

Monthly E-Briefing (Issue 41 – July/August 2013)

Committee vacancies

The **Financial Law Committee** has two vacancies to fill as a result of resignations and is therefore seeking applications from prospective new members. [Click here](#) for details. To apply, please contact the Committee Chair before **10th September 2013**.

CLLS comments on MoJ legal aid proposals

The CLLS Chair recently wrote to the President of the Law Society regarding the MoJ proposals for the future of publicly funded legal services – ‘Transforming Legal Aid’ [Click here](#) to read the letter which observed that the MoJ proposals “pose a potentially irreversible risk to the standards and reputation of English justice”. The paper made some observations about the risks of the proposed situation and pointed towards some areas where there might be scope for change.

Commercial Law Committee comments on application of draft Consumer Rights Bill to price escalation clauses

The **Commercial Law Committee** recently submitted comments to BIS in relation to the application of the proposed Consumer Rights Bill to price escalation clauses ([Read paper](#)). The Government described the purpose of the Bill as being, inter alia, to “streamline key consumer rights covering contracts for goods, services, digital content and the law relating to unfair terms in consumer contracts in one place”. The Committee’s submission concerned the unfair terms provisions within the Bill, where there appears to be a potential conflict in terms of how the Bill addresses price escalation clauses in on-going services contracts. The paper noted that while it seems clear that price indexation clauses will not be assessable for fairness provided that the method by which prices vary is explicitly described and the provision is transparent and prominent, the position in relation to price escalation clauses (even if they are transparent and prominent) is rendered uncertain by the re-structuring of the grey list.

Competition Law Committee comments on Schedule 7 (private actions in competition law) of draft Consumer Rights Bill

The **Competition Law Committee** also recently commented on the draft Consumer Rights Bill, this time in the context of the pre-legislative scrutiny of the draft Bill conducted by the Business, Innovation and Skills Committee (a Commons Select Committee). ([Read paper](#)). The submission noted generally that the Competition Law Committee broadly supports the proposed legislative reforms set out in Schedule 7 of the draft Bill, but that it does have a number of concerns about the Bill’s provisions. It went on to make detailed comments about some of the provisions.

IP Law Committee response to Law Commission and IPO consultations

The **Intellectual Property Law Committee** recently responded to the Law Commission consultation “Patents, Trade Marks and Design Rights: Groundless Threats”. ([Read paper](#)). In the document, the Commission consulted on two approaches to reform. The first approach was to build on the reforms made to patent law in 2004 and to extend these to the other rights. The Commission also proposed that legal advisers should be protected from liability for groundless threats. The second approach was to treat groundless threats as a form of unfair competition and to introduce a new and broader cause of action based on the Paris Convention. In its response, the Committee noted that it considered that the provisions to seek to restrain unjustified threats in IP cases are important, but the current regime needs reform. The Committee broadly agreed with the Intellectual Property Lawyers Association (IPLA)’s response to the consultation, subject to some specific comments on passing off/Copyright, and the view that a revolutionary (cf. evolutionary) approach to law reform in this area was preferable.

The Committee also submitted two responses to the IPO consultation “Technical review of draft legislation on copyright exceptions“. The consultation outlined the changes that the Government intends to make to copyright exceptions, and the reasons for them. The Committee’s first response ([Click here to read](#)) focussed on exceptions in relation to private copying, parody, quotation and public administration. It answered some of the consultation questions and made some specific drafting comments. The second response ([Click here to read](#)) focussed on exceptions in relation to data analysis, education, research, libraries and archives. More generally, both responses argued that, as the government’s intention is to implement the Copyright Directive exceptions as far as possible, in general, it should do so in a way that replicates the wording of the Copyright Directive, as far as possible. They also expressed serious doubts about the legality of using a statutory instrument to interfere with a fundamental tenet of English law, namely freedom of contract, in the absence of a Directive requiring that interference. As such, they argued that the contract over-rides should be removed.

Litigation Committee responds to Civil Procedure Rule Committee costs consultation

The **Litigation Committee** recently responded to a Civil Procedure Rule Committee consultation on costs budgeting and costs management. ([Read response paper](#)). The consultation focussed on several issues, including “the desirability of retaining the Admiralty and Commercial Courts’ blanket exception to the mandatory requirement to produce costs budgets at CPR Part 3.12(1).” The response argued that the Commercial Court’s exemption should be retained, and stated in summary that it did not agree with the preliminary view of the majority of the sub-committee of the Civil Procedure Rule Committee in its consultation paper that the Commercial Court’s exemption from automatic costs budgeting “may be unnecessary and inappropriate”.

PR&RC responds to Committee on Standards in Public Life consultation “Lobbying: Issues and Questions Paper”

The **Professional Rules & Regulation Committee** (PR&RC) recently responded to the Committee on Standards in Public Life’s document “Lobbying: Issues and Questions paper”. ([Click here to read the paper](#)) The submission stated, *inter alia*, that “Adopting a blanket statutory register of lobbyists will aggregate those that are already highly regulated in relation to lobbying activities and those that are not.” It also stated that “For those that are regulated, such as solicitors, their law firms and their employees (who are bound by Solicitors Regulation Authority (“SRA”) regulation), the initiative may create overlapping, and potentially contradictory, regulatory regimes. It may also have the effect of stifling productive, even essential, dialogue between legislators and those who consider the implications and practicalities of relevant legislation on a day-to-day basis.”

Revenue Law Committee responds to HMRC consultations on two aspects of the tax rules on partnerships, Code of Practice on taxation for banks, close company loans to participators rules and taxation of corporate debt and derivative contracts

The **Revenue Law Committee** recently responded to the HMRC consultation “A review of two aspects of the tax rules on partnerships”. ([Read paper](#)). The consultation concerned two aspects of the tax rules on partnerships in order to prevent tax loss arising from:

- disguising employment relationships through limited liability partnerships; and
- certain arrangements involving allocation of profits and losses among partnership members.

The Government sought views on the detailed design of the changes and on how to ensure that any impacts outside the specified targeted areas can be reduced without giving rise to uncertainty and avoidance. The submission responded to the specific consultation questions, and noted generally that the review of the tax treatment of partnership taxation as set out in the consultation seemed rather at odds with the UK’s ambitions to establish itself as the global centre for the investment management industry.

The Committee also responded to the HMRC consultation “Strengthening the Code of Practice on taxation for banks”. ([Click here to read paper](#)) The consultation sought comments on the HMRC governance process around determining non-compliance with the Code of Practice for Taxation of Banks and the nature of the report to be published by HMRC. The Committee responded to the paper in detail and argued generally that the proposals contained in the consultation document were bad proposals which should either be withdrawn, or significantly amended before being pursued.

The Committee also responded to the HMRC consultation “Reform of close company loans to participators rules”. ([Read paper](#)). The consultation sought views on whether to reform the rules governing the taxation of close company loans to their participators (and other related arrangements) and on options for such reform. In its response, the Committee was of the view that none of the proposed options should be pursued. Instead, it argued that the charge should be abolished and replaced with a similar charge levied at dividend tax rates on participators.

The Committee also responded to the HMRC consultation “Modernising the taxation of corporate debt and derivative contracts”. ([Read paper](#)). The consultation concerned modernising the rules governing the taxation of corporate debt (loan relationships) and derivative contracts. The Committee provided a number of detailed comments, and stated generally that “we agree that it is appropriate to undertake a significant review of the loan relationships code even if in many cases our recommendation is to make only minor changes.”

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Useful links:

The Law Society

The Solicitors Regulation Authority

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