



The City of London Law Society

Monthly E-Briefing (Issue 38 – January/February 2013)

Committee vacancies

The **Associates Forum** has four vacancies to fill and is therefore seeking applications from prospective new members. [Click here](#) for details. Applications close 30 April 2013.

The **Financial Law Committee** has one vacancy to fill as a result of a resignation and is therefore seeking applications from prospective new members. [Click here](#) for details. Applications close 30 March 2013.

FRC discussion paper “Thinking about disclosures in a broader context: A road map for a disclosure framework”

The **Company Law Committee** recently responded to the Financial Reporting Council's discussion paper “Thinking about disclosures in a broader context: A road map for a disclosure framework” (see <http://bit.ly/XUrNSA> for the consultation document and [click here](#) for the response paper.) The paper set out a road map for a disclosure framework for financial reporting aimed at improving the quality of disclosure and their value to the users. The paper was particularly focussed on “the reduction of clutter in financial reports by avoiding duplication in disclosures and using tests of materiality more rigorously.” The response welcomed the FRC's initiative in promoting discussion regarding a disclosure framework. In particular, it saw significant benefits from a framework that will guide standard setters and regulators with a view to ensuring that obligations on preparers are consistent (“joined up”). The response provided comments on the different themes that emerged in the Discussion Paper.

Euroclear consultation “CREST Rule 13: settlement finality in respect of complex transactions”.

A joint working party (JWP) of the CLLS **Financial Law** and **Insolvency Law Committees** recently responded to the Euroclear UK & Ireland consultation “CREST Rule 13: settlement finality in respect of complex transactions”. (See <http://bit.ly/14767GE> for the consultation paper and [click here](#) for the response).

The response contained a detailed analysis and stated in conclusion that “It therefore appears that, in straightforward situations, the impact of the “relation back” approach would not prejudice relevant parties, and might enable CREST settlement to occur where this is considered in the interests of the insolvent member and market participants and is consistent with the discharge of EUI's regulatory functions to enhance the stability of the financial markets and promote wider financial stability.”

Proposed changes to the European Insolvency Regulation: call for evidence

The **Insolvency Law Committee** (along with the Insolvency Lawyers' Association and the

Association of Business Recovery Professionals (“R3”) recently produced an initial response to the Insolvency Service’s Call for Evidence on European Commission proposals for EU insolvency reform. (See <http://www.bis.gov.uk/insolvency/Consultations/EU-CallForEvidence> for the consultation paper and [click here](#) for the response.) The **Financial Law Committee** also expressed its whole-hearted support for the views expressed in the submission – [Click here](#). The Call for Evidence related to the European Commission’s publication of its proposals to reform EU insolvency law in December 2012. As part of its ongoing discussions with UK stakeholders, The Insolvency Service sought views and evidence on the likely costs and benefits of the Commission’s proposals, and whether the Government should opt-in to the proposals. The response focussed in particular on the questions of opt-in and the listing of schemes of arrangement. The submission stated, inter alia, that “[w]e very firmly believe that the UK should opt in to the negotiations on the proposed Regulation”, and that opting out of the negotiations would be contrary to the interests of the UK.

New Land Law Committee precedent document

The **Land Law Committee** recently published a precedent “Deed of Release of Rights to Light and Air”. ([Click here](#) for the document).

Specimen terms of business for the supply of services by a barrister in a commercial case

The CLLS and the Commercial Bar Association (“COMBAR”) have published specimen terms of business for the supply of services by a barrister in a commercial case, together with a guidance note on those terms. As the associated press release ([Click here](#)) stated: “The CLLS and COMBAR have agreed a standard form of contract for use in commercial cases by solicitors and barristers. This form of contract is the product of more than two years of constructive discussions between CLLS and COMBAR, both of whom recognised the benefits to both barristers and solicitors of having a form of contract agreed by representatives of the two sides of legal profession rather than one imposed unilaterally or that needed to be negotiated from scratch on each occasion a barrister is instructed.

Use of the terms is voluntary, and the terms will need adaption for individual cases. The terms were negotiated with a view to saving individual parties from either drafting their own terms or having to start from a clean sheet of paper each time a barrister is instructed.”

[Click here](#) for the COMBAR/CLLS Guidance note on the Agreement for the Supply of Services by a Barrister in a Commercial Case and [click here](#) for the COMBAR/CLLS specimen Agreement for the Supply of Services by a Barrister in a Commercial Case.

DCLG consultations on “Nationally Significant Infrastructure Planning” and “Planning performance and the Planning Guarantee”

The **Planning & Environmental Law Committee** recently responded to the DCLG consultation “Nationally significant infrastructure planning: expanding and improving the ‘one stop shop’ approach for consents”. (See <http://bit.ly/WxXnpz> for the consultation paper and [click here](#) for the response). The consultation’s aim was to seek views from interested bodies on:

- what consents should be moved within the scope of an expanded ‘one stop shop’ for major infrastructure, and
- proposals for streamlining the current list of statutory consultees that developers are required to consult before applying for a development consent order.

The Committee’s response generally welcomed the Government’s proposals, and responded in detail to the consultation questions.

The Committee also recently responded to the DCLG consultation. “Nationally significant infrastructure planning: extending the regime to business and commercial projects”. (See

<http://bit.ly/Zn60Sq> for the consultation paper and [click here](#) for the response.) As the consultation document stated, “To help speed up planning decisions for the most complex projects and to increase choice for developers, the government proposes to extend the scope of the Planning Act 2008 so that a wider range of development can be brought within the nationally significant infrastructure planning regime. This will allow developers of nationally significant business or commercial projects to apply to the Secretary of State for the option of using the streamlined planning regime set out in the Planning Act.” The consultation sought views about the proposal to extend the nationally significant infrastructure regime and, in particular, about the types and forms of business and commercial projects to be prescribed in regulations. The submission responded in detail to the various consultation questions.

The Committee also responded to the DCLG consultation “Planning performance and the Planning Guarantee”. (See <http://bit.ly/134EiPB> for the consultation paper and [click here](#) for the response.) The consultation linked to the Government’s proposals, contained within Clause 1 of the Growth and Infrastructure Bill, to introduce legislation to give applicants the choice of submitting planning applications direct to the secretary of state, where the local planning authority is underperforming. The consultation sought views on what measures to use to identify an authority’s performance, how to identify underperformance and how to identify improved performance and related measures to underpin the Planning Guarantee. The submission welcomed this further initiative to speed up planning procedures in an attempt to secure the delivery of much needed development and growth, and responded to the specific consultation questions.

MoJ consultation on the judicial review process.

The Committee also recently responded to the Ministry of Justice consultation “Judicial Review: proposals for reform”. (See <https://consult.justice.gov.uk/digital-communications/judicial-review-reform> for the consultation document and [click here](#) for the response.) In the consultation, the Government sought views on a package of measures to stem the growth in applications for judicial reviews. The measures aimed to tackle “the burden that this growth has placed on stretched public services whilst protecting access to justice and the rule of law”. The engagement exercise sought views on various proposals including reducing the time limits for bringing a judicial review relating to procurement or planning (in order to bring them into line with the appeal timetable which already applies to those cases). In general terms, the submission welcomed the Government’s proposals and in particular the efforts to reduce delay in the judicial review procedure and to introduce more rigour to the screening of judicial review claims at the permission stage. The response also set out more detailed comments in response to the questions raised in the consultation paper.

SRA’s “Co-operation agreements” consultation

The **Professional Rules & Regulation Committee** (“PR&RC”) recently responded to the SRA consultation “Co-operation agreements”. (See <http://www.sra.org.uk/sra/consultations/consultations-closed.page> for the consultation document and [click here](#) for the response.) The consultation noted that the SRA is “considering a policy of entering into co-operation agreements, in appropriate cases, with witnesses to misconduct who may themselves have had some involvement in the wrongdoing. Typically, this would involve a witness to the misconduct in question co-operating with a wider investigation or prosecution in respect of other regulated persons. The intention is to facilitate reports of misconduct to the SRA by clearly setting out how prompt and frank reporting and co-operation by regulated persons in a wider investigation could mitigate that person’s own regulatory position.” The consultation sought views on the benefits and risks and, ultimately, upon whether such a policy would be desirable.

The response noted that co-operation agreements comprise just one category of whistleblowing matter - c.f. whistleblowing in cases where a potential witness has not committed any breaches or misconduct. As such, it stated that cases in which co-operation agreements might be used are likely to form only a small sub-set of matters which a firm will be required to report to the SRA each year. In this context, it noted that the CLLS would welcome a more comprehensive policy and guidance from the SRA generally on the reporting (including internal reporting) of breaches and misconduct by law firm participants. The paper also noted that, only within this context and subject to a number of provisos and amendments (which the paper listed), does the CLLS support the draft policy.

HMRC discussion document and draft guidance on Tax and Procurement

The **Revenue Law Committee** recently responded to the HMRC discussion document and draft guidance on Tax and Procurement (see <http://bit.ly/115bkdk> for the consultation paper and [click here](#) for the response.) The discussion document outlined the background of the proposal and set out in detail the elements of the proposal on tax compliance and procurement relating to the declaration of tax compliance. The submission made a number of comments on the proposals and noted in summary that “for efficient procurement the playing field needs to be level and seen to be level. These proposals risk this not being the case and that ultimately will not benefit the wider body of taxpayers and may severely prejudice particular businesses.”

HMRC consultation on GAAR draft legislation and Guidance

The Committee also recently commented on the GAAR draft legislation and Guidance. (See http://www.hm-treasury.gov.uk/tax_avoidance_gaar.htm for background, and [click here](#) for the comments.) The response made a number of drafting points in relation to the draft legislation, as well as some general comments concerning the draft Guidance. It also noted, in summary, that the legislation together with the Guidance needed to draw in much clearer terms the boundaries between what is reasonable and unreasonable tax planning. The Committee noted that, in its view, the current drafts did not achieve this.

SRA’s “Red Tape Initiative”

The **Training Committee** recently responded to the SRA Consultation "Red Tape Initiative: Removing unnecessary regulations and simplifying processes". (See <http://www.sra.org.uk/> for the consultation paper and [click here](#) for the response.) The response focussed on the consultation’s education and training related proposals (Proposals 5-10).

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