

BRIEFCASE

Your Update
on Legal News

SPRING 2004

- Will disputes
- Birmingham update
- Planning procedure reforms
- Stamp duty changes
- IP launch
- E-marketing and electronic communications regulations



**"I know everything I need to know
about Employment Law"**

**"Why not have a go at our quiz inside?
The results might surprise you!"**

Check your Employment Law knowledge
FULL DETAILS INSIDE

THE
SYMBOL FOR
LEGAL EXCELLENCE



Harvey Ingram Owston
solicitors



Chris Finlay
Managing
Partner

2004 is a major year in sporting circles - from the European Football championships in Portugal to the Olympic games in Athens, teams and individuals will be competing to win recognition as the best in their field

Sporting success doesn't come easy. It takes years of practice and dedication to become the best and even then, if you stop for a rest or to give yourself a pat on the back, the competition will soon catch you up.

You may think that law doesn't have much in common with sport, but the same principles apply. As Leicestershire's largest law firm we might be tempted to sit back and look at what we've achieved, but this attitude will stop us continuing to improve our performance.

Just like sportsmen, every one of our staff is dedicated to getting better at what they do and setting new 'personal bests', whilst as a team we're developing our skills in new areas and working together to ensure we give our clients gold medal service in every discipline in which we compete.

Thank you for staying loyal to our team. For further information on our range of legal services, please visit our website at www.hio.co.uk

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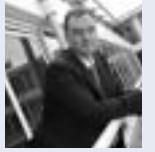
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LEICESTER TEAM BOOSTED BY FIVE SENIOR APPOINTMENTS



(From L-R) Associate solicitor Jonathan White, associate solicitor Darren Perry, partner Nina Murray Smith, senior partner Phillip Lane, partner Rafique Patel and associate solicitor John Measures.

OUR LEICESTER OFFICE IS EXPERIENCING A PERIOD OF FURTHER GROWTH WITH THE APPOINTMENT OF TWO NEW PARTNERS AND THREE NEW ASSOCIATE SOLICITORS.

Dispute resolution expert Rafique Patel is promoted from associate solicitor to partner having joined the firm at the start of his legal career as a solicitor six years ago. He specialises in the areas of contract

claims, professional negligence, prosecuting and defending trading standards cases and defending environmental and planning law prosecutions. Leicester born Rafique is an active member of the region's Asian business community and also sits on the Legal Panel of the Muslim Council of Britain.

Nina Murray Smith joins the firm as a partner from a leading City law firm. Nina has been a specialist in construction and engineering cases and projects for over ten years. After commencing her career in the region, this included practising in Hong Kong with Masons.

Private Client specialist Darren Perry who is promoted to associate solicitor, has been with us for nineteen years, formerly as a legal executive with Owstons. Darren practices in the field of trusts, wills, tax, court of protection elderly issues and the administration of estates.

John Measures also becomes an associate solicitor, specialising in personal injury. A member of the Law Society's Personal Injury Panel, John was instrumental in establishing our successful 'BikerResolve' personal injury service which is designed specifically for motorcyclists. A keen biker himself, John is a member of the Institute of Advanced Motorists' motorcycle division and is a qualified motorcycle instructor.

Another member of our personal injury team Jonathan White also becomes an associate. Specialising in uninsured loss recovery and professional negligence work, Jonathan is also a member of the Law Society's Personal Injury Panel and works closely with the motor loss PI team in our Birmingham office.

Commenting on the new appointments, senior partner Phillip Lane said: "We see the internal promotions, all thoroughly deserved, as a clear illustration of our continued commitment to the organic growth of the firm and the personal development of individuals.

"The appointment of Nina is exciting in that, with the knowledge and expertise that she brings to us, we believe we now have a construction law team which is second to none in the East Midlands."

TERMINATION OF TENANCIES FOR TENANT DEFAULT

LANDLORDS SHOULD TAKE NOTE THAT THE REMEDY OF FORFEITURE BY PEACEABLE RE-ENTRY WITHOUT NOTICE MAY SOON BE GONE FOREVER. THE LAW COMMISSION HAS RECENTLY PUBLISHED ITS CONSULTATION PAPER ON TERMINATION OF TENANCIES FOR TENANT DEFAULT. THE PROPOSALS FOR REFORM INCLUDE:

1. A requirement for notice to be served within a specified time period when a landlord seeks to terminate a tenancy.
2. The doctrine of "Waiver" that puts landlords at

risk of losing their rights will be abolished.

3. Extra powers to enable the Court to make orders requiring the remedy of the breach or termination of the tenancy.

4. A right for landlords to re-enter premises unilaterally and terminate the tenancy provided notice and procedural requirements are satisfied.

5. Relief will be available to a wider group, including joint tenants, sub-tenants and mortgagees.

The consultation process ends on 30 April 2004. We will keep you updated as more information becomes available.

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VISIT OUR PERSONAL INJURY WEB SITE

CLIENTS WISHING TO FIND OUT MORE ABOUT OUR PERSONAL INJURY SERVICES CAN NOW ACCESS AN AREA OF OUR WEB SITE DEDICATED TO THIS EXPANDING SIDE OF THE FIRM'S BUSINESS.

Headed by personal injury specialists Robert Rose and Kathryn Hart, both partners in our firm, the department represents over 18,000 clients at any one time and obtains millions of pounds worth of compensation each year on behalf of victims in accidents caused by somebody else's negligence.

All our Personal Injury lawyers are members of APIL, the Association of Personal Injury Lawyers, an organisation dedicated to promoting the rights of accident victims. We also have members of the Law Society Personal Injury Panel.

"The web site has been established to let people who have been victims of personal injury find out

more about our expertise in this area. We hope it will encourage them to pick up the phone and talk to one of our dedicated professionals," says Robert Rose.

We are able to take on clients cases on a 'No Win No Fee' basis and also have a Legal Services Franchise in Clinical Negligence which enables us to represent vulnerable members of society who feel let down by the medical profession.

For further details please visit our website at http://www.hio.co.uk/ls_PersonalInjury.asp



LR PANEL ROLE FOR HENRY

Residential property partner Henry Doyle is the sole East Midlands representative on a Land Registry User Panel formed to discuss the ongoing performance of the Land Registry in the delivery of its services, their future plans and the transition to e-conveyancing.

Following the establishment of a successful London panel comprising lawyers, lenders and Land Registry representatives, a decision was taken to form a Northern group which would meet twice a year at the Registry's York office.

Members of the firm recently participated in a video produced by the Land Registry to promote the wide scale changes to the land registration system under the recent Land Registration Act. Henry was one of the members of the firm who "starred" in the video and he was then invited to participate in the panel due to his long-standing experience in the residential property market.

Henry said "I was delighted to be asked to participate in the Users Panel as it gives myself and the representatives from other law practices throughout the country a chance to participate in the changes and future plans of the Land Registry in its desire, prompted by the government, to move towards a more transparent and simplified form of conveyancing using the latest technology.

"We are fully behind these changes and have in the last 12 months started to embrace these with the introduction of our use of NLIS the National Land Information Service which is an electronic online provision for searches for the benefit of our clients which helps speed up the whole process.

"There are many changes ahead with the move over to e-conveyancing and I am delighted that we will be able to have an input into this with participation in the Users Panel and to be able to implement these changes over the next year or so."

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STAMP DUTY LAND TAX & LEASES - OUCH!

TENANTS OF BUSINESS PREMISES ARE NOW FEELING THE FULL FORCE OF THE CHANGES TO STAMP DUTY WHICH CAME INTO EFFECT ON 1 DECEMBER 2003.

Prior to 1 December last year the tax payable was stamp duty. The duty was based on a percentage of the rent (plus VAT in most cases) such percentage being determined by the length of the term of the lease (for example a lease for ten years at a rent of £75,000 per annum attracted stamp duty at a rate of 2% of £75,000 plus VAT being £1763).

The changes provide for a new tax called Stamp Duty Land Tax (SDLT). For the purposes of business leases SDLT is calculated as a percentage (currently 1%) of the net present value (NPV) of the total rent payable over the term of the lease. NPV is basically a discount to allow for inflation and the current discount rate is 3.5%. NPV of a lease is therefore the total rent payable for the term discounted by 3.5% a year. Additional SDLT is payable if the rent increases during the first five years of the term (for example if turnover rents are payable).

To calculate NPV is a complicated procedure. The Inland Revenue has kindly provided a website containing a calculator for this purpose; unfortunately only for a lease of an exact number of years!

The government did introduce some concessions following stormy protests to these changes in that the first £150,000 of NPV is tax free and SDLT is payable on the NPV less £150,000, not on the whole of the NPV.



To demonstrate the effect of SDLT, in the example above the NPV for a lease for 10 years at £75,000 a year with a rent review after 5 years with VAT payable on the rent is £732,900 attracting SDLT of £5829. The difference speaks for itself!

Using the same example but with an annual rent of £200,000 (not uncommon in shopping centres) stamp duty was £4700. SDLT is £18,044! Ultimately will this be a cost borne by the consumer?

One good point to note is that if the property is within what is termed a "disadvantaged area" there is no SDLT payable on such leases. Interestingly enough the Bull Ring Centre in

Birmingham, the Meadowhall Centre on the outskirts of Sheffield and Canary Wharf are all within disadvantaged areas; a substantial loss of revenue.

As SDLT is dependent upon the length of term of the lease it remains to be seen whether business tenants, and retailers in particular, will commit themselves to lengthy leases. If for example a 10 year lease has an option to determine in favour of the Tenant at the end of the fifth year of the term which is exercised, no SDLT is repayable!

For further information please contact Richard Miller on 0116 257 4417 or email rfm@hio.co.uk

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WHERE THERE'S A WILL...

ADRIAN DAY EXPLORES THE COMPLICATED AREA OF WILL DISPUTES...

For many of you, the term Will Disputes no doubt conjures up nothing more than perhaps a petty squabble over sharing the family silver (or Tupperware as the case may be) or dividing up the contents of the family home. The reality could not be further from the truth, says Adrian Day, a litigator of almost 40 years experience and a member of ACTAPS (the Association of Contentious Trust and Probate Specialists).

Despite the apparent recent transformation of many city centres into a seemingly endless succession of theme pubs, clubs and other outlets for the young, we live in an ageing population. It is currently estimated that more than 20% of the population of the UK are over the age of 65 and this percentage seems likely to rise as we all begin to live longer. This in turn means inevitably, that an increasing number of people are at risk of dying, either having left no Will at all or having made their last wishes known (perhaps in the form of a "home-made" or hurriedly prepared Will) at a time when they may be ill, frail, elderly and/or recovering from medical treatment.

Will disputes tend to fall broadly into two broad categories. On the one hand, a surviving spouse or dependent children (together with certain others) may be entitled to claim a share of the estate (of a person dying with or without a Will) on the grounds that they are dependant upon financial provision being made from the estate in order to maintain their normal lifestyle. Such claims from within the family, frequently involve nothing more than an exercise as to how best to divide up what has been left, unless of course the element of dependency itself is questioned.

On the other hand, an increasing number of claims seek to challenge the validity of the last Will itself (particularly those of the "home-made" variety referred to above) on the basis that the person who made it, lacked sufficient mental capacity to fully understand what they were doing at the time by

reason, for example, of dementia and/or other forms of mental ill health such as Alzheimer's Disease or the effects of medication. The success of such challenges frequently depends upon medical evidence. The law has for many years recognised that people making what are generally known as "death-bed" Wills, form a vulnerable group, susceptible to suggestions put forward by and, the influence of others. However, proving that someone actually unduly influenced another to make a bequest in his or her favour is usually a difficult task, as independent witnesses are often scarce at the critical time.

As a result of recent countrywide upward surges in property prices, many deceased persons' estates tend to be far more substantial than in the past £ giving even more reason for some to question whether granny (or whoever) really did intend to

leave all her assets to just one of her seven children. Such an example may sound exaggerated but it is typical of just one of the many such investigations currently being undertaken by Adrian. Please don't assume from the above that only "home-made" Wills are liable to be overturned. On the contrary, almost every recent reported court case involving this subject has involved a Will drawn up professionally by solicitors. The Law Society's and the Courts' current requirements are rigorous when it comes to vulnerable groups.

Where there's a Will, particularly one made very late in life, there is frequently a way to challenge or interfere with it.

If you have any queries or require further information, please contact Adrian Day on 0116 254 5454 or email ad@hio.co.uk



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FAMILY LAW APPOINTMENT IS MAJOR COUP

HIGH PROFILE MATRIMONIAL LAW EXPERT JANE COWLEY HAS JOINED US AS A PARTNER IN OUR FAMILY LAW DEPARTMENT.

Previously the Family Law partner with law firm Nelsons in Leicester, Jane has built up an enviable reputation in her field of expertise, specialising in advising high net worth clients.

Jane is one of only two Leicestershire based Family Law specialists to be recommended by The Legal 500; the UK's most comprehensive and best respected survey of the legal profession. The other entry belongs to David Mitchell, who is also a partner in our Family Law department and who has led the department successfully for many years.

"Returning to Harvey Ingram Owston gives me a unique opportunity to concentrate on growing the firm's ancillary relief work and help position it as the leading legal advisor for clients whose circumstances demand specialist attention," comments Jane.

"Harvey Ingram Owston's strong client base,

coupled with its position as the county's largest law firm provides the ideal starting point from which to mount this expansion."

A graduate of Nottingham Trent University with a degree in French, Jane was articled with law firm Edwards Geldard, qualifying with Owstons before their merger with Harvey Ingram. She was an associate in the merged firm before leaving in 1996 to head the Family Law department of Ironsides prior to its merger with Nelsons in 2000.

"Much of Jane's work comes as a result of personal recommendation and referrals from banking and investment professionals which gives some indication as to the high regard in which she is held," says managing partner, Chris Finlay.

"We regard Jane's appointment as a major coup for the firm, strengthening our Family Law department and giving even greater potential to attract new

clients, not only within the Midlands but from further afield as well."

To contact Jane Cowley, please call on 0116 257 4435 or email jc@hio.co.uk



Jane Cowley has joined us as a partner in the firm's Family Law department

IS A WILL ON YOUR HOLIDAY CHECK LIST?

YOU'VE BOOKED YOUR ACCOMMODATION, RESERVED YOUR FLIGHTS, UPDATED YOUR HOLIDAY WARDROBE, ORGANISED YOUR CURRENCY, SORTED YOUR TRAVEL INSURANCE....AND BOOKED AN APPOINTMENT WITH YOUR SOLICITOR TO MAKE A WILL?

We are finding it increasingly common to be contacted during the Summer by clients wishing to make Wills before they go on their holiday. This trend has become even more evident in recent years, largely due to the perceived increased risks associated with foreign travel.

Karen Clarke, an associate solicitor in our Trusts Department says that making a Will is a more advisable option than simply keeping your fingers crossed and hoping for the best:

"People are often unaware of the value of their assets, for example, the family home, and this may lead to the assumption that they don't need to make a Will. Imagine a typical family of four: most people believe that if their spouse were to die without having

made a Will, they would receive their whole estate. This however may not be the case if for example there are children involved. Despite much publicity on the subject, it's a worrying fact that more than four out of five people in the UK have yet to make a Will."

Logging on to lastminute.com might offer the best deals for a bargain holiday, but the same rules do not apply when it comes to Will making, as Karen explains:

"Seeing your solicitor the day before you go away is not recommended. There are often many more things to consider than you first realise and it's not always advisable to make a Will based on snap decisions.

"Likewise, Internet and off-the-peg Wills may not be sufficient to ensure that your assets pass in accordance with your wishes. A Will is a legal document and there are certain legal technicalities you need to observe to ensure that the Will is valid. Also, the value of your assets will have an effect on

how the Will is drawn up - there is no one standard document to suit all circumstances.

"It's better that you allow yourself adequate time to consider these things so that you end up with a Will which will last for several years, rather than only for the duration of your holiday."



A brochure containing information and a questionnaire setting out initial considerations for making a Will is available free of charge. Please contact Karen Clarke on 0116 254 5454 or email krc@hio.co.uk

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DO YOU KNOW YOUR

ARE YOU UP-TO-DATE ON ALL ASPECTS OF PEOPLE MATTERS? DO YOU UNDERSTAND EMPLOYMENT LAW TO THE EXTENT YOU SHOULD? ARE YOU FOLLOWING THE RIGHT PRACTICES?

This easy to complete questionnaire helps you to assess how well you know your employment rights. It should help you decide whether you need a pat on the back, some detailed tinkering with your existing processes, or a sharp kick up the backside. Simply ring the answer you think is most appropriate, then check your answers against the score sheet, and go to the relevant conclusion. Because of the nature of employment law it may be possible to argue different answers to some questions in exceptional circumstances. The correct answers given are the ones most usually associated with the specific question.

1 If an employee leaves without giving notice you can:

- A - Sue for damages for loss, if suffered
- B - Withhold any outstanding pay due
- C - Gain an injunction to stop them working for someone else
- D - Do nothing

2 RIDDOR applies to:

- A - Dangerous Drugs
- B - Deaf and Dumb
- C - Dangerous Occurrences
- D - Death and Disability

3 A woman returning from maternity has the right to:

- A - Request to work reduced hours
- B - Work part time for 5 years
- C - Take unpaid leave as needed
- D - Request to work from home

4 The minimum annual leave an employee is entitled to is:

- A - 12 days plus Bank Holidays
- B - 15 days plus Bank Holidays

- C - 20 days inclusive of Bank Holidays
- D - 20 days plus Bank Holidays

5 An employee cannot claim unfair dismissal (except where there is discrimination, etc) until they have:

- A - 6 months' service
- B - 1 year's service
- C - 2 year's service
- D - No service requirement

6 An employee demands to see their personal file. You:

- A - Must provide the file as it stands
- B - May omit references given by you
- C - May omit any material you consider sensitive
- D - May refuse to provide the file

7 The minimum notice period you must give an employee with 8 years service is:

- A - 1 month
- B - 4 weeks
- C - 8 weeks
- D - 12 weeks

8 If you issue an employee with a written warning it remains on file for:

- A - 6 months
- B - 12 months
- C - For as long as you reasonably specify
- D - Unlimited period

9 The maximum an employee can claim for unfair dismissal in situations which do not involve discrimination etc, is:

- A - £16,000
- B - £38,000
- C - £55,000
- D - £64,000

10 An employee is entitled to a redundancy payment in which of the following circumstances:

- A - 2 years employment and age 63
- B - 1 years employment and age 46
- C - 2 years employment and age 67
- D - 1 years employment and age 17

11 If an employee does not disclose a pertinent medical condition on appointment and you subsequently find out you can:

- A - Dismiss without notice
- B - Dismiss with notice
- C - Issue a formal warning
- D - Do nothing

12 An employee has the following rights at a disciplinary hearing:

- A - To be accompanied by a friend of their choice
- B - To be accompanied by a solicitor or CAB rep.
- C - To be accompanied by a relative
- D - To be accompanied by a work colleague

13 A week's redundancy payment is:

- A - £180
- B - £270
- C - £360
- D - One week's actual wages

14 You have no employment contract or other documents and an employee resigns and gives statutory notice. You can:

- A - Send them home during notice period
- B - Pay their money in lieu
- C - Dismiss without notice
- D - Allow them to work their notice

EMPLOYMENT TERMS?

15 Written Terms and Conditions of employment must be issued to new employees within:

- A - 2 weeks of starting
- B - 8 weeks of starting
- C - 3 months of starting
- D - No time limits

16 (Assuming there is nothing in writing) how far can you ask an employee to move their workbase for operational reasons?

- A - Within 2 mile radius
- B - Within 5 mile radius
- C - Within 15 minutes travelling time
- D - You can't

17 An employee has the right to an internal appeal against the issue of:

- A - All warnings, including dismissal
- B - Dismissals only
- C - Where contractually specified
- D - There is no right

18 If you dismiss an employee during their probationary period you must give them:

- A - 1 day's notice
- B - 1 week's notice
- C - 1 month's notice
- D - No notice

19 If you withdraw an offer to an employee you must pay:

- A - Nothing
- B - 1 week's pay
- C - Contractual notice period
- D - Actual loss plus compensation

20 If an employee is not given written Terms and Conditions they can:

- A - Claim compensation from a Tribunal
- B - Ask a Tribunal to decide the terms
- C - Ask ACAS to write the terms
- D - Do nothing

Questionnaire answers:

0	0	3	0	20	0	0	0	3	10
0	3	0	0	19	0	3	0	0	9
0	0	3	0	18	0	3	0	0	8
0	0	0	3	17	0	0	3	0	7
3	0	0	0	16	0	0	3	0	6
0	0	0	3	15	0	0	3	0	5
0	0	0	3	14	4	3	0	0	4
0	0	0	3	13	3	3	0	0	3
0	0	0	3	12	2	0	0	3	2
0	0	0	3	11	1	3	0	3	1
D	A	B	C	Q	Q	A	B	C	D

How did you do?

If you scored between 0 and 20

Employment is becoming much more complicated and costly when it goes wrong. Your answers suggest that your understanding of employment issues is - shall we say D not as good as it could be. It appears that you are waiting for an expensive claim to come winging your way. Invest in the future with an audit of current practice. This will give you a clear understanding of what needs bringing up-to-date and what your priorities should be. Some training of managers in employment law may not go amiss.

We are able to help. For advice and a quote on updating employment contracts and employment law training please ring John Palmer on 0116 257 4407

If you scored between 21 and 40

You obviously have some idea of employment law issues but there appear to be some unfortunate gaps. With the cost of getting it wrong increasing all the time, now might be the right time to invest in a review of existing policies and procedures. Investing in up-to-date policies now may be the best investment you make this year.

We can help. For advice and a quote for a review of existing processes and possible solutions please ring John Palmer on 0116 257 4407

If you scored between 41 and 60

You are a competent manager with a good broad understanding of employment law. But there is always room for improvement. Some areas could do with an update just to make sure that you have all the correct policies in place.

Ring John Palmer for assistance on 0116 257 4407 for a discussion on how we may be able to help.

If you scored between 61 and 80

What can we say? You are obviously well informed about your employment rights. We assume that you have all your policies in place. You might wish to consider employment insurance to give you additional confidence in the event of an employment claim. If so, we can help.

For more information on our Employment Insurance package please ring John Palmer on 0116 257 4407 or email jcp@hio.co.uk



E-MARKETING AND THE NEW PRIVACY AND ELECTRONIC COMMUNICATIONS REGULATIONS 2003

VERITY CHASE GIVES A ROUND-UP OF THE EFFECTS FOR BUSINESS.

The brave new world of Internet trading has taken a huge step forward in recent years and has brought with it a number of issues for businesses who advertise and trade on-line. The Privacy and Electronic Communications (EC Directive) Regulations 2003 ("the Regulations") impact on the ways in which businesses trade on-line and send out marketing emails. Implemented into the UK at the end of last year, the Regulations have been controversial with some of the most significant provisions dealing with unsolicited emails and the use of cookies on websites.

Unsolicited Emails

Spamming is a global problem which affects almost everyone who uses email messages, or other means of electronic communication. Estimates suggest that the quantity of junk email has increased by as much as 300% since 1999 and now accounts for over half of all email traffic. The new Regulations are seeking to address this problem and it is important for UK and European businesses to familiarise themselves with the new rules and seek to ensure that their marketing practices are compliant.

Amongst other things, the Regulations set out the circumstances in which unsolicited commercial emails may be sent to individual (as opposed to corporate) email addresses. In general terms, the Regulations prohibit spam unless the recipient has previously agreed to receive it - although there are limited exceptions to this rule.

The Regulations apply to electronic communications sent for the purpose of "direct marketing". This term is defined as "communications (by any means) of any advertising or marketing material which is directed to particular individuals." The Regulations

seek to be technology neutral and cover a wide range including text, picture and video messages as well as emails. Fax communications are however covered separately under the Regulations.

Unless an individual has consented in the manner set out in the Regulations, marketing to an individual will only be possible if the following circumstances arise:

(i) the recipient's details were obtained in the course of the sale or on negotiations for the sale of a product or service;

(ii) the marketing material being sent concerns similar products or services;

(iii) the recipient was given a simple means (which was free from the cost of transmission) of refusing the use of his contact details for marketing purposes at any time when they were collected and for each subsequent communication to him.

Currently, there is some debate as to the meaning of the term "similar products and services."

The new rules raise a number of problem areas (such as the distinction under the regulations between individual and corporate subscribers) as to how organisations use marketing lists. The definition of "individuals" covers sole traders (such as consultants who carry on their business in their own names rather than under the umbrella of a company) and partnerships. Other organisations (principally UK companies) fall within the definition of corporate subscribers and so may be sent unsolicited marketing mail without prior consent as long as the requirements of the Data Protection Act 1998 are met. Marketing materials which are clearly aimed at individuals within corporate organisations are deemed as being sent to corporate subscribers for

the purposes of the Regulations.

Where marketing lists have been obtained from a third party it is still the responsibility of the marketer under the Regulations to ensure that the rules have been complied with.

If you market via emails you should consider the following:

- Is the email address a corporate address? If so, the Regulations do not apply.
- The safest way to comply is to ask individuals to "opt-in" to receive direct marketing emails.
- Ensure that that you seek advice in drafting "opt-in" wording carefully.
- Ensure you check the Direct Marketing Association's opt-out registers on a regular basis and certainly before sending direct marketing emails. This can be accessed at www.dma.org.uk.
- Keep records of individuals who have given consent. Ensure your databases have the ability to record the consents, how they were given and to amend consents in the future.
- All emails must now include an address for unsubscribed requests. Ensure your systems can honour such requests.
- Ensure you make it clear who you are when sending emails. It is illegal to disguise or conceal the identity of a sender of a direct marketing email.

Use of Cookies and other "Spyware"

Many websites use cookie technology to enable a website to recognise a previous user on his/her

return to the site and to personalise the content accordingly.

The Regulations provide that all cookies, and any other device which can be used to collect information from a user's terminal, will be prohibited unless the sender first:

- (i) provides clear and comprehensive information about why the cookie will be used;
- (ii) allows the user to refuse the cookie (or to refuse access to information stored in the cookie).

Practical steps which should be considered to achieve compliance include the following:

- (i) a review of your existing (or the development of a new) privacy policy statement;
- (ii) the inclusion of a clearly flagged link to a privacy policy or cookie statement;
- (iii) the identification of whether any cookies used fall within the exemptions in the Regulations.

Other Provisions

The Regulations also consolidate existing rules on marketing by fax and telephone, the use of automated calling systems, the use by telecom network operators of traffic and billing data and location data. There are also provisions relating to security, itemised billing, tracing of nuisance calls and automatic call forwarding.

Enforcement and Penalties

The Information Commissioner, the UK's data protection watchdog, will enforce the Regulations which includes powers of entry and inspection and the issue of enforcement notices. Anyone who suffers damage from a contravention will also have a statutory right to pursue compensation.

For further information please contact Verity Chase on 0116 257 4434 or email vc@hio.co.uk

PLANNING PROCEDURE REFORMS

PARTNER PAUL HUNT TAKES A LOOK AT THE LIKELY IMPLICATIONS OF THE REFORMS:

The Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003 has now been brought into effect.

One of the most important changes brought about by the new Order is to reduce the period for submitting planning appeals under Section 78 of the Town and Country Planning Act 1990 from six months down to three months. The new time periods only apply to planning applications submitted on or after 5 September 2003. All applications submitted prior to that date will still be subject to the six month period for submission of an appeal. Identical amendments have been made to the regulations dealing with Listed Buildings and Conservation Area appeals.

The other major change contained within the new Order is to be found in Article 5. This requires that where a Local Planning Authority grant planning permission or approval of reserved matters they must provide a summary of their reasons for the grant and a summary of the policies and proposals in the development plan which were relevant to the decision. This new regulation came into effect on 5 December 2003. It does not apply to any application submitted prior to that date where a permission is issued pursuant to that application within 3 months of the date, so if permission is granted after 5 March 2004, the

regulation will apply even if permission was sought prior to 5 December. Again similar rules apply to Listed Buildings and Conservation Area Consents.

The consequence of this requirement will undoubtedly be to provide an opportunity for those aggrieved by the grant of planning permission to seek to challenge the validity of the permission through the Courts if there is any defective reasoning underlying the grant of permission which is disclosed by the reasons set out in the grant. Local Planning Authorities will have to be just as careful in drafting their reasons for granting permission as they will in drafting reasons for refusal or conditions imposed on a permission.

For further information please contact Paul Hunt on 0116 257 4451 or email pdh@hio.co.uk



Partner Paul Hunt takes a look at the likely implications of the reforms.

STRONGER WORKING PARTNERSHIPS NEEDED IN THE WAKE OF PROCEEDS OF CRIME ACT REVISION

Family law expert and partner Jane Cowley foresees a need for local law firms, accountants and financial advisers to work more closely together in the wake of groundbreaking revisions to The Proceeds of Crime Act 2002.

The new legislation, which came into force on 1 March 2004, places responsibility on legal and financial industry professionals to disclose any suspicions they may harbour regarding their clients' involvement in criminal activity.

"The new rules are mandatory and could be very damaging to firms that do not apply them to the letter," explains Jane.

"Our strong reputation in the field of family law gives us a head start in advising on the correct interpretation of the new rulings and we are hoping to encourage local firms to forge working partnerships in order to address these issues."

We will be hosting a seminar at The Belmont House Hotel on 19 May aimed at offering practical advice on the revisions to the Act and its possible ramifications.

"It is vitally important that firms become acquainted with the new rules" says Jane. "Our seminar will provide a forum for discussion on this highly significant and far reaching legislative development."

For further information please contact Jane Cowley on 0116 257 4435 or email jc@hio.co.uk.

STEPHEN TAKES UP CHAMBER PRESIDENCY

PARTNER STEPHEN WOOLFE IS LOOKING FORWARD TO AN "EXCITING" TWO YEARS AHEAD, FOLLOWING HIS RECENT ELECTION AS PRESIDENT OF LEICESTERSHIRE CHAMBER OF COMMERCE.

At the Chamber's annual luncheon, Stephen addressed a record crowd, telling them that his new role came at a "very exciting point in the development of the Chamber."

He continued: "This is a fascinating time to be involved in the business community in our city and county. I have worked in Leicester for more than 30 years and can't remember any period when there has been such activity.

"I'm sure that over the next two years we are going to see some significant changes in the services we offer to members and in the business community in which we work."

Stephen spoke of the Chamber's merger with the Leicestershire Development Agency, incorporating Business Link services in Leicestershire on behalf of the DTI, the Small Business Service and EMDA, a development he feels will help provide a more powerful and more focused representation and support unit for the local business community.

He went on to cite examples such as the work of the Leicester Regeneration Company to demonstrate the strides that are being made in restructuring and redeveloping the city, commenting: "Within the county the Leicester Shire Economic Partnership along with the Chamber are working hard to create economic conditions that will improve the quality of people's lives and the environment in which they live.

"Within the business community there has been extraordinary interest from all sectors in seeking to ensure that the voice of business is clearly heard and there are now a myriad of organisations working to influence local and regional policy."

Stephen puts this change in local attitude and

renewed momentum down to three influential factors: Firstly, the creation of EMDA which has had such a positive effect on the economic growth and prosperity of the wider East Midlands.

Secondly, the huge amount of work that has gone into regeneration of the Chamber over recent years.

And thirdly, what Stephen calls "a new spirit of self-belief and confidence within the business community" evident in such activities as the Leicestershire Business Awards, Leicester Revealed and the City's sporting success through its association with key members of the World Cup winning rugby team.

Stephen concludes: "The East Midlands has set itself a challenge of being a top 20 region by 2010. I firmly believe that this is achievable and that Leicester must support this ambition by becoming a pre-eminent part of the region.

"My presidency comes at a time when the City and county are very much on the up, and I am looking forward to playing a key part in supporting their continued growth."



Stephen Woolfe has recently been elected president of Leicestershire Chamber of Commerce.

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FULL SPEED AHEAD FOR BIRMINGHAM

SINCE ITS LAUNCH IN JULY LAST YEAR, OUR BIRMINGHAM-BASED CORPORATE UNINSURED LOSS RECOVERY OFFICE HAS GONE FROM STRENGTH-TO-STRENGTH, ALREADY INCREASING ITS TEAM BY OVER 30%.

Partner Paul Davies who heads up the dedicated motor claims division, feels a unique approach to ULR work is what makes us stand out from the other players in this specialist legal field.

"There are plenty of huge organisations out there dealing with motor claims and an equal number of smaller, one-man-band type operations covering the same ground. We lie in the middle of the two, which means, even with large volumes of work, we can offer clients the type of personal service and attention they seek, whilst also giving them expert advice and a quick resolution of their claim."

Originally 15, now 20 strong, Birmingham's team are split into three units each comprising supervisors, fee earners and administrative support. Each team works for a separate client base, allowing strong, consistent working relationships to be established.

"There are many things which set us apart from other practitioners in this area, but we tend to focus on three key factors," explains Paul.

"Firstly, the fact that we are a legal firm means that our letters of claim prompt a better response, and when necessary we can issue proceedings ourselves and don't have to wait for other parties who could potentially slow things down.

"Secondly, we are offering a bespoke service in what is essentially a volume market. Clients are not always used to having personal attention or a

response tailored to their needs. This means we can offer value added services that give both a commercial and time advantage.

"Thirdly, we thrive on establishing long term relationships with our clients, the vast majority of whom have been working with us for many years. This familiarity with their business practices helps us become more efficient and means that we can offer some of the most competitive recovery times in the industry - typically just 13-14 weeks when the norm can be as much as 20-30 weeks."

Following on from this success, Birmingham is now expanding its niche "corporate Personal Injury" product for road accident victims, with the support of Leicester based PI experts; partners Robert Rose and Kathryn Hart. This service is sold

to the employer/company rather than individuals.

This allows the employer to control how the service is offered to its employees, who then receive a more personal service from our experts than is traditionally available for this type of work.

"It is usually in a company's interests to help their employees resolve their personal injury claims as expeditiously as possible and following on from their company's introduction, we can help individuals recover all uninsured losses arising from a no-fault accident at no cost to themselves," says Paul.

For further information on our ULR and motor related PI work please contact Paul Davies on 0121 262 6551 or email pxd@hio.co.uk



Partner Paul Davies heads up our Birmingham office

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INTELLECTUAL PROPERTY LAUNCH ASKS: "ARE YOUR BUSINESS IDEAS SAFE?"



Our IP specialists (from left) Matthew Talbot, Margaret Davies and Estelle Dimelor meet 'Mimic Man', the human movement robot which copies the actions of inventor Chris Box of Leicester-based Robotic Systems (right); one of several inventors present at the firm's recent IP department launch.

A human movement robot and a system to produce plant-based molecules for industrial and pharmaceutical applications, were just two of the inventions displayed at the launch of our expanded Intellectual Property (IP) department.

Held at Leicester's National Space Centre, the event gave guests the opportunity to chat informally with a number of locally based inventors, business support organisations and members of our IP team.

"Our exhibitors were typical of the types of new business start-ups who should be considering IP as a vital part of their business plan," explains partner and Head of Intellectual Property, Estelle Dimelor.

"IP is an area not just reserved for new businesses however," continues Estelle, "established businesses whose success is reliant upon designs, ideas or systems should also be thinking about protecting their good ideas and taking steps to shield them from exploitation."

"The launch event proved very popular and certainly got people thinking about valuable business assets which they may take for granted; precisely the sort of areas that IP measures can help protect."

Our IP team is the largest specialist department of its kind in the region and can offer businesses unparalleled advice in this rapidly expanding and highly significant area of the law.

For further information on how our IP team can help your business please contact Estelle Dimelor on 0116 257 4448 or email ed@hio.co.uk

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CONKERS TRIUMPHS THANKS TO LIZ'S NOMINATION



Award-winner CONKERS encourages children to find out about nature

A NOMINATION FROM LIZ MUNSEY HAS RESULTED IN SUCCESS FOR HARVEY INGRAM OWSTON CLIENT HEART OF THE NATIONAL FOREST FOUNDATION, WHOSE CONKERS INITIATIVE WAS VOTED PROJECT OF THE YEAR AT THE PROCON LEICESTERSHIRE AWARDS.

CONKERS opened to the public in April 2001 and since then has attracted almost 700,000 visitors - 100,000 of whom have been school children.

CONKERS has been developed by the Heart of the National Forest Foundation; a partnership of business, the community and the public sector from Leicestershire and the East Midlands, and was made possible with major support from the Millennium Commission

"We are absolutely delighted to have won this prestigious Leicestershire Award for CONKERS", said Mike Ballantyne, Project Director of the Heart of the National Forest Foundation.

"CONKERS is a massive success and this Award is a recognition of all we have achieved since opening just over two years ago. The visitor attraction is a particular favourite of Leicestershire people and winning the Award will encourage even more families from the city and county to come to CONKERS."

Says Liz: "I became aware of CONKERS through my professional involvement with the Heart of the National Forest. When my colleague Jonathan Fear first mentioned the awards I thought it had all the right qualities to be successful, so was naturally delighted to find out that it had won."

ASBESTOS AT WORK - THE CLOCK IS TICKING

In May this year another part of The Control of Asbestos at Work Regulations 2002 comes into force which will have an impact on landlords, tenants, occupiers and managing agents of non-domestic properties. Anyone who has an obligation of any extent to repair and maintain non-domestic property or means of access thereto, becomes a duty holder under the Regulations and is obliged to manage the risk from asbestos. Criminal sanctions, fines and imprisonment may be imposed if all due diligence has not been exercised.

For further information please contact Debra Mansfield on 0116 257 4421 or email daman@hio.co.uk

SEMINARS

- **13 May 2004. Planning and Development seminar:**
The Immediate Past and Foreseeable Future
Leicester City FC 5.30pm - 8.00pm
- **19 May 2004. Family Law seminar:**
The Proceeds of Crime Act...
working together in partnership
The Belmont House Hotel
7.45am - 9.30am
- **26 May 2004. Intellectual Property seminar**
Leicester City FC 7.45am - 9.30am
- **8th June 2004. Business Advisers Club seminar**
The Belmont House Hotel
7.45am - 9.30am
- **16th June 2004. Employment Law seminar**
Leicester City FC
7.45am - 9.30am
- **23rd June 2004. Corporate seminar**
Leicester City FC
7.45am - 9.30am

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