



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

NO.47 JANUARY/FEBRUARY 2007

THE PRESIDENT'S COLUMN



SARA CHANDLER

What a start to the New Year.....the terrible sight of a death sentence being carried out before our eyes shocked and sickened me to the core. The resulting debate about capital punishment may reach many people who have never thought about our own individual responsibility as human beings, as well as the collective responsibility of society to protect each person's human rights, in whatever circumstances the need arises. Each of us has to think about the principled and pragmatic reasons behind our beliefs. Something as stark as the Saddam Hussein execution forces us to do so.

Over the Christmas break members of the Society's Professional Matters Committee have been hard at work on a number of issues. As a result I wrote on behalf of the Society to our local MPs, Mark Field and Frank Dobson, explaining the lack of protection of the independence of the legal profession in the proposed provisions in the Legal Services Bill for the Lord Chancellor to make the appointments to the Legal Services Board. While the Lord Chancellor of this day may never exercise the proposed powers, the legislation will enable others to do so at some future time.

It has also been an active time in the legal aid campaign. Members of the Society, including Council Members, attended the Special General Meeting of the Law Society on 17 January. It was a packed meeting, with the Common Room full, plus people standing and two overflow rooms with big screens. The topic: Access to Justice, and the impact of the Carter proposals. A special resolution tabled by criminal defence solicitors was passed unanimously, directing the Law Society to oppose

proposals including price competitive tendering. The Law Society's "What Price Justice?" campaign has resulted in an adjournment debate so well attended by the public that even the Chair of the Law Society's Access to Justice Committee had to wait patiently outside until MPs came by and she heard how the debate was going. It was the first showing of back bench concern that the Carter proposals will decimate the legal aid sector. This was followed up by a meeting with the Legal Services Commission, led robustly by President Fiona Woolf, to counter the proposals on new contracts.

At the same time as legal aid spending is being reduced by the Government, local authorities are changing to a system of commissioning for voluntary sector legal advice services. There are three Not for Profit organisations in our area who serve vulnerable members of the public in the Holborn and Westminster catchment areas: Camden Community Law Centre, Central London Law Centre and the Mary Ward Legal Centre. Camden Council proposes to cut the grants to voluntary sector organisations and currently all three organisations receive this kind of funding. At a time when their Legal Services Commission contracts are under threat, they are also to lose Council funding. I wrote on behalf of the Society to Leader of the Council, Councillor Keith Moffat and Deputy Leader, Councillor Andrew Marshall to express our concern at the cuts.

Jeffrey Forrest has written about the Mary Ward Lecture, a most memorable event on 17 January at Clifford Chance. Our speaker was outstanding in his lively and unconventional presentation, and our host's auditorium was full with

standing room only at the back. Our thanks go to Elizabeth Beesley who worked tirelessly on the organisation of the event, and to Michael Smyth and Joanna Gibson at Clifford Chance for making this a very special evening. Thank you to so many members who attended the lecture, and for your generosity in supporting our fundraising efforts, and to those who could not attend and sent donations.

Des Hudson, the Chief Executive of the Law Society will attend the Main Committee meeting on 27 February, to answer questions and discuss with members the future of the national Law Society. This is an opportunity to raise your views on the role and structure of the Law Society as we become a more representative body. Non Committee Members who wish to attend should contact Elizabeth Beesley for details of time and place.

Time has flown and already the Annual Dinner is upon us. To be held on Tuesday 20 March in Middle Temple Hall, it will be a most convivial evening. Those most prudent among us will be booking their tickets and inviting their guests now before the dinner tickets sell out.

DIARY

2007

FEBRUARY

- 13 Welcome Drinks
- 26 Lecture: Age Discrimination
- 27 Committee meeting followed by dinner with Des Hudson

MARCH

- 20 ANNUAL DINNER
- 26 Lecture: Family Law Update
- 28 Committee meeting

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is **23 February 2007**

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TEXT OF LETTERS TO MPs

This is the text of the letter sent by the President to the MPs for Westminster and Holborn, Mark Field and Frank Dobson, referred to in the President's column. The enclosure of the Law Society briefing is replaced with a link.

Serious Threat to Access to Justice and the Constitution

In the interests of the public, and of this country's reputation, I write, in my capacity as President of the City of Westminster and Holborn Law Society, to urge you to vote for an amendment to the proposed method of appointing members to the Legal Services Board in the Legal Services Bill, so that such appointments are demonstrably independent of government.

Background:

The City of Westminster and Holborn Law Society is the local law society for solicitors in your area. Part of our representation function includes considering changes in the law which affect the profession, and commenting as appropriate.

We commented on the Government's proposals for changes to the regulation of legal services when the White Paper on the future of legal services was published. Since then, the Legal Services Bill has been published and amended. The Law Society of England and Wales prepared a briefing note for the second reading of the bill, on 6 December 2006, a copy of which is enclosed for your information.

[<http://www.lawsociety.org.uk/secure/file/159858/e:/teamsite-deployed/documents//template%20data/Internet%20Documents/Parliamentary%20briefings/Documents/LegalServicesBillLords2R121206.pdf>]

While the Bill as amended takes into account a number of comments made, there is one critical issue to draw to your attention. This is the independence of the regulator of legal services from government.

It is crucial for the administration of justice and for the protection of the public that the legal profession is, and is seen to be, fully

independent of government. If not, there is a risk that government, by influencing appointments to the regulator, can affect or bring pressure to bear on decisions concerning access to the legal profession, and also how cases may reach the courts. This could cause real prejudice to the citizens of this country.

We are not saying that these provisions would be used in this way. We simply demonstrate our grave concern that, if passed into law, these provisions could enable a future administration to limit the independence of the legal profession.

This possibility is in itself damaging to this country's reputation abroad. Independence is regarded as an essential of a well regulated profession. Therefore if there is any question that the regulation may not be independent, this may hinder the ability of UK lawyers to practise abroad and affect the willingness of foreigners to employ UK lawyers and to choose UK courts.

LEGAL AID

The Law Society submitted a Briefing Paper to MPs for the Westminster Hall debate on 11 January 2007 on the future of legal aid. It stated that the Society had long agreed that the legal aid system needs overhauling: legal aid is a vital public service. However, its future is being threatened by continued under-investment by the Government and by the way it proposes to introduce many of the Carter Review recommendations.

The Society launched its What Price Justice? campaign on 8 November 2006. The campaign is supported by MIND, Shelter, CPAG and other organisations. The Society is concerned that some key Carter Review proposals will affect adversely the quality of advice provided and cause solicitors to abandon legal aid. The economic fragility of the current supplier base is highlighted by an independent economic evaluation of the proposed reforms, undertaken by the LECG on behalf of the Law Society.

Legal Aid remains the Cinderella service. Findings in Law Society surveys of practitioners show a decline in the supplier base for legal aid to be very likely. Further, research commissioned by the Legal Services Commission shows that a move to competitive tendering as suggested would have a disparate impact on black and minority ethnic firms. The Law Society foresees adverse effects also in respect of clients with disabilities.

The Society believes that successful implementation of the reforms will require a guarantee of income levels that do not

threaten the stability of the fragile supplier base; sensible timetabling; and close evaluation at each stage.

Websites:

www.whatpricejustice.lawsociety.org.uk
www.defendinglegalaid.lawsociety.org.uk

Email:

parliamentaryunit@lawsociety.org.uk

SGM 17 January 2007

At a Special General Meeting of the Law Society on 17 January, the Resolution below was carried unanimously. The meeting was very well attended. The main theme was that the Government should be given the clear message that the profession should say No to best value tendering.

The debate was not confined to the Carter proposals; problems with proposed changes within the scope of the existing contracts and the proposed new unified contract were considered. Publicly funded work is in crisis and the government needs to act now.

RESOLUTION

That this Society, noting:-

- a) *the fragile and deteriorating state of the Criminal Defence Service,*
- b) *the inherent negotiating inequality between the Department for Constitutional Affairs, a monopsonist and participant in the supply, through the Public Defender Service, of*

Defence Services, and this Society's members who have contracted to supply Criminal Defence Services,

- c) *this Society's traditional role in advising and recommending to its members the acceptance or non-acceptance of conditions of service and remuneration,*

RESOLVES *to take immediate steps to negotiate new terms for the supply of a Criminal Defence Service which*

- i. *gives pre-eminence to the choice of members' clients of those firms which they may wish to instruct,*
- ii. *remunerates those firms by a formula linked to the Guidelines Rates for summary assessment locally negotiated,*
- iii. *gives to criminal defence firms or consortia a basic length of term of agreements of not less than five years, in order that investment, recruitment and training may be properly introduced and planned to secure the future of a Defence Service,*
- iv. *gives to the Society having regard to relevant issues of professional efficiency and probity the right to determine the minimum size of criminal defence firms or consortia to deliver a Defence Service and a period of transition in which it may be achieved,*
- v. *rejects the principle of Price Competitive Tendering while the Department for Constitutional Affairs continues as a monopsonist and supplier of defence services.*

COUNCIL MEMBER'S REPORT

SUE NELSON

There were two interesting papers on the Council agenda for the December meeting – (a) legal aid and (b) the budget and business plan for 2007. Both of these debates took place in private session. This report is about why those debates should not have taken place in private.

I shall start with the Carter debate. After this debate some Council members felt it was 'Council at its best'. This is shorthand for a rousing session with talk of 'dying in ditches' and 'tanks on lawns'. It usually features those who are most at home in the magistrates' court and, as the money gets tighter, year on year, it is supported by more and more better remunerated solicitors who may, privately, believe any solicitor prepared to work for £60 an hour is either daft or ...err, daft. Now things are so tight that even these members are on their feet to plead the cause of the poor and soon-to-be-unrepresented. I note they still do not support their criminal colleagues' cause directly in these debates.

What the debate was not about was the various negotiating options available with thoughtful contributions about the pros and cons of each. Indeed, each time anyone gets close to saying that our negotiating team should withdraw from the negotiations while they continue on a 'Chatham House' basis, the Council members involved in the negotiations rise to defend the absolute necessity of confidentiality. It seems to me that they are mistaken in this. It would be quite apparent, were the minutes of the negotiations ever to come to light, who was saying what as these negotiations are really 'them and us'. Any particular remark would be attributed either to the government or to a party seeking a better deal from the

government. The 'Chatham House' nature, therefore, of the negotiations is meaningless once the minutes are available. (There is currently a Freedom of Information Act request for disclosure of these minutes.)

In any event, each time the issue of our position on Carter comes back to Council for debate, the paper is classified as 'confidential'. One could have a confidential debate on Carter but we never do. Thus we ought at least to be prepared to 'rouse the troops' and 'defend the soon-to-be-unrepresented' in public. Even if there were no other argument for publicity, then the simple need for the Law Society to be open and transparent has never been more pressing. Fourteen months ago the profession said that the Society had 12 to 18 months to demonstrate that it could prove itself as a representative body. It does not appear to have convinced the criminal practitioners yet. For years the specialist groups in the field of crime were the long-standing London Criminal Courts Solicitors Assoc. and the more recent national Criminal Litigation Solicitors Assoc. Now there are, in addition, the Assoc. of Major Criminal Firms, a grouping thought to be less negative about Carter than most, and the Criminal Defence Solicitors Assoc, formed by Roger Peach. Roger has called a Special General Meeting of the Society, due to take place on 17 January. His motion, inter alia, calls on the Society to negotiate to a particular template.

The recent proliferation of representative bodies in this field and the Peach resolution indicate that the criminal practitioners are not sure that the Law Society is representing them adequately. The great challenge for the Society is to demonstrate that it can represent all

practitioners – indeed, it should be aiming at being so good as a representor that members of the profession would be prepared to pay a voluntary subscription to have the Society represent them. Only being prepared to consider how to respond to Carter in private – thus excluding non-Council member solicitors from the meeting and preventing Council members from reporting the debate to their electorate - does seem to be an ill judged move. Indeed, I think it has been a decision reached without any proper consideration.

The second debate I cannot report on was the annual debate to consider the budget and business plans. If your members consider you to be a 'bloated bureaucracy' and you want to demonstrate that you are moving towards being 'lean and mean', then debating your business plan and budget in private does seem to be a poor tactic. Of course, what we discussed might have been confidential, but looking at the papers and Minutes very little of it could be so classified. Had we identified specific proposals, perhaps concerning redundancy proposals, which we needed to debate privately then that could have been done – but it wasn't. The entire debate was confined to a private session.

An average member of the profession will never pick the phone up to the President and complain about the classification of papers for a Council meeting. They will simply wait until (if) membership becomes optional and vote with their feet. Down with secret dealings with your money and your professional future!

CHRISTMAS QUIZ 2006

Thank you to all who entered the Christmas Quiz (The Report, December). The first name out of the hat of correct entries was that of Anna Clifton of Gregory Rowcliffe Milners - congratulations.

An honourable mention to whoever entered as "Larry Page and Sergey Brin", for the (correct) entry, in rhyming couplets:

1. **A** is for Alice who fell down a holl, something imagined by Lewis Carroll (Alice's Adventures in Wonderland)
2. **B** is for Bill (Shakespeare, the Bard). So far this quiz isn't terribly hard! (Henry VI, Part II)
3. **C**'s for Companion, for that's what he was. James Boswell recorded the life of his boss. (The Life of Samuel Johnson)
4. **D** Don't try to trick us, the author is Ed, a poet (like many) already quite dead (Edmund Spenser - Prothalamion)
5. **E** is for Errors, mistakes or blunders, another of William Shakespeare's wonders (The Comedy of Errors)
6. **F** is a Fine old musical play (Gilbert & Sullivan's Iolanthe)
7. **G**'s a Great book by that master of stories, and one of Charles Dickens' narrative glories (Great Expectations)
8. **H** is for Horace (the counsel Rumpole), another creation of this witty soul (John Mortimer - A Voyage Round my Father)
9. **I**'s for In Chancery, one of the bits that was shown on TV and was one of its hits (The Forsyte Saga by John Galsworthy)
10. **J** is for Jealous, how he was of Irene. He treated her badly, the unpleasant meanie! (Soames Forsyte)

COMPREHENSIVE LAND REGISTER

Although Land Registry has been in existence since 1862, a significant proportion of the land in England and Wales remains unregistered. While a lot of urban land has been compulsorily registered, rural areas, where the turnover of land ownership is much lower, have been missing out on the benefits of registration.

Owners of registered land under the Land Registration Act 1925 already benefited from the greater certainty and clarity that a registered title gives over unregistered deeds, with more convenient access to title information and a state guarantee of title should third parties claim to have a superior unregistered title or some other interest in the land to which the registered proprietor is not subject.

In addition, since 13 October 2003 the Land Registration Act 2002 has provided a different mechanism for dealing with adverse possession of registered land, which effectively gives the owner of a registered estate a two-year early warning of a squatter's claim, provided that his address for service is kept up to date. This is in stark contrast to the rules for adverse possession of unregistered land which continue unchanged, and can result in a landowner not finding out about a squatter until too late – when his ability to claim the title back has been lost.

Voluntary registration may benefit those with large or widely dispersed landholdings that they cannot police easily against a squatter taking possession. In addition, registration can prove a useful aid to landowners in improving land management systems, allowing them to consolidate information held with estate managers or by family members, or information held in a range of documents. It also makes your (and your client's) work easier, providing you with electronic documentation and maps to work from. Once registered the process of dealing with land ownership is likely to be simpler for you and your client.

The Land Registration Act 2002 extended the scope of registration, particularly to leases of

more than seven years. Estates in land that are now capable of registration, which were not capable of registration before 13 October 2003, can be registered voluntarily without the need for a trigger event, such as a conveyance, to have occurred.

The registrar is entitled to register land with absolute title if he is of the opinion that the person's title to the estate is such that a willing buyer could properly be advised by a competent professional adviser to accept (ss.10(2) and 11(2) Land Registration Act 2002). Registration of title has a curative effect even if the title is imperfect in some way. Voluntary registration can therefore be of benefit if there is some doubt as to the title or a complex or infrequently encountered area of law is involved, such as copyhold.

More and more practitioners are now advising their clients to take advantage of voluntary registration to ensure their land enjoys the best legal protection available.

Land Registry is actively encouraging owners of unregistered land to voluntarily register their title to that land. The aim is to achieve a comprehensive land register. To this end, Land Registry will be launching a marketing campaign shortly, aimed at persuading farmers and large private landowners across England and Wales to register their land. Solicitors can play a vital role in explaining the benefits of land registration.

The Law Commission stated in "Land Registration for the Twenty-First Century: A Conveyancing Revolution" (the Law Commission and H. M. Land Registry) (July 2001) (Law Com. No. 271) that the need to bring all estates in land on to the register would be looked at again by the Department of Constitutional Affairs and the Law Commission, probably five years after the Act came into force (i.e., by October 2008). It is felt that by then Land Registry will know the effect of the extension of the compulsory triggers and the effect of the advantages of registration created by the Land Registration Act 2002.

Now is the best time to register. If registration

is applied for without a compulsory trigger, then the fee is reduced by 25%, so why wait until registration becomes compulsory by reason of one of the events currently triggering the requirement for compulsory registration in s.4 of the Land Registration Act 2002.

A Register Development Team has been set up to achieve this. They are keen to make the process as straightforward as possible. They will work with landowners and their representatives to assist them to register their title. All of them. They will also guide you as to the benefits of a strategic programme of registration as opposed to registration on a piecemeal basis and give advice on fees and the preparation of applications. They may even arrange for a member of Land Registry staff to work with the landowner's representatives in preparing the applications. The programme of registrations will be allocated to a particular Land Registry office with a dedicated team working to complete your client's programme of voluntary registration.

If you are acting for a landowner contemplating voluntary registration of a large holding of unregistered land you should contact us to discuss how we can help your client. The Register Development Team has appointed representatives (Local Registration Development Managers) in each local Land Registry Office.

A full list of our Register Development Managers can be accessed from the following page on our website, which also contains links to other pages giving further information about our register development programme: - www.landregistry.gov.uk/register_dev/voluntary/

Alternatively, for more information, you can contact the Register Development Helpline on 0800 432 0432 between 9am and 5pm, Mondays to Fridays.

Colin Tate
Land Registrar
Land Registry – Harrow Office

WIG & PEN

WIG & PEN PRIZE RULES

The Wig & Pen Prize originated with Bernard Coral, who owned the Wig & Pen Club.

He donated the Prize, which consisted of a silver inkstand and quill pen; these

were held by the winner for one year. Later, the Prize was judged and awarded jointly by the three central London law societies, and more recently a cash prize was introduced as well.

The cash is applied to a legal charitable

purpose with which the winner has connections or which the winner selects. The Prize is usually presented in July.

The rules were revised in 2004 and can be found on the Society's website www.cwhls.org.uk and will appear in the next issue of The Report.

MARY WARD LECTURE

CLIVE STAFFORD SMITH – 17 JAN 2007

JEFFREY FORREST

Things are not always as they seem. The gracious Georgian squares of Bloomsbury have always included pockets of real poverty and deprivation. And the previously derelict and abandoned West India Docks are now reborn as the dazzling Canary Wharf development, the financial hub of East London.

The ever cash-strapped Mary Ward Legal Centre lives precariously in the former Clifford Chance, one of the world's largest law firms, stands proud and tall in the latter.

Mary Ward was very much her husband's wife. As a popular late Victorian novelist she wrote in the name of Mrs Humphry Ward and it was at least partly her husband's wealth that supported her philanthropy and the establishment of the Mary Ward Settlement. The settlement included a "Poor Man's Lawyer" service which became the Mary Ward Legal Centre. Attitudes change and, for her many other virtues, we may forgive her for some of her unenlightened views of her own gender that caused her to be a leader of the anti-suffrage movement.

On 17 January the Mary Ward Legal Centre and Clifford Chance came together when, with enormous generosity, Clifford Chance welcomed us to their magnificent offices for the annual Mary Ward Lecture, given this year by Clive Stafford Smith. The superb auditorium was entirely filled for the lecture, something never previously achieved, according to Michael Smyth, Clifford Chance's public affairs partner.

Clive Stafford Smith is a charismatic speaker who has no difficulty in demonstrating that if anyone is mad, it's not him, it's THEM. By now his story is probably well enough known. When he was a recent guest on *Desert Island Discs*, he recalled writing a school essay on capital punishment, believing it was a history essay. Learning that execution was very much alive in America, he has spent most of his career fighting to save death row prisoners in Louisiana and elsewhere.

After 9/11 and the subsequent setting up of Guantanamo Bay, it was a natural progression for him to represent Guantanamo detainees. Clive began his talk by recounting the case of Ryan Matthews, who spent five years on Louisiana's death row (from age 17) for a crime he did not commit. He was released in 2004 as a result of DNA evidence that exonerated him and revealed the real murderer. Clive does not claim that no one is ever guilty of heinous crimes but by his reckoning, of 176 cases he was involved in, 121 of those accused were undoubtedly innocent.

As he said, if this is what happens where there is supposedly open justice, what chance can "War on Terror" detainees have where the US authorities flout established international law and conventions, torturing and detaining people indefinitely without trial or operating "*Kangaroo Courts*"? – not his description, he said, but Lord



Steyn's. It had taken a long time to get access to any of the detainees and it had been hard to get their trust because of the misinformation fed to them by the US military authorities.

If this wasn't all so serious it would be laughable. And, indeed, Clive was able to find humour in much of the absurdity demonstrated by those describing themselves as "*honour bound ...to defend freedom*". He told of the interrogation of one young man, Mohammed El Gharani, suspected of being an Al Qaeda paymaster, who was a 14 year old boy when detained, although his captors said he was twice that age. Because of linguistic differences between Saudi and Yemeni Arabic, when he was asked how he got his "*zalata*" when he travelled, he had said he could get it anywhere he went. He was very puzzled by their strange questions. They were talking about cash. He thought they were talking about salad. At their insistence, he told them of all the shops and stalls he could think of in Pakistan where he could buy green vegetables!

We were reminded to retain a sense of proportion regarding the real threats we face in today's world. By any objective standard, anyone in England today is less at risk than in the Second World War and yet our fundamental rights and liberties were being taken away in the name of the War on Terror.

Cast your mind back to 10 September 2001, he said, and you had probably not even heard of Al Qaeda and Osama Bin Laden. At most, Al Qaeda was a small group of fanatics. Now, by their oppressive and aggressive actions, George W Bush and his supporter Tony Blair had actually created the many-headed Hydra of terror.

He said that most of those in Guantanamo were turned in by others, for a \$5,000 bounty. In Western buying power, that was probably equivalent to over \$200,000. According to his reckoning, some 773 prisoners have been incarcerated in Guantanamo, none of whom has had any form of trial. Over 300 had been released because of political pressure. He believed there were about 385 prisoners now in

Guantanamo. Over half had still not had any access at all to a lawyer.

The military guards at Guantanamo have a simple belief that those they are guarding are evil doers, even though the cases, if any, against them have not been judicially tested in any way. So it was, probably, with the American public. If they were innocent, the detainees wouldn't be there. In answer to a question from the audience, Clive said that he did not claim that every Guantanamo detainee was an innocent. He did think that most were innocent of "terrorism" or at worst guilty of fighting for the Taliban and against the Northern Alliance, ultimately no direct concern of "*The Coalition of the Willing*".

Even more worryingly, Guantanamo represented just a very small proportion of the threat to liberty. He believed that there were 14,000 ghost prisoners in secret prisons around the world today, unseen and unrepresented. He could not say where many missing people were being held, although Diego Garcia, in the middle of the Indian Ocean and far from landfall, was a likely place.

That very morning, one Charles "Cully" Stimson, an Assistant Secretary of Defense, and the senior official at the Pentagon with responsibility for Guantanamo, had been forced to write to the Washington Post, retracting the outrageous comments he had made on radio some days earlier, criticising those many pro bono lawyers who have represented Guantanamo detainees, doubting their bona fides and explicitly suggesting that major corporate clients should not instruct those firms who had behaved so unpatriotically.

Clive ended with a call for us to support the Mary Ward Legal Centre, whose evening it was (www.marywardlegal.org.uk). But he also urged us, particularly the large number of students and trainees present, to support his work and his charity, Reprieve. Clive's email address is clivess@mac.com. Reprieve's website is www.reprieve.org.uk (clara@reprieve.org.uk).



The Law Society

THREE INDEPENDENT VOICES. ONE PROFESSION.

The solicitors' profession is changing for the better. From now on, three separate bodies will be responsible for regulation, complaints handling and representation.

These organisations will be known as the Solicitors Regulation Authority, the Legal Complaints Service and the Law Society. They will work independently to fulfil their different roles in helping solicitors and the public get the most from the legal profession in England and Wales.

Look out for more information and website launches from the end of January.

The Law Society.
Supporting solicitors.

The Law Society

The Law Society now concentrates on representing solicitors. From negotiating with and lobbying the profession's regulators, government and others, to offering training and advice, we're here to help, protect and promote solicitors across England and Wales.

www.lawsociety.org.uk



The Law Society

Solicitors Regulation Authority

The Solicitors Regulation Authority deals with all regulatory and disciplinary matters, and sets, monitors and enforces standards for solicitors across England and Wales. Formerly known as the Law Society Regulation Board, it acts solely in the public interest.

www.sra.org.uk



Solicitors
Regulation
Authority

Legal Complaints Service

The Legal Complaints Service is for members of the public wishing to make a complaint about solicitors. Formerly known as the Consumer Complaints Service, this independent and impartial body will work with solicitors to resolve any issues quickly and efficiently.

www.legalcomplaints.org.uk

legal 
complaints
| service

WILLIAM BANKES:

AN APPRECIATION BY TIMOTHY DRABBLE

William Bankes, who gave many years of service to Holborn Law Society and to The City of Westminster and Holborn Law Society, died on 10 December 2006. Willy, as he was almost universally known, the writer first met at the bar of the Royal Bath Hotel in Bournemouth in 1977. Willy had come for the day to the Law Society conference. Shortly afterwards he came onto the Committee and before long was appointed joint Secretary with Richard Selby, who edited the Holborn Report, a role that Willy was to take on much later. Willy handed over to Paul Matcham in 1985 when he became Junior Vice-President. He was President in 1987-88; during that year the writer had the good fortune to be Senior Vice-President. Many events were enjoyed, with our wives, in particular the Law Society conference in Vienna and a reconnaissance earlier in the year. In addition to the serious business there Willy celebrated his sixtieth birthday.

After his Presidential year and three years on the Committee as Past-President, Willy was persuaded to stay and become Editor of the Report. He continued to do this with his usual thoroughness and enthusiasm after the amalgamation of the two societies in 2001. He

finally “hung up his pencil” in 2003. He was appointed an Honorary Life Member in recognition of his long and valuable service to the two societies.

Willy attended Eltham College, where he won the English Prize, and later went on to obtain an MA and later BCL in Roman law at New College, Oxford. After serving Articles in London Willy was admitted as a Solicitor on 1 October 1954. He started practice on his own account. In 1961 he merged his practice with two others to create Peacock Fisher & Finch. After a number of amalgamations the firm became Field Fisher Martineau, of which he became Senior Partner, and which, under his leadership, merged with Waterhouse & Co to become Field Fisher Waterhouse.

Enough of the facts! What was Willy Bankes like? We cannot do better than draw on the Eulogy given by his son, Charles, at his funeral. The qualities and characteristics which he highlighted were those which were apparent not only to close family but also to the many people whose lives he touched, both professionally and socially.

He was fun to be with. At a Committee Meeting he could bring a rather boring

discussion either to life or to an end with a short witty remark, not frivolous but well considered. He and his wife Mary were charming hosts at home, excellent companions on holiday, at conferences and at the opera. He had an endless store of limericks which Charles remembered from an early age but later realized had been sanitized until he (Charles) had grown up.

His intellect was considerable; throughout his life he enjoyed learning which he did with energy and great enjoyment. This he passed on with the same enthusiasm to his children, grandchildren, and apparently to his dogs! He had clear and firm ideas, morals and strong beliefs, including a strong Christian faith. He had a strong sense of loyalty to those organizations to which he belonged, in particular the Church of England and the Conservative Party. Finally, it was his ability to love; not only his wife and close family but also the many friends and colleagues in whom he engendered warm affection. Those who knew him were greatly blessed.

The Society’s sympathy goes out to Mary, Charles, his daughter Louise and his five grandchildren.

CAJN O’SULLIVAN

ARTHUR WEIR

John O’Sullivan, senior surviving past president of Holborn Law Society and an honorary member of the City of Westminster and Holborn Law Society, died peacefully on 15 January 2007, a few days before his 92nd birthday. A founder member of the Society, and President from 1965 to 1966, he was only the fourth president.

Then a senior officer of the Public Trustee Office, he was central to the Society’s first major achievement in its short life. The Government had announced its intention to abolish the Public Trustee Office. The Society set up a working party of Dick Ritchie (Trower, Still and Keeling), Simon Mosley (Frere Cholmondeley & Nicholson) and Colin Prestige (Lawrence Graham), which opposed the plan so effectively that the Government changed its mind.

So it was with no little pride that his colleagues saw John himself promoted to the post of Public Trustee, and to hold that office from 1971 to 1975. Remembered for his anecdotes, his Irish wit, his charm and his efficiency, he was among the most distinguished of all the Society’s presidents.

THE FUTURE OF THE ETHICS HELP LINE

Members of CWHLs might like to know how the ethics helpline is to change following the separation of regulation and representation. In December, prompted by the Professional Matters Sub-Committee, I wrote to the two Chief Executives asking about the future of the ethics helpline. We were concerned that the current helpline could not be as useful if it were housed in one part or the other. Housed in the rule-making Solicitors’ Regulatory Authority, it might feel inhibited in giving interpretations (and solicitors might feel inhibited in talking to it); housed in The Law Society, it might not be able to give answers with the same authority as the SRA.

This question was put to the Chief Executives in the following terms:

“An example of the sort of problem that [the Professional Matters Sub-Committee] discussed is this: it seems to us that it is important that those who issue the rules (i.e. Regulation) should also provide advice on what they think they mean. It is equally important that the rules are viewed objectively, and in that Representation has a role to play and should have views to express to members of the Law Society. Of course, we would expect that the two viewpoints will coincide on nearly all matters, but it is inherent in the split between the roles of representation and regulation that differences of interpretation will arise. We think our members have a particular need to understand,

- whether there will be a joint advisory

service, two separate services, or one housed in one of the two functions, or some other arrangement,

- how they are to approach making requests for confidential advice in the new world (which is now only a month away). The answer to this may well depend on how Regulation and Representation interrelate when providing advice.
- a concern we have about the termination of the Money Laundering helpline, and how this need is intended to be met within other functions.”

The responses were sent before Christmas, and no doubt decisions have moved on. I have set

out the full operative text of each reply below. However, it might be helpful to members to know that in summary:

- The Law Society (representation) is considering how it might provide a confidential advisory service
- The Law Society might well wish to offer interpretive comments, but recognizing that it is a problematic area
- The Law Society is currently seeking to establish a Regulatory Affairs Group that we would expect to engage with the regulators
- In relation to the Money Laundering helpline, Mr Hudson expects that members will now be aware of the interim steps that have been taken to ensure provision of advice. Once again it would be the Law Society's intention to ensure that the service is continued on a more permanent basis
- The SRA will help solicitors through providing better information on its website and through the existing ethics helpline service
- The SRA service will remain confidential from other regulatory activity, unless there is a risk to clients or the public interest

The SRA ethics guidance service will not provide legal advice, or advice on best practice, beyond securing regulatory compliance

- The SRA view with respect to money laundering, because this is largely based on the law (the Money Laundering Regulations and Proceeds of Crime Act) and not SRA practice rules or principles of conduct, is that this is an area of practice in which it seems more sensible for the Law Society to facilitate the provision of legal advice to its members. Work on establishing a panel of solicitors to provide such advice is already underway. The SRA ethics helpline will continue to advise on the attendant conduct obligations arising from the legislation, but will not advise on the legislation itself
- The SRA will also be launching a new SRA website, which will host the Code of Conduct, and will provide easily accessible guidance to provide clarity as to solicitors' professional obligations.

Peter Adams

From Desmond Hudson:

"First, as you say, the issuing of rules is a matter for Regulation albeit that those rules would be promulgated after consultation with the Representative body - the Law Society - and more widely. I anticipate that the first objective of a regulator of whatever description is to produce regulations that are clear and do not need reams of interpretation to give them practical effect. That said, I do not offer that comment as a blanket rejection to the provision of interpretation and/or advice from Regulation

I would further anticipate that the Regulation body would be willing to consider providing advisory services. It is important I think however

to understand some of the implications that arise from that. If an employee of Regulation in seeking to provide advice became aware of circumstances that suggest a breach of the regulations, would that individual not be duty bound to act on that set of facts? I am not sure - and this is something that certainly we in Representation are currently working on - that it would be possible for "confidential advice" to be given in these circumstances.

For Representation's part we are therefore actively considering how we might provide a confidential advisory service arm to members. I think it likely therefore that if advisory services are to proceed (and it is my hope that they will) they may well be provided separately. That is certainly the working assumption being made by Representation for its part i.e. that we would wish to provide a confidential helpline or advisory service which we anticipate would be separate from any advisory service (if any) offered by Regulation. As to the question you raise about the provision of interpretive comments, I anticipate that the consultation process we have in mind should for the majority of circumstances ensure that our interpretation is common. Representation might well wish to offer interpretive comments, but that is a problematic area. I would not see it as common that our interpretations would differ but do recognise that a healthy and mature relationship between Regulation and Representation would not be endangered by limited circumstances of us having separate interpretations of a particular point. It may well be that such interpretations would more usefully act as a catalyst for further review and possible change.

Indeed it may also be helpful to comment further on this last point where we are currently seeking to establish a Regulatory Affairs Group that we would expect to engage with the regulators (not just the Regulation arm of the Law Society) and to press the concerns and interests of its members both in relation to proposed Regulation and existing Regulation where the passage of time or experience has indicated a need for change.

Finally in relation to the Money Laundering helpline, I expect that you will now be aware of the interim steps that have been taken to ensure provision of advice. Once again it would be our intention to ensure that that service is continued on a more permanent basis. This example I think also is a useful one to consider the point you raise about the working relationship that needs to continue and develop between Regulatory and Representative staff in this regard. Again I believe that it is important that we have a form of contact and dialogue and build and share thinking on these issues. I am confident that that will be the case."

From Antony Townsend:

"The Board acknowledged the importance of helping solicitors understand and comply with the Code of Conduct and underlying principles. This will be done through providing better information on our website and through the existing ethics helpline service.

We hope that this will encourage solicitors to contact the SRA for guidance on issues of concern. The service will remain confidential from other regulatory activity conducted by the SRA, unless there is a significant risk to clients or the public interest. The ethics guidance service will not provide legal advice, or advice on best practice, beyond securing regulatory compliance.

The Law Society is also looking at the support it might offer its members in this regard. A joint working group of the SRA and the Law Society is working to determine how best the two services might complement rather than duplicate each other. The SRA and the Law Society will keep the profession informed of developments.

With respect to money laundering, because this is largely based on the law (the Money Laundering Regulations and Proceeds of Crime Act) and not SRA practice rules or principles of conduct, this is an area of practice in which it seems more sensible for the Law Society to facilitate the provision of legal advice to its members. Work on establishing a panel of solicitors to provide such advice is already underway. The SRA ethics helpline will continue to advise on the attendant conduct obligations arising from the legislation, but will not advise on the legislation itself.

In addition to the above, you might find it helpful that the Law Society currently also provides the following support:

- A dedicated anti-money laundering online resource containing the Law Society Money Laundering Guidance and sector-specific Guidance Notes; important web links and the Law Society's responses to Government and EU consultations on money laundering. Go to: www.moneylaundering.lawsociety.org.uk.
- An online discussion forum for Money Laundering Reporting Officers and employees with anti-money laundering compliance responsibilities within solicitors' firms. For more information, email: antimoneylaundering@lawsociety.org.uk
- A free electronic newsletter called 'Gatekeeper' which covers all the latest UK, EU and international news and regulatory developments in the field of money laundering. Subscribe online by visiting: www.moneylaundering.lawsociety.org.uk
- Regional group meetings for Money Laundering Reporting Officers to discuss problems regarding anti-money laundering compliance, training and reporting within their firms, to exchange best practice and to keep up to date on the Law Society's work in this area.

As part of the SRA's commitment to providing clarity about what is expected of solicitors we will be launching the new Code of Conduct in 2007. We will also be launching a new SRA website, which will host the Code of Conduct, and will provide easily accessible guidance to provide clarity as to solicitors' professional obligations."

REVENUE COMMITTEE

JEREMY DE SOUZA



While you will all know about the Pre-Budget Report, relatively few will realise what a weight of documentation has been issued in relation to it. This includes not only draft clauses, explanatory and guidance notes on the legislative changes but also a number of tomes on planning and environmental issues which need to be perused in order to try and guess what is likely to result in both the March Budget and next year's PBR.

Enforcement

Hidden away in the crowd are documents showing how HMRC are seeking powers to toughen up collection, not just from the small minority of evaders, but also from those who have sought, and are continuing to seek, to comply with their statutory responsibilities. Yet in this series of documentation, it is difficult to find any suggestion that part of the blame for the public's difficulties might reasonably be laid at the door of HMRC. In "Delivering a new relationship with business: HMRC's plans to deliver a better service for business by 2010-11", we find at para 3.23 that in 2009 they will condescend to issue one with forms with all their reference numbers filled in (alias "pre-populated with basis information"). But why, with all the computerisation which has already been paid for, is this to take so long?

On the other hand para 3.31 tells us that a phased introduction of a direct debit facility for self assessment will start next year. One has to wonder, however, who would be willing to give HMRC such a right to collect their version of what is owing when, certainly where foreign investment income is concerned, they seem to have the greatest difficulty calculating the correct bill the first time round?

The gem is to be found in para 3.41, the effect of which is that HMRC would like to take a look behind the figures submitted by accountants in order to make a "risk" assessment into their professional output.

If a lawyer were to be involved instead, this would amount to a breach of professional privilege. But if the proposed supplementary powers to the FA 2004 "scheme" disclosure regime contained in the consultation entitled "Ensuring compliance with the tax avoidance disclosure regime" are to be taken at face value, HMRC may be about to be handed a way round this particular "problem".

We have also been served up "Modernising Powers, Deterrents and Safeguards: A new approach to penalties for incorrect tax returns". Para 8.10 suggests that a taxpayer should in future become liable to a penalty where he has relied on professional advice and the adviser made "a misinterpretation".

As to which, the Society have been corresponding with the Rewrite Project in relation to proposed changes in the Income Tax Bill just presented to Parliament. In one case in particular, Change 103, the Project had

admitted to there being an ambiguity and advocated dealing with this, inter alia, to prevent the point being argued by taxpayers.

This issue was put before the Project's Consultative Committee on 14 November, the Minutes for which meeting record that the comment was made that the Explanatory Notes should, in future, avoid using the tell-tale phrase: "the change is adverse to taxpayers but is in line with current practice"! And, needless to say, there was no hint of this type of problem being "solved" outside the normal Finance Bill process in paras 11 and 12 of the Regulatory Impact Assessment signed by the Economic Secretary on 18 November.

And finally there is the little matter of HMRC's expenditure of the taxpayers' money on two surveys on trusts and CGT since 1998. On p.5 of the latter is to be found the allegation that 13% of contributors have engaged in tax avoidance. The footnote reveals, however, that no such question was posed in the survey, this motivation being inferred from, inter alia, moving abroad or making a gift hold-over election.

Not impressive!

Environmentalism

Following the Rodgers Report – entitled "Towards an Urban Renaissance" – in 2001, a number of new – and extremely complex – reliefs were introduced. A common factor between them was the inclusion of a number of nonsensical anti-avoidance provisions, the only rational explanation for which appeared (at the time) to be to limit the cost to the Exchequer of these environmental concessions.

Needless to say, it appears from the five-yearly evaluation by the University of East Anglia and Arup published in May 2006, that the flat-above-the-shop first year allowances have produced next to no result. One only has to look at some of the disqualifications, e.g. no outside staircase and no access other than from the ground floor, to realise why.

Land remediation relief was also analysed, and more favourably. Property lawyers will be aware, however, that this is not available where a full cost indemnity is obtained from the vendor. Is it altogether surprising therefore that, in her Final Report, Kate Barker suggests that this might be made more widely available in order to enable contaminated land to be redeveloped?

And we have of course now been told that new zero-carbon homes are to be free of SDLT. But as these appear to cost 3% more than conventional ones and refurbishments are to be excluded, one has to wonder how much of an incentive to purchasers this is going to be. Needless to say, it should be apparent to all that, the fewer the takers, the less "damage" to Brown's successor's attempts to balance the books.

Has one, perhaps, come across this before?

Planning-gain Supplement

This has both been put back a year and a big "if" introduced. Whether we are to see this seems to depend upon the results from three secondary consultations on, basically, how it is to be paid, what value one has to pay on and how (and if) the residuary s.106 issues (direct infrastructural issues and social housing contribution) can be simplified.

At the centre of the PGS problem is to be found the conundrum that only with self-assessment can the expenses (and therefore the rate) be kept down, but that professional experience with both betterment levy and DLT suggests that each and every computation should require negotiation with the DV. Yet the "payment" consultation proceeds on the basis not only that self-assessment is a viable *modus operandi* but also that a pre-filing valuation agreement option is a non-starter.

The "valuation" consultation can only be described as an attempt to shove this under the carpet. One is told that the normal IHT/CGT principles will be applied. But that the property to be valued will not be that owned but an imaginary unincumbered freehold. A Probate value has, under case law, to be arrived at on the basis that the property and the neighbours are actual and only the vendor and purchaser imaginary.

For PGS it seems that the property may also be imaginary and one just wonders how special purchasers are to be taken into account on Peter Gibson LJ's basis in *Greenbank v. Pickles*, [2001] EGLR 1 (not, it seems, accepted in the Red Book supplement) that it is the second highest bidder who has to be had regard to, when one of them may be the tenant!

Where land is contaminated, the official view seems even more wide of the mark since it has clearly been assumed that such land cannot, in principle, have a negative value. This is extremely odd since not only there is authority, *Re Brand*, [1945] N.I. 1, for the latter proposition but this fact seems to have been taken on board in the House of Commons Communities and Local Government Committee's Fifth Report of Session 2005-06, which recommended that a "nil" figure would have to be provided for by statute.

Needless to say, we shall be submitting observations on the two papers issued under the auspices of HMRC!

The Parliamentary draftsman has excelled himself with the inserted FA 2003, s.75A. On the face of it, this could catch far more transactions (some of them not normally classified as "avoidance") than the official commentary suggests. Gerald Moran and I will be pursuing this issue with HMRC through the STPG

RISKS IN EMPLOYMENT



People are both a firm's most important asset and its greatest risk exposure. It is people who make mistakes that can lead to claims. In short, people constitute a risk exposure which needs to be identified, analysed, and managed. However, many firms pay little if any attention to this potential danger. The "life cycle" of employment - that is, commencement, continuation and termination of employment - must be managed. Simple steps taken at the appropriate time can save considerable costs in terms of complaints and claims.

Before commencement of employment the following steps, at the very least, should be followed:

1. The interview process should test the applicant's skill and expertise in the appropriate area. Consider a written test. Pose problems to the applicant and see how they respond. Few firms do this, notwithstanding that claims and complaints arise because the fee earner is simply not up to the job. Do not rely on the applicant's assessment of how good they are, find out for yourself.
2. Verify the academic and professional credentials of the applicant. There have been a number of instances where firms have employed a solicitor who has subsequently been shown not to hold a current practising certificate.
3. Make enquiry as to the applicant's professional history. Have they ever been the subject of civil, disciplinary or criminal proceedings or bankruptcy for example?

4. Obtain references. Whilst it is accepted that most references say very little these days for fear of incurring litigation, they may still be of assistance.

When the successful applicant joins the firm:

- Make sure that they have an adequate job description and contract of employment. There are statutory requirements that have to be followed; make sure you are compliant.
- Have a proper induction process. All too often firms simply show a new employee where the desk is and then hand over the files. This is not enough. A selection of issues that should be addressed includes:
 - an introduction to the IT system and how it works
 - training in or explanations of how to comply with the firm's existing policies and procedures (such as money laundering and conflict checks, how to request a cheque)

Health and Safety issues (for example how to leave the building in case of fire!)

It is difficult to criticise an employee who does not comply with a procedure, when they did not know that it existed!

- Have a period of supervision. This should apply to all levels of employment, from trainee to partner. The degree of supervision will depend on the degree of experience of the individual concerned. Not all appointments turn out to be successful, and if there is no monitoring in place to assess competence, then the

subsequent problems will come as a complete surprise.

During employment:

- An audit of the fee earner's files should be carried out regularly (and this applies to all fee earners and partners)
- A proper appraisal process should be in place, which should identify performance issues, training needs, and career prospects
- Supervision at the appropriate level continues throughout the period of employment
- Adequate ongoing CPD training is provided.

At the end of the employment:

- As soon as someone resigns they should not handle any new business, and a file audit should be undertaken to ascertain if all is in order. Once they have resigned, their mind will be on the new job
- The employee should be encouraged to identify and discuss any files that they have concerns about, so that any potential problems are rectified
- Conduct an exit interview to find out why the employee is leaving, however unpalatable the truth. Any problems identified should be acted upon.

The above is not an exhaustive list but should provide a basis for a procedure to be created. In addition any such procedure must be compliant with current legislation.

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MEMBERSHIP DEVELOPMENT COMMITTEE

CWHS is looking for a member who feels he or she might contribute by chairing the sub-committee concentrating on Membership Development. The role of the sub-committee is to expand the membership, and the "canvass" of

options for doing this is at present a blank awaiting the right artist. Since expanding the practice is at the heart of every firm, this is an opportunity for someone to demonstrate to his or her partners why he or she is the right person to be

considered as a future managing partner. If you think you have ideas and the energy to take this opportunity and to lead the Society's efforts in this area, please contact the Hon. Sec, Peter Adams, at Adamspg@gmail.com.

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

Tuesday, 20 March 2007 6.45 for 7.30 pm in Middle Temple Hall

The highlight of the Society's year is its annual dinner. This year we are again holding the dinner in Middle Temple Hall. The price for the evening is £75 per person and this includes drinks at the reception beforehand and three course meal with wine and port or brandy. After dinner drinks will be available from a cash bar. The dress code is black tie. Come and bring your colleagues, clients, spouses and friends! Apply for your tickets now.

ANNUAL DINNER: TUESDAY, 20th MARCH 2007

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

Please send me tickets @ £75 per ticket: a cheque for £ is enclosed payable to CWHLS

Name:

Name of firm:

Address:

..... DX

Dietary requirements:

Seating requirements (if any)

CWHLS LECTURES

26 February: AGE DISCRIMINATION LECTURE

Akhlaq Choudhury

Akhlaq Choudhury of 11 King's Bench Walk Chambers will deliver a lecture on Age Discrimination. He will focus on Recruitment, Reward/Loyalty and Retirement in respect of the Age Discrimination legislation.

26 March: FAMILY LAW UPDATE

Philip Marshall

Philip Marshall's lecture will include:

- 3 common principles: needs, compensation and sharing
- the marital acquest: matrimonial and non-matrimonial property
- contributions: breadwinners and homemakers
- 50/50: the right approach?
- sharing pensions
- periodical payments: needs, compensation and clean breaks
- no order for costs
- Brussels II Revised

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

	Member	Non member
AGE DISCRIMINATION LECTURE	_____	_____
FAMILY LAW UPDATE	_____	_____

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

Name _____ Name of Firm _____

Address _____

_____ DX _____

Signature _____ Date _____