the position that the Probate Registry was raising issues as to whether an LLP constituted a successor practice where executors appointed under a Will are partners in a named firm or its "successor practice". An LLP does not have partners. The Law Society is taking up this issue. It just shows

that there may be unintended consequences if firms convert to LLPs. In practice it really should not be too difficult to agree that members of a firm that has converted to an LLP will be treated as partners (which is what they would normally be called by their colleagues).

- We have also been concerned with the Law Society's consultation paper on training. This was not strictly a matter for our Committee. However, it was a matter of such importance to the whole profession that it was agreed that we should consider it along with all members of the main Committee. We had serious concerns both as to the practicality and enforceability of many of the proposals. We supported the learning of several areas of hard law prior to qualification; and agreed that this should include the learning of ethical principles. However, we also felt that a centrally set and marked exam was the fairest and most reliable method of ensuring consistent standards. We felt it was wholly impractical to try to examine trainees on the basis of their experience of ethical issues. In many of our member firms trainees would not have much exposure to real ethical dilemmas. Where trainees were so exposed it could cause them problems (and would cause problems of client confidentiality) if these were assessed by outsiders.

Amongst topics which have concerned us in previous years, we were pleased to see that there have been real improvements in the position on client confidentiality. The House of Lords decision in *Three Rivers* has allayed many fears as to the duties of disclosure of legal advice (widely defined); and the Court of Appeal decision in *Bowman v. Fels* has greatly improved the

protection of client confidentiality in the money laundering context. Our discussions on the money laundering context have been greatly assisted by the presence of David Morgan from his position as Chairman of the International Committee. It is a matter of considerable interest that countries which have had experience of tyranny have been much more concerned to protect the independence of the legal profession and the sacrosanct nature of client confidentiality. It was noted that before *Bowman v Fels* reported statistics of disclosures made to the relevant authorities for money laundering purposes were 13,200 in the UK, 8 in Germany and 50 in France! (We were also aware of the fact that the UK Government had taken the opportunity of extending the duty of reporting beyond money laundering to issues such as tax avoidance or evasion.) These two decisions are greatly welcomed. There is still however some uncertainty on the position in non-contentious matters.

It is a matter of great interest and during the course of the year two of our old topics became "political" issues well beyond the doors of our profession.

- The Clementi proposals to allow outside ownership of legal practices became an election issue. Both the Liberal Democrat and Conservative spokesmen indicated that they were against this. The Government however appeared to be in favour.
- During the course of the year our profession (or at least that part which bothered to vote) voted 3:1 in favour of restoring the ban on paying referral fees. We have avoided discussing this issue overmuch within our Committee because we have discussed it so often in

the past. We are not wholly united. It is probably fair to say that most members of our Committee and of our Society are instinctively against the idea of paying referral fees. It is interesting that some members have become more violently against having had experience of them. However there are undoubted problems in defining where to draw the line; and how to enforce the ban. Those in favour of relaxing the ban very often refer to these two issues. What is fascinating is that as I write this has become a “hot” topic. It is known that the Office of Fair Trading has always been against the ban.

They felt that this was uncompetitive. It was largely in deference to their views that the ban was lifted. However, there are many who feel passionately that this is completely misconceived. They argue that the requirement to pay a referral fee in order to attract work must by its very nature be anti-competitive. It is known that the Financial Services Authority is very suspicious of paying referral fees. It is also interesting that the outgoing Master of the Rolls, Lord Phillips of Worth Matravers, has indicated his view that relaxing the ban was a mistake.

I have now chaired this Committee for 10 years. It has been an enjoyable experience, made all the more pleasant by the members, some of whom have been members throughout most of the period. As we traditionally do not meet in August, our last meeting was on 7 July. Only Bruce Coles, our invariable Secretary (Richard Brown) and I were able to attend. It was the day of the London bombings. However, I think it was important that we did meet. We discussed the issues on the agenda, we had a drink, and we resolved to carry on as far as possible as normal.

## REVENUE

We have had a busy year.

The formation of HMRC was accompanied, needless to say, by the transfer of Customs’ eighteenth century powers of entry to the new body.

- In the subsequent “consultation” we advocated the removal of such powers and
- the establishment of an oversight body to police “random” income tax enquiries.
- We also suggested that separate legislation should be used to address this issue. It seems, however, that the “changes” are to take the form of instalments in the 2006 and 2007 Finance Bills. These will not be capable of amendment in the House of Lords and are likely only to be given a cursory glance in the Commons.

Members will be aware that SDLT compliance has been a major problem for conveyancers and that we have been liaising with the Law Society on this issue.

- The changes instituted in June have increased practitioners’ problems, albeit

hopefully only on a temporary basis pending “Parliament’s” approval of the revisions to the return forms required to take account of the never-ending tinkering with the statutory provisions. The latest “glitch” seems to be caused by a computer programme that does not permit SDLT5s to be issued where the actual answers to the questions posed differ from those the programmers assumed to be possible.

- Of more concern is the fact that many everyday private client transactions which did not attract stamp duty have been said, albeit not via the HMRC website, by the Policy Unit probably to be subject to SDLT. The partnership transactions code introduced in July 2004 has also been giving rise to very considerable difficulties in practice and considerable areas of doubt remain in relation to its provisions. Without a greater degree of certainty as to interpretation, it is very difficult for solicitors to carry out routine

JEREMY DE SOUZA



commercial transactions (and indeed in some cases administrative ones relating to their own firm).

We have, however, had two successes, one direct and one indirect.

- As to the first, it can be seen from the Society’s website that we received a helpful response in relation to apparent problems in relation to the disabled persons’ trusts CGT regime which was the product of the enactment without debate of the pre-Election Finance Act.
- As to the second, our feed-in to the official consultations on the tax treatment of the single farm payment resulted in it being accepted that it did “exist” from promulgation and that business property relief has been available on pre-2005 deaths.

On the ECJ front, our year closed with good news. The rejection of the Advocate General’s Opinion in “D” means that UK businesses continue to be able to benefit in full from our extensive treaty network.

## TRAINEE AND YOUNG SOLICITORS GROUP ROISIN UPCRAFT

The year began with a pro bono initiative. Through our links with the Solicitors Pro Bono Group (the SPBG) we made some initial headway in establishing a partnership with Pimlico law centre. We held an initial drinks evening back in December primarily targeted at trainee and young solicitors during which Rebecca Barnes from the SPBG gave a short talk on the role that trainee and assistant solicitors could play. This was followed by an open evening at Pimlico law centre so that potential volunteers could see the type of work that they would be involved in. It was then a question of determining the level of commitment volunteers would be required

to make. We are still in the process of negotiating terms, and hope to have in place a formal timetable by the end of the year.

On the social side of things, we had an extremely enjoyable wine tasting evening back in April. Emma Fitcher, a former manager at Oddbins, kindly agreed to host the evening which took the format of a quiz with prizes being presented to the winning team and the runner up. A good time seemed to be had by all. This is something that we would certainly be looking to repeat in the future.

Our next event will be a drinks evening which is taking place on 5th October at

Hodgsons Wine Bar. The main aim of the evening will be to welcome new trainees and assistant solicitors in the area – but the invitation is, of course, open to all. As I and a number of the committee members will be standing down later this year, we will also be looking to attract any trainee and young solicitors who may be interested in being on the committee.

Finally, I would like to thank Louise May, the treasurer, and the other committee members, Chris McIntosh, Ivan Ho, Linda O’Shea and Zoe Cumberland for all of their hard work over the past year in making the above events so successful.

# ANNUAL GENERAL MEETING

## MINUTES OF THE 3RD MEETING OF THE CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY

held on Wednesday 20th October 2004 at the Law Society's Hall

- |   |  |   |
|---|--|---|
| <p>1. <b>Minutes of Second Annual General Meeting</b><br/>The minutes of the Second Annual General Meeting of the Society were approved.</p>  | <p>The President noted that Peter Adams had agreed to be nominated as Honorary Secretary for the Society, and that this would be referred to the Committee at its next meeting for decision.</p>   | <p>8. <b>Resolution to Amend the Rules</b><br/>The meeting considered a proposal to amend the Rules of the Society pursuant to Rule 35 and RESOLVED:<br/>That to enable the Society to incorporate the Rules of the Society be amended as follows:<br/>In Rule 2 (Objects) insert after paragraph (l) the following additional paragraph:<br/>“(m) For the purpose of incorporating the Society:<br/>(i) to promote or form a company (“The Successor Body”) having a memorandum of association and articles of association each in such form as the Society in general meeting shall have approved; and<br/>(ii) to transfer the assets, liabilities and undertaking of the Society to the Successor Body on such terms and conditions as the Society in general meeting shall have approved at any time whether before or after the incorporation of the Successor Body.”</p> |
| <p>2. <b>President's Report</b><br/>The President presented his report. He reported on a successful year. The President thanked those who had supported and assisted him during his Presidency, including the Chairmen of all the sub-committees, the officers, including Ursula Taylor who was retiring as Honorary Secretary. He thanked Mrs Elizabeth Beesley, the administrator, for her work supporting the Society during the year.</p> | <p>5. <b>Election of the Committee</b><br/>There being 16 nominations for election to the committee, the following were elected:<br/><br/>Arthur Alexander                      Joanna Kennedy<br/>Julian Aylmer                              Nigel Mayhew<br/>Richard Brown                             David Morgan<br/>Mark Challis                                Stephen Rayner<br/>David Coffey                                Ursula Taylor<br/>Bruce Coles                                 Roisin Upcraft<br/>Sue Elson                                     Arthur Weir<br/>Michael Gillman                             Roger Woolfe</p> | <p>9. <b>Installation of the Society's Remembrancer</b><br/>Peter Williamson was installed as the Society's Remembrancer.</p>   |
| <p>3. <b>Approval of Accounts</b><br/>The Treasurer presented the Accounts for the period to 31 May 2004. He commented that it was important to maintain and improve membership levels. The Accounts showed a net operating surplus. The Treasurer proposed and it was agreed that thanks be recorded to Lawrence Graham for hosting the lectures during the year.<br/><br/>On the proposal of the Treasurer the Accounts were approved.</p>  | <p>6. <b>Appointment of auditors</b><br/>On the proposal of the President, Robert Smith and Philip Langford were appointed Honorary Auditors for the Society.</p>  | <p>10. <b>Any other business</b><br/>There being none of which the Secretary had received notice, the meeting concluded.</p>  |
| <p>4. <b>Installation of Officers</b><br/><b>President:</b> Jeffrey Forrest<br/><b>Senior Vice President:</b> Charles Fraser<br/><b>Junior Vice President:</b> Sara Chandler<br/><b>Honorary Treasurer:</b> Timothy Drabble<br/><b>Deputy Honorary Secretary:</b><br/>Jonathan Cornthwaite<br/><b>Editor:</b> Rosemary Lester</p>   | <p>7. <b>Election of honorary members</b><br/>On the proposal of the President, Willy Bankes, a long serving member of the committee of the Society, former Secretary and Editor of the Report, was elected an Honorary Life Member of the Society.</p>  |   |

NOTICE IS HEREBY GIVEN that  
the 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 Tuesday, 11th October 2005

The business of the meeting will be:-

- |  |  |
|--|--|
| 1. To receive the President's Report.                          | 2. To install the officers for the ensuing year.                         |
| 3. To receive the report of the Honorary Treasurer.            | 4. To approve subscriptions for the following year.                      |
| 5. To elect the members of the Committee for the ensuing year. | 6. To appoint honorary auditors  |
| 7. To elect honorary members of the Society                    | 8. To consider any other business of which notice shall have been given. |

AFTER THE AGM THERE WILL BE A DINNER AT THE CHANCERY RESTAURANT, 9 CURSITOR STREET, EC4A 1LL: THE COST WILL BE £38 PER HEAD: PLEASE LET US KNOW BY 6 OCTOBER IF YOU WOULD LIKE TO ATTEND THIS DINNER.

**DINNER FOLLOWING THE AGM**

TO: The Administrator, 25 Rotherwick Road, London NW11 7DG Reply by 6 October 2005  
DX 33801 Golders Green

Please send me ..... tickets for the dinner @ £38 per head

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

Name(s) .....

Address: .....

..... DX .....

Dietary requests: .....

Signature: ..... Date: .....

# CWHLs IN AN ERA OF CHANGE

“May you live in interesting times” runs the Chinese curse: well, as Solicitors, we do and the Committee has set up a sub-committee to look at the threats and opportunities facing our Society in this era of change. The sub-committee intends to report in November, so we need to work quickly.

The future of our Society is ours to grasp: the sub-committee will not have a monopoly of ideas, nor any omniscience or crystal ball, and positively wants ideas, thoughts and contributions from members.

Please put your thoughts on the role the Society might play in the future in an

email to me at [Adamspg@aol.com](mailto:Adamspg@aol.com) (copy, please, to [admin@cwhts.org.uk](mailto:admin@cwhts.org.uk) for record keeping).

The approach the sub-committee will take to this question will be guided by the Terms of Reference which are:

1. To consider and forecast the likely future shape of governance of the profession and the role of the Law Society and Local Law Societies in that governance process.
2. To review CWHLs’ strengths and weaknesses with particular reference to the forecast role of Local Law Societies.

3. To consider what, if any, any areas of activity not currently undertaken by CWHLs might be undertaken in future to the benefit of CWHLs’ members.

4. To review the threats to, and opportunities available to CWHLs.

5. To make recommendations based on the above reviews and considerations.

Peter Adams  
Honorary Secretary

## AUTUMN LECTURES

**CHARITY LAW UPDATE** – Michelle Russell and Alice Holt of the Charity Commission

**21 September**

This lecture on Charity law will include a summary of the Charities Bill 2005. The lecture will be particularly useful to general practitioners, pro bono advisers, other non-charity law specialists with charities amongst their client base and those solicitors who themselves are charity trustees.

**CIVIL LITIGATION UPDATE** –

H H Judge Paul Collins

**PLEASE NOTE THE CHANGE OF DATE – 27 October**

Judge Paul Collins, the Senior Circuit

Judge at the Central London Civil Justice Centre and the Designated Civil Judge for the London Group of County Courts, will deliver a topical Civil Litigation Update. If there are particular issues that attendees would like addressed, please will they indicate these when applying for tickets.

**CONTRACT AND THE CONFLICT OF LAWS** – Shantanu Majumdar of Lamb Chambers

**9 November**

In this lecture, Shantanu Majumdar will discuss recent and topical issues of forum and choice of law in international contractual disputes.

**LANDLORD AND TENANT UPDATE** – Katharine Holland of Landmark Chambers

**7 December**

Katharine Holland will deliver a topical Landlord and Tenant Update. She will include a review of the most significant landlord and tenant cases during the course of the preceding twelve months.

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 |
|-----------------------------------|--------|------------|
| CHARITY LAW UPDATE                | _____  | _____      |
| CIVIL LITIGATION UPDATE           | _____  | _____      |
| CONTRACT AND THE CONFLICT OF LAWS | _____  | _____      |
| LANDLORD AND TENANT UPDATE        | _____  | _____      |

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

Name \_\_\_\_\_ Name of Firm \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ DX \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_