

## Monthly E-Briefing (Issue 45 – March/April 2014)

### *CLLS Twitter account*

A reminder that all CLLS response papers are announced on Twitter as soon as they are published – follow us @TheCLLS.

### *Committee vacancies*

The **Associates Forum** is seeking applications from prospective new members ([click here](#) for details). To apply, please contact the Committee Chair before **30 June 2014**.

### *Insolvency Service Consultation “Strengthening the regulatory regime and fee structure for insolvency practitioners”*

The **Insolvency Law Committee** responded to the above Consultation ([click here](#)). The Consultation set out ways to strengthen the regulation of insolvency practitioners, by introducing regulatory objectives and giving the oversight regulator additional powers to deal with failure to comply with the objectives. It also included proposals to change the ways an insolvency practitioner can charge fees to ensure that money is available to pay creditors. The Submission responded to some of the specific questions contained in the Consultation Paper. It also made the general comment that the measures proposed in relation to insolvency practitioner fees are unlikely to improve market confidence or the reputation of the insolvency profession and may in fact discourage insolvency practitioners from taking appointments which may leave creditors in a worse position, for example where work currently undertaken by small practitioners is no longer economic.

### *European Commission “Public Consultation on the review of the EU copyright rules”*

The **Intellectual Property Law Committee** responded to the above Consultation ([click here](#)). The Consultation Paper focussed on the challenge of ensuring that “the EU copyright regulatory framework stays fit for purpose in the digital environment to support creation and innovation, tap the full potential of the Single Market, foster growth and investment in [the EU] economy and promote cultural diversity”. The Committee responded in detail to the Consultation Paper.

### *BIS Consultation “Introduction of a Land Registry service delivery company”*

The **Land Law Committee** responded to the above Consultation ([click here](#)). The Consultation sought views on the Government’s proposals to create a new service delivery company to take over responsibility for processing land and property registration from HM Land Registry. The Submission responded in detail to the Consultation, and raised a number of general concerns, including that “in view of the fundamental nature of the [Consultation] proposals, we consider that inadequate information has been provided in the consultation. Many statements have been made, but insufficient evidence has been

provided to support the statements.”

*Land Law Committee’s Insurance Provisions for a Rack Rent Lease of Commercial Property – March 2014*

The Committee also produced the above document, which was published on the CLLS website in late March ([click here](#)).

*CJC’s Call for Evidence on the impact of the ‘Jackson reforms’ on costs and case management*

The **Litigation Committee** responded to the Civil Justice Council's request for written submissions on the practical impact of the reforms in civil procedure introduced in April 2013 (the "Reforms"). ([click here](#)). The Submission’s introduction noted: “The Committee is highly concerned about the impact of [the reforms in civil procedure introduced in April 2013 (“the Reforms”)] on the conduct of commercial litigation in England and Wales. In particular, the Committee considers that the Reforms have increased the cost of litigation, that the Reforms have not improved the efficiency of litigation or the proportionality of litigation costs, that the Reforms have engendered an unduly formalistic approach to compliance, and that there remain major ambiguities in the interpretation and application of the Reforms. Indeed, the Committee is concerned that the Reforms may have an adverse effect on the international perception of litigation in England.”

*SRA Consultation on “Proposed changes to the registered European lawyer regime”*

The **PR&RC** responded to the above Consultation ([click here](#)). The Consultation was designed to seek views on proposed changes to the application of the SRA Handbook to entities in England and Wales which are controlled by Registered European Lawyers (RELs). As the Consultation Paper stated, “The effect of these changes would be to introduce a choice for REL firms wishing to establish in England and Wales of:

- whether they wanted to seek authorisation as an SRA authorised body and become subject to the full rights and obligations of the SRA Handbook; or
- pursue the activities of their law firm practice in England and Wales through an unauthorised entity.”

The Submission responded to the specific Consultation questions.

*Memorandum: “EMIR: reporting of derivatives transactions and corporate transactions”*

The **Regulatory Law Committee** recently published the above Memorandum ([click here](#)). The memorandum concerns the potential legal uncertainties which may arise as to the application of the European Market Infrastructure Regulation (“EMIR”) – and specifically its reporting requirements - to ordinary corporate transactions and arrangements (e.g. between companies and their shareholders, when capital raising, with share scheme arrangements for employees).

*PRA Consultation Paper “CP2/14: The PRA Rulebook”.*

The Committee also responded to the above Consultation ([click here](#)). The Consultation Paper set out proposals to redraft certain modules of the Prudential Regulation Authority’s (“PRA”) Handbook. The scope of the response was limited to the Committee’s views on the proposed PRA Fundamental Rules (“FRs”). (Chapter 3 of the Consultation Paper set out the PRA’s proposal to replace the six Principles for Business (the “Principles”) inherited from the FSA with the FRs.) In addition to its detailed observations on the proposed FRs, the Submission also noted that, as a general observation, the Committee considered that the proposed changes to the Principles are unnecessary and risk causing legal confusion

amongst dual-regulated firms.

*SRA's Consultation "Training for Tomorrow – A new approach to continuing competence"*

The **Training Committee** recently responded to the above Consultation ([click here](#) for the covering letter and [click here](#) for the full response). The Consultation Paper followed the SRA's response to the final LETR report, where the organisation had communicated its intention to:

- replace the mandatory continuing professional development ("CPD") scheme for solicitors with a new approach to continuing competence; and
- take a "broader look" at how CPD can be used more widely within the SRA's regulatory framework to ensure the continuing competence of the legal services delivered by the entities that the SRA regulates and the individuals within them.

The Consultation Paper set out several possible approaches to the issue.

In general terms, the covering letter for the Submission welcomed the plan to allow individual solicitors and the regulated entities for which they work the freedom to determine the right way to ensure "continuing competence". The letter went on to note that while there was not unanimity of view across the CLLS on the issue of mandatory Hours, on balance the Committee supported the SRA's plan to drop that requirement "as doing any fixed number of Hours is not of itself a way to guarantee competence". It noted that "[t]he new regime should give the profession the flexibility to decide how to ensure competence while being structured and monitored in a way which ensures compliance." It also noted that a number of issues needed also to be addressed, including what standard is being applied when determining "competence", the need for Indicative Behaviours to guide individual solicitors as to what they could or should do, and the importance that the new scheme not be seen as "voluntary". It cautioned that change is needed to make the current scheme more effective, but that care is needed if the new regime is to ensure that the collective competence of the profession continues to be enhanced.

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