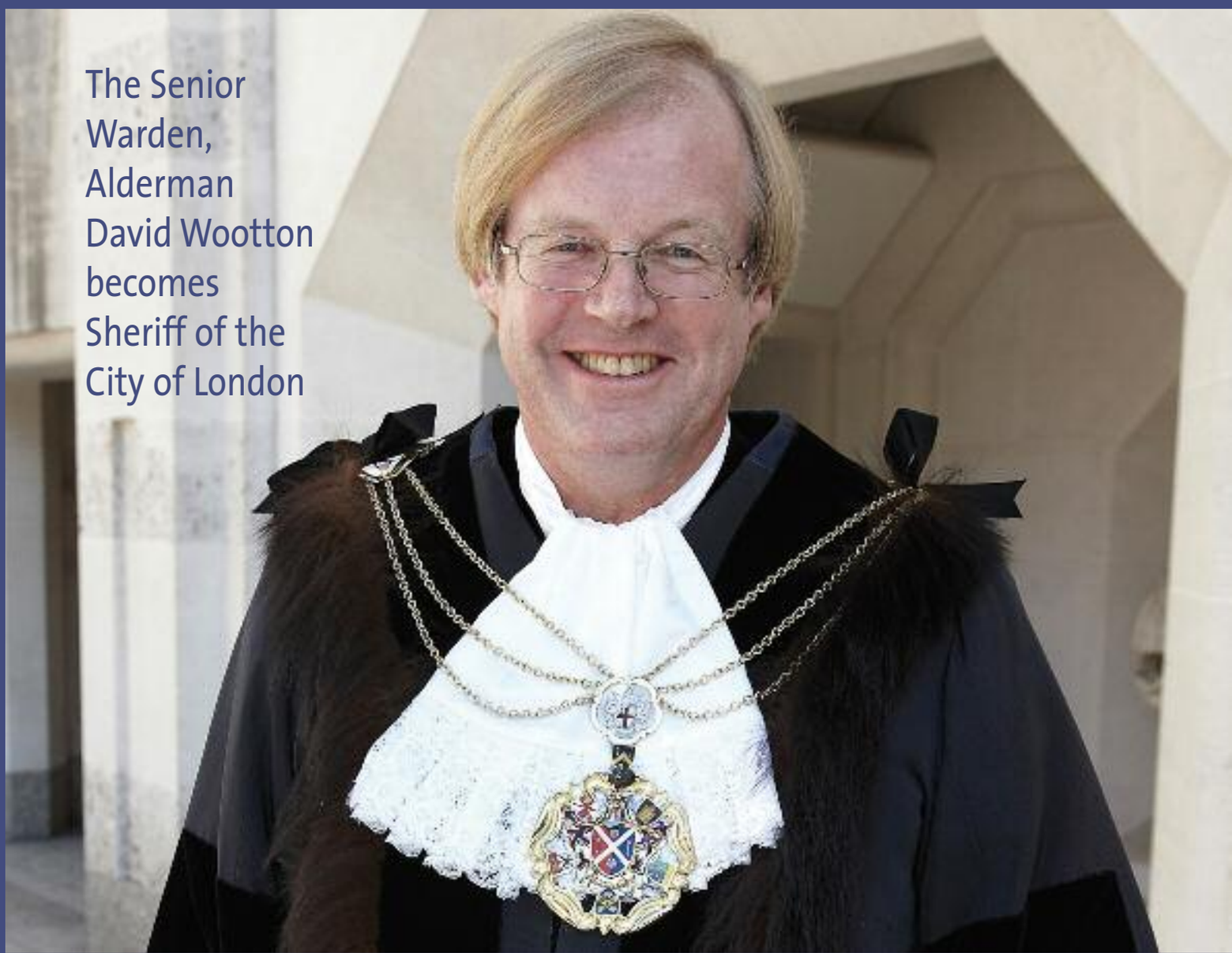
AUTUMN 2009 ISSUE 67

City Solicitor

The newsletter of the City of London Solicitors' Company and the City of London Law Society



The Senior Warden, Alderman David Wootton becomes Sheriff of the City of London

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Summer	4th June 2010
Autumn	17th September 2010
Winter	19th November 2010

Editorial

As Summer turns to Autumn, and the weather closes in, we can reflect on the first three quarters of this year and the changes they have brought to the City and its constituents. The City profession has seen massive changes through the eyes of its clients, and experienced at first hand the effects of these. To a very large extent, things will not be the same, and it is our ability, as lawyers, to adapt that will ensure that services continue to be provided to the highest standards.

This edition contains particularly full reports from the Society's professional committees. A busy Summer was driven by the shifting sands of business in the City and the relentless fallout from what is now colloquially called the Global Financial Crisis. The Regulatory and Financial Law Committees in particular have represented the City profession's views in this regard, and we commend their reports and the work they have done.

Our Senior Warden was recently elected to a new position, and we were fortunate enough to persuade hi m to explain to the rest of us how he will be spending some of his time over the next year. Many congratulations to David Wootton who admirably combines a busy practice with unstinting service to the City.

Many members of the Livery are similarly involved in the activities of other companies. Our series of insights into other Livery companies continues with a well crafted glimpse into the Makers of Playing Cards by Junior Warden John White.

And finally, the fantastic Mr Fox is back with a rather patrician report on motoring in style. We continue to welcome his indefatigable appreciation of the better things in life. We wish all readers a productive Autumn.

John Abramson
AIG, Editor

Dates for 2009

THE CITY OF LONDON SOLICITORS' COMPANY.

Thurs. 5th Nov		General Purposes Committee, at the Company's offices at 4 College Hill, EC4 at 5.00 p.m.
Sat. 14th Nov.		Lord Mayor's Show
Mon. 23rd Nov.		Livery Dinner, Drapers' Hall, Throgmorton Street, EC2.at 7.00 p.m. Liverymen and Guests. D.
Thurs. 26th Nov.	*	Court meeting at 11.00 a.m. followed by luncheon at 1.00 p.m.

THE CITY OF LONDON LAW SOCIETY

Wed. 2nd Dec	†	Committee of the City of London Law Society at 11.00 a.m.
	†	Carvery Lunch at 1.00 p.m.

* At Cutlers' Hall, Warwick Lane, EC4.
† At Butchers' Hall, Bartholomew Close, EC1.

The City of London Law Society has a new logo

The City of London Law Society

Following its separation from the City of London Solicitors' Company the Society's PR Consultants, Lehmann Communications, have undertaken a re-branding exercise for the Society and developed a new logo in place of the Company's crest which has been used until now. The stylised sword logo will appear on all CLLS stationery and printed materials and it is hoped that this simple, modern design will serve them for many years to come. The re-branding exercise also included a review of the Society's web site and this will be re-launched shortly.

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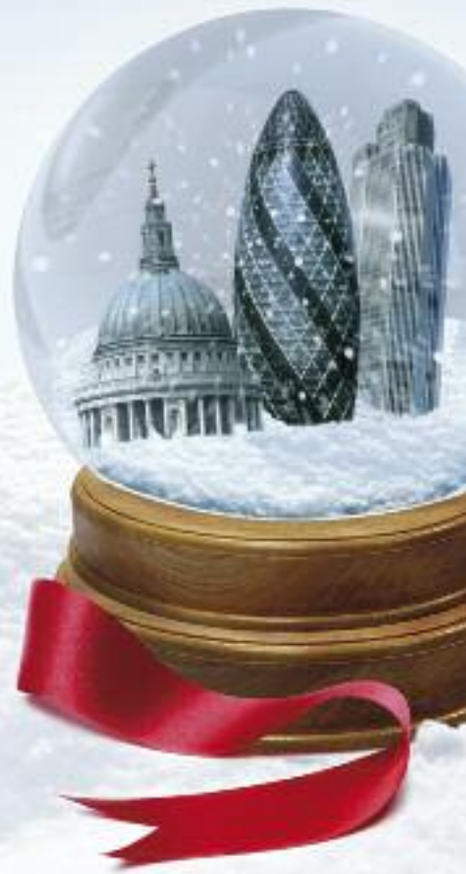

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The British Red Cross Society, incorporated by Royal Charter 1908, is a charity registered in England and Wales (220949) and Scotland (SC037738).

The Makers Of Playing Cards: A City Of London Livery Company

The Worshipful Company of Makers of Playing Cards is one of the Craft Guilds in the City of London. The Company was founded as the "Mistery of Makers of Playing Cards of the City of London" by a Royal Charter granted by King Charles 1 on 22nd October 1628. Some 164 years later, on 27th November 1792, the Court of Aldermen granted the Company its Livery. Accordingly, though 75th in order of precedence, it is one of the older of the City craft companies. The number of Liverymen is limited to 150 – and we now admit women. The current Liverymen come from a wide cross-section, but many have an interest in the history of playing cards or enjoy using them, especially for Bridge.

Charter 1628

Role of Livery Companies

The Livery Companies developed out of the medieval guilds in the City. These guilds originally evolved from a religious base, as craftsmen in specific trades congregated in parishes. From their congregations voluntary associations were formed for mutual aid and protection of their members.

Gradually, trade considerations took over and the guilds' main role became the regulation of their trades or crafts within the City. They exercised control over standards, including the power of search, and the training of apprentices. The Makers of Playing Cards was a craft, rather than a trade, company.

Members of the Livery, Liverymen, were drawn from the freemen of the City and became freemen of the Companies first, qualifying for Livery status by patrimony (inheritance), servitude (apprenticeship), or redemption (purchase).

Management of the City was based on a charter granted to its citizens by King William I that provided a remarkable degree of autonomy. They then won from King John the right to vote for their Mayor. Civic power rested with the Court of Aldermen who administered justice in matters of dispute within the City, regulated the Livery Companies and settled all inter-livery disputes. Liverymen elected the Lord Mayor and the Sheriffs – and still do.

Original Role of the Company

The Company was incorporated to regulate the trade of making playing cards in London, which had suffered from the importation of foreign cards, and cheap and inferior cards manufactured in this country. Customs officers were ordered to seize foreign or poor quality cards. In exchange for these benefits the Company agreed that each pack manufactured was to be sealed and a duty paid to the King. Every maker had to register a mark of his own, and the Company kept a list of approved makers' marks.

The King's Receiver of this duty had an office in the City and was made a freeman of the Company. In 1712 an Act stipulated that the Ace of Spades must be marked on the printed side with the maker's name, and the duty was only abolished in 1960 (when the cost of collecting outweighed the revenue received).

These roles for the Company declined over the years, in common with many other Livery Companies, such that by 1880 there were only twenty Liverymen, apart from the Master and Wardens.

Resurgence of the Company in the 1880's was largely the result of the activity of two collectors of playing cards on the Court, one of whom was also a manufacturer: and these collections now are regarding as leading world collections and are held at the London Metropolitan Archives managed by the City of London Corporation. The presentation of the Company's pack of playing cards at the Installation Banquet for the Master and Wardens commenced in 1882 and has become an annual custom. A portrait of the Master appears on the Ace of Spades with the names of the Wardens and the Clerk. The backs of the cards commemorate some important event of the year.

The Company maintains today the historic right and duty of Liverymen to attend Common Hall, at Guildhall, to vote in the elections of the Lord Mayor and Sheriffs. It also observes the ordinances for the appointment of the Court, the Master

and Wardens, and holds an annual installation ceremony and religious service for the new Master (in November 2008 at Watermen's Hall and St Mary-at-Hill, a Wren designed Church with early English foundations). It also has an affiliation with H.M.S.Turbulent, one of the Royal Navy's nuclear powered submarines, and three of the boat's former skippers have become Liverymen. The Company also has an affiliation formed in 2009 with Middlesex Army Cadet Force.

The main social activities of the Livery are quarterly dinners, held at different Livery Halls in the City (in 2009 the Halls used have been Apothecaries', Coopers', Tallow Chandlers' and Trinity House) and, following the election of the Master and the Wardens on St Andrew's Day (30 November) the annual installation banquet held at the Mansion House, in the presence of the Lord Mayor and Sheriffs. Other Company events in 2009 included a craft evening with a talk on the history and development of English playing cards associated with City of London traditions, a City walk around the Wards of Billingsgate and Tower, a professional magic show, a Master's long weekend on the Isle of Wight, a Court and partner's tour and dinner at Sutton's Hospital in Charterhouse, and a fund raising concert at St John's Smith Square, together with taking part in inter-Livery sailing, clay shooting, golf and tennis events.

Every spring, the Company organises the Inter-Livery Duplicate Bridge competition, in Drapers Hall, under the auspices of the English Bridge Union.

The Company's Coat of Arms

The Company's arms, used without authority for more than two centuries, were granted by the Kings of Arms on behalf of the Crown on 8 March 1982. Motto: CORDE RECTO ELATI OMNES 'with an upright heart all are exalted' ".

The Cutler Trust

Charity has always been an integral part of Livery companies' existence ever since their formation, often as Fraternities or Trade Guilds, in the Middle Ages.

Over the course of time, Livery Companies provided education and training for the young, including apprenticeships to practising members of the Livery's craft, and looked after Liverymen and their dependants in times of hardship and old age.

The Company's connected Charity, The Cutler Trust, was set up on 25 October 1943 by two card manufacturers, John Waddington Limited and De La Rue Company Limited and named after the then Master, Lindsay Cutler, (whose grandsons have been apprenticed to the Livery). Consistent to the original Livery concept, it was initially for beneficiaries and dependants of those who were or had been employed in the manufacture of Playing Cards.

Later, the objectives of the Trust were widened to help all people under 25, to include the relief of need; helping those people to prepare for entry into any profession, trade, occupation or service; and promoting the education (including social and physical training) of such persons. The Trust supports current students at the City of London School for Girls and the Guildhall School of Music and Drama, as well as specialist schools for the disabled and mentally ill.

The Current Master's Darwin Cards

These playing cards celebrate the bicentenary of Charles Darwin's birth on 12th February 1809 and the 150th anniversary of first publication of "On the Origin of Species" in November 1859. Darwin's ideas on the evolution of species through natural selection and environment were formed largely from his naturalist collections and observations whilst a "gentleman's companion" to Captain FitzRoy on the round the world surveying voyage of the 242 tons brig-sloop HMS Beagle from December 1831 to October 1836. The Galapagos Islands in the Pacific to the west of Peru were particularly significant because of the variations Darwin noticed in distinct species between the various islands.

Darwin's letters indicate that he played cards. The colours and shape of the pips are contemporary with his time, except for the introduction of the numbers.

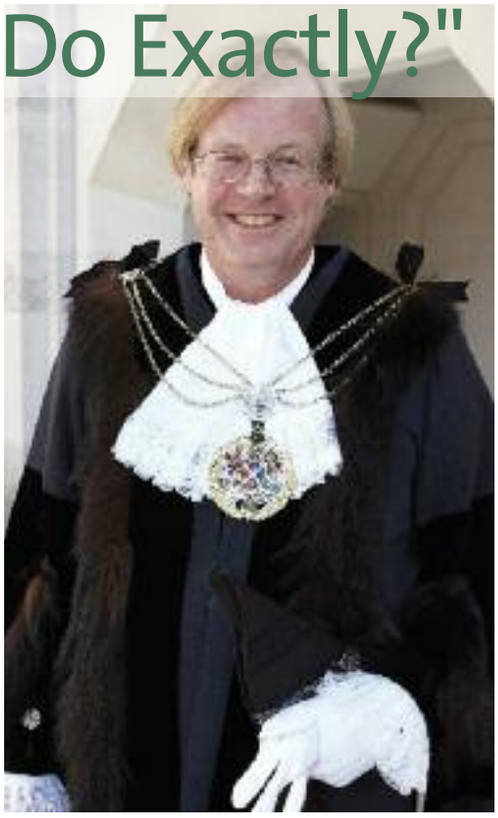
Darwin developed his interest in natural history whilst at Christ's College, Cambridge (my former college), studying for a Bachelor of Arts degree with the intention of becoming an Anglican priest. He became a great collector of insects, particularly beetles, and some of his specimens were included in J F Stephens' "Illustrations of British Entomology", published between 1829 and 1832. The images of the beetles and moths come from here.

The other images are from "The Zoology of the Voyage of HMS Beagle" written by various authors but edited and superintended by Darwin, and published between 1838 and 1843: the rodents are from Part 2 Mammalia by George R Waterhouse; the birds from Part 3 by John Gould; and the iguanas from Part 5 Reptiles by Thomas Bell.

The King of Hearts is a tanager from Santa Fe, "Tangra Darwini"; the Queen is "Chlorospiza Xanthogramma"; and the Jack is the Galapagos finch "Geospiza Fortis" which was later observed to develop a smaller beak to feed on tiny seeds when threatened by the arrival of another species with a larger beak.

Of the Jokers, the mockingbird is from a Galapagos island and is "Mimus Melanotis". The ostrich is the lesser "Rhea Darwinii" which Darwin recovered from his shipmates who were cooking it at a landfall off the Argentine coast.

"And What Does a Sheriff Do Exactly?"



"And what does a Sheriff do exactly?" is the usual question to David Wootton when he says that he became in late September one of the two Sheriffs of the City of London. Many familiar with the civic side of the City already know, many who think they know are surprised to discover more, and many do not know and immediately think of sheriffs of old, or from westerns, or from crime reports from the US on television these days. All have the same origin, but the London version is different... David's office is a part-time, one year, unpaid post: he is a corporate partner in Allen & Overy LLP and will be continuing his role and activities there as the diary of a Sheriff permits, and he is also Senior Warden of the City of London Solicitors' Company and a member of the Committee of the City of London Law Society.

So what does a Sheriff do? Support and assist the Lord Mayor (of the City of London) in promoting the business City. The "business City" means financial services in the UK – wherever in the UK and not just the City, and of whatever nationality or ownership. "Financial services" does not just mean banks but includes securities houses, brokerages, hedge funds, private equity, insurance and shipping. Increasingly, it also extends to professional services: law, accountancy, surveying, real estate, actuaries, and many more! As a lawyer, David is keen to make sure that professional services, which have not up to now been much regarded as a single sector – each of the main professions is sponsored by a different government department, for example, while financial services are dealt with by one – receive from government and media due credit for the contribution they make, both domestically and internationally. Banks have been hit badly, he says, but other financial services have been doing well – insurance is the best example – and City and UK-based professional services have retained their global standing.

David's role in supporting the Lord Mayor will take him on a number of overseas visits, to India for example in October and to the Gulf and South Africa in the New Year, where he will meet with the Lord Mayor senior government figures, regulators, professional, trade and industry bodies, as well as practitioners: he will have the opportunity to put forward the concerns of UK professions to policy makers in the countries he visits.

In the UK, the same thing, being present at meetings with visiting government and regulatory officials from overseas, and being involved in discussions with the UK government, regulators and professional and trade associations.

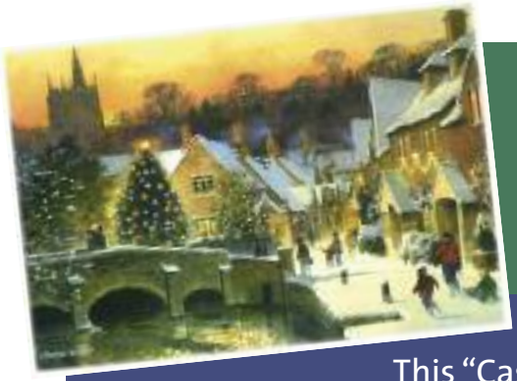
The second major role of the Sheriff is ceremonial: attending civic occasions of national, international or London importance. A good example was the recent service at St. Paul's Cathedral to mark the end of British military involvement in Iraq, where he and his wife Liz formed part of the formal processions, and the reception afterwards at Mansion House, where he was one of those who greeted the Queen and the Duke of Edinburgh, and had the (pleasant) task of looking after the President of Iraq. "Ceremonial" means many things and it extends to charity events: speaking at a breakfast in Canary Wharf to launch 125 black taxis taking 300 disabled and disadvantaged children for a few wonderful days in Disneyland Paris, attending events in the City to promote individual charities – early examples included The Barts & London Charity, Care for Children and the Treloars Trust: the attendance of the Lord Mayor and/or the Sheriffs at these events is a big draw and is very helpful to charities in lending them the prestige of the civic City.

Ceremonial also means social: attending with the Lord Mayor or on their own breakfasts, lunches, dinners, receptions or other events of the 108 City Livery companies or the 22 ward clubs (the City is divided into "wards" for electoral purposes) and of other City organisations, adding strength to the complex social web of the City community.

David became a Sheriff by election, under the Representation of the People Acts – the same legislation as governs general and council elections – by an electorate consisting of the 25,000 or so members of the City Livery Companies, of which the Solicitors' Company is one. The office of Sheriff goes back to Saxon times, when the Sheriff administered what justice there was and collected taxes for the Crown. Nowadays the legal function of the Sheriffs in the City is responsibility for the Central Criminal Court, the Old Bailey: the building is provided to the Courts Service by the City and the Sheriffs are responsible for making sure that the building is available for proper use.

One of the two Sheriffs hosts lunch for the Old Bailey Judges each day and has the opportunity to invite guests, particularly those who know little about the City and what it does. This typifies the role of a Sheriff: promoting the City in all it does and making sure that as many people as possible know what it does.

The Old Bailey



SOLICITORS BENEVOLENT ASSOCIATION

CHRISTMAS CARDS 2009

(please support your Charity)

This "Castle Combe" Christmas card is just one from a selection that is available in support of the Solicitors Benevolent Association. The full range of cards can be viewed and ordered at **www.cards2print.co.uk/sba**

We hope that there will be something in this year's collection that will appeal to you and remind you that 40% of the total cards and printing costs goes directly to the SBA.

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Policy & Committees Coordinator's Report

The CLLS's Committees have continued to produce a large number of detailed submissions over the last few months.

The Professional Rules and Regulation Committee has responded to a number of consultations over the last few months, including the SRA's consultations on *"decision-making criteria"*, *"Regulatory-risk information requirements – 2009" (supplementary response)*, *"Use of enhanced investigatory powers"*, *"Regulating alternative business structures"*, *"Moving towards a fairer fee policy"* and *"SRA (Cost of Investigations) Regulations 2009: Consultation on increase in charges for cost of investigations"*. The Committee also responded to the BIS consultation on the draft Services Regulations (which are expected to implement the Services Directive (Directive 2006/123/EC) into UK law), and the LSB's consultation paper ("CP") *"The Levy: funding legal services regulation. Consultation on proposed rules to be made under Sections 173 and 174 of the Legal Services Act 2007"* and its discussion paper ("DP") *"Wider Access, Better Value, Strong Protection: Discussion paper on developing a regulatory regime for alternative business structures"*. The Committee also recently commented on Lord Hunt's Initial Response to Evidence.

The Training Committee recently commented on the SRA's *"Strengthening the Training Contract"* document and the SRA's DP *"An agenda for quality: A discussion paper on how to assure the quality of the delivery of legal services"* (see the Committee Chair's report).

The Company Law Committee recently provided an updated pro forma circular describing suggested changes to articles of association to reflect certain recent developments. The Committee also commented (in a joint report with the Law Society's Standing Committee on Company Law) in response to the European Commission's Call for Evidence on Market Abuse Directive 2003/6/EC on Insider Dealing. (See the Committee Chair's report.)

The Employment Law Committee responded to the Department for Business Innovation and Skills consultation on implementation of the EU Agency worker directive. (See the Committee Chair's report.)

The Financial Law Committee responded to a BERR consultation regarding the revised Overseas Companies (Company Contracts and Registration of Charges) Regulations 2009 circulated on 3 April 2009; to the European Commission's Green Paper on the review of Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; to the HMT consultation *"Developing effective resolution arrangements for investment banks"*; and in liaison with the Insolvency Law Committee, to The Insolvency Service's CP *"Encouraging Company Rescue – a consultation"*. (See the Committee Chair's report.)

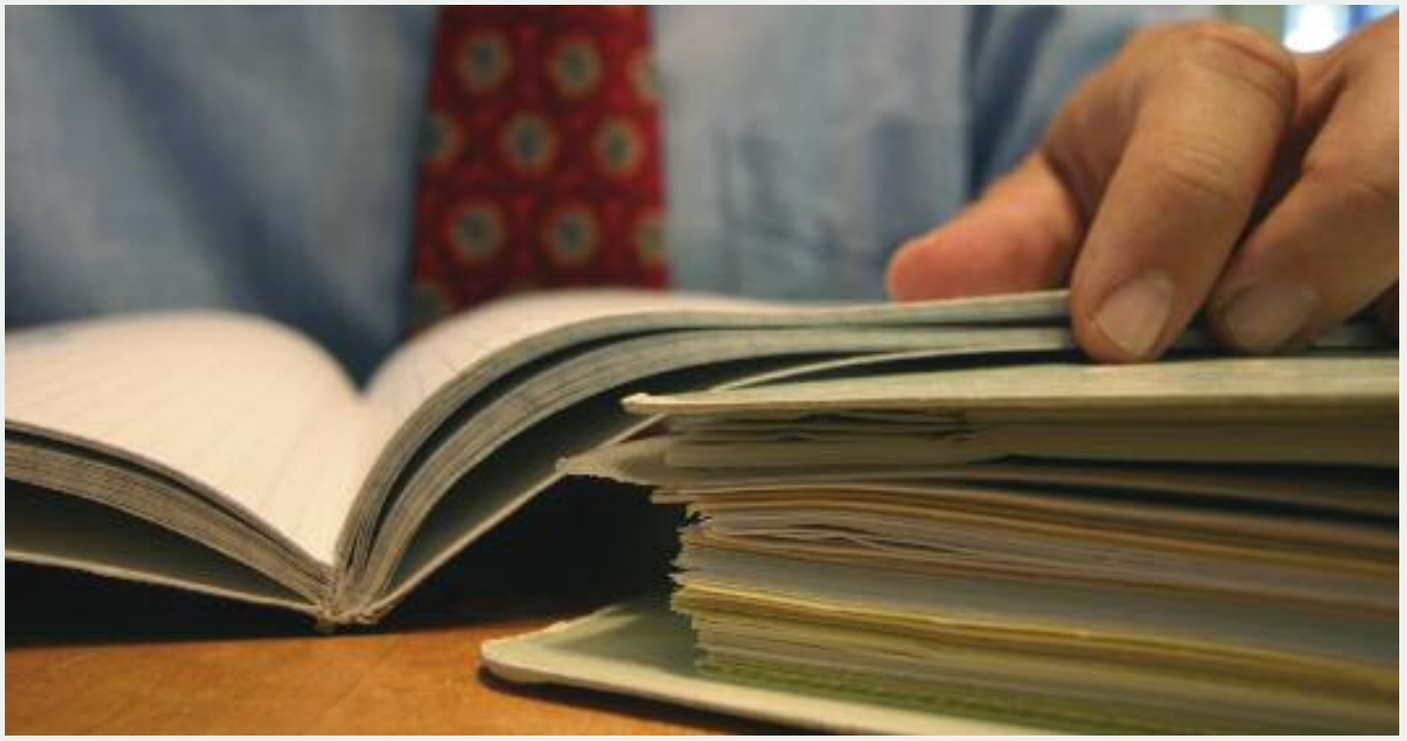
The Insurance Law Committee responded to a joint Law Commission/Scottish Law Commission issues paper *"Micro-businesses - should micro-businesses be treated like consumers for the purposes of pre-contractual information and unfair terms?"* and to a Law Commission introductory paper "Section 83 of the Fires Prevention (Metropolis) Act 1774: should it be reformed?" (See the Committee Chair's report.)

The Intellectual Property Law Committee recently responded to the plans for reform of the Patents County Court being considered as part of the Costs Review and as put forward by the Working Group set up by the IP Court Users Committee.

The Land Law Committee recently finalised three documents which have been placed on the Committee's webpage: *"Letter to company - draft City of London Law Society Land Law Committee Long Form Certificate of Title (6th Edition 2008 update)"*, *"Letter to company - final draft of City of London Law Society Land Law Committee Long Form Certificate of Title (6th Edition 2008 update)"*, and *"Questionnaire to accompany the Certificate of Title (CLLS Land Law Committee Long Form 6TH Edition - 2008 update)"*. The Committee also produced a suggested form of Rent Deposit Deed.

The Litigation Committee prepared a detailed response to Lord Justice Jackson's *"Review of Civil Litigation Costs: Preliminary Report"*. In addition, the Litigation Committee responded to the Ministry of Justice's CP 04/2009 "Controlling costs in defamation proceedings".

Robert Leeder, *Policy and Committees Coordinator, CLLS*



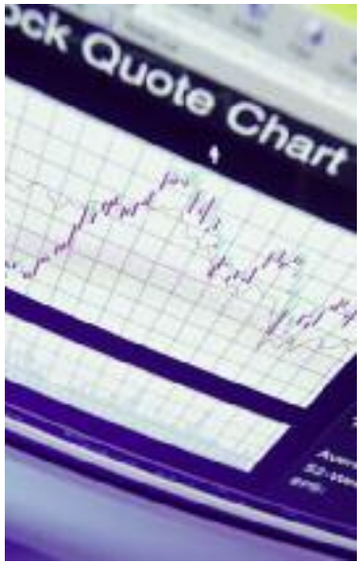
The Planning & Environmental Law Committee recently responded to the DECC document "*Consultation on the Draft Order to Implement the Carbon Reduction Commitment*". The Committee also recently responded to the Department for Communities and Local Government's ("DCLG") CP *"Greater flexibility for planning permissions*"; to the Food and Environment Research Agency (Defra)/Welsh Assembly Government "Consultation on the possible release of a biocontrol agent to control Japanese knotweed"; and to the Defra consultation "*Adapting to Climate Change – ensuring progress in key sectors: Consultation on the Adaptation Reporting Power in the Climate Change Act 2008"*. The Committee also submitted comments to the DCLG on two (then) draft statutory instruments (The Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009 and The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2009).

The Regulatory Law Committee responded to the European Commission's CP *"Consultation Paper on the UCITS depositary function*", its call for evidence document *"Review of Directive 2003/6/EC on insider dealing and market manipulation (Market Abuse Directive)"*, its proposal for a Directive on Alternative Investment Fund Managers (*"AIFM*"). The Committee also commented on various FSA consultations, including FSA DP 09/1 *"Temporary short selling measures*"; FSA CP 09/10 "*Reforming remuneration practices in financial services*"; FSA CP 09/12 "(*Quarterly consultation (No.20)*)"; and FSA DP 09/2 *"A regulatory response to the global banking crisis*". (See the Committee Chair's report.)

The Revenue Law Committee recently made further comments to HMRC on the provisions relating to the debt cap and international movement of capital aspects of the measures contained in the Finance Bill 2009 (including the draft legislation on financial services companies and anti avoidance rules released on 5 June 2009). The Committee also recently responded to the HMRC consultation *"Modernising Powers, Deterrents and Safeguards: Working with Tax Agents*".

Details of all the Committees' submissions can be found on the CLLS's website at **www.citysolicitors.org.uk**

Committee Reports



FINANCIAL LAW COMMITTEE

The Financial Law Committee has had a busy summer as legislative proposals, many in response to the financial crisis, continue to roll in with ever increasing frequency. There are times when we feel that we are suffering from "consultation overload", but we are nevertheless managing to respond to a considerable number of proposals in a constructive manner and to influence law making in other ways. Members of the Committee and of the various working parties have worked extremely hard and been available to comment at short notice. They deserve many thanks for their contribution to a very considerable workload.

We have commented formally on changes to the law relating to charges over the assets of overseas companies under the Companies Act 2006, to the European Commission Consultation on its review of the Brussels Regulation on Choice of Court, to the Treasury paper on Effective Resolution Regimes for Investment Banks and to the Insolvency Service's important consultation on Encouraging Company rescue (all available on the CLLS website). On the last we had excellent support from a working group headed by Geoffrey Yeowart (Lovells), deputy Chairman of the Committee, and the views expressed have been supported by a number of other respondents, including ISDA and the BBA. Our joint working party with the Regulatory and Insolvency Committees worked on the response on Resolution Regimes for Investment Banks. It has been good to work closely with those Committees.

We are doing further work with the Land Law Committee, the Company Law Committee and the Law Society Company Law Committee on the paper on Execution of Documents at a Virtual Signing or Closing (available on the CLLS website). Robin Parsons (Sidley & Austin) has worked on this.

We are currently considering a limited response to the Treasury White Paper on Reforming Financial Markets and have liaised with the Competition Law Committee on certain aspects of this. We liaise with the City Corporation in relation to the EU proposals for a codified set of principles for European private law and its implications for English law in the field of financial and commercial law. We regularly meet with the Financial Markets Law Committee (sponsored by the Bank of England), the BBA, LIBA, ISDA and other City bodies on matters of mutual interest and members participate in some of their Committees.

Dorothy Livingston (Herbert Smith) represents the CLLS as a member of the Banking Liaison Panel (BLP) established under the Banking Act 2009, with David Ereira (Linklaters) as her deputy. He has been involved in work relating to investment banks, while Dorothy participated in advice to the Treasury which led to amendments to the Safeguards Order in June, which usefully clarified the extent of the protection afforded by the Order. Dorothy is Chairing a sub-group of the BLP which will be active this autumn. It will be considering recommending further amendments in the following areas:

- Treatment of Small Companies;
- Interaction with EU law and its UK implementation, particularly the Financial Collateral Regulations; and
- The claims process where the order is incorrectly applied.

If CLLS members or other Committees have views on any of these matters, Dorothy would be pleased to hear from them - evidence taking on problems and potential solutions is a function of the BLP in formulating its advice.

A separate sub-group of the BLP is working at the same time on recommendations in relation to the Code of Practice and Dorothy can arrange for evidence to be given to that sub-group also.

Dorothy Livingston, *Chairman,* Herbert Smith LLP

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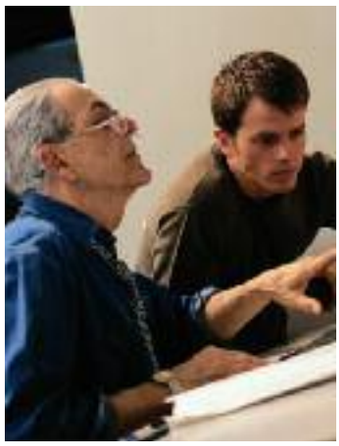

TRAINING COMMITTEE

There have been a number of training–related developments over the last few weeks, namely:

- The approval by the SRA Board of the proposals for a new transfer scheme for internationally qualified lawyers and lawyers qualified in the UK seeking admission as English solicitors

- The request for comments on the SRA's "Strengthening the Training Contract" Handbook; and

- The launch of the SRA's Discussion Paper on "An agenda for quality".

Looking at those in turn, the key aspects of the new transfer scheme (the "Qualified Lawyers Transfer Scheme" – QLTS) will be:

- To allow lawyers to apply from a larger number and wider range of jurisdictions than at present,

- To remove the current experience requirement, but use practical exercises as an objective way of assessing applicants' experience of practice in the law of England and Wales, and

- Introduce a separate English language test for international applicants, to be passed before an applicant is eligible to take the QLTS assessments.

The regulations implementing the QLTS will be drafted over the Autumn but then need to be approved and the indications are that the new scheme will not be brought into force before the end of 2010 or the beginning of 2011.

The paper setting out the detailed proposals can be found on the SRA's website (www.sra.org.uk) and many of the comments the Training Committee included in its Response to the Consultation which led to the recently approved proposals have been taken on board. However, the Committee will keep track of the regulations governing the scheme as they are developed.

The SRA's "Strengthening the Training Contract" Handbook contains guidance for all those involved in training trainee solicitors – the trainees themselves, the training principals and supervisors and authorised training establishments. It explains the roles of the various parties to the training contract, the requirements (including the work experience and skill development requirements) to be met during the traineeship and an outline of the SRA's role together with details of the process for inspecting training contracts.

Accordingly, it is a very useful document for ensuring the effectiveness of the traineeship.

The Training Committee submitted very detailed and extensive comments on the Handbook with a view to helping make sure it is of real value to its target audience. The Handbook will be available from the SRA over the Autumn.

Finally, perhaps the most important development has been the launch of the SRA's Discussion Paper on "An agenda for quality". This is a Discussion Paper designed to promote a debate on how to improve "quality" at all levels and in all areas of practice of the profession. As such it is a very important initiative. The Paper raised a range of headline issues and sought comments on them; the Paper did not contain any detailed proposals. Those proposals will be developed over the coming months by means of discussions with stakeholders (including the CLLS) across the profession with a view to a formal Consultation being launched in 2010.

The Training Committee submitted an extensive Response (available on the CLLS website) to the Discussion Paper and the Committee will be in close contact with the SRA as the thinking on this issue develops.

Without intending to set out the Discussion Paper or the Committee's Response, the key aspect of the Paper was the SRA's view that steps should be taken to ensure:

- the "quality" of the members of the profession;
- the "quality" of the environment in which they operate; and
- the "quality" of the service experience for "consumers".

While these are irrefutably important issues for the success of the profession at large as well as of individual firms or members of the profession, the Committee queried whether it was the role of the regulator to step into all of these areas. It is certainly the role of the regulator to ensure the "competence" of both entrants and qualified members of the profession (the first area of "quality"). It may be the role of the regulator to endeavour to determine aspects of the "environment" in which solicitors operate (assuming "environment" covers the mechanisms such as effective supervision when delivering their services rather than the physical environment in which they work). However, the Committee did not see that it was the role of the regulator to attempt to govern the "service experience" of clients.

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This is not to say that any of this is unimportant, rather it is a matter of determining the appropriate drivers for ensuring the "quality objective" is achieved. It may be regulation but it may also be the business imperatives solicitors face.

The Committee flagged the need for an over-arching strategy which took into account the wide range of other potential training-related and/or potential regulatory changes which are in the pipeline – the outcome of the work-based learning pilot, the Hunt and Smedley Reports and the advent of Alternative Business Structures to name a few.

There is clearly a lot more work to be done on this by the SRA in conjunction with the stakeholders in the issue and the Committee will be engaged in this process.

Tony King, *Chairman,* Clifford Chance LLP

COMPETITION LAW COMMITTEE

There have been some recent changes in the Committee.

Tony Morris stepped down as Chairman upon his retirement from Linklaters, and upon taking up a position as a member of the Competition Commission. The Committee would like to thank him for all his hard work and dedication in leading the Committee over the past years. The new Chairman is Robert Bell of Nabarro - Margaret Moore of Travers Smith is Deputy Chairman.

Alastair Lindsay, who left Allen & Overy for Monckton Chambers and Alex Nourry of Clifford Chance have also stepped down from the Committee and we thank them for their contributions. We also welcome Nicole Kar of Linklaters and Antonio Bavasso of Allen & Overy as new members of the Committee.

The Committee will continue to focus on monitoring and commenting on competition law developments, making representations, where appropriate, to Government and competition regulators in response to consultations as well as more generally. The Committee meets quarterly and, where relevant, working parties will be established to deal with particular topics and meet more regularly as necessary.

Recently members of the Committee and of the Joint Working Party of the Bars and Law Societies of the United Kingdom on Competition Law held a joint meeting with representatives of the OFT and the Competition Commission to discuss the Merger Assessment Guidelines published jointly as a Consultation Document by the OFT and the Competition Commission ("the Joint Guidelines"). The meeting was very constructive and there was a wide-ranging discussion on a number of topics including the proposed scope of the Guidelines. Other points covered related to the regulators' approach to market definition, the treatment of conglomerate mergers and parallel transactions and the approach to secondary product markets. Given the current economic climate, there was particular interest in the circumstances in which the OFT would be willing to use the "failing firm" defence and/or "de minimis" exception to avoid a referral.

In the coming months, the Committee will be considering a number of recent consultation papers including the BIS consultation on the future of the Land Agreements Exclusion and Revocation Order 2004 and, the EU Commission's review of the Vertical Agreements Block Exemption, (Commission Regulation 2790/99).

Robert Bell, *Chairman,* Nabarro LLP

INSURANCE LAW COMMITTEE

The Committee has responded to two Issues Papers by the Law Commission and the Scottish Law Commission in the context of their review of insurance contract law.

These relate to the position of microbusinesses and to the operation of section 83 of the Fires Prevention (Metropolis) Act 1774. In the case of microbusinesses, there was general support for the Law Commission's proposal to extend the regime previously proposed for consumer insurance in relation to pre-contractual information and it was recommended that the Law Commission should adopt a definition of microbusiness for this purpose which would converge with definitions of "small business" currently employed by the Financial Ombudsman Service and for other legal purposes. As regards section 83 (concerning the application of money insured on houses burnt down or damaged by fire), the Committee's experience was that this provision had little relevance to current insurance practice and might just as well be repealed.

The Committee have also kept under review a range of other legal developments, including in particular the substantial consultative exercise being conducted by CEIOPS on measures to implement the EU Solvency II Directive, and a number of interesting judicial cases, including the proceedings in WASA v Lexington concerning "back -to-

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back" reinsurance: this case resulted in a judgment by the House of Lords at the end of July.

Ian Mathers, *Chairman,* Allen & Overy

COMMERCIAL LAW COMMITTEE

It has been a relatively quiet period for the Commercial Law Committee, with no public consultations within its remit considered worthy of comment. Nevertheless, the Committee has continued to meet according to its established schedule, every two months. In the interest of sharing best practice within the profession, Committee meetings always provide an opportunity for members to raise and invite discussion of developments in the law and business practice.

These discussions are quite fully minuted and the minutes are available on the Society's web-site. Recent discussions have concerned:

- the propensity of those who arrange competitions (eg for architectural design on new projects) to require all entrants to grant licences of their submissions to the organisers;
- the NETTTV case, in which it was held that there is a strong, albeit rebuttable, presumption that an exclusion of loss clause cannot cover deliberate repudiatory breaches of contract;
- the OFT's challenges to football club season ticketing arrangements;
- the success of the OFT's case against Foxtons and the consequential heightened interest in standard terms.

The Committee's external activities include liaison with other bodies including organs of government. In pursuit of this objective, a working group of the Committee [recently] had a further meeting with representatives of the OFT, aimed at sharing views on developments in those aspects of commercial law within the purview of the OFT, especially consumer law, advertising and the interpretation of the two sets of Regulations adopted in 2008 pursuant to the European

Directive on unfair trading. These discussions will not be recorded in detailed minutes of the Committee, but the Committee Chairman is willing to deal with any written queries from members.

The Committee continues to liaise with the publishers of the well-known directories in order to develop their appreciation of commercial work as a distinct area of practice worthy of a separate category in their publications.

The membership of the Committee is at a good level, but new members continue to be welcome, especially in the interests of diversity. Queries should be addressed to the Chairman.

Nick Mallett, *Chairman,* DMH Stallard

COMPANY LAW COMMITTEE

The Company Law Committee meets every other month to discuss current developments in company law, regulation and practice. The minutes of the Committee can be found on the City of London Law Society website. Between meetings, working parties of the Committee are formed to respond to consultations on issues of interest or to prepare guidance or other documents likely to be useful to our members in

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practice. Details of our recent work are provided below.

Market Abuse Directive - Call for Evidence Review

In April 2009, the EC Commission published a Call for Evidence Review of Directive 2003/6/EC on insider dealing and market manipulation (the "Market Abuse Directive"). The Committee believes that reform and revision of the Market Abuse Directive regime is required in a number of respects and thus submitted a written response to the consultation jointly with the Law Society's Standing Committee on Company Law. The Committees stated that:

(i) they believed that the policy objectives of the Market Abuse Directive would be met more effectively if different definitions of "inside information" were adopted in respect of the insider dealing prohibition and in respect of issuer disclosure obligations of "inside information". It was proposed that the definition for the purposes of the prohibition of insider dealing should involve a simple test of price sensitivity (i.e. it would not include a "reasonable investor" test or a requirement that future events or circumstances be "reasonably expected") and that the definition of "inside information" for the purposes of the issuer disclosure obligation should be retained as it is;

(ii) the circumstances in which an issuer may delay disclosure of inside information should be clarified; and

(iii) it should be made clear that transaction reporting by managers and their closely associated persons should not require the reporting of pledges over shares.

The full response paper is available on the City of London Law Society website.

Articles of Association: Updated Pro Forma Circular

An updated version of a pro forma circular developed by a number of firms represented on the Company Law Committee was produced. This describes suggested changes to articles of association to reflect (i) the changes to the Companies Act 2006 as a result of the implementation of the Companies (Shareholders' Rights) Regulations 2009 in August 2009 and (ii) provisions of the Companies Act 2006 coming into force in October 2009. The UKLA and ABI have also reviewed the updated circular.

The Pro Forma Circular can be downloaded from the City of London Law Society website.

William Underhill, *Chairman,* Slaughter and May

COMPANY LAW COMMITTEE - VACANCIES

The Company Law Committee has two vacancies to fill as a result of resignations of existing members and is therefore seeking applications from prospective new members. Applicants should practice in the area of corporate/company law, be enthusiastic about the opportunity to contribute to the work of the Committee and be able to commit enough time to participate in the work of the Committee, including attending its regular meetings in the City of London.

To apply, please contact the Chairman, William Underhill, at Slaughter and May (e-mail: william.underhill@slaughterandmay.com; Tel: (0)20 7090 3060) before 30 November 2009. When applying, please send a CV and give an indication of your main areas of interest in the work of the Committee.

LITIGATION COMMITTEE

Over the summer, the Litigation Committee prepared a detailed response to Lord Justice Jackson's preliminary report on the costs of civil litigation (published on 8 May 2009). This response was submitted to the Jackson Review on 31 July 2009, and can be accessed on the Company's website.

As part of this process and to promote public debate and feedback to Lord Justice Jackson, The Committee worked with the Commercial Litigators Forum to host a joint open meeting with Lord Justice Jackson on 13 July 2009. Attendees were able to exchange views on a number of the important issues raised by the preliminary report and were polled by Lord Justice Jackson for their answers to some key questions.

The Litigation Committee limited its written response to areas relevant to commercial litigation, and emphasised that any recommendations for reform must seek to preserve London's present status as a popular venue for international business dispute resolution.

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One key area of focus was the funding of civil litigation. Two of the most controversial issues Lord Justice Jackson is considering are whether the UK should allow contingency fees, and whether success fees and "after the event" (ATE) insurance premiums should continue to be recoverable. The Litigation Committee expressed itself to be cautiously in favour of contingency fees provided costs shifting principles were retained, but argued that the success fees themselves and ATE premiums should not be recoverable in commercial cases. The Committee generally supported the existing retrospectively assessed costs shifting regime, and considered that an expansion of fixed fees or costs capping into commercial cases would be inappropriate.

Another major focus of Lord Justice Jackson's attention was how to better control the costs of litigation – which arise particularly in relation to disclosure, witness statements and expert evidence. The Litigation Committee agreed that the costs of disclosure have spiralled in the last ten years, but emphasised that the UK's rigorous disclosure regime is seen as an attractive feature of the English and Welsh legal system. The Committee discussed various proposals for better managing the costs of disclosure. The Litigation Committee agreed with Lord Justice Jackson's suggestion that, as overly long and lawyer-driven witness statements have become a key driver of litigation costs, witness summaries might sometimes be preferable. The Committee also expressed its support for many of Lord Justice Jackson's proposals for containing the costs of expert reports.

Lord Justice Jackson's final report is due to be published in December 2009.

Lindsay Marr, *Chairman,*
Freshfields Bruckhaus Deringer LLP

REGULATORY LAW COMMITTEE

The CLLS Regulatory Committee (the "Committee") meets monthly and from June 2009 until present has submitted the following papers.

1. **A response to the FSA's discussion paper on 'A regulatory response to the global banking crisis' (DP09/2).**
   The Committee broadly agreed with the principal points raised by the FSA in the discussion paper. However, the Committee felt that the FSA should resist the temptation of being 'first to market' with implementing any regulation in response to the banking crisis and emphasised the importance of not disadvantaging the UK. The Committee also considered that further regulation was not required in order to reduce the likelihood of systemically important firms failing, or to reduce the impact if they did. Instead, the Committee felt that there should be greater focus by the FSA on the risks inherent in banking business models, and of the economics of banks' businesses.

   The Committee considered that any international supervisory architecture needed to focus on making individual supervisors work better together, rather than establishing a single supervisor or group of supervisors to work on a cross-border basis. The Committee agreed with the logic of encouraging (or even requiring) the formation of supervisory colleges for the major international banking and financial services groups, but felt that there were limitations on what the colleges could and should achieve.

   Although the Committee supported the FSA's ongoing work on the range of initiatives designed to strengthen the infrastructure for OTC derivatives, it considered there to be a number of legal and operational issues that needed to be carefully worked through together with the CCP, clearing members and their clients in order to make CCP clearing an attractive proposition to participants in the CDS markets, and the markets for other OTC derivatives. It also felt that the portability of CCP cleared contracts in the case of a default of a clearing member should be examined. Particular thanks are due to Peter Bevan, Patrick Buckingham and Simon Morris for their work on this submission.

2. **Comments on the EU Commission's proposal for a Directive on Alternative Investment Fund Managers (the "Directive").**
   The Committee wrote on two occasions to the FSA, HM Treasury and the Swedish Finance Ministry to comment on certain core areas of the Directive which it considered to create significant legal uncertainty. The Committee's policy was to make key legal rather than policy points. The points made were that:

   (i) it was extremely important for the Directive to contain a clear definition of what was meant by a "collective investment undertaking" within its scope. An enhanced definition accompanied by specific exemptions (dealing with, for example, joint venture arrangements and investment arrangements involving only undertakings within the same group) would help avoid problems of legal uncertainty.
   (ii) it was not clear what activities brought a person or

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an entity within the scope of the Directive's definition of "manager of alternative investment funds". There must be a clear policy decision taken as to the characteristics which define the entity within the scope of this definition and these must be clearly reflected in the Directive. Further, it would be important for the Directive to make it clear that if the day-to-day management of a fund was in fact the responsibility of the investors, then those investors were not the "manager".

(iii) the Directive needed to make it clear that, during the three year period before the third country provisions would apply, a third country fund/manager may carry on marketing activity in accordance with the local private placement regime, and this would continue to be the case after the end of that period.

(iv) the position under the Directive in relation to MiFID firms was unclear, particularly in relation to the types of investment services that they may provide to Alternative Investment Funds ("AIFs") and AIFMs which were not subject to the Directive.

(v) there should be no restriction on the ability of MiFID firms to provide MiFID services and this must be made clear in the Directive.

(vi) the concept of leverage in the Directive needed much greater definition in order to ensure that it was directed at the kind of leverage that could have systemic impact.

(vii) the Directive's threshold tests were important, but it was not clear how "assets under management" were to be calculated for the purposes of assessing the test. There needed to be a mechanism enabling a firm to opt-out of (in addition to opting into) the Directive. Further, where the value of assets under management fluctuated above and below the threshold level, it was essential for there to be a "grace period" for managers who crossed the threshold during the life of a fund (or funds).

(viii) the position in relation to national private placement regimes required greater clarity. It was unclear whether existing EEA member state private placement regimes would continue for AIFMs that were not required to comply with the Directive.

(ix) greater clarity was also needed in relation to what was meant by "marketing" within the Directive. Professional investors should be permitted to make enquiries of an AIFM (and vice versa) about a prospective fund without triggering the prior notification and consent procedures.

The Committee's work on these submissions was co-ordinated by Bridget Barker and Margaret Chamberlain.

Margaret Chamberlain, *Chairman,* Travers Smith LLP

EMPLOYMENT LAW

New Agency Workers Law

After at least two decades of trying the European Union agreed in November of last year a Directive on Temporary Agency Work (2008/104/EC). The Directive has two aims: to provide certain employment rights for temporary agency workers and to liberalise the supply of agency workers (because some Member States place restrictions on what employment agencies can do). The UK Government is keen to transpose the Directive into UK law promptly. To that end it is undertaking a two-stage consultation process. The first was on policy issues and the second will be on the detailed legislation. The consultation document on policy was published in May. The Committee submitted a detailed response raising a number of concerns with the Government's proposals.

Unsurprisingly the definition adopted in the new law for "agency worker" will be critical. The Government's starting point is that the Directive is only intended to regulate agencies (which the Government calls "employment businesses") who supply workers to user undertakings (which the Government calls "hirers") on a temporary basis. By contrast those businesses (which the Government confusingly calls "employment agencies") who offer workers to employers for permanent employment are not to be covered. Nothwithstanding the bewildering terminology the Committee agrees "employment agencies" should be excluded.

But in fact the more important issue is not who is the supplier but rather the nature of the assignment. As we are in the context of a triangular relationship – employment business, person supplied and hirer – this is inevitably going to be tricky. The Government's proposal is that "agency worker" should be defined by the standard employment law definition for "worker" i.e. somebody working under a contract of employment or other contract personally to provide work (excluding the self-employed). The Committee agrees with this proposal but with some reservations. First of all the test of "worker" is not altogether clear .Take, for example, the issue of whether the ability to appoint "substitutes" always rules out someone being a "worker". Also, the concept of "self-employed" is slippery because its meaning seems to vary depending upon context. Secondly, the Government suggests some standard relationships will be in scope (for example, umbrella companies) but others will be out of scope (for example, personal service companies). However, it is unclear how the test of "worker" will achieve this and, indeed, some would say umbrella companies and personal service companies are practically the same.

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At the heart of the Directive is the principle of "equal treatment". This is that agency workers are to have during the period of their assignment the benefit of the same "basic working and employment conditions" that would apply if they had been recruited directly to occupy the same job. This raises a host of issues. First, the Directive says such "conditions" include "pay". The Government proposes to define the latter as basic pay and contractual entitlements "directly linked to the work undertaken by the temporary agency worker while on assignment". The Committee queries why one should adopt a test that will lead to disputes when the option of selecting basic pay uses a concept everyone is familiar with. Secondly, the centre piece of the Government's proposed implementation is that the principle of equal treatment will only apply after 12-weeks. Does that mean 12 calendar weeks or 12 weeks of work? The Government proposes the former. The Committee considers that this is probably the right choice. The latter would introduce bureaucratic procedures and is potentially indirect (sex and part-timer) discrimination. Thirdly, does a break in assignment stop the 12-week clock running? The Government accepts this but has not decided how long a break must be to stop the clock. The Committee thinks the well developed rules on continuity on employment for employment protection purposes should be applied. Fourthly, the Committee considers the Government has adopted a debatable approach on how to decide whether there has been equal treatment in "the same job" where there is no permanent employee undertaking that role. The Government's suggestion is to use a concept of "broadly similar work" and it hints at a hypothetical comparator. But it seems to the Committee that the Directive says neither of these things (which must be deliberate) and so it would be inappropriate to adopt them in the UK. Fifthly, there is the issue of whether the obligation to implement equal treatment falls upon the employment business or the hirer. We agree with the Government that the right answer is the former. Having said this, it does lead into some real practical problems because it is only right that the employment business should have a defence if the hirer has not provided it with the information it needs to ensure compliance with the law. But this begs the question of what information the hirer must provide and at what point will liability switch from employment business to hirer?

The Directive offers Member States the opportunity to adopt two exceptions to the principle of equal treatment. First, where the agency worker is a permanent employee of the business. Secondly, where a workforce agreement (i.e. a collective agreement) is in place at the hirer. The Committee welcomes both exemptions, although there must be some doubt over whether the second is likely to be a practical proposition with most employment businesses not being unionised. By contrast, the first exception is likely to be well used. The Government intends to lay down "anti-avoidance" measures here. But this raises controversies. For example, the Government proposes that to qualify as a permanent employee the worker must following the assignment be paid not less than 50% of the pay for the last assignment (we say why not use the national minimum wage rate which has the virtue of clarity) and must be employed for a period of post assignment although no period is proffered at this juncture by the Government (we say one week to reflect the minimum statutory period of notice).

In addition to equal treatment, agency workers are to be provided, by the hirer with access to employment vacancies and "amenities or collective facilities". The Committee urges the Government to define these obligations with precision. For example, is a staff Christmas party an "amenity"? Another new provision that we consider requires a clear definition relates to the fee an employment business can charge a hirer who offers permanent employment to an agency worker. The Directive prohibits any restrictions imposed by the employment business upon the hirer permanently recruiting an agency worker although the employment business may charge a reasonable fee. We thought that "reasonable" has to be defined in the legislation because otherwise it is certain that employment businesses and hirers will take different views on what is reasonable and that will lead to uncertainty and ultimately litigation.

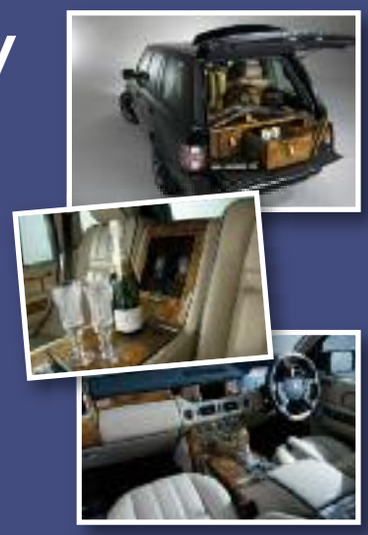
The Directive contains rules on rights for pregnant women and new mothers, counting agency workers towards thresholds at the employment business that trigger the right to a body representing workers, and the supply of "suitable information" on the use of agency workers by the hirer to bodies representing workers. The Committee broadly agrees with the Government's proposals with one major exception. The Government proposes to define "suitable" information as information that can establish whether equal treatment is being provided. However the view of the Committee is that "suitable" should be defined by context. In other words one looks to the obligation the employer is fulfilling in relation to information concerning its permanent employees and the employer must provide similar information in relation to the use of its agency workers. As regards enforcement, the Government's proposal that disputes would be heard by Employment Tribunals and ACAS would be invited to assist in attempting dispute resolution, is endorsed by the Committee.

The Government has until December 2011 to introduce the new law. The Government is in a hurry to legislate as soon as possible. Even so, the Committee considers the Government needs time to get the legislation right and then there must be time for both sides of industry to be ready for the new law. A commencement date of October 2011 seems to us more sensible. By then we can expect that the business of supplying agency workers will be structured in such a way as to achieve a flexible arrangement for worker and hirer that does not exploit the vulnerable.

Raymond Jeffers, *Former Committee Chairman,*
Linklaters LLP

Ronnie Fox, *Past Master,* Motoring Correspondent

FOX IN THE LAP OF LUXURY



Some motoring design objectives remain constant over many years. Manufacturers have long sought to perfect a car which will transport 4 people together with their luggage in comfort and at high speed over a considerable distance. I have been examining two variations on this theme.

I recently drove a classic car built to meet this objective by a famous and slightly quirky manufacturer, a 1972 Bristol 411 Mark 2. The beautiful alloy body and walnut/leather interior are pure British. The engine, a muscular 6.3 litre V8, and the three speed automatic gearbox were supplied from the United States by Chrysler. At the time it was built a Bristol 411 was said to be the fastest 4-seater car in production (0 – 60 in around 7 seconds which I shall be checking on the Cornhill/College Hill drag strip). Some people rate the Bristol more highly than a Bentley of the same era. Fewer than 300 411's were built between 1968 and 1976 so it was certainly an exclusive car.

A great deal of attention was devoted to ensuring plenty of space for the passengers and their belongings despite a comparatively narrow body. So far as I know the positioning of the battery and spare wheel (immediately behind the front wheels and covered by detachable front wing panels) has remained unique. I loved the period feel of the switchgear and the thin-rimmed steering wheel coupled with ample torque from that massive engine.

Bristol Cars continues to manufacture hand-built luxury cars which are sold through a single showroom in Kensington. They claim to be the last wholly British-owned builder of luxury cars. If you speak to them very nicely, they might even build you a brand new Mark 6 411!

Another approach to the same design brief is the newly-launched Holland & Holland Range Rover by Overfinch, the latest and most luxurious version of the iconic Range Rover.

It is hard to believe that the first version of the Range Rover was introduced as long ago as 1970. It was thought of as a big brother to a Land Rover, combining extraordinary on and off-road capability with great comfort, thanks to its coil springs. In my opinion the purity of the original 2 door design by David Bache has never been equalled. A four door body was introduced in 1981 and the car has steadily become more luxurious, more reliable and more expensive. Today the company is owned by Tata Motors of India; the cars continue to be manufactured at the Rover factory in Solihull.

Holland and Holland, the famous shotgun and rifle manufacturer, was founded in 1835. Their guns have always been built in England and the company holds Royal Warrants from the Duke of Edinburgh and the Prince of Wales. The roots of the business now called Overfinch are engineering Range Rover modifications to improve the performance of the standard factory cars. The two companies have worked together to produce what they describe as the most luxurious and exclusive off-roader ever.

Mechanically the cars will be the same as the 503 bhp supercharged petrol or the diesel V8 Range Rover. The enhancements are to the exterior (mainly four exclusive colours, super quality paintwork, special wheels and exhaust outlet embellishments) and the interior (superb leather and wonderful wood trim). Equipment specific to this model includes a beautifully veneered rear console incorporating a refrigerator and crystal glasses; there is also a removable, separately lockable, gun cabinet in the boot.

The most intriguing feature is described as "the world's first self-replenishing cocktail drinks cabinet" filled with luxury brands of champagne, single malt whisky, gin and vodka. "Self-replenishing? Could this be some Paul Daniels illusion? A modern miracle comparable to the ancient story of one day's supply of oil burning for eight days? No. During the first year of ownership regular refills will be dispatched to the owner of the car to make sure that the passengers don't go thirsty!

This superb craftsmanship explains a starting OTR price of £140,000, double the price of the base model and well into Bentley territory. I am convinced that the 100 Holland & Holland Range Rovers by Overfinch to be built each year will be collectors' items from the day they are delivered.

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