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## City solicitors congratulate the new Lord Mayor

**The City of London Solicitors' Company's immediate Past Master, Alderman David Wootton, was installed as the 684th Lord Mayor of the City of London on 11th November 2011.**

David, who has been a corporate partner at Allen & Overy LLP since 1979, was Master of the City Solicitors' Company and President of the City of London Law Society from 2010 until June 2011. He is Chairman of the City of London Branch of the Institute of Directors and an Honorary Bencher of Grays Inn.



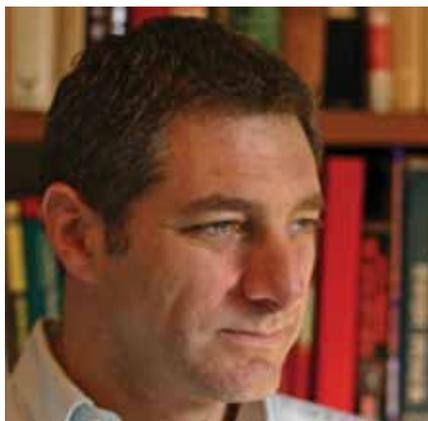
On Lord Mayor's Show Day, he arrived in the City aboard the Royal Shallop "Jubilant", marking the origins of the Show which was traditionally held on the River with a procession of barges. Later he joined the parade in the Lord Mayor's Coach and greeted the crowds on his way to the Royal Courts of Justice. More pictures from the Lord Mayor's Show can be found on pages 8 & 9.



2011 has given City solicitors much to think about. It has been an interesting year, and one of contrasts. It is easy to become reflective at the end of it, but reflection is valuable only when it provides guidance, for both the present and the future. And it is guidance that your Editorial Board desires.

*City Solicitor* is a unique publication: it is the only publication dedicated to the City profession. It is usually packed with contrasting pieces – witness in this edition alone, Geoffrey Yeowart's most informative introduction to the Guide to English Opinion letters, a full colour pictorial report of the Company's participation in the Lord Mayor's Show, and Lionel Rosenblatt's charming essay on his operatic experiences at Wexford. The powerhouse content remains the reports of the professional committees – only a taster in this edition but of course much more activity in the first half of the year.

We now go out to a large and diverse readership. Diverse in their areas of interest and specialty, in their time spent in the City profession, and in their connection with the more ceremonial activities of the Company. The Master explains with his usual eloquence why the Livery Company is interesting and relevant to all of us in the City profession. And we cannot let this Editorial pass without recording our heartfelt congratulations to the new



Lord Mayor of London, Past Master Alderman David Wootton, with our sincere wishes for the greatest success in his year at the Mansion House.

And finally, back to the reflection. We want *City Solicitor* to be a reflection of the City profession. Please help us, readers, to be your looking glass. We always welcome feedback on our publication, we always crave newsworthy copy, and we always encourage personal contributions, on just about any subject. We want to fulfil our unique mandate, but value your input in doing so. Best wishes from your Editorial Team for 2012.

**John Abramson, Editor,**

## Clerk to the Company & Secretary of the City of London Law Society

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## Dates for 2012

### The City of London Solicitors' Company

#### Mon. 9th Jan.

General Purposes Committee, at the Company's offices at 4 College Hill, EC4 at 5.00p.m.

#### Mon. 16th Jan.

\* **Court meeting** at 4.30 p.m. followed by Court/Committee of the City of London Law Society/Chairmen of Committees/Liverymen Dinner at 6.45 p.m. L

#### Mon. 6th Feb.

**Royal Regiment of Fusiliers**, H.M. Tower of London. 6.45 p.m. Reception followed by Dinner at 7.30 p.m. 9.30 p.m. Keys Ceremony. Liverymen and Guests. L.

#### Mon. 5th Mar.

**Inter-Livery Duplicate Bridge Competition** at Drapers' Hall, Throgmorton Street, E.C.2.

#### Thurs. 8th Mar.

**General Purposes Committee**, at the Company's offices at 4 College Hill, E.C.4. at 3.30 p.m.

#### Thurs. 15th Mar.

**New Members' Event**, Old Bailey, E.C.4.

#### Wed. 21st Mar.

**Banquet**, Mansion House, at 6.45 p.m. Liverymen, Freemen and Guests. E or D.

#### Fri. 23rd Mar.

**United Guilds' Service**, St. Paul's Cathedral at 11.30 a.m. followed by lunch at Butchers' Hall, Bartholomew Close, EC1. Liverymen.

#### Mon. 26th Mar.

\* **Court meeting** at 11.00 a.m. followed by luncheon at 1.00 p.m.

#### Mon. 14th May

**Court meeting** at 5.30 p.m. Annual Service at 6.30 p.m. H.M. Tower of London, followed by Reception/Supper at Trinity House. Liverymen, Freemen & Guests. L.

#### Wed. 16th May

Inter-Livery Clay Shoot, Holland & Holland, Northwood, Middlesex.

#### Thurs. 17th May

**Inter-Livery Golf** - Prince Arthur Cup. Walton Heath.

#### Fri. 18th -

#### Mon. 21st May

Visit to Treguier.

#### Wed. 13th June

**Legal Charities Garden Party**, Lincoln's Inn Fields

#### Mon. 18th June

**Court meeting** at 4.30 p.m. Annual General Meeting and Champagne Reception at 5.30 p.m. at Tallow Chandlers' Hall, Dowgate Hill, EC4. Liverymen and Freemen

#### Mon. 25th June

**Election of Sheriffs**, Guildhall, noon. Followed by lunch at venue to be arranged. Liverymen.

#### Thurs. 6th Sept.

**General Purposes Committee** at the Company's offices at 4 College Hill, EC4 at 5.00 p.m.

#### Thurs. 20th Sept.

\***Court meeting** at 4.30 p.m. followed by Court Dinner at 6.30 p.m.

#### Thurs. 27th Sept.

**SOLACCSUR Golf Day**. Walton Heath Golf Club. *Details available from the Clerk.*

#### Mon. 1st Oct.

**Election of Lord Mayor**, Guildhall, 11.45 a.m. followed by lunch at venue to be arranged. Liverymen.

#### Thurs. 1st Nov.

**General Purposes Committee**, at the Company's offices at 4 College Hill, EC4 at 5.00 p.m.

#### Sat. 10th Nov.

**Lord Mayor's Show.**

#### Mon. 19th Nov.

\* **Court meeting** at 11.00 a.m. followed by luncheon at 1.00 p.m.

#### Tues. 27th Nov.

**Livery Dinner**, Drapers' Hall, Throgmorton Street, EC2 at 7.00 p.m. Liverymen and Guests. D.

### The City of London Law Society

#### Wed. 22nd Feb.

† **Committee of the City of London Law Society** at 11.00 a.m. † **Carvery Lunch** at 1.00 p.m.

#### Wed. 18th April

† **Committee of the City of London Law Society** at 11.00 a.m. † **Carvery Lunch** at 1.00 p.m.

#### Wed. 13th June

† **Committee of the City of London Law Society** at 11.00 a.m. † **Carvery Lunch** at 1.00 p.m.

#### Mon. 18th June

**Annual General Meeting and Champagne Reception** at 6.00 p.m. at Tallow Chandlers' Hall, Dowgate Hill, EC4.

#### Wed. 19th Sept.

† **Committee of the City of London Law Society** at 11.00 a.m. † **Carvery Lunch** at 1.00 p.m.

#### Wed. 28th Nov.

† **Committee of the City of London Law Society** at 11.00 a.m. † **Carvery Lunch** at 1.00 p.m.

\* **At Cutlers' Hall, Warwick Lane, EC4.**

† **At Butchers' Hall, Bartholomew Close, EC1.**

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

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



## Training Committee

The key issue for the Committee continues to be the Joint Review of Legal Education and Training being run by the SRA, the Bar Standards Board and ILEX Professional Standards.

The Committee is tracking the work on the Review via the Review's dedicated website ([www.letr.org.uk](http://www.letr.org.uk)).

The researchers working on the Review are conducting a "literature review" of best practices in legal education across the world as well as looking at ethnicity and diversity issues within the "legal workforce" (that is, all suppliers of legal services whether solicitors or not and whether qualified or not).

The timetable for the Review means that concrete information will begin to come out of the Review in the New Year and the Committee will continue to monitor developments.

For now, CLLS members are recommended to see the Note on the Review which the Committee has posted on the CLLS website and to visit the Review's website (address above).

Interested parties will be able to register their contact details through the website, allowing them to comment on documents and other items posted. Alternatively, anyone wishing to email the research team rather than use the website can contact them at [letrbox@letr.org.uk](mailto:letrbox@letr.org.uk).

If any CLLS member does send comments direct to the Review's website, the Training Committee would be interested to know the views expressed. If members are willing to share their views, please send them by e-mail to the Chair of the Training Committee, Tony King at [tony.king@cliffordchance.com](mailto:tony.king@cliffordchance.com)

**Tony King**, *Chairman*,  
*Clifford Chance LLP*

## Professional Rules & Regulation Committee

The PR&RC has continued to be active on a number of fronts. In the summer, it had made a number of suggestions to the SRA for last minute changes to the new Code. Ultimately, these were not accommodated by the SRA, apparently because the LSB was not prepared to accept changes. However, many of the points made will be revisited when the SRA considers its first revision of the Code in early 2012. In the meantime, the SRA has confirmed that:

- (i) Outcome 7.10 (outsourcing) is not intended to apply to use of the bar or foreign law firms; and
- (ii) For the purposes of Outcome 1.6, "clients" does not include former clients.

The PR&RC has also continued to make representation to the SRA concerning the Relationship Management programme. In particular, we have addressed the continuing need for the SRA to have sufficient staff with material experience of "City" work. We have also expressed the view that firms will be reluctant to have a fully open dialogue with Relationship Managers if there is a risk that they might then join a competing firm, taking know-how learned from such discussions with them for the benefit of their new employer. The ball is with the SRA on both issues.

The PR&RC has also been feeding suggestions into the SRA for the purposes of its review of its regulation of international practice. We will be submitting a substantive response to the consultation which has now been launched.

Another issue we have reviewed is the SRA requirement for information on first tier complaints. That has elicited from the SRA clarification to the effect that it only seeks information in respect of complaints where the firm's formal complaints procedure has been invoked. In addition, they are only interested in

complaints in respect of work done in England & Wales, not overseas.

**Chris Perrin**, *Chairman*,  
*Clifford Chance LLP*

## Land Law Committee

Over the last few months we have dealt with the following topics and projects:

- We have established a sub-group to produce a standard rights of light agreement to provide a starting point for negotiation of these documents which have received increased attention as a result of recent decisions such as *Heaney*. We have involved insurance brokers in the consideration of this document.
- We have noted the Law Commission's report on easements, covenants and profits a prendre and have welcomed its general recommendations.
- We are monitoring the progress of the initiative by the British Property Federation for the production of a standard lease based on the Land Securities "Clearlet" Lease.
- We are re-considering the draft insurance provisions for inclusion in leases which we issued a few years ago and which appear on the Committee's page of the CLLS website.
- We have debated the consequences for interpretation of the Landlord and Tenant (Covenants) Act 1995 created by the decision in *K/S Victoria v House of Fraser*. We will continue to monitor the application of this case which appears to have created uncertainty in a number of areas as well as certainty in others.
- We have continued to consult on the final form of the new edition of the CLLS Certificate of Title and hope to bring this project to fruition in early 2012.

**Nick Brown**, *Chairman*,  
*CMS Cameron McKenna LLP*

# Policy and Committees Coordinator's Report

## Common European Sales Law ("CESL") proposal

On the European contract law front, as mentioned previously, the European Commission (on 11 October 2011) released a "Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law". (See [http://ec.europa.eu/justice/newsroom/news/20111011\\_en.htm](http://ec.europa.eu/justice/newsroom/news/20111011_en.htm) for the proposed Regulation and other accompanying documentation.)

On 10 November the Law Commission and the Scottish Law Commission published a joint document entitled "An Optional Common European Sales Law: Advantages and Problems. Advice to the UK Government" – ([http://www.justice.gov.uk/lawcommission/docs/Common\\_European\\_Sales\\_Law\\_Advice.pdf](http://www.justice.gov.uk/lawcommission/docs/Common_European_Sales_Law_Advice.pdf)). The advice contained an in-depth analysis of the proposal, and identified the proposal's most problematic issues as being "whether the CESL should be confined to cross-border sales; language; the right to terminate; damages for distress and inconvenience; telephone selling; and doorstep selling."

In order to be adopted, the proposal must be approved by the European Parliament and the Council of Ministers.

The CLLS is continuing to work closely with the MoJ and other stakeholders on this issue.

## The Legal Education & Training Review continues

The CLLS Training Committee recently published a briefing note which sets out some background on the Joint Legal Education & Training Review of the SRA, the Bar Standards Board and ILEX Professional Standards (the "Review"). (See <http://www.citysolicitors.org.uk/Default.aspx?sID=968&IID=0> for the note and associated documents). As the note states, "the project itself will fall broadly into two parts: (a) scoping the current and likely future legal services sector to 2020, and (b) identifying the key skills and training needs within the sector, making recommendations for legal education and training accordingly."

## Proposed EAPO Regulation criticized

In September, the Financial Law and Litigation Committees responded to the Ministry of Justice's consultation paper "Proposed EU Regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters - How should the UK approach the Commission's proposal?".



(See <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1063&IID=0> and <http://www.citysolicitors.org.uk/FileServer.aspx?oID=1065&IID=0> for the separate responses.)

The consultation paper sought views on whether it is in the UK's national interests to be a party to the Regulation, i.e. whether the UK should opt in to the proposal or not and/or be party to the forthcoming negotiations. The paper also sought views on the proposal's specific provisions. Both Committees raised serious concerns about the proposal's current form, and recommended that the UK not opt in to the proposal (for the current stage at least).

In October, the Government stated that it had "decided that the UK should not opt in to the [European Commission's proposed Regulation] now", although "it intends to participate fully in the negotiations with the hope that sufficient changes will be made to enable a post-adoption opt in."

## Consultations

In addition, some of the more recent consultations to which the CLLS Committees have responded have included:

DCLG: "Draft National Planning Policy Framework: Consultation"

Defra: "Consultation on a Draft National Policy Statement for Hazardous Waste"

FSA: "Guidance Consultation: Simplified Advice"

House of Lords Justice and Institutions Sub-Committee: "Inquiry into EU Criminal Procedure: Call for Evidence"

*Robert Leeder, Policy & Committees Coordinator, CLLS*



John White,  
Master 2011/2012

# Why are City Solicitors Special?

**We are the earliest, after the Master Mariners, of the Modern Livery Companies. From the end of the eighteenth century to the early twentieth century, no new Companies were created. However, in the last 50 years, well after us, there has been a demand from professions and new industry groups to become a City of London Livery Company. We are numbered 79th but the most recent is 108th.**

Our uniqueness is that, unlike the other older companies and the ones created in the last 100 years, we are still linked in membership terms to the City of London. Our members must have practised or must currently practise within the City of London or within a mile of the Bank of England. (We have, however, recently added neighbouring areas east of the City to which some City firms have relocated, such as Spitalfields and Canary Wharf.)

The other Livery Companies generally recruit members nationally due to industry, professional and trade links, as well as through old family ties. So we can be rightly proud that we are really “City Solicitors”, rather than solicitors who have joined a City of London Livery Company.

Originally, before the creation of trade and professional bodies, Livery Companies set the entry requirements for being recognised as proficient, and a mark of proficiency was to be allowed to wear the distinctive clothing, “Livery”, of that trade or professional group so as to be easily recognised. Livery Companies also set up charitable funds to support their members and their dependents in times of illness, death and other financial difficulties.

Although we did not set the entry requirements to our profession, we quickly became involved in professional matters relating to City legal work and developed a strong local law society, with specialist committees of practitioner members covering all of our main areas of expertise, as well as training and on-going

education. This law society element has been so successful, that a few years ago we spun off, as an independent body, the City of London Law Society, which has its own Chairman and Chief Executive and allows corporate membership. But there are still very strong links between the two: the Livery Company and the Local Law Society.

The distinction is that the Livery Company concentrates on the social, traditional and charitable activities. As the Livery Company we run formal dinners in historic surroundings where we bring together people important to our profession; we have informal events for City solicitors to socialise and make

new friends in the profession; we raise money for charity and spend this in support of the less fortunate, especially where we can make a difference in training and education; and we support the Lord Mayor and Sheriffs in their role of promoting City business and City professions.

Why am I writing about this? Many of our readers are now just members of the City of London Law Society through the corporate membership route. I urge you to consider joining the Livery Company in addition. Every organisation needs regular regeneration to remain active. To signify the importance of the status of being “clothed in the Livery” which relates to the concept of being proficient to practise one’s profession or trade in the City, all Liverymen have first to become Freeman of the City of London. So once you become a member or “Freeman” of our Company,

**“I urge you to consider joining the Livery Company in addition.”**

you must then become “Free” of the City to become a “Liveryman” (which term equally applies to women and men). None of these steps is difficult and our Clerk, Neil Cameron, can easily help and guide you through the process, including helping to make your appointment for the Freedom Ceremony at the City of London Corporation.

As with joining many clubs, there is a joining fee of £400, but this is reduced to £300 for those aged 35 or under and you receive your silver

gilt Livery medal and your first Livery dinner at our expense.

I encourage you to join. We have fun. Highlights in my year as Master have been or will be: summer Champagne party at Tallow Chandlers’ Hall; Burgundy, Bordeaux and Rhone wine tasting; tour of the Olympic Park and supper at Pizza Express; 4 day Champagne tour to Rheims; Livery Dinner at Carpenters’ Hall with LJ Heather Hallett; Committee and Livery Dinner at Cutlers’ Hall; dinner at the Royal Fusiliers’ Mess,

Tower of London, and the Keys Ceremony; reception and tour of the Old Bailey; Mansion House Banquet with LCJ Igor Judge and the Lord Mayor; annual service at St Peter ad Vincula, Tower of London, followed by supper at Trinity House; weekend trip to Brittany to celebrate St Yves, our Patron Saint, with good food, wine and company. As to be expected of solicitors, we know our wines and run a good cellar, which you will enjoy at our dinners.

Be clothed as a “City Solicitor”!

*From right to left, Tim West is pictured with Kim Archer, President of the City of Westminster and Holborn Law Society, Alasdair Douglas, Chairman of the City of London Law Society and Alderman John White, Master of the City of London Solicitors’ Company.*



## Wig & Pen Prize 2011

The Wig & Pen Prize is awarded each year by the City of London Law Society and the City of Westminster and Holborn Law Society for pro bono legal work by a young solicitor, less than five years qualified.

Winners hold the prestigious Wig & Pen Inkstand for one year and are awarded £1,000 for the charity or project of their choice.

This year’s winner is Tim West of Ashurst LLP for his work with a number of organisations including: Toynbee Hall Free Legal Advice Centre, where, in addition to volunteering he also encouraged his colleagues to get involved and set up a new rota system.

Tim has also been responsible for establishing Ashurst’s relationship with Reprive, the legal action charity which uses the law to enforce the human rights of prisoners from death row to Guantanamo Bay and has secured Ashurst as a legal partner to Advocates for International Development (A4ID), an international charity which facilitates the provision of pro bono legal advice from law firms to development organisations in developing countries.



## Lord Mayor's Show 12th November 2011

The City of London Solicitors' Company had a special reason to celebrate at this year's Lord Mayor's Show as their own Past Master, Alderman David Wootton was sworn in as Lord Mayor. As David will be the London 2012 Lord Mayor, the Company entered into the spirit of the day with a colourful array of costumes depicting "The Animal Olympics".

Once again the Company was pleased to work with Harlesden-based Mahogany Carnival who provided spectacular costumes representing sprinting gazelles, synchronised swimming swans, equestrian eventers as well as Olympic flames and flags. Our thanks go to them and everyone else who took part.







Lionel Rosenblatt,  
Salans LLP, Liveryman



## Opera ... and Guinness are good for you

**I have been transported by opera since 1966, following a performance at the Royal Opera House of those “terrible” twins, Cavalleria Rusticana and I Pagliacci. As an impressionable 16 year old, I was ‘persuaded’ as part of my education, as my father put it, to go to the opera for the first time.**

I was a perfectly normal teenager - Presley, Buddy Holly, the Cavern for the Beatles in the early 60s - I had no interest in classical music, let alone opera. I did everything I could to persuade Dad that a night away from Liverpool and “our mum” would be much better spent hitting the high spots down the King’s Road or at a nightclub in Carnaby Street, where there might be the chance to check out the migration of the Mersey beat to what we used to call “the Smoke”.

My father’s love of opera prevailed and, when the lights dimmed and the curtain rose on Easter morning in a Sicilian village, a magical Zeffirelli production, I did not immediately realise I was witnessing a life changing event. Some 3 hours later as the curtain fell following Canio’s violent stabbing of his unfaithful wife, Nedda, and her lover, Silvio, with the final words still

ringing in my ears, “la commedia é finita!”, I knew immediately that my passport to more of the same required a place at a London University to read law and follow my ambition to become Perry Mason, and sufficient A Levels to achieve those ambitions. In 1968, with a place at LSE secured, my opera (and legal) journey began.

I have seen opera all over the world and attended many festivals, some occasionally and others a regular rendezvous. One of those calling me back annually is a festival held in the bottom right-hand corner of Ireland, in a most unprepossessing setting for opera that you are ever likely to stumble across, Wexford. A town of no more than 12,000 inhabitants has little in way of a musical tradition and little reason for anybody to return. This was until Dr Tom Walsh decided

that the decaying Theatre Royal, with seating for an audience of 440, should hold an annual international opera festival. The inaugural festival, with a performance of Balfe's 'The Rose of Castile', took place in 1951, and it has just held its 60th anniversary.

When I first went in the early 80s, the Theatre Royal remained little changed. It stands in a cobbled street resembling Coronation Street, with terrace houses on either side. The festival relied on volunteers to man the bars and act as ushers. These volunteers are integral to the operation of the festival and remain so to this day. The festival belongs to the town, and the charm and the good nature of the people entice you back to sample again its unique atmosphere.

The Theatre Royal was demolished and the magnificent Wexford Opera House built in its place (in the same street), witnessing its first festival in October 2008. The changes over the years have produced improved productions, some wonderful singers, more recently the Maltese Tenor, Joseph Calleja, and Juan Diego Florez, then at the very dawn of their careers.

The festival presents a mix of opera scenes/short works, orchestral and choral concerts and recitals. There is a gala concert featuring many of the artists performing in the festival presenting their own choice of arias. Also, three staged works of neglected operas which, as the Artistic Director stated in this year's programme, 'by performing them, giving them another

chance to become better appreciated". The general view was that this invariably produced a hit, a miss, and an "okay". With this success rate, being unable to anticipate in advance "the hit", woe betide you if you only went to one or two of the operas ...

For its 60th anniversary, Wexford presented Ambroise Thomas' La Cour de Celimene, Roman Statkowski's Maria, and Donizetti's Gianni di Parigi. Because of pressures on time, I had to live dangerously and was able to attend just the gala and two of the operas, forsaking the Donizetti. The Thomas, better known for his Mignon and Hamlet, proved to be a frivolous soufflé. The music was attractive, the story of a heartless coquette and a suitor only interested in her money. The sets and costumes were a riot of colour, conjuring up an evocative and decadent French society. The emergence of two excellent Irish singers is good to report. The coloratura soprano of Claudia Boyle as the Countess, and the fine bass of John Molloy. At curtain, the audience repaired for a Guinness ... or three ... in fine mood, untroubled otherwise by this slight, though attractive, piece.

The melodrama that is Roman Statkowski's (1859-1925) Maria is virtually unknown in the UK. The composer is hardly better known. Its first-ever production outside Poland, a gloomy plot, contrasts two fathers' love for their children, Maria and her husband, Waclaw. Waclaw's father is Count Palatine, who had bigger ideas for his son than marrying the

daughter of the District Governor. He engages his son in repelling a Tatar invasion whilst arranging for the murder of Maria. The Wexford chorus and orchestra performed this romantic score with great feeling. There was some exceptionally heroic tenor singing from Rafal Bartminski as Waclaw, a singer capable of singing both softly and with thrilling top notes. Whilst the first act produced a choral Polonaise, concluding with a choral Mazurka, the second and third acts portray clear influences of Tchaikovsky and, in particular, in seeking to maintain dramatic continuity, melting one scene into another, clear Wagnerian influences. The love duet between Maria and Waclaw in the middle of Act 2 produces fine dramatic music, displaying much emotion, and I was certainly transfixed throughout the second and third acts. The view expressed during the interval that "Maria" would go down well in Poland was supplanted as it became something far more rewarding after the last two acts. If ever there is a chance to see it performed I would recommend it both for its orchestral and vocal writing. A most rewarding evening.

Next year, the festival will run from 24 October to 4 November 2012 and provides an eclectic mix of Italian, French and English works. Mercadante's 'Francesca da Rimini', Chabrier's 'Le Roi Malgré Lui', and Delius' 'A Village Romeo and Juliet' ... Wexford, a festival of music and laughter to refresh the spirits ... I can barely wait.

## SENIOR PARTNERS DINNER

The City of London Law Society held its 2011 Senior Partners Dinner at Guildhall in November. This year's speaker was Andrew Tyrie MP, Chairman of the Treasury Select Committee who addressed the group on the issue of Barriers to National Wealth Creation.





Geoffrey Yeowart,  
Hogan Lovells International  
LLP & Deputy Chairman,  
CLLS Financial Law  
Committee

# Guide to English opinion letters in financial transactions

The Financial Law Committee has issued a Guide to questions to be addressed when providing English law opinion letters in financial transactions. The aim of the Guide is to save time and costs spent in discussing which law firm should provide an opinion letter, what it should cover and who may rely on it. The Guide is available at [www.citysolicitors.org.uk](http://www.citysolicitors.org.uk).

The Guide suggests twelve questions which a law firm practising English law should consider addressing when seeking or providing an opinion letter and explains the key considerations, including the professional conduct rules which must be observed. It does not lay down rules or a code of conduct. Each law firm is free to decide on its own policy for providing opinion letters.

The Guide is concerned primarily with opinion letters delivered by a law firm to its client or, at its client's request, to a third party, where the opinion is to be relied upon by its client or the third party (typically in fulfilment of a condition precedent to the completion of a financial transaction), or reference is to be made to the opinion in a public document or to obtain a debt rating. Written advice to a client for its sole use on points of law or on its legal position fall outside the scope of the Guide. This article outlines a few questions addressed by the Guide.

## **What opinions are required, who should provide them and who may rely on them?**

It is appropriate to consider, before requesting another law firm to provide an opinion letter, whether, if the roles were reversed, the requesting law firm would itself be willing (and permitted under professional conduct rules) to give the opinion requested. This approach – sometimes called the “Golden Rule” – can avoid many of the difficulties which may otherwise arise.

The normal practice is that an English opinion letter in a financial transaction is given by the lender's own legal advisers. Exceptions may occur where it is convenient and saves costs or where market practice has adopted a different approach and, in each case, where giving the opinion is consistent with professional conduct rules. There are differing views as to the extent of the exceptions. One exception recognised by some (but not all) law firms is that, if one party requires an opinion letter only on the capacity and authority of the other party to enter into the transaction documents, it may in certain cases be most cost efficient for the law firm acting for that other party (or its in-house lawyer) to provide the opinion letter.

## **How should differences in opinions practice be reconciled in cross-border transactions?**

There is a significant difference of practice as between the USA and England. The US approach is to expect more from the borrower's legal advisers. A lender in a US financial transaction will often require the borrower to provide a legal opinion for the benefit of the lenders from the borrower's legal advisers on the enforceability of the financial documentation (a “third party opinion”).

The “Golden Rule” may appear difficult to apply in cross-border transactions. A law firm practising in the USA may ask a law firm practising in England to give an opinion letter in wider terms than is normal under English practice because the US law firm would be willing to provide an opinion if the roles were reversed. In practice, a common

answer (which is consistent with professional conduct rules) is that the opinion letter should be given by reference to the practice generally applicable in the jurisdiction whose law is the subject of the opinion. So, an opinion letter on English law would take into account the normal approach that applies in England and an opinion letter on New York law would take into account the normal approach which applies in New York.

### **What issues need to be considered when a law firm is requested to provide an opinion letter to a third party?**

The Guide examines several factors which are relevant. In particular, applicable professional conduct rules must be observed where, for example, a request for a third party opinion may give rise to a possible conflict between the law firm's duty to its own client and the responsibilities assumed by it to the recipient of the opinion. Additionally, the giving of the requested opinion letter may have the effect that responsibility for advising the addressee in relation to certain features of the transaction is transferred inappropriately from the law firm acting for the addressee to the opinion provider (being the law firm acting for the other party).

### **What is the purpose of an opinion letter?**

The primary purpose of an opinion letter is to state conclusions of law as to the ability of a party to enter into and perform its obligations under an agreement and/or the legal effect of the agreement. Most opinion letters are subject to at least some qualifications.

An opinion letter often states conclusions of law without explaining the legal analysis leading to those conclusions. Closing opinions in financial transactions do not normally address the legal consequences if, for example, the contracting party covered by the opinion were to enter into insolvency proceedings. The possibility of a party entering into insolvency proceedings would involve complex legal issues. The time and expense involved in the analysis of these issues may be disproportionate in the context of the transaction. Thus, the opinion letter will normally include a qualification that any opinion is subject to all provisions of insolvency law and other laws affecting creditors' rights generally.

An opinion explaining the legal analysis (a "reasoned opinion") may be requested in the case of securitisations or netting arrangements or otherwise to satisfy the requirements of rating agencies or regulators. It may be required to address the impact of insolvency proceedings on the enforceability of contractual obligations.

It is often regarded as inappropriate for a law firm to give an opinion as to the nature and effect of security or its registrability, unless it has been or is responsible for preparing and, if applicable, registering the security

documents. Even if a law firm has prepared the security documents, it may be unwilling to opine on priority, unless the legal position is capable of being established conclusively by priority searches at the relevant registry (as, for example, in the case of mortgages of registered aircraft or land).

### **What is the proper role of the opinion provider?**

The views contained in an opinion letter are expressions of professional judgment on the legal issues addressed and not guarantees that a court will necessarily reach a particular decision. The provider of an opinion letter may be liable to the addressee if the opinion is negligently given, but is not necessarily negligent merely because an opinion proves to be at variance with a decision ultimately reached by a court at a later date. The provider of an opinion letter is not an insurer against risks which may affect the parties.

### **What approach should be taken in an opinion letter on factual issues?**

The Guide highlights the importance of the distinction between fact and law. An opinion letter will generally be given only on specific questions of law. The provider of an opinion letter is not a warrantor of factual matters. An opinion letter is invariably expressed to be based on relevant factual assumptions. These assumptions may in turn be covered by warranties given by one party to the other in the transaction documents.

### **What is best practice as to the form of opinion letters?**

The Guide provides examples of best practice. For instance, an opinion letter should use a recognisable format and language which assists the reader to evaluate its contents and to identify any unusual assumptions or qualifications. The terms of the opinion should also be complete and self-reliant.

Unless a detailed, reasoned opinion is required, the purpose of an opinion letter lends itself to the use of language as concise as its subject matter permits. The language should be easily intelligible and the letter clearly laid out. A key statement, such as that an agreement is valid, should not be buried in a mass of intricate legal technicalities. The reader may otherwise fail to draw the correct conclusion. Care in wording assumptions and qualifications is also important. Where an opinion letter is given to a client, it is helpful not only to the recipient but to the law firm providing it, since it defines the scope (and, at least in a reasoned opinion, records the substance) of the opinion given.

The Guide will be a useful aid to all practitioners who provide opinion letters on English law.

# Livery Dinner at Carpenters' Hall

The 2011 Livery Dinner was held in Carpenters' Hall on London Wall, the site of that Company's Hall since medieval times.

One of the great pleasures and privileges of belonging to a Livery Company in the City of London is the sense one has of being part of an ancient fellowship which has endured and prospered over many centuries, maintaining its purpose and values but adapting constantly to changing – and often challenging – times. Living as we do in quite challenging times it was, I felt, very apposite to be holding our Livery Dinner in the relatively modern surroundings of a truly medieval Livery Company whose Livery hall rose again in unapologetic splendour following its predecessors destruction by bombs in 1941. Moreover, like our own Company, it continues to play a significant role in the craft which brought it in to being.

The Hall itself – its two predecessors having been destroyed, the first by fire in the 19th Century, the second as I mentioned by enemy action in the 20th - is a resplendent example of mid 20th Century tastes enhanced by exceptional craftsmanship. At least 18 different kinds of wood have been used throughout the building which was intended as a showcase for the craft of carpentry. Linking the present hall with its predecessors are some splendid wall paintings which survive from the first hall where they were painted in 1571.

In these splendid surroundings guests were greeted by the Master, the Senior Warden and the Junior Warden as they arrived and then loosed into a throng of Liverymen and women, our official guests and our many private guests. (For those of you who, being lawyers, want some hard facts, the count was as follows: of a total of 179 attendees there were 73 Liverymen, of which 8 were newly admitted this year; 43 official guests covering 17 Livery Companies; 52 individual guests; 2 Prize Winners (Company & Wig & Pen Prizes); 6 legal guests; 1 High Sheriff; Our Auditor and Chaplain.)

I am a great believer in the idea that eating together strengthens bonds of friendship and performs an essential role in the life of the Company. That is all the more true when the dinner itself is as splendid as it was on this occasion. I particularly enjoyed the roast fillet of beef which was perfectly complemented

by the claret – Clos de Marquis 2001. The formal part of the evening in the shape of the speeches (which followed a little after the Master had graciously taken wine with new Liverymen, myself included) mixed the light hearted with the desperately serious. The light hearted included the Junior Warden's traditional toast to the Guests and, to wrap things up, a response to our guest speaker by the Master who in giving it also revealed his unusual military career as a member, at different times, of all three of Her Majesty's Armed Forces.

The serious came in the form of a well-balanced and measured argument from The Rt. Hon Lady Justice Hallett when responding to the Junior Warden's Toast to the Guests. Warning the profession against the rather dangerous complacency which she sees in the face of a multi-pronged attack on the profession by politicians, she carefully unpicked an all too common confusion which exists amongst the general public around the terms professionalism and consumerism. She also expressed concern as to who, in the brave new world post the Legal Services Act, will ensure that lawyers in future act in accordance with their legal duty rather than in the interests of their bosses and shareholders.

Lady Justice Hallett said she was concerned that the profession, which has a duty to care about its future – in our own and our country's interest – was standing to one side whilst those with no such duty or interest inflicted permanent and irreversible damage on us and our reputation in pursuit of an ill thought through desire to act in the best interests of consumers by attacking professionalism as a protectionist gambit that damages, whilst purporting to protect, consumers.

As we all know, nothing could be further from the case. It is hard to believe that market forces will provide better protection for consumers than well regulated, properly trained and qualified professionals who put their clients' interests first. Moreover, from the self-interested perspective of the country as a whole there is also the fact that, in 2010 for example, UK legal services generated 1.3% of UK GDP. Around the world our competitors

have been striving for decades to raise their standards of probity, professionalism and the rule of law to those of the UK legal profession.

Perhaps most tellingly, Lady Justice Hallett pointed out that putting the regulation and oversight of the profession in the hands of the SRA and the Legal Services Board, a lay body appointed by the Government, meant the profession was now in the hands of the Executive, an outcome which runs counter to all the tenets of the rule of law. The message to the world is now that we are a profession under Government control. If we are in any doubt of that we have only to look

at the legislation which makes it clear that the role of the Legal Services Board is to support the Ministry of Justice's overall aims and objectives. That is a role very different to our centuries old duty to serve the interests of justice without fear or favour.

From the rousing terms of Lady Justice Hallett's Toast to the carousing common whenever two or more lawyers are gathered together in pursuit of pleasure was but a step and the evening ran off in a gentle buzz of conversation and, for one or two of those present, haze of delicious alcohol.

## FAY LANDAU, MBE

**On Friday 25th November, the Grand Hotel in Brighton, was the venue for a Memorial Tea Party in memory of Fay Landau MBE. Among the guests present were: John Young, Past Master of the City of London Solicitors' Company and Janis Purdy and Vivien Stern, both from the Sole Practitioners Group.**

Fay had had two separate circles of friends and colleagues, in Brighton and others London-based, so it would have been difficult to arrange one event that would attract her friends and colleagues from both. As it was, at the venue fixed in Brighton, naturally her local friends and contacts from that area were mostly the attendees. There were some beautiful photos of Fay on display, including one of her in a vintage car, and one receiving the MBE award.

The attendees were all truly loyal supporters of Fay, including her long-standing secretary of 30 years. All who were there had fond and interesting memories of her, and there was non-stop talk about her during the event, which no doubt would have made her smile.

There was a total of four of her secretaries from over the years. The Gang of 4 were inseparable. They all remembered (among other things) Fay's long letters, which had become

longer over the years! The husband of one had volunteered his services - free of charge - to Fay for doing the filing. He was amused by the memory that despite the absence of any salary, this had not prevented Fay from criticising his job performance as "the slowest filer ever"! He had remonstrated that this was because he did his job properly, reading things before putting them away. This defence had cut no ice at all with Fay!

One lady told me that she had been a client, and Fay had been the best solicitor she had ever had. As I moved around and gradually talked to more people, it became obvious that Fay had made a big impact on everyone's lives.

The consensus of all at the end was this had been a very fitting gathering for Fay, and she herself would have enjoyed it immensely.

**Vivien Stern, Sole Practitioners Group**

## Fox asks whether better things are electric (cont. from back page)

My most exciting drive in an electric car was a couple of years ago at the U.K. launch of the Tesla Roadster, designed in California and built on a Lotus chassis. I was impressed. The recently announced Model S Tesla saloon is claimed to deliver up to 300 miles per charge. The batteries are liquid-cooled lithium ion cells which enable the car to leap from 0 to 60 in 5.6 seconds.

The most sophisticated solution to the range problem is that developed by Better Place, a company which provides infrastructure for electric vehicles. As well as a neat charging point which can be conveniently located at home or in a shopping centre car park, this company has designed battery switch stations. Occupying less space than a car wash these stations use an ingenious robotic system to replace a depleted lithium-ion battery with a newly-charged battery. On board electronics monitor battery power and warn the driver when there is approximately 25 miles of power left in the battery; the satellite navigation system then directs the driver to the nearest battery switch station. The car is driven over what looks like a maintenance pit.

Within less than 5 minutes, an automated system washes the underbody, initiates the battery release process, lowers the depleted battery from the vehicle, places it on a storage rack for charging and installs a fully-charged battery into the waiting car.

I watched this system being demonstrated and then drove a development version of the Renault Megane fitted with the electric motor and electronics of the new Renault Fluence; this model has been designed from the ground up to offer a choice between petrol, diesel and all-electric power units. Electric versions will be leased rather than sold; monthly payments will probably include battery maintenance and replacement as well as vehicle depreciation. The car which I drove exhibited all the most desirable features of an electric car: exceptional torque, zero emissions and a virtually silent ride.

The solution to range anxiety is in sight. Electric vehicles are the way of the future.



**Ronnie Fox\***,  
Past Master,  
Motoring Correspondent

\* This article incorporates much appreciated research undertaken by Ali Hussain of Linklaters.

# Fox asks whether better things are electric

I attended the City of London School. Now I practise partnership and employment law in the heart of the City. My life has been spent in the City of London.

Apart from the commute, there are two great disadvantages to working in the City. The first is contamination of the air we breathe. The fresh air of the countryside or a sea breeze is vastly more pleasant than the fetid air in the City. Could working and living in a polluted city also have negative implications for health and life expectancy?

Another disadvantage to City life is the constant noise of traffic. Notwithstanding double-glazing, the constant thrum from the engines of cars caught up in the Cornhill traffic is always audible in my office.

Concerns of this kind prompted my active interest in the development of electrically-powered cars. The advantages seem overwhelming: electric cars generate no emissions, no noise and are really cheap to run.

Critics say that the environmental damage created by running an electric car is just as great as that created by a conventionally powered car. They assert that the way in which electricity is generated moves the pollution to a different place but without eliminating or even reducing it. Yes, it is true that every method of generating electricity - by burning coal, oil or gas, by nuclear fission, by solar radiation, or by wind or wave power - has some negative impact on the environment. Combustion erodes the ozone layer. The radiation emitted by spent nuclear fuel takes thousands of years to decay to safe levels. An accident at a nuclear power station has disastrous consequences. Physical limitations on the ability to store

electricity combined with the transient nature of sun, wind and sea make those sources marginal elements in the equation: Prince Philip famously described wind farms as "absolutely useless".

The fundamental point is that the use of electricity to power vehicles enables

us to choose where the pollution takes place. Power stations can be sited far from locations where people live and work, the very places where the internal combustion engine causes so much damage and inconvenience.

The other key advantage of electrically-powered vehicles is their virtual silence in operation. Although standards of sound insulation in cars are steadily improving, nothing can disguise the fact that petrol and diesel engines work by creating a series of explosions.

To date the only major disadvantage to owning an electrically-powered vehicle has been its lack of range. Few can afford to run two cars. The one to buy must be capable of the occasional long run.

The traditional response to this dilemma has been the hybrid technology pioneered by Toyota in the Prius and successfully implemented in various Lexus models. A recent variation on this theme is the "range extender" hybrid; the Chevrolet Volt is a plug-in hybrid which can go 40 miles on battery power before the petrol engine kicks in to provide 300 more miles.

Battery technology is steadily improving. The first all-electric passenger vehicle to sell in any quantity in the UK was the G-Wiz. It isn't really a car at all but a quadricycle. It is slow, cramped and has an extremely limited range especially when the heater is used. The G-Wiz is something of a toy; there are nagging doubts about its safety.

The first all-electric car which I drove was a Toyota RAV4. In the late 90's Toyota shipped a batch to Jersey where there is a maximum speed limit of 40 mph. Half a dozen were used by the Jersey police and the others were supplied to Avis for rental. It was an excellent vehicle and ideally suited to Jersey roads. 0 – 60 in around 18 seconds and a range of 100 miles posed no problems. An updated version, developed with Tesla, is to be manufactured in Canada and will go on sale next year.

