



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

NO.45 NOVEMBER 2006

THE PRESIDENT'S COLUMN



SARA CHANDLER

It was refreshing to participate in the legal aid debate, one of the Law Society Council's "finest hours", on 5 October. Legal aid practitioners and corporate lawyers stood side by side to condemn the Government's Carter proposals on slimming down legal aid provision. At the Law Society Conference on 13 October Charles Fraser, then still CWHS President, gave the welcoming speech, and again spoke of widespread concern, including that of lawyers in Holborn and Westminster, that proposals to introduce competitive tendering, fixed fees, and further exclusive and limited contracting will restrict and reduce access to justice. The Lord Chancellor attended the Conference, and heard these serious concerns and announced that the proposals on civil and family legal aid will be postponed until further research has been carried out. He also heard concerns about the Legal Services Bill. The President spoke of the importance of maintaining an independent legal profession, regulated independently with light touch regulatory oversight. However, there is unlikely to be any change to the draft Legal Services Bill before it goes into the Queen's speech for 17 November.

For those who have not met me: I'm a legal aid lawyer with a background in the Law Centre movement as well as private practice legal aid. I work in the Legal Advice Centre of the College of Law's Store Street branch, where I manage the Advice Centre as Senior Supervising Solicitor. I also have responsibility for the College's clinical legal education and pro bono programme throughout our six branches. I've been active in the national Law Society for the last 14 years. I joined CWHS in 2003 and am an active member of CWHS International committee. I am proud to be a member of a local law society with an active committee membership and which is recognised for its contribution in many fields of law reform, education and

training, professional matters and representation of members' interests.

During my year I intend to ensure that CWHS committees have full support to carry out their work. I will be supporting initiatives on access to justice, pro bono, the rule of law, independence of the profession and the upholding of human rights. The legal profession is the watchdog that maintains the rule of law in a democracy and ensures that every individual in society is protected by access to justice and the practical implementation of human rights legislation. That's our role, and if we don't take our responsibility seriously there is no one else to do so.

CWHS is very supportive of the Mary Ward Legal Centre. The Centre's work helps people who cannot afford to pay for legal services and who need help in many ways where social welfare law helps them to obtain their basic human rights. It has long been a place where young lawyers have given their time to help as volunteers. Some of our members are former volunteers. Our support is vital to the financial health of the Centre. The annual lecture will be held on 17 January 2007 in the splendid Clifford Chance offices at Canary Wharf, with the legendary CC hospitality. It's an event not to be missed and this year the lecture will be given by Clive Stafford Smith of Reprieve. Clive is a dedicated pro bono volunteer who represents US prisoners on death row in their appeals. I've met one of his clients, who thanks to the Reprieve defence team won his appeal and came to the UK to meet the Reprieve supporters. It was one of the most memorable moments I have experienced.

Two years ago we organised the CWHS Pro Bono Fair, and in the spring of 2007 we shall do so again. The hunt is on again for CWHS pro bono lawyers who are less than 10 years qualified. The Wig & Pen Prize is awarded in June, but we need to identify now who amongst our

member firms and organisations should be nominated for the prize.

My thanks go to our members who have finished their terms of office or their membership of the main committee: Edward Solomons, our former President, has gone on to serve on the Solicitors Regulatory Authority, Nigel Mayhew, who has maintained the excellent CPD training programme over the years, Julian Aylmer and Richard Brown, who are standing down as Chairman and Secretary of our Professional Matters Committee, Mark Challis, who continues as Chairman of our Parliamentary and Planning Committee, and David Coffey, who continues as Secretary of our Law Reform Committee. The Committee all recognise the extremely valuable work they have done. My personal thanks go to retiring President Charles Fraser and former President Jeffrey Forrest who have been responsible for my apprenticeship during the vice presidential years, and have trained me over the last two years for the role of CWHS President. I will do my best to follow in their footsteps, veritable hard acts to follow.

DIARY 2006

NOVEMBER

- 13 Lecture: Commercial Litigation Update
- 29 Committee meeting

DECEMBER

- 11 Lecture: Charities Update

2007

JANUARY

- 17 Mary Ward lecture
- 24 Committee meeting

FEBRUARY

- 27 Committee meeting

MARCH

- 20 ANNUAL DINNER

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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
12A Station Field Industrial
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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 December edition of THE REPORT,
is **20 November 2006**

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THE GAMLEN LAW PRIZE

This year the Society awarded the Gamlen Law Prize to Charlotte Lee, who is a trainee at Collyer Bristow. The runner up was Ben Parry Smith, who is a trainee at Mishcon de Reya.

This Prize is awarded to the most promising student on the Legal Practice Course within the area of the City of Westminster and Holborn. Each course provider nominates a suitable candidate for consideration by the Society for award of the Prize.

The Prize was presented at the Society's AGM by Rodney Stubblefield, one of the Gamlen Trustees. The Prize was

established in memory of the Gamlen Family and more especially St. John Gamlen, who was the last of five generations of Solicitors, and was a meticulous and sparing draftsman. In nominating a candidate, the course provider must, *inter alia*, have regard to the candidate's ability to reduce a complicated subject into simple and lucid language, able to be understood by a lay client.

The Rules of the Wig and Pen Prize, which is awarded for Pro Bono work, will be published in the December edition of The Report.



SOLICITORS BENEVOLENT ASSOCIATION

CHRISTMAS CARDS 2006

MARTIN DE BERTODANO

There are many ways that you can support your Charity and one of them is to buy the SBA Christmas cards which can be viewed on our website: www.sba.org.uk. Leaflets and sample cards are available from the SBA office, telephone 020 8675 6440, email: sec@sba.org.uk. We continue to receive a 9p royalty for every card sold from the CCA Group who print and despatch the cards at no cost to ourselves. All monies made go towards helping needy solicitors and their dependents.

In 2005 over 400 beneficiaries were helped and over £1.5 million was spent on direct grants and interest-free loans. Some of the awards made last year included:

- Assistance to a solicitor left totally paralysed and unable to speak after a brain-stem stroke.
- Help with living expenses for a young single mother unable to work full-time as her child was born with serious disabilities requiring ongoing medical treatment.

- Provision of a stair-lift for an existing beneficiary left immobile following hip surgery
- Funding modifications to the layout of the homes and gardens for three former solicitors with MS to enhance wheelchair access.

It would also greatly assist us if you would let us know about any potential beneficiary who may be in need of assistance and either unaware of our existence or unwilling to ask for help.

THE LEGAL CHARITIES GARDEN PARTY

As was reported in the last edition of The Report, Commander Nick Lorimer has retired from the SBA and he has organised the Legal Charities Garden Party for the last time. Following a meeting of the LCGP Committee in September, James Furber hosted a

lunch at which Nick Lorimer was formally thanked for all his work on the Garden Party.

We look forward to next year's Garden Party on Wednesday, 13 June with Adrian Rees in charge.



CAPITAL AND INCOME

ARTHUR WEIR



Blind Justice

Law has such a thing as a blind spot, a simple point that lawyers do not recognise. A complete absurdity can develop and no-one but a non-lawyer notices. One surfaced recently. It needs legislative surgery, but the operation will be dead simple, and the prospect of success is 100%.

Whenever trustees hold a fund for persons in succession, or as a permanent endowment, they must separate the income and pay that to the life tenant, or to the present objects of the charity, or whatever the trust requires. The separation exercise is usually simple. Interest received will be applied as income, liquidation distributions as capital, and so on. But exactly on what principles should the trustees be doing this?

After a line of decisions dating from the eighteenth century, the House of Lords held in *Bouch v Sproule* (1885) 12 App Cas 385 that you must look at the nature of the payment. There the trustees held shares in a company, which had declared a dividend out of reserves, and had distributed it with a cash or shares option. The decision turned on a finding that the company had formed the intention to capitalise its profits. The full scope of that approach was settled by the Privy Council in *Hill v Permanent Trustee Company of New South Wales Ltd* [1930] AC 720. On facts broadly similar to those in *Bouch v Sproule* the Board held that the company in *Hill* had no power to distribute capital. The distribution, which was made as a dividend, must therefore be income. That has remained the law. It has caused confusion in company demergers. In a direct demerger the shares in the new demerged company must be applied as income, even though the value of the trust fund will have instantly fallen by the amount of the value of those shares - *Re Sechiari* [1950] 1 All ER 417. When thirteen years ago ICI demerged Zeneca the same result seemed set to

happen, but Nicholls V-C (as he then was) declined to follow suit. "In my view an application of existing principles in their full width would produce a result in this case which would, frankly, be nothing short of absurd" - *Sinclair v Lee* [1993] Ch 497, 514. Put less diplomatically, *Sinclair v Lee* is the *reductio ad absurdum* of *Bouch v Sproule*.

Warming to the theme, Parliament had long before weighed in with the Apportionment Act 1870, setting rules to govern time apportionments. That has produced another distinctly pointless rule. Upon change or termination of a life interest under a trust, you must apportion each dividend according to the accounting year of each company paying it, not according to the payment date. Not only in the United Kingdom do detailed accounting rules hold sway. In the United States they are enshrined in a Uniform Principal and Income Act, updated less than a decade ago. It has been adopted by more than half the states.

Rubbish

Astonishingly, it is all rubbish. It is logical nonsense. The fatal mistake was a failure to start at the beginning, by analysing the exercise. An ordinary accountant would have got it right. He would have told the trustees to do as would any business man preparing a simple account. First, identify what is the purpose of the account (to ascertain partnership shares, perhaps, or to measure the profitability of a project). Second, decide what classification of the receipt will most appropriately fit that purpose. As with receipts, so also with payments. There may be a choice whether certain fees or travelling expenses incurred by the partnership are treated as overheads of the whole firm or are charged to the partners at a particular branch. The answer may depend on the particular purpose of the account. Again, if the project account is not to be misleading there will be a choice how management costs are

apportioned. Decisions by trustees are no different. They should be exercises in judgement, never just a mechanical process. Rules of course have importance, but their function here is as guidelines. They must never displace common sense.

The Fallacy

The fallacy in the law lies in the assumption that a payment has a single classification for both parties to it. The assumption is fundamentally wrong in theory, because classification depends on purpose, and the parties will have different purposes. It can be demonstrated to be wrong by simple examples. An individual buying a holding of shares will doubtless have purchased them as capital, but if the seller is a dealer in securities he may correctly credit the proceeds to his profit and loss account. Again, a building contractor credits payments received for his work to a revenue account, but his client may treat the same payments as capital expenditure. Classification as a concept is meaningless without purpose. If I ask you to classify the contents of my house, you will ask why - for insurance, for artistic merit, for division by value between my children? Trust receipts can only be logically classified as capital or income from the viewpoint of the trustees receiving them. Their purpose is to perform the trust by keeping the corpus intact for the remainderman while providing an income for the life tenant. They must classify the receipt as best they can in accordance with that purpose. The viewpoint of the company or other institution making the payment is irrelevant. (How things got to this pass is hard to say, but then lawyers are not known to be good at accounts, and judges do not do them at all - they refer them to the masters.)

Is this an esoteric science unique to trusts and charities? No, it is a routine function. Every organisation must classify each receipt and payment according to what the accounting

person judges to be appropriate in relation to the organisation or the project and the purpose for which the particular accounting is required. As in all exercises of judgement the accounting person (director, partner, or trustee) must consider all the circumstances of the case and give weight to those deemed relevant.

It is necessary, simply, to abolish all the existing rules of classification. Trustees can then get it right. To quote the words of Sir Donald Nicholls,

"No one, unversed in the arcane mysteries I shall be mentioning shortly, would have any doubt over the answer to these questions".

The current project of the Law Commission, presently deferred until August 2007, provides the opportunity.

This article is based on the Society's paper two years ago, published on its website, in response to the Law Commission's Consultation Paper 175.

(<http://www.lawcom.gov.uk/docs/cp175.pdf>)

THE MARY WARD LECTURE

SECRET PRISONS AND GHOST PRISONERS: SPEAKER CLIVE STAFFORD SMITH

"Anyone who has a law degree should look around them to see who the people are who are most hated in the world and then go try to help them. Otherwise, I just don't see the point to having a law degree. Death Row has always represented the distillation of our hatred – we despised people enough that we wanted to go and kill them. I never thought I would say this, but now there's a group of people that we hate even more..."

Clive Stafford Smith

Clive Stafford Smith was born and educated in England and is the driving force behind 'Reprieve'. After studying journalism in North Carolina, he attended Columbia University Law School in New York. He is admitted as an attorney in Louisiana and Washington DC. For many years he was involved in defending Death Row prisoners in Louisiana and the Southern United States.

In a recent appearance on Desert Island Discs, he disclosed how writing a school essay on the death penalty had changed his life. He had thought he was writing a history essay. When he discovered that the death penalty was still in use – and newly legitimised by the US Supreme Court's landmark 1972 ruling in the case of *Furman v Georgia* – he decided to do something about it. He spent many years in the Deep South, representing Death Row prisoners and, despite watching many of his clients executed, he has always remained optimistic that the fight against capital punishment will succeed. Today it looks as if his optimism is justified.

He founded REPRIEVE, the charity that fights for the lives of people facing the death penalty and other human rights violations. REPRIEVE focuses on the cases of the innocent, people who are mentally ill or with a learning disability, women, racial and ethnic minorities, all those unjustly on Death Row and now those detained out of reach of the law in the 'War on Terror'. Ryan Matthews, one of the prisoners defended by Clive Stafford Smith, was 17 when he was arrested. He spent five years on death row in Louisiana. He always maintained his innocence and all the charges were dropped in August 2004, after DNA evidence proved his innocence. Thanks to the Reprieve legal team of pro bono volunteers, headed by Clive, Ryan Matthews is a free man.

Those of the City of Westminster and Holborn Law Society who have heard him speak have described him as "a speaker who makes the issues very clear and brings his strong commitment to the table" and "inspirational".

For the past few years he has been based in London, representing Guantanamo detainees.

Clive has agreed to deliver the Mary Ward Legal Centre Lecture, to talk about his work on Death Row and, mainly, to talk about his recent work representing the "other" victims of the War on Terror. Clive Stafford Smith is a brilliant and compelling speaker. His lecture is not to be missed.

The Mary Ward Legal Centre

The Centre is located in Holborn and provides free legal advice to those on low incomes. They specialise in Housing and Employment law, Debts and Welfare Rights. Free initial advice is provided to all clients. Further assistance and support is provided to those in most need and disadvantaged. Where appropriate the Centre will provide full casework and representation.

40% of their clients are eligible for legal help but 60% are not and because of their low income they cannot afford to pay a solicitor. These clients have few resources to turn to for assistance and the Mary Ward Legal Centre is one of the few able to provide the level of specialist help that they require, including representation at court and hearings. Priority is given to problems that cause need, hardship and distress:

- multiple debts including bankruptcy, mortgage arrears and shortfalls
- unfair dismissal, minimum wage claims, harassment and discrimination.
- welfare rights
- housing problems including eviction and threat of eviction, homelessness and rights to housing, severe disrepair

This work is free of charge. The Centre's costs have to be met by grants and donations. All support is gratefully received by the Centre and their clients.

See page 12 for the application form for tickets.

THE LAW SOCIETY CHARITY

It is said that charity begins at home and that is certainly true in the case of the Law Society, the home of the representative body for more than 100,000 practising solicitors in England and Wales. Catherine O'Leary examines the prospects of the Charity as the Law Society looks to the future.

The Law Society Charity was set up in 1974 as a charitable fund by the then treasurer of the Law Society, Sir John Stebbings, as a way of funding the Society's educational role. Since then children in penal institutions, young witnesses, and law students in Africa are just some of the people who have benefited from grants from the Law Society Charity. In fact, the Charity has allocated grants totalling more than five million pounds to 200 charities worldwide.

Grants are allocated to a wide variety of organisations and individuals, whose work is related to the law and the legal profession and to furthering justice around the world. A Board of Trustees, which consists of six Law Society Council members and six other solicitors, runs the Charity and decides which groups deserve financial support, based on its aims and objectives.

The objectives of the Charity are broad. They range from championing human rights to supporting legal education, domestically and internationally. However the Charity also helps those closer to home. Indeed, despite the fact that some solicitors are unaware that the Charity actually exists, for many groups it has been a lifeline, providing help for solicitors suffering from stress, depression and alcoholism. This lifeline is provided by **LawCare** (helpline on 0800 279 6888; for information on volunteering, phone 0870 774 3663).

Fiona Woolf, Law Society President, said: "The Law Society Charity has a very proud tradition of providing grants to individuals and groups who need financial help. The donations they give have helped solicitors through troubled

times and good causes throughout the world, promoting better law and justice for all".

In January this year the NSPCC received a grant of £12,620. Tim Hunter, the NSPCC's deputy director of fundraising, says the money has made a difference. "The money donated by the Law Society Charity has enabled us to provide high-level support to ten children, helping them cope with the emotional impact of giving evidence in court. Our Young Witness Support projects provide vital support for children and young people giving evidence in court, an experience which can be distressing and traumatic. Our projects can help reduce these effects by informing young people in advance about what is likely to happen and helping them to understand the trial process."

Another grateful recipient of funds over a number of years is the Citizenship Foundation, which develops young people's citizenship skills, knowledge and understanding. In 2005/06 the Foundation, which was founded by Lord Phillips of Sudbury, was given a further £75,000 from the Law Society Charity and Lord Phillips has described the work of the Law Society Charity as invaluable and irreplaceable.

Some other examples of the projects that have received funding are Youth Net, an organisation which provides legal advice for young people via various communication tools such as mobile phones and the internet, and the Nottinghamshire Law Society joint project with local universities providing legal advice to the local community.

The beneficiaries also include the Howard League for Penal Reform – an inquiry into the treatment of children in penal institutions; Book Aid International, for the provision of law books in sub-Saharan Africa; and the Rift Valley Newcastle Justice Project, which is a joint project between Newcastle Law Society and Rift Valley in Kenya to further develop the provision of legal services in Kenya.

Lucy Winskell, of the Rift Valley Newcastle Justice Project, said the project was enormously grateful for the £25,000 grant. "In practical terms the grant will help with the provision of additional secretariat support in the Rift Valley in Kenya, which means more legal assistance can be given to the children caught up in the civil justice system." She said: "The grant will give longevity to the arrangements between the Newcastle Law Society and the Rift Valley Law Society."

Last September the Charity gave a grant of £60,000 to the British and Irish Legal Information Institute [BAILII]. BAILII is a charity which promotes the administration and development of the law and advances legal education by providing free access to legal materials. The donation was used to develop a free internet database of public legal materials for the UK and Ireland. This database provides access to the most comprehensive set of British and Irish primary legal materials including 400,000 searchable documents with approximately 15 million internal hypertext links, which are available in one location on the internet. BAILII can be found at Bailii.org.uk (web page).

Now, the Charity is looking to the future and putting itself on to a new and stronger footing. It is exploring income generation through fundraising and joint project work with other charities within the legal sector where there is huge potential. To make more of a mark, the Charity will also be raising its profile so that it is recognised as the main charity of the solicitors' profession.

If you would like to make a contribution, please send it (made payable to Law Society Trustees Ltd) to Helen Firth at The Law Society, Chancery Lane.

Robert Venables will deliver CWHL's' December lecture – "Charities Update" – on Monday 11 December: details on page 12.

E-CONVEYANCING - MAKING CONVEYANCING EASIER FOR ALL

FROM LAND REGISTRY

The driving force behind e-conveyancing is the desire to develop an electronic system of conveyancing that makes buying and selling houses easier for the general public and conveyancing professionals. The intention is to build on the good parts of our existing conveyancing system to make a better system.

Most people in England and Wales are able to co-ordinate their sale and purchase. However, this does inevitably mean that there are chains of transactions. It is particularly in this area that e-conveyancing can improve on the existing system. A 'chain matrix' service will enable all the parties in the chain to see the current state of play and which stages have or have not been completed. Are searches satisfactory? Have finance conditions been met?

A Staged Approach

Land Registry is avoiding any "big bang" approach by introducing the component parts of the e-conveyancing service incrementally in stages, ensuring that each component part has been thoroughly tested and then trialled by groups of customers before additional components are added. Full support will be provided to customers during this period of change.

The Chain Matrix Prototype

In keeping with this approach, practitioners in Bristol, Portsmouth and Fareham are now being invited to take part in the prototype testing of the Chain Matrix Prototype. These areas were selected on a variety of factors, such as a high percentage of home ownership and a good mix of property types.

This exercise will allow Land Registry to test not only the service itself, but also the marketing, training and customer support facilities that we have put in place. Land Registry will use feedback from the trials of the prototype to develop an enhanced chain matrix, due to be rolled out progressively across England and Wales in 2008-2009.

The chain matrix will show all the participants in a chain of transactions and, for each of those participants, their progress in passing the key stages. For example, when a buyer obtains his mortgage, the field showing the status of the finance arrangements will be updated.

Participating conveyancers will be able to see other parts of the chain in which their client is involved, and will be able to update the matrix as key stages, both pre-exchange and pre-completion, are achieved. The chain matrix will be able to display information about more complex arrangements, such as contract races and branched chains when two sales are required to finance one

purchase or a divorcing couple each acquires a new property.

This first version of the matrix will be an information only tool giving information regarding the progress of transactions in the chain. Conveyancers will signal manually the fact that exchange and completion have occurred.

Later developments will allow the chain matrix to be used as the mechanism for exchange and completions, ultimately linked to the passage of funds through the Electronic Funds Transfer (EFT) service including all completion moneys, Land Registry fees and stamp duty land tax.

Future Stages

The next stage, to be trialled initially by a small number of customers in late 2007/early 2008, will be an enhancement of the current e-lodgement service, including:

- Improved access point to web services.
- Lodgement of applications that include e-deeds and documents.
- E-signature facilities for a conveyancer to sign on behalf of their client with the e-security arrangements needed to make use of the system safe and secure.
- An SDLT interface based on HMRC's current service, but not payment of Stamp Duty Land Tax.
- "Data Checking": this will be a central feature of e-conveyancing, enabling the automatic checking of data contained in e-documents against records already held in Land Registry databases for certain errors or inconsistencies. This will enable many requisitions to be raised before exchange of contracts.

The next stage will test the basic elements of most of the components of the e-conveyancing with the major exception of EFT. The responses to the EFT service consultation last year indicated that our preferred solution needed to be looked at again. Land Registry is now working on the solution and intends to include the EFT component in a later tranche.

When all customer trials have proved that the e-conveyancing services launched so far are stable and operating successfully, Land Registry aims to introduce an enhanced chain matrix, enhanced security, third party interfaces, e-contracts and an extension of "front end validation" to enable a notional register to be prepared. This will show the register entries that will appear on the register simultaneously with completion of the transaction. The notional register will be viewable only by the parties to the transaction and their advisors and it will

provide reassurance that title issues have been properly and fully addressed.

Land Registry will aim to introduce the remaining planned e-conveyancing services on a progressive basis as and when each previous stage has been proved to be stable as a result of testing and trials in a customer environment.

Fees

Land Registry is currently working on the charging strategy for the new services.

The aim is to revise the existing fee structure so that the overall fees payable on the average transaction are about the same as they are now, but to reflect the different services used within each transaction.

Further Consultation

There are several sets of consultation papers planned for the coming year and conveyancers are encouraged to look out for them and actively participate in developing our plans for e-conveyancing and the relevant secondary legislation.

First, in respect of the network access agreements and other e-conveyancing rules that will contain the requirements for joining and participation in the service.

Secondly, in respect of the land registration rules that will require slightly less scrutiny by Parliament, governing how you should use the service.

Finally, in relation to the charging points and fees payable in respect of the use of the new e-conveyancing service.

Preparations you can make at this stage

Use of electronic services raises new issues, such as how to store information. If you use the electronic services that are already available and the further services as Land Registry rolls them out, this will help to identify your training and equipment needs within your office. Dealing with these issues is part of the essential preparation for e-conveyancing.

Electronic services that are already available include:

- Land Registry Direct (www.landregistry.gov.uk/direct),
- NLIS (the National Land Information Service) (www.nlis.org.uk) and
- e-correspondence (e-requisitions and e-notices).

We encourage customers to begin to use e-correspondence as good preparation for e-conveyancing and as a way to process certain requisitions (those that do not require attachments or the circulation of documents) more efficiently.

For more information see:

- Practice Guide 23 - *Electronic lodgement of applications to change the register*
- Practice Guide 45 - *Receiving and replying to notices by email*
- Practice Guide 59 - *Receiving and replying to requisitions by email*.

For some time Land Registry has been piloting a direct debit service for substantive fees. This facility is now being extended to other customers and you should register your interest if you wish to participate. Again this is good preparation

for e-conveyancing. The web address for further information regarding our direct debit service is:

<http://www.landregistry.gov.uk/info/articles/ddpayment/>

Have a look at the e-conveyancing website www.landregistry.gov.uk/e-conveyancing for information and the latest news, including future consultation exercises, or join the e-conveyancing forum and participate in online debate.

If you are interested in attending a demonstration contact the E-conveyancing Team at enquiries@e-conveyancing.gov.uk

Training and support

Within Land Registry, alongside the E-conveyancing Team, the Education and Training Group is working on plans to support participants in each stage of the e-conveyancing service. The group is also developing presentations and online packages.

E-conveyancing will not appear overnight. But, in consultation with you, we will build a service that will ultimately transform the way in which conveyancing is undertaken and takes full advantage of the electronic age – a service that, with your help, will make conveyancing easier for all.

ALEXANDER FORBES INTERNATIONAL RISK SERVICES COMPLETES TRANSACTION TO CREATE LARGEST PRIVATE INSURANCE BROKER



Alexander Forbes International Risk Services (AFIRS), the international insurance and risk management arm of Alexander Forbes Limited has been acquired by Lockton Companies, Inc. creating the largest independent and privately owned global insurance broker with revenues in excess of \$600m. When combined with FIRS' position in the European broker partnership, EOS RISQ, it creates an organisation with local representation in 43 countries.

We have worked with Lockton for more than a decade as business partners and are, therefore, confident that this arrangement will benefit both AFIRS and our clients. The operations of our two businesses complement each other, both in terms of geographical presence and the skills that we can bring to you.

MORTGAGE FRAUD

In March 1991 the Law Society issued its "Green Card" warning on property fraud in response to the numerous fraudulent property transactions involving solicitors. Most solicitors were unwittingly involved, and were used as instruments by the fraudsters to enable them to achieve their objectives. The scale of these frauds was enormous and was to have substantial impact on the Solicitors Indemnity Fund, and in turn the pockets of solicitors whose contributions to the fund increased dramatically to cover these liabilities.

It was hoped that such frauds would never be experienced again either by the

profession or the professions PI Insurers. However, there is evidence to show that the fraudsters are back. And what is more solicitors are again assisting them to achieve their objectives.

There is simply no excuse for this.

Any member of staff involved in a property transaction must be able to spot a property fraud, and know what steps they must take in order to minimise the risk of fraud. To achieve this one need look no further than the information contained in the Law Society warning card. The obligation is on the firm to bring the card to the attention of every member of staff involved in property transactions and ensure that adequate training is given.

Remember that many of the more recently qualified solicitors were still at school when the last wave of frauds was being perpetrated. Many are not aware of the existence of the Green Card. Others who were practising at the time appear to have forgotten what to look out for. Whilst the Green Card must be consulted, some of the more common points to look out for are:

- Deposits allegedly paid directly between seller and buyer without involving the solicitor.
- Recently acquired properties being sold, or sub-sales, where a substantial profit is being made without there being a reasonable explanation as to why. Remember also your obligations in accordance with the CML handbook to

report pursuant to paragraph 5.1, surrounding circumstances.

- Unusual transactions – transactions which do not follow the normal course of events; do not close your eyes to suspicious circumstances, not least because of your obligations to report suspicious transactions pursuant to the Money Laundering legislation.

The Green Card also identifies what steps should be taken to minimise fraud. They are simple and straightforward, but extremely effective. For example:

- If necessary, question why you have been instructed. If you are based in Newcastle, the client lives in Cornwall, and the property is in Birmingham, why you?
- If elements of the transaction worry you, discuss them with the client; do not assume it is none of your business. If the client is a fraudster, the minute they believe they have been rumbled they will be off.
- Check signatures and addresses on documents and make sure they marry up

The above is just a sample from the Guidance. It is for you to ensure that you and all your staff read and understand the Green Card. It should be on the desk of every property practitioner as a constant reminder. Where do you find the Green Card? Annex 25 G of your Guide to the Professional Conduct Of Solicitors.

COUNCIL MEMBER'S REPORT

FRASER WHITEHEAD



"I dare say you haven't had much practice" said the Queen – "When I was your age I always did it for half an hour a day. Why, sometimes I believed as many as six impossible things before breakfast"

Not so much Alice in Wonderland but there was a strong sense of déjà vu when Council batted down to discuss its agenda at the beginning of October. With apologies to the important issue of the future of Legal Aid, the principle item for discussion was the size of Council. But the sense of déjà vu was not due to the fact that only five years ago it had battled with that very issue and courageously increased itself from 75 to 100 members, the better to represent the profession. Nor was it due to the not too distant smoke and mirrors diplomacy that had led the profession, or to be precise "1466 people" as the web site puts it, to guide the Council towards considering reducing itself back to 75 or less.

No, it was due to the fact that it had discussed not much else for the last several months and not least the exact same matter just a few days earlier at a special meeting on the sole issue of the size and role of Council. On that occasion a reasonable observer might have concluded that the issue had been somewhat dodged. And it was, but not necessarily by the Council (who else decides things, you ask - indeed - and Council wonders too). None the less, just a few days later the subtly re-titled debate on the role and size of Council re commenced.

The October meeting followed the pattern of its illustrious earlier twin. I can spare the detail of the cut and thrust of debate, the nuances of the politics, the championing of democratic principle by telling you the decision, which says it all. After all the time and wrangling the future Council will be "large enough to

represent the profession" Well, we can all be happy with that.

But behind my brief and slightly cynical analysis there is a real and important point. Council actually did achieve something. In its apparent prevarication Council achieved an important win. (Win against whom you ask - indeed etc., see above).

Eighteen months earlier the Council rushed lemming like, and prematurely, into the separation of regulatory and representational functions and clearly didn't get it right. "I have in my hand a piece of paper signed by Mr Williamson" is the lesson history has taught us on this occasion. What we have won is more time for *ourselves*. And time is crucial here, not to delay or postpone as long as possible the Council turkey and voting for Christmas tableau but so that we can get the future of representation absolutely right.

And we simply must get it right for there will be no second chance. In the battle for the very survival of much of the profession that the post Legal Services Act world will herald, the key is the effective marshalling /representation of the profession. Indeed, if we get it wrong the future size of Council will be an easy matter. And we have very little time to get it right for it's a battle that those who seek to dominate us and our markets have already commenced. The evidence is everywhere.

Evidence? The "other" matter Council debated – the Carter Review, a first skirmish in that battle, shows what can be achieved when that representational force is effectively marshalled. In a stirring debate Council committed the profession to a well canvassed, widely supported popular campaign of resistance. Effective? Well, within a few weeks the government, remarkably, appears to be on a u-turn. Did the

current size of Council voting in 3 figure margins help? No.

What matters and dictates the issue is not the size of Council but the quality of the surrounding representational structure. With Carter we had a rare glimpse of the current system working well, but it didn't work because of the size of Council but because of the groundswell across wide areas of the profession, well beyond the legal aid camp. We learnt the important lesson that in unity there is strength.

What we must use the time for now is to put in place first a much better and more efficient representational structure underneath the Council, in the form of effective and empowered local law societies, based I dare to suggest on the Westminster & Holborn model (and perhaps electing the Council?) These new local societies will be more regionally structured and fewer in number than at present. Additionally we need to develop alongside Council a new structure of empowered functional committees and law practice sections delivering the output of the representational deliberations at national and governmental level. The size of Council will reflect what can and needs to be achieved to communicate locally and deliver nationally. It may be the same or more or less or even have to be flexible and increased to deal with certain issues, reduced for others? But Council size is the second consideration not the first.

This is a new way of doing things. We have time now to plan, albeit not much time. We must all have realised by now that the unthinkable may happen. Impossible things? Wonderland is over. Yesterday's impossible thought is today's reality. The age of appeasement is over. We are to all intents and purposes on a war footing. We are now fighting for survival.

NEW MEMBERS

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Richard Max & Co: D T Warman

ASSOCIATION MEMBERSHIP – TRAINEES:

Lee Bolton & Lee: B D Clarke, T J McM Moore,
A J Sherbrooke

REVENUE COMMITTEE

JEREMY DE SOUZA



The Pre-Budget Report will either have been delivered or be imminent when this reaches you. While one cannot cater for this year's surprises (and with the current incumbent unlikely to be in place for the following PBR it seems likely that there will be some), some reflection on certain areas of unfinished business scheduled for an appearance would be appropriate.

Planning-gain Supplement

With the Chancellor now taking a leading role in the development of the town and country planning system, further announcements on that score are to be anticipated. To most people's surprise the last Budget contained no amplification of the extraordinary proposals for the replacement of TCPA 1990 s.106 agreement payments by a new tax.

A number of problem areas were identified and it will be interesting to see what transpires in relation to them:

- The first is how much of the take will be recycled to the local authority in question and how (and how quickly) it will get there. There must be a distinct likelihood of payment having to be made to the Treasury and some of the money finding its way into the general tax pot, currently clearly in need of sources of renewal!
- One of the planning objectives was to encourage development over brown land, in order to avoid further incursions into the green belt. But almost the only source of such land in country towns is the sale of parts of people's gardens. At the moment such sales can normally be achieved without the payment of capital gains tax. But if a new tax were to be substituted, the likelihood is that householders would only be willing to sell for an equivalent price which is net of tax. This will either increase the price of new housing or so restrict the supply of land on which to erect it that incursions into the green belt will become unavoidable.
- Experience with both betterment levy and development land tax suggests that there is no prospect whatsoever of

a self-assessment system of valuation being workable. But the necessary compulsory involvement of the District Valuer will increase the cost of collection considerably, possibly to such an extent that the Government's undisclosed "moderate" rates of tax will not produce sufficient to enable the s.106 payment system to be replaced by a cash flow satisfactory for some local authorities.

The increased cost of conveyancing

The introduction of a PGS will not reduce conveyancing costs, rather the opposite. The replacement of stamp duty by SDLT achieved this to a remarkable extent and (despite the efforts of Gerald Moran and others to induce HMRC to make the collection procedure more user friendly) the public may not yet have seen the last of such cost increases.

One area which has been causing some concern over the summer is the impending outcome of the second consultation (the first was launched in the autumn of 2000) into the transfer of going concern VAT regime. At present, this operates on the basis of lore (rather than law) contained in Notice 700/9, last revised in March 2002. In relation to property investment transactions some of the current official practices laid down in that document are highly questionable under two recently-established European law principles, that in relation to harmonising the treatment of property transactions and the scope of the "neutrality" principle, but no change in the party line is anticipated in this respect.

What is essential for property lawyers is to have a system which is relatively simple and in relation to which they can be confident of being able to establish the status of the transaction on completion. There have been mutterings from some quarters outside HMRC and the legal profession about the possibility of a "wait and see" what the purchaser actually does period. If such a proposal were to be put forward officially, property lawyers would be placed in an almost impossible position with:

- the purchaser having to produce a sum equal to 17.5% of the agreed price having to be placed in escrow for a period likely to last some months; and
- quite possibly also having to make a forced loan of 4% of that to the stamp office on top and probably for a rather longer period.

It has been made clear to those in question, as well as HMRC, that the introduction of a system necessitating such complications would be unworkable and therefore unacceptable to conveyancers.

Primarolo's inheritance tax changes

The longer time elapses, the more oddities are being revealed in the FA 2006 reformulation. No doubt some of the more obvious will be filled in the PBR. One fast ball which some of you may have missed is that the much vaunted two years for reorganisation of accumulation and maintenance settlements does not apply where an interest in possession arises during the transitional period.

Charities

It has long been established that our tax reliefs for charities are confined to those of UK origin. On 14 September, the ECJ handed down a judgment which, in principle, will allow those of EU origin to claim exemption from income tax, stamp duty, SDRT and SDLT on their investments in the UK: *Centro di Musicologia Walter Stauffer v. Finanzamt Munchen fir KErperschaften*, C-386/04. Swift recovery is not, however, to be expected because HMRC are entitled to look into whether the home state's charitable criteria and structures are equivalent to ours.

The Rewrite

Our, and other bodies', comments on the draft Income Tax Bill appear to have been considered carefully and some changes made. It should be a matter of considerable concern, however, that the Project has failed to draw the line at making changes which fall quite clearly within the scope of the Finance Bill procedure in at least two places.

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The City of Westminster & Holborn Law Society

MARY WARD LEGAL CENTRE ANNUAL LECTURE *SECRET PRISONS AND GHOST PRISONERS*

Speaker : Clive Stafford-Smith of Reprive

Wednesday, 17th January 2007 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**.

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Number of tickets required:

Standard rate:	£25	[]
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To: Mrs E J Beesley, CWHLs, 25 Rotherwick Road, London NW11 7DG DX 33801 Golders Green with cheques made payable to **The Holborn Law Society Charitable Trust** – tickets will be issued on receipt of payment.

CWHLs LECTURES

13 November COMMERCIAL LITIGATION UPDATE

Mark Cunningham, QC and Michael Gibbon

Mark Cunningham, QC and Michael Gibbon of the Maitland Chambers have a broad based litigation practice. Their lecture will include the following points:

- Time for Serving Proceedings
- Use of material and information provided during without prejudice negotiations
- Recent developments in Appellate procedure
- Some recent developments on disclosure

11 December CHARITY LAW UPDATE

Robert Venables, Nicola Evans and Peter Garrard

With the long promised Charities Act hoped for before the end of the current session of Parliament, Robert Venables and Nicola Evans of Bircham Dyson Bell, accompanied by Peter Garrard of the Charity Commission, will give an update on developments in charity law.

They will give an overview of the changes expected to be made by the Bill, and will also address some of the problems to which it will give rise in relation to the recent developments in the Charity law of Scotland with issues of dual registration of charities now being required and separate requirements of the Charity Commission and the Scottish Charity Regulator.

These lectures will be held at the offices of **Nabarro Nathanson** at Lacon House, Theobald's Road, WC1X 8RW. The price is £20 for members of this Society and £30 for non members and includes a drink from 6.00pm. 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, NW11 7DG DX 33801 Golders Green
Please send me tickets for the following lectures at £20 per ticket for members and £30 per ticket for non members

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