

**CITY OF LONDON LAW SOCIETY
LITIGATION COMMITTEE**

MINUTES OF MEETING

Date: 27 April 2010

Location: 10 Upper Bank Street, London E14

Present:

Simon James (Chairman)	Clifford Chance LLP
Duncan Black	Field Fisher Waterhouse LLP
Tom Coates	Lewis Silkin LLP
Gavin Foggo	Fox Williams LLP
Hardeep Nahal	Herbert Smith LLP
Tim Hardy	CMS Cameron McKenna LLP
Joanna Page	Allen & Overy LLP
Patrick Swain	Freshfields Bruckhaus Deringer LLP

In attendance: Lizzie Alpass (for Helen Jackson), Associate Observer, CMS Cameron McKenna LLP

Apologies: Angela Dimsdale Gill, Richard Foss, Willy Manners, Rory McAlpine, Arundel McDougall, Stefan Paciorek, Kevin Perry, Philip Vaughan

1. The Committee recorded its grateful thanks to Lindsay Marr, who has resigned from the Committee, for his valuable and hard work over a long period on behalf the Committee, most recently as Chairman.
2. The Minutes of the previous meeting, held on 11 January 2010, were approved.
3. Matters arising from those Minutes:
 - (a) Paragraph 1: Response to the collective action provisions of the Financial Services Bill. The Committee's comments on the Bill had been submitted. However, the relevant part of the Bill had been omitted in order to secure the Bill's passage through Parliament before Parliament was dissolved. (See also paragraph 8 below.)
 - (b) Paragraph 2: The Ministry of Justice's consultation on the draft Civil Law Reform Bill. The Committee's comments on the draft Bill had been submitted.
 - (c) Paragraph 3: Amendments to the rules for service in the Civil Procedure (Amendment No 2) Rules 2009. The Committee's letter to the Master of the Rolls had been sent, but the Rules had come into force without amendment. It was, therefore, now open to a solicitor to give an address for service outside the UK. If that happened, the courts would have to consider how to deal with the service of documents in the course of proceedings.
 - (d) Paragraph 4.2: Barristers operating in a dual capacity. The documents relating to this were now available on the Legal Services Board website.

Jackson Report

4. The Committee noted that there was an increasing amount of hostile comment on Lord Justice Jackson's proposals to reform the civil justice system (those proposals were published on 14 January 2010). This comment came in particular from claimants' lawyers and insurers, though it appeared that the proposals in the Lord Justice Jackson's Report still enjoyed considerable support within the higher judiciary. The judiciary was likely to seek to introduce reforms that could be effected by the Civil Procedure Rule Committee or by Practice Directions after the general election.
5. The possibility of the Committee holding a public event on the Jackson reforms, at which Lord Justice Jackson himself might be invited to speak, was discussed. An event might show that there were voices concerned about civil procedure that were not represented by those currently criticising Lord Justice Jackson's proposals. The Committee decided, however, not to pursue this idea for the time being. It was felt that it would be premature to do so. Without any specific proposals for reform, it would be difficult to secure a satisfactory attendance. The issues being ventilated now were also issues of greater concern to personal injury lawyers than to lawyers in the City. In addition, the Committee noted that it had, for example, opposed the proposals on costs budgeting set out in Lord Justice Jackson's preliminary report, but those proposals had still been carried through to the final report.

Higher rights of audience

6. The Solicitors' Higher Rights of Audience Regulations 2010 came into force on 1 April 2010, replacing the previous exemption, accreditation and development routes for obtaining higher rights with a new regime. The new regime required solicitors to pass an "advocacy assessment", which would automatically give them higher rights. The advocacy assessment being offered by, for example, the College of Law was a two stage process: an examination on procedure, evidence and ethics; and an advocacy assessment. The examination and the assessment both lasted 2½ hours. The College of Law was offering three day courses leading to each of the examination and the assessment, though attendance was not compulsory. It therefore appeared that, in practice, the new regime was similar to the old development route, but without any mentoring period. Given the Committee's support for all solicitors being given higher rights automatically, this was disappointing.
7. The Regulations themselves were very brief, providing that the SRA would issue guidelines and standards for the provision of competence assessments (Regulation 8.1.1). The Chairman would seek to obtain a copy of those guidelines, and the Committee would consider at a future meeting whether it should raise any concerns with the SRA.

Collective actions

8. The Civil Justice Council had sent to the Civil Procedure Rule Committee and the Lord Chancellor draft general rules for collective actions. The covering letter notes that the Civil Procedure Rules Committee is to carry out a full public consultation on the draft rules before reaching any decision. The Committee would consider whether there were any fundamental issues in the draft rules that merited the Committee seeking to influence their content before any public consultation was carried out or whether any points could wait until that consultation.

Other items

9. The following additional points were noted by the Committee:

- (a) City of London Law Society structure. The Committee noted the proposals in David McIntosh's letter dated 30 March 2010 to Chairmen of the CLLS's specialist committees.
 - (b) The Rolls Building. The March 2010 update for the Rolls Building states that moves into the Rolls Building are due to commence in the second quarter of 2011.
 - (c) E-filing. A group of court clerks had formed a committee, under Mrs Justice Gloster, to seek to improve the system of e-filing in the Commercial Court and to ensure that the forms used for e-filing comply with the Civil Procedure Rules. The Chairman said that he had been informed by the team responsible for e-filing in the Commercial Court that some 60 claim forms had been e-filed this year, as opposed to 6 last year (use is higher in the Technology and Construction Court). The team expects, based on experience in other jurisdictions, it to take five to eight years to achieve a significant take up of the system (at least 70% of claim forms issued online). The Committee also noted that there was as yet no means to pay court fees on line, and that concerns had been raised about the system's confidentiality.
 - (d) Defamation costs. The Master of the Rolls wrote to the Ministry of Justice on 17 February 2010 arguing for a "holistic" solution to the recoverability of success fees on the basis of Lord Justice Jackson's proposals, and criticising the Ministry's proposal to cap the recoverability of success fees in publication proceedings in isolation. In any event, the Ministry of Justice's proposal had lapsed because of the general election.
 - (e) Super-injunctions. The Master of the Rolls had set up a committee to consider "super-injunctions". The Committee observed that super-injunctions had, in any event, become difficult to obtain in the light of the recent adverse publicity about them.
 - (f) Guideline hourly rates. New guideline hourly rates for 2010 have been published, which increase the 2009 rates by 1.7% (the rate of inflation in service costs).
 - (g) E-disclosure. The Civil Procedure Rule Committee had set up a sub-committee, chaired by Mr Justice Coulson, to consider the lengthy e-disclosure questionnaire drafted by a previous group under Senior Master Whitaker. The CPRC had been considering e-disclosure for some considerable time, and appeared unsure as to whether mandating a questionnaire along the lines of Senior Master Whitaker's draft would increase costs or reduce them, and whether a shorter, more discretionary, questionnaire might be more appropriate.
 - (h) Bank attachment orders. It appears from a speech by EU Commissioner Viviane Reding on 15 March 2010 that the Commission is intending to take forward its proposals in a Green Paper dated 24 October 2006, upon which the Committee commented, for a European Union regulation that would allow courts in one country to freeze bank accounts in another before judgment. A public hearing is to be held in Brussels on 1 June 2010.
10. The next meeting of the Committee is scheduled for 29 June 2010 at 4pm.