



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

NO. 65 SEPTEMBER/OCTOBER 2009

THE PRESIDENT'S COLUMN



ADRIAN BARHAM

My predecessor as President wrote, this time last year, that he was surprised how quickly the presidential year had passed. I have to concur. It really does seem like yesterday that I took office, and was slightly apprehensive of the year ahead. Now it is almost over, and I have to try and encapsulate my year in a few well-chosen words. It won't be easy.

I'm sure all Presidents start with grand intentions — I had hoped to attend meetings of each of our various sub-committees. That I only managed to get to two or three of them is no reflection on the wonderful work they do for the Society every year. You can read about their work in this issue of the Report. On behalf of the Society, I thank all our committee volunteers for their hard work over the past 12 months. Your dedication to the cause is much appreciated.

For anyone who is looking for a way to get more involved with the Society, our sub-committees are a wonderful way to share your knowledge and expertise of practice, and make a valuable contribution to the work of your Society. We have sub-committees covering a wide range of topics and, whatever your interest, there will be a committee that can make use of your talents. Why not drop us a line (at admin@cwahls.org.uk) to see when they are next meeting?

I said at my installation as President that I wanted to increase the levels of communication, both from the Society and between members. We now have a very successful e-Report e-mail newsletter, and we remain committed to getting members together for

networking opportunities. If you have any ideas for social events, or other ideas that can help to get the members together, do please contact us.

The Society has continued to foster international links this year, maintaining its ties with the Berlin Bar, and entering into a new partnership with the Barcelona Bar. Anyone who is looking to do business in either of those cities is strongly encouraged to contact us so that we may put you in touch with our counterparts. As ever, we have also played a full role in the Federation of European Bars (FBE), with attendance at its congresses in Torquay last October and Bruges in May. The next FBE meeting is in Valencia, Spain, at the start of this October.

Our third annual Nigel Mayhew Memorial Lecture will take place on 30 September at the offices of Bircham Dyson Bell, and will be given by Robert Lewis of Radcliffe Chambers. He will be talking about the influence of human rights on town and country planning, and how to balance the rights of the landowner with those of the public. The lecture commemorates our colleague, Nigel Mayhew — who was Chair of our Education & Training sub-committee — who passed away unexpectedly after a short illness. I hope as many of you as possible will come along to hear Robert Lewis speak, and to remember Nigel.

Our Annual General Meeting will be held this year on Tuesday 13 October at The Law Society, and I hope that you will be able to join us that evening. The AGM is followed by a dinner at Coopers

restaurant, on Lincoln's Inn Fields, and you are cordially invited to join us. To purchase a ticket, please contact our Administrator, Elizabeth Beesley.

My final duty as President, at the AGM, will be to award the Gamlen Law Prize to the most promising candidate on the Legal Practice Courses run in the Society's area. It is heartening to know that, even in these difficult times, there are high calibre, motivated students entering our profession.

It would not be right to finish my final column without thanking the Society's Administrator, Elizabeth Beesley, for all of her hard work during my presidential year. Her help and assistance have been invaluable, and she has ensured that I was in the right place at the right time, time after time.

I hope that I have managed to keep your interest over the past 12 months, and trust that you will continue to support the Society in the coming year. Without you, the members, we do not have a Society.

DIARY

2009

SEPTEMBER

- 23 Committee meeting
- 30 Nigel Mayhew Memorial lecture

OCTOBER

- 13 CWHLS AGM and Dinner
- 26 Costs lecture
- 28 Committee meeting

NOVEMBER

- 12 Presentation of the Wig & Pen Prize
- 25 Committee meeting

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is **30 October 2009**

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COUNCIL MEMBER'S REPORT

22/23 JULY 2009

SARA CHANDLER



Amidst an atmosphere of “school’s out” and “demob frenzy” Council met over two days, to include the July Council Meeting and the AGM. We faced several difficult issues.

Practising Certificate Fee

We had the task of setting the Practising Certificate Fee for 2009/10. PC fees fund the work of the SRA, the Legal Complaints Service, the Law Society, the Solicitors Disciplinary Tribunal, the Legal Services Board (LSB) and the Office for Legal Complaints (OLC). It was with considerable regret that Council took the decision to set an increased fee of £1,180 together with a contribution to the compensation fund of £390. Council was reluctant to agree the increase at what is a very difficult time for the profession but felt compelled to do so, despite savings by the Law Society. The increased spend was required to meet the statutory obligation for the profession to pay the majority of the costs for the establishment of the LSB and the OLC. There are also increased costs to be met for developing a new IT system for the SRA, known as the enabling programme. It is assumed that there will be a reduced number of certificates taken out in October 2009 and that the contribution is calculated on the same basis as today, although the SRA intends to implement an entity based fee in 2010/11. The fee of £1,180 is an increase of £185. The increased costs per pc fee paid are £106 for the LSB and the OLC, £41 for the SRA enabling programme, and £38 to cover the reduction in PC fees paid. The compensation fund has increased by £54 due to a change in policy whereby the cost of non-dishonesty interventions is now charged to the compensation fund (as permitted by statute) rather than to the pc fee. There is a slide show available for any CWHLS member who would like further information: please contact sara.chandler@lawcol.co.uk

Legal Aid and Best Value Tendering

The Legal Services Commission (LSC)

decision with regard to best value tendering (BVT) was announced by Des Hudson, Law Society Chief Executive. The two pilots in Bristol & Avon and Manchester will continue as previously announced but there will be no roll out for the rest of the country until 2013. Firms in the pilot areas face bankruptcy and the Law Society will continue its work lobbying against the introduction of the pilot scheme and to support criminal practitioners in the areas.

The LSC has returned to the promise given by Sir Michael Bichard and extended the evaluation period for the pilots. The Law Society’s success in obtaining deferment is tempered by concerns for the firms in the pilot areas, as for them this will not be a pilot. If they are unsuccessful in bidding, they will cease to have contracts in police stations and Magistrate Courts and probably their Crown Court work will end. There are some arrangements to allow payment for own client work outside the area of their contracts but the implications for the firms in the pilot areas will be severe. At this stage, it does not appear likely that there will be an opportunity for litigation by the Law Society, but more work will be done to support the firms. It is proposed that there be a joint meeting with the Bar Council and BME firms, and more work will be done on the BME impact assessment. The Society needs to discuss the current proposals urgently with practitioners in both Manchester and Bristol & Avon, to understand how they see things and how we may progress matters further. The LSC intends to roll out training in bidding in these areas and the Society is examining ways in which it can support the firms in the run up to bidding. The Law Society Legal Aid Team together with a number of legal aid practitioners is conducting a comprehensive review of legal aid with a view to putting forward proposals in 2010.

New President

Robert Heslett became President at the AGM (23 July). Bob’s theme for

the year will be the role of solicitors in maintaining the rule of law, the commitment of solicitors to the rights of the individual and the vital part played by solicitors in UK commerce.

New SRA Chair

The President announced that Charles Plant will be the Chair of the Solicitors Regulation Authority (SRA) from 1 January 2010.

Salary Survey 2008 – Results and Project Plan

In late 2008 the Strategic Research Unit of the Law Society undertook the annual salary survey of the solicitors’ profession, revealing pay inequalities.

Whilst there are strong ideas about some of the causes of the pay inequalities across the profession, there is a lack of consensus about how they can be addressed most effectively. A discussion is proposed with practitioner groups, including the BME Forum and the Firms Diversity Forum, to finalise plans for a project to address pay inequalities. There will be public announcement of the project plan and a series of confidential focus groups/round tables with members of individual demographic groups in collaboration with practitioner associations such as the Association of Women Solicitors. There will be confidential focus groups/round tables with employers of solicitors and parallel desk research into existing knowledge; and publication of an anonymised report of each event highlighting key points and associated publicity. The second stage will be development and agreement of recommendations and the third will be launch of commitment to action, currently planned for November 2009. However, because of the time pressure due to the lengthy debate on the PC fee, it was agreed that the paper be looked at next year.

Coming period

Council work over the next few months will be difficult as we set the budget on reduced funds for Law Society activity. Members are welcome to attend and observe Council meetings.

AON SECURES NEW EXCLUSIVE PROFESSIONAL INDEMNITY INSURER

Aon, the UK's leading insurance broker, will be working with XL Insurance to bring new capacity, and thus more competition and innovation, to the solicitors' professional indemnity (PI) market.

XL Insurance has strong credentials in the PI market, having underwritten PI insurance on an excess of loss basis in the UK and on a primary basis in the US since 2003, covering over 6000 US law firms. The insurer has worked closely with Aon to identify the needs of solicitors in England and Wales to offer appropriate cover.

Ryan Senior, director for Aon's specialist Professional Services Group, said: "Solicitors want the confidence that whatever their size, they will be able to access competitive rates and market-leading cover. Working with XL Insurance reinforces Aon's commitment towards achieving this."

"At XL Insurance we have many years' underwriting experience in the PI market," added Bill Wharton, chief underwriting officer, Professional Lines UK for XL Insurance. "We are pleased to now support legal firms in England and Wales as a primary PI insurer."

Aon will seek to provide a quotation from either XL Insurance or its existing partner, QBE, depending on the firm's profile and cover requirements, whether a small sole practitioner or a larger ten partner firm. To access the exclusive schemes from Aon please complete a proposal form, available by contacting your local contacts, solicitors@aon.co.uk or on the website at www.aon.co.uk/solicitors. Aon also provides a customised approach for larger firms of 11 partners or more.

Partnership Protection Insurance (Directors & Officers and Employment Practice Liability)

In today's sophisticated business environment, directing a local, regional or national law firm places significant demands on even the most experienced partners. Partnership firms are managed businesses and this imposes significant potential liability risks on partners, similar to the risks encountered by the directors and officers of a company.

The demands on firm management and its associated risks can at times seem overwhelming, particularly for a partner who wishes to maintain an active practice while shouldering leadership responsibilities. It is important to recognise the scenarios that result in disputes over management decisions, which will allow management to anticipate and address these potential liability exposures. Management liability claims may be classified into three groups:

Third party disputes, where a party unaffiliated with a firm brings a claim against the firm and its management, may include claims by other law firms, claims by clients that do not involve malpractice, and any claim against the firm management for failure to fulfil an obligation of duty to a third party other than a client.

Health & Safety Investigations or Corporate Manslaughter prosecutions where an official investigation is made regarding internal procedures following an accident at work or the police prosecute for a gross breach of duty of care causing the death of another person.

Employment disputes, where a current or former employee brings a claim against firm management arising out of an employment decision, could be brought in the context of a claim for unlawful discrimination.

No lawyer would consider practising law without professional liability insurance. Yet, many partners forget that many decisions they make on a day-to-day basis in managing their law practices fall outside their professional liability insurance. Therefore, a firm should evaluate whether its current insurance program affords adequate protection for management decisions and consider investing in management liability insurance.

For further details, please contact your Aon contact shown below.

Helen Parsons, Regional Underwriter - Director & Officers Liberty International Underwriters

Aon contact details

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THE LEGAL CHARITIES GARDEN PARTY 2009

We hardly expected a good result in the year of the credit crunch, the year when belts are being tightened throughout the land.

So with surprise and delight we announce to you, our patrons, that you have done it again! By your support you have raised £22,600 for the lawyers' charities, more by a whisker than last year. So thank you all!

ARTHUR WEIR
Garden Party Treasurer

SUB COMMITTEE ANNUAL REPORTS

EDUCATION AND TRAINING

Once again the Society has put on a varied programme of lectures in the last year, with topics including property development finance, international human rights law, credit crunch insolvencies, litigation funding, the Climate Change Act 2008, a contract law update and employment and redundancy.

Forthcoming lectures include the third lecture in memory of Nigel Mayhew, the former chairman of the Education and Training committee who passed away in 2007. This year's lecture is entitled "Planning and Human Rights" and will

be given by Robert Lewis of Radcliffe Chambers on Wednesday 30 September at the offices of Bircham Dyson Bell LLP. Costs will be the topic for the October lecture, to be held on Monday 26 October at the offices of Nabarro LLP.

We want to arrange lectures which you will want to attend, so the committee is keen to hear from you if you have any views or ideas on topics you would like to see in the programme of lectures for 2009-10 – please contact the Society's administrator, Elizabeth Beesley whose email address is admin@cwahls.org.uk.

ADRIAN BARHAM



As well as organising the lecture programme, the committee has also responded to some of the many consultation papers which raise education and training issues, including papers on changes to the Qualified Lawyers' Transfer Scheme and ensuring the quality of the delivery of legal services.

New members of the committee are sought; we meet once every 4-6 weeks in Holborn in the early evening. If you are interested please contact the Society's administrator - admin@cwahls.org.uk.

INTERNATIONAL

This has been another busy year for the International Sub Committee.

The FBE half-yearly meeting and training conference was held in Torquay where the delegates enjoyed Devon with visits to the Royal Naval College Officer Training School at Dartmouth and Kent's Cavern.

Day one of the congress saw an excellent debate on the core duties of the profession. Sara Chandler spoke on the core values, and the Codes of Conduct of the Bar and the Law Society. On Day two David Morgan was in the chair for a session on Alternative Business

Structures, and the impact of the Legal Services Act 2007.

The FBE Annual Meeting in May was held in Bruges and was attended by Adrian Barham and David Morgan. The two main themes were the structures of law firms and their financing, and the financial situation of bar associations themselves, with particular reference to the current economic climate.

Whilst the Society's link with the Berlin Bar has been not very active this year we still keep in touch with them resulting in proposals for a joint meeting in 2010 to update members of both organisations

DAVID MORGAN



on money laundering and also on conflict of interests as the professional rules of the two professions vary on both aspects. We now have a training agreement with the Barcelona Bar and this was signed at the Society's Annual Dinner. Jonathan Cornthwaite is our liaison officer with the Barcelona Bar.

As reported elsewhere the Caravana group continues the work that was started in Colombia last summer. The appointment of a co-ordinator of this group funded by the Law Society charity will ensure that this work continues.

COLOMBIA CARAVANA : ONE YEAR ON

In August 2008 fourteen members of CWHLS joined the international delegation of lawyers which spent a week investigating the situation of human rights lawyers in Colombia. Thanks to

the Law Society Charity, CWHLS was able to ensure that members who could not otherwise afford to participate joined the delegation, including trainee solicitors and newly qualified solicitors.

SARA CHANDLER



Working with the Law Society's International Human Rights Committee, members have provided support to Colombian lawyers during the last twelve months.

The Caravana group have undertaken various activities this year, including organising public meetings, the publication of the delegation's report and sending letters expressing grave concern to the Colombian authorities. Members have joined other monitoring visits to Colombia including a high profile group of MP's and trades unionists.

In early May the delegation's Report was launched. Alirio Uribe Munoz, the current president of Ccajar, the Colombian human rights lawyers' chambers, addressed a meeting in Parliament on 7 May 2009 hosted by Lord Avebury, of the All Party Parliamentary Group on Human Rights to mark the launch of the Report of the delegation's visit to Colombia in August 2008.

Four Colombian human rights lawyers known to CWHLS members are among a large group of Colombian citizens who

have been the subject of a secret operation inside the DAS, Colombian intelligence service. In the body of evidence at the trial of the former head of the DAS, Jorge Noruega, are 103 dossiers on Colombian citizens and foreign visitors, who were the victims of secret investigations. Lawyers in the Ccajar group have been subjected to phone-tapping, intelligence gathering about their families, their homes, their lovers, their friends and associates.

CWHLs has hosted visits from lawyers named in the dossiers. Alirio Uribe, Zoraya Gutierrez, Dora Lucy Arias and Reynaldo Villaba, all speakers in Law Society and CWHLs meetings in recent years, are named in the dossiers, as are their young children, with photos of the children and their cousins. Not only the lawyers and their families, but also the support staff and even law students on internships are named in the dossier with description of harassment, such as

following on foot and motor bike, carried out against the human rights defenders.

The Noruega proceedings are into their third year, and numerous attempts have been made by the Noruega defence team to have the case against him dismissed. In December the Caravana Group of lawyers wrote to the Colombian Courts in support of human rights defenders' efforts to prevent dismissal of the charges.

CWHLs has been awarded a second grant by the Law Society Charity for the funding of coordination of the Caravana group's support for human rights. It is anticipated that a Coordinator will be appointed by the beginning of October to assist the Caravana group in England.

Colombian lawyers have named the date for the return visit of the Caravana: 24 August 2010. All CWHLs members who are interested should contact Sara Chandler as soon as possible.

LAND LAW AND CONVEYANCING



ADAM MABERLY

It would be incorrect to report in comparison with previous years that the sub-committee has been active in responding to consultation papers issued during the year. However we have considered various matters of concern to property practitioners, summarised as follows with some aide-memoires.

HM Land Registry ("HMLR")

(a) We will need to embrace the Land Registry portal, launched in September 2008 but being steadily expanded as to the electronic services available so that HMLR intend to close Land Registry direct and Land Register on-line in the spring of 2010, by which time all firms who wish to access Land Registry services electronically will need to complete three agreements: a Portal Conditions of Use Agreement, a Network Access Agreement and a Memorandum of Understanding. Comprehensive information on the portal and the documentation required is available on the Land Registry website.

(b) Questions were raised as to whether HMLR intended to include a facility to take payment of SDLT as part of the HMLR's development of an electronic transfer system. HMLR have confirmed that the taking of SDLT payments by them will not be included in the scope of proposed electronic transfers which is preferred as it is considered that HMLR should concentrate on the conveyancing aspects and not attempt to finalise SDLT returns.

(c) The provisions of the Companies Act 2006 have been brought into effect gradually and a further set come into effect on 1 October 2009, including those relevant to charges made by overseas companies, the regime for registering overseas companies that establish a place of business in the U.K. and the execution of documents by Limited Liability Partnerships. Reflecting these changes, HMLR are introducing, applicable also from 1 October, rule amendments which practitioners will need to take into

account in relation to applications to HMLR submitted after that date.

(d) HMLR early completion procedure effective in relation to applications submitted after 3 August 2009 caused the greatest stir amongst conveyancers. Views were expressed that if the proprietorship register contained a restriction in a lender's usual format (this being fairly standard these days) then it might be negligent (applying the principle established in *Patel -v- Daybells*) not to require a condition in the contract to the effect that the seller is not ready, willing and able to complete unless his conveyancer had in his possession a DS1 before completion. Quite apart from the perceived reluctance of sellers to accept such a contractual provision, the majority of discharges at HMLR are now effected electronically obviously after completion and therefore such a contractual provision would be ineffective. Alternative ways of dealing with the

problem have been suggested but these rely on undertakings from sellers' conveyancers that may be difficult to enforce if not at least in time to avoid cancellation of an application. Experience to date is that buyers' conveyancers are not amending contracts but they may be requiring undertakings expanded from the Law Society's recommended form. Some heat has been taken out of the matter following HMLR relaxing the procedures to some extent in accepting that they would raise a requisition regarding the discharge and permit (subject to compliance with pre-conditions) a period of 40 business days to comply with the requisition.

It is clear that if there is no restriction, the only real concern is to establish through the implementation of internal office procedures that the discharge has taken place (CML having confirmed that even if the application under early completion is finalised by registration of the transfer and the new charge leaving the prior charge extant in the register so that the new charge takes effect initially as a second charge, they will not consider conveyancers in breach of their

undertaking included in their retainer which requires them to procure a first charge in favour of the lender as the lenders consider that the retainer is not "completed" until their charge has been registered as a first charge). If there is a restriction then more stringent internal office procedures will be necessary particularly if the lender is a foreign company, an individual or an institution whose record on discharges is poor.

HIPS

The DCLG Consultation Paper referred to in last year's report was debated but it was decided not to respond as we had submitted responses to the original consultations and had indicated, contrary to the view of the government, that professional advice would invariably be necessary to finalise preparation of forms equivalent to the proposed Property Information Questionnaire ("PIQ") in a format which would assist in speeding up the selling process. The changes that were made became effective on 1 January 2009 (providing that a copy of the lease was the only additional required document for leasehold properties) and 6 April 2009

(abolishing the extension of the first day of marketing concession and requiring the inclusion of a PIQ in the HIP).

Lease Code

Considered somewhat ironic to some, it was noted that a DCLG report had concluded that leases were now "flexible and fair" and consequently that the Lease Code 2007 was "unnecessary". Practitioners might well query the former but accept the latter.

Newts and Bats

On a lighter note beware of newts and bats. On the acquisition of country properties, and some properties in urban areas, whether or not development is proposed, an initial survey by a specialist consultant is strongly recommended since the cost of relocating these protected species can be considerable. For newts, surveys can only be carried out during the breeding season (mid-March to mid-June), and a survey of bats involves the careful inspection of the building or the land, including trees, to identify features and structures that roosting bats may favour.

LAW REFORM

This is the only committee whose job it is to consider what the law is and should be. As such it is closely involved with revenue law and with land law. Each of those topics has a separate committee, which reports to Law Reform.

The sad illness and death of Jeremy de Souza in March has meant that, for the time being at least, Law Reform has been taking charge of revenue matters. There have been a number of government consultations on property and conveyancing topics, some of which have been responded to by the Land Law and Conveyancing Committee. On a number of occasions these have been discussed also in Law Reform.

Capital and Income

The major event for the Committee during the year was the culmination of

the Law Commission's study of capital and income in trusts. The project had begun five years ago, but was delayed because of other commitments imposed on the Commission. The Society in 2004 had argued strongly against a rule-based approach to classification, and had advocated that classification actually was, and should be recognized as, a matter of judgement. It was not an esoteric science unique to trusts but a routine accounting function which managers and accountants performed daily. Trustees, we said, should be required by law to use their judgement. In the rare cases of difficulty they should be required to conform with good accountancy practice, which in turn might perhaps be supported by a Statement of Recommended Practice (SORP). This argument was studied very

seriously by the Commission, which devoted a separate working paper to our submissions. The Society was also represented on the Commission's advisory committee.

The Law Commission published its report Law Com No 315 *Capital and Income in Trusts (Classification and Apportionment)* - see www.lawcom.gov.uk/citcat.htm. They decided against us partly on the grounds that most trustees were not professional accountants and would not be willing to incur the expense of giving their accountants suitably specific instructions. It was also said that if entries were to depend on the trustees' decision they would be unclassified until trustees had reached a view, resulting in delay in trust administration and perhaps adverse tax consequences.



ARTHUR WEIR

Undisguised threat

We may respectfully disagree with both those points, but there was a third that was decisive. The Society's approach was ultimately a discretionary one, based on the individual judgment of the trustees. The Commission was made plainly to understand by Her Majesty's Revenue and Customs that a change in the law to that approach would be met with changes to the tax treatment of interest in possession trusts. It would also lead to

HMRC requiring full accounts from all trusts - a huge additional burden on trustees. Any element of decision-making by trustees, whether under the Society's approach or by way of some power of allocation or adjustment, would have that effect. Against that undisguised threat the Commission had no choice.

Exam questions

The Commission also recommended that the rules of apportionment should be abolished. This would remove section 2

of the Apportionment Act 1870 and the rules in *Allhusen -v- Whittell*, *Howe -v- Dartmouth*, and re the Earl of Chesterfield's Trusts. Those are the cases which laid down rules that trustees must sell wasting assets or assets of a reversionary nature and meanwhile perform complex adjustments as between capital and income. Loved only by those who set examination questions, the rules are largely ignored. We shall welcome their passing.

LITIGATION

The Litigation committee has met quarterly in the past year. During the year, the issue of costs has arisen time and again. The committee has discussed issues relating to conditional fee agreements, after the event insurance, third party funding, recovery of costs between solicitor and client, and contingency fees. The costs review undertaken by Rupert Jackson LJ was also discussed by the committee, and while no submission has been made by this committee, the chairman reported

on the initial response to submissions by Jackson LJ and the further submissions being coordinated by the London Solicitors Litigation Association. A presentation on recent costs decisions and principles by Master Colin Campbell has been arranged for 26 October and it is hoped that there will be a strong attendance by the membership.

The committee has also considered procedural changes, including the new Practice Direction on pre-action

behaviour, introduced in April this year, which applies to all matters governed by the Civil Procedure Rules.

Other topics discussed included Mediation and other ADR options, and some practical difficulties arising in cases where CFAs and ATE insurance were in place.

The committee is looking forward to a more active year with greater involvement in the committee and the opportunity to respond to consultation papers on litigation issues.



PATRICK WHEELER

PROFESSIONAL MATTERS

This has been another year of consultations, indeed, even the SRA has been complaining of consultation fatigue! That said, our views have been acknowledged, and, at least partly, adopted by both the SRA and Lord Hunt. In summary, the consultations we have considered are:-

- The Draft SRA (Cost of Investigations) Regulations which had a very short consultation period and which related to the SRA's powers to recover some of the costs of investigation from those found to have breached professional rules.

- The Smedley Review – The committee wishes to thank Sue Nelson for her invaluable contribution to its response to the Smedley Review. The Smedley review concerned the regulation of corporate law firms and sought views on whether these should be regulated differently. The committee felt that any differentiation in terms of applicable rules would be inappropriate although we acknowledged that the SRA did not necessarily have the expertise to address professional issues arising out of complex multinational transactions – a view endorsed by Mr Smedley.

- Changes to conflicts and confidentiality rules. Although the committee had strong reservations about this, the SRA have now published an analysis of responses and come out in favour of an amendment to the rules. Amended rules will be published in the autumn and the committee will be responding.
- The SRA's new powers under s.44D Solicitors Act 1974. The SRA will be getting new powers to publicly rebuke and fine solicitors up to £2,000. The committee submitted a lengthy response raising serious concerns about the SRA's proposals.



SUSANNA HELEY

- **Regulatory Risk Information Requirements** – this consultation concerned the new information requirements arising as a result of the SRA's move towards risk based regulation and the new requirement for firms to be approved. The Committee provided a fairly brief response and was primarily concerned that the requirements should not be unduly onerous or unfair.
- **A New Approach to Regulation** – this paper concerned the potential shifting of regulatory focus towards firms rather than individuals and set out the criteria which the SRA would use to decide whether an individual or a firm should be the focus of an investigation. The committee's concern with this paper was that individual responsibility was a key element of professional life and that it must not be abandoned.
- **The Hunt Review.** The Committee submitted a detailed response to Lord Hunt's comprehensive review of legal regulation in April of this year. We were pleased to note that Lord Hunt appeared to take our concerns to heart in his interim response.
- **Decision Making Criteria** – this was a short consultation on the criteria the SRA should consider when making its decisions. The committee filed a short response, essentially agreeing with the approach of the SRA.

- **Use of Enhanced Investigatory Powers** – this consultation related to the SRA's new powers to require production of documents and to require attendance at an interview. The committee was concerned that elements of the new powers may have an intimidatory effect on solicitors and was keen to ensure that proper regard was had to ensuring a fair and just procedure.
- **Regulating Alternative Business Structures** – this was a discussion paper focussing on the issues which are likely to arise with respect to ABS. The committee's main concern was that whatever happens, there should be a level playing field. We were also concerned that the LSB timetable – introduction of ABS by mid 2001 – may be ambitious.

We have assisted the Education and Training Committee in preparing the response to the SRA's consultation "An Agenda for Quality" concerning the maintenance of professional standards.

All in all, it has been an interesting year in terms of the direction which regulation appears to be taking. Firm based regulation has been introduced as the pre-cursor to the introduction of ABS and a new practising certificate regime has emerged. Legal Disciplinary Practices permitting a limited proportion of non lawyer managers and partnership with other branches of the legal profession are now a reality. It can be safely assumed

that the flurry of consultations which this year has brought is simply the next step in the massive changes which are affecting the legal services industry now and in the next few years.

We think it can safely be said that the committee has had a very busy year and is facing more of the same in the future. We would invite the members of CWHLS to contact the committee directly with any comments or concerns in the field of professional matters, particularly in connection with SRA consultations. We are, after all, here to ensure that your views are heard.

We would like to take this opportunity to express our gratitude to:

- Alison Parkinson for her excellent chairing of the committee until July 2009;
- Ursula Taylor, secretary of the committee until July 2009, for her invaluable contribution; and
- Roger Woolfe for his hospitality in hosting our meetings.

We are sorry to report that both Alison and Ursula have stepped down from their roles due to other commitments and we are all immensely grateful to them both for their wonderful work on behalf of the CWHLS. Julian Aylmer takes over as the chairman of the committee and Susanna Heley takes over as secretary.

CWHLS JUNIOR LAWYERS DIVISION

This has been yet another busy year for the JLD. The committee has been active in running the annual conference and summer ball and holding elections for its new members. It has also hosted a number of training events throughout the year specifically for young lawyers and successfully launched the JLD Pro Bono Awards 2009 at an event at which Cherie Booth QC was the guest speaker.

However the main theme which has dominated the JLD's activities this year has been the economic downturn and the

impact this has had on junior lawyers. As JLD Chair Kat Gibson has said, "junior lawyers have felt the brunt of the economic downturn" not just because they are seen as expendable, having not yet met their full fee-earning and client gathering potential but also due to early specialisation. This made it hard for young lawyers to adapt quickly when areas of work dried up.

Now more than ever young lawyers need to get involved with the JLD to help it champion the cause of lawyers who have

been disadvantaged by the downturn, from trainees struggling to qualify to students chasing training contracts. The JLD is a dynamic and growing organisation and is well placed to continue to fight the corner for young lawyers.

If you are interested in becoming the JLD rep for Westminster and Holborn or just getting more involved in the work of the JLD then please do get in touch with me - richard.broadbent@dcsf.gsi.gov.uk.



RICHARD BROADBENT

MASTER OF THE ROLLS DELIVERS ANNUAL MARY WARD LECTURE

MARGIE BUTLER

On 15 July 2009 the City of Westminster and Holborn Law Society hosted the Mary Ward Legal Centre Annual Lecture at Linklaters LLP, which also sponsored the event. All proceeds of the lecture were donated to the Mary Ward Legal Centre, the Society's preferred charity.

The Master of the Rolls, the Rt Hon The Lord Clarke of Stone-cum-Ebony, chose to speak on the topic "Access to Justice: Hope Springs Eternal", saying "Access to justice...a subject that is close to my heart". Over eighty people attended the event. Amongst those in the audience were voluntary sector agencies involved in provision of legal advice, solicitors, barristers and judges.

The Lord Clarke referred to Ulpian in 533BC who defined justice as "the constant and perpetual wish to render everyone his due", to Sir John Holt in

1702 and to the American Justice Brennan in 1956.

The Lord Clarke spoke of the need to have a properly funded civil, family and criminal justice system: "The three systems are in fact no more than three facets of an indivisible whole and it is that whole that is or should be the living embodiment of our commitment to the rule of law".

The Lord Clarke emphasised that we should take care to ensure that all aspects of our justice system are properly funded and able to deliver effective access to justice to all. He wished the Mary Ward Legal Centre every success in the future and hoped it would continue to receive public and private sector support.

Margie Butler, Chief Executive of the Mary Ward Legal Centre, spoke of the

work of the Legal Centre in providing free access to debt, housing, employment and welfare benefits advice to over 6,000 Londoners each year. She reported the increasing challenges facing the organisation in securing sufficient funds to support the service. The impact of the recession has led to a greater demand for all services, in particular debt advice. She thanked supporters from the private sector, in particular Linklaters who make a substantial financial contribution each year, and informed the audience that the Centre had lost over £80,000 in donations due to the recession. Replacing this support was essential for the Legal Centre to have a sustainable future.

By early August the Annual Lecture had brought in over £9,500 from ticket sales and donations.

ANNUAL GENERAL MEETING

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, 13 October 2009

The business of the meeting will be:-

1. To receive the President's Report.
2. To approve the Accounts for the year to 31 May 2009.
3. To approve subscriptions for the following year.
4. To appoint honorary auditors.
5. To elect honorary members of the Society.
6. To consider any other business of which notice shall have been given.
7. To elect members of the Committee for the ensuing year.
8. To install the Officers for the ensuing year.

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

The dinner following the AGM will be held at Coopers, 49 Lincoln's Inn Fields, WC2A 3PF: please let us know by **7 October** if you would like to attend this dinner.

DINNER FOLLOWING THE AGM

TO: The Administrator, 25 Rotherwick Road, London NW11 7DG
DX 33801 Golders Green

Reply by 7 October 2009

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:

Signature Date

ANNUAL GENERAL MEETING

MINUTES OF THE ANNUAL GENERAL MEETING OF THE CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY held on 14 October 2008 at The Law Society, 113 Chancery Lane, London, WC2

1. President's Report

The President, Michael Gillman, thanked Elizabeth Beesley for her invaluable help and assistance to the Society throughout this year; Jeffrey Forrest for proposing him three years previously; and Adrian Barham and Peter Adams for their strength and support as Senior and Junior Vice Presidents. The President also thanked Tim Drabble, the Treasurer, and Rosemary Lester, the Editor of The Report.

The President thanked the Chairs of the subcommittees. Whilst he was aware of all the good work of the subcommittees, he regretted that he had not managed to attend all their meetings. Particular acknowledgement was given to the work of the Professional Matters Committee in responding to the many consultations issued by the Solicitors Regulation Authority over this past year.

The President had on behalf of the Society attended a variety of meetings, notably starting with the Peace Brigade International meeting in November 2007, which was to raise the profile of volunteer lawyers working in Colombia. He congratulated Past President Sara Chandler, who visited Colombia with a large number of Society members as part of the international contingent in support of Human Rights. Speaking of events closer to home, he noted that the Society had held a successful Mary Ward Lecture by Shami Chakrabarti, Director of Liberty. He was delighted with the vote in the House of Lords the previous day against 42 days' detention for terrorist suspects. This was important, to demonstrate that civil liberties were not quite dead yet in this country: while we are aware of abuses elsewhere, here in the UK we cannot be complacent. He had assisted in choosing the Wig & Pen Prize winner at the Junior Lawyers' Division Pro Bono Awards, and the winner of the Gamlen Prize.

The President had attended dinners at the Law Societies of Liverpool, the City of London, Birmingham and Surrey. The Society had hosted yet another successful Legal Charities Garden Party; and members had attended two meetings of the Federation of European Bars, in Strasbourg and Istanbul.

Finally, the President said that he had met both President and Chief

Executive of the Law Society regarding the question of giving appropriate notice of the Law Society AGM. He was optimistic that the Law Society had taken on board the concern of the Society. He finished by thanking members of the Society for their trust in him as President.

2. Approval of the Accounts for the year to 31 May 2008

Timothy Drabble, the Treasurer, presented the accounts. The figures were similar to those last year. The Society had for the year to 2008 increased its subscription fee by 10%, although there had been a reduction in membership. Although the number of functions held had remained constant, the Society had lost its sponsorship for the annual dinner; that had led to a loss for this event. Otherwise the expenses were in line with previous years', albeit a slightly larger deficit of £7,250 was seen this year (£5,300 last year). The Treasurer encouraged firms to be fully subscribed rather than simply having nominal members. The Accounts were unanimously approved.

3. Appointment of honorary auditors

The current auditors, Philip Langford and David Long, were unanimously re-elected for the year 2008/2009.

4. Honorary member of the Society

Paul Marsh, President of the Law Society, was unanimously elected an honorary member of the Society.

5. Election of the Committee

The following members were elected:

Arthur Alexander
Julian Aylmer
Catherine Barham
Richard Broadbent
Bruce Coles
John Davies
Charles Fraser
Richard Henchley
Ivan Ho
Ellen James
Alison Parkinson
Shams Rahman
Roisin Smith
Pip Salvador Jones
Ursula Taylor
Patrick Wheeler
Arthur Weir
Roger Woolfe

6. Officers of the Committee

The following Officers were installed for the year 2008/2009:

President :
Adrian Barham

Vice President :
Peter Adams

Junior Vice President :
Miss Margaret Heathcote

Honorary Treasurer :
Timothy Drabble

Honorary Secretary :
Matthew Claxson

Editor of The Report :
Miss Rosemary Lester

Deputy Honorary Secretary :
Jonathan Cornthwaite

7. Adrian Barham – newly elected President

The President presented to Michael Gillman the past presidents' medal of office and a gift of appreciation. He said that it had been an honour and a privilege to have worked with him over the past three years. He had offered sterling leadership in difficult times regarding legal aid and issues with the Law Society over the question of appropriate Notice. He thanked Mr Gillman for all his efforts over the past three years.

The President turned to the twelve months ahead. He noted that the Society had instituted a Membership Development Sub-Committee to explore more ways to increase our membership and create further portals to pass our members information on what work is undertaken by the Society. The President wished over the next year to increase the level of communication by means of an HTML e-mail and the involvement of the profession.

The President encouraged members to support by attending the regular CPD accredited lectures, which also present networking opportunities. He was conscious that members were becoming more dependent upon internal training within firms and this needed to be considered. Finally, he wished to create additional networking opportunities on an informal basis to give members an opportunity to speak and meet with people of common understanding and common ground.

8. Any Other Business

Ellen James mentioned that the team of lawyers who formed part of the legal delegation to Colombia in August 2008 continue with their follow up work and they will keep the Society informed of developments.

CWHLS LECTURES

THE NIGEL MAYHEW MEMORIAL LECTURE: PLANNING AND HUMAN RIGHTS

Robert Lewis, Radcliffe Chambers

Monday, 30 September 2009

We are very pleased to announce that Robert Lewis has accepted our invitation to deliver this year's Nigel Mayhew Memorial Lecture. The subject of lecture will be the influence of human rights on town and country planning. His lecture will include the following topics:

1. The European Convention – its history and importance
2. What are the protected rights and what have they to do with planning controls?
3. Absolute and qualified rights and the concept of 'proportionality'
4. The Convention's incorporation into English Law – The Human Rights Act 1998
5. How the rights are reflected in planning decisions – development control; enforcement; prosecutions
6. The difference between an interference with, and an infringement of, human rights
7. The balancing of the rights of the landowner with those of the public
8. Key cases – *Lopez Ostra v Spain*; *Hatton v UK*; *Alconbury*; *Chapman v UK*; *Lough v FSS*; etc.

Robert Lewis qualified as a solicitor in 1977 before being called to the Bar in 1996. He practises in the fields of planning, environmental, highways, compulsory purchase and general local government law. He has a wide-ranging practice, advising and acting for planning authorities, developers, financial bodies and local residents in relation to planning matters including appearing at planning appeal and other inquiries, in court and the Lands Tribunal.

This lecture will be held at 6.00pm at the offices of **Bircham Dyson Bell LLP**, 50 Broadway, SW1H 0BL: the cost is £22 (£10 for students). One hour of CPD is available (ref JC/CWHLS).

COSTS LECTURE

Lecture by Costs Master Campbell

Monday, 26 October 2009

Costs Master Campbell has kindly agreed to deliver a lecture to members of the Society on the subject of Costs. He will talk about the recent case regarding terminating retainers and also on any other costs issues that are currently topical.

This lecture will begin at 6.15 p.m. at the offices of **Nabarro LLP**, Lacon House, 84 Theobald's Road, WC1X 8RW. One hour of CPD is available (ref JC/CWHLS). The cost is £22 for members of this Society, £36 for non members and £10 for students.

30 September: Nigel Mayhew Memorial lecture: ___ tickets @ £22 at Bircham Dyson Bell's offices]

26 October: Costs lecture: ___ tickets @ £36, ___ tickets @ £22 for CWHLS members, ___ tickets @ £10 for students [at Nabarro's]

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

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

Name _____ Email address _____

Name of Firm/organisation _____

Address _____

_____ DX _____

Signature _____ Date _____