

Monthly E-Briefing (Issue 52 – November 2015)

The latest submissions from the City of London Law Society's Specialist Committees are listed below.

CLLS Twitter account

A reminder that all CLLS response papers are announced on Twitter as soon as they are published - follow us @TheCLLS.

Competition Law committee

The Committee put in a response to the European Commission's White Paper: "Towards More Effective EU Merger Control". [Read paper.](#)

Company Law Committee

The Company Law Committee made two submissions on Response to Shareholder Voting Working Group regarding Shareholder proxy voting: Discussion paper on potential progress in transparency (July 2015), and the FCA's consultation document entitled 'CP15/28: Quarterly Consultation Paper No. 10'1, released on 4 September 2015.

[Read shareholder proxy voting paper.](#)

[Read quarterly consultation paper.](#)

Construction Law Committee

The Construction Committee ran its construction foundation training course over two Fridays in October and November. [See programme.](#)

Insolvency Law Committee

The Insolvency Law Committee submitted a response to the Law Commission Consultation Paper entitled "Consumer Prepayments on Retailer Insolvency". [Read paper.](#)

Land Law Committee

The Land Law Committee prepared an Asset and Development Management Agreement to cover a wide range of property development activity over large and small projects.

[View the Agreement.](#)

Litigation Committee

The response from the Committee to the Ministry of Justice's Consultation Paper entitled "Court and Tribunal Fees" is attached. This paper reinforced the concerns of the Committee and its members about the continuing process by the Ministry of Justice of increasing court fees in the courts and tribunals England and Wales. [Read paper.](#)

Professional Rules and Regulation Committee (PR&RC)

The Committee put in a response to the SRA's discussion paper "Protecting Clients' Financial Interests" (the "Discussion Paper"). [Read paper](#)

Regulatory Law Committee

The Committee commented on the FCA's Discussion Paper on Smarter Consumer Communications (the DP), focusing on legal issues in connection with the use of "smart" formats in the design and delivery of firms' terms and conditions (T&Cs) and potential suggestions for improving accessibility of T&Cs without compromising legal certainty.

[Read paper.](#)

HM Treasury published on 21 July 2015 a technical consultation on proposals in the Bank of England Bill that are intended to strengthen the Bank's governance, transparency and accountability, enhance the ability of the Bank to discharge its macroprudential, microprudential and monetary policy responsibilities in a co-ordinated way, and ensure that the UK's crisis management arrangements keep pace with developments in resolution policy. [Read the response paper.](#)

Training Committee

The Committee met with the SRA on 13th October to discuss the ongoing process of reform of access to the profession and professional qualifications. The approach of the CLLS was set out in the attached briefing note.



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members briefing not

General matters

The period covered by this report includes the launch of the Brexit negotiations with the Prime Minister's letter to the EU Commission, and the discussions with the Lord Chancellor and Ministry of Justice at the roundtable chaired by the CLLS in the aftermath of the Lord Chancellor's speech at the Legatum Institute on the subject of pro bono and the policy of a levy floated in its aftermath.

Lord Chancellor's Speech/:Levy/Pro Bono

The Lord Chancellor attended a round table meeting at Clifford Chance on Monday 27th October with senior partners and pro bono managers of a number of City of London law firms to discuss pro bono work carried out by solicitors within the City. The meeting discussed pro bono work, the range of activities carried out by the firms, and the potential for growth in this sphere. The meeting also discussed a proposed levy on the turnover of City of London law firms, a proposal which had arisen in the days before the meeting.

The discussion with senior partners continued over a dinner on Tuesday 28th October.

The main issues comprised the range and value of pro bono work carried out by the City of London, the impact that any levy on the City of London law firms would have on their commitment to pro bono work, the impact that such a levy would have on the overall work carried out by City law firms and whether international competition faced by London law firms would be increased in the event of a levy being imposed.

Brexit

The Prime Minister sent his much trailed letter to Donald Tusk, a copy of which is [here](#).

The response to the letter was mixed. Tim Farron and Lord Mandelson were among those who expressed support for the scope of the letter: several Conservative MPs and MEPs were not encouraged by its limitations. There have been calls for the supremacy of UK law and UK courts to be added to the negotiation.

Schengen

The ongoing migrant crisis and its impact upon freedom of movement within the EU has led to calls for the suspension and even abolition of the Schengen zone. Several EU countries have re-imposed border controls, including Austria, Slovakia, the Netherlands, Sweden, Finland and Norway, while Hungary and Slovenia have constructed fences to limit the numbers of those entering their countries. There have been calls for a mini-Schengen comprising Austria, Germany and the Benelux countries.

The EU met at a summit in September, and apportioned the numbers of migrants between members states. While some saw the plan as a blueprint for future ways of dealing with movement and settlement of refugees in the EU, there was strong opposition from Hungary, Slovakia, Romania and the Czech Republic, and the plan was accepted only by majority voting.

Since then, the plan has come under sustained and strong criticism, with Hungary calling it a “mad and unfair” way to tackle a crisis. Poland’s new government stated that the plan was “wrong, too naive and idealistic.” Slovakia, Czech Republic and Bulgaria have also come out against it. Hungary has now announced that it intends to challenge the plan in the Court of Justice of the EU in Luxembourg.

The impacts of the atrocities in Paris have also led to increased calls for tighter external borders and for Schengen to be scrapped.

Tax Credits

Votes in the House of Lords on the Draft Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 saw HM Government defeated in two divisions in October.

The Chancellor had to revise his spending plans in the run-up to the Spending Review to deal with a potential reduction in revenue, and has been in negotiation with spending departments to agree further cuts. The Spending Review is on 25th November.

Strathclyde Commission

Following the House of Lords vote, HM Government announced that it had commissioned

Lord Strathclyde to lead a review into how to secure the decisive role of the elected House of Commons in the passage of legislation.

The purpose of the review is to examine how to protect the ability of elected Governments to secure their business in Parliament in light of the operation of these conventions. The review will consider in particular how to secure the decisive role of the elected House of Commons in relation to its primacy on financial matters, and secondary legislation.

Lord Strathclyde is being supported in his work by a small panel of experts, with the aim of submitting his recommendations to the Prime Minister, initially by the end of the year.

Other:

The prospect of a **fixed costs regime** being introduced was discussed both at the Law Society and at the Conservative Party Conference. Further details are [here](#).

The Government announced the creation of a **National Infrastructure Commission**, an independent body for long term strategic decision-making to build effective and efficient infrastructure for the UK.

The commission was set up 5 October 2015 to look at the UK's future needs for nationally significant infrastructure so as to help to maintain UK's competitiveness amongst the G20, and provide greater certainty for investors by taking a long-term approach to the major investment decisions facing the country. Lord Adonis is to chair the commission and he has moved to the Cross Benches in the House of Lords. [Read announcement](#).

The Government announced that the £5.9m **prisons training contract** with Saudi Arabia was not to proceed. The deal would have involved British civil servants training their Saudi counterparts. This episode, along with criticism of the Saudis from human rights NGOs and politicians, led to the threatened withdrawal of the Saudi ambassador to the UK back to Riyadh, forcing the Prime Minister to intervene to bolster the UK/Saudi relationship.

Jo Johnson published his **Green Paper on higher education**, with aim of driving up teaching standards and giving students more information through a new Teaching Excellence Framework which it is hoped will encourage a greater focus on high quality teaching and graduate employment prospects. The Green Paper also aims to widen participation for students from disadvantaged backgrounds and encourage providers to increase focus on supporting all students through their course and into employment or further study. A new Social Mobility Advisory Group is to report to the Universities Minister with a plan to increase the proportion of disadvantaged students entering higher education and increase the number of BME students by 20% by 2020. Faster access to Degree Awarding Powers and University Title is intended to make it easier to establish a new university, thereby widening the range of high-quality higher education providers. A new Office for Students is to be set up to promote the student interest and value for money, and reduce the regulatory burden on the sector. [View consultation](#).

The Justice Select Committee held evidence sessions in its inquiry into **Courts and tribunals fees and charges** in late October 2015, with the controversy about the question of imposing extra costs on those in the criminal courts system continuing. It is likely that such charges, which have raised a very small amount, will be amended or withdrawn.

The draft **Investigatory Powers Bill** was published on 4 November. The draft Bill will bring together all interception powers currently under RIPA and the Wireless Telegraphy Act 2006. It will limit the ability to seek interception warrants to the existing nine intercepting authorities and existing three statutory purposes. It will introduce a new safeguard requiring that Judicial Commissioners must, as well as Ministers, approve warrants before they come into

force. Applications for targeted interception warrants will need to specify a particular person, premises or operation. The powers under which stored communications may be accessed will be limited and the use of covert powers made subject to IPC oversight. [View Bill](#).

The **devolution** of powers to the national assemblies continued to be implemented with the Scotland Bill putting “the Vow” of the referendum campaign on the statute books passing through its House of Commons stages, with first reading in the House of Lords taking place on 10th November. Second reading is scheduled for 24 November. [View Policy Papers](#).

A new Wales Bill has been published which will create a new Welsh devolution system, moving to a reserved powers model similar to the one which currently operates in Scotland. The draft Bill devolves important new powers over energy, transport and local government and Assembly elections. [View Draft Bill](#).

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