

Monthly E-Briefing (Issue 43 – November/December 2013)

Committee vacancy

The **Competition Law Committee** has a vacancy to fill as a result of the resignation of an existing member (due to that member having been appointed to a senior role at the Competition & Markets Authority (CMA)). [Click here](#) for details. To apply, please contact the Committee Chair by **21st February 2014**.

CMA Consultation on CMA Competition Act Guidance and Rules of Procedure

The **Competition Law Committee** submitted comments in response to the Consultation Paper issued by the CMA Transition Team on 17 September 2013 entitled “Competition Act 1998: CMA Guidance and Rules of Procedure for investigation procedures under the Competition Act 1998”. [Click here](#) for the Consultation Paper and [click here](#) for the response. The Committee responded to the specific Consultation questions, and noted in summary that “we broadly welcome the proposed Rules and Draft Guidance. However, we have some specific comments on certain aspects of them. A particular issue which we consider requires clarification is the role of members of the CMA (formerly CC) panel in decision making.”

CMA Consultation on the Cartel Offence Prosecution Guidance and BIS Consultation on the draft Enterprise Act 2002 (Publishing of Relevant Information under section 188A) Order 2014

The Committee also made a number of detailed comments in response to the CMA Consultation on the Cartel Offence Prosecution Guidance and the BIS Consultation on the draft Enterprise Act 2002 (Publishing of Relevant Information under section 188A) Order 2014 (which ran in parallel with the CMA Consultation). [Click here](#) and [here](#) for the Consultation Papers and [click here](#) for the response paper. Having looked at analogous prosecution guidance issued in relation to other offences, the Committee felt that considerably more detail and explanation could be provided in the Guidance. In relation to the Statutory Instrument Consultation, the submission stated that “the Committee believes that the manner of publication of “relevant information” would be detrimental to commerce both (i) in terms of the delay between submitting information to the Gazette and publication and (ii) the cost of doing so. It is also unclear how practical this mechanism will be as it is very difficult to accurately predict the number of submissions that will be made to the Gazette in relation to the Offence, but there is a possibility that the sheer volume will undermine the purpose of publication.”

CMA and BIS Consultations relating to concurrency and regulated sectors

The Committee also responded in detail to the CMA Consultation “Regulated Industries: Guidance on concurrent application of competition law to regulated industries”, and the parallel BIS Consultation on proposed secondary legislation relevant to the UK concurrent

competition law regime. [Click here](#) and [here](#) for the Consultation Papers and [click here](#) for the response paper.)

HMT Consultation “Secondary legislation for Non-Bank resolution regimes”

The **Insolvency Law Committee** responded to the HMT Consultation on the secondary legislation which will underpin the extension of the Special Resolution Regime to include investment firms, banking group companies and clearing houses. In its response, the Committee focussed on three specific questions raised in the Consultation, namely:

- “Whether we consider that the capital markets exemption should be included in the draft Banking Act 2009 (Banking Group Companies) Order 2013 (the “**Order**”);”
- “Whether the current provisions are framed in “a sufficiently powerful but flexible way as to provide legal certainty””; and
- “Whether there are any other entities which we would wish to see excluded. “

[Click here](#) for the Consultation Paper and [click here](#) to read the response paper.

Civil Justice Council’s Costs Committee’s Call for Evidence regarding solicitors’ guideline hourly rates

The **Litigation Committee** responded to the Civil Justice Council’s Costs Committee’s (the “CJC”) call for evidence on new guideline hourly rates for solicitors’ firms. The call for evidence sought to assist the CJC in making “evidence-based recommendations” on new guideline hourly rates. In parallel with the call for evidence, the CJC had conducted a survey of solicitors’ firms, to gather evidence in order to enable the CJC to set guideline rates. The submission responded in detail to the call for evidence and noted generally that “the CJC’s survey reflects a flawed approach to establishing solicitors’ reasonable charges and, further, that if this approach is carried through, it may reduce the international attractiveness of litigation in England and Wales.” [Click here](#) for the Consultation Paper and [Click here](#) for the response paper.

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

Version 2.0 of the Commercial Bar Association (COMBAR)/CLLS specimen terms of business for the supply of services by a barrister in a commercial case has been published ([Click here for the specimen terms](#)), together with the second edition of a guidance note on those terms ([Click here for the Guidance Note](#)). As the guidance note states, “As a result of regulatory changes, barristers enter into contracts with their instructing solicitors more frequently than was traditionally the case. In order to assist barristers and solicitors in commercial cases, the City of London Law Society and the Commercial Bar Association have negotiated specimen terms (the “Terms”) that can, if the parties so wish, be used as a basis for discussions in relation to terms to be agreed for any particular case. Version 1 of the Terms was first published in January 2013, but is now succeeded by version 2 with effect from 1 January 2014. Version 2 endeavours to build on practical experience of using the Terms, aims to make clearer the effect of certain terms and also reflects certain regulatory changes.”

Defra Consultation: “Biodiversity Offsetting in England”

The **Planning & Environmental Law Committee** responded to the Defra Consultation Paper “Biodiversity Offsetting in England”. The Consultation set out options for the Government’s proposed biodiversity offsetting system and posed questions about how the system may best operate. The Committee’s submission set out answers to the specific Consultation questions, and noted that the Committee considers that there is merit in the introduction of a biodiversity off-setting system to work alongside the planning system, and that it broadly agrees with the Government’s objectives for the system and the proposed

characteristics of the system. [Click here](#) for the Consultation Paper and [click here](#) for the response paper.

LSB Consultation on appointment of lay Chairs of regulatory bodies

The **Professional Rules & Regulation Committee** responded to the LSB's Consultation "Chairs of regulatory bodies: Consultation on an amendment to the Internal Governance Rules to require that the Chairs of the Boards of the regulatory arms of each applicable approved regulator be a lay person". [Click here](#) for the Consultation Paper and [click here](#) for the response paper. In its response, the Committee raised a number of points, including that it saw "little merit in a rule change which necessarily narrows the field of candidates for the role of Chair of these bodies, where no evidence is given to show that the presence of a non-lay Chair has meaningfully impeded the independence of the regulator".

LSB Consultation on statutory guidance relating to legal education and training

The **Training Committee** responded to the LSB's Consultation "Increasing flexibility in legal education and training: Consultation on proposals for draft statutory guidance to be issued under section 162 of the Legal Services Act 2007". [Click here](#) for the Consultation Paper and [click here](#) for the response paper. The Consultation concerned statutory guidance (based around five outcomes) that the LSB proposes to issue to all approved regulators. The Committee's response raised a number of concerns with the LSB's paper and in conclusion stated that "It will be clear that we have extremely serious reservations about the Consultation Paper. We do not accept that there needs to be statutory guidance. If there is to be guidance it has to be well thought out, based on evidence (not prejudice) and coherent and realistic. We would have thought the current Consultation Paper should be withdrawn."

Robert Leeder
Policy & Committees Co-ordinator

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Contacts:

[Liz Thomas](#)

[Robert Leeder](#)

Website:

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