

Monthly E-Briefing (Issue 48– September/October 2014)

CLLS Twitter account

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European Commission White Paper: "Towards more effective EU merger control"

The **Competition Law Committee** responded to the above consultation. ([Click here](#) for the consultation document and [click here](#) for the response.) The European Commission sought views on possible improvements of the EU Merger Regulation contained in the White Paper "Towards more effective EU merger control". The proposals (as described by the Commission) in particular included "A light and tailor-made review of those acquisitions of non-controlling minority shareholdings which could harm competition", as well as proposals to:

- make case referrals between Member States and the Commission more business-friendly and effective;
- make procedures simpler; and
- foster coherence and convergence.

The submission responded in detail to the White Paper.

HMT consultation: "Transposition of the Bank Recovery and Resolution Directive"

The **Financial Law Committee** and the **Insolvency Law Committee** of the CLLS and the Banking Reform Working Group of the Law Society of England & Wales submitted a joint response to the above consultation. ([Click here](#) for the consultation document and [click here](#) for the response.) The consultation considered some of the key issues to be addressed in the transposition of the Bank Recovery and Resolution Directive, and sought views from industry and others potentially affected by the changes. The submission responded in detail to the consultation questions. It also urged the Government, once the current round of legislation is complete, to address as a priority the production of consolidated legislation in the fields of financial services and bank regulation, or, at least, the prioritisation of production of official consolidated texts for the statutes and key SIs.

The **Regulatory Law Committee** also responded separately to the consultation ([click here](#) for the response). The response focussed on the proposals for removing the impediments to resolvability discussed in section 3 of the consultation document; and in particular the proposals to give enforcement powers for early intervention to the Bank of England.

Insolvency Service consultation: "Insolvency Proceedings: Review of debt relief orders and the bankruptcy petition limit"

The **Insolvency Law Committee** also responded to the above consultation. ([Click here](#) for the consultation document and [click here](#) for the response.) The consultation sought views on

how debt relief aids have performed (since they were introduced in April 2009) and how they could be improved. It also sought views on whether the creditor petition limit (currently £750) should be increased. The response stated, inter alia, that the Committee believed that there are two key principles which should shape any consideration of the relationship between the Debt Relief Order (DRO) and bankruptcy regimes, namely that:

- An individual in severe financial difficulties should always be able to apply for either a Debt Relief Order or a bankruptcy order; and
- As a general rule, an individual in severe financial difficulties should not be forced to choose bankruptcy rather than a DRO, where their bankruptcy is unlikely to result in any repayment for creditors, given the value of that individual's assets.

Insolvency Service consultation: "Continuity of supply of essential services to insolvent businesses"

The **Insolvency Law Committee** also responded to the above consultation. ([Click here](#) for the consultation document and [click here](#) for the response.) The consultation referred to powers taken in the Enterprise and Regulatory Reform Act 2013 which enable the Government to build upon existing legislative provisions contained within the Insolvency Act 1986 relating to the protection of supply of essential utility services for insolvent businesses. The consultation sought views on the exercise of the powers, with a view to ensuring insolvency practitioners are more effectively able to rescue viable businesses. The submission argued that the wording of the Draft Order should be conformed as far as possible to the equivalent provisions contained in the SAR and FSBRA, and also made general comments in relation to the priority of supplies made after the appointment of an administrator, and provision by the Insolvency office holder of a personal guarantee. The submission also responded to the specific consultation questions.

English Heritage: "Consultation on Historic Environment Good Practice Advice in Planning"

The **Planning & Environmental Law Committee** responded to the above consultation. ([Click here](#) for the consultation document and [click here](#) for the response.) The consultation invited views on several "Historic Environment Good Practice Advice Notes", namely notes on "The Historic Environment in Local Plans", "Decision-Taking in the Historic Environment" and "The Setting of Heritage Assets". The purpose of the notes was described as being to provide information on good practice to assist local authorities, planning and other consultants, owners, applicants and other interested parties in implementing historic environment policy in the National Planning Policy Framework and the related guidance given in the National Planning Practice Guide. In its submission, the Committee stated that it viewed the amalgamation of English Heritage's advice into one source as a positive step. The Committee also noted that, as much of the advice had been previously published, it had no particular concerns in respect of the contents, and that the submission responded only to the questions raised. The submission went on to respond in detail to the consultation questions.

DCLG: "Technical consultation on planning"

The **Planning & Environmental Law Committee** also responded to the above consultation. ([Click here](#) for the consultation document and [click here](#) for the response.) The consultation put forward a range of proposals, which DCLG stated would "further improve the planning system and build upon the improvements we have already made". The Committee submitted a detailed response to the consultation questions.

HMRC consultation: "New employee shareholding vehicle"

The **Revenue Law Committee** responded to the above consultation. ([Click here](#) for the consultation document and [click here](#) for the response.) By way of background, at Budget 2014 the government announced it would seek views on the Office of Tax Simplification's (OTS) recommendation to introduce a new employee shareholding vehicle to make it easier for companies wishing to manage their employee share arrangements and create a market for employees' shares. The discussion paper explored the case for change made by the OTS and the potential issues that the introduction of an employee shareholding vehicle would raise. The submission responded in detail to the specific consultation questions.

HMRC consultation "Strengthening the Tax Avoidance Disclosure Regimes"

The **Revenue Law Committee** also responded to the above consultation. [Click here for the response paper](#) The consultation sought views on proposals to further strengthen Disclosure of Tax Avoidance Schemes (DOTAS) and initial thinking about how the VAT Disclosure Regime might be updated. The response looked at the issues of the financial products hallmark, impact on business, the dual purpose of DOTAS and good administration.

Regulatory Law Committee

The **Regulatory Law Committee** also responded to the FCA's call for examples of retrospective application of rules by the FCA/FSA [click here for the response paper](#) and the ESMA CP 809 on MAR technical standards [click here for the response paper](#).

Training Committee meeting with the SRA

The **Training Committee** invited representatives of the SRA, including the chair of the Education and Training committee and the Director of Education and Training to their October meeting to talk about the Competence Statement for Solicitors, which together with an underpinning Statement of Legal Knowledge and Threshold Statement would be released for consultation later in the month. These three documents would constitute a framework for the education and training requirements for qualification as a solicitor and continuing professional development. The Statement of Competence is fundamentally a statement of the skills set which solicitors are required to have upon qualification and in practice. The meeting was advised that the statement of legal knowledge was being tested by academics and selected practitioners and the committee understands that it will not be the subject of a separate consultation. How the skills in the Statement of Competence and the legal knowledge requirements will be assessed is not yet settled and will be the subject of a further consultation in twelve months' time. Whilst there are clearly fundamental aspects of the education and training requirements for qualification not covered by the October consultation, the consultation represents a very significant and important first step.

Finally, if your firm would like to take part in the CLLS Annual Quiz Night on 18th November, we still have a few places available. [Click here for details](#).

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Useful links:

The Law Society

**The Solicitors Regulation
Authority**

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**The City of London Law
Society**

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