



City Solicitor

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



Lawyers at their Peak [p.19](#)

Master's Word [p.6](#)

Prizes 2009 [p.8](#)

Young Solicitors and the City [p.12](#)

City of London Law Society

Committee Members

President

The Master

Chairman

† D.A. McIntosh, QC (Hon)

Secretary

N.A. Cameron

Administrator

Mrs E.J. Thomas, B.A.

Policy & Committees Co-ordinator

R.S. Leeder

Committee

† CHAIRMAN
PRESIDENT

† P. Barnes

† S.W. Davis

Miss S. Hawes

N.M.L. Hughes

V.T. Keaveny

C. Martin

A.G. Murray-Jones

Ms J.C. Palca

† Ms. F.A.E. Palmer

Miss K.D. Richardson

M.C. Roberts, B.A.

Ms C.F. Usher

M.A. Webster

† Alderman J.R.C. White, T.D.

* Alderman D.H. Wootton

* Ex-officio appointed by the CLSC

† Ex-officio as members of the Council of The Law Society

Clerk to the Company and Secretary of the City of London Law Society

Neil Cameron

4 College Hill, London, EC4R 2RB

Tel: 020 7329 2173 Fax: 020 7329 2190

Email: mail@citysolicitors.org.uk

Editorial Board

John Abramson

58 Fenchurch Street, London, EC3M 4AB

Tel: 020 7954 8525 Fax: 020 7954 8961

Email: john.abramson@aig.com

Elizabeth Thomas

4 College Hill, London, EC4R 2RB

Tel: 020 7329 2173 Fax: 020 7329 2190

Email: mail@citysolicitors.org.uk

City of London Solicitors' Company

Court of Assistants

Master

Alderman Sir David Lewis

Senior Warden

Alderman D.H. Wootton

Junior Warden

Alderman J.R.C. White, T.D.

Stewards

I.C.S. Morpeth

J.M. Abramson

Full Assistants

Past Master A.J.C. Collett, LL.B.

Past Master N.C.C. Bamping, LL.B.

Past Master Miss K.D. Richardson, M.A.

Past Master W.J.L. Knight

Past Master Ms A.L. Marks

M.C. Roberts, B.A.

V.T. Keaveny

Alderman Mrs C.F. Woolf, C.B.E.

N.M.L. Hughes

Additional Assistant

Mrs J.M. Gaymer, QC (Hon), C.B.E.

D. Thomas

Chairman of The City of London Law Society

D.A. McIntosh, QC (Hon)

Ex-Officio Assistants

Past Masters

J.H. Snaith

J. Guillaume

P.J. Purton, O.B.E., L.M.R.T.P.I.

D.F. Gray, M.A.

E.P.T. Roney, C.B.E., M.A., Dep.

Sir Max Williams

M.H. Sheldon, C.B.E., M.A.

K.S.G. Hinde, O.B.E., T.D., M.A.

J.A.E. Young, LL.B.

D.L. Biddle, M.A.

R.H.V. Dixon, M.A.

J.A. Rowson

Sir Christopher Walford, M.A., D.C.L.

His Hon. Harvey Crush

S.N. Beare, M.A., LL.B.

W.L. King, M.A.

J.F. Avery Jones, C.B.E., M.A., Ph.D., LL.M.

R.D. Fox, M.A.

M.R. Mathews, M.A.

Alderman Sir Robert Finch

M.J. Cassidy, C.B.E., B.A., M.B.A., Dep.

J.E. Hume

Past Master B.J. Greenwood, LL.B.

Clerk

N.A. Cameron

Contents

Editorial p.3

Chairman's Column p.4

Master's Word p.6

Prizes 2009 p.7

Dates for 2009 p.8

Members' News p.9

**Article by Company Prize Winner
Preena Patani p.10**

Young Solicitors and the City p.12

Committee Reports p.13

Policy and Committees Coordinator's Report **p.13**

Financial Law Committee **p.13**

Land Law Committee **p.13**

Training Committee **p.14**

Company Law Committee **p.14**

Revenue Law Committee **p.15**

Insurance Law Committee **p.15**

Litigation Committee **p.15**

Regulatory Committee **p.16**

Professional Rules and Regulation Committee **p.18**

Cricket on Everest p.19

Fox Goes Clubbing p.20

Editorial



Future generations will hear from us that the first half of 2009 was challenging. City lawyers have responded to a variety of challenges in a variety of different ways. We are delighted to recognise and welcome our new Master, Alderman Sir David Lewis, who has stepped up to meet

the challenge of being Master of the Company for the forthcoming year. Sir David has undergone a year's intense training for the role at the Mansion House and we are privileged to have the benefit of his experience, knowledge and personality for the next 12 months. We welcome him and wish him every success during his term of office.

Joining the legal profession is challenging for any young lawyer. The demands of the City profession make it more so. In this edition we feature articles from two young lawyers, the Company Prize winner Preena Patani, and Liveryman Fleur Palmer, who provide differing perspectives.

And then to the physical challenges that we face. Michael Preston's piece recounts in fascinating detail how two City solicitors have managed to succeed on an unlevel playing field.

The Editorial Board wishes all readers, a happy, healthy and warm summer.

John Abramson
AIG, Editor

Front Cover: Michael Preston and his cricket team at Mount Everest.

Chairman's Column

David McIntosh, QC (Hon), Rodney Warren & Co,
Chairman of the City of London Law Society



It has, I believe, been another good year for the Society despite the business recession.

We have maintained our individual and corporate membership with the latter standing at 52 firms.

With the help and guidance provided by an external survey on what our members want from us and the sharpening of our communications with the help of our PR advisors and – of considerable importance – mandates given to those of us who speak up on behalf of the Society and its members by our very representative main Committee – we have become an influential voice for City solicitors.

Recently, having had our say, we have stepped back from further media comment in relation to the Hunt and Smedley reviews of regulation because of the danger of diluting our impact if we say too much on the same topic too often.

This increased visibility – which extends to a number of our specialist Committee Chairs – will increase our influence with those we regularly meet and lobby including the Government, the SRA, the European commission and the national law society.

This is because we are able to contribute to the important regulatory debate in interesting and important ways with the considerable weight of our membership behind us.

It is not a co-incidence that so many of Nick Smedley's criticisms of the SRA and his recommendations for improvement reflect our city orientated concerns.

We and our members, many of whom met with Nick Smedley individually, have put forward the right arguments to him and expressed commonly held concerns regarding the inappropriateness of the SRA's current non-differential approach and lack of understanding of how commercial practice is conducted by large commercial firms.

At the moment we are waiting for the SRA's substantive response to Smedley's recommendations and once that is published we are poised to respond privately and/or publicly.

Although the activities of our Professional Rules and Regulation Committee chaired by Chris Perrin, with its membership drawn from Clifford Chance, Linklaters, Slaughter and May, Travers Smith, Taylor Wessing, Pinsent Masons, Freshfields, Allen & Overy, Olswang, DAL Piper, Lovells and Herbert Smith, has been foremost on the regulatory focus, our other 16

specialist Committees have (as has been the case over many years) been carrying out sterling work for our membership.

In the past this has been mostly unsung but now through our sharpened media profile our Committees' "newsworthy" activities are being more widely noted and through our regular emails and other reports, summaries of all our Committees activities are regularly promulgated to our membership.

Time constraints do not allow me to refer to every important contribution of our Committees but I do wish to mention one matter which bears on the extent to which Committee work is recognised as something which contributes to the business and financial needs of the City. It is the fact that Dorothy Livingston, Chair of our Financial Law Committee, was invited to become a member of the Treasury's Banking Liaison Panel charged with, amongst other things, responsibility for advising Government on responding to the impact of the banking crisis on financial markets.

I have mentioned the importance of our main Committee which provides strategic guidance as well as connecting our small executive team – including myself – with all categories of membership.

If I may remind you current membership includes representatives from Barlow Lyde & Gilbert, Charles Russell, Clifford Chance, Herbert Smith, Baker & McKenzie, Skadden Arps, Olswang, PI Legal Services, Pinsent Masons, Macfarlanes, DLA Piper, Webster Dixon, Toronto Dominion Bank and Allen & Overy. Between them they provide a sound weather vane on our overall membership concerns and on what City practitioners need from the Society. They also inspire and monitor the Society's own annual business plan making sure that they focus on what our membership expects from us.

Two of our Committee members who have served since our corporate membership started step down this year. They are Stuart Popham of Clifford Chance and Peter Wayte of DLA Piper – you may have heard of them! Their support has been of immense value as has that of David Thomas of the Financial Ombudsman's Service who also steps down because of his appointment to the board of the Legal Complaints Service. This is for potential conflict of interest reasons despite, I cannot resist saying it, the very low incidence of complaints against City solicitors. You will be glad to know that all three will

continue to be involved in the Society's and Company's activities as individual members.

They are especially thanked because they are retiring from the Committee. Others who remain on it and who have pulled their weight to the same extent will no doubt receive thanks at future AGM's – as long as they keep up the good work! You see how I try to motivate!

One other happening which deserves a special mention was the meeting of World City Bars hosted by the CLLS here in London in October. Our new Master played a considerable role in enhancing the event which was attended by 13 World City Bar Associations who, as well as being entertained socially at the Master's then home as Lord Mayor, the Mansion House, were also the guests of Allen & Overy, Clifford Chance and Freshfields for the meeting's working sessions.

The relationship between the Society and the Company is for all practical purposes as strong as it has ever been. There is no doubt that the Society, unlike any other local Law Society in England and Wales, has a massive advantage as a result of being tapped into the fabric of the City of London through

the Company. The support through the Society and the Company is mutual and if I may express a view, virtuous.

The Society whole-heartedly supports the idea announced by Sir David as incoming Master, of heightening the standing of City solicitors internationally. His idea regarding introducing a global kite mark for City solicitors and filling the vacuum left for this by the national Law Society is tabled for discussion at our main Committee meeting.

May I also take this opportunity of thanking Neil Cameron, Liz Thomas and Denise Llewellyn, whose efforts are shared with the Company, as well as Robert Leeder, the Society's Policy and Committees coordinator. A small but very effective team that serves our membership well.

Finally and on a personal note can I thank you and the entire membership for providing me with the stimulating role of Chair of the Society over the last five years and surprisingly the reason for my now being a Queen's Counsel without having to pass any exams! I cannot tell you how much pleasure the award of this unexpected honour has given me and my family.

David McIntosh, Chairman of the CLLS, recently travelled to Rio de Janeiro on behalf of the national Law Society to attend the Order Dos Advogados Do Brasil (OAB) Business Meeting and to participate in the Lord Mayor's Business Delegation in Rio De Janeiro on 6, 7 & 8th May 2009. Here is his report on both events:-

Attending OAB Meeting

7th May

I attended preliminary meetings with the Chair of the OAB, Mr Raimundo Britte and its Head of International Affairs, Mr Robert Burato (whom I had met at the IBA Meeting in Buenos Aires in the Autumn when this invitation was extended) and also Presidents of Local Bar Associations – including Rio and other members of the host welcoming party. They were very pleased about the Law Society (and the Lord Mayor's!) support for their meeting.

I was then part of the Lord Mayor's delegation for lunch at the OAB office and at the opening ceremony at which the Lord Mayor spoke with translation. As the rest of the OAB programme for the day was without translation it was opportune for me to join the Lord Mayor for his afternoon and evening meetings (see below).

8th May

After a further meeting with Robert Burato (at which the strength of the Law Society's relationship and the interest of UK Law firms in Brazil was discussed) I joined the OAB meeting in time for my participation in its Panel Discussion on the pros and cons of mandatory or voluntary membership of BarAssociations/Law Societies (with translation).

My fellow panellists and speakers were:

Jorge Fontana – Member of OAB National Commission of Internal Affairs
Julio Ernesto Bilbiani – President of the Bar Association of Paraguay and
Carols Alberto Andreucci – President of the Argentina College of Abogados (whom I had also met in Buenos Aires).

For reasons referred to below the legal interface between Brazil and the UK is likely to increase and the Law Society's closeness with Brazil – the world's 7th largest economy and 3rd largest Bar Association after the USA and India has the potential to serve the UK's international law firms well.

The Lord Mayor's Delegation

6th May

I attended the delegation briefing at the British Consulate following the Lord Mayor's party's arrival from Sao Paulo (and before that Buenos Aires).

The briefing was impressive, particularly the powerpoint presentations by Steve Rimmer of KPMG in Rio and only slightly less so by Mauricio Chacur, the President of Investe Rio – its Development Finance Agency.

The Lord Mayor referred to a "hot off the press" Report from the Corporation of London entitled "The Challenges and Opportunities for Financial Business in Brazil". The common message was that the UK business sector is not sufficiently aware of the extent of the business opportunities - in all sectors – in Brazil and that the bureaucratic hurdles in the way can be and are worth overcoming. Once this challenge is taken up, there will be much for UK law firms in Brazil.

7th May

Having re-joined the Lord Mayor's delegation for lunch and the opening of the OAB Meeting, I remained with the Lord Mayor's party into the evening. This included attending and participating in meetings with the Brazilian Financial Services Regulator, Ms Maria Helena Santana and the Director of its Collective Investment Schemes, Carlos Rebello Sobrinho and later with the Governor of Rio de Janeiro, His Excellency Governor Sergio Cabral, at which the messages regarding the democratic and economic soundness (Brazil has not been much affected by the world credit and commodities decline) and business opportunities in Brazil were fortified.

The Lord Mayor was very adept at "selling" our law firms' legal services – clearly assisted by his own background of accountancy practice involving many major law firm clients. On more than one occasion he referred to Law Society participation in his delegation and his aides privately praised the quality and help to the Lord Mayor's office derived from Law Society briefings.

I believe the opportunity to combine attending the OAB Meeting as a speaker/panellist with joining the Lord Mayor's delegation made the long distance trip worthwhile from the Law Society's perspective.



New Master's Statement at the AGM On 15 June 2009

I am tremendously grateful to the Court and to you all for electing me as your Master for the 2009-10 livery year. It is an enormous privilege and I am only too aware of the very high standards set by recent Masters not least our Retiring Master, Alexandra Marks. She has been only our second Lady Master ever and has had an outstanding year in every way; on your behalf I would like to thank Alexandra most sincerely for everything she has done for the Company and generally for law in the City in very difficult economic circumstances.

The cognoscenti amongst you may have noticed that I and my two Wardens are all Aldermen of the City of London. I believe this is probably the first time in the history of the Livery over more than 800 years that any Livery Company (and there are now 108 of them) has had three Aldermen in this position. Another first for our Company! All we need now is for an Alderman to be our third Lady Master.

JK Galbraith famously said that: "there are two kinds of economists, those who don't know the future and those who don't know that they don't know". The ongoing financial crisis of the last 21 months has witnessed the greatest financial event of our careers. We had the Northern Rock bailout in autumn 2007, followed by huge losses by UBS, the rescue of Bear Stearns in March 2008 and then of Fannie Mae and Freddie Mac, and then the calamity of Lehmans being allowed to go bankrupt on 15 September 2008 but AIG being bailed out the very next day, then came Bradford & Bingley, the Icelandic banks fiasco, the LloydsTSB bailout following the HBOS merger and the RBS bailout following the ABN acquisition and the forced changes in their respective boards. Many distinguished economists and central bankers on both sides of the Atlantic read it wrong; the FTSE index even reached an almost all-time high of 6,456 at the beginning of 2008. It was not an easy time to hold the office of Lord Mayor.

Martin Wolf writing in the FT as early as September 2007 said: "It took foolish investors, foolish creditors and clever intermediaries, who persuaded the former to borrow what they could not afford and the latter to invest in what they did not understand, to create the conditions for the current credit

crisis". As we know the word "credit" is derived from the Latin "credere" meaning to trust; there is still an enormous lack of trust in the financial and inter-bank markets and despite the enormous and commendable efforts of Governments and of the G20 and the unproven optimism of our own Treasury, there is a very long way to go before the European economies will recover and unemployment start falling back to the levels of 21 months ago.

So against this turmoil where does this leave the City's legal profession? Well, in 2007-8 fee income of the 100 largest law firms reached a record £14 bn and all UK legal services contributed about 1.5% of GDP; 320,000 people were employed in the sector; and four of the largest six Global 100 firms in terms of global revenue were headquartered in the UK; in terms of headcount UK firms held five of the top seven places. Perhaps surprisingly the 2008-9 year which has just ended looks as if revenue was similar to the previous year although profits understandably were down. However firms have had to adapt and cut their cloth accordingly to deal with the new economic environment and as we know many firms have had to make partners and staff redundant or place them on a reduced working week and have asked trainees to defer their training contracts. In my 40 years' experience in the City we have never seen anything of this magnitude before.

It is my firm belief that our legal profession in the City will come out of this recession in a year or so well placed to take advantage of the global opportunities ahead having had to adapt and adjust our business models. The City may change and indeed needs to change in certain areas in terms of regulation, but it will continue to be one of the two major global international financial and legal centres. The opportunities ahead include how we adapt to the post Legal Services Act landscape of new services, Legal Disciplinary Practices and in due course Alternative Business Structures and the new competition they will bring.

The areas in which we must continue to be active include influencing the legislature and the regulators in the areas in which our firms and their clients are affected; ensuring that

we never forget our basic values of ethics, probity, integrity, independence, acting at all times in the interests of the client and upholding the rule of law (and we should never forget what happened to some of the Judges in Pakistan); and arguing that whilst there are benefits in retaining “one profession”, regulation and supervision of City practices must be appropriate and relevant in the details of such issues as conflicts, confidentiality, referral fees etc, and I hope Lord Hunt will listen closely.

But we must also market our profession better than we do. I applaud what the Law Society is doing in promoting “excellence” and recognising outstanding achievement in the profession and we must continue to work with them. However in one area we need in my view to take the initiative. Over the past two years I have been discussing with the Law Society the possibility of changing their Charter to enable solicitors to be given a global kite-mark of recognition in the same way as chartered accountants become ACAs on qualification and then FCAs after some years of experience. An attempt was made last year to change the Charter with the

recommendation of Council but the membership voted this down unwittingly because it was part of a composite resolution which also encompassed a controversial proposal about those who do not have practising certificates and some others being permitted to become members of the Law Society. Sadly, I am told by the President that there is no current wish to resurrect the idea of “Fellows of the Law Society” or equivalent. We in the City represent firms who act for all the FTSE 100 companies and they employ some 17,000 solicitors. I believe that since the Law Society is not minded to pursue this idea at the present time we need to lead the way on this issue initially. I would like to start a debate and to explore the idea of this Company or our associated City of London Law Society permitting our members to use the titles “MCS” and “FCS” (which would stand for Member or Fellow of the City Solicitors’ Company or City Law Society) or equivalent. We will be very interested in your views and will of course be asking the City law firms for their views before deciding whether or not to pursue this idea.

Finally may I thank you all again for electing me to this office. I very much look forward to the year ahead.

Prizes 2009



The following presentations were made at the Company’s AGM on 15th June 2009 in honour and recognition of achievements during the last year:-

The Distinguished Service Award

The Award for 2009 was presented to Chris Perrin (pictured above) of Clifford Chance LLP in recognition of his work over many years on the Conflict of Interest Rules and his service as Chairman of the Professional Rules and Regulation Committee.

The Company’s Prize

The Prize for 2009 was awarded to Preena Patani, a trainee with Ashurst LLP. An article based on her winning essay is printed on page 10.

Inter-Firm Clay Pigeon Shooting Trophy

The winning team for 2009 was Ken Baird and Simon Stebbings of Freshfields Bruckhaus Deringer.

The prize for individual best gun was won by Ken Baird from Freshfields Bruckhaus Deringer.

Inter-Livery Bridge Competition

The Company’s team of Roy Griggs and Mark Nicholls of CMS Cameron McKenna finished 3rd out of 65 teams in the Inter-Livery Bridge Competition.

The Prince Arthur Cup Inter-Livery Golf Competition was held on 21st May and the Company’s team of Anthony Surtees, Richard Grandison, Stephen Turnbull and Frank Donagh finished 6th out of 52 teams.

Our congratulations to them all.

Dates for 2009

THE CITY OF LONDON SOLICITORS' COMPANY

- Mon. 7th Sept.** General Purposes Committee, at the Company's offices at 4 College Hill, EC4 at 5.00 p.m.
- Thurs. 24th Sept. *** Court meeting at 4.30 p.m. followed by Court Dinner at 6.30 p.m.
- Tues. 29th Sept.** Election of Lord Mayor, Guildhall, 11.45 a.m. followed by lunch at venue to be arranged. Liverymen.
- Thurs. 5th Nov** General Purposes Committee, at the Company's offices at 4 College Hill, EC4 at 5.00 p.m.
- Sat. 14th Nov.** Lord Mayor's Show
- Mon. 23rd Nov.** Livery Dinner, Drapers' Hall, Throgmorton Street, EC2. at 7.00 p.m. Liverymen and Guests. D.
- Thurs. 26th Nov. *** Court meeting at 11.00 a.m. followed by luncheon at 1.00 p.m.

THE CITY OF LONDON LAW SOCIETY

- Wed. 30th Sept.** † Committee of the City of London Law Society at 11.00 a.m.
† Carvery Lunch at 1.00 p.m.
- Wed. 2nd Dec** † Committee of the City of London Law Society at 11.00 a.m.
† Carvery Lunch at 1.00 p.m.



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

New Members

The following people have been admitted as Freemen of the Company, in person and in absentia:-

NAME	FIRM
Christian Simon BROWNE	Cannings Connolly
Michael Joseph Ramsay Bonner COATES	Shell International BV
Richard James DARTNELL	Pinsent Masons LLP
Christine GALLYER	AW Law
John Pelly NELMES	Field Fisher Waterhouse LLP
Emmanuel NINOS	Shadbolt LLP
Thomas William PEMBERTON	Shadbolt LLP

The following Freemen have been admitted Liverymen of the Company:-

NAME	FIRM
Shona Virginia Playfair CANNON	Formerly BT plc
Stephen Francis JONES	Baker & McKenzie LLP
Vincent Francis MERCER	Speechly Bircham LLP
Michael Anthony WEBSTER	Webster Dixon LLP
John Todd YOUNG	Lovells LLP

The following people have been admitted as Members of the City of London Law Society:

NAME	FIRM
James ANDERSON	Metronet Rail (Affiliate Member)
John Gordon BAIRD	Osborne Clarke
Annalisa CHECCHI	International Director, Junior Lawyers Division, the Law Society
Robert COOMBES	Slaughter and May
Patrick CORR	Sidley & Austin LLP
Thomas TRY	Slaughter and May
Stephen WILKINSON	Royds Solicitors

Members' News

For Sale (by a member of the Company):
A cask of 1983 Chateau Lacaze Armagnac
currently in bond. Approximate cost of bottling
£1,500 plus VAT, expected to yield thirty cases
(12 bottles each).
Offers invited, in region of £1,000.

Initial enquiries via the office at
mail@citysolicitors.org.uk or 020 7329 2173

Tony Morris, now a Consultant at
Linklaters who until recently chaired
the CLLS Competition Law Committee has
been appointed to the Competition
Commission and takes up his position on
1st September.

Liveryman Peter Scrafton has
been appointed a Honorary
Member of the Rating
Surveyors' Association. He is the
first lawyer and one of the first
non-surveyors to be honoured.

Michael Smyth of
Clifford Chance LLP
received a CBE in the
Queen's Birthday
Honours for services to
Pro Bono Legal Work.



Inter-Livery Swimathon – 30th March 2009

The City of London Solicitors' Company once again took part in the Inter-Livery Swimathon held at Woodcote Park in Epsom to raise money for the Lord Mayor's Appeal.

The Team Captain, Robert Stevenson (Berrymans Lace Mawer), led the rest of the CLSC team in completing a distance of 5000 metres. Other team members (pictured) included,

Richard Keczkas (Olswang), Janet Wayman (Davies Arnold Cooper) and Gemma Jones (Lawrence Graham), Kate Taylor (Olswang) and Daniel Altneu (Lawrence Graham).

Our thanks and congratulations go to them all for representing the Company at this event.

The Wig and Pen Prizes 2009

City of London Law Society and the City of Westminster and Holborn Law Society invite applications for the annual Wig and Pen Prizes for pro bono legal work by young solicitors. Nominations for the Wig and Pen Prizes which form part of the Junior Lawyers Division Pro Bono Awards, have now opened and the closing date for nominations is 11th September 2009. Nomination packs are available from www.lawsociety.org.uk/awards



Applications for the Wig and Pen Prizes are invited from individuals who have been nominated for the JLD Pro Bono Awards 2009 and have been admitted as solicitors for less than 5 years. There is also a requirement that a candidate must either be a member of the City of London Law Society or the City of Westminster and Holborn Law Society or work as a solicitor within the catchment area of either Law Society.

The Prize is awarded to a candidate who has made a significant contribution to the quality of justice in their communities and in helping to ensure the legal system is open and available to all. In particular, the judges will take into account -

- (a) the length of time involved in giving free legal advice or representation to people who have otherwise failed to obtain access to justice;
- (b) the candidate's involvement in setting up new or innovative projects providing free legal services to people who would otherwise fail to obtain access to justice;

(c) the significance of the candidate's service to their clients and their community; and

(d) the extent to which the candidate's contribution was made in his or her own time outside that person's normal employment.

Two Prizes may be awarded. The first Prize consists of a silver ink stand and quill pen to be held by the winner for one year and a cash sum of £1,000 which is paid to the charity or project of the winner's choice as approved by CWHLS and the City of London Law Society. A second Prize may be awarded to a candidate who is not in receipt of the first Prize and, at the closing date for entries, does not work within the local Law Society catchment area of the first Prize winner. The second Prize consists of a cash sum of £500 to be paid to the charity or project of the winner's choice as approved by CWHLS and the City of London Law Society.

This year's prize will be awarded at a ceremony on the evening of 12th November 2009, during Pro Bono Week.

What do you regard as the key challenges that City firms will face over the next five years and how would you address them?



This article is based on an essay by Preena Patani of Ashurst, winner of the City of London Solicitors' Company Prize 2009. Preena is pictured with the Master Alexandra Marks and Tony King, Chairman of the CLLS Training Committee.

"It is not the strongest of the species that survives, nor the most intelligent, but the ones most responsive to change" – Charles Darwin.

Never before has Darwin's insight on survival in the natural world been so apt for the various species and beasts in today's global economy. Recent unprecedented events, including the fall from grace of former financial powerhouses, has been so severe that the mere term 'investment bank' conjures feelings of rage and embarrassment where pride and arrogance once stood. Globalisation has acted as a catalyst in turning a focussed financial scare into a non-discriminatory global crisis and has resulted in companies across all sectors being pushed to the brink and perhaps beyond.

Traditionally law firms have been well placed to weather storms of such magnitude. However the current crisis is not just a cyclical downturn but rather a representation of a paradigm shift, which requires even the most robust business models to be put under scrutiny.

Law firms have turned their attention to two main priorities – capturing as much business as possible while at the same time applying a sharp focus to their cost base. Most firms already recognise the opportunity for saving overhead costs and tightening up on discretionary expenditure but firms should resist the temptation to minimise costs that enable partners to continue building rapport with their clients and pursue other opportunities. Firms have also turned to reducing the number of working hours for employees and/or freezing their wages. A more creative approach has been employed by Spanish bank BBVA which has offered its employees the opportunity not to come to work for 5 years in exchange for nearly a third of their normal salary and a guaranteed job when they return. Such measures

demonstrate the drastic steps companies are taking in order to save costs by avoiding making redundancies where staff are entitled to large payoffs under domestic laws.

Leadership teams will face an ongoing challenge in managing headcount consistent with demands in a lower-growth environment. This equation will continue to vary for the foreseeable future so it will be important to keep a close eye on when these changes unfold and to react to them as soon as possible.

Firms will also have to adapt to the various new legislation that will be introduced over the next few years to account for the serious weaknesses that have been highlighted in the UK regulatory framework. For instance, the Banking Act 2009 was introduced to provide a permanent framework for dealing with banks and building societies that fail or are likely to fail, to ensure stability in our financial system. However, we are yet to discover how it will feel in practice and it remains an area of uncertainty.

The world economy is forecast to contract this year for the first time in 60 years. The client pool available to law firms will also shrink, particularly in the financial services sector which had been a leading source of business. There will be tremendous pressure on fee rates as companies battle to reign in costs and shore up their balance sheets in the wake of the credit crunch. A potentially attractive cost saving mechanism that most law firms have not yet given serious thought to is outsourcing. At present a large number of law firms are apprehensive about sending their legal work to another country which highlights their concerns relating to data security, client confidentiality and quality of work delivered. Outsourcing providers need to gain the confidence of law firms and demonstrate that a satisfactory end product will be

delivered; however, as yet the benefits of outsourcing do not appear to be substantial enough to override law firms' concerns. A solution could be to sign a service agreement with an outsourcing provider for a trial period to determine whether they can provide the quality of service expected.

The implementation of the Legal Services Act will provide a further catalyst for change as institutions outside the legal profession will have a much greater influence on how some firms are managed. The extent to which this affects CITY firms will depend on the degree of change each firm is willing to succumb to; it can involve rebuilding the way law firms do business with new or potential clients. This should enable partners to spend more time on the most complex needs of clients and delegate other work as far down the hierarchy chain as possible. The Government's plans to encourage alternative business structures to increase competition and choice for consumers will result in companies such as Tesco being able to provide legal services. This will be an attractive proposition for individuals or companies who want a fast, easy and cheap way of getting legal advice on simple transactions. However, this will be at the expense of local law firms who will view Tesco as a direct competitor. It is less likely to affect City firms as they traditionally deal with more complex transactional work, tailored specifically to each client dependant on their commercial circumstances. Protestors of the Government's plans have stated, "Legal services by supermarkets is as ridiculous as lawyers selling beans". These protestors have united under a brand name QualitySolicitors.com which has attracted 100 law firm members which they plan to market to rival moves by chain stores or any other newcomers to the legal market.

The type of deal activity has also shifted. Law firms are less able to use their junior lawyers to churn out standard deal terms as transactions become more complex and require

more creativity and thought from senior lawyers. This could lead to the potential collapse of the traditional law firm pyramid structure, as clients become less willing to pay for junior lawyers and the ending of the billable hour method of charging as clients look for increased predictability in bills. Law firms could place more emphasis on variable as opposed to fixed remuneration based on performance to motivate their lawyers and to ensure they retain and capture as much business as possible.

Decisive leadership and the ability to manage change will be key attributes for city firms. Firms have displayed prominent entrepreneurial flair in pioneering new markets, especially in relation to emerging markets and business in the East, and will now have to continue tapping into that knowledge to adapt to the changing markets to create new opportunities. The key is to unlock the potential in all areas of business. At the core of identifying the right leadership is the recruitment process. Law firms could introduce fixed contracts for senior marketing posts. This way firms can ensure they have the appropriate marketing expertise for every stage in the economic cycle and thereby meet changing commercial priorities. A regular injection of ideas and energy will ensure firms remain competitive and guard against stagnation.

At a time like this it is important for law firms to be proactive rather than reactive and try to anticipate the way in which the markets are going to change, where new opportunities will develop and who the best people are to lead their business forward. Although there is a great amount of uncertainty as to what lies ahead there are already steps that firms can take to ensure they are best placed for when the markets pick up again, which they undoubtedly will at some point in the future. All law firms will need to adjust to the times and those that do not will fall behind. As Darwin has stated it is those most responsive to change that will survive.



One of Alexandra Marks' last events as Master was to be "Jailed & Bailed", in aid of the Red Cross. She is pictured under arrest at Mansion House, charged with masquerading as the Lord Mayor (Dick Whittington) in the 2008 Lord Mayor's Show, before being transferred to jail (and a good lunch!) at the Tower of London. She was released on bail later that day, having raised £4,500 for the Red Cross.

Photographs by Bob Kauders





Young Solicitors and the City

(With apologies to Darren Star and HBO!)

One moment they're little more than students in sharp suits who don't know what WIP means, and the next they're convincing you that they really

are the next "Mr Big". Some are even cheeky enough to ask to become involved in a guerrilla outfit called The Junior Lawyers Division or, even worse, the City of London Law Society and dress it up as career development!

So (in the words of Carrie Bradshaw), "I got to thinking about relationships". The question that I was asked is "Why? What added value will this bring to someone who is working hard, hitting targets and generally doing well?"

Those that ask the question are committed, interested, talented and ambitious and some, shockingly enough, genuinely do want to give something back to the profession. The odd one or two have even read the huge volumes of papers making up the Legal Services Act and the various responses to it from the earlier consultation phases and have realised the potential impact that this will have upon their chosen career path.

These people can be good or even excellent billers who show interest in the firm, take an active role in marketing and cross selling and support the firm's events. Young solicitors not only have a lot to offer, but they have far more interest in practice affairs than they appear to at first glance. Today's junior fee earner is tomorrow's managing partner. It's just a question of dates. It can however be difficult, if not impossible, to find out about the nitty gritty of running a practice and the relationship with businesses. Added to this, it is practically career suicide to admit that you lack "commercial knowledge" of any kind and for some, it is not easy to find the answers.

What we need, and are searching for, is a form of mentor to develop our careers after qualification and develop those aspects of our development that are not routinely covered. The so called "soft skills" which are rarely, if ever, taught on courses. It is also rare for a partner and junior fee earner to have a relationship where this is offered, especially in the smaller city firms. It's certainly not available on a standard basis but as it's such an essential thing for the future of a firm (not to mention the profession) don't you think it should be?

This is where the City of London Law Society and the Junior Lawyers Division come in. Working together, these organisations have the contacts and experience to help develop young solicitors with a mixture of training and social events and in particular, introducing them to the principles of networking (at no exposure to the firm's business strategy) at

City of London Law Society events.

Social events such as the very popular wine tasting evenings and the JLD Annual Conference and Ball are also an excellent way of relaxing after a hard day's work and widening our network of peers nationally and internationally. There is also the added carrot that at events, the young solicitor will make more contacts and therefore bring more work into the firm.

Many young solicitors feel that there is an impenetrable fog surrounding certain skills sets that sometimes is not lifted until it's too late. It is not a valid argument to say "well, I learned on the job, that's how it's always been, that's how it was with me, and that's how it will remain". That is a somewhat short sighted and potentially costly view that I suspect many will not support as a result.

The organisations I have mentioned are committed to developing the careers of young solicitors, supporting charities, professional representation of member's interests and of protecting the future of our profession as a business within the City. The most important aspect of the relationship in my opinion is the commitment to further business.

I have certainly found interaction with the Law Society, City of London Law Society and what was the Young Solicitors Group (now the Junior Lawyers Division) has developed my career and introduced me to opportunities via networking and training that I would not otherwise have had. I would certainly not have been promoted to partnership somewhat earlier in my career than many of my peers at university without making a determined effort to better my skills base and knowledge of the profession as a whole and especially the issues that threaten to impede our business and working relationships for the future. It is pointless adapting after the event and complaining that someone else has stolen a march on us.

With the right encouragement and mentoring, you are not only going to get the best out of your young solicitors performance-wise, but also you are investing in the future of your firm and protecting your partnership succession. This will become increasingly important considering the well publicised talent drain that the profession is experiencing and during the current economic climate.

So maybe, just maybe, that cocky young chap in the sharp suit may be buying his Carrie Bradshaw a Cosmopolitan having lived up to his billing.

With a little help from his friends.

Committee Reports

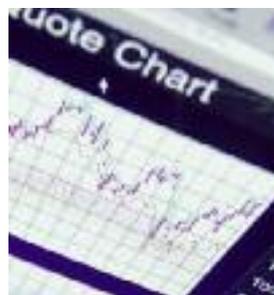
POLICY & COMMITTEES COORDINATOR'S REPORT

The CLLS's Committees have remained busy during the first half of 2009, producing 44 submissions, as well as 3 pro forma/guidance documents for the Profession:

- Guidance on execution of documents at a virtual signing or closing. (The Guidance was prepared by a joint working party of The Law Society Company Law Committee and The City of London Law Society Company Law and Financial Law Committees.)
- Pro forma circular to amend the articles of association of a listed company with effect from 1 October 2009 to cater for CA 2006 changes coming into effect on 1 October 2009 and to cater for other items of business at 2009 AGMs. (The pro forma circular was developed by a number of firms represented on the City of London Law Society.)
- City of London Law Society Land Law Committee Form of rent deposit deed

All of these submissions are available on the Committees' webpages, accessible via www.citysolicitors.org.uk. Following are the reports of the Chairs of the Company Law, Finance Law, Insurance Law, Land Law, Litigation, Professional Rules and Regulation, Regulatory Law, Revenue Law and Training Committees on their Committees' recent activities.

Robert Leeder, *Policy and Committees
Coordinator, City of London Law Society*



FINANCIAL LAW COMMITTEE

This has been a busy period for the Committee.

Even after the Banking Act 2009 became law in February, there has been a great deal of activity in that area. We continue to have a standing working party including members of the Insolvency and Regulatory Committees and we are keen to be advised of any problems encountered in practice. We also liaise with the FMLC and LIBA, the BBA and ISDA on this legislation. Dorothy Livingston has been active as a member representing the CLLS of the Banking

Liaison Panel set up under the Act, which is considering possible refinements to the "Safeguards Order" in relation to partial property transfers and revisions to the Special Resolution Regime Code of Practice. David Ereira, her alternate, has been active with members of the Insolvency Law Committee in a separate sub-group considering the SRR and Insolvency regime that might be appropriate for Investment Banks. There are order-making powers in this regard in the Act.

In addition we have commented on legislation related to charges over overseas companies and are disappointed that the DBIS (as we must now call it) has decided to defer consideration of our proposals to reduce legal uncertainty and cost in the system as it currently stands and as it is to be revised. These are expected to be considered as part of a wider review in 2011.

With the Company Law Committee and the Law Society Company Law Committee we have worked on guidance on the execution of documents in virtual closings, to address issues arising from recent case law (the Mercury case). The guidance is available on the CLLS web-site and follow up is being carried out by the Property Law Committee relating to real estate transactions.

We are commenting on the Brussels I Regulation revisions in a consultation ready this month and have a working party established to deal with proposals for a moratorium regime for larger companies, announced in this year's budget. We continue to keep an eye on a range of other developments affecting financings.

Dorothy Livingston, *Chairman, Herbert Smith LLP*



LAND LAW COMMITTEE

The Committee has held two meetings in recent months.

We have continued our initiative with the Construction Law Committee to promote the greater use of the Contracts (Rights of Third parties) Act 1999 as an alternative to the use of warranties. We hope to be giving greater publicity to this in the coming months of the year.

We are working on standard service charge provisions which

Committee Reports

will be compliant with the Service Charge code and institutionally acceptable. We intend to discuss these clauses with other industry bodies.

We have discussed issues in relation to “Green Leases” and the implications of the Carbon Reduction Commitment Scheme. We anticipate that these represent a general area which will need our attention in the future.

Nick Brown, *Chairman*, CMS Cameron McKenna LLP



TRAINING COMMITTEE

The principal focus of the Committee's work over the last few months has been the SRA's review of the Qualified Lawyers' Transfer Regulations.

The SRA's consultation came to an end in February and we are waiting for the SRA to publish the outcome of the consultation with details of the next stage of this review. We will ensure the membership is aware of progress with this review.

In the coming months, the Committee will be monitoring the public information available on the SRA's work-based learning pilot and continuing to contribute on education and training issues to the debate on the future of the regulation of the profession.

Tony King, *Chairman*, Clifford Chance LLP

COMPANY LAW COMMITTEE

The Company Law Committee meets every other month to discuss current developments in company law, regulation and practice. The minutes of the Committee can be found on the City of London Law Society website. Between meetings,

working parties of the Committee are formed to respond to consultations on issues of interest. Details of our recent work are provided below.

Guidance on the execution of documents – a response to the Mercury case

As a joint working party, the Committee, the CLLS Financial Law Committee and the Law Society Company Law Committee produced practical Guidance to assist parties on the execution of documents at “virtual” signings. This was in response to certain obiter comments made in the now well documented case of R (on the application of Mercury Tax Group and another) v HMRC [2008] EWEH 2721. The Guidance was approved by Leading Counsel (Mark Hapgood Q.C.) in conference on 27 March 2009 and is available on the City of London Law Society website at <http://www.citysolicitors.org.uk/FileServer.aspx?oID=571&lID=0>.

Amendments to the Prospectus Directive

In January 2009, the European Commission launched a consultation on its review of the application of the Prospectus Directive. The review included proposals to improve and simplify the Directive. The Committee was generally supportive of these and a joint working party of the Committee and the CLLS Regulatory Committee prepared a written response. This response included support for a shortened form of prospectus for rights issues in line with that proposed by the Rights Issue Review Group in their November 2008 report.

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

Amendments to the Structure of the Listing Regime

In December 2008, the FSA published a consultation paper relating to amendments to the Listing Rules and to the structure of the Listing Regime. The Committee submitted a written response to the paper jointly with the Law Society Company Law Committee, and, in particular, responded to the FSA's proposals relating to (i) the segmentation and labelling of the Listing Regime and the ability of issuers to migrate between different segments, (ii) disclosure by overseas issuers of shareholder pre-emption rights and of their compliance with the Combined Code, (iii) the availability of a directive-minimum share listing for UK companies, and (iv) the FSA's comments on regulation over global depository receipts.

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

William Underhill, *Chairman*, Slaughter and May

Committee Reports

REVENUE LAW COMMITTEE

Nigel Doran recently stepped down as Chair of the Committee on his retirement from Macfarlanes and moved to join HMRC. The Committee thanks him for his contributions over many years leading from the front. Christopher Cox of Beachcroft has also stepped down from the Committee and thank you to him too. The Committee is now led jointly by Bradley Phillips of Herbert Smith (Chair) and Simon Yates of Travers Smith (Deputy Chair).

The Committee will continue to focus on commenting on relevant tax matters, in particular, responding to HMRC and HM Treasury consultations. Notable representations this year include significant comments on the new corporation tax rules on foreign profits and the worldwide debt cap rules. Comments were also made on the new rules concerning the "principles-based approach to financial products avoidance". Comments have also just been submitted on the HM Treasury Consultation on "Enhancing the Competitiveness of UK funds".

The Committee is in the process of reviewing its membership and is considering ways to further raise its profile.

Bradley Phillips, *Chairman*, Herbert Smith LLP

INSURANCE LAW REPORT

The Committee continues to follow with keen interest the deliberations of the Law Commission and the Scottish Law Commission on insurance contract law.

Most recently the Commissions have circulated an Issues Paper on the question of extending to micro-businesses the protective regime for consumers on which they have been working. This would in effect restrict the rights of insurers to avoid policies on the grounds of non-disclosure or breach of warranty. If the principle of such an extension can be accepted, there would then be an issue as to how to define the thresholds for qualifying as a micro-business, e.g. those currently applied or proposed for access to the Financial Ombudsman Service. The Committee will be responding to these questions shortly.

In addition, the Committee has reviewed a wide range of legal and regulatory developments relating to insurers, including proposals by the Ministry of Justice for a Bill to replace the Third Parties (Rights against Insurers) Act 1930, on which the Committee offered some comments (mostly favourable) to the MoJ; and the FSA's revised proposals for barring the payment of compensation costs by with-profits

insurers from the inherited estate (these would no longer have retrospective application, which was an earlier concern of the Committee).

There has been a steady flow of legal proceedings and decisions involving the insurance market, including the EL trigger litigation which is set down for appeal in November.

Ian Mathers, *Chairman*, Allen & Overy LLP

LITIGATION COMMITTEE

The Litigation Committee has recently responded to a number of consultation papers in the litigation arena.

In April 2009, the Litigation Committee responded to the SRA consultation paper "*Solicitor Higher Court Advocates – proposals for mandatory re-accreditation*". The Litigation Committee continued to submit (as it has done with previous consultations on this topic) that mandatory reaccreditation is not the right route to follow because it is not necessary for the maintenance of standards and it would perpetuate further the different standards applicable to solicitor and barrister advocates. The Committee took the view that ongoing quality standards could be maintained adequately through the usual professional duties on a solicitor in accepting work and by suitable continuing professional education requirements, for example, by including some mandatory advocacy related training within the annual minimum CPE requirements for solicitor advocates.

The broad topics of the costs of civil litigation and litigation funding continue to be the subject of much debate. The Committee responded recently to the Law Society consultation entitled "*Litigation Funding: key issues and background information*". A majority of the Committee were cautiously in favour of removing the prohibition on contingency fees. However it was felt strongly that the cost shifting rules were of critical importance and should be retained if a contingency fee regime were to be introduced, albeit that the Committee did not consider that the contingency fee itself should be recoverable from the losing party.

The Committee has also recently responded to the Ministry of Justice consultation paper on controlling costs in defamation proceedings. The Committee did not agree with the proposals and saw no case for treating defamation proceedings as a special case. In any event, it seemed mistaken to pre-empt the broader review of civil litigation costs currently being carried out by Lord Justice Jackson.

The Committee is also active in relation to the Lord Justice Jackson Costs Review. In January, two members of the Committee (together with members of the Commercial

Committee Reports

Litigators' Forum) met with Lord Justice Jackson to assist in his information gathering exercise as part of Phase I of his review. The Committee is currently considering the Report published by Lord Justice Jackson on 8 May 2009 to serve as the basis for consultation during Phase II of the Review, and the Committee intends to submit a response during the consultation period ending on 31 July.

There have been some recent changes to the Committee. We have said goodbye, with thanks, to Tony Marks of CMS Cameron McKenna and Chris Vigrass of Ashurst, both who have been long serving and dedicated members of the Committee, in Tony Marks' case as Chairman for several years. In their place, we welcome two new members, Tim Hardy of CMS Cameron McKenna and Arundel McDougall of Ashurst. We are also looking forward to being joined by Helen Jackson of CMS Cameron McKenna as the associate observer assigned to the Litigation Committee, as part of the Society's encouragement of participation in the work of the specialist committees by members of the Associates' Forum.

Lindsay Marr, *Chairman*,
Freshfields Bruckhaus Deringer LLP

REGULATORY COMMITTEE

The CLLS Regulatory Committee meets monthly and from March 2009 until present has submitted the following papers.

1. A response to the FSA's consultation on 'The Approved Persons regime: Significant influence function review' (CP08/25).

The Committee considered that the proposed handbook amendments had not been satisfactorily justified by reference to market failure, by an explanation of the inadequacy of the current regime or by reference to the outcome of the Northern Rock investigation and it was unclear what the intended increased level of supervision would be as this was set out in an unpublished Supervisory Enhancement Programme (SEP). It felt that the proposed extension of APER fell outside the FSA's powers and that as the proposed extension of the CF1 and CF2 definitions to certain individuals was unclear, firms would have difficulty in determining whether an individual fell within or without the scope of individual approval. The Committee highlighted practical difficulties associated with the proposal, suggested that aspects of its implementation would be disproportionate and impracticable and noted that unregulated holding companies might alter individuals' roles to fall clearly outside the FSA definitions, thereby depriving the regulated firm of group oversight. It felt that implementation of the proposal would create conflict with

directors' fiduciary duties and might also cause overseas regulators to lose an element of group oversight if the regulator of a subsidiary sought to impose direct obligations on head office officials. Guidance clarifying the role of non-executive directors was unnecessary as information on this is widely available. The Committee considered that the FSA did not have the power to extend the CF29 description to include more proprietary traders and that introducing such a proposal could have serious anti-competitive consequences for UK firms. Particular thanks are due to Simon Morris for his work on the submission.

2. A response to the FSA's consultation on 'Stress and scenario testing' (CP08/24).

The Committee focused on ensuring that, in relation to stress testing issues, the obligations which would be imposed on firms, the standards of behaviour expected by the FSA and likely FSA procedures were clear and it reiterated its concerns about the FSA taking a 'first to market' approach, previously expressed in its response to CP08/22 ('Strengthening Liquidity Standards'). It noted that any departure from GENPRU or BIPRU rules which does not implement amendments to the Basel II Framework or the Capital Requirements Directive will create difficulties with interpretation and interoperability and lead to an increased compliance burden. The Committee agreed that excluded BIPRU 50K investment firms should be excluded from reverse stress testing requirements, however expressed concerns that the guidance might encourage the FSA to require such firms to conduct reverse stress tests in practice, despite there being no defined Rules and underlined that it must be clear that either there is no such requirement on these firms or the nature of any requirements should be set out in a Rule in order to be binding on firms. The Committee welcomed the introduction of a regular industry forum to discuss the types of stresses firms should consider but considered that it should be clarified whether its views would be binding on firms or intended to inform guidance; if the former, these should be implemented as Rules. Particular thanks are due to Bob Penn for his work on the submission.

3. A response to the FSA's discussion paper on short selling (DP09/1).

The Committee suggested that achieving a consistent set of short selling measures across European and global markets should be a key FSA objective and supported the FSA approach of delaying any definitive UK regulatory approach to short selling until greater international consensus is achieved. In relation to the expiry of the temporary regime, the Committee suggested lifting or prolonging the temporary measures to facilitate further consideration, debate and a fully coordinated European response. The Committee felt additional measures regarding naked short selling would be unnecessary and it did not support a blanket or permanent ban on short selling.

Committee Reports

The Committee conceded that in times of extreme market stress and fragility, where the FSA might need to intervene to maintain or restore stability and order in the markets, it might require additional emergency powers. To avoid an ultra vires challenge and ensure market confidence, the FSA should seek long term statutory emergency powers which were transparent and accountable. An analysis of the potential impact on market efficiency and liquidity should be carried out before any direct constraints on stock lending were imposed. The Committee specifically considered it inappropriate to regulate short selling on the basis of a blanket assumption that an undisclosed net short position above a particular size is market abuse.

In relation to a permanent disclosure regime, the Committee felt it was too early a stage to reach a final conclusion on its cost benefit and if such a regime were introduced it should be applied to all UK incorporated issuers (not just the financial sector) to create a level playing field for issuers. Should some form of disclosure be required, then it considered a net position disclosure of short positions to be preferable. The Committee felt that a case had not been made for the imposition of any specific restrictions on credit default swaps, as the market abuse regime adequately covers manipulative behaviour relating to CDS spreads. Particular thanks are due to Patrick Buckingham for his work on the submission.

4. A response to the FSA's consultation on 'reforming remuneration practices in financial services' (CP09/10).

The Committee re-iterated its concerns about the FSA taking a 'first to market' approach, which it had previously highlighted in its response to CP08/22 ('Strengthening Liquidity Standards') and CP08/24 ('Stress and Scenario Testing'), noting that the proposed Code is more detailed and prescriptive than international initiatives and potentially could damage the competitive position of UK firms unless significantly modified. It also noted that potential employment law consequences had not been adequately considered and that there was no direct cause or link with any market failure for this regulatory response. The Committee felt there were no significant gaps in the current regulatory framework which necessitated change and where gaps did exist, the proposed Code, as drafted, was not a proportionate way of filling them. It expressed concern that the introduction of the Code, as proposed, would have adverse implications for the UK as a financial centre which would outweigh any benefits and called for the Code to be redrafted to reduce its scope and ensure that its provisions were not inconsistent with the Commission's recommendations. The Committee considered it inappropriate for the Principles to be made as prescriptive evidential provisions and felt that the proposed transitional provisions were inadequate and failed to take proper account of firms' contractual and other legal obligations.

The Committee favoured creating high level principles (mainly through FSA guidance) which would apply to credit institution, investment firms and (probably) insurers, and which would be subject to the UK's obligation to transpose amendments to the CRD. The Committee underlined that it did not favour an approach under which any firm would be advised that it should comply with principles of the kind appearing in the draft Code or in the Commission's document irrespective of the firm's size, internal organisation and nature and scope of its activities. Particular thanks are due to James Perry for his work on this submission.

5. A response to the FSA's consultation CP09/12: 'Quarterly Consultation' (Chapter 6 and 7).

The Committee commented on the proposed revised PERG Guidance on 'arranging' (Chapter 6). Given existing difficulties with the interpretation of Article 25(2) and the insufficient guidance on it, the Committee felt that, rather than make the proposed small changes to the guidance, it would be preferable to have a fuller review of Article 25(2) issues with a view to publishing more comprehensive guidance. The Committee expressed concern that the amendments proposed ignored the recent High Court decision in *Watersheds*, which, even if the FSA disagrees with it, is a statement of the interpretation of the law from a court.

The Committee commented on the proposed new guidance on packaged structured investment bonds ("PSIB"s) (Chapter 7). The Committee supported the addition of guidance on this topic and was broadly in agreement with the views expressed, however it noted that, in certain instances, the proposed guidance was unclear and created uncertainty as to the proper delineation between collective investment schemes and PSIBs. Particular thanks are due to John Crosthwait for his work on this submission.

6. A response to the European Commission's call for evidence in respect of the review of Directive 2003/6/EC (the Market Abuse Directive) ("MAD").

The Committee considered that the scope of MAD should not be extended to instruments traded on Multilateral Trading Facilities and suggested that it would be helpful to align the MAD definition of financial instruments with the broader MiFID definition. The insider dealing prohibition should continue to apply only to financial instruments not admitted to trading on a regulated market where their value depends on a financial instrument which is admitted to trading on a regulated market. The Committee felt that though the definition of 'inside information' was helpful, as Member States take different approaches to the concept, greater transparency in relation to the rationale behind enforcement actions would be useful.

The Committee agreed that issuers should be exempt from disclosing inside information where their financial viability

was at stake and where delaying the disclosure of relevant facts to the markets was necessary in order not to endanger emergency measures. It supported proposals for EU-wide mandatory and minimum standards in relation to the disclosure and publication of inside information, but disagreed with proposals to impose disclosure obligations on commodity derivatives issuers. The Committee also supported the Commission's proposal to delay clarifying the interpretation of 'using' inside information until it had considered the ECJ preliminary ruling in the Spector Photo Group case but felt that there could be no 'use' of inside information through mere possession. Though the Committee considered it unnecessary to revisit safe harbours for buy-back programmes and stabilisation activities, it felt that greater convergence regarding the application of Regulation 2273/2003 (the Stabilisation Regulation) by Member States would be helpful.

The Committee considered it essential that consistent European and global short selling measures were put in place, however it would be inappropriate to base such regulation on the market abuse regime (either in relation to emergency interventions, in times of market fragility, or in relation to a permanent disclosure regime); creating standalone requirements outside the market abuse provisions would be preferable. The Committee felt that authorities should only take emergency measures in extreme circumstances and any long-term emergency powers put in place should be implemented on a statutory basis. Particular thanks are due to Patrick Buckingham for his work on this submission.

Margaret Chamberlain, *Chairman*, Travers Smith LLP



PROFESSIONAL RULES & REGULATION REPORT

The Professional Rules & Regulation Committee has continued to be very busy. As a matter of course, papers and responses to consultations produced by the Committee are posted on the CLLS website. The main issues which have been addressed by the Committee are summarised below.

Representatives of the Committee have been heavily involved with the review of the regulation of corporate firms set up by the Law Society under Nick Smedley. They have attended the meetings of the 'Reference Group' which he established and provided comments on drafts of his report. Since publication of the report, representatives of the Committee have also met with senior members of the Law Society and the SRA to discuss how the recommendations should be taken forward.

Committee representatives have also met with Lord Hunt in relation to his wider review of regulation. These meetings will continue as he works on his final report.

The Committee has continued to put in responses to the many consultations launched by the SRA and, increasingly, by the LSB. It has also made representations in the implementation of the EU Services Directive and the review of the Market Abuse Directive.

Representatives of the Committee have continued to meet with senior members of both the Law Society and the SRA on a regular basis. Additional points raised with the SRA include the extra-territorial effect of the SRA Code, the need for a transitional period in respect of rule changes, the SRA's approach to Freedom of Information requests and the SRA's current reaction to private equity investment in law firms.

The Committee has also continued to press for the limited reform of Rules 3 and 4 (conflict and confidentiality) which it has pursued since the Committee was formed in early 2007. Most recently, the Committee has put forward proposed wording in respect of Rule 3.

Representatives of the Committee have also now started to have periodic meetings with senior members of the Legal Services Board.

The large number of issues addressed by the Committee is a testament to the considerable amount of effort which the Committee members have been willing to commit. I am very grateful to them all.

Chris Perrin, *Chairman*, Clifford Chance LLP

Cricket on Everest

In early 2007, on an expedition to Everest base camp, a keen mountaineer and cricketer from the UK spent a night at the Gorak Shep plateau - a barren, rocky piece of ground near base camp, over 5,100 metres above sea level. He remarked casually to his guide that "it was big enough to play cricket on."

It was a throwaway remark.

Two years later, on 21 April 2009, after 10 days of trekking two teams from the UK played that cricket match. At 5,165 metres (more than 17,000 feet), the game set the world record for the highest team sporting event. The 20/20 match was officially recognised by the English Cricket Board, and planning for the expedition had taken most of the previous two years. In order to make the game and the record official, the expedition members carried with them every piece of equipment that would be required for a regular game of cricket - bats, helmets, pads, boundary flags and a scoreboard all made the 5-kilometre climb. A portable wicket was carried up in sections and rolled out onto hard-packed sand; the balls were pink leather so they would show up better against the snow.

The expedition party numbered around 50, with a playing squad of 30 (to provide reserves in case of altitude sickness or other injury), 4 doctors, 4 members of the media and a number of travelling spectators. The playing squad included two lawyers practicing in London - Cleary Gottlieb's Mike Preston and Renaissance Capital's Hayden Main. As part of the challenge, each expedition member carried their own equipment, with packs averaging around 23 kilograms each. The squad had been selected around a year before the match, and throughout the year stuck to a fitness and training regime designed to ensure that 22 fit players could take the field. The climb itself was tough, in no small part due to the equipment load. Altitude sickness struck a number of expedition members, and the doctors found themselves the busiest members of the party. Thankfully, however, on the morning of 21 April each captain had the luxury of being able to pick a final 11 with reserves to spare, and Team Tenzing took to the field to play Team Hilary.

Adjusting to the playing conditions was interesting. The Gorak Shep plateau has a rough sandy surface, which froze solid in the overnight temperatures that reached -15 degrees celcius. This formed a rock-hard base under the portable pitch, and for most of the first innings the bounce stayed true. Unfortunately for Team Tenzing who lost the toss and batted second, as the ground warmed up during the day the surface softened, and the

bounce became inconsistent. Interestingly the ball did not swing nearly as much as had been feared. In a practice session at around 3,000 metres it had moved frighteningly in the thin air, and the quicker bowlers could smell blood. However at over 5,000 metres, presumably because the match was played above the clouds, the ball tended to hold its line. Physical exertion, however, remained tough, with oxygen levels at around 60% of oxygen at sea level. Quick singles were not appreciated either by batsmen or fielders! Assisted by porters, the squad spent several hours on the day before the match clearing the outfield of most of its rocks (burying the larger ones), but the fielding side had to stay on (and watch) its toes.

Base camp emptied out and provided a colorful array of spectators for the match. (Any players off the field spent time explaining the basic rules of cricket to American and German climbing teams.) After a strong opening partnership led by David Kirtley (brother of England bowler James Kirtley), Team Hilary looked set to build a formidable total. However, several key breakthroughs and an excellent performance in the field saw Team Tenzing restrict Hilary to 148/5 from their 20 overs. Team Tenzing's strong batting lineup was confident of chasing the runs, but early and then regular wickets saw them struggle. Despite a late flurry of boundaries, including one or two huge 6s, Team Tenzing fell short, losing its final wicket 26 runs short of the total.

The expedition aimed to raise funds for the Lords Taverners, the youth sporting charity with historical links to Lords Cricket Ground, and the Himalayan Trust. Around £200,000 was raised, with each expedition member raising at least £1,500, and contributions coming from a number of sponsors including title sponsor Nokia, North Face and Qatar Airways. The teams also participated in several cricket coaching sessions at schools in Kathmandu and on the mountain itself, leaving behind cricket kit supplied by the Lords Taverners at one school.

More information on the expedition is available on the website, www.theeveresttest.com, and video highlights can be seen on youtube under the name "Nokia Maps Everest Test Showreel".

Fox Goes Clubbing



I hope the scrappage allowance will not discourage motorists from keeping and looking after classic cars – or cars destined to become classic cars.

I have a much-loved 10 year old car eligible for the scrappage allowance (a Mercedes sports car with 16,000 miles on the clock, since you ask). If Mr Brown really believes that £1,000 of taxpayers' money and another £1,000 extorted from motor manufacturers will persuade me to buy a new model, he needs to think again.

Fortunately there has never been more enthusiasm for classic cars. A week-end in June saw the well-supported revival of the Fête Champêtre and Concours d'Elégance at the Hurlingham Club. Cars on display included a beautiful Mercedes 300 SL Gullwing Coupé – the spiritual ancestor of my SLK (look at the twin power bulges on the bonnets of both cars). Amongst the other wonderful cars which caught my eye were a huge Dusenberg, a Harley Earl Cadillac, a fully-restored Silver Ghost and the sweetest little Morris Post Office van you could imagine.

British sports cars are the essence of our great motoring heritage. Amongst those on display at the Hurlingham Club were 2 Austin-Healey 3000's (who can forget the success of Pat Moss in one of these cars in the Monte Carlo Rally?), an Aston Martin DB6 (a better car than the DB5 driven by James Bond), a Lotus 2 + 2 (which never achieved the popularity of the two-seater Elan), a Jaguar XK 150S (surely one of the most elegant sports cars ever made) and several historic Bentleys.

There is a long waiting list for membership of the Hurlingham Club. Those elected in January 2009 had waited for over 15 years. More accessible is membership of the Royal Automobile Club (never the RAC Club) which has over 100 years of history as an automotive and social club. Where else would you find a dinner and presentation to mark the 50th anniversary of De Tomaso? The Club's own veteran Simms is on permanent display in the Pall Mall club house (Frederick Simms founded the Club). From time to time other

captivating historic cars appear beneath the Royal Automobile Club Rotunda.

I have always wanted to try a Citroën DS. The car was a sensation at the 1955 Motor Show. Styled by the sculptor Bertoni, the DS (a pun on *déesse*, or goddess) introduced major engineering innovations. The hydropneumatic self-levelling suspension gives a superb ride and was later used by Rolls-Royce under licence. Hydraulics power the front disc brakes (the brake pedal is replaced by a mushroom-shaped switch with only a few millimetres of travel), the steering (which sighs gently as the one spoke wheel is turned) and the semi-automatic front-wheel drive transmission. Later models feature swivelling headlights, a boon when travelling fast on twisting roads.

The front track is much wider than the rear track. A DS can be driven on three wheels. That ability probably saved the life of de Gaulle during the 1962 assassination attempt. Afterwards he would never use any other car.

The Classic Car Club generously lent me their DS. The soft ride made Mrs Fox feel sick. The semi-automatic gearbox and lack of power made it difficult to drive smoothly. The operation of the heating and ventilation controls was not intuitive, to put it politely. But it was a great experience.

There is nothing like driving a piece of motoring history yourself. Joining the Classic Car Club avoids the expense of buying and maintaining your own classic car. The Club's collection of vehicles is housed in Old Street, just 20 minutes' walk from Cornhill. An annual subscription buys points which are traded for the use of a car. The number of points needed to drive a particular car depends on the desirability of the car, the season and the day of the week. Obviously a summer week-end in an XK150 needs more points than a mid-week day in winter with an MGB. More information is at www.classiccarclub.co.uk. Mention the CLLS motoring column when you visit and you will receive a warm welcome.