



City Solicitor



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



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Editorial



The end of 2009 is fast approaching and 2010 beckons with hopefully a more welcoming embrace for all of us. Despite the obvious challenges presented over the last 12 months, the CLLS and the Company have both remained extremely active

– a testament to the enthusiasm and professionalism of our members.

The Chairman's Column provides a handy summary of the CLLS' achievements during 2009, especially their fascinating interaction with the SRA. We also commend the report in this edition of the CLLS Regulatory Committee, an impressive description of a vast body of work completed in the last quarter.

The Company's annual Livery Dinner was a splendid affair held in the magnificent Drapers' Hall in Throgmorton Avenue. We carry in this edition a super report by Liveryman Colin Gregory, as well as a transcript of the Master's thought provoking address to the Company's Liverymen and their guests.

The Company's participation in the City traditions continued in November with a spectacular entry in the Lord Mayor's Show. See the cover photographs and many others inside this edition. The City profession is certainly the place where the wild things are.

And finally, eagle eyed readers will notice that I sign off this editorial under the rebranded name of AIG's general insurance businesses, Chartis. From all of us on the editorial board, we wish you a very happy holiday season and all the best for 2010.

John Abramson
Chartis, Editor

City Solicitor Copy Deadlines 2010

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| Spring | 26th February 2010 |
| Summer | 4th June 2010 |
| Autumn | 17th September 2010 |
| Winter | 19th November 2010 |



What A Year!

2009 has provided an agenda which has kept the CLLS on its toes, not least on the regulatory front. There has, however, still been time for our 17 Specialist Committees to produce no fewer than 81 non-regulatory consultation responses, pro formas and guidance notes for members. They have also held two strongly supported members' seminars, one on the Jackson Costs in Civil Cases Review and the other on the SRA's Qualified Lawyers Transfer Tests proposals.

We have also managed to increase our corporate membership despite the business recession. We have also increased our profile and hopefully influence by becoming a regular calling point for the media, both national and legal.

However, most of our time has been taken up with informing and following up the Smedley and Hunt Reports and responding to regulatory consultations (no less than 26, increasing our overall response rate for the year to 107). The implementation of the Smedley and Hunt Reports is likely to continue to be the priority throughout 2010 as the new SRA Chair, Charles Plant and the new SRA Board (with wider experience of City practice as practitioners and clients) begin to bed in from 1st January.

Both Nick Smedley, with his concentration on City practice, and Lord Hunt, with his whole profession focus, have widely consulted with us and our membership. Furthermore, in their joint recommendations, both have recognised and accepted the genuineness of our concerns and the need for constructive change in the way we are governed and policed.

The need to convince the SRA that it needs to improve its approach and procedures has demonstrated the value of the CLLS providing an overall but not overbearing representative tent for its members and scope for their autonomies. A dual approach became necessary in order to convince the SRA and the Legal Services Board that Nick Smedley's Plan A (involving the SRA responding to our needs) was our, as well as his own, preference. His Plan B (a separate regulator for City firms) was seen by us and our membership as the only alternative if the SRA fail to provide Plan A. A decision was reached that the need to avoid a Plan B outcome could best be communicated to the SRA by a delegation of Senior Partners from some of the CLLS's largest corporate member firms, rather than by the CLLS itself.

This approach has worked well and the strong indications are that the SRA with its new Chair and renewed Board in place from 1st January 2010 will implement the thrust of Nick Smedley's recommendations. Indeed, the new SRA have already identified new premises for a branch office in the City of London.

Our regular six-monthly meetings with the SRA (the most recent on 1/12/09) involving Chris Perrin (Clifford Chance), Alasdair Douglas (Travers Smith) and sometimes others from our Professional Rules & Regulation Committee, as well as myself and our Policy & Committees Co-ordinator Robert Leeder, will continue. In the meantime, regular contact continues between the SRA and the Working Party representing those of our corporate member firms likely to be involved with piloting the Nick Smedley approach (which involves the firms' having their compliance structure monitored – and hopefully approved - by the SRA). This process has only just begun and as soon as I know which firms have been approached by the SRA, I will let our membership know. This piloting, if successful, should prove to be a template for all of our Corporate Member firms as well as being seen by Lord Hunt as a model for all well run law firms in and beyond the City.

We are encouraged by what the SRA have promised but that needs to be fortified by seeing it recruiting and empowering someone with City experience at Director level with a team of senior staff with first hand experience of City legal practice, to head up a City unit with the authority to deliver Smedley's Plan A.

Finally, I take this opportunity to wish all of our members, corporate and individual, a successful 2010.

The City of London Law Society Lifetime Achievement Award

The Rt. Hon. The Lord Collins of Mapesbury

The City of London Law Society was delighted to announce Lord Collins as the winner of this year's Lifetime Achievement Award at the British Legal Awards on 3rd December, in recognition of his outstanding legal career, from City solicitor to Justice of the Supreme Court and his service to the legal profession.

Having qualified as a solicitor in 1968 he became a partner in Herbert Smith & Co in the City of London in 1971, specialising in international law. In 1997 he became one of the first two solicitors to be appointed practising Queen's Counsel, and he was appointed a Deputy High Court judge in the same year. In 2000 he was the first solicitor to be appointed to the High Court bench (Chancery Division) direct from private practice, and in 2007 the first former solicitor to be appointed to the Court of Appeal. He was appointed as a Lord of Appeal in Ordinary in April 2009.

Having been the first solicitor in every other respect, he also became the first solicitor member of the Supreme Court, with his appointment as one of the twelve Justices, when it opened in October 2009.



Acceptance Speech by Lord Collins

I am really sorry that I can't be with you tonight to accept the Award which has been so generously bestowed by the City of London Law Society.

I first came to the City in 1966 as an articled clerk at Herbert Smith & Co on £500 a year plus luncheon vouchers. Since then some things have dramatically changed. Among the things that have changed are the working habits of partners in the great City firms. In 1966 a senior partner would come to the office, typically from Surrey, at about 10 a.m. in the morning. He (it was almost invariably he) would then read the post (including post addressed to assistant solicitors). He would then dictate a few letters to a shorthand typist. At about 12.30 p.m. he would go to lunch at one of the great merchant banks, say Lazards, Kleinwort Benson, Schroders or Warburgs. Lunch would begin with an aperitif at 12.45 p.m. Lunch would finish (after the port had been passed more than once) at about 3.45 p.m. He would then return to the office to sign the letters he had dictated in the morning and be ready to catch the 5.10 p.m. from Waterloo.

On my first day at the office I was called to the room of the great international lawyer Francis Mann. He asked me to work with him on the Barcelona Traction case in the International Court of Justice at the Hague. I still can't quite believe that about 30 years later I would be on my feet in the House of Lords as a Solicitor-QC in the Pinochet case, and then be appointed as a judge in the Chancery Division without having had any Chancery practice at all, and still less that I am now in the new Supreme Court.

I have often been asked whether I am glad I became a judge. What I always reply is that I have enjoyed every minute of it, but that I still miss my colleagues in my old firm. I was very lucky to have worked with an enormously talented bunch of people, and to have had such interesting work that I got a buzz every time I went into the office. That is why I am so pleased that this award is from the City of London Law Society. I owe a lot to the City.

Thank you.

Dates for 2010

THE CITY OF LONDON SOLICITORS' COMPANY.

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| Mon. 11th Jan. | General Purposes Committee, at the Company's offices at 4 College Hill, E.C.4. at 5.00 p.m. |
| Thurs. 28th Jan. * | Court meeting at 4.30 p.m. followed by Court/Committee of the City of London Law Society/Chairmen of Committees/Liverymen Dinner at 6.45 p.m. L |
| Tues. 23rd Feb. | Inter-Livery Pancake Races, Guildhall Yard. 12 noon. |
| Mon. 1st Mar. | Inter-Livery Duplicate Bridge Competition at Drapers' Hall, Throgmorton Street, E.C.2. |
| Thurs. 11th Mar. | General Purposes Committee, at the Company's offices at 4 College Hill, E.C.4. at 5.00 p.m. |
| Mon. 15th Mar. | Inter-Livery Swimathon, RAC Club, Woodcote Park, Epsom. |
| Fri. 19th Mar. | United Guilds' Service, St. Paul's Cathedral at 11.30 a.m. followed by lunch at Butchers' Hall, Bartholomew Close, EC1. Liverymen. |
| Wed. 24th Mar. * | Court meeting at 11.00 a.m. followed by luncheon at 1.00 p.m. |
| Tues. 13th April * | Banquet, Mansion House, at 6.45 p.m. Liverymen, Freemen and Guests. E or D. |
| Mon. 10th May | Court meeting at 5.30 p.m. Annual Service at 6.30 p.m. H.M. Tower of London, followed by Reception/Supper at Trinity House. Liverymen, Freemen and Guests. L. |
| Wed. 19th May | Inter-Livery Clay Shoot, Holland & Holland, Northwood, Middlesex. |
| Thurs. 20th May | Inter-Livery Golf - Prince Arthur Cup. Walton Heath. |
| Mon. 14th June | Court meeting 4.30 p.m. Annual General Meeting and Champagne Reception at 5.30 p.m. at Tallow Chandlers' Hall, Dowgate Hill, EC4. Liverymen and Freemen |
| Wed. 16th June | Legal Charities Garden Party, Lincoln's Inn Fields. |
| Thurs. 24th June | Election of Sheriffs, Guildhall, noon. Followed by lunch at venue to be arranged. Liverymen. |

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| Mon. 6th Sept. | General Purposes Committee, at the Company's offices at 4 College Hill, EC4 at 5.00 p.m. |
| Thurs. 23rd Sept. * | Court meeting at 4.30 p.m. followed by Court Dinner at 6.30 p.m. |
| Wed. 29th Sept. | Election of Lord Mayor, Guildhall, 11.45 a.m. followed by lunch at venue to be arranged. Liverymen. |
| Thurs. 4th Nov. | General Purposes Committee, at the Company's offices at 4 College Hill, EC4 at 5.00 p.m. |
| Sat. 13th Nov. | Lord Mayor's Show |
| Mon. 22nd Nov. * | Court meeting at 11.00 a.m. followed by luncheon at 1.00 p.m. |
| Thurs. 25th Nov. * | Livery Dinner, Haberdashers' Hall, 18 West Smithfield, EC1. at 7.00 p.m. Liverymen and Guests. D. |

THE CITY OF LONDON LAW SOCIETY



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|------------------|-----------------------------------------------------------------------------------------------------------|
| Wed. 24th Feb. | † Committee of the City of London Law Society at 11.00 a.m. † Carvery Lunch at 1.00 p.m. |
| Wed. 21st April. | † Committee of the City of London Law Society at 11.00 a.m. † Carvery Lunch at 1.00 p.m. |
| Mon. 14th June | Annual General Meeting and Champagne Reception at 5.30 p.m. at Tallow Chandlers' Hall, Dowgate Hill, EC4. |
| Wed. 16th June | † Committee of the City of London Law Society at 11.00 a.m. † Carvery Lunch at 1.00 p.m. |
| Wed. 22nd Sept. | † Committee of the City of London Law Society at 11.00 a.m. † Carvery Lunch at 1.00 p.m. |
| Wed. 1st 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.

For the assistance of members, the dress for evening functions is indicated in the programme as follows:

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|---|---------------------------|
| E | Evening Dress (white tie) |
| D | Dinner Jacket (black tie) |
| L | Lounge suit |

Colin Gregory, *Liveryman*

Livery Dinner at Drapers' Hall

This year's Livery Dinner took place in the splendid Livery Hall of the Drapers' Company, situated in the Broad Street Ward of the Master, Alderman Sir David Lewis.

As we walked up the stairs to be greeted by the Master and Wardens (who are all Aldermen this year), the strains of Trio Mel from the Guildhall School of Music and Drama wafted down, and the cares of the day evaporated: a fine evening was in store. Past Master Nigel Bamping and his wife Angela were waiting in the Court Dining Room to greet the principal guest The Right Rev Graham Knowles, Dean of St Paul's Cathedral, but were most welcoming to me. The Dean when he arrived reminded us of the curate who was urged to limit his sermon to ten minutes, so it seemed we were not to expect a lengthy discourse later.

The magnificent Livery Hall is decorated with striking early 20th century ceiling paintings by Herbert Draper. They show scenes from Shakespeare's *The Tempest* and *A Midsummer Night's Dream*. The Drapers' Company were apparently "diffident about the choice of subject". Perhaps this is because the protagonists are depicted wearing far fewer clothes than at any performance I have ever witnessed. As a music lover, my wish that I might be seated at dinner close to the trio came true. Unfortunately I was still unable to hear most of what they played; perhaps a brass or wind ensemble would stand a greater chance of being heard?

Continuing in the tradition of his predecessor, the Honorary Chaplain, the Rev. Roger Hall, spoke a verse grace and we began dinner. It is amazing what you can learn at a Livery Dinner from guests from other companies. The Clerk of the Feltmakers Company explained that despite the decline in hat wearing (not in my case), felt could be found in all manner of unexpected places, such as in surgical stents. A member of the Worshipful Company of Cooks advocated the visiting of single Michelin-starred restaurants that were hoping for their second star. I shall bear that in mind when an appropriate opportunity presents itself, but there was no suggestion that the plan was to be put into immediate effect as the dinner we were being treated to was excellent.

In accordance with custom, the Junior Warden, Alderman John White, proposed the toast to the guests. The task was a particularly demanding one this year: the guests included 18 masters of other companies and 17 of their clerks, whilst the time allotted for welcoming them was not to be increased – what might be described in local government finance terms as an "efficiency squeeze". Alderman White carried it off with elegance and wit. In



responding, Dean Knowles said he felt a bit like Daniel in the lions' den: if we had any lion-like tendencies, we kept them in check, but the Dean was regrettably subjected to the twenty-first century trial of interruption by mobile telephone. He informed us that his office carried a duty to be decorative, so living by his motto "Never Knowingly Underdressed" his hose were of a purple hue (a fact we had to take on trust, at least at my end of the table). He also noted in passing a connection between the study of ecclesiastical law and the enjoyment of good dinners. He concluded with a reminder that as lawyers we have a responsibility to use what power and influence we have for the good.

Those gazing at the ceiling during dinner may have been aware of Ethics depicted in one of the spandrels. This theme was strongly echoed by the Master in his reply. Having recently served as Lord Mayor he is well placed to speak about the future of the City. He reminded us that long-term wealth creation is not about short-term profit: a free market cannot operate in a value-free environment. He noted that the word "credit" derives from the Latin *credere* to trust. Bankers are not all crooks and retribution should not be mistaken for reform. Lawyers, he said, had a role in helping to restore trust. A commitment to morality and ethics mattered above all else: our future depends on finding ways to incentivise ethical behaviour.

By sitting down together at dinner we are not only able to enjoy fine food and wine in fine surroundings, but also, in the tradition of the City, take the opportunity to address collectively some of the complex problems faced by society today. Long may the tradition flourish.

Master's Word



MASTER SOLICITOR'S SPEECH TO THE CITY OF LONDON SOLICITORS' COMPANY'S LIVERY DINNER, DRAPERS' HALL, 23 NOVEMBER 2009

May I start by extending a very warm welcome to you all and in particular to you Graeme (Rt Rev Graeme Knowles, Dean of St Paul's Cathedral) for a characteristically amusing and thought provoking speech. We are all in your debt and congratulate you and your Chapter at St Paul's for all the wonderful work you do; attending one of your services is one of the great privileges we enjoy in the City.

I have the great honour of being the Alderman for this Ward of Broad Street so unsurprisingly I wanted to dine here for this Livery Dinner. May I on behalf of us all thank Master Draper and his admirable clerk (he's an Admiral) most sincerely for permitting us to dine here in this wonderful Hall tonight. Incidentally we believe that this is the first livery dinner in the City's history where the Master and both Wardens of the host company are all Aldermen.

May I also add my own very warm and sincere welcome to our visiting Masters, Prime Wardens and their Clerks, not forgetting the Master Chartered Accountant, whose great hospitality I recently enjoyed despite his amusing jokes about lawyers. I will not rise to that provocation but I should perhaps just say that I have had a quite extraordinarily boring morning speaking to a conference of certified accountants. I had never really thought before how very apt the word "certified" is. Anyway it is so nice to be back again with a live audience.

Tonight I am going to wander into Graeme's area of expertise and speak about trust, ethics and morality in our society and in the City. Being a Welshman I was brought up to admire Lloyd George who did not have a moat or duck pond, but was very effective at selling peerages. He once said that the Ten Commandments should be treated as an examination question; only six need be attempted. But the near death experience to the global financial system, which we have all lived through during the past two years, has led me to wonder what if anything our society has learnt during the past century since Lloyd George. The Governor of the Bank of England placed the blame on regulation and supervision and warned that banks would need more capital; quite right, but the Governor to whom I refer was Governor Leigh-Pemberton 22 years ago after Black Monday when the Dow Jones fell by 22% in one day; some of us will remember that was followed by base rate at 10% rising two years later to 15% with boom then becoming bust. Did we learn from that experience?

Only last year the sale of peerages was again headline news; we are faced today with a breakdown of trust between the general public and politicians of all political parties. Headlines tell us that politicians simply don't get it; some are threatening not to repay their outrageous and immoral expense claims; some will probably end up in the criminal courts; many will not be re-elected at the next General Election. And the position amongst some Peers in the Upper House is no better. We even witnessed the Attorney General being fined £5,000 and, instead of resigning, defending herself by saying it was merely a technical offence equivalent to forgetting to pay the congestion charge. No wonder so many have lost respect for Government and for politicians in general. When a former Minister was asked to define "politics" he famously said: "It derives from the Greek; "poli" means "many" and "tics" are bloodsucking insects".

Not long ago we saw the Serious Fraud Office being sat upon by HMG to stop them investigating fraud and corruption at BAe on the grounds of public or national interest, and yet the British Government feels able to criticise other Governments for similar cover-ups and all this while Guantanamo Bay continues. We witnessed a former Attorney General having difficulty with advising on the legality of the Iraq War and it is unclear whether we will ever discover the truth about his advice. Did you know that more hours of debate were spent in Parliament on the Hunting Bill than on the Iraq war; what does that say about our legislature and public trust? Our wonderful troops bravely carry on doing their duty (with many paying the ultimate sacrifice) while thousands of very well paid MoD civil servants, who continue to receive bonuses, are incapable of planning and providing our troops with what they need to do their job. Another breakdown of trust.

Many of the public have also lost trust in our criminal justice system and two thirds think that the system respects the rights of offenders more than those of victims. Half of all criminal cases are now punished out of court (including 40,000 assault cases each year) and are dealt with by Police caution alone; the DPP is at last reviewing this. We have some 85,000 prisoners with about 36,000 crown court cases awaiting trial and on average less than half of those will actually get to trial on time. Our prisons are full which is why Prison Governors are advocating abolition of all sentences of less than 12 months and they regularly free those prisoners who are given custodial sentences of less than six weeks, completely ignoring the court. No wonder the public have lost trust.

Alderman Sir David Lewis

Turning to the City, over the past two years we have seen a breakdown of trust between banks, and between the public and banks. The credit market collapsed; as we know the word “credit” derives from the Latin word “credere” meaning to trust and banks were not prepared to lend to each other for some months. There also still remains a very understandable breakdown of trust between the general public and “the bankers” fuelled by politicians who are desperate to make bonuses a political punchbag particularly while their own expenses scandal is still in the headlines.

The credit crunch has changed the ordinary man’s view about “the City” brand. What needs to be done? First, not all bankers are crooks or on the take and not all MPs are fiddling their expenses, although those who are should be dealt with like any other criminal. The City has become a political football at a time when we have a global economic crisis, a UK financial crisis with record government debt and an enormous drop in the Treasury’s tax take, new MEPs in the European Commission with little experience, and a forthcoming UK general election, all of which is a very difficult backdrop against which to sort out the steps which need to be taken globally.

Bashing bankers might be fun but what will it achieve? Policymakers should be very wary of mistaking retribution for reform.

Global regulatory reform is clearly required, but easier said than done. The Basel II Rules, which have been found wanting, took 10 years to agree and even then were not adopted by the US. The US and the UK have pretty much recapitalised our major banks. Many other European and other countries have not and will delay doing so until their economies improve. Capital adequacy and liquidity regulation are the most important issues, not bank bonuses. Capital adequacy and more prudent lending policies will mean that banks lend less, but that may be no bad thing if the result is a more stable financial system.

Yes a small number of bankers behaved recklessly and appallingly and yes, bank bonuses should be subject to sensible global G20 rules so that risk taking is not the driver, yes they should be deferred and subject to clawback rules, but some of the recent more bizarre ideas are unworkable and the idea of legislating against bonuses and negating service contracts is frankly just plain electioneering. Pay restraint in the 1970s did not work nor will it now. Legislating specifically on bonuses and increasing the rate of income tax and corporation tax will merely drive bankers, hedge fund managers and others offshore to Switzerland, Hong Kong, Singapore or back to the US, so instead of the Treasury receiving 40% of a bonus in tax they will receive 50% of nothing. A number of UK based companies have already moved overseas resulting in a loss of jobs here and of course less tax receipts for the Treasury. Many non-doms have also fled as last year some of us warned they would; they will not return.

Yes we need better international regulatory standards, more risk management systems and proper remuneration structures, but we must still encourage innovation. Banking like business is about taking risks but the task is to manage that risk much better with the aim of long-term wealth creation not short term

profit. The FSA says senior bankers will in future face new tests to ensure they foster an ethical culture in their institution. I agree that a free market cannot operate in a value free environment. It is clear that higher standards of integrity, ethics and fair play are essential before trust can be restored in the City and in Parliament.

So how relevant are we in helping to restore that trust? I commend to you a new book called “Good Value: Reflections on Money, Morality and an Uncertain World” written by Stephen Green, the Chairman of HSBC our biggest and most successful bank, who is also an ordained priest. The great majority of the 1.5 million working in the financial services sector are honest hardworking people with integrity, many of whom give back a lot to the community through corporate social responsibility programmes and charitable giving of the sort with which many firms in this room will be very familiar. But yes we have some bad apples. Stephen Green says that we need to change the morality of our banking industry so that there is a standard of integrity, a standard of culture and a standard of commitment that informs recruitment decisions, that informs training and development programmes, and that informs the way people are appraised and rewarded too. In short there has to be a change in culture and behaviour so that morality and ethics are key and bankers do not say: “if it’s legal and profitable then we will do it whether it is morally right or wrong and whatever the consequences to others”.

It is vital to the future success of this country and its economy that trust is restored and that banks are strong, prudent and successful. We as lawyers or accountants or chartered secretaries or whatever can help restore trust in the City; we not only have high ethical standards in our own respective professions but we have an obligation to our clients and to society to ensure that the very highest standards of governance and ethics prevail. Are we all sure that all our staff understand the ethical standards to which we should all aspire and how to do the right thing; do we have sufficient training to help them achieve this standard; have you had an independent review of your own organisation’s business ethics programme; have you properly assessed the non-financial risks to your business; do you incentivise ethical behaviour; do our respective professional exams cover this issue sufficiently; do they teach enough ethics in schools and universities? These are all questions we should be asking ourselves and just as importantly asking our clients because this could also be a good business opportunity for us.

I conclude with some jokes specially requested by the Master Chartered Accountant. What is the definition of an accountant? Someone who solves a problem you didn’t know you had in way you don’t understand. Why did the accountant cross the road? Because he looked in the file and that’s what they did last year. What does an accountant’s wife do when she can’t get to sleep; she says to her husband “Please tell me about your work”. Actually, if the truth be known, lawyers admire and respect accountants enormously and we all have much to learn from each other.

Lord Mayor's Show

14 November 2009



Once again the Solicitors' Company entered into the spirit of the Lord Mayor's Show on 14th November, with a truly spectacular array of animals depicting the "Law of the Jungle" theme.

The Company was delighted to work with Harlesden-based "Mahogany Carnival", whose wonderful costumes ensured a fantastic reaction from the crowds. Our thanks go to them and everyone else who took part and made the day such a success.







Past Master John Guillaume 1925-2009

Tribute by David Thompson, former colleague at Guillaume & Sons

John was the great-grandson of Edward Guillaume who in 1836 founded the firm that carried his name in the City of London. Later offices were opened in Bournemouth and Weybridge. John served articles with the firm and joined his father Reginald and brother Rex as a Partner in 1950 on qualifying as a solicitor. The firm had been a family practice from its inception and remained so until 1979 when Roger Bowen became the first “outside” Partner. Such was the strength of the family tradition that one F.S. Stanford, the then Senior Managing Clerk who had been with the firm for 47 years, wrote to John Guillaume a few days after his birth in these terms:

“ I understand that tomorrow is the appointed day for you to be received into the Church. In due time I trust you will be received into your father’s firm as a Partner and become learned in the law and add to the reputation of the good old firm.

I dare say, in this warm weather you do not wish to be troubled with much correspondence and perhaps at some time convenient to yourself, your mother will read this letter to you and you can then reply at your leisure”.

I have no record of the infant John’s response. However, in the fullness of time he certainly lived up to those words. After the death of his father, John rose to the challenge of leadership and under his stewardship the firm which had a staff compliment in the 1950’s measured in single figures grew to a total of 55-60 by the mid-1980s. He was a man given to great ideas and possessed the skill to devise and implement schemes for the improvement and development of the firm, including the introduction of Litigation, Tax, Insurance, Company Law and Commercial Property disciplines.

Long service in the firm by both Partners and staff also became a tradition, many serving over 25 years and several more than 60 years.

John’s breadth of vision and imagination enabled him on occasions to do unbelievably good work for clients. He was very kind and generous with staff and was repaid by their loyalty. Staff were regularly treated to parties and other social events. He was an incredible rock to any member of staff in difficulty. He would go to enormous lengths to assist them. In an internet tribute a former member of staff has written:

“John was my first boss and he was a true professional, he was meticulous and very kind. I couldn’t have had a better boss, he taught me so much and always had time for his staff. We were like one big happy family”.

In a tribute to John, Keith Allen a friend for nearly 70 years and formerly Accountant to the firm wrote:

“Sometimes he was quite irrepresible, infuriating at times and yet he would disarm one and turn crossness into laughter. I suppose it all came down to charm. He had the ability to bring the best out of one”.

John retired as Senior Partner at the end of 1986 and was a Consultant to the firm for some years thereafter. The esteem and respect in which the firm was held was manifested when the 150th Anniversary was celebrated in 1986. In attendance were a number of distinguished guests including Judges, Queens Counsel, Barristers, Her Majesty’s Coroner of the City of London, a Minister of State and the President of the Law Society.

During his career, John was a member of the City of London Solicitors’ Company and rose to become Master in 1980-81 following which he served as a member of the Court of the Company. The impression that John made on the Company is handsomely summarised in the words of Lesley MacDonagh, the first female Managing Partner of a top ten firm.

“I was privileged to meet John when he became Master of the City of London Solicitors’ Company. The tremendous honour of being elected Master of the Livery Company was even more significant in John’s

case as he mainly practised in Surrey and not within the Square Mile. He was, however, an extremely popular choice and went on to be an outstandingly successful and pro-active Master.

I have the clearest memory as a new (and, in those days relatively rare) female City lawyer that John was a natural supporter of young people and the person who instigated new forms of fellowship within the solicitors profession. Due to his incredible energy, John was able to further the professional work of the Company whilst also devising projects to raise money for charity and enabling members to have more fun! With his cheerful, positive attitude John could make any task fun.

I recall once having returned a pro-forma that John had circulated to Solicitors Company members indicating that "I would be interested in a Charity Ball" – I meant that would be interested in buying a ticket and attending. John somehow chose to interpret my form as meaning that I would help him organise a large 75th Anniversary at the Guildhall for hundreds of guests, raising thousands of pounds for charity. However, such was John's charisma and powers of persuasion that at the end of our first meeting I actually believed that I HAD intended to help organise and not just attend the Ball.

Through John's energy and enthusiasm, solicitors came together professionally and socially as never before. The Company attracted large numbers of new young members and in addition to the business agenda John masterminded charity talent events showcasing the musical skills of lawyers and encouraged us for the first time to build and man a float in the Lord Mayor's Show – a tradition that the Solicitors Company maintains today.

Above all, John was an absolute gentleman and one of the first true supporters of professional women in the City. When I asked John to be Godfather to my eldest child Lexy, I knew he would support her in the same way he had supported me and my career. Lexy and I will miss John a great deal but Angela and his children whom he loved so much, will I know continue to pass on the qualities of friendship, support and inspiration that we so readily associate with John and his wonderful family".

I am sure that everyone who knew John will endorse those sentiments. I considered myself privileged when I was recruited to join Guillaume & Sons in 1975 and to have worked with John. It has been an honour to have known such a special person.

INTER LIVERY SWIMATHON 2010

The Chartered Surveyors' Company is organizing the eighteenth Inter-Livery Charity Swimathon on Monday 15th March 2010 at the Royal Automobile Club, Woodcote Park, Epsom, Surrey.

The Solicitors' Company has been invited to take part in this event again and in order to participate, we need a team of five or more people to swim a total distance of 5000 metres. It is not a competitive race, the simple object is to complete the course and raise money for the Lord Mayor's Appeal 2010. The Swimathon will start at 5.00 p.m. and will be followed by an informal dinner.

If you are interested in joining the Company's team, please contact Liz Thomas on 020 7329 2173 or mail@citysolicitors.org.uk



Wig and Pen Prize 2009

We are pleased to announce that the winner of the Wig & Pen Prize for 2009 is Michael Spencer of Freshfields Bruckhaus Deringer LLP. The Prize is awarded jointly by the CLLS and the City of Westminster and Holborn Law Society and now forms part of the Junior Lawyers Division Annual Pro Bono Awards.



The Wig & Pen Prize (comprising the silver Wig & Pen Ink stand and £1,000 for the winner's charity or project) is awarded to individual solicitors, up to five years qualified who practice in the areas of City of London and City of Westminster and Holborn Law Societies, who judges feel have made a significant contribution to the quality of justice in their communities and in helping to ensure that the legal system is open and available to all. In particular, the judges consider the length of time involved in giving free legal advice to people who have otherwise failed to obtain access to justice and the significance of the candidate's service to their clients and their community.

Michael is an associate in the dispute resolution practice at Freshfields Bruckhaus Deringer. He qualified in August 2008 and was chosen as this year's winner in recognition of his work on a number of cases and projects.

As a trainee, Michael spent three months on secondment at Liberty, where he assisted on several Human Rights cases (including the McKinnon extradition case and the Sarika Singh discrimination case) and gave free legal advice to the public on Human Rights issues. As part of a team at Freshfields, Michael also assisted in drafting a US Supreme Court Amicus Brief, which was mentioned favourably by the Justices in an historic ruling on the unconstitutionality of the death penalty for non-murder offences (*Kennedy v Louisiana*). Michael also took part in two Freshfields schemes for giving free legal advice, at the Tower Hamlets Law Centre (on housing issues) and the RCJ Citizens Advice Bureau (on civil procedure).

Both the City of London Law Society and the City of Westminster and Holborn Law Society agreed unanimously that Michael deserved to win the award this year.



From Left to Right, Vincent Keaveny, representing the Chairman of the City of London Law Society, Michael Spencer and Matthew Claxson, Junior Vice President of the City of Westminster and Holborn Law Society.

Policy & Committees Coordinator's Report

The CLLS's 17 Committees have continued to actively represent the members on issues of policy and practice and have produced (since the start of the year) over 100 submissions on a variety of areas.

Since the last report, the **Professional Rules and Regulation Committee** has responded to several SRA consultations, including:

- "Repeal of Solicitors' (Non-Contentious Business) Remuneration Order 1994. Legal Services Act 2007: Proposed new rule on information about how to question a bill";
- "Handling complaints about the SRA"; and
- "Schedule of Charges – SRA (Cost of Investigations) Regulations 2009".

The Committee also responded to the Legal Services Board's discussion paper "Designating new approved regulators and approving rule changes: Discussion paper on developing rules to approve applications for designation as an approved regulator and to approve changes to the rules of approved regulators".

The Takeovers Joint Working Party of the CLLS **Company Law Committee** and the Law Society of England and Wales' Standing Committee on Company Law produced a response to the Takeover Panel's Consultation Paper (issued by the Code Committee of the Panel) entitled "Miscellaneous Code amendments revision proposals relating to various rules of the Takeover Code" ("PCP 2009/2").

The **Insolvency Law Committee** responded to the "Evaluation of Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings."

The **Intellectual Property Law Committee** responded to the Department for Business Innovation and Skills' "Consultation on Legislation to Address Illicit P2P File-Sharing".

The **Planning & Environmental Law Committee** responded to four Communities and Local Government consultations:

- "Detailed Proposals and Draft Regulations for the Introduction of the Community Infrastructure Levy";
- "Policy Statement on Regional Strategies and Guidance on the establishment of Leaders' Boards – Consultation";
- "Improving Permitted Development"; and
- "Consultation paper on a new planning policy on Development and coastal change".

The work of the **Construction Law, Land Law, Regulatory Law and Revenue Law Committees** is set out in the following pages in their Chair's respective reports.



Committee Reports



LAND LAW COMMITTEE

The Land Law Committee has continued its programme of meetings every two months and has been engaged in a number of projects through meetings of sub-

committees. We have welcomed a number of new members to the Committee over the last six months and are grateful for their contributions.

We have engaged with the Company Law Committee and the Financial Law Committee in supporting their work on the appropriate procedures for execution of documents at virtual completions, following the decision in the Mercury case. This work will contribute to the forthcoming issue of a Practice Note by the Law Society.

We are undertaking a project to produce provisions for institutionally acceptable leases that accord with the Code for Leasing Business Premises. A sub-committee has now produced Code Compliant service charge provisions which are being considered by the wider Committee.

We continue to monitor developments in topics such as the Carbon Reduction Commitment and the impact which they will have on lease documents.

A number of topics bring us into contact with the Construction Law Committee and with them we will be taking forward a project to support the use of Third Party Rights rather than collateral warranties in development documentation. Issues are arising in respect of the insurance of tenant fit-out works and we are exploring these with the Construction Law Committee.

Nick Brown, *Chairman*, CMS Cameron McKenna LLP

REVENUE LAW COMMITTEE

The Committee has continued to focus on commenting on tax matters relevant to the work and clients of City firms, in particular, responding to HMRC and HM Treasury consultations.

Since our last report we have commented on the Consultations on "Transactions in Securities", "Unallowable Purpose Tests", "Code of Practice for Taxation of Banks", "Modernising Powers, Deterrents and Safeguards: Working with Tax Agents" and "Capital gains rules for groups of companies".

The Committee expects to be busy again following the 9th December Pre-Budget Report.

Gareth Miles of Slaughter & May has joined the Committee and we will be looking to expand our membership in the New Year.

Bradley Phillips, *Chairman*, Herbert Smith LLP

REGULATORY COMMITTEE

The CLLS Regulatory Committee (the "Committee") meets monthly and, from 15 September to 4 December 2009, it has submitted the following papers.

1. A response to the Working Document of EU Commission Services - DG Markt Consultation on the UCITS Depository Function

The Committee addressed the following issues of potential legal uncertainty arising out of the EU Commission's Consultation Paper.

- (i) Safe-keeping and administration duties of depositaries – The Committee agreed with the proposal that safe-keeping and administration duties of depositaries should be clarified, as should the applicable liability regime. However, it did not think that such clarification could occur in a vacuum and there must first be an assessment of the duties that

Committee Reports

are appropriate to impose on a depositary, against a background of a proper cost-benefit analysis which should enable the economic effect of different policy judgements to be understood.

- (ii) Eligibility to act as UCITS depositaries – The Committee did not agree with the EU Commission's view that only credit institutions should be eligible to be depositaries, either in the UCITS or in the Alternative Investment Fund Managers context. The Committee suggested that, when considering the nature and identity of the depositary, regard must be had to the context in which the depositary operates and the resources that are available to it to meet any liabilities.
- (iii) Proposed adjustments to the liability regime associated with the custody duties of the UCITS depositary – The Committee did not consider a liability regime could be developed until there was greater clarity of the duties that were expected and of the regulatory standards that would apply to such duties. In particular, the Committee suggested that the EU Commission must first analyse the duties that should be applied to depositaries and the standards to which these duties should be performed and examine the range of risks that could arise in connection with fund property, before deciding on an appropriate liability regime. Further, the Committee considered that a strict liability for sub-custodians would require a depositary to underwrite the solvency of each sub-custodian that it used, which would result in concentrating credit risk in the hands of depositaries and pose the problem of adding systemic risk to the banking system, as the failure of a sub-custodian would adversely impact the solvency of any depositary using it.

Particular thanks are due to Bob Penn and Margaret Chamberlain for their work on this submission.

2. A response to the Walker Report's call for greater shareholder engagement and comments on change in control requirements under the EU Acquisitions Directive

In response to the Walker Report's call for greater engagement by shareholders with the boards of financial institutions, the Committee indicated that it shared the concern of others that shareholder collaboration of the kind recommended by the guidance on the meaning of the term "acting in concert" published by the three Level 3 Committees (CEBS, CEIOPS and CESR) (the "Guidance") (which was drafted in extremely wide terms) may bring those shareholders within the controllers regime under

Part XII of FSMA, even though their activities were not linked to the acquisition of shares or voting power in the relevant regulated financial institution.

In the Committee's view, the precise scope of the Guidance remained unclear. In particular, the Committee considered that it was not clear whether supervisors in other EEA member states were in agreement with the FSA's approach, which may be particularly relevant on changes in control relating to financial groups where there were regulated subsidiaries throughout the EEA. The Committee urged the FSA to request a review of the Guidance, with a view to achieving agreement among EEA member states about the types of shareholder activity that could be carried out without concern about triggering notification requirements under the EU Acquisitions Directive.

Particular thanks are due to Patrick Buckingham for his work on this submission.

3. A response to the FSA's consultation on 'Transparency as a Regulatory Tool and Publication of Complaints Data' (CP 09/21)

The Committee welcomed the fact that the FSA's proposals included the same product/service groupings as those employed by the Financial Ombudsman Service. The Committee was concerned however that these groupings differed from the analysis criteria proposed in the European Commission's recently-published Communication on a harmonised methodology for classifying and reporting consumer complaints and enquiries. Further, the Committee believed that it would be appropriate for an alignment of the UK and EU groupings/criteria in order both to facilitate comparison by consumers and to ensure that the firms themselves were not unduly burdened with the responsibility of producing two separate sets of data.

Particular thanks are due to David Berman for his work on this submission.

4. A response to the FSA's consultation on 'Enforcement Financial Penalties' (FSA CP 09/19)

The Committee supported the FSA's efforts to make its approach to setting financial penalties more transparent and consistent so that the outcome of an enforcement action becomes more predictable. However, the Committee believed there was further work to be done, particularly in respect of the proposed treatment of individuals in the context of market abuse cases.

The Committee considered that the FSA's proposed



approach for individuals facing a penalty for market abuse contrasted markedly from the approach proposed for other contexts. Further, in the context of an individual facing a penalty, the Committee felt that the FSA's proposed approach was to attach the same level of seriousness to all market abuse cases. In the

Committee's view, by setting the base level for a market abuse fine at £100,000, this carried a message by the FSA that every instance of market abuse was very serious and that, in all cases, the individual's behaviour included avoidable elements. The Committee felt that this approach contradicted the statement in the Code of Market Conduct (reflecting the position under the Financial Services and Markets Act 2000) that intention was not a required element of market abuse.

The Committee also considered that the FSA's proposal regarding financial hardship did not address the fundamental principle of proportionality. Whilst the Committee agreed that the enforcement process should reflect the FSA's credible deterrence strategy, it believed that this must be balanced with fairness towards the individuals/firms in question and their financial circumstances.

Particular thanks are due to Richard Everett for his work on this submission.

5. A response to the FSA's consultation on 'Distribution of Retail Investments: Delivering the RDR' (FSA CP 09/18)

The Committee identified a number of areas in which it felt the FSA's proposals should be clarified. In particular:

- the definition of "retail investment products" was very broad, and did not appear to be wholly consistent with the FSA's policy objectives as set out in the Consultation Paper;
- the position of discretionary investment managers (including wealth managers) who act for retail clients was particularly unclear under the proposals;
- the proposed product provider requirements were very onerous, and placed strict obligations on providers where it was disproportionate and unreasonable to do so;
- proposals for "Professional Standards: Code of Ethics" needed to be carefully considered, given that it might

give rise to separate disciplinary consequences for an approved person, irrespective of the position under APER or FIT; and

- the FSA did not have the constitutional authority to establish a new Professional Standards Board.

Particular thanks are due to James Perry for his work on this submission.

6. Comments on the legislative framework for the regulation of alternative finance investment bonds (sukuk) published by HM Treasury and the FSA

The Committee illustrated its concern with the "reasonable commercial rates of return" clause in the proposed legislative framework for the regulation of alternative finance investment bonds ("AFIB"). In particular, the Committee considered the current drafting of the clause to be inappropriate in determining the regulatory perimeter, particularly given the proposed criminal law consequences of breaching the perimeter – the Committee believed that this approach was unprecedented. It also felt that it was unusual to define a product or service in financial regulation by reference to financial numbers and this type of assessment, rather than by reference to structure, purpose and legal terms. The Committee considered that this was not only inappropriate, but would create substantial uncertainty and undermine the very clarity and costs benefits of reform.

The Committee suggested that the definition of AFIB should be amended to allow for consideration in kind. It considered that, without this, AFIBs would not be available in situations where conventional debt securities were commonly used, for example, as part (or alternative) consideration in corporate acquisitions and, importantly in the current economic climate, corporate restructurings. Further, the Committee felt that restructurings where an existing sukuk was substituted for a new sukuk would be impossible. The Committee also commented that, this would indirectly place Islamic equity investors at a disadvantage when considering a takeover offer, since they could not be offered AFIBs in part or full consideration of their shares.

Particular thanks are due to Robert Finney for his work on this submission.

7. A response to the Tribunals Service's consultation on amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 to accommodate the transfer of the Financial Services and Markets Tribunal to the Upper Tribunal

The Committee noted that a key objective of the consultation was to create a new simplified framework for

tribunals and it agreed that, in principle, this was a sensible objective. However, in the Committee's view, the existing Upper Tribunal rules needed significant amendment, although it also anticipated that many of the more general provisions would be applicable or readily adaptable for the Financial Services and Markets Tribunal (the "FSMT").

The Committee considered that the Upper Tribunal rules would need to cater for reference notices and the way those interacted with statements of case, disclosure and handling applications by parties not directly involved in action by the FSA, but to whom rights to apply to the FSMT were given. The Committee anticipated that the Upper Tribunal Rules would draw upon the existing FSMT rules on these matters, but suggested that, given the potential application of the additions to other tribunals, the draft revisions to the proposed Rules should be consulted upon in due course.

Particular thanks are due to Richard Everett for his work on this submission.

Margaret Chamberlain, *Chairman*, Travers Smith LLP

CONSTRUCTION LAW COMMITTEE

In the Autumn the Committee responded to the Government's consultation on revising limitation periods and the likely impact such reforms would have on the construction industry. The Committee did not support the proposed changes as they believed they would lead to uncertainty and increased costs. In addition they did not believe, that as far as the construction industry was concerned, that there was a problem that needed fixing. It became apparent that many others shared the Committee's view as in November the Government decided not to progress the issue further. A copy of the Committee's response is on the CLLS website.

When it last met the Committee discussed the increasing trend of landlords refusing to procure that their insurers grant a waiver of subrogation to tenant's fit out contractors. This can lead to tenants having to incur considerable cost should their fit out contractor need to take out additional insurance due to the absence of such a waiver. The tenant would then invariably seek to pass that cost on to the landlord via demands for extended rent free periods or other landlord incentives. As this trend is causing increasing problems in a fragile lettings market the Committee decided to set up a working group to investigate the reasons behind this apparent change in policy by insurers. To assist and to reflect the different areas of law involved, representatives from the Land Law and Insurance Committees have been invited to participate in the investigation. A first meeting is scheduled for early January and will begin by discussing the issue with leading insurance brokers and representatives from the JCT.

The Committee has decided, following positive feedback received, to repeat the two entrance level training sessions for junior associates and trainees (last held in 2007) in March 2010. When dates are finalised they will be posted on the Committee's website.

Marc Hanson, *Chairman*, Ashurst LLP



FOX PERSONALITY ANALYSIS



As a specialist in partnership and employment law, I have noticed that the true reasons why partners and executives at a senior level either stay at one firm or move on are often bound up with the character of a firm and individual personality issues.



Car marques too each have separate and distinct personalities. I have recently been examining Volvos. First off was a Volvo 122 S built in 1964 which I drove courtesy of the Classic Car Club. If ever there was a car with a split personality, the Volvo Amazon was it.

At first sight the American influence is obvious: vestigial fins and outsize chromium-plated hubcaps outside and a ribbon-style speedometer with an elegant bright metal horn ring inside. The performance and road-holding, on the other hand, were well up to European standards. The example I drove had a precise four-on-the-gearbox and firm suspension. There was no problem keeping up with traffic on the motorway although noise levels from the large diameter exhaust system were high until the electric overdrive was switched on. Two speed wipers (rarely found on cars of this vintage) made light work of driving rain. The steering was highly accurate though heavy at parking speeds despite the huge steering wheel.

The Amazon helped to establish Volvo as a manufacturer of safe, reliable cars. Volvo was a pioneer in the development of the modern three-point seat belt introducing it as standard equipment in 1959. The car I drove also had rudimentary padding on the dashboard.

The lighting, heating and demisting systems were designed to withstand the rigours of a Swedish winter; the Volvo coped easily with a cold, wet autumn day in Cornhill. Some years ago a Volvo television advertisement showed the engine starting without problems even after being drenched with water from a high pressure fireman's hose.

Certainly the car lent to me by the Classic Car Club started first time every time. Perhaps that is a tribute to meticulous maintenance. If you are interested in driving classic cars without the hassles associated with ownership – insurance, maintenance, storage, security and breakdown recovery - this is the answer. The Old Street branch is handy for the City. Details are on www.classiccarclub.co.uk. Anyone who joins the

Club during the next six months mentioning the CLLS/CLSC newsletter and the reference: FL007 will receive a free weekend in the Volvo Amazon, a 10 per cent discount on the cost of points and a 12 per cent bonus on points. So you could pay £3,375 (plus a £500 joining fee) and receive 840 points for Entry Level membership.

For years the typical Volvo customer attracted by the safe, dependable personality of the 120 series was middle-class, middle-aged, drove his mid-sized car in the middle of the road and wore a hat. I suspect many solicitors bought the 120.

Directly after driving the Amazon I went for a ride in a diesel-engined S 80. This particular S 80 was built in 2000, not long after Ford had acquired Volvo. I was pleased to find that the same solidity. The S 80 is strongly built and likely to last a very long time. Some of the body and trim panels are designed to crush in an impact but everything is properly screwed together. Luxury equipment was intended to move Volvo up-market and attack the Mercedes E class head-to-head. Pretensions of grandeur?

Now Ford is hoping to sell Volvo. Perhaps that is why the marketing people at Volvo are currently engaged in a determined attempt to change the personality of their cars?

A current advertisement for the Volvo C30 is headed "There's more to life than a Volvo" and features pictures of fit young men wearing swimming trunks. The text says, "Surges of Adrenaline and bursts of inspiration. Striking design with lower emissions. Leaving conformity and convention in the dust".

This is a serious assault on the personality of the marque. We shall see whether the traditional Volvo values – and the appeal of the cars to lawyers – survive.