Winter 2009/2010

The Digest

A round-up of cases and news from Brick Court Chambers

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Success at Bar Awards for Brick Court

At the Chambers Bar Awards 2009 held on the 1st October, Brick Court Chambers was awarded Commercial Litigation Set of the Year and David Anderson QC was awarded Competition/EU Silk of the Year.

Brick Court had 10 nominations in 6 different categories including Commercial Litigation (Set of the Year and Simon Salzedo for Junior of the Year), Competition/EU (Set of the Year, David Anderson QC and Nicholas Green QC were nominated for Silk of the Year and Daniel Jowell for Junior of the Year), Insurance (Set of the Year), Human Rights & Public Law (Jemima Stratford for Junior of the Year) and Professional Negligence (Set of the Year and Charles Hollander QC for Silk of the Year).

Excellence recognised by Legal Directories

In the recently published 2009 edition of the Legal 500 and the 2010 edition of Chambers and Partners, over 75% of Brick Court Chambers' barristers were cited and ranked. Members of Chambers achieved 128 rankings in Chambers and Partners and 133 in the Legal 500. And Brick Court Chambers was ranked as the leading Commercial and EU/Competition set in both directories. As well as being ranked as a leading set within Administrative and Public law, Aviation, Banking and Finance, Commercial Arbitration, Commercial Litigation, Consumer & Product Liability, Energy, European and Competition, Environment, Fraud - Civil Fraud, Human Rights / Civil Liberties, Insurance and Reinsurance, Professional Negligence, Public procurement, Shipping, Sport and Telecommunications.

Supreme Court rules on bank charges

Office of Fair Trading (OFT) v Abbey National plc & Ors [2009] UKSC 6

The Supreme Court ruled unanimously in favour of the Banks, overturning the decisions of the courts below. This judgment is the latest in more than two years of test case litigation in which the High Court and Court of Appeal had ruled that unauthorised overdraft charges could be investigated for fairness under the Unfair Terms in Consumer Contracts Regulations 1999.

The appeal involved a relatively narrow issue. The Supreme Court had to decide not whether the Banks' charges for unauthorised overdrafts were fair, but whether there could be an investigation into whether they were fair. The Supreme Court held that any assessment of the fairness of the charges which related to their appropriateness as against the services supplied in exchange fell within the exclusion laid down in Regulation 6(2)(b) of the Regulations.

In addition, the Supreme Court decided that, although the interpretation of the European Directive which the Regulations implement was a question of European law, it was not necessary to refer the matter to the European Court of Justice.

Jonathan Sumption QC was instructed for Barclays Bank PLC; Mark Hoskins QC was instructed for HSBC PLC; Jemima Stratford and Sarah Love were instructed for the OFT.

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Nicholas Green QC to be new Chairman of the Bar

In January 2010, Nicholas Green QC (right) will begin his year as Chairman of the Bar Council. He has sat on the Bar Council for 10 years.

2010 is expected to be a busy year, in his inaugural speech he reflected that: "Over the course of the next 12 months the Bar Council will be addressing a host of detailed matters.

... Two themes stand out and characterise the nature of the issues that are arising. They are, first, the need for stability for the publicly funded bar. And secondly, the need for the entire Bar to address its role in a fast-moving and changing legal landscape and, in short, to modernise."

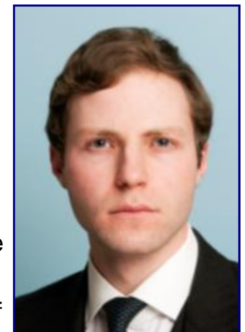
On stability, he spoke at some length and said in summary: "... there are three main pressures to consider: the tightening of the public purse, the growth of the CPS, and the impact of growth in competition from solicitors."

Nicholas Green also spoke about modernisation of the bar stating that: "A key objective that I have is to facilitate modernisation at the Bar."

He concluded: "I come from the commercial bar. But it is a real privilege for me to be able to stand here and represent the entire Bar. Ours is a remarkable and unique profession. We are also resilient. As a profession we will see through our present travails. In due course the recession will lift. But in the meantime we will fight our corner hard on a principled and a pragmatic basis."

Two new tenants are welcomed to Brick Court Chambers

Edward Harrison and Richard Eschwege joined Chambers in September 2009 on completion of their pupillage.



Edward Harrison (left) practises in all areas of Commercial Litigation, including Insurance, Banking and Finance, Shipping and the Conflict of Laws. He also undertakes cases in European law and Public law. Since joining Brick Court he has appeared regularly before a range of courts including the High Court and a number of county courts. Before coming to the Bar, Edward was an undergraduate and graduate student at Worcester College, Oxford, where he has more recently been a Lecturer in Contract law.

Richard Eschwege (right) is instructed in all areas of Chambers' work. In particular, he undertakes a broad range of commercial work and is developing his practice in that field. He appears both in the High Court and in the county courts. Richard was an undergraduate at Balliol College, Oxford.

James Flynn QC joins new CAT User Group

James Flynn QC is one of the founder members of the new CAT User Group which held its first meeting on the 25th February 2009. The CAT User Group has been set up to provide parties and their representatives with an opportunity to express their views on issues relating to the Competition Appeal Tribunal.

Membership of the User Group includes parties and their representatives regularly involved in proceedings before the Competition Appeal Tribunal, membership will rotate from time to time and future plans indicate that attendees of the User Group might include representatives from Northern Ireland, industry and consumers.

In their first meeting the User Group discussed how the CAT can make more use of its powers to encourage or facilitate forms of alternative dispute resolution ("ADR") to resolve or reduce the issues which are in dispute.

It is envisaged that the User Group will meet twice a year, with the agenda for each meeting being set after seeking proposals from Tribunal users and the minutes from the User Group meetings will be posted on the Competition Appeal Tribunal website.

Recent judgment round-up

This section brings together brief summaries of recent judgments in which members of Brick Court Chambers have been involved. The most recent are listed first.

Commercial:

27/11/2009 - Privy Council rules that ultra vires act takes effect as lesser intra vires act

National Transport Co-operative Society v AG of Jamaica [2009] UKPC 48 concerned a licence issued by the Jamaican Government to the appellant ("NTCS") in 1995, purporting to grant NTCS a 10-year right exclusively to operate bus services in certain parts of the Kingston area. The licence included a term under which the Government promised by a certain date to introduce a new fare table that would allow NTCS to charge higher fares that would enable it to make a reasonable profit from providing the service. The Government breached its promise and NTCS successfully claimed over $4 billion in damages from the Government in an arbitration award delivered in 2003.

The Government challenged the arbitration award on the grounds that the issue of licence had been ultra vires because the licence failed to comply with the terms of the statute under the authority of which it had been issued, the Public Passenger Transport (Corporate Area) Act ("PPT Act"). The argument had certain unattractive features: it required the Government to rely on its own failure to ensure that it was acting within its power; it had first been raised at a late stage in the arbitration; and it had been raised despite the fact that NTCS had been providing bus services under the licence for several years in good faith without the Government ever suggesting that the licence had been issued ultra vires.

Brooks J at first instance and the Court of Appeal nevertheless found for the Government. NTCS's appeal to the Privy Council was allowed. The Board (whose advice was delivered by Lord Neuberger) agreed with the judges below that the licence had been outside the terms of the PPT Act, but went on to hold that the licence should be treated as valid to the extent that a licence *could* have been issued intra vires. Since the Government could properly have issued a non-exclusive 3-year licence under its more general powers in the Road Traffic Act, the licence would be treated as though it had been issued in accordance with that Act and therefore (despite its terms) took effect as a 3-year non-exclusive licence.

The Board also found for NTCS on a second issue as to whether the parties had agreed in 1996 to postpone the implementation of the new fare table, on the grounds that the Heads of Agreement reached in 1996 were too uncertain to be enforceable.

The matter was therefore remitted to the Court of Appeal to consider the adjustment needed to the quantum of damages awarded by the arbitrators to reflect the shorter period of validity of the licence.

Stephen Midwinter was the junior instructed for the appellants NTCS.

13/11/2009 - Court of Appeal split on limitation issue

Axa Insurance Ltd v Akther & Darby Solicitors & Ors [2009] EWCA Civ 1166 (12 November 2009)

In an important limitation ruling, the Court of Appeal held by 2-1 that an insurer's liabilities under policies of after-the-event legal expenses insurance are not ‘contingent liabilities' within the meaning of the House of Lords decision in *Law Society v Sephton*. The majority consisted of Arden and Longmore LJJ. In a powerful dissenting judgment, Lloyd LJ held that the insurer's liabilities under such policies were indistinguishable from unsecured contingent liabilities within *Sephton*.

The judgment was given in the *Composite* litigation, a £60 million professional negligence claim against 89 firms of solicitors which has been called ‘son of TAG' (after earlier large-scale ATE insurance litigation which settled in 2007). *Composite* has been set down for a lead case trial lasting 6-8 weeks beginning in February 2010.

The Court of Appeal exercised its exceptional power to grant permission to appeal to the Supreme Court.

Charles Hollander QC, Tim Lord QC and Colin West appeared for Axa.

06/11/2009 - BBC Victory against Woolworths restores the anti-deprivation principle

The judgment of the Court of Appeal in the conjoined appeals **Perpetual Trustee Co Ltd v BNY Corporate Trustee Services Ltd** ("Perpetual") and **Butters v BBC Worldwide Ltd ("Butters") [2009] EWCA Civ 1160** concerns the so-called "anti-deprivation principle" that, in summary, "there cannot be a valid contract that a man's property shall remain his until his bankruptcy, and on the happening of that event shall go over to someone else, and be taken away from his creditors".

In *Perpetual*, the administrators of Lehman Brothers Special Financing Inc ("LBSF") contended that the anti-deprivation principle applied to a number of synthetic collateralised debt obligations, set up through the medium of a

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Judgment round-up cont.../

'in an area where Parliament had intervened so substantially and so significantly, it could only be very exceptional circumstances in which the court would be prepared to invent its own anti-avoidance policies and frustrate the terms of commercial contracts freely entered into by sophisticated parties.'

special purpose vehicle ("SPV"), so as to vitiate provisions which, on an insolvency event, switched the priority over the assets and changed the allocation of unwind costs" in favour of the noteholders to the potential detriment of LBSF. At first instance, the Chancellor found that the principle did not apply.

In *Butters* the administrators of Woolworths contended that the anti-deprivation principle rendered void or unenforceable the termination provisions in a master licence between BBC Worldwide ("BBCW") and a joint venture company with the result that BBCW was obliged to buy Woolworth's shares in the joint venture on the basis that the master licence still subsisted (thereby considerably increasing the price payable). At first instance, Mr Justice Peter Smith held that the anti-deprivation principle did apply, but only to 'blue pencil' certain (immaterial) parts of the clause. In addition, he held that because the parties had subsequently entered into a temporary licence, the master licence would have been thereby terminated in any event.

The Court of Appeal (Lord Neuberger MR presiding) dismissed appeals by both sets of administrators and allowed BBCW's cross-appeal. The court held, in summary, that the underlying purpose of the anti-deprivation principle was to uphold the insolvency legislation and prevent parties from contracting out of it; in an area where Parliament had intervened so substantially and so significantly, it could only be very exceptional circumstances in which the court would be prepared to invent its own anti-avoidance policies and frustrate the terms of commercial contracts freely entered into by sophisticated parties. In particular, the principle could not apply unless the deprivation took place after the insolvency or administration process formally commenced. In relation the *Butters* appeal, the Court of Appeal further upheld the Judge's finding that, by entering into the temporary licence, the master licence would have terminated in any event, and rejected the contention that the temporary licence was void for common mistake or subject to an express or implied condition precedent.

Mark Howard QC and Daniel Jowell acted for BBCW. Stephen Midwinter appeared on behalf of BNY for whom Mark Howard QC was also acting.

09/10/2009 - Commercial Court Rules on Arbitration Dispute between Secretary of State for Transport and Stagecoach

Secretary of State for Transport v. Stagecoach South Western Trains Limited [2009] EWHC 2431 (Comm)

Mr. Justice Gross gave judgment on an application by the Secretary of State for Transport ("the Secretary of State") under section 72 of the Arbitration Act 1996 seeking a determination as to whether a dispute fell within the scope of an arbitration clause.

The dispute arose out of a Franchise Agreement between the Secretary of State and Stagecoach for the operation of passenger train services in the South West of England - essentially, services from Waterloo Station and in the Isle of Wight. Stagecoach sought the determination of two substantial commercial disputes (the Car Parking Dispute and the Revenue Support Dispute) by arbitration. The Secretary of State conceded that the arbitrator had jurisdiction in respect of the Car Parking Dispute. However, he maintained that the Revenue Support Dispute did not fall within the relevant arbitration clause.

The Commercial Court held that: (1) the "one stop shop" principle of adjudication contained in *Fiona Trust v. Privalov [2008] 1 Lloyd's Rep.* 254 did not apply to the arbitration clause because the Franchise Agreement also contained a jurisdiction clause in favour of the English Court; (2) on the language of the arbitration clause and the structure of the relevant provisions, the issue may have been finely balanced; (3) however, having regard to the commercial consequences of the competing constructions of the arbitration clause, the Revenue Support Dispute fell within it such that the arbitrator had jurisdiction to determine that dispute.

Jonathan Hirst QC and Jasbir Dhillon appeared for the Secretary of State.

18/09/2009 - Court of Appeal declares clause requiring payment of additional hire in a time charter held to be a penalty clause

Lansat Shipping Co Ltd v Glencore Grain BV [2009] EWCA Civ 855 (31 July 2009)

The Court of Appeal upheld the Judgment of Mr Justice Blair, who had confirmed the Award of an LMAA tribunal, determining that a clause in a time charter requiring payment of additional hire in the event of breach of a provision relating to late redelivery was a penalty clause and therefore not enforceable.

Jonathan Hirst QC and Simon Birt appeared for the Charterers, Glencore Grain BV.

31/07/2009 - Fraudulent company cannot sue auditors for failing to detect its own fraud

In an important case for auditors, a majority of the House of Lords upheld the decision of the Court of Appeal in **Moore Stephens v Stone & Rolls Ltd [2009] UKHL 39.**

The claimant was a 'one man' company which had been used by its controller as the vehicle for an enormous letter of credit fraud on a Czech bank. The bank had obtained judgment for fraud against both the company and its controller in 2002 (see [2003] 1 Lloyd's Rep. 383), but it went unsatisfied. Liquidators

appointed by the creditors then caused the company to bring an action against its auditors. The essence of the claim was that the auditors should have detected that the company was being used by its controller to carry out the fraud, and should then reported the fraud to the police or some other competent external agency thus bringing it to an end.

The auditors applied to strike out the claim, invoking the maxim *ex turpi causa non oritur actio*. They argued that the cause of action was founded upon the company's own illegal actions, and in effect sought to indemnify the company against the consequences of having acted fraudulently: public policy should not permit such a claim.

The issues raised by the case had sharply divided judicial opinion. Langley J refused to strike out the claim at first instance, but the Court of Appeal (Mummery, Keene and Rimer LJJ) described it as 'astounding' and struck it out unanimously. That decision has now been upheld by a 3-2 majority in the House of Lords (Lords Phillips, Walker and Simon Brown; Lords Scott and Mance dissenting).

The reasoning of Lords Walker and Brown was that the dishonesty of the controller had to be attributed to the company and that therefore the company had itself committed the frauds. They held that the rule in In *re Hampshire Land* (to the effect that an agent's knowledge that he has been defrauding his principal) does not apply to a 'one man' company (ruling that this concept encompassed any company in which the management and shareholders had actual or 'blind-eye' knowledge of the fraudulent activity). Thus they held that the company's claim against the auditors relied upon its own dishonesty, and failed on public policy grounds.

The other member of the majority, Lord Phillips, agreed on attribution, but expressed the view that this was not the central question. He preferred to answer the public policy question raised by the illegality defence by examining whether the auditor's duty extended to protect those who would benefit from the claim. Since (on *Caparo* lines) that duty extended only to the exercise of reasonable care in the provision of information to the directors and those with a proprietary interest in the company, and since this in effect meant only the dishonest controller, this meant that the auditors owed no duty to anyone who had acted honestly, and the illegality defence should be given effect.

The speeches are lengthy and wide-ranging, and contain many other strands likely to be of some importance in audit litigation. These include discussions as to whether an auditor owes any duty at all to a company if its sole business is fraudulent; the extent to which it is proper to take account of the interests of the creditors who would be benefited by an action against auditors; the significance of an intervening insolvency; the effect of the decision in *Caparo*; and the nature of the test for illegality.

Jonathan Sumption QC and Tom Adam QC appeared for the auditors.

30/07/2009 - House of Lords rules on scope of reinsurers' obligations

Lexington Insurance Company v AGF Insurance Ltd & Wasa International Insurance Ltd [2009] UKHL 40

See page 15 for case focus

28/07/2009 - Clause applying noteholder payment priority on Lehman's insolvency is valid under English law

Perpetual Trustee Co Ltd v BNY Corporate Trustee Services Ltd & Anor [2009] EWHC 1912 (Ch)

The Chancellor gave judgment in two claims arising out of the insolvency of Lehman Brothers Int'l Europe ("Lehman") which raise a novel issue of importance to financial markets as to whether the contractual rights of investors under commercial agreements governed by English law can be over-ridden by a US Bankruptcy Court: (1) Perpetual Trustee Co and (2) Belmont Park Investments Pty v BNY Corporate Trustee Services [2009] 2 BCLC 400.

The claimants ("the Noteholders") are investors who hold notes in certain series issued under the Lehman administered multi-issuer Dante secured obligation programme ("the Dante Programme"). Under the Dante Programme, Lehman Brothers Special Financing Inc ("Lehman BSF") entered into swap agreements with the issuers of the Notes. BNY Corporate Trustee Services Ltd ("the Trustee") holds the Collateral for the Notes subject to specified security interests.

A clause of the relevant trust deeds provide that the Trustee was required to pay the moneys received by it to LBSF as the swap counterparty in priority to the Noteholders unless an Event of Default had occurred under the swap agreement, in which case the Trustee was required to pay the monies to the Noteholders in priority to LBSF ("the Noteholder Priority Clause"). The Dante Programme documentation was governed by English law.

In September 2008, Lehman and, in October 2008, Lehman BSF applied to the New York Federal Court for protection under the US Bankruptcy Code. These constituted Events of Default under the swap agreements. Lehman BSF issue proceedings against the Trustee in the New York Court contending that the Noteholder Priority Clause was invalid under the US Bankruptcy Code.

Thereafter, the Perpetual and the Belmont Noteholders issued proceedings against the Trustee in the English Court seeking orders designed to realise the Collateral in

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Judgment round-up cont.../

accordance with the Noteholder Priority Clause. Lehman BSF intervened in the English proceedings to contend that the Noteholder Priority Clause was invalid under English law, because it deprived Lehman BSF of an asset on its insolvency contrary to the *British Eagle* anti-deprivation principle, and that the English proceedings should be stayed pending the resolution of the New York proceedings.

The Chancellor held that the Noteholder Priority Clause was valid under English law because such a clause: (a) was not caught by *British Eagle* because it did not deprive LBSF of an asset on insolvency but rather limited the scope of the interest that LBSF had in the asset from the outset; and (b) that since the clause had operated as a result of the first event of default (the insolvency of Lehman) the later insolvency of LBSF was causally irrelevant so that the British Eagle could not apply in any event. The Cout of Appeal dismissed Lehman's appeal: [2009] EWCA Civ 1160.

Mark Howard QC (before the Chancellor) and Stephen Midwinter represented the Trustee. Mark Hapgood QC and Jasbir Dhillon were instructed by the Belmont Noteholders (but did not appear at either hearing)

23/07/2009 - Victory for insurance company in fraud claim against agent

In **Markel International Insurance v Higgins [2009] EWCA Civ 790** the Court of Appeal upheld the trial judge's finding that the defendant underwriting agent had been a dishonest party to a conspiracy to defraud his principal.

The appeal focussed on a defence raised by one of the co-conspirators to the effect that he had been affected by the symptoms of Alzheimer's Disease at the time of the fraud and hence was not responsible for his actions. The trial judge (Teare J) dismissed the defence on a number of grounds including by reference to medical evidence, the fact that the defendant had been a major recipient of the proceeds of the fraud; a lack of material contemporaneous evidence suggesting that the defendant had forgotten the limits of authority on the dozens of occasions when he abused it; and the fact that the agent's own contemporary and false explanation for his conduct (which he maintained in the witness box) was not that he had forgotten the limits of his authority at all but that there was in place a 'silent' arrangement with another insurer whereby they would take the 'excess' liability. The Court of Appeal unanimously upheld Teare J's findings and dismissed the appeal.

The respondent Markel International Insurance Co Ltd was represented by Michael Swainston QC and Stephen Midwinter.

16/07/2009 - High Court Upholds Royalty Payments for Broadcasts of The Darling Buds of May, A Touch of Frost and My Uncle Silas on ITV2 and ITV3

Excelsior Group Productions v Yorkshire Television Limited [2009] EWHC 1751 (Comm)

The Commercial Court rejected a claim brought by the production company Excelsior, in which it sought a declaration that Yorkshire Television Ltd (YTV) was required to pay Excelsior flat-rate fees for repeat broadcasts of three popular television dramas - The Darling Buds of May, A Touch of Frost and My Uncle Silas - on ITV2 and ITV3.

The agreements governing the three dramas were entered into by Excelsior and YTV in 1990 (Darling Buds of May), 1992 (Frost) and 1999 (Silas), giving rise to the question of what was within the contemplation of the parties at the time the agreements were entered into. The Court heard detailed arguments as to what evidence could properly be taken into account as relevant and admissible evidence in this regard. In doing so, the Court considered the line of authority culminating in the House of Lords' recent ruling in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38.

The Court concluded that it was permitted to have regard to the background knowledge reasonably available to the parties in the situation in which they were at the time each agreement was made, disregarding pre-contractual negotiations (such as they were), the subjective intentions of the parties and their subsequent conduct.

Applying that approach, the Court agreed with YTV that repeat broadcasts on ITV2 and ITV3 attracted royalty payments, not flat-rate fees. Flat-rate fees were reserved for repeat broadcasts on Channel 3/ITV1.

Excelsior's application for permission to appeal was refused.

Charles Hollander QC and David Scannell appeared for Yorkshire Television Limited.

09/07/2009 - Commercial Court rejects exclusive jurisdiction argument under Judgments Regulation

JPMorgan Chase Bank, N.A. v Berliner Verkehrsbetriebe (BVG) Anstalt des Öffentlichen Rechts, Commercial Court judgment of 9 July 2009 [2009] EWHC 1627 (Comm)

'The Commercial Court (Teare J) handed down a judgment concerning the interpretation of the exclusive jurisdiction provisions in Article 22 of the Judgments Regulation (Regulation 44/2001).'

The Commercial Court (Teare J) handed down a judgment concerning the interpretation of the exclusive jurisdiction provisions in Article 22 of the Judgments Regulation (Regulation 44/2001).

JPMorgan and BVG, which is the German public law institution charged with managing the public transport system of Berlin, concluded

a complex credit default swap agreement in 2007. Under this agreement, BVG in effect agreed to provide credit default protection to JP Morgan in respect of 150 reference entities. In 2008, a number of credit events occurred. JPMorgan had sued BVG in the Commercial Court for declarations that the transaction was enforceable and for some $112 million said to be owing under the credit default swap agreement. BVG contended that the credit default swap agreement was void and unenforceable, because it was beyond the scope of BVG's powers to enter into such an agreement.

BVG applied for a declaration that the claim falls within the exclusive jurisdiction of the German courts under Articles 22(2) and 25 of the Judgments Regulation, even though issues other than ultra vires, such as alleged misselling by JP Morgan, were also raised in the proceedings.

Teare J rejected BVG's application, finding that the German courts do not have exclusive jurisdiction over all or part of JPMorgan's claim. Teare J concluded that taking all aspects of the litigation into account, the proceedings were not principally concerned with the issue of ultra vires. Teare J granted BVG permission to appeal against his order.

Tim Lord QC, Simon Salzedo and Sarah Abram appeared for BVG.

22/06/2009 - Court of Appeal declines to interfere with Commercial Court refusal to stay English proceedings on grounds of concurrent proceedings in Iran

Karafarin Bank v Mansoury-Dara [2009] 2 Lloyd's Rep. 289

An Iranian Bank sued the Defendant (Mr. Dara), who was domiciled in England, in Iran on dishonoured cheques leading to criminal and civil judgments in his absence. The Bank was unable to enforce the Iranian judgments in Iran because it could not locate any assets there and it was unable to enforce the judgments in England because Mr. Dara had not submitted to the jurisdiction of the Iranian Court. The Bank then commenced a claim against Mr. Dara based on the dishonoured cheques in the English Commercial Court.

Subsequently, Mr. Dara set aside the criminal judgments in Iran and applied to set aside the civil judgments in Iran, and shortly before the English trial applied to stay the English proceedings on the grounds that they constituted an abuse of process and/or the Iranian proceedings were lis alibi pendens and/ or for case management reasons. Mr. Justice Teare dismissed the stay application.

The Commercial Court held that, although it was *prima facie* an abuse of process to a claimant to pursue a defendant for the same claim in two jurisdictions, the present claim was not an abuse of process because the Iranian judgments were not enforceable in England and that principle was recognised by section 34 of the Civil Jurisdiction and Judgments Act 1982. The English claim was not an abuse of process and no stay should be granted in favour of Iran on *forum non conveniens* grounds because the ability of the Bank to enforce a judgment against assets of Mr. Dara in England was a legitimate juridical advantage it should not be deprived of. The stay on case management grounds was refused because the Iranian proceedings would take one to two years longer than the English proceedings to be determined. Mr. Dara's delay in making the application also constituted a good reason for refusing the stay.

As the trial of the Commercial Court claim was due to start on 6 July 2009, the Court of Appeal heard an urgent application by Mr. Dara for permission to appeal Teare J's ruling. On 18 June 2009, Lord Justices Longmore and Etherton refused Mr. Dara permission to appeal after an oral hearing.

Jasbir Dhillon was Counsel for the Bank.

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EU/Competition:

29/10/2009 - Judge declines stay under Article 28 of the Judgments Regulation

In **Cooper Tire & Rubber Company & ors v Shell Chemicals UK Ltd & ors [2009] EWHC 2609 (Comm)**, Teare J accepted that the English courts had jurisdiction over an action seeking damages in respect of a European cartel and, notwithstanding ongoing Italian proceedings, refused to grant a stay pursuant to Article 27 or Article 28 of the Judgments Regulation.

The action arose out of the decision of the European Commission (COMP/F/38.638 - *Butadiene Rubber and Emulsion Styrene Butadiene Rubber*) in which various rubber manufacturers (including the Enichem, Bayer, Dow, Trade-Stomil and Synthos groups of companies) were found to have infringed Article 81(1) of the EC Treaty by entering into an anti-competitive cartel. In July 2007, Enichem brought proceedings in Italy against various tyre manufactuers (that had purchased rubber from the cartel members) seeking negative declarations that (amongst other things) no loss or damage had been caused by the cartel. In December 2007, the same tyre manufacturers that were defendants in the Italian proceedings (and their affiliates) brought the present proceedings in the English High Court. The proceedings were brought against the participants in the cartel with the exception of Enichem and sought damages in respect of overcharges said to have been caused by the cartel. The proceedings brought by Enichem in Italy were subsequently dismissed by the Italian court of first instance but that dismissal has been appealed to the Italian Court of Appeal.

Judgment round-up cont.../

'The Competition Tribunal ("CAT") quashed the Competition Commission's ("CC's") decision to recommend the introduction of a point of sale prohibition ("the POSP") as part of the remedies package proposed by the CC in respect of the payment protection insurance markets.'

The Dow Defendants contested the jurisdiction of the English Courts to hear the claims against them. Teare J agreed that the Claimants could not establish English jurisdiction on the basis of Article 5(3) of the Judgments Regulation. Declining to follow *Sandisk Corporation v Koninklijke Philips Electronics NV* [2007] EWHC 322 (Ch), he found that, in the context of a Europe-wide cartel orchestrated at meetings in several countries, it was not appropriate to find that the place where the harmful event occurred was England on the basis that the first cartel meeting had taken place here. However, the Judge held that the English courts did have jurisdiction on the basis of 6(1) of the Judgments Regulation because, he held, there was a valid claim against at least one UK domiciled defendant. In particular, following the judgment of Aikens J in *Provimi Limited v Roche Products Ltd.* [2003] EWHC 961 (Comm), the Judge found that it did not matter that the three English defendant companies (who had been joined as a tactical devise to establish jurisdiction) were not addressees of the Commission Decision and were not alleged to have themselves participated in (or even known about) the cartel. It was sufficient, the Judge held, that the English subsidiaries were to be regarded as part of the same "undertaking" as the addressees of the Comission decision and that the English subsidiaries had "implemented" the cartel by selling some of the product in question.

The Dow Defendants further sought a stay under Article 27 of the Judgment Regulation on the basis that, as alleged joint tortfeasors, Enichem and the Defendants should be regarded as the same "party" within the terms of that provision. Teare J declined to grant a stay on the grounds that it would not be just in the present case to regard Enichem as bound by a decision against the Defendants or as indissociable from them. However, in respect of certain of the claims against Dow Europe (where the Italian court was first seised) the Judge held that he was obliged to grant a stay under Article 21 of the Lugano Convention (the equivalent of Article 27).

Both the Dow and Bayer Defendants further sought a stay under Article 28. In this regard, Teare J granted permission to the Bayer Defendants to bring their application for a stay out of time but declined to grant such a stay in favour of the Italian courts. The Judge recognised that the Italian courts were first seised, accepted that the English and Italian proceedings were very closely related and that Italy was more proximate to the dispute. However, having specific regard in particular to the dismissal of the claims in Italy at first instance and to the length of time it would take to obtain a judgment on the merits in Italy, the Judge held that it was not appropriate to grant a stay.

The Judge granted permission to appeal (on the application of Articles 6, 27 and 28 of the Judgments Regulation) and permission to cross appeal (on the application of Article 21 of the Lugano Convention)

Mark Hoskins QC acted for the Bayer Defendants. Daniel Jowell acted as junior counsel for the Dow Defendants. Marie Demetriou acts for the defendant Trade Stomil, and James Flynn QC and Colin West, act for the Synthos Defendants - but neither took part in the applications

16/10/2009 - CAT allows challenge to Competition Commission's market investigation report on payment protection insurance

Barclays v. Competition Commission [2009] CAT 27 - Case No: 1109/6/8/09

The Competition Tribunal ("CAT") quashed the Competition Commission's ("CC's") decision to recommend the introduction of a point of sale prohibition ("the POSP") as part of the remedies package proposed by the CC in respect of the payment protection insurance markets. Payment protection insurance ("PPI") is a form of insurance contract which provides payment to a consumer in respect of outstanding credit balances on the happening of a relevant event (usually accident, sickness, unemployment or death of the consumer).

The POSP recommendation was contained in the CC's Report on PPI dated 29 January 2009, which was produced after a two year investigation. The effect of the POSP would have been to prohibit distributors and intermediaries from selling PPI to their credit customers within seven days of a credit sale, unless the customer had proactively returned to the seller at least 24 hours after the credit sale. The CAT noted that the POSP was the most controversial of the remedies proposed by the CC, and is one for which there is no precedent.

The CAT unanimously concluded that the CC had failed to take account of relevant considerations in deciding to make the POSP recommendation. In particular, the CAT found that in conducting its proportionality analysis the CC had failed to give any consideration to the reduced take-up of PPI that would follow from the loss of customer convenience resulting from the introduction of the POSP. The CAT also concluded that certain aspects of the methodology used by the CC in modelling work undertaken by the CC as a tool for quantification of an aspect of the benefits to be expected from its proposed remedies package were defective so as to be judicially reviewable.

The CAT has therefore remitted the CC's decision to recommend the imposition of the

POSP to the CC for reconsideration in accordance with the principles set out in the judgment.

Helen Davies QC and Kelyn Bacon appeared as counsel for Lloyds Banking Group, which intervened in support of the applicant, Barclays. Mark Hoskins QC and Marie Demetriou appeared as counsel for the Financial Services Authority, which intervened in support of the respondent, the CC.

01/10/2009 - ECJ holds tax on clearance systems violates the capital duty directive

In its judgment in **Case C-569/07 HSBC Holdings plc v HMRC (1st October 2009),** the European Court of Justice ruled that the levying of 'stamp duty reserve tax' ('SDRT') pursuant to section 96 of the Finance Act 1986 ('FA 1986') on the issue of shares into a foreign clearance system infringes Article 11 of Council Directive 69/335/EEC concerning indirect taxes on the raising of capital ('the Capital Duty Directive').

The ruling arose on a reference from the Special Commissioners of England & Wales in relation to HSBC's claim for repayment from HMRC of approximately £27m of tax that had been paid pursuant to s96 FA 1986 on HSBC's issue of shares in connection with an acquisition in France. HSBC challenged the legality of the tax and sought its reimbursement on the basis that it infringed the Capital Duty Directive and/or one of the 'fundamental freedoms' of the EC Treaty.

Accepting HSBC's arguments and rejecting those of the United Kingdom Government and the Commission of the European Communities, the ECJ found that charging SDRT on the initial acquisition of securities immediately consequent upon their issue could not be regarded as a 'season ticket' for future transfers. It held that such an interpretation would deprive Article 11(a) of the directive of its practical effect and undermine the clear distinction established by Articles 11(a) and 12(1)(a) of the directive between the concepts of 'issue' and 'transfer'.

The Advocate General in the case had opined that the tax could, in addition to violating the Capital Duty Directive, also be regarded as an infringement of Article 56 of the EC Treaty (freedom of capital). However, the ECJ held that where a matter is harmonised at Community level, national measures relating thereto should be assessed in the light of the provisions of that harmonising measure rather than those of the EC Treaty.

Daniel Jowell was junior counsel for HSBC.

24/09/2009 - UK Group tax provisions infringe freedom of establishment

In **Philips Electronics UK Ltd v HMRC (Decision No. TC 00176)** the First Tier Tribunal (Tax), formerly the Special Commissioners, held that two provisions of UK tax legislation infringed the principle of 'freedom of establishment' contained in Article 43 of the EC Treaty. This is believed to be the first occasion upon which the Tribunal (or the Special Commissioners) has been prepared to disapply primary legislation of the United Kingdom relating to direct tax on the grounds of its incompatibility with EC law without a prior reference to the European Court of Justice.

The case arose in relation to the denial by HMRC of group consortium relief to Philips Electronics UK Ltd for losses (amounting to in excess of £60m) incurred through trading in the UK of a permanent establishment of a Dutch resident company in the Philips group. Such relief was ostensibly unavailable to Philips because of section 406(2) and/or section 403D(1)(c) of the Income and Corporation Taxes Act 1988. Upholding Philips' challenge under Article 43 EC, the Tribunal held that each of these provisions constituted (a) a *prima facie* restriction on freedom of establishment and (b) in contrast to previous cases such as Case C-446/03 *Marks & Spencer*, neither provision could be justified by any 'overriding reason of public interest'. The Tribunal further held that, if it were wrong about the latter conclusion **in** relation to s403(D)(1)(c), that provision would only be proportionate if it were 'read down' in line with the 'no possibilities test' laid down in Case C-446/03 *Marks & Spencer* as that test has been interpreted and applied by the Court of Appeal and the Tribunal.

Daniel Jowell was junior counsel for Philips Electronics UK Ltd.

16/07/2009 - Devolved administrations in the UK free to implement EC obligations in different ways

The European Court of Justice in **Case C-428/07 - Horvath v Secretary of State for Environment Food and Rural Affairs** has held that the devolved administrations in the UK are entitled to implement Community obligations in different ways.

An EC Regulation provided for payments to farmers who maintained their land in good agricultural and environmental condition (GAEC), with Member States being bound to lay down minimum standards for what constituted GAEC. Different rules were laid down for England, Wales, Scotland and Northern Ireland, with the English rules alone requiring that farmers maintain "visible rights of way" such as footpaths. Mark Horvath, a farmer in England, argued that the maintenance of footpaths did not relate to agricultural or environmental condition, and that it was in any event discriminatory for the UK to impose that requirement on farmers in England, but not in Wales, Scotland and Northern Ireland. The European Court accepted the UK position that visible rights of way related to the GAEC of land. More significantly, the Court upheld the

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Judgment round-up cont.../

'The Court of Appeal found in favour of Ofcom and the interveners, BT and T-Mobile, and upheld the CAT's decision rejecting H3G's challenge.'

right of devolved administrations to implement the Community rules in different ways, without this amounting to discrimination. The Court found support for this conclusion in its previous case law. It also noted that differences in treatment resulting from different legislation in different Member States do not amount to discrimination prohibited by Community law. Equally, where it is the devolved administrations of a Member State which have the power to implement the Community rules on GAEC, divergences between the measures provided for by the various administrations cannot, alone, constitute discrimination.

Derrick Wyatt QC was instructed with the Advocate General for Scotland for the United Kingdom Government.

16/07/2009 - Court of Appeal uphold Competition Appeal Tribunal's finding in telecommunications case concerning Significant Market Power

Hutchison 3G UK Ltd v The Office of Communications [2009] EWCA Civ 683

The Court of Appeal dismissed an appeal brought by Hutchison 3G UK Limited ("H3G"), one of the five mobile telephone operators in the United Kingdom, against a decision of the Competition Appeal Tribunal ("CAT") [2008] CAT 11. Ofcom, in its two Mobile Call Termination ("MCT") statements of 27 March 2007 had found that H3G had Significant Market Power ("SMP") and imposed a price control on it, at the same time as it imposed price controls on the other four mobile companies. H3G challenged Ofcom's decisions.

The Court of Appeal found in favour of Ofcom and the interveners, BT and T-Mobile, and upheld the CAT's decision rejecting H3G's challenge.

That challenge was based on the fact that Ofcom has the power under the Communications Act 2003 ("the Act") to impose prices on parties who disagreed about the prices at which call termination services were being offered. H3G argued that those dispute resolution powers had to be taken into account in assessing whether BT had sufficient countervailing buyer power ("CBP") to offset the advantages that H3G had as a monopoly provider, and in assessing whether or not the conditions for adopting price controls under section 88 of the Act had been met.

The Court of Appeal, in judgments given by Lloyd LJ and Etherton LJ, found that Ofcom's resolution of price disputes amounted to a form of regulation of H3G. If the possibility of such regulation on the party whose SMP was being assessed had to be taken into account this would make a finding of SMP or introduction price controls impossible in respect of that party and the system would be self-defeating. That possibility therefore had to be left out of account when Ofcom made its assessments.

David Anderson QC and Sarah Lee appeared for BT.

10/07/2009 - Foxtons' renewal and sales commission terms in contracts with landlords are unfair under the UTCCRs

The Office of Fair Trading v Foxtons Ltd [2009] EWHC 1681 (Ch)

Mann J held, in proceedings brought by the Office of Fair Trading ("OFT"), that certain standard-form terms in contracts between Foxtons and consumers who engage Foxtons as a letting agent are unfair under the Unfair Terms in Consumer Contracts Regulations 1999 ("UTCCRs"). The terms in question concerned Foxtons' commission when there is a renewal or extension of a tenancy agreement; its commission when a landlord sells his property with the benefit of a tenancy agreement; and its sales commission when a landlord sells his property to his tenant.

The Judge found that the terms concerning renewal commission were not in "plain intelligible language" and were not part of the "core bargain" between Foxtons and the typical consumer. For both of these reasons, the renewal commission terms were not within the exemption in Regulation 6(2) of the UTCCRs, and fell to be assessed for fairness.

The Judge has adjourned the issue of the relief to which the OFT is entitled to a further hearing (if no agreement can be reached).

Nicholas Green QC, Helen Davies QC and Sarah Love appeared for the OFT.

09/07/2009 - Court of First Instance dismisses challenges to financial sanctions against Melli Bank plc

Joined Cases T‑246/08 and T‑332/08

The Court of First Instance ("CFI") (having previously rejected applications for interim measures) dismissed challenges brought by Melli Bank plc in two expedited cases, T-246/08 and T-332/08, against the Council's decision to adopt sanctions against it.

Melli Bank plc is the United Kingdom subsidiary of Bank Melli Iran. Both were made subject to financial sanctions in a decision made by the European Council in June 2008. Melli Bank plc was included in the restrictive measures by virtue of Article 7(2)(d) of Council Regulation (EC) No 423/2007 because it was "owned or controlled" by an entity identified as engaged in, directly associated with or providing support for nuclear proliferation.

The CFI agreed with the arguments of the Council and the United Kingdom and French governments, which intervened in the case, that

in the case of a subsidiary owned and controlled by such an entity, Article 7(2)(d) on its proper construction obliged the Council to adopt a measure freezing the funds concerned. The CFI also rejected Melli Bank plc's submissions that Article 7(2)(d) was incompatible with the principle of proportionality, and that the decision to designate breached the principle of non-discrimination. Although the Court rejected the Council's submissions that the "owned and controlled" requirement was satisfied merely by a 100% shareholding, it held after examination that the requirement was satisfied on the facts of the case.

Richard Gordon QC, David Anderson QC, Jemima Stratford and Mark Hoskins QC appeared at various stages for Melli Bank plc. Sarah Lee appeared for the United Kingdom Government.

01/07/2009 - Court of Appeal overturns Competition Appeal Tribunal and strikes out follow-on damages claim

Enron v EWS English Welsh & Scottish Railway Ltd v Enron Coal Services Ltd [2009] EWCA Civ 647

The Court of Appeal struck out two of the claims brought by Enron (in liquidation) against English Welsh & Scottish Railways Ltd on the grounds that the claims do not "follow on" from any finding of an infringement of competition law by the Office of Rail Regulation and therefore the Competition Appeal Tribunal has no jurisdiction under the Competition Act 1998. Enron claimed that it had been over-charged by EWS for coal haulage services to power stations owned by British Energy and Edison Mission from 2000 to 2001 and was therefore entitled to damages in the Competition Appeal Tribunal. The Court of Appeal stated that a clear finding of infringement was required in order to found such an action, and there was no such finding in the ORR's decision. Enron's other claim for loss of a chance to win a contract will be heard in the Tribunal in September 2009.

Mark Brealey QC and Maya Lester appeared for EWS.

29/06/2009 - Court of First Instance annuls definitive anti-dumping duty on imports of glyphosate from China

Case T-498/04 Zhejiang Zinan Chemical Industrial Group v Council

Zhejiang Xinan ("ZX"), a Chinese producer and exporter of glyphosate, has successfully challenged a Council regulation imposing definitive anti-dumping duties on imports of glyphosate originating in China. Glyphosate is a herbicide widely used by farmers.

The Association des Utilisateurs et Distributeurs de l'Agrochimie Européenne ("AUDACE"), a pan-European association of users and distributors of agrochemicals, intervened in support of the form of order sought by ZX.

The contested Council regulation had been preceded by a lengthy investigation process designed to determine whether ZX should be afforded Market Economy Status ('MES') as an undertaking whose commercial decisions were taken free of "significant state interference". ZX had submitted extensive evidence at that stage. However, MES had ultimately been refused, on the ground that ZX was state-controlled. Because of that refusal, the contested regulation proceeded on the basis that "normal value" was to be determined by the "analogue country" method, i.e. on the basis of data from producers in a market economy third country, here Brazil. The anti-dumping duty was fixed in the contested regulation at 29.9%. AUDACE's submissions included the contention that the concept of State "interference" could not be equated to that of State "control". There had to be an element of "meddling", "tampering" or "actual contamination" of decision-making. The Court accepted that the mere involvement of a state in the business of an undertaking does not equate to "interference", which is the threshold required for MES to be excluded. Were it otherwise, state-controlled undertakings could never benefit from MES status. The evidence adduced by ZX had been sufficient to show that the State did not exceed the role of a normal shareholder in a market economy country, that ZX's decisions were made freely and independently of considerations peculiar to the State and that those decisions were therefore based exclusively on purely commercial considerations, appropriate to an undertaking operating under market economy conditions.

The Council was also held to have made a manifest error or assessment in concluding that ZX's export prices were not freely set on the sole basis of commercial considerations and without any interference by the State. Ample evidence had been adduced by the applicant to show that export prices were set freely.

Because the wrongful refusal of MES status had influenced the imposition of the anti-dumping duty, the duty was annulled as regards ZX.

James Flynn QC and David Scannell represented AUDACE.

Public:

19/10/2009 - Court of Appeal Guidance on Forfeiture of Impermissible Political Donations

Electoral Commission v. United Kingdom Independence Party [2009] EWCA Civ 1078

The Court of Appeal handed down judgment in an appeal arising from the first ever claim by the Electoral Commission for the forfeiture of impermissible donations received by a political party under the Political Parties, Elections and Referendums Act 2000 ("PPERA").

'The Council was also held to have made a manifest error or assessment in concluding that ZX's export prices were not freely set on the sole basis of commercial considerations and without any interference by the State.'

Judgment round up cont.../

‘Crest Nicholson has won its judicial review against the OFT in relation to its investigation into bid-rigging in the construction industry. The High Court found that the OFT acted unfairly and in breach of the principle of equal treatment.’

The United Kingdom Independence Party ("UKIP") had received donations amounting to £363,697 that it was prohibited from accepting under PPERA because the donor was not on the electoral register at the time the donations were made. On the Electoral Commission's application for an order forfeiting the impermissible donations under PPERA, the City of Westminster Magistrates' Court ("Magistrate") made a forfeiture order in respect of donations amounting to £14,481 but refused to order the forfeiture of donations amounting to £349,216. On the Electoral Commission's claim for judicial review, the Administrative Court quashed the Magistrate's decision refusing to forfeit all of the impermissible donations and remitted the claim for forfeiture to the Magistrate for a re-hearing in the light of the guidance provided by the Administrative Court as to principles upon which the statutory power to order forfeiture should be exercised.

On the Electoral Commission's successful appeal, the Court of Appeal held that there was nothing in the circumstances of the case which would entitle the Magistrate not to make the forfeiture order sought by the Electoral Commission. The Court of Appeal also provided guidance as to the scope of the discretion to order forfeiture of impermissible donations under section 58 of PPERA by holding that: (1) the normal consequence of an impermissible donation being brought to the attention of the court is an order for forfeiture of an amount equivalent to the value of the donation; (2) such an order was not disproportionate or contrary to Article 1 of the First Protocol to the European Convention on Human Rights because by statute the order was restricted to the value of the impermissible donation; and (3) whether the donation was "foreign" and the financial resources of the political party were irrelevant to the exercise of the power to order forfeiture.

Jasbir Dhillon appeared as Junior Counsel for the Electoral Commission and was instructed by the Treasury Solicitor.

28/07/2009 - High Court tackles question of whether a Commercial Airport Authority providing public services is susceptible to judicial review

In **R (Birmingham and Solihull Taxi Association) v Birmingham International Airport Limited,** Wyn Williams J had to consider whether the Airport Authority, in terminating the licence of Birmingham and Solihull Taxi Association (BASTA) to provide taxi services from the Airport taxi rank pursuant to a commercial contract negotiated between them was nonetheless subject to public law duties not to act for an improper purpose and to consult BASTA prior to termination of the licence. The Court held that the Airport Authority was in principle amenable to judicial review but was not a body which had a duty to comply with the principles of transparency under the EU Treaty, with the majority of the Airport Authority's shares being held by private companies. The Court also held that on the facts, there was no evidence that the Airport Authority had acted for an improper purpose, nor that it had failed adequately to consult with BASTA. The claim was accordingly dismissed.

Neil Calver QC and Gerard Rothschild acted for the Defendant, Birmingham International Airport Limited.

27/07/2009 - Administrative Court refuses recognition to Turkish Republic of Northern Cyprus

R (on the application of) Yollari & Anor v Secretary of State for Transport & Anor [2009] EWHC 1918 (Admin)

The High Court (Wyn Williams J) has rejected a claim by a Turkish airline and its UK subsidiary that the UK Government acted illegally by refusing to grant operating permits for chartered and scheduled flights from England to airports in the northern part of Cyprus which had not been designated for international aviation purposes by the government of the Republic of Cyprus. The Claimants (whose arguments were resisted by the Republic of Cyprus as well as by the defendant) argued that since the Republic was not in effective control of the northern part of its territory, its refusal to designate should not have been treated as determinative.

Having considered nine bundles of authorities (principally relating to public international law) and been addressed by two Oxford Professors as well as three QCs, the court held that the Government was obliged to refuse such permits both as a matter of domestic law, as it relates to the recognition of foreign states and their acts, and by its duty to respect the rights of the Republic of Cyprus under the Chicago Convention.

David Anderson QC appeared for the Defendant, and Richard Gordon QC for the Republic of Cyprus.

24/07/2009 - Administrative Court rules that OFT acted unfairly in handling bid-rigging investigation

R (Crest Nicholson) v Office of Fair Trading [2009] EWHC 1875 (Admin)

Crest Nicholson has won its judicial review against the OFT in relation to its investigation into bid-rigging in the construction industry. The High Court found that the OFT acted unfairly and in breach of the principle of equal treatment.

The OFT made a "Fast Track Offer" of settlement to all firms under investigation for bid-rigging, offering them a 25% discount in

any fine in return for the firms admitting liability in respect of the OFT's allegations. Crest Nicholson was drawn into proceedings as a result of its historic ownership of Pearce Construction (Midlands) whose activities were the subject of the OFT's investigation. Crest Nicholson no longer has any links with that company and informed the OFT that it had no means of investigating the allegations made by the OFT and was not in a position to take an informed decision on the Fast Track Offer. It was, therefore, in a different position to the majority of other recipients of the Offer.

The Court held that the OFT's refusal to engage with this point was unlawful. Whether or not to accept the Fast Track Offer was not, as the OFT would have it, simply a commercial decision for Crest. The offer involved asking parties to admit liability for serious infringements of the Competition Act and fairness demanded that firms were not pressurised into admitting liability. The OFT is now required, when setting any penalty in respect of Crest, to take account of the difference between Crest's position and that of other firms.

Richard Gordon QC and Marie Demetriou represented Crest Nicholson.

01/07/2009 - House of Lords rules that women in refuges will generally be homeless

In **Moran v Manchester City Council**, the House of Lords considered whether women in refuges for victims of domestic violence had "accommodation" which it was reasonable for them to continue to occupy for the purposes of Part 7 of the Housing Act 1996. The House held that, in general, it would be reasonable to continue to occupy accommodation if and only if a person could be expected to live there for as long as she would have to unless the housing authority take action. Although there may be circumstances in which it was reasonable to continue to occupy a refuge indefinitely, there was nothing to indicate that that was so in the present case. The result was that the Appellant (and most women in refuges) would be considered homeless. The House inclined to the view that refuges were, however, capable of constituting "accommodation" within the meaning of the Act.

Martin Chamberlain appeared for the Secretary of State for Communities and Local Government, intervening.

'The result was that the Appellant (and most women in refuges) would be considered homeless.'

The best of the rest...

Here we have selected some of those matters of interest that did not move to judgments.

23/11/2009 - Belfast High Court rejects attempt to stave off regulatory investigation following collapse of Mutual Society

The High Court in Belfast (Weatherup J) has rejected an attempt by two accountants to judicially review a decision of the Executive Counsel of the Accountancy and Actuarial Discipline Board to pursue an investigation arising out of the collapse of the Presbyterian Mutual Society Limited. The Society's collapse in 2008 affected many thousands of savers in Northern Ireland. The Board is investigating whether the Society, of which the accountants were directors, failed to obtain the appropriate regulatory authorisation for the conduct of its business.

The Board is the independent investigative and disciplinary body for accountants and actuaries in the United Kingdom. It deals with cases which raise or appear to raise important issues affecting the public interest. It operates and administers an independent disciplinary scheme covering members of the principal accountants' and actuaries' professional bodies in the UK.

The accountants claimed that the Board's investigation violated their rights under the European Convention on Human Rights and that the Board's decision to investigate them was likely to produce material which may compromise their ability to resist other potential regulatory action and/or civil claims by members of the Society who have suffered loss as a result of the collapse. The Court rejected these arguments.

Alan Maclean QC and Margaret Gray acted for the successful Accountancy and Actuarial Discipline Board.

06/11/2009 - Skype obtains anti-suit injunction against Joltid

Mr Justice Lewison granted a final anti-suit injunction against Joltid Limited, requiring it to discontinue its proceedings against Skype Technologies SA ("Skype") in the United States District Court for the Northern District of California.

Skype's application for an anti-suit injunction arose in the context of a long-running dispute with Joltid over the licensing of certain software which is fundamental to Skype's business. In 2003, Skype and Joltid entered into a Licence Agreement, pursuant to which Joltid granted Skype a worldwide licence to use its software. According to Joltid, Skype acted in breach of the licence by using a different form of Joltid's software and on 12 March 2009, Joltid

The best of the rest cont.../

purported to terminate the Licence Agreement. On the same day, Skype issued proceedings in the High Court seeking a declaration that Joltid's termination was not valid. Skype brought its claim in the High Court in accordance with an exclusive jurisdiction clause contained in the Licence Agreement.

On 1 September 2009, eBay Inc announced its agreement to sell a 65% stake in Skype to a group of investors for $2 billion. On 16 September 2009, Joltid commenced proceedings in the Californian Court against Skype and the investors for copyright infringement.

At the hearing before Mr Justice Lewison, Skype successfully argued that the US proceedings fell within the scope of the exclusive jurisdiction clause in the Licence Agreement, because if Skype was correct and the Licence Agreement continued in force, then Joltid's claims against Skype in the Californian Court would not get off the ground.

Applying *Donohue v Armco*, Mr Justice Lewison then considered whether there were any strong reasons for refusing to grant an anti-suit injunction. Joltid argued that the Californian Court was the forum conveniens, but it was held that such considerations "should be given little weight in the face of an exclusive jurisdiction clause where the parties have chosen the courts of a neutral territory in the context of an agreement with worldwide application". Moreover, although the US proceedings would continue as against the other defendants, there was merit in ensuring that at least all disputes between Skype and Joltid would be decided in a single forum. Finally, Joltid offered to undertake (i) to be bound by the final decision of the English Courts in the US proceedings and (ii) not to seek any remedy in the US proceedings for any alleged breach of copyright occurring prior to the date on which it claimed that the Licence Agreement was terminated. However, Mr Justice Lewison rejected these proposed undertakings as "no more than an attempt by Joltid to wriggle out of its contract". By consent, the Court agreed to stay that part of the order compelling Joltid to discontinue the proceedings in the US pending the disposal of Joltid's application for permission to appeal.

Charles Hollander QC and Tony Singla appeared on behalf of Skype.

Neil Calver QC appeared on behalf of Joltid.

'Mr Justice Lewison rejected these proposed undertakings as "no more than an attempt by Joltid to wriggle out of its contract".'

22/06/2009 - Sir Michael Bishop and Lufthansa settle their dispute in relation to BMI

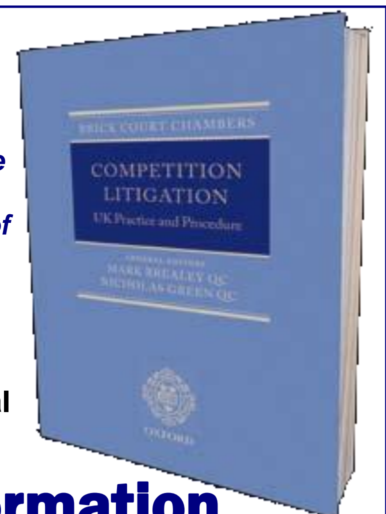
Sir Michael Bishop and Lufthansa have settled their dispute over the satisfaction of the conditions precedent in relation to a put option relating to a 50 per cent plus one share interest in British Midland PLC ("BMI").

On 10 October 2008, Sir Michael Bishop exercised the put option on behalf of his holding company The BBW Partnership Limited (BBW). The option was part of a shareholders' agreement between BBW, Lufthansa and co-shareholder Scandinavian Airlines (SAS) dated 9 November 1999. Under the terms of the settlement, Sir Michael has agreed that specific performance of the put option will not be available and consequently Lufthansa will not be required to acquire the shares. In turn, Lufthansa will pay consideration of GBP 175 million for the cancellation of the put option. With effect from 1 July 2009, LHBD Holding Limited (a UK based company, in which Lufthansa have a 35% stake) will acquire BBW's entire stake of 50 per cent plus one share in BMI for approximately GBP 48 million.

Helen Davies QC, Jemima Stratford and Roger Masefield represented Sir Michael Bishop and BBW. Mark Howard QC, Alan Maclean QC, Alec Haydon and Martin Chamberlain represented Lufthansa. Marie Demetriou was Junior Counsel for BMI.

"The book provides practical guidance on all aspects of competition litigation... Together the editors and the contributors have created a book which is well-presented, easily navigable and clearly written. It contains the answers to (all) the questions which arise in this area of litigation, and will be an invaluable tool for the competition practitioner. I note that the cover of this unique work is blue. Perhaps it will in due course become known by competition lawyers simply as The Blue Book*".*

Extract from the foreword by the Honourable Mr Justice Barling, President of the Competition Appeal Tribunal



See Page 17 for more information ...

Case focus

Lexington Insurance Company v AGF Insurance Ltd & Wasa International Insurance Ltd [2009] UKHL 40

In allowing the appeals of AGF and Wasa, the House of Lords has set the limits of the circumstances in which a reinsurer can be called upon to follow the settlements of its reinsured where the insurance and reinsurance are written on 'back to back' terms but are subject to different governing laws. The decision has significant implications for those reinsuring US long-tail asbestos-related and environmental damage claims.

The case involved claims for losses sustained by the original insured, Alcoa, in cleaning up environmental damage which occurred at various productions sites in the US and around the world from the 1940s to the 1980s. Alcoa claimed for the entire cost of the operation from Lexington, which had provided global all risks insurance for three years from 1977 - 1980. The dispute reached the courts of the State of Washington, where it was held that the policy was governed by Pennsylvania law and that pursuant to that law Lexington was indeed liable for all damage, whenever it occurred, provided that some damage was manifested during the policy period. Lexington therefore settled Alcoa's claim on the basis that it was potentially liable for the entire cost of the clean-up operation.AGF and Wasa were participants on a facultative proportional reinsurance of the Lexington policy. Lexington sought to require them to follow its settlement. The reinsurers demurred, accepting that the settlement had been honest and businesslike but pointing out that the reinsurances were governed by English law and that, as a matter of longstanding English law, they could only be held liable for losses occurring during the policy period. The settlement therefore fell outside the terms of the reinsurance as a matter of law and could not be recovered.

In response to this argument, Lexington referred to the House of Lords' decision in Vesta v Butcher, in which it was held that there was a presumption that a reinsurance policy written on 'back to back' terms with the original insurance should be construed so as to have the same meaning as the original insurance, even if the governing laws were different and the application of the different governing laws would ordinarily produce different results.

At first instance, Simon J found in favour of reinsurers, distinguishing Vesta and holding that the parties could not here be presumed to have intended that the ordinary meaning of the period of cover provided by the reinsurance should be overridden by a finding as to the period of cover of the insurance as a matter of Pennsylvania law.

Simon J's decision was overturned by the Court of Appeal, which held the case to be indistinguishable from Vesta. Sedley L.J. went further and held that the time had come to recognise that reinsurance was in reality a form of liability insurance, such that reinsurers should be liable for whatever their reinsureds have been held liable to pay.

The House of Lords has unanimously allowed the reinsurers' appeal and restored Simon J's judgment. The leading speeches, given by Lord Mance and Lord Collins, reject Sedley L.J.'s invitation to treat reinsurance as a form of liability insurance and restore the orthodox view that a contract of reinsurance is an independent protection of the original subject matter. Both Lord Mance and Lord Collins approved the strong dicta of Hobhouse LJ in Municipal Mutual v Sea Insurance that under English law an insurer or reinsurer under a time policy can only be liable for losses that occur during the period of cover, and held that reinsurers should be entitled to the benefit of the bargain that they made, i.e. that they provided cover under English law for losses occurring during the period of cover. Lord Mance (with whose reasoning Lord Collins agreed) distinguished Vesta as a case on different facts which whilst establishing "a sensible principle of construction...cannot be made into an inflexible rule of law, which would impose on reinsurers a liability for which, under the law applicable to the reinsurance, they did not bargain."

Neil Calver QC and Stephen Midwinter represented the appellant AGF Insurance.

Jonathan Sumption QC represented the respondent Lexington Insurance.

'The case involved claims for losses sustained by the original insured, Alcoa, in cleaning up environmental damage which occurred at various productions sites in the US and around the world from the 1940s to the 1980s.'

The Competition Litigation Conference

A one day conference
By Brick Court Chambers
On 4th March 2010
At The Waldorf Hilton

See page 20 for more ...

Forthcoming publications

There are four new books written or with contributions by members of Chambers that are due out in early 2010.

‘there is no doubt that whichever party takes office in 2010, the questions it raises are likely to remain for urgent debate.’

Competition Law and Shipping: The impact of EU Competition Law on the Shipping and Ports Industries

Due to be published in January 2010, this is the first book to focus specifically on the impact of EU competition law on the shipping industry since the industry became subject to the full weight of competition law and lost immunity for liner conferences in October 2008. It contains a detailed critique of the European Commission’s guidelines on the application of Article 81 of the EC Treaty to maritime transport services, dealing with such issues as the jurisdictional reach of \EU law, the rules to be applied in defining the relevant product or geographical markets, the legality of information sharing agreements between competitors and the correct analysis to be applied to pooling agreements in the tramp shipping sector. However, the book is not limited to the maritime guidelines but examines a broad range of competition law issues affecting all sectors of the maritime industry, including ports.

Fergus Randolph QC (pictured top right) was one of the contributing editors. His chapter is entitled: ‘Overview, jurisdiction and legal status of Guidelines’.

The publishers are offering a 20% discount to Brick Court Chambers clients. To order a copy please email: orders@cmppublishing.com - to take advantage of the 20% discount simply mention ‘Brick Court’ in the order. The published price is £125.00 (-20% = £100)

To reform or not to reform - that is the question?

The constitutional crisis of 2009, sparked by the 'expenses scandal', led rapidly to the questioning of our entire political order, and to some quick-talking but anodyne political responses. Both Government and opposition, no doubt with a May election in mind, began banging the drum of constitutional reform but doing little.

The expenses scandal prompted Richard Gordon QC to take to his keyboard over the summer of 2009 and write a book to be published in February 2010 called ‘Repairing British Politics - A Blueprint for Constitutional Change’. In the book Richard argues that inertia should not be allowed to take over, that the moment for significant change is now, and that it may not occur again for decades. The book presents a bold new appeal for constitutional reform focused around a draft written Constitution underpinned by a new principle of constitutional supremacy, in place of the traditional principle of Parliamentary sovereignty. Part 1 of sets out the arguments in favour of a written constitution, as well as the most common objections. Part 2 contains a working draft of the Act of Parliament which would be needed to introduce any form of constitutional change. Part 3 sets out a possible model in the form of a draft Constitution. Observations and explanatory notes are attached to each section of the Constitution. This model Constitution is intended as the first stage in a public debate, intended to provoke further discussion about the content and method of legislating into law a written Constitution.

‘Repairing British Politics’ (Hart Publishing) is already attracting interest in media and academic circles, which is likely to increase when its themes are debated at an event being organised by the publishers at the RSA. Though Richard stresses that his book has no political affiliation or bias there is no doubt that whichever party takes office in 2010, the questions it raises are likely to remain for urgent debate.

The New Tribunals Handbook

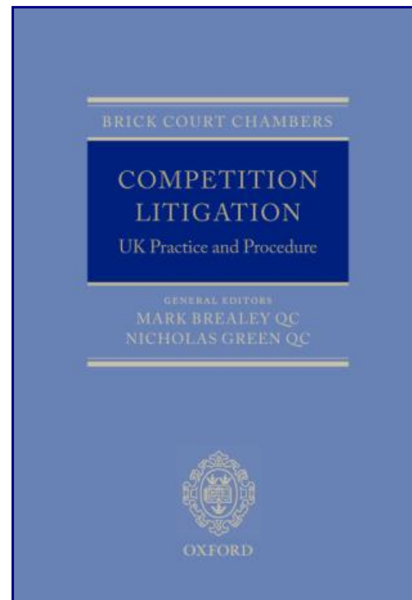
By Richard Gordon QC, Sarah Love (top right) and Richard Blakeley (bottom right) - Estimated date of release: April 2010

The New Tribunals Handbook is the first comprehensive procedural guide to the Tribunals under the Tribunals, Courts and Enforcement Act 2007. The Handbook will primarily be used by practitioners and the Tribunals themselves and is both a reference tool and an on-the-spot, in-court source of procedural rules and guidance for advocates, judges and other Tribunal members and users.

The Handbook is arranged in an encyclopaedic fashion with entries covering the rules and procedure specific to each of the Chambers of the First-Tier Tribunal and Upper Tribunal and entries that apply across the Tribunals system, including those covering the rules relating to costs, decisions, hearings, rights to appeal and judicial review. The Handbook entries are fully cross-referenced and its thumb-tabbing index helps locate the information needed quickly and easily making it ideal for use in hearings.

The Handbook will be the most up-to-date guide to the Tribunals system and will include the latest procedural and jurisdictional changes, including the expansion of the General Regulatory Chamber that is due to take place early in 2010.

Announcing the new publication: 'COMPETITION LITIGATION - UK Practice and Procedure'



"This comprehensive guide to competition litigation takes a unique hands-on approach that will be welcomed by many. The book, which will undoubtedly be more commonly referred to as The Blue Book, is an exciting and high quality publication that will become to competition law what The White Book is to Civil Procedure".
Richard Whish, Professor of Law, King's College, London

New definitive work

Competition Litigation: UK Practice and Procedure is the new definitive work on competition litigation in the UK. Written and edited by a team of 35 barristers from the leading competition set Brick Court Chambers, this book draws upon the vast collective experience of the authors and offers unprecedented breadth of commentary and depth of expert insight into the practice and procedure of competition litigation, focussing particularly on the High Court and the Competition Appeal Tribunal.

First port of call

The book will be an essential companion for any practitioner specialising in contentious competition law, as well as for those in the judiciary and the regulatory authorities themselves. It will also be the first port of call for commercial litigators who need to understand the specific demands and peculiarities of competition litigation.

Unique hands-on approach

The work covers all aspects of competition litigation including: commencement of proceedings, jurisdiction, statements of case, disclosure, evidential issues, privilege and confidentiality, hearings, intervention, remedies, and dispute resolution. It takes a unique hands-on approach to the subject, offering extensive practical guidance that goes beyond the scope of typical civil procedure books. It is the first work to contain guidance on the implications of the recent Norris case on criminal aspects of competition law and the application of the Rome II Regulation.

35 members of Brick Court Chambers have contributed to the book. The General Editors are Mark Brealey QC and Nicholas Green QC, both of whom have considerable experience and knowledge of all aspects of UK and EU competition law and regularly appear before the courts of England and Wales, the Competition Appeal Tribunal, and the European courts.

The contents include:

1. Commencing Proceedings
2. Parties and Group Litigation
3. Third Party Intervention
4. Limitation and Time Periods
5. Jurisdiction
6. Applicable Law: Rome II
7. Strike Out, Rejection, and Summary Judgment
8. Interim Remedies
9. Disclosure and Access to Documents
10. Privilege
11. Effect of Previous Decisions
12. Factual Evidence
13. Expert Evidence
14. Burden and Standard of Proof
15. Hearings
16. Monetary Compensation
17. Quantification of Damage
18. Final Orders
19. Funding and Costs
20. Appeals to the Court of Appeal
21. References
22. Alternative Dispute Resolution
23. Arbitration
24. Criminal Proceedings

OUP are offering clients of Brick Court Chambers a 20% discount on the cover price of £145.00. This offer will only be valid on orders placed directly with OUP (ie not through bookshops). You can order your copy by emailing bookorders.uk@oup.com or calling (01) 536 741 727. Please quote the code ALBRICK09 to be able to claim your discount.

'The book will be an essential companion for any practitioner specialising in contentious competition law, as well as for those in the judiciary and the regulatory authorities themselves.'

Brick Court Seminar Directory

This directory brings together seminars and talks that we think are topical, informative and interesting, which we can present in chambers, in your offices for your teams, or perhaps over dinner with groups from BCC and your firm.

The topics in this directory are regularly revised and in addition to those shown, we are happy to present bespoke seminars on topics that you identify. For more information about any of the seminars listed and to discuss your seminar requirements please do not hesitate to contact Lucy Adam - lucy.adam@brickcourt.co.uk.

'topics in this directory are regularly revised and in addition to those shown, we are happy to present bespoke seminars on topics that you identify'

Contact lucy.adam@brickcourt.co.uk for further information

Seminar Topics

Commercial Law topics

- Non-Disclosure and Fair Presentation of Risk - what does it mean in 2010?
- Non-Disclosure and Breach of Warranty: A case for reform?
- Claims Co-operation Clauses
- Wasa and AGF v Lexington
- Repudiatory, anticipatory and material breaches
- 'Recent Developments in Contractual Interpretation'
- The modern law of tort in a commercial context
- Limitation of Auditors Liability: review of the recently introduced law under the Companies Act 2006 permitting auditors to limit their liability.
- Witness evidence – practicalities and pitfalls
- Commercial Human Rights: a review of human rights issues relevant to commercial clients
- Commercial Agents
- Credit Crunch Update
- What's new in Conflicts.
- "The Freezing Order : A 'nuclear weapon'"
- Damages/Accounts of Profits
- Brokers
- Commercial Injunctions
- Restrictive covenants in employment contracts
- Recent Developments in disclosure and privilege
- Limitation - key developments
- Economic Torts
- Rome I & Rome II
- Jurisdiction and Judgments workshop

EU / Competition Law topics

- Litigating competition law in the English courts
- Dawn Raids
- Pleading Competition Law
- EC Legal Professional Privilege after the Akzo Nobel case
- The Early Disposal of Competition cases
- Judicial Review in the Competition Appeal Tribunal
- Recent Developments in Competition Law
- Competition law in the OFT, CAT, High Court and Court of Appeal compared
- Competition Law and Parallel Imports
- Corporate liability for competition law infringements.
- Legal basis for damages in competition law - rights and remedies
- Issues of jurisdiction in relation to international cartels
- Inter-relationship with criminal investigations/proceedings
- European jurisdiction, evidence and service issues, including recent developments
- Overview of relevant rules in Maritime Competition Law to include: new Commission Guidelines and remedies
- Prosecuting cartels for conspiracy to defraud - Norris & GG
- Rome I & Rome II
- CAT cases and procedure
- Procurement Law – the substantive requirements
- Competition Damages Claims
- Recent Trends in EU State Aid Law

Public & Administrative Law topics

- The Chagos Islands Litigation: Is the Royal Prerogative Unlimited?
- Security and Human Rights
- EC Law in Judicial Review
- Public Law and Competition Law
- Making Judicial Review Proof Decisions
- Bringing and Defending a Public Law Challenge
- Interim Relief – Injunctions and Disclosure
- Legitimate expectation
- Understanding the role of public International law, the Human Rights Act and EU in domestic public law
- The Right to Property - Art. 1 Protocol 1
- The Right to a Fair Hearing
- Fair speech and privacy - two competing rights
- Privacy Law – Recent Developments
- The exercise of Public Law Powers
- Human Rights and Commercial Law
- Public Law Consultation Duties
- Procurement Law – the substantive requirements
- Data Protection and Freedom of Information Acts

A change of scene

Recently, two of the major reforms bought in by the Constitutional Reform Act 2005 have taken effect — the Law Lords have been replaced by the Supreme Court and the judiciary is now selected by the independent Judicial Appointments Commission. Neil Calver QC (right) has recently been appointed a Recorder (Criminal Law, SE Circuit) - in this article he discusses how he found the new selection process.

Neil Calver QC was appointed a Recorder (criminal law, SE Circuit) and is among the first to be selected by the Judicial Appointments Commission (JAC). This was the third Recorder selection exercise run by the JAC, but the first for the SE Circuit. Competition was fierce, with 983 applications for the 128 posts.

Q. Neil - How did you find the process?

A. Two words - rigorous and fun.

Q. Can you talk us through the process?

A. The first step is to submit an application form - this is similar in its extent, the referees required and in the qualities and abilities which you have to demonstrate when applying to become a QC. Then I sat the 'Qualifying Test' which the JAC uses to shortlist candidates. For the Recorder SE selection exercise the Test lasted 3 hours. I had to answer a series of questions which were a mix of criminal law problems (you have to give mini judgments) and court room dilemmas. It is intended to test your analytical ability and how you react under pressure, as there is a lot of material to get through and you are provided with the source materials upon which the problems are based on the day.

There is no pass or fail. The best performing candidates on the day are invited to a "selection" day. For me this began with a probing and wide ranging interview for approximately one hour with a judge and an independent person. Later in the day we had to undertake role play as a judge sitting in court, where actors played the parts of litigants, witnesses and court room staff, and we were judged by how well we handled the various difficulties which arose. The main purpose of this exercise appeared to be to identify the applicant's ability to think quickly, to act with authority and to maintain a cool unruffled approach. I did a number of these exercises during the day; I was only given the basic facts of each role play situation just a couple of minutes before being called into the role play. I have to say I really enjoyed these. After that, it was a case of waiting to hear whether my application had been successful. Fortunately, it was!

Q. Why did you choose to apply for this role? - it's a far cry from your usual commercial work.

A. I've been at the bar for 20 years undertaking a mix of commercial, EU and public law work. I took Silk 3 years ago. I guess I wanted to do something new. Most of the other applicants were criminal lawyers, not being a criminal lawyer makes it more of a challenge. I also wanted to develop a new set of skills as being a judge is an entirely different role to being a barrister. I suppose there was also an element of wanting to put something back into the system from which I have benefited.

Q. Do you think the new system to be a positive change?

Definitely! I thought the whole process was extremely fair, transparent and professionally run. And rather than the added rigour and requirements putting people off, I have been really surprised by how many of my colleagues have shown interest in becoming a Recorder. It seems that the new selection process has strengthened the system.

Q. What are your next steps?

As I'm not a criminal barrister, I have to sit for one week with a Crown Court Judge as well as undertake a week long residential induction course early next year. Following this, when I am let loose on the poor unsuspecting public, I will be monitored in court during my first week by a Crown Court judge. I'm really looking forward to it!

'I thought the whole process was extremely fair, transparent and professionally run. And rather than the added rigour and requirements putting people off, I have been really surprised by how many of my colleagues have shown interest in becoming a Recorder.'

Information

The Judicial Appointments Commission (JAC) is an independent commission that selects candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals whose jurisdiction extends to Scotland or Northern Ireland.

The processes and criteria may vary, depending on the role and the minimum entry requirements. For examples of the Recorder and other Qualifying Tests and for more information on the selection process please go to www.judicialappointments.gov.uk

Winter 2009/2010

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The Brick Court Chambers Competition Litigation Conference

4th March 2010 at The Waldorf Hilton

To mark the publication of *Competition litigation: UK practice and procedure (see page 17 for more information)*, Brick Court Chambers will be holding a one day conference under that title on the 4th March 2010 at the Waldorf Hotel, Aldwych, to be chaired by the book's general editors Mark Brealey QC and Nicholas Green QC (tbc).

The conference will be presented by members of Brick Court Chambers who contributed to the book and who have unrivalled litigation and advocacy experience before regulatory bodies, tribunals and courts both at national and EU level. Their expert knowledge covers all the need-to-know areas ranging from advising clients on the merits of bringing or defending a private actions before the English courts to challenging decisions by EU and national competition authorities and regulators, as well as dealing with all procedural and evidentiary requirements.

Topics that will be covered include a review of themes emerging from the last decade of UK competition litigation and a view of future developments, as well as sessions addressing current issues on evidence, damages, international jurisdiction, criminal sanctions, complaints to competition authorities, and mediation and ADR.

Speakers will include:

- William Wood QC
- Charles Hollander QC
- Catharine Otton-Goulder QC
- James Flynn QC
- Neil Calver QC
- Helen Davies QC
- Fergus Randolph QC
- Mark Hoskins QC
- Aidan Robertson QC
- Sarah Lee
- Jemima Stratford
- Daniel Jowell
- Marie Demetriou
- Robert O'Donoghue
- Margaret Gray
- Kelyn Bacon
- Maya Lester
- Sarah Ford

There will be a fee of £200 + VAT per person for the conference. This fee is to cover administration costs and costs on the day – the conference is not being presented as a profit making venture. The conference will be registered for 6 cpd hours - (tbc)

To register your interest in attending this conference and to receive a full programme and booking form please email clc@brickcourt.co.uk. Places will be limited and will be awarded on a first come first served basis.

The Digest contacts

If you have any comments or would like to discuss this or any other issue of The Digest please email Lucy Adam at lucy.adam@brickcourt.co.uk

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