

Monthly E-Briefing (Issue 44 – January/February 2014)

Committee vacancies

The **Construction Law Committee** is seeking applications from prospective new members. [Click here for details.](#) To apply, please contact the Committee Chair before **15 March 2014**.

The **Land Law Committee** has three vacancies to fill as a result of resignations of existing members and is therefore also seeking applications from prospective new members. [Click here for details.](#) To apply, please contact the Committee Chair before **13 March 2014**.

ESMA Discussion Paper 2013/1649: “ESMA’s policy orientations on possible implementing measures under the Market Abuse Regulation”

The Market Abuse Joint Working Party of the **Company Law Committees** of the CLLS and the Law Society of England & Wales responded in detail to the above Discussion Paper ([click here](#)).

UK Government Review of the Balance of Competences between the United Kingdom and the European Union in relation to Competition and Consumer Policy

The **Competition Law Committee** responded to the above Consultation ([click here](#)). The Committee’s response only extended to competition and state aid policy. In its response, the Committee took the view that the two important questions that needed to be addressed were as follows:

- “To what extent is EU competence in the competition and state aid fields necessary for the operation of the internal market and is this beneficial to the UK’s global competitiveness?”
- “How might the UK benefit from the EU taking less or more action in this area?”

The Committee responded to each of these questions in detail.

CLLS Financial Law Committee: Secured Transactions Reform Discussion Paper 2: Fixed and Floating Charges on Insolvency

A working party of the **Financial Law Committee** has published a second Discussion Paper on the issue of reform of the law of secured transactions in England ([click here](#)). The Paper focusses on the requirement to draw a distinction between fixed and floating charges under insolvency legislation.

The Insolvency Service: “Consultation - Insolvency Rules 1986 – modernisation of rules relating to insolvency law”

The **Insolvency Law Committee** responded to the above Consultation ([click here](#)). The stated aim of the Consultation was “to modernise and recast the [Insolvency Rules 1986]; taking the opportunity to reorder the whole structure on more logical and clear lines”. The

Submission responded in detail to the Consultation questions and made a number of comments on the drafting of the Insolvency Rules.

CLLS Land Law Committee: Protocol for discharging mortgages of commercial property

A sub-group of the **Land Law Committee**, with input from the Association of Property Lenders and the CLLS Financial Law Committee, has produced a “Protocol for discharging mortgages of commercial property” ([click here](#)).

Ministry of Justice Consultation: “Court fees: proposals for reform”

The **Litigation Committee** responded to the above Consultation ([click here](#)). The Committee’s response raised a number of concerns with the proposals contained in the Consultation Paper, and in its general comments stated that “The Committee does not accept that the Consultation Paper makes out any case for increasing court fees in civil litigation”.

House of Commons Environmental Audit Committee’s Inquiry into Invasive Species

The **Planning & Environmental Law Committee** responded to the above Inquiry ([click here](#)). The Inquiry concerned the prevention and management of the introduction and spread of invasive alien species. The Planning & Environmental Law Committee’s response focussed on Japanese Knotweed, and *inter alia* called for the introduction of clear guidance on the legislation surrounding Japanese Knotweed, as well as for a change in existing legislation in relation to Japanese Knotweed in order to plug the gap between lenders and borrowers.

LSB Consultation on its draft Business Plan 2014/15

The CLLS responded to the above Consultation ([click here](#)). The response highlighted the absence in the draft plan of the research programme “Mapping the Unregulated Market” (the item had been referred to in the draft 2013/14 LSB Business Plan). The response called on the LSB to answer a question that it had posed in a 2011 Discussion Paper entitled “Enhancing consumer protection, reducing regulatory restrictions”, namely “there is a question about the relative balance of regulatory focus. Is the current balance of regulation right or are there areas where deregulation may be appropriate?”

SRA Consultation: “Proposal to increase the SRA’s internal fining powers”

The **Professional Rules and Regulation Committee** responded to the above Consultation ([click here](#)). The Consultation Paper invited views on the SRA’s proposal to “increase the current level of [its] fining powers for ‘traditional’ law firms from their current level of £2,000”. The response commented in detail on the Consultation proposals.

HMT Review of the Balance of Competences (Single Market: Financial Services and the Free Movement of Capital - Call for Evidence)

The **Regulatory Law Committee** responded to the above Consultation ([click here](#)). The Committee’s comments focussed on (i) the integrity of the EU legislative process and (ii) the clarity of EU law-making. The Committee submitted a detailed response, and noted generally that it “had many serious concerns about the current approach to law making and implementation for the single market in financial services”.

FCA CP13/17: Use of dealing commission

The Committee also responded to the FCA’s Consultation Paper on proposed changes to the FCA’s use of dealing commission rules in its Conduct of Business Sourcebook (COBS) ([click here](#)). The FCA stated that the proposed changes were designed to “ensure investment

managers make appropriate judgements and control costs on behalf of clients when using dealing commission to pay for goods and services". The Submission addressed the Consultation questions, and noted generally that the Committee had significant concerns in relation to several aspects of the proposals, namely:

- "the presentation of the changes as being a "clarification" and as being consistent with the "intention behind the original regime". These are clearly substantive changes to the rules which have a number of implications, including on the requirement for an Article 4 notification";
- "the introduction of a new definition relating to research"; and
- "the definition of corporate access".

House of Lords Economic Affairs Finance Bill Sub-Committee

The CLLS wrote to the House of Lords Economic Affairs Finance Bill Sub-Committee regarding the provisions of the draft Finance Bill 2014 ([click here](#)). The Submission focussed on the "Salaried Member" proposals, and stated generally that "We have extremely grave concerns about there being tax provisions which treat one form of partnership very differently to other forms of partnership (as is the result of the LLP salaried member proposals) and over the way in which these measures are being implemented, which we think are contrary to the principle of legal certainty by which the UK sets so much store in measuring its international competitiveness. We think that as currently drawn the measures go too far, and would apply in circumstances which are not offensive when tested against the professed policy behind the changes."

Comments to HMRC on the draft Finance Bill 2014 Partnership proposals

The **Revenue Law Committee** also submitted detailed comments to HMRC on the draft Finance Bill 2014 Partnership proposals ([click here](#)). The Submission stated generally that "Our principal concern is with the "Salaried Members" legislation. We believe that the tests are poorly drafted, leading to unsatisfactory (over-)reliance on (entirely non-binding) HMRC guidance. The guidance contained in the technical note is confused in a number of different areas, and needs to be dramatically improved." It also expressed concern that "affected (or potentially affected) businesses have had insufficient time to prepare" for the introduction of the new rules.

HMRC Consultation: "Tackling marketed tax avoidance"

The Committee also commented on the above Consultation Paper ([click here](#)). The Consultation concerned proposals to require individuals and companies to pay the tax in dispute during an enquiry or appeal relating to tax avoidance. The Committee's comments were restricted to the proposals for accelerated tax payments in follower and other cases.

SRA: "Training for Tomorrow: Regulation Review"

The **Training Committee** responded to the above Consultation ([click here](#)). The Consultation set out the SRA's proposals to review the regulatory requirements that underpin its current education and training framework, with a view to "remov[ing] unnecessary regulatory burdens and improv[ing] processes." The Submission responded in detail to the Consultation and raised two general concerns, namely the SRA's apparent intention "to place obligations on training providers, law firms and so on rather than the SRA itself directly regulating "quality"; and the potentially far-reaching consequences of some of the regulatory proposals contained in the Consultation Paper.

CLLS Twitter account

A reminder that all CLLS response papers are announced on Twitter as soon as they are

published – follow us @TheCLLS.

Robert Leeder
Policy & Committees Coordinator

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Policy & Committees Co-ordinator

Useful links:

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Contacts:

[Liz Thomas](#)

[Robert Leeder](#)

Website:

[The City of London Law Society](#)

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