



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

NO.52 SEPTEMBER/OCTOBER 2007

THE PRESIDENT'S COLUMN

SARA CHANDLER



August is a time for holidays for many of us, especially those with children, or in my case, those who work in the rhythm of academic terms. It is usually quiet in the Law Society, but this year the success of the Law Society in its judicial review of the Legal Services Commission should not go unnoticed. The Law Society, in its stronger representational role, has achieved a not unexpected victory, by using the law and legal procedure to its best effect. The judge said that the LSC had breached public contract regulations and European Law in its reform of legal aid through the introduction of the unified contract. The Commission was ordered to pay three quarters of the Law Society's costs. Well done to all concerned.

It is, however, the political decisions behind changes in the provision of access to justice that make the difference. There is still an enormous amount to do in the way of convincing backbench MPs of the need to review the Carter proposals in order to preserve legal aid. David Morgan, of RadcliffesLeBrasseur, is responsible for CWHLS parliamentary liaison, and any member who is willing to approach their own MP, please get in touch. There may be an opportunity now to get back to negotiations.

I travelled to Johannesburg in July not for a holiday but in order to attend a conference of University law faculty lecturers, post graduate teachers and legal clinicians. Delegates came from all over the world, and most have a programme of pro bono work carried out by students in law clinics rather like the one in which I work at the College of Law. Nowadays we would think that there's nothing unusual in that, as more and more teaching institutions recognise the value of hands-on learning for their law students. We were in the University of Witwatersrand, in post apartheid South Africa. Wherever I went and discussed the new situation, there was a positive approach to everything.

When the conference was over, we went on some organised visits, to the Constitutional Court, the Apartheid Museum, the Origins Centre and Soweto. All these visits were an eye opener for me. The Constitutional Court welcomes everyone in 11 languages, with fascinating modern art in the lobby area, where the visitor gets the feeling that they could be in a village listening to the discussions of the elders underneath the shade of a large and spreading tree. The Court has been built on the site of Prison Number Four, and we toured the prison blocks and old cells where Nelson Mandela and Mahatma Gandhi were held. At the University of Witwatersrand, the Origins Centre traces the origins of human beings and is well worth a visit for the knowledge I gained on mine. In Soweto we saw the evidence of new building, and whole new estates in some of the 32 towns in Soweto. We met a woman in a squatter camp who had built her cabin and is bringing up her children there. What impressed me was that in spite of enormous hardship, there was a positive attitude in everyone we met, with an optimism that obstacles could be overcome.

Have you ever come face to face with a memory from your youth? I found the Apartheid Museum very evocative since as a student in my twenties at the London School of Economics I had been very active in the Anti Apartheid Movement in London. It reminded me of the large number of UK lawyers who were members of AAM and Amnesty International, and who are still actively supporting human rights wherever they are under attack. As I rounded a corner in the Apartheid Museum, I focussed on the section about international anti apartheid protests. There was a photo of protesters in London in 1971 denouncing the selling of arms to South Africa, and one of the young women was me!

In October CWHLS will welcome the visit of Eduardo Carreno, the head of the

human rights lawyers group which CWHLS supports in Colombia. On 18 October there will be a meeting at the Law Society, jointly hosted with the Law Society's International Department. It will be an opportunity for members to hear about the work of the human rights lawyers, and the risks they face daily in their work. Another advance date for your diaries is the visit of members of the Berlin Bar in November, with a seminar and dinner on 9 November. It is a business opportunity not to be missed.

All members are welcome to attend the Nigel Mayhew Memorial Lecture on 24 September, an important opportunity for us to pay our respects and remember the enormous contribution Nigel made to the Society.

There are only a few days left before the deadline for nominations for the Wig & Pen prize for solicitors up to five years qualified who do pro bono work. The Committee has not heard of any nominations as we go to press, so please make sure that you make the nominations before 21 September. Forms from Yvonne.treacy@lawsociety.org.uk

DIARY

2007

SEPTEMBER

- 24 Nigel Mayhew lecture
- 26 Committee meeting

OCTOBER

- 9 A G M and dinner
- 15 Costs lecture
- 18 Meeting with Colombian lawyers
- 31 Committee meeting

NOVEMBER

- 9 Visit by members of the Berlin Bar
- 14 Presentation of the Wig & Pen Prize
- 19 CWHLS lecture
- 28 Committee meeting

The City of Westminster and Holborn Law Society

A company limited by guarantee
registered in England and Wales
number 5467334
Registered office:
25 Rotherwick Road
London NW11 7DG
Telephone/Fax: 020 8209 1039
www.cwhls.org.uk

Editor

Rosemary Lester
6 Westhorpe Road
Putney
London SW15 1QH

Editorial Board

Timothy Drabble
Andrew Hill
Sara Chandler
Elizabeth Beesley

Published by

The City of Westminster and
Holborn Law Society

Printed by

Hunts Printing
12A Station Field Industrial
Estate, Kidlington
Oxford OX5 1JD
Telephone 01865 853633
print@hunts.co.uk
www.hunts.co.uk

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SUE ELSON

We would like to extend our congratulations to Committee member Sue Elson who was awarded an MBE in The Queen's Birthday Honours.

The deadline for all copy for the November edition of THE REPORT
is **15 October 2007**

Copy to be sent to The Editor – rl Lester@lesting.fsnet.co.uk

Previous copies of The Report are available on the Society's website:
www.cwhls.org.uk

President: Sara Chandler, The College of Law, Legal Advice Centre, 14 Store Street, London WC1E 7DE
020 7291 1290 sara.chandler@lawcol.co.uk

Senior Vice President: Michael Gillman, Bishop & Sewell, 46 Bedford Square, London WC1B 3DP
020 7631 4141 mg@bishopandsewell.co.uk

Junior Vice President: Adrian Barham, Department for Work & Pensions, Room 414, New Court,
48 Carey Street, WC2A 2LS
020 7412 1213 adrian.barham@dwp.gsi.gov.uk

Hon Treasurer: Timothy Drabble, Okehurst, Billingshurst, West Sussex, RH14 9HS
01403 782535 drabtim@okehurst.co.uk

Hon Secretary: Peter Adams, 5 Osten Mews, Emperors Gate, London SW7 4HW
07768 435575 Adamspg@gmail.com

Deputy Hon Secretary: Jonathan Cornthwaite, Wedlake Bell, 52 Bedford Row, WC1R 4LR
020 7395 3000 jcornthwaite@wedlakebell.com

Editor: Rosemary Lester, 6 Westhorpe Road, Putney, SW15 1QH
020 8788 7023 rl Ester@lesting.fsnet.co.uk

Administrator: Elizabeth Beesley, 25 Rotherwick Road, NW11 7DG
020 8209 1039 admin@cwhls.org.uk

“ASK NOT WHAT...”

SARA CHANDLER, PRESIDENT
MICHAEL GILLMAN, SENIOR VICE PRESIDENT

We are all familiar with the iconic call to arms of Lord Kitchener's recruitment poster with the slogan "Your Country Needs You". So, dear reader, does your local Law Society!

The Legal Services Bill and the reorganisation of the regulation of the legal profession present us with many challenges and change. Whilst some change may be beneficial, other change may be ill thought out and destructive and it is therefore imperative that the voice of solicitors is heard both locally and nationally, speaking cohesively and authoritatively on issues affecting society at large and the profession.

The active membership of the Society's committees is getting older. The average age of the profession is becoming younger and their involvement in CWHLS is hugely important if the Society is to represent authoritatively the profession as a whole in Central London. The Society's year draws to an end in October and a new year then begins. We hope that those who are reading this article pause and consider how you and your colleagues can find a small amount of time to participate in the Society's activities to ensure that we will remain a vibrant and effective voice for the profession in the City of Westminster and Holborn. Please consider putting yourself forward for

election to the Main Committee, or to be co-opted on to one of the many sub committees covering Professional Matters, Law Reform, Revenue, Land Law and Conveyancing, Education and Training, Civil Litigation, Planning and Parliamentary, Trainee and Young Solicitors' Group, and International. We hope that participating in the deliberations of the Society's sub committees can be both informative and stimulating and give an opportunity for you to comment on many of the issues of the day and on consultation papers.

So with apologies to John F Kennedy; ask not what your local Law Society can do for you – ask what you can do for your local Law Society.

RATHER A GOOD PARTY

ARTHUR WEIR

This year was held the fortieth garden party. Started in 1958 (by Dennis Gordon of course) it began just as a social event for members of Holborn Law Society. It raised a small surplus which the Committee decided to donate to the Solicitors' Benevolent Association. Among those present was Fay Landau, who has moreover attended regularly ever since. She came this year as our guest of honour, and

presented the prize to the winner of the ticket lottery.

RECORD

From the small beginning the Legal Charities Garden Party has become one of the outstanding achievements of Holborn Law Society and its successor, CWHLS. Though the event is now managed independently, the Society is prominently

represented on its committee and the guests continue to be welcomed on arrival by our President. In the last decade alone it has raised over a quarter of a million pounds for lawyers in need and their dependants.

This year's party was a good one – that much we knew at the time. We now know that financially it was a very successful event indeed. It broke all previous records with a profit of over £33,500.

CWHLS PARLIAMENTARY LIAISON OFFICER

DAVID MORGAN

At the end of June I was appointed CWHLS Parliamentary Liaison Officer. In the past, this has been largely a reactive role, if not a passive one. With the interventionist character of the current government, more and more legislation which impacts on the way we conduct our profession and practices is being enacted. Of course, I expect our "national" Law Society on whose Council I serve to take a lead role but there are times when it has to concentrate on key issues. The past year is a good example with the Legal Services Bill, Legal Aid changes, further money laundering proposals and the introduction of HIPS.

However, there is a huge raft of other legislation with the potential to affect

lawyers and their clients detrimentally, such as changes to the tax regime, company and charity law, rating etc which would benefit from informed commentary by Solicitors. We do, of course, already do this by responding to consultation papers and writing to Government Ministers, departments and agencies. I believe that we should be doing more to obtain changes to legislation by more direct lobbying of Parliament and the European Parliament, particularly in view of the fact that Whitehall and the Houses of Parliament lie within our bailiwick.

If there are serious issues which any member or committee of CWHLS would like to raise, they are invited to contact me

at RadcliffesLeBrasseur, 5 Great College Street, Westminster, London, SW1P 3SJ, DX: LDE 113 London Chancery Lane, telephone number: 020 7227 7433, fax: 020 7222 6208, email: david.morgan@rlb-law.com. Where necessary, I will refer the matter back to the committee or appropriate sub-committee for approval before raising it with an MP, peer, Minister or MEP with a view to organising a briefing meeting between him or her (i.e. the member or committee raising it) and the interested parties.

It would be very helpful if you could let me have copies of any Parliamentary exchanges that you have.

'THE COSTS COLUMN'

THE latest judgment in the long running saga of the *Myatt (No. 2)*⁽¹⁾ case serves as a salutary lesson to solicitors about the dangers of pursuing litigation substantially or wholly for their own benefit (**Cost Recovery News** – Issue 10, download available from www.dbcosting.co.uk)

In addition, after almost two years of uncertainty in relation to compliance with the Conditional Fee Agreements Regulations 2000 (for pre November 2005 conditional fee agreements), the Court of Appeal judgments also represented a hardening of the position adopted in *Hollins v Russell*⁽²⁾ concerning the test of “materiality” to be applied to any breach of the Regulations. Lord Justice Dyson in *Myatt* and *Garrett*⁽³⁾ has said that there is no requirement for actual prejudice to the lay client, because “materiality” is determined at the date of the conditional fee agreement.

This sounds like it is all bad news for solicitors. However, whilst the judgments in *Myatt* and *Garrett* are, of course, binding on lower courts, they do not always seem to be in keeping with the decisions which are now being made “on the ground”. Here are a couple of cases which have come to my attention recently.

In an appeal to Regional Costs Judge HHJ Thorn QC, from a detailed assessment in the Kingston-upon-Hull County Court⁽⁴⁾, where the modest damages of £5,800.00 were agreed by the parties without the need to issue proceedings, the Claimant's conditional fee agreement was disclosed voluntarily. However, the paying party sought the further

disclosure of attendance notes to evidence compliance with Regulation 4(2)(e) of the Conditional Fee Agreements Regulations 2000. *Hollins v Russell* confirmed that whilst attendance notes would not ordinarily be disclosed, they might be if a “genuine issue” was raised. The best that the paying party could argue in this case was that an attendance of 18 minutes duration was not long enough for the fee earner to have engaged in the discussions with the client which were required by the relevant regulations. Both the District Judge on detailed assessment and the Regional Costs Judge on appeal refused to find that this, on its own, raised a “genuine issue”.

This judgment was echoed in a case in the Supreme Court Costs Office in February of this year⁽⁵⁾. Master Howarth held that the power to order disclosure pursuant to Rule 47.14 of the Civil Procedure Rules and paragraph 40.14 of the Costs Practice Direction, did not arise until *after* detailed assessment proceedings had commenced and then **ONLY** if the paying party had first raised a “genuine issue”.

The rationale behind these cases and the case of *Bailey*⁽⁶⁾ is that “as officers of the court, solicitors are trusted not to mislead or to allow the court to be misled”.

Making sure that the claim for costs is accurate before the bill of costs is signed is *crucial*. Once the bill has been signed, speculative attempts by the paying party to go behind the signed certificates within the bill of costs should be resisted. The paying party

should be reminded of the need to establish a “genuine issue” within the detailed assessment process.

In addition, Rule 2.03 of the new Solicitors' Code of Conduct 2007 spells out that the lay client must be given up-to-date written information about the likely overall cost, together with further specified information arising out of the funding of the litigation by conditional fee agreement. This is just as relevant during the detailed assessment process as it is at earlier stages of the litigation. As the most recent *Myatt* judgment shows, running costs litigation for the benefit of the solicitor rather than the lay client is to be avoided at all costs.

(1) *Myatt & Others v National Coal Board (No. 2)* [2007] EWCA Civ 307

(2) *Hollins v Russell* [2003] EWCA Civ 974

(3) *Garrett v Halton Borough Council and Myatt & Others v National Coal Board* [2006] EWCA Civ 1017

(4) *Bradbury v London & Cambridge Properties Ltd* (not reported)

(5) *Ashley Cole v News Group Newspapers (SCCO - February 2007 - substantive assessment is ongoing)*

(6) *Bailey v IBC Vehicles Ltd* [1998] EWCA Civ 566

For up-to-date information about costs issues, please visit our website at www.dbcosting.co.uk

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SBA

The SBA was established in 1858 as the principle charity for solicitors in England and Wales. It helps those in need who are or have been admitted to the Roll of Solicitors or who are or have been dependants of solicitors.

In 2006 for example nearly £2million was awarded to beneficiaries by way of grant or loan. This included help given to 73 children of beneficiaries to assist them with university costs and 7 awards to individuals resident in nursing homes. *These numbers include 32 people in the London area.*

Other awards included helping:

- A young man suffering from Motor Neurone Disease.
- A single and unemployed mother with a brain tumour.
- A young woman suffering with Multiple Sclerosis.

If you know of anyone who may need the help of the SBA please do call on 020 8675 6440 or write to 1 Jaggard Way, London SW12 8SG. Alternatively you can email at sec@sba.org.uk.

Christmas will soon be upon us and we are still selling Christmas cards as a way of 'spreading the word' and raising funds for our beneficiaries. Let us know if you would like us to send you a leaflet.

More information may also be obtained from the SBA website – www.sba.org.uk.



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Fax:
01664 482867

DX 26776
Melton Mowbray

E-Mail:
enquiries@dbcosting.co.uk

COUNCIL MEMBER'S REPORT



SUE NELSON

Matters of money caused concern at the final Council meeting of the year.

With some reluctance, the Council agreed a Contribution Fund levy of £300. The Contribution Fund is used to compensate those who have suffered through dishonesty of members. Members will recall that, due to an error, the SRA over-collected the Compensation Fund last year, having failed to take into account a Council decision to reduce the levy in 2006.

The reluctance to agree a £300 levy this year was caused by the concern many of us have had for years about the way the contribution to the Fund is set. Claims on the Fund have been falling but the cost of administering the Fund has not reduced. There has also been a tendency to over collect – just in case we have a massive claim. Furthermore, we have several tens of millions of pounds which the Society holds on statutory trusts which could be used to compensate clients but which, currently, the SRA cannot access. After much wrangling behind closed doors the Law Society agreed to approve the £300 levy on

the basis that there was an urgent review of the Fund which the SRA has agreed to carry out. I expect that that will cause the levy to drop in future years (in similar conditions) and that some of the administrative charges will be transferred onto the Practice Certificate fee, where they rightly belong.

Meanwhile, we agreed again to peg the PC fee at £950. Council members are looking forward to a very different presentation of the first cut of the budget in November. The Council needs to have better information about how activities are costed.

Some members may have spotted that we paid our departing Chief Executive over £820,000 in her final year with us. Decisions of this sort are not taken by the Council. One would have needed some persistence to find the information on the Law Society's website but it was there in the Annual Report.

Two things flow from this. Firstly, yet further steps are in hand to ensure that the pension arrangements for staff are more affordable. Secondly, I expect that the

Council will be revisiting how, in future, notice of the AGM and access to the Annual Report is provided to members. This is crucial if members are to have the opportunity to challenge the leadership directly on an informed basis. Several members of Holborn and Westminster Committee have been, for some months, working on this issue.

Finally, mineworkers' payments. Solicitors have received much criticism over their handling of claims on behalf of former miners. Following pressure from the LSCC, those mineworkers who are still awaiting payment of IPS awards made against solicitors will be paid by the Law Society. These sums are being paid from monies raised by commercial activities and not from PC fee funds. Proposals as to how this will operate have been put to the LSCC. They will be reviewed if either the SDT cannot recover the monies from the solicitors concerned or alternatively if the scheme becomes too expensive. Despite claims to the contrary, this does set a precedent – which is worrying.

BEST PRACTICE, BEST COMPANY?

Peter Adams attended a presentation at the Law Society on the results of the "Quality of Life" initiative. The Excellence awards will be presented at a special dinner at the Honourable Artillery Company on St Crispin's Day (25 October for those without their Shakespeare immediately to hand) - members will know that it is a truly excellent venue.

In the meantime, Best Companies, which produces the list in the Sunday Times and other journals, has put together a short article on the recruiting and retention benefits of thinking about joining the initiative.

In an incentive to attract talent to the law sector, the Law Society has joined forces with Best Companies, the name behind the Sunday Times 100 Best Companies to Work For.

Best Companies are dedicated to "helping to make the world a better workplace". Through a highly developed methodology they have analysed over 400,000 employee

surveys, with results highlighting the best organisations to work for within the UK.

By working in association with the Law Society, Best Companies are providing the opportunity for law firms to enter into the Sunday Times 'Best Companies to Work For' project free of charge.

Fiona Woolf, then President of the Law Society, outlined in her speech at the Great "Quality of Life" Debate the reasoning behind the proposition to implement such an initiative to create interest within the law sector, and the role of Best Companies within the process. She talked of the difficulty of retaining staff and the importance of attracting a high level of ability to the law sector in the current race for talent.

The collaboration was further championed by Jonathan Austin, CEO of Best Companies, who proposed the advantages of involvement within the process, whilst highlighting:

"There's not a business in the country that isn't starting to think about this issue".

Participation in the Best Companies projects is free of charge, and success for the participating organisation in either the Sunday Times Lists or Accreditation will generate high profile media attention. In turn, publicity guarantees interest from potential sources of talent and enables firms to retain their best employees.

To find out more about this exciting initiative, please register your interest by visiting www.bestcompanies.co.uk or calling a member of the Best Companies team on 01978 856222.



The name behind the Sunday Times Best Companies to Work For

SUB COMMITTEE ANNUAL REPORTS

ACCESS TO JUSTICE

Four months ago the CWHLs Access to Justice Sub Committee was convened, meeting for the first time in The Plough in Museum Street, and since in a local firm. Chair of the Committee, Pip Salvador-Jones, is Director of the Mary Ward Legal Centre, and Secretary is Wendy Pettifer of the College of Law's Legal Advice Centre. Members are drawn from local legal aid firms such as Christian Khan, Mary Ward Legal Centre, Central London Law Centre, the College of Law's Legal Advice Centre and the Public Legal Services (legal aid LPC) staff team at the College.

The Committee had a very active start, lobbying local MPs, participating in the Law Society's public meetings, the Access to

Justice Alliance protest outside Central London County Courts and supporting the Access to Justice meeting at the House of Commons hosted by Karen Buck MP and attended by many others including Alan Beith MP, chairman of the Constitutional Affairs Committee. With the advent of the new Government there has been a "wait and see" period. In the meantime the Law Society has successfully had the LSC's Unified Contract implementation programme judicially reviewed. Our committee will now be working closely with the Law Society and the Access to Justice lobby to coordinate and galvanise support for the ongoing campaigns. The Legal Services Commission has just published the

PIP SALVADOR JONES



transitional funding provisions for Not for Profit legal advice agencies working to the new contract after 1 October. Many that the Mary Ward Legal Centre have talked to believe that their future survival is hanging by the thinnest of threads. Their solicitors will be forced to take high volumes of simple legal cases simply to meet cash flow pressures instead of prioritising the complex legal cases of vulnerable clients, the *raison d'être* of 'lawyers in the community' over the past 30 years.

New members are welcome; the committee meets early evenings at 6.00pm near the British Museum. Please contact Pip.Salvador-jones@marywardlegal.org.uk, or Wendy.pettifer@lawcol.co.uk.

EDUCATION AND TRAINING

The Education and Training Sub Committee of the Society have been very lucky for the last few years in having the use of the offices of Lawrence Graham for the lectures. Following their move the lectures have for the last twelve months been hosted by Nabarro in Theobalds Road and we are grateful to them for their support.

The Education and Training Sub Committee has suffered the sad loss of Nigel Mayhew who chaired the E&T Sub Committee for many years and arranged the lecture programme. It was with great

sadness that the society received news of his untimely death in March. The lecture, which is to be held on 24 September at Bircham Dyson Bell's offices, is entitled 'What now for the mighty fighter' and will be given by Martin Edwards in Nigel's memory.

The Society over the last twelve months has put on a varied programme of lectures covering the new Companies Act, the new law relating to Powers of Attorney and other related matters arising from the Mental Incapacity Act and various other topics including a Family Law update and conveyancing.

MICHAEL GILLMAN



We hope that members of the society feel that lectures are worth while and enable members to keep up to date with various areas of the law on a variety of topics which are of interest. If you have any views as to the topics you would like covered in the next programme please let me know. The litigator in me says that I suggest a time and date by which I would ask you to respond but I will refrain from doing so and just ask that if you have any views you let me have them as soon as possible. My email address is mg@bishopandsewell.co.uk.

INTERNATIONAL

The past year has been a very active one for the International Sub Committee, due in no small part to the very active participation of our President, Sara Chandler. Shortly after her election last October, we attended the half yearly conference of the Federation of Bars of Europe (FBE) in Oporto. The highlight of the conference was the address given by Dr Reinaldo Villalba Vargas, a member of the Lawyers' Collective in

Colombia. Over 40 of his colleagues during the past 2 years have been murdered by the paramilitaries, left wing guerillas or drug barons while in pursuit of their legal practice. I think that we were all humbled by the courage of these champions of the poor victims of human rights abuse. Clearly he was delighted that we had managed to get him such an international platform from which to propagate his message.

DAVID MORGAN



After our return to London, we assisted Peace Brigades International with the organisation of a reception and presentation at St Ethelburga's to a large audience in the City. The political situation in Colombia is very complex and a minefield for lawyers navigating the legal and political shoals of the judicial system. We continue to give the collective our moral support but feel that we do not have a mandate to expend members

funds in providing more material assistance. We do however help in a practical way by keeping our colleagues in Colombia in the international spotlight.

Other major involvement overseas is our continuing partnership with the Berlin Bar. They have been following the development of the UK Government's proposals to remove regulation from the profession and to destroy its independence. Sara Chandler and I flew out to Berlin in June to address the board of the Berlin Rechtsanwaltskammer on the recent changes to the regulation of solicitors, the main changes predicated in the Legal Services Bill. They are keen to strengthen ties between us and we see this as an opportunity for them and ourselves to generate work for our members. We are hoping therefore to organise a seminar later this year and we will encourage members to attend this – details will follow when known.

Earlier in the year, we received a visit by 45 members of the Barcelona Bar. Jeffrey Forrest and I addressed them at the Law Society on the basic principles of English Company Law and the new Companies Act. Most of the delegates were young lawyers and it was interesting and encouraging to find that not only did they speak excellent English but also that they looked to the Anglo Saxon model rather than the French as previously.

CWHLs remains an active member of FBE and we participated in both its conferences in Oporto last October and in Naples in May. Jeffrey Forrest and I both gave presentations to the October meeting on comparisons between the Anglo Saxon common law and the Roman civil law which is prevalent throughout mainland Europe. In Naples, we both sang for our supper once again on the topic of "Defending the Independence of the Profession of

Lawyers". We also led the defence of the Federation's own constitution which the former President was seeking to amend at short notice to extend his tenure of office. I am pleased to report that this was roundly defeated but further amendments are likely to be proposed in October.

The FBE has been successful in protecting the profession's right to confidentiality in certain circumstances vis-à-vis proposals made by the G8 Financial Action Task Force and on its behalf I have also been liaising with the International Criminal Court and the International Criminal Bar over disagreements on the proposed Code of Conduct for Advocates appearing in that Court.

With the current hiatus endemic in the changes currently transforming the national Law Society, we regard it as more important than ever to maintain the close watch on international developments.

LAND LAW AND CONVEYANCING

ADAM MABERLY



It has been a hectic year for property practitioners, in particular in relation to the following:

1. HIPs

The original justification for the introduction of HIPs – that, by supplying a prospective buyer with certain information and documents available following the first point of marketing, the period between offer and acceptance and completion would be reduced thus saving costs and reducing the possibility of gazumping and gazundering – was never fully sustainable and is no longer sustained, being subsumed in the argument that the provision of an Energy Performance Certificate ("EPC") will effect substantial savings in energy consumption as buyers will be aware at an early stage of the works they could carry out to render their property more energy efficient, a somewhat vain hope unless buyers can at least be satisfied that increases in Council Taxes will not result from re-valuations taking into account improvements initiated by the EPC.

Finally introduced on 1 August 2007 in relation to homes with four or more bedrooms (leading to the inevitable marketing of homes with three bedrooms and a study/snooker room/computer room capable of conversion to a bedroom) and shortly to be extended to homes with three or more bedrooms as from 10 September (with a similar result) we are faced with a

bureaucratic nightmare. Initially until 31 December a HIP is compliant if containing only the index, the sales statement, title information and the EPC supported by an undertaking that the other required documents (the local and water/drainage search and the leasehold and commonhold documents and information if relevant) have been commissioned on the basis that they should be available within 28 days of the first point of marketing, and no HIP will be required if the first point of marketing is between 1 June 2007 and the appointed commencement date (i.e. 1 August for homes with four or more bedrooms, 10 September for homes with three or more bedrooms, and a date anticipated to be early in the new year for all homes). Sellers might be advised to advertise in the local newsagents before the relevant commencement date to avoid having to provide HIP. As to the general effect of HIPs only time will tell but it is doubtful as to whether the original or subsequent justification of HIPs will be realised. Enforcement of the regulations is difficult in practice as those delegated to enforce them are complaining that they have insufficient staff to do so. It is also unlikely given the difficulty of proving a breach of the regulations but the common misconception that £200 is worth paying rather than incurring the cost of a HIP should be tempered by the information that, theoretically, the fine is £200 per day.

2. Tenancy Deposit Schemes ("TDS")

These are effective as from 6 April 2007. Landlords need to be made aware of the legislative framework surrounding the schemes, in particular that the landlord must:-

- (a) within 14 days of receiving the deposit inform the tenant of the Tenancy Deposit Scheme being used and
- (b) give certain prescribed information to the tenant.

Such information is stipulated in the charmingly described the Housing (Tenancy Deposits) (Prescribed Information) Order 2007, which requires the landlord (inter alia) to supply information regarding the procedures applicable under the relevant scheme regarding repayment of the deposit and other matters which may necessitate the landlord obtaining details of the relevant procedures from the scheme administrator and possibly verifying with the scheme administrator that he has supplied details to the tenant.

The sanctions for failure to comply with the regulations are onerous. If the deposit is not being held in accordance with an authorised TDS or the initial requirements of such a TDS have not been complied with in relation to the deposit then no Section 21 Notice can be served by the landlord to recover possession of the property. The initial requirements of a TDS are those imposed by the particular scheme. The landlords should

establish those requirements at an early stage before receipt of the deposit. In addition no Section 21 Notice can be served if the prescribed information has not been provided and if the tenant satisfies the court that the initial requirements have not been complied with or if the tenant has been unable to obtain confirmation from the scheme administrator that the deposit is indeed being held in accordance with the scheme (which necessitates the landlord making sure that the scheme administrator will supply such confirmation) then, *inter alia*, the court must order the landlord to pay the tenant a sum of money equal to three times the amount of the deposit, in addition to imposing other discretionary sanctions.

3. RICS Code of Practice – service charges

The code came into effect on 1 April 2007. There is no statutory protection for commercial service charges and the code, which supersedes all previous guides, does not have legal status but it does have guidance notes status which means that Chartered Surveyors should follow its provisions so far as possible, explaining any departure from its form. In an allegation of professional negligence the court is likely to take into account the contents of any relevant guidance notes in deciding whether or not the practitioner acted with reasonable competence, and while this strictly applies to surveyors it is clearly possible that solicitors who have no knowledge of and take no notice of the code when negotiating leases particularly from the tenant's view point may be prejudiced in negligence proceedings taken by the tenant. In addition, landlords could potentially lose disputes if it is found that they have not followed the code and the dispute is then resolved using alternative

dispute resolution procedures and it would be advisable for tenants, when negotiating heads of terms and possibly also in enquiries before contract, to request the landlord to confirm what position he has taken with regard to the code. Part D of the code is of particular relevance to conveyancers, paragraph D8 dealing with dispute resolution which is of obvious relevance to property litigators in particular in relation to lease renewals.

4. Code of Practice for Commercial Leases – 3rd Edition

This was published on 28 March 2007. Although it is still a voluntary guide for landlords and tenants, the prevailing view is that compliance with the code is viewed as the last chance of the property industry at self-regulation. Lawyers have a vital role to play in helping to promote use of the code amongst their clients particularly landlords. Experience to date is that many landlords pay lip service to the principle of code compliance when giving instructions regarding the drafting of leases but are more susceptible to accepting amendments to a draft when these are justified by reference to the code.

It is possible that a tenant's advisor, making no attempt to negotiate the issues dealt with by the code and failing to advise his client that the resulting lease is not or will not be code compliant, might be liable in damages which will depend on the tenant's suffering loss, which could be the case if the tenant's ability to assign is reduced.

The government has indicated that it intends to keep a close eye on how well the new code is performing, and only time will tell whether the property industry has done enough to avoid legislative intervention.

5. Solicitors Regulation Authority – Consultation on a possible change to the Rules on when a solicitor can act for both the buyer and the seller in a conveyancing transaction

The Consultation Paper presented three options, namely to retain the rule (Practice Rule 6(2) of the Solicitors' Practice Rules 1990 now contained in rule 3 of the 2007 Solicitors' code of conduct) as it stands, to remove the rule and allow the general conflict provisions to apply or to remove the rule and rely on the general option provisions, but with safeguards. The Society's preference was to leave the rule as it stands, the reason for this being that this is an area of work where conflict of interest is likely to arise and there will be few occasions when, in practice, there is no conflict. For this reason it was considered unhelpful for the rule to be changed so that the general conflict provisions apply, without further specific guidance or safeguards.

6. Some reminders

- (a) new Construction (Design & Management) Regulations came into effect on 6 April 2007. Unless already referred to by inference, standard form leases may need to be amended.
- (b) new lasting Power of Attorney Regulations come into force on 1 October 2007.
- (c) the requirement that the landlord must supply long leaseholders with a summary of their rights and obligations relating to service and administration charges when sending out demands also comes into effect on 1 October 2007.

LAW REFORM

Of all the remedies in English law forfeiture of leaseholds is the most ridiculous. The landlord has to pretend he has re-entered the property, though he mustn't do so and mustn't take rent. He must then go to court to find out whether he did re-enter after all, and to try and recover the rent he hadn't been allowed to accept. The law began its current reforming process in 1968, when the Law Commission published its first consultation paper. The Commission produced its first outline report in 1985, but so much time had elapsed by 2004 that a

fresh consultation had to be undertaken. CWHLS responded that year, making two main submissions. In its Final Report (Law Com. 303) published late last year the Commission discussed both of our submissions and adopted one of them. Where a valuable lease was to be terminated for some default, the value of the unexpired term should not always go as a windfall to the landlord. The court, we said, should have the power to order a sale instead. Any surplus should go back to the former tenant after satisfying the

entitlement of the landlord. This new power is now in Clause 14 of the bill appended to the Report. It was a good start to our year.

The Law Reform Sub Committee works closely with the Revenue Sub Committee and the Land Law and Conveyancing Sub Committee, and much of its work during this year related to the work of those Sub Committees. An important response on employment law was steered by Rosemary Lester and Arthur Alexander. The consultation by the Department of Trade



ARTHUR WEIR

and Industry is proposing to replace present statutory grievance procedures with simplified rules more directed to the merits.

Most recently the Sub Committee tackled the difficult topic of damages for

bereavement – for grief, that is, as opposed to financial loss. Already available to spouses under the amended Fatal Accidents Act, should it now be extended to long-term cohabitants? The Ministry of Justice is considering the options placed

before it by the Law Commission. On a subject admitting of such a wide variety of views the Sub Committee did not attempt to find a consensus. Instead we submitted a paper on a number of aspects raised in the consultation.

LITIGATION

The litigation Sub Committee has not been very active this year for which its chair apologises. However, we did consider the Carter Review of Legal Aid. Unfortunately the Sub Committee is not strong on legal aid issues and so were not able to make much meaningful contribution.

We have always in the past supported LSLA

in its collection of litigation rates which are fed into the guidance rates used by the various courts on assessment.

This year the OFT expressed concern about the LSLA's methods of collecting litigation rates. We supported that organisation in its discussions with OFT and it appears that LSLA has been

successful in convincing OFT that it may continue with its current practice.

We encouraged our members to attend the litigation lectures organised as part of the Education and Training programme.

This Sub Committee needs revitalisation. It would welcome new applications to join it.



JOANNA KENNEDY

PLANNING AND PARLIAMENTARY

The planning system is continually evolving, not least in response to social change, political pressure and the influence of European Law.

The Planning and Parliamentary Sub Committee of the Society meets on an occasional basis to discuss emerging and new planning law, policy and guidance.

This year saw the Government's Planning White Paper "*Planning for a Sustainable Future*", the centrepiece of which is a

radical proposal for planning applications for major infrastructure projects to be decided not by Ministers but by an independent commission to be established for that purpose. Whilst the proposed commission has grabbed the headlines, the White Paper also proposes a raft of other significant changes to the development control system, in relation to development plans and the appeal process.

The White Paper has come only three years after the major changes made by the

Planning and Compulsory Purchase Act 2004, arguably the most significant changes since the modern system of planning law came into being after WW2. This illustrates the pace of change that practitioners, local authority planners and all others involved with the system have to keep up with.

Any members of the Society who would like to participate in the work of the Sub Committee are very welcome to contact David Morgan (david.morgan@rlb-law.com) the newly appointed P L O.



MARK CHALLIS

PROFESSIONAL MATTERS

The Professional Matters Sub Committee, chaired by Alison Parkinson, has had another busy year. During the year we have responded to the consultations relating to professional matters from the newly formed Solicitors Regulation Authority. Responses have been submitted to the consultations on: Character and Suitability Guidelines; Modernisation of Regulatory Decisions; Regulatory Decision Making and

Adjudication; and on Solicitors Acting for Seller and Buyer in conveyancing, property selling and mortgage related services.

The Committee took a particular interest in the future of the professional help line, discussing whether this should be located within the SRA, as the originator and enforcer of the Rules, or rather with the Law Society as the solicitors' representative body.

We discussed the practicalities of co-location of any professional helpline in the future so that it could be accountable to both the Regulation and Representation side. We raised the topic with the Chief Executives of both the Law Society and the SRA, and have reported to you on the responses.

The committee prepared letters for the Society to lobby Frank Dobson and Mark



URSULA TAYLOR

Field, the two MPs whose constituencies cover our area, on issues relating to the independence of the legal professions arising under the Legal Services Bill, and Access to Justice.

The Committee has during the year included within its membership four Council Members of the Law Society, and the Committee has provided a discussion forum with them on professional issues

during the year, including a matter of long-standing interest, successor practices and indemnity insurance, and also the Money Laundering Regulations.

We have kept the membership informed of our activities through regular articles in the Report, detailing our consultation responses, our correspondence with MPs, and the responses in respect of the professional help line, and we have reminded you of the

important change to our regulation, the issuing of the new Code of Conduct.

We anticipate another busy year. We have been keeping a watchful eye on the progress of the standard contract between solicitors and barristers, now delayed, and will continue to do so as the implementation date approaches; and we will continue to respond to consultations on professional issues, whether from Government, the SRA or the Law Society.

REVENUE

In the April/May issue, I commented on the Advocate General's recommendations in *Lakebrink*, C-182/06. These were accepted by the ECJ in its judgment, delivered on 18 July. It will be recalled that Mr & Mrs Lakebrink live in Germany but both work in Luxembourg and felt that the taxpayers of the Grand Duchy should contribute to a reduction in their income tax there to allow for property rental losses in Germany which were not otherwise relievable on an immediate basis because they had, in that year, only negligible income in their country of residence. Their claim for relief was under the freedom of movement provision in the Treaty, Article 39.

The provisions of Article 56, under which *Marks & Spencer*, C-446/03, were obliged to bring into account the possibility of alternative relief in the member states in which its subsidiaries traded – and under which, presumably, account would have been taken (in *Lakebrink*) of the possibility of relief in Germany against rental surpluses in future years – does not apply to Article 39, only to Article 43, which relates to freedom of establishment. This difference was, ironically, brought home by the ECJ in another judgment delivered on 18 July, *Oy AA*, C-231/05, in which it was held that Finland was entitled to restrict relief for subvention payments to group members established within its borders.

It seems therefore that, where the Treaty's "fundamental freedoms" are concerned, some taxpayers are (as George Orwell might have put it) more equal than others.

SDLT notional transactions and the valuation process

One of the issues which HMRC declined to address in relation to the new anti-

avoidance code (as to the "guidance" on which, see the July/August issue) is that of the compliance machinery. Where a chargeable transaction has taken place, the purchaser is obliged to file a return within 30 days under FA 2003, s.76(1), but only where s.77 so specifies. The latter makes no provision whatsoever for notional transactions between parties who have not had direct dealings, the scenario postulated by s.75A(1)(c). Where a notional transaction has taken place, s.75A(4)(b) requires this to be substituted for the "actual" ones. HMRC consider it unlikely, however, that the ultimate purchaser will be aware of the activation of this override at the time when a return would normally be required for the transaction he has "actually" carried out. They are, therefore, banking on the likelihood of problems not arising at HMLR because a SDLT5 (the document which has to be sent to HMLR) will be produced from a return later displaced retrospectively.

It is envisaged, however, that the same forms will be submitted for a notional event as for an actual one, and there is nothing in these forms to tip off other recipients of information from them (e.g. the VOA and the local authority) that they do not relate to a real transaction. It must follow from this that the District Valuer will have entered the "notional" into his IHT/CGT/CPO/rating database as a "real" one, with a view to citing it as a precedent in such negotiations. This is quite plainly inappropriate and I would expect those involved in such negotiations (and any appeals to the Lands Tribunal) to be able to challenge all post-5 December 2006 SDLT1 citations on principle, on the basis that the DV cannot know whether a notional

transaction has been involved.

Rating (Empty Properties) Act 2007

Two problem areas need to be noted:

First, the relief, under the new LGFA 1988, s.45A, for charities and qualifying sports clubs which expect (either themselves or jointly with others in the same category) to occupy the empty premises again may prove difficult to claim in practice because of the use of the phrase "it appears". Some local authorities are likely to take the view that the "apparition" must be to them (subjectively), and decline to grant relief. In the event of an appeal, the Courts would no doubt substitute an objective test, but discovering that will cost money many potential qualifiers may not feel able to lay out.

Second, the facility to make regulations to prevent avoidance, under the new LGFA 1988, s.66A, must, under the post-2004 purposive rules of construction, clearly be deemed to have limited scope. It is therefore a matter of considerable concern that the Department of Communities and Local Government, in *Modernising Empty Property Relief – A Consultation Paper*, appears (albeit at the instance of the local authorities) to envisage that such regulations could cover (for instance) deliberate non-completion of new buildings and quantum in subsequent periodic revaluations. However, while no expressions of concern are likely to deflect that Department from its pre-determined utilisation of this power, the procedures which apply in relation to regulations made by the Welsh Assembly could well result in the majority of Consultation Paper's proposals being treated as ultra vires.

JEREMY DE SOUZA



ANNUAL GENERAL MEETING

MINUTES OF THE ANNUAL GENERAL MEETING OF THE CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY held on Tuesday 17 October 2006 at the Law Society's Hall

1. President's Report

The President opened the meeting, expressing a particular welcome to the President and Chief Executive Officer of the Law Society. He said that his reports on the activities of his presidency had appeared regularly in the Report and he would not repeat them, but he wished to place on record the substantial debt of gratitude due to all those who had supported him during the year, and especially to those who were retiring from the Committee. To these, he added Richard Brown, who was retiring as secretary of Professional Matters, and Elizabeth Beesley, who kept the Society running.

It had been a good year for the Society: of overwhelming importance to our members was the separation of functions within the Law Society and the contribution we had made to the debate surrounding it. Recently, we had opened the Law Society Conference, which had been very well attended and the response from the attendees had been very positive.

2. Installation of Officers

The President announced that the following Officers had been elected to serve for the year 2006/7 and they were duly installed:

President: Sara Chandler

Senior Vice President: Michael Gillman

Junior Vice President:

Adrian Barham

Honorary Treasurer: Timothy Drabble

Honorary Secretary: Peter Adams

Deputy Honorary Secretary:

Jonathan Cornthwaite

Editor: Rosemary Lester

3. Approval of the accounts for the year to 31 May 2006

The Treasurer presented the Accounts for the Society covering the period to 31 May

2006. Subscriptions income had advanced by 2.64%. Lecture income was lower than the previous year and the consequence of lower income and increases in expenses was a small deficit for the year. There had been no material change to the Society's assets.

The Treasurer thanked the Honorary Auditors. The Accounts were approved.

4. Election of the Committee

The following were elected:

Arthur Alexander	Richard Henchley
Julian Aylmer	Joanna Kennedy
Adrian Barham	Roisin Smith
Lynne Burns	Ursula Taylor
Bruce Coles	Arthur Weir
John Davies	Roger Woolfe
Sue Elson	

6. Appointment of auditors

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

7. Election of honorary members

On the proposal of the President, the President of the Law Society of England and Wales, Fiona Woolf, was elected an Honorary Member of the Society for the year 2006/7.

8. Any other business

Mr Forrest, seconded by Mr Morgan, proposed that the Society adopt the core principles which had been adopted unanimously by the Bar Association Presidents at their meeting in Paris on 19 November 2005. He said that both the FBE and the Law Society had adopted the principles; there is a need for the legal profession to be the guardians of some fundamental concepts. After further discussion the following resolution was approved:

The legal profession throughout the world, in the interest of the public, is committed to these core principles:

- 1 An impartial and independent judiciary, without which there is no rule of law.
- 2 An independent legal profession, without which there is no rule of law or freedom for the people.
- 3 Access to justice for all people throughout the world, which is only possible with an independent legal profession and an impartial, and independent, judiciary.

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

Ms Chandler, newly installed as President, closed the meeting by saying that she was greatly honoured by the office and very proud to be the first female president of the incorporated body, though each of the former Societies had previously been presided over by women in the past. She was committed to the rule of law both in the United Kingdom and internationally, which would be reflected in her year. She drew attention to a forthcoming address by Dr Reinaldo Villalba, a Colombian lawyer engaged in human rights issues in that country at a meeting at St Ethelburga's on 26 October. She also announced that the Mary Ward lecture would take place on 17 January at Clifford Chance's offices, and that the speaker was to be Clive Stafford Smith, well known for his inspired representation of appellants subject to the death penalty.

She expressed the Society's gratitude to Charles Fraser for the great contribution he had made during his year as President.

NOTICE IS HEREBY GIVEN that

The Annual General Meeting of the City of Westminster and Holborn Law Society will be held at The Law Society's Hall, 113 Chancery Lane, London WC2 at 6.15 pm on Tuesday, 9 October 2007

The business of the meeting will be:-

- | | |
|--|--|
| 1. To receive the President's Report. | 2. To install the officers for the ensuing year. |
| 3. To approve the Accounts for the year to 31 May 2007. | 4. To elect the members of the Committee for the ensuing year. |
| 5. To appoint honorary auditors | 6. To elect honorary members of the Society |
| 7. To consider any other business of which notice shall have been given. | |

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

The dinner following the AGM will be held at Chez Gerard, 119 Chancery Lane, WC2: the cost will be £40 per head: please let us know by **2 October** if you would like to attend this dinner.

DINNER FOLLOWING THE AGM

TO: The Administrator, 25 Rotherwick Road, London NW11 7DG **Reply by 2 October 2007**
DX 33801 Golders Green

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

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

Name(s)

Address:

DX

Dietary requests:

PUTTING SOMETHING BACK INTO THE PROFESSION

A MOST REWARDING WAY OF CONTRIBUTING TO THE FUTURE OF THE PROFESSION

The College of Law is seeking practitioners who would be prepared to make a difference to the recruitment of future solicitors. Would you like to be a mentor?

The College of Law's Mentoring Scheme is aimed at those students who have had limited access to the legal profession. The programme aims to address this issue in some way by providing able students with an ongoing individual contact from within the legal profession whose views, practical

experience and wisdom they can benefit from. The scheme is open to all of our students here at the college but we aim to choose those students who will benefit most from the scheme in terms of ability, enthusiasm, commitment and lack of available opportunities open to them anywhere else.

The programme operates from November to May each year, and during this time, we ask mentors to agree to offer a minimum

of four contact points, at which discussions on areas of practice, CVs, application forms, application strategy, interview preparation and wider career management issues might take place. We ask that one of these contact points is a face to face meeting, but the others could be via email, telephone or letter.

Please contact
Joanne.Rourke@lawcol.co.uk

CWHLs LECTURES

24 September NIGEL MAYHEW LECTURE

WHAT NOW FOR THE DOUGHTY FIGHTER?

Martin Edwards

to be held at the offices of **Bircham Dyson Bell LLP**, 50 Broadway, SW1H 0BL

This planning lecture will be delivered by Martin Edwards in memory of Nigel Mayhew. Recently there has been an upsurge in the use of compulsory purchase orders, particularly in relation to regeneration projects. It is an inherent part of the compulsory purchase process that a balance has to be struck between private and public interests. The key question therefore is, in the face of this renewed enthusiasm for compulsory purchase, has the balance shifted and, if so, in which direction?

15 October RECENT DEVELOPMENTS IN COSTS

Master O'Hare, Costs Judge

to be held at the offices of **Nabarro** at Lacon House, 84 Theobald's Road, WC1X 8RW

This lecture will concentrate upon the following points:

- New professional conduct rules on client relations
- Current state of CFA law
- Fixed costs
- New law on costs draftsmen
- Cost capping orders
- Changes in practice at the bar
- Court of Appeal guidance on ATE insurance premiums
- Raising issues of conduct at a detailed assessment
- Costs estimates

Both these lectures will begin at 6.15 pm with a drink available from 6.00 pm. One hour of CPD is available (ref: JC/CWHLs) – please give your roll number when attending.

TO: Mrs E J Beesley, CWHLs, 25 Rotherwick Road, London NW11 7DG

DX 33801 Golders Green

Please send tickets for the following lectures: the cost for the Nigel Mayhew lecture is £20 for all those attending and for the Costs lecture the charge is £20 for members of CWHLs and £32 for non members.

All attendees

Nigel Mayhew lecture

Member

Non member

Recent Developments in Costs lecture

I enclose a cheque for £

payable to the City of Westminster and Holborn Law Society

Name

Name of Firm

Address

DX

Signature

Date