



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

No.44 SEPTEMBER/OCTOBER 2006

THE PRESIDENT'S COLUMN

CHARLES FRASER



And so with a certain amount of “end of term” feeling I write my last column for The Report. It’s hard to imagine that this is really my last Presidential column. It is still mid-August, and yet by the time we go to print and The Report is distributed it will be September. By the time the next Report is published, our Society will have a new President...

So I am taking the opportunity to look back over my year, and at my aims at the start of the year and whether I have managed to fulfil them. My first was to find a guest speaker for our annual dinner. I did find one – but as you know illness prevented him from attending!

I wrote in my first Presidential column that the White Paper on the Future of Legal Services would be published and we would need to respond to it. I would like to take this opportunity once again to thank Peter Adams, our Honorary Secretary, who has worked tirelessly this year, often behind the scenes, in arranging meetings and especially the open meeting held at Bircham Dyson Bell on the Law Society’s “Have Your Say” consultation paper. We are a membership organisation, and our sub-committees respond to consultation papers on your behalf. It is only with your input that we can properly represent your interests. As a result of the meeting we were able to respond to

the consultation paper taking your views into account. We are also trying to examine the services that we offer you, our members, to reflect what you expect and want from your local law society – delivering value for money.

I was determined to raise the awareness of Pro Bono work in our society, and it was a great disappointment that there were no entries from solicitors in our area for the Wig & Pen Prize. Hopefully the judges next year will be inundated with entries – go on, show them what you’re doing!

Lastly I wanted to carry on where Jeffrey left off in relation to access to justice. It is not simply that legal aid lawyers need to be paid a rate commensurate with the work that they are undertaking, but also a matter of the provision of high quality advice and the retention of those providing that advice. I have tried to highlight some of the issues that face the younger end of the profession. The profession has changed dramatically in the last ten years or so. Not simply in terms of technology but also working practices, and attitudes, a lot of which has been prompted by legislation. With over half of the profession under 40 and not partners, it will continue changing...

My year is not over until the AGM, and I have an extremely busy couple of

months in the meantime, especially with the Law Society’s annual conference on the auspicious Friday 13 October, which will be a much more slimmed down event and hopefully more relevant to today’s solicitors than in previous years.

As the immediate past President I remain an officer for another year, and of course I am still a Law Society Council Member for the City of Westminster, so I would like to say “au revoir”, and not “adieu”.

DIARY 2006

SEPTEMBER

- 25 Lecture: Landlord and Tenant Update
- 27 Committee meeting

OCTOBER

- 16 Lecture: Judicial Review
- 17 C W H L S AGM
- 19 T Y S G Drinks
- 25 Committee meeting
- 26 Human Rights lecture

NOVEMBER

- 8 Mary Ward lecture
- 13 Lecture: Commercial Litigation Update
- 29 Committee meeting

DECEMBER

- 11 Lecture: Charities Update
- 20 Committee meeting

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registered in England and Wales
number 5467334

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Published by

The City of Westminster and
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Printed by

Hunts Printing
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Estate, Kidlington
Oxford OX5 1JD
Telephone 01865 853633
print@hunts.co.uk
www.hunts.co.uk

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The deadline for all copy for the November edition of THE REPORT,
is **13 October 2006**

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COUNCIL MEMBER'S REPORT

JULY 2006 MEETING

DAVID MORGAN

"A look into the future"

I suspect that most members switch off when confronted with a report on meetings of the Law Society Council. However, deliberations are at a fairly crucial stage as decisions are now being made on how we are to run in the future.

First, the good news: the fee for practising certificates for the coming year will be reduced to £950. Although the Law Society has separated its regulatory and non-regulatory functions, until legislation is passed the powers of regulation continue to be vested in the Law Society through its Council, and partly for that reason a close interest is maintained in the activities of the Regulation Board, chaired by Peter Williamson, my predecessor representing Holborn on the Council. While the Council has tried to distance itself from the detail of regulation, it does retain an understandable concern that the way it is run can affect all of us insofar as inadequate investment can result in fines imposed by the Legal Services Complaints Commissioner. Such fines do, of course, impact on the whole profession. Peter Williamson has also confirmed that we will be consulted on training reform later this year.

There was also a report on the Society's representation to the Joint Select Committee considering the draft Legal

Services Bill, and it seems the concerns expressed by our representatives do seem to have been reflected in the Committee's own report, published on 25 July after our Council meeting.

Most of the meeting was devoted to consideration of the Non-regulatory Transformation Plan. This was based on a "July Deliverable Synopsis", my criticism of which has already earned me a severe rebuke from Chancery Lane. The future services to be offered by the "representational" Law Society and how they were to be funded were noted, as no decisions on those matters were being taken, and the proposed route map was also briefly discussed. Most of the time was devoted to a proposal relating to the size of Council, as well as the paper's recommendation that Council members be elected on a geographical basis, apart from three members to represent minority ethnic solicitors, solicitors with a disability and young solicitors respectively.

The Council Membership Committee recommended a Council of between 15 and 30 members and the Governance Review Group (which included Council and external members) recommended a Council of between 30 and 50 members (CWHLS Professional Matters Committee have considered a Council of approximately 60 to be more realistic). The President proposed to invite Council members to vote on five different

options in ascending order, ranging from up to 15 members to more than 70 members. This, however, was resisted strongly from the floor because Council members had less than one week in which to consider the paper, and it was therefore agreed that this should be a subject of an additional full day meeting of Council in September. Sue Nelson also made the very valid point that we needed to look at what Council's function would be before we could sensibly decide what size the Council should be and this will all be discussed at our meeting on 27 September.

This may all seem extremely introspective but, quite frankly, the result of these discussions could have a major impact on representation of the profession. In particular, it is important that the national Law Society's relationship with local Law Societies is clarified and I for one have every intention of seeing that the views of CWHLS and its members are reflected in any discussions we have on the subject in the future. It is fair to say that there is little unanimity of view, but it is important that views of local law societies should not be ignored, as they were in danger of being insofar as the meeting of local presidents and honorary secretaries who expressed some fairly strong views was unreported.

Watch this space.

PROFESSOR AUBREY DIAMOND QC

TIMOTHY DRABBLE

Those former members of Holborn Law Society who knew him will be saddened to learn of the death on 6 July of Professor Aubrey Diamond. I first met him (many years ago!) at the Law Society's School of Law at Lancaster Gate on the old Intermediate Exam Course, where Aubrey lectured on Constitutional Law. Such was the clarity and enthusiasm with which he taught us that I believe that I, and I am sure his other students, still remember much of what I learned then, or at least can still

remember the means to find the answer. The separation of powers, the Royal Prerogative, the difference between the Prorogation and Dissolution of Parliament come to mind as a few examples of subjects still useful for General Knowledge crosswords!

Later he had a varied and distinguished career at LSE, Queen Mary College, as a partner in Lawford & Co and at The Law Commission. Much later I knew him when he was Professor of Law and

Director of the Institute of Advanced Legal Studies: at that time he was on the Council of the Law Society and as such an ex-officio member of the Holborn Law Society Committee. His wise, but often rather quiet, counsel, was something which we valued greatly. There were a number of Law Society Conferences which he attended with his wife Eva where we all enjoyed their company. Aubrey was among the first Queen's Counsel *honoris causa* to be appointed.

THE LAW SOCIETY REGULATION BOARD

WHO WE ARE AND WHAT WE DO

PETER WILLIAMSON



It is just over two years since the Governance Review Group which was chaired by Baroness Prashar, the then First Civil Service Commissioner, reported to the Council of the Law Society. They recommended that the governance of the Society's regulatory and representative functions should be clearly separated in order to deliver greater effectiveness, integrity and transparency. They also proposed that there should be a new Board responsible for the regulatory functions comprising 15 to 20 members, all to be appointed on merit through a transparent and independent procedure, and that half of them should not be solicitors. In his Final Report, published in December 2004, Sir David Clementi effectively adopted these proposals and referred specifically to the need to satisfy the Legal Services Board (LSB), when it comes into being, that appropriate arrangements have been made in connection with governance issues and the split between regulatory and representative functions.

The Law Society Council was quick to grasp the nettle and by early 2005 had taken the decisions necessary to set up a Regulation Board with as much independence as the current statutory regime allows. Following a recruitment process conducted last summer in accordance with Nolan principles, I was appointed as the first chairman of the Board and the appointment of the other fifteen members followed soon thereafter. The four members of the Board who were Council members resigned immediately from the Council, as they were required to do.

The Law Society Regulation Board – I shall return to the name in due course – comprises nine solicitors (including the chairman) and seven lay members. The solicitors come from a wide range of professional backgrounds including city practice, the high street, legal aid and commerce and industry. The lay members are similarly diverse with considerable experience in many relevant areas including the regulation of other professions, broadcasting, the courts, and government and its agencies.

On 1 January 2006 the Regulation Board assumed responsibility for all regulatory

matters except consumer complaints. We are therefore now responsible for four of the key functions identified by Sir David Clementi, namely entry standards and training, rule making, monitoring and enforcement and, finally, discipline. It is a very large business with about 600 members of staff employed on two sites in the Midlands and an annual budget of £55 million. One of the Board's first, and most important, tasks was to recruit a Chief Executive of the highest quality and I am delighted that we have been able to appoint Antony Townsend who has gained considerable experience at the Home Office, the General Medical Council and, most recently, as Chief Executive of the General Dental Council for the last five years.

The Regulation Board has four committees, each chaired by a member of the Board. They are:

- the Education and Training Committee chaired by Dr Jonathan Spencer, whose Civil Service career included posts at the Department of Trade and Industry and at the Department for Constitutional Affairs
- the Rules and Ethics Committee chaired by Edward Solomons, who is now Director of Legal Services for the Metropolitan Police and is a Past President of the City of Westminster and Holborn Law Society
- the Indemnity Insurance Committee chaired by Andrew Long, who practised in indemnity insurance, financial services and regulatory matters at Pinsent Masons and is a Deputy District Judge
- the Compliance Committee chaired by Sir Stephen Lander, who was the Law Society's Independent Complaints Commissioner and is now chairman of the Serious Organised Crime Agency.

The first three of these committees existed before the Regulation Board came into existence. To preserve the perception and reality of the Board's independence from the representative Law Society, it has been agreed that Council members should be precluded from serving on the Board's committees. Their membership has therefore already

ceased on the Education and Training Committee and the Rules and Ethics Committee, and will cease in the case of the Indemnity Insurance Committee at the end of the year. The Compliance Committee was established by the Board, and its membership does not include Council members. There will very shortly be a recruitment campaign, which will be advertised widely, to find suitable people to join Board members on the first three of these committees.

The Board has spent much time in the early months developing its high level strategy and has consulted widely on it. Our purpose is "to set, promote and secure in the public interest standards of behaviour and professional performance necessary to ensure that clients receive a good service and that the rule of law is upheld". We are committed to:

- promoting equality and diversity
- acting independently of, but in consultation with, our stakeholders including consumers (all users of legal services), the profession and its representative bodies, the judiciary and government
- operating in accordance with Better Regulation principles, adopting a risk-based approach to regulation
- being open and accountable
- demonstrating value for money.

Our focus is protection of the public by setting and enforcing standards; but regulation has to be proportionate. We will therefore target our resources at the areas of greatest need. It would not be effective or in the public interest to make the many excellent firms and individual solicitors answer to us in the same way as those who have bad track records. One of our early tasks has been to review all our activities. We are examining what we do and whether it is necessary, and then whether we are doing it in the right way. The Board is committed to demonstrating value for money and the review has already resulted in the identification of processes which can be streamlined. It is also helping us to develop our workplan for 2007 and, indeed, the following two years.

The Board firmly believes that prevention is better than cure. This explains one of our first actions – to introduce criminal record checks on new entrants to the profession. We have done this because people must be able to have full confidence in their solicitor. We are not saying that a minor motoring conviction or forgetting to buy a TV licence will stop someone becoming a solicitor in the future, but where we see dishonesty or a track record of poor financial management or other indications of untrustworthy behaviour, then we will want to know much more about a person's character before he or she is admitted. We shall be consulting in the very near future on new criteria for assessing character and suitability.

We are also planning changes in the training of the profession. There are some who argue that the present system is fine and there is always the temptation to think that one's own route to qualification cannot be improved. We cannot, however, ignore the great changes that have taken place since the present scheme was introduced in the early 1990s. There has been a huge expansion in higher education and learning methods with e-learning and distance learning becoming more popular and affordable. There have also, of course, been considerable developments in legal practice. We are proposing changes to the Legal Practice Course which will allow more flexibility. We will be consulting on proposals to overcome the difficulties that can be encountered in securing a training contract that would allow students to put together a portfolio of their work-based learning which would then be assessed. We will also be looking at the future of Compulsory Professional Development, concentrating on results rather than counting the number of hours.

The draft Legal Services Bill was published in May and the Regulation Board was invited to give evidence to the Joint Committee of the Houses of Parliament which was set up to scrutinise the draft. We submitted that there must be greater clarity about how professional bodies which are also approved regulators should ensure the separation of

regulatory and representative functions and we made the point that existing and potential approved regulators should not have to second guess what might or might not be adequate separation. We said that the draft Bill should be amended to specify the minimum criteria which the LSB must take into account in being satisfied that there are effective arrangements to prevent improper influence and that these should include:

- that all regulatory rule making and decision making is wholly delegated to a separate regulatory body and that any body with a representative function should have no concurrent powers
- provisions to ensure that the regulatory body may raise the funds it requires to regulate. Representative bodies should have the right to make representations to the LSB if they consider that the regulatory body's expenditure is excessive, but should not have a power of veto
- that the membership of the regulatory arm of a front line regulator should be appointed independently and must not include members of the representative arm
- that the regulatory body should be able to deal directly with the LSB, the Office for Legal Complaints and other approved regulators without having to direct communications through any body with representative functions.

The recently published report of the Joint Committee indicated support for this approach and we are hopeful that the draft Bill will be suitably amended.

When the Solicitors Act 1974 was in gestation I was an Articled Clerk. Since then the profession has expanded beyond expectations and we now need modern powers to enable us to regulate in the public interest. For example the present provisions relating to the issue of practising certificates and the requirements for accountants' reports are overly prescriptive. They prevent us from making the procedures more effective and efficient and in line with modern practice. We would like to be able to make public some of our formal regulatory findings – at the moment only

SDT findings and orders are in the public domain – and to be able to agree statements in respect of some decisions, as is the case with other regulators such as the FSA. Whilst our investigative and enforcement powers are good, we would welcome the power to require firms to review their files and to take appropriate action. We must continue to have the power to intervene in practices, but there are cases where the appointment of a receiver/manager would be appropriate. We have been assured that our need for modern powers will be addressed when the Bill is introduced in the autumn.

Separation of functions does not mean regulation without reference to the profession. We intend to consult widely with all stakeholders and to continue to work closely with, and listen to, law societies across England and Wales. We are planning a series of road shows around the country at which Antony Townsend and I, together with Board members and staff, will come and talk about our new role and our plans for the future. We look forward to hearing the views of all interested parties.

In this article I have referred more than once to the importance of the separation of regulatory and representative functions. Separation must not only be a reality, but must be seen to be a reality. The name "Law Society Regulation Board" does not achieve this and, in any event, only refers to the Board and not the entirety of the regulatory organisation. Work is therefore proceeding on identifying a new name and distinct branding which will reinforce the independence of regulation. I hope that we shall be able to launch our new identity in the autumn.

In conclusion, I am very much enjoying my new role. It is a privilege to work with so many talented people and I look forward to building on the successes of the past to ensure that even better regulation enhances the reputation of the profession, of which I remain proud to be a member.

Peter Williamson
Chair of the Law Society
Regulation Board
Past President of The Law Society and a
Past President of Holborn Law Society

SUB COMMITTEE ANNUAL REPORTS

EDUCATION AND TRAINING

The Society was very fortunate to have been able to hold its lectures for many years at the offices of Lawrence Graham; an excellent venue and very conveniently placed for many of our members.

We are very grateful to Nabarro Nathanson for kindly hosting our lectures this year.

Nigel Mayhew has chaired our Education and Training Committee and run the lecture programme since the Society was formed in 2001. We are extremely grateful

to him for all the hard work that he has put into what has been one of the Society's most successful undertakings. I have succeeded Nigel and before planning next year's programme I would be grateful for YOUR thoughts. If we are to run a lecture programme, we do need to ensure that the venue, topics and timing are what the members require. For instance, do we continue to hold one off lectures giving a general update on various topics or would you prefer that we organised an in depth series on different

subjects? The input of the membership in planning for the future would be very helpful - after all it is your Society and the lectures are for your benefit. The Society does receive considerable income from the lectures so it is to everyone's advantage to ensure that we get it right, so please let me have your views; the litigator in me says I should suggest a time and date by which you should respond but I will refrain and suggest that as soon as possible would be fine. My email address is mg@bishopandsewell.co.uk

MICHAEL GILLMAN



INTERNATIONAL

The past year has been a fairly active one for the committee, starting with the half yearly meeting of the Federation of European Bars (FBE) in Marseilles addressing, inter alia, "Lawyer's Publicity". This meeting was followed by two other meetings attended by myself as a former president of the FBE in Paris in November and in Barcelona in February. On both occasions, the topic of regulation was raised when I was able to alert the audience to the problems facing the professions in the UK in the wake of the Clementi Report.

In November, as has already been reported, Jeffrey Forrest in conjunction with the Law Society's Regional Manager, Morag Goldfinch, organised a group trip to Brussels where we were given presentations at the Law Society's offices, the European Commission's Legal Division, the UKrep (our diplomatic representative at the European Union), the European Parliament and the Central Council of the Bars of Europe, of which the national Law Society is a leading member. This was an extremely useful lesson on how the European institutions and legislation can be used to benefit clients, even on those matters which, at first sight, might

appear to be of domestic interest only.

The AGM of the FBE was held in Zurich in May and, again, the topic of lawyer's publicity was revisited. On this occasion, the meeting was addressed by our former president, Jeffrey Forrest, on the rules governing solicitors in England and Wales by way of comparison to those prevalent throughout mainland Europe.

Earlier this year, our senior Vice-President, Sara Chandler, introduced Susi Bascon, who works for Peace Brigades International UK Committee when she explained her involvement with lawyers in Colombia supporting their human rights work. As a result of this, a leading Colombian lawyer, Reinaldo Vallalba Vargas will be coming to address an international event on 26 October which will be held in St Ethelburga's Church in the City of London. Both he and Sara Chandler will be speaking on "DEFENDING THE RIGHT TO DEFEND HUMAN RIGHTS". Our aim is to raise the international profile of the work undertaken by human rights lawyers, particularly in countries where the rule of law is not necessarily prevalent.

As part of that initiative, I have arranged for him to have a platform at the FBE

meeting in Oporto which is being held on 21 October. This is particularly appropriate in the light of the fact that, Sara will be attending as our newly elected President, especially as she is a member of the national Law Society's International Human Rights Committee, having carried out a lot of work in that field. The CWHS International Committee considers International Human Rights are now even more important in the light of the cut backs being made by the national Law Society and we hope that others will support us in this view.

Finally, Jeffrey Forrest succeeded in getting the FBE AGM in May to adopt the IBA's Core Principles of the Legal Profession:-

An impartial, and independent, judiciary, without which there is no rule of law.

An independent legal profession, without which there is no rule of law or freedom for the people

Access to justice for all people throughout the world, which is only possible with an independent legal profession and an impartial, and independent, judiciary.

And that, these core principles shall not yield to any emergency of the moment.

DAVID MORGAN





We have been pro-active in one particular area concerning Home Information Packs (“HIP”). We had previously considered the (then) ODPM circular regarding the recommendations of the HIP Planners Project Board. In October 2005 the ODPM published the Home Information Pack draft Regulations and a response to such draft Regulations was submitted on behalf of the Society. Reflecting the view taken by the Law Society, the Committee had accepted the inevitability of the introduction of HIPs (although, of course, subsequently reduced in effect given the intention to exclude, as a mandatory document to be supplied with an HIP, the Home Condition Report), but we made a number of constructive suggestions as to the provisions of the Regulations some of which have been reflected in the actual Regulations as published on 9 June. In particular, we were unhappy at the suggestion that blank forms, corresponding closely with the Sellers Property Information Form and Fixtures and Fittings form promulgated by the Law Society, should be supplied; but if they were to be supplied then it would be sensible if they were completed. Under the Regulations, neither of these forms, whether completed or not, is required to be supplied.

Given the requirements of CML that, in the case of a management company being required to maintain or repair the common parts of a building, that company’s last three years’ published accounts should be provided, we considered it would be logical to require the provision of such accounts even if this was one of those documents which could be provided within a specified period of the preparation of the original HIP, and we also suggested that in the case of leasehold properties it should be mandatory to supply details of the insurance policy. Neither suggestion has been followed up, the Regulations providing that the supply of such documents and information is authorised rather than required.

We pointed out that while the general requirements for search reports and as to the content of local enquiries and drainage and water enquiries were comprehensive, it was presumed that the government was aware that the present format of the

official search provided by local authorities on form LLC1, and the replies to enquiries from local authorities on CON29 (2002 Edition) and also the standard format of the residential, drainage and water searches provided by the water companies, do not necessarily provide all the information which is required by the Regulations. It was presumed accordingly that the government would prevail upon local authorities and water companies to amend the relevant forms and their reports respectively so as to provide the information or documentation required, and it was hoped also that the government would prevail upon local authorities and water companies to provide reports on-line and also to update such reports in relation to an individual property both on-line and at a cost substantially less than the cost of the original report – this being particularly relevant where, as a result of a delay in a sale being progressed, the first point of marketing becomes a date later than the date the property was originally marketed.

The implementation date is still 1 June 2007. It appears to have been accepted that, given the number of home inspectors currently regulated and the number anticipated to be regulated by the proposed implementation date, it was impractical to proceed with an implementation date of 1 June 2007 unless the Home Condition Report was excluded as a mandatory requirement of the HIP. It can therefore be anticipated that its introduction will ultimately be a requirement, although a consequential effect of excluding the HCR from the HIP may be to reduce the numbers applying for registration as Home Inspectors.

In addition the following received consideration:

1) **SDLT.**

The changes in law and practice were considered during the year. The committee appreciated the efforts in particular of Gerald Moran in liaising with members of the Revenue Committee and making representations in written format and also at meetings with the Revenue to suggest improvements in procedure and clarification as to the legal principles involved.

2) **Planning Gain Supplement.**

Observations as to the effect on conveyancing transactions which would result in the implementation of a Planning Gain Supplement were made in general terms although the principal response to the proposals was made by the Revenue Committee. The usual reservations were expressed, reflecting problems encountered with the four or five previous attempts to introduce the equivalent of such a charge. For practitioners it was essential to consider the possible effect of the introduction of a Planning Gain Supplement on the assessment of consideration to be paid under options to purchase, where it was envisaged that the option would not normally be exercised unless a satisfactory Planning Permission was obtained and in relation to contracts conditional on the issue of a satisfactory Planning Permission - in both cases it would be necessary to establish who will effectively be liable for any Planning Gain Supplement which would ultimately be payable.

3) **Chancel Repair Liability.**

The sub committee chairman attended a discussion group arranged by the Law Society at which a paper prepared by Trevor Aldridge as to Chancel Repair Liability was presented. Despite recent well publicised cases both as to the quantum of liability, which can be considerable, and as to the fact (the Wallbank case) that enforcing the liability does not contravene the Human Rights Act, many practitioners seem to be uncertain as to the advisability of investigating the possibility of Chancel Repair Liability (or indeed whether they are under a duty to do so) affecting property in England and Wales in circumstances where properties in the most unlikely places (Fulham being a classic example) may well be affected. The practical difficulties of carrying out a comprehensive search which involves a personal search at the National Archives Office in Kew

where the Records of Ascertainment are kept was emphasised, one investigation involving a trainee spending almost all day at Kew to obtain the necessary information in order to check information with the relevant records. It must be a matter for practitioners to consider whether it is necessary first to carry out a Chancel Repair Liability search through the agencies currently available in the market, although it would certainly appear that this should be the minimum standard adopted; and whether then

(depending on the result of such a search) to carry out a full search, in addition considering whether insurance would be appropriate, taking into account that cover is normally only available for between 25 and 30 years and is invariably limited to the amount the owner might have to pay as a contribution towards repair and does not cover any diminution in the value of the property reflecting the fact that there could be a potential liability on the property owner to contribute to repair costs.

4) Consultation Papers.

These are anticipated from the Department of Communities & Local Government (the successor to the ODPM) on the revision of lease laws to require compliance with certain provisions of the lease code and on the right to manage. In addition a Law Commission Consultation paper on easements and covenants as affecting properties is expected. None of these have yet been published but as and when they are they will receive consideration by the committee.



ARTHUR WEIR

LAW REFORM

Law reform is about promoting changes in the law, or that is what we used to think. This year it has mostly been the opposite. Much of our time has been spent in opposing changes.

First there was the National Insurance Contributions Bill, which would have enabled subordinate legislation with retrospective effect. Then came the Legislative and Regulatory Reform Bill. That bill began with the laudatory aim of speeding up legislation on non-controversial issues, for example to implement Law Commission recommendations. No problem there. But, dubbed the 'Abolition of Parliament Bill', it went on to give power to ministers

to amend or repeal virtually any parliamentary legislation. Ours were among the many voices raised in protest. Most recently, we became closely involved with the Revenue Committee in protesting against the notorious BN25 – the budget proposal to classify a huge number of ordinary family trusts as tax avoidance devices and to subject them to the onerous and expensive discretionary trust regime. Once again the Society's protests joined those of many other organisations, resulting in the dramatic capitulation of the Paymaster-General.

In July the Law Commission published its report on Trustee Exemption Clauses – www.lawcom.gov.uk/docs/lc301.pdf. It

recommended no changes in the law. The Society's paper in 2003 had stressed the dangers of depriving trustees of the protection they enjoyed from the clause exempting them from personal liability. We would have been prepared to accept some limited inroad into the exemption in the case of paid trustees, but we have no problem with the outcome. "We urge the Commission (we had said), in reviewing responses to the consultation, to avoid extensive reform that would affect private and family trusts, in order to prevent injustices illustrated by a few cases. Trustee exclusion clauses have been well tried over a very long period and abuses in this field are, in our experience, very rare".

PLANNING AND PARLIAMENTARY SUB-COMMITTEE

The Planning and Parliamentary Sub-Committee meets from time to time to consider and discuss emerging legislation, policy and guidance and to provide comment from a practitioner's viewpoint.

For participants, it is a good way of keeping up to date with what is going on,

particularly at a time when there are seemingly endless changes being made to the planning system.

As an example of the Sub-Committee's work, it recently commented at some length on the Government's proposals to lift the long standing Crown immunity in

relation to the planning system.

If anyone would be interested in joining the group, they will be most welcome and are invited to contact me at Bircham Dyson Bell, 50 Broadway, London SW1H 0BL, telephone: 020 7170 0323 or email: markchallis@bdb-law.co.uk.



MARK CHALLIS



JULIAN AYLMER

PROFESSIONAL MATTERS

The approach of the Government and the regulators of the legal profession to rules, regulation and legislation have been our major concern this year.

We have been heavily involved in the discussion about the implications of the Legislative and Regulatory Reform Bill. At present it seems that the Government has made some major concessions. However, it is well worth reading the report of the House of Lords Constitution Committee to understand the lamentable way in which this legislation was approached. It also shows the serious misgivings that remain as to the powers Government will acquire. The Government has given some solemn undertakings that these will not be misused. As citizens and lawyers we would rather have legislative safeguards than solemn undertakings from the Government of the day!

Not unrelated to the relationship between citizens and Government is that between the legal profession and Government. We responded to the Government's White Paper "The Future of Legal Services: Putting Consumers First" (which followed the Clementi Report). Our main concerns have been the following:-

- The importance of ensuring the independence of the legal profession. The importance of this to the freedom of citizens in relation to Government is often much better appreciated in countries that have experienced tyranny within living memory than in countries like our own where it is all too easy to think that there is no real threat from any conceivable Government; and that lawyers' expressions of concern are motivated by protectionism. Governments should also remember that if they interfere too much in the legal profession this could damage the valuable invisible earnings earned from it.
- The stated objectives and principles of the legal profession were to be made by secondary legislation. Those principles underpin the rule of law and access to justice, and should only be changed after full scrutiny by Parliament.
- The Government should not appoint the members of the Legal Services Board. Moreover, that Board should only be a "safety valve" if the primary regulators fail. If it is not a "light touch" regulator (as the Lord Chancellor seems now to be

inclined to say it will be), the threat to the independence of the profession will grow.

- The proposals for regulating Alternative Business Structures are too vague.
- The "polluter pays" principle of making firms against whom complaints were made pay for them could have serious implications for some areas of practice where complaints are more common, and are often unjustified.
- The Regulation Board must be properly accountable, but not to Government. That Board's consultation on its own strategy (to which we have responded) referred to being accountable to its "stakeholders" without saying who they were. It is important that the Government should not be one; and that it takes no part in the appointment of members of the Board.
- The paper stated that the Board would adopt a risk-based approach without stressing that the fundamental principles underlying the legal profession will be upheld in any event.

The issue of how detailed regulation should be has arisen in other contexts. We were for instance concerned that the Law Society's Draft Rules on confidentiality should not be too prescriptive in the treatment of exceptions. There is a problem here. The more rules are detailed, the easier they are to enforce. However, they risk putting solicitors in a straitjacket which may well not be in the ultimate best interests of all their clients. As we have stressed many times before, you cannot (and should not) avoid the need for solicitors to apply their professional judgement in deciding how they should react to certain circumstances such as the need to judge how realistic is the threat of a conflict of interest arising between certain of their clients; and how serious the impact of that conflict would be when weighed against any common interest of those clients. It is interesting that the Financial Services Authority is moving firmly in the direction of a principles-based approach rather than expanding on its ever-growing volume of detailed rules. Some compliance officers find this disturbing because they cannot fall back on the certainty of whether the letter of a rule has been followed; and fear that there is too wide a scope to interpret principles with the benefit of hindsight.

We have also responded to the Law Society's consultation on its own future. Several members of our Committee feel that the Law Society has "rolled over" too easily in surrendering self-regulation of our profession. However, the separation of the representational and regulatory functions of the Law Society is now probably irreversible. It is important therefore to ensure that the representational side functions properly. We feel strongly that issues such as the size, composition and selection of members of the Council really cannot be considered independently of deciding what its role is; and what it will cost. Clearly one of its roles will be to represent the profession in ensuring that the Regulation Board functions properly and fairly.

The issue of fairness arose in the case of *Sheikh v Law Society* where (it will be remembered) Miss Sheikh persuaded the High Court that the intervention into her practice was unfair and disproportionate. The case is going to appeal, so that it is inappropriate to comment on its particular merits. However, it is important to bear in mind that even any intervention is likely to destroy a practice. The majority of interventions apparently do not involve dishonesty. That does not mean they are unnecessary. However the quite correct need to protect the interests of clients has to be balanced against the need as far as possible to allow solicitors to practise in their own way without unnecessary intervention from their regulators. There could be a particular danger if the regulators are appointed by Government. David Morgan has reminded us of recent experience in other countries where Government has leant on regulators to take action against lawyers who have acted in a way that the Government does not like.

This report would be much longer if I mentioned every issue we have discussed. All the members of our Committee have made interesting and serious contributions, and it has been a pleasure to chair the discussions we have had. My firm's recent move near to the Tower of London has precipitated my no doubt long overdue decision to stand down as Chairman after 11 years. Richard Brown (who has been invaluable both as Secretary and as contributor to our discussions) is also retiring. I am confident that the Committee will continue to thrive in considering the important issues that it has to grapple with.



Are your [FA 2004, s.306] reporting procedures in order?

The replacement of the 2004 employment and financial instrument rules by a “hallmarked” regime covering the whole of income tax, capital gains tax and corporation tax from 1 August will have caused those firms with dedicated tax departments to set up compliance controls, even though the compliance obligation will be that of the client. But those whose practices are not so organised will nonetheless need to consider whether any bespoke tax saving (which is generally outside the disclosure obligation) is within the new regime where the “client” consists of more than one person, e.g. husband and wife or a group of shareholders in a private company.

Far more serious could be the effect of the 2005 SDLT disclosure rules, which have not been brought within the hallmarking system. It seems clear from the statutory definition of “tax advantage” that the obligation to disclose could arise in circumstances in which no “scheme” exists, i.e. in some circumstances in which a conveyancer applies common sense in choosing between two possible alternatives and does not need to take specialist tax advice (even assuming that his firm has such a facility in-house, which, taking the country as a whole, is not very often).

An example which has been aired recently, but in relation to which HMRC’s views are unclear, is where a client wishes to take a 10 year lease with the option to break it after five. So structured, the SDLT charge would be calculated on the basis of a 10 year lease even if the break clause was exercised. It is likely that, in such circumstances, any conveyancer would advise that the transaction be restructured as a five year lease with an option to renew it. In so doing, he would be unlikely to have considered that he was participating in tax avoidance, merely applying the letter (and scheme) of the law.

While it seems hardly likely that Parliament intended this to be disclosable as a “scheme”, on a literal reading of the statute it may well be, and some law firms are understood to have registered this, and similar, arrangements *ex abundante cautela*. Unfortunately, on a worst case interpretation, the fact that one knew that another firm had submitted such a registration would not absolve one’s client from registering unless one had taken steps to preclude this “necessity” by doing so oneself.

Fixtures Allowances

Property lawyers will think that qualification for these is already complicated enough:

- first, it has to be plant with which, rather than the setting in which, the business is conducted;
- second, its description has to be found within a long statutory list;
- third, the expenditure has to have been by the right person; and
- now, one has to check whether that attribution has been affected by the transmogrification of treatment of finance leases: property lawyers may, in this connection, find it helpful to refer to the Leased Plant and Machinery Technical Note published on 1 August, paras. 2.72-83, 9.11-17, 11.1-6 and Annex A.

VAT avoidance

The first case in which the *Halifax abuse* doctrine (see the March/April Report) would have been invoked has been heard, *Redcats (Brands) Ltd*, No. 19,648. It was not, however, necessary for the tribunal to do so because it rejected the accountant-devised scheme as a “pretence or mislabelling”. The case concerned a mail order house which started claiming to charge for the supply of its catalogue (seemingly zero-rated as a book) and to credit that amount against the standard-rated goods ordered from it.

One of the Achilles’ heels was that, if the customer returned the goods, the

catalogue price was refunded on top of the reduced price for which the goods were stated to have been sold. It may be recalled that this defect was also present in the credit card charge case, *Debenhams Retail*, for which the House of Lords has now refused permission to appeal.

The effect of these two cases is to protect the competitive position of the small retailer, in accordance with the “neutrality principle” which is at the root of the input credit arrangements which are central to the application of VAT.

Inheritance Tax

On Report, the Paymaster-General filed an amendment to protect widow’s life interests in remainder under what have been described as “old-fashioned” (but are actually just genuine) Marriage Settlements. This was one of the issues on which the Society had been pressing.

The Paymaster-General was not, however, willing to allow any testator to leave money to a minor contingently upon attaining the age of 18. The end result is likely to be the creation of numerous testamentary enlargeable life interests for minors with Trustee Act 1925, s.31 having to take effect for administrative purposes only “outside the trust fund”. Furthermore, as the right to hold-over a gain on a distribution in specie up to 25 will not be available, it is likely that inbuilt CGT will deter trustees from making the interest absolute in some cases when they would otherwise have done so. This hardly accords with the Minister’s expounded analysis on the concept of life interest!

Needless to say, the Parliamentary Draftsman’s instructions (as interpreted) appear to have created a number of anomalies, including:

- while additions to existing life interest trusts are no longer PETs, the statute has not been amended to make them into (as HMRC appear to think) “new discretionary” settlements;

- while it is to be permissible to change an accumulation and maintenance trust into an 18-25 trust, according to the statute, and the Minister has indicated that this will not be the occasion of an A&M “failure” charge based on the length of time for which the settlement has been in existence and for which there is no nil rate band, the Parliamentary Draftsman did not think it necessary to provide for the latter in terms;
 - while a testamentary life interest can be set up by Will or out of a “two year” discretionary trust, the Minister’s statement that one can be set up by Deed of Variation only accords with the statute if one first creates a two year discretionary trust and creates the life interest out of it (an option not present in the Bill when that statement was made).
- No doubt these anomalies will have to be addressed next year. In the meantime

IHT’s Primarolo Round seems about as successful as the WTO’s Doha Round.

Finally, a word of caution. Tax efficiency should only be one element to be taken into account in trustees’ primary duty of safeguarding trust capital. And in this context one has to wonder whether the investment risk in placing funds in the AIM market for the two years preceding a periodic charge does not more than offset the prospect of having to pay only 6% tax out of a conventionally managed portfolio.

TRAINEE AND YOUNG SOLICITORS GROUP



ROISIN SMITH

This has been a year of "meet and greet". The year began with a drinks evening at Hodgsons Wine Bar, Chancery Lane. This provided trainee and young solicitors in the area with an opportunity to form new links with other solicitors/firms in the area and to cement existing ones. It was particularly encouraging, as always, to see so many people from different firms/organisations specialising in a range of areas. We held a further drinks evening later in the year at Pagliacci,

Kingsway. Again, we had a very impressive turnout.

On behalf of the TYSG committee, I would like to say a big thank you to the members of CWHLS for their continuing support over the past year. I would also like to thank Louise May, the treasurer of the TYSG, Nick May, for his artistic contribution to the production of flyers and, finally, Chris McIntosh for his invaluable help in organising the events. The next drinks evening will be held on Thursday 19 October and I would

encourage all new and existing trainee and young solicitors in the area to come along for what promises to be a most enjoyable evening.

Throughout the course of the next year, through the support of the members of the CWHLS, we hope to continue to provide members of the TYSG with the opportunity to develop social and professional networks through similar drinks evenings and other events.

THE LEGAL CHARITIES GARDEN PARTY

14 JUNE 2006

ARTHUR WEIR

As the final figures come in, the results are clearly going to be excellent. The surplus, which goes to the six legal charities, is edging towards a massive £32,000. Better than any result this century, and over 20% up on last year,

it is matched only twice in the mid nineties. It compares with an average over the previous years since 1989 of about £23,000.

This was the last occasion at which Commander Nick Lorimer was at the

helm – as members will know he retired last year from running the Solicitors’ Benevolent Association. The results are a fitting tribute to his work.

The 2007 Garden Party will be held on Wednesday, 13 June.

YOU CAN MAKE A DIFFERENCE – GIVING SOMETHING BACK

LawCare offers support and advice to Lawyers suffering from health problems such as stress, depression and addiction. It does this by means of a confidential, freephone helpline (0800 279 6888). Callers to this helpline have access to a member of staff to talk things through with; a wealth of experience and information; referral to professional help or other agencies if required; and referral to a LawCare volunteer, if appropriate. There are currently over 100 LawCare volunteers across Britain, and the support that they give is absolutely vital to LawCare's work in assisting the professions. Like Anne and Victor, their primary duty is to act as a friend and supporter to a lawyer who is referred to them, standing by them as they work to resolve their problems, giving them the benefit of their own experience, and encouraging them to

take all the steps necessary to get well.

Currently, around a quarter of all LawCare's cases are referred to a volunteer for help, but this isn't enough. Many more distressed lawyers could have the personal support of a volunteer if we had more volunteers available. Most of our volunteers only help with one or two cases a year, but we have geographical areas where there is no volunteer coverage, and areas of the profession (notably the Bar) where we have far too few volunteers. Could you help?

If you have useful life experience; recovery from addiction or mental illness, or association with those with such problems; knowledge of counselling techniques (as opposed to being a trained counsellor) or even just enthusiasm and compassion then please consider becoming a volunteer for LawCare. You'll receive no

monetary reward[§] but you will have the satisfaction of knowing that you are putting something back into the profession and helping your fellow lawyers. Like Anne and Victor, you will have the reward of seeing people you have helped resuming effective professional and personal lives. LawCare also offers free[§] CPD accredited presentations to local law societies, groups and firms on stress management and recognition.

Call 0870 774 3663 or email admin@lawcare.org.uk with your name and address for further information on volunteering for LawCare or on the stress seminars.

If you are suffering from a health issue such as stress or depression, or are worried about your drinking or drug use, you can call the LawCare helpline on 0800 279 6888. The service is free and entirely confidential.

[§] except for expenses

CWHS IN DEFENCE OF HUMAN RIGHTS

SARA CHANDLER

CWHS International Committee is in frequent contact with Peace Brigades International (PBI) as we are twinned with human rights lawyers in Colombia, who are protected by PBI. There is a tradition of support for lawyers who are faced with attempts on their lives, and CWHS is part of this tradition. PBI acts as a communication link, and their latest newsletter reports that the human rights lawyers in the Jose Alvear Restrepo Collective have received renewed death threats and

warnings in May and June 2006. This comes at a time when paramilitary groups are being demobilised even though crimes against human rights organisations have not been investigated and will go unpunished.

CWHS member Peter Burbidge was in Colombia during August lecturing at the National University of Colombia (Bogota) under an existing link with The University of Westminster, and he met the human rights lawyers. 77 lawyers have been murdered in

Colombia while doing their jobs as lawyers, many more have received threats, and those representing criminal defendants have themselves then been arrested and faced charges.

Advance warning of a date for your diaries: Thursday 26 October at 7.00pm in St Ethelburga's Church in the City - PBI with CWHS will host an event called: "Defending the right to defend human rights". Speakers from Colombia.



The City of Westminster & Holborn Law Society

MARY WARD LEGAL CENTRE ANNUAL LECTURE

SECRET PRISONS AND GHOST PRISONERS

Speaker : Clive Stafford-Smith of Reprieve

Wednesday, 8th November 2006 at 6.30 pm, followed by drinks reception

Generously hosted by Clifford Chance LLP

Venue: Clifford Chance LLP, 10 Upper Bank Street, London E14 5JJ

One hour of CPD is available (ref JC/CWHLS)

All proceeds to the Mary Ward Legal Centre a **registered charity no 1024148**.

BOOKING FORM

Name:

Firm:

Address or DX Number:

.....

Email: Telephone no:

Number of tickets required:

Standard rate:	£25	[]
Trainees and unemployed:	£10	[]
Students:	£5	[]

How did you hear about this lecture?.....

Cheques to be made payable to **The Holborn Law Society Charitable Trust** and sent with this form to:

The Administrator
The City of Westminster and Holborn Law Society
25 Rotherwick Road London NW11 7DG
DX 33801 Golders Green

Tickets will be issued on receipt of payment

City of Westminster & Holborn
Law Society



Trainee & Young Solicitor Group

Drinks

October 19th
at 6.30pm

All trainees and
young solicitors
welcome

Venue:
Pagliacci
77a Kingsway
London WC2B 6SR

email to: rks@hunters-solicitors.co.uk

ANNUAL GENERAL MEETING

MINUTES OF THE 4TH MEETING OF THE CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY held on Tuesday 11 October 2005 at the Law Society's Hall

1. President's Report

The President opened the meeting, noting that this was the first Annual General Meeting since incorporation. The minutes of the last Annual General Meeting of the unincorporated Society had previously been approved by the Committee, prior to the old Society ceasing activity following incorporation.

He reported on a successful year and referred in particular to Annual Dinner and the Mary Ward lecture given by the late Robin Cook. The Society was extremely well regarded in the larger legal community for the quality of its contributions, for example on SDLT, on law reform, and on land law. The response by the Society on the Revenue's recent pension consultation had been substantially adopted by the Law Society's Revenue Committee in its own submission.

The President thanked all those who had supported and assisted him during his Presidency, including the Chairmen of all the sub-committees, the officers, his own office staff, the Law Society's Regional Officer Mrs Goldfinch, as well as Mrs Forrest. He thanked Mrs Elizabeth Beesley, the Administrative Secretary, for her work for the Society during the year, presenting her with one of his own water colour paintings.

2. Installation of Officers

President: Charles Fraser
Senior Vice President: Sara Chandler
Junior Vice President: Michael Gillman
Honorary Treasurer: Timothy Drabble
Honorary Secretary: Peter Adams
Deputy Honorary Secretary: Jonathan Cornthwaite
Editor: Rosemary Lester

Adrian Barham
Mark Challis
David Coffey
Bruce Coles
John Davies
Sue Elson
Nigel Mayhew
David Morgan
Ursula Taylor
Roisin Upcraft
Arthur Weir
Catherine Williamson
Roger Woolfe

3. Treasurer's Report

The Treasurer presented the final Accounts for the unincorporated Society covering the period to 31 May 2005. Income was slightly down on the previous year, but the Accounts showed a very modest surplus. The Treasurer thanked the Honorary Auditors. The Accounts were noted.

The President expressed the Society's gratitude to Richard Brown, who was standing down, and to Peter Williamson and Edward Solomons, who were unable to continue to contribute to the committee following their appointment to the Regulation Board of the Law Society.

4. Subscriptions

The Treasurer proposed an increase in line with the details circulated. There had been no increase since the amalgamation, and the proposal was in line with inflation during that period. The increased subscriptions were approved.

6. Appointment of auditors

On the proposal of the President, Robert Smith and Philip Langford were reappointed Honorary Auditors for the Society.

7. Election of honorary members

On the proposal of the President, the President of the Law Society of England and Wales, Kevin Martin, was elected an Honorary Member of the Society for the year 2005/6.

5. Election of the Committee

The following were elected:

Arthur Alexander
Julian Aylmer
Richard Henchley
Joanna Kennedy

8. Any other business

There being none of which the Secretary had received notice, the meeting concluded.

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, 17 October 2006

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 approve the Accounts for the year to 31 May 2006.
4. To elect the members of the Committee for the ensuing year.
5. To appoint honorary auditors
6. To elect honorary members of the Society
7. To consider any other business of which notice shall have been given.

After the AGM, the Gamlen Prize will be presented by Rodney Stubblefield.

The dinner following the AGM will be held at The Chancery Restaurant, 9 Cursitor Street, EC4A 1LL: the cost will be £40 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 2006**
DX 33801 Golders Green

Please send me tickets for the dinner @ £40 per head

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

Name(s)

Address:

DX

Dietary requests:

GREATER LONDON REGIONAL OFFICE

EVENTS & CPD TRAINING SEPTEMBER TO DECEMBER 2006

25 September

Age Discrimination – 4.30pm to 6.30pm
The Law Society, Old Council Chamber, London

28 September

Legal Aid – Penny Owston – 4.30pm to 6.30pm
The Law Society, Chancery Room, London

11 October

E- Business seminar – 4.30pm to 6.30pm
The Law Society, Bream Room, London

19 October

Personal and Stress Management – 9.00am to 5.00pm
The Law Society, Fetter Room, London

2 November

Time Management – 9.00am to 5.00pm
The Law Society, Chancery Room, London

12 December

Assertiveness – 9.00am to 5.00pm
The Law Society, Fetter Room, London

FOR FULL DETAILS AND BOOKING FORMS PLEASE CONTACT:

Mercy Cefaz, Greater London Regional Office,
The Law Society, 113-114 Chancery Lane, WC2A 1PL
DX : 56 Lon/ Chancery Lane
Tel: 020 7316 5554 Fax: 020 7320 5971
Email: mercy.cefaz@lawsociety.org.uk

CWHLS LECTURES

25 September LANDLORD AND TENANT UPDATE

Tom Jefferies

16 October JUDICIAL REVIEW

Richard Gordon, QC

13 November COMMERCIAL LITIGATION UPDATE

Mark Cunningham and Michael Gibbon

11 December CHARITIES UPDATE

Robert Venables

These lectures will be held at the offices of **Nabarro Nathanson** at Lacon House, 84 Theobald's Road, WC1X 8RW. 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
Landlord and Tenant Update	_____	_____
Judicial Review	_____	_____
Commercial Litigation Update	_____	_____
Charities Update	_____	_____

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

Name _____ Name of Firm _____

Address _____

DX _____

Signature _____ Date _____