

AUTUMN 2006

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Team sets up nationwide home energy deal



Harvey Ingram LLP
solicitors



Chris Finlay
managing
partner

2006 has been a busy and eventful year and it's hard to believe we're already entering the last quarter.

In this issue, we look at some of our recent achievements and how we have restructured and expanded to respond to the ever-evolving needs of our clients – most notably through the formation of specialised new teams such as our new Regulatory and Trading team.

In the newly-published 2006 Legal 500, we have maintained all our first-tier rankings in the areas of Corporate and Commercial, Commercial Litigation, Employment, Tax/Trusts/Probate and Commercial Property, and have been highly commended in other areas. The publication pays particular tribute to our corporate activity, and you can read about some of our larger and more unusual corporate transactions in this issue of Briefcase.

We extend a warm welcome to the new additions to our expanding firm and offer our congratulations to those solicitors who have become newly-qualified.

For further details of our forthcoming events, news and Briefing notes, please visit our website at www.harveyingram.com

I hope you enjoy this issue. With best wishes from everyone at Harvey Ingram for health and prosperity in the year ahead.

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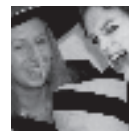
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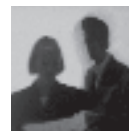
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From food-making to wind-making, the transactions team has the right recipe...



Our Corporate Finance and Transactions Team has helped a wide range of leading businesses from all types of industry to restructure or expand over the past six months – both in Britain and overseas.

A new food industry joint venture has just been completed for national client Samworth Brothers Limited. Solicitor Rosie Prabhakar and partner John Stobart helped the company to structure the new arrangements for the development of the Mrs Beeton's brand of food products, working jointly with Mr Stephen Knockton, a well known figure in the food products industry.

Samworth Brothers is a privately owned family business and a leading UK producer of quality savoury and dessert food products. The company makes products across a range of categories, from sandwiches to desserts, for many leading UK retailers under their own labels as well as Samworth Brothers' own portfolio of brands,

including Ginsters and Dickinson & Morris. The latest transaction means that the rights to use the Mrs Beeton's name on packaged food products are now held exclusively by Mrs Beeton's Limited in which Samworth Brothers Limited and Stephen Knockton will have an ongoing involvement and interest.

HKS Motors of Belgrave Gate, Leicester, recently acquired the established JB Jackson Group to add three more filling stations to those already owned by the company, with the help of our team.

HKS Motors, which is now a leading operator in the sector, was established by and is still owned by the Thakrar brothers. Earlier this year HKS bought the airport filling station at East Midlands Airport. The most recent acquisitions of three new filling stations situated at London Road, Coalville, Ashby Road, Ibstock, and Talbot Street in Whitwick indicate that the company will continue with its business development plans in the future.

Our Corporate Finance and Transactions team has acted for HKS since 1972 and continues to work with the company on its acquisition strategy.

French manufacturer Vivitar SA has been given a helping hand in meeting its business development targets by establishing its UK distribution network. Vivitar SA, a French digital camera maker, recently appointed our team to handle its legal work as it aims to further its UK business. Vivitar SA is the European subsidiary of Vivitar Inc of California. Its UK distribution centre is based in Leicester and



it supplies its products to many established High Street retailers in the UK. As a result of the appointment, we will be handling its property work as well as drawing up future employment and commercial contracts.

Mark Insulations, based in Beaumont Leys, has been appointed as national installer of an award-winning wind generator developed by Glasgow company Windsave, with our team handling the legal aspects of the deal. The wind generator has been developed and patented by Windsave after research revealed there was a market for efficient wind energy in the domestic sector; and the company needed an established national company with experience of domestic installation. The multi-million pound deal was set up by our team, who ensured that both parties achieved a solid agreement which would be of mutual benefit to both Mark Insulations and Windsave.

New solicitors make a welcome return



▲ Akmol Ali

Three new solicitors who have just joined our firm are making a welcome return to the region.

Akmol Ali, who has joined our Commerce and Technology team, said the opportunity to live and work in Leicester was an 'added bonus' to joining our team, which he said attracted him because of its sound reputation, quality of work and people, and training and development opportunities.

Bradford-born Akmol, who will specialise in commercial contracts and intellectual property issues, obtained his law degree at Leicester University and the legal practice course at De Montfort University, before going on to do an



▲ Nicola Darby

intensive intellectual property course at Bristol University. He previously worked for Royal and Sun Alliance and Zurich in London, Brachers Solicitors – the largest firm in Kent, and VSH Law in Northamptonshire. His previous client list is impressive, featuring well-known names like IKEA and Marks and Spencer.

Nicola Darby was born in Oakham, Rutland and was educated locally at the Vale of Catmose and Rutland Sixth Form colleges. She studied law at the University of Birmingham and completed her LPC at De Montfort University. To date, she has worked for Clifford Chance and the main focus of her work is landlord and tenant issues.



▲ Natalie Griffiths

Natalie Griffiths, who has joined our Employment Law group, lives in Nottingham and is looking forward to working closer to home. For the past four years she has worked for Wright Hassall, solicitors in Leamington Spa, developing a broad experience of employment law.

Born in Solihull, Natalie was educated at Arden High School, Knowle and Solihull Sixth Form College before going on to obtain her LLB Law with honours at Nottingham Trent University. She then passed the legal practice course at London College of Law. Natalie specialises in all areas of employment law and chose to join us so that she could work within a larger Employment team.

This year's Legal 500 results – a firm stronghold



Once more we have reached top-tier status in five practice areas in this year's Legal 500, holding firm our position in the UK's definitive annual guide to law firm and legal practitioner performance.

The 19th edition of the guide, which bases its opinions on interviews with clients and other legal professionals, pays particular tribute to our corporate work. Our recently opened corporate office in Birmingham is helping us to be recognised for our corporate work across the Midlands.

The first tier rankings obtained for our Corporate and Commercial, Commercial Litigation, Employment, Tax/Trusts/Probate and Commercial Property work last year were all retained in 2006 and our Family, Social Housing, Licensing, Sport, Pensions, Intellectual Property, Insolvency/Corporate Recovery, Personal Injury/Clinical Negligence, Construction, Planning and Banking and Finance work were all also highly commended by the publication.

Many individuals were again singled out for mention. Chris Saul and his Dispute Resolution team were described as 'very capable' whilst Kate Hall's team in Commercial Property were described as *"having very competent people coming through, particularly associate Lee Hennell"*.

Managing partner Chris Finlay said the placings in the Legal 500 continued to reflect the good work of all of our staff throughout the past 12 months.

"We are delighted that we've been able to maintain the high levels achieved last year," he said. *"The Legal 500 is a respected barometer for the legal profession so we are pleased to have made such a good overall impression and to be so highly thought of by clients and competitors alike."*

New Regulatory and Trading team formed



▲ **Left to right:** Rafique Patel, Jonathan Hill, Debra Mansfield, and John Palmer.

Increasing regulatory requirements are putting more and more pressure on businesses, and in June this year we responded to this pressure by setting up a new Regulatory and Trading team to help business professionals ensure they are complying with new and existing legislation. The team combines our existing expertise in the fields of transport, health and safety, environmental and trading law, and is made up of partners Rafique Patel and Debra Mansfield, solicitor Jonathan Hill and personnel consultant John Palmer.

In recent years, the level of regulatory work we have undertaken has risen dramatically. In addition to health and safety and trading law, many more existing and new clients have sought advice on the environmental aspects of corporate and property transactional work. For this reason, we decided to set up a specialist team which could represent clients in corporate criminal defence, civil proceedings and corporate and property transactional work. The team draws on the

expertise of all the firm's departments for different areas of work. In transport, trading law and health and safety matters, team members liaise with our Dispute Resolution, Corporate Personal Injury, Uninsured Loss Recovery and Projects teams, whilst its environmental work involves all of the property-based teams, along with the Projects team in marketing matters.

More information about the new Regulatory and Trading team can be found on our firm's website under the Commercial Services link.

For further information please contact Rafique Patel on 0116 257 4446 or e-mail: rafique.patel@harveyingram.com



Loans to Directors:

Do you know the score?



Rick Smyth, partner and head of our Corporate Finance and Transactions team in Birmingham, examines the changes relating to loans to directors.

So, you are in the boardroom and your co-director mentions that he is looking to buy his dream house and needs a short term bridging loan until his old house is sold, but the bank is going to charge a fortune for it. You have known each other for years, built a strong business together and between you, you own the company. You know he is good for his word and he even offers to pay a commercial rate of interest above that which the company is getting at the bank. The company is in good shape and it seems in the interests of the company to put that spare cash to work in the short term until you finalise that acquisition that you have earmarked it for.

Seems like a good plan? After all, we get by with a little help from our friends?

Congratulations, you have just committed a criminal offence. Under Section 330 of the Companies Act 1985, a company is prohibited (subject to very limited exceptions) from making loans to its directors. Where a company makes that arrangement or a transaction for a director in contravention of Section 330, that director and any other director who authorises the transaction or arrangement are jointly and severally liable

to indemnify the company for any loss resulting from the arrangement or transaction. In short, you have just underwritten the loan personally and exposed yourself to the risk of a fine and even imprisonment.

Historically, there has been a defence under Section 341(5) for a director if he can show that, at the time of the arrangement when the transaction was entered into, he did not know the relevant circumstances constituting the contravention of Section 330. However, in the recent case of *Neville (as Administrator of Unigreg Limited) and Anor vs. Krikorian and Ors*, the Court of Appeal has expanded and clarified the circumstances in which directors can become personally liable.

In that case A and K were the only two directors, with K being the only active director. Both began to operate a loan account which was disclosed in the company's accounts. Even though A was no longer active in the day-to-day management of the business it was held that A was aware of and allowed the operation of the loan account but was unaware of the individual circumstances of the loan and had not specifically authorised it. A sought to rely on Section 341(5) as a defence to his joint and several liability for K's account.

It was determined that even if a director was not aware of the relevant circumstances of the loan or did not know the details of the individual loan that had been made, where a director knew of a company's operation of a loan account in favour of another in breach of Section 330 of the Companies Act and did nothing about it, he was jointly and severally liable to repay all sums loaned after he became aware of the existence of the loan account.



The court held that on discovery of the existence of a loan account a director, as part of his statutory duties, has an obligation to take steps to recover the outstanding loan to a company immediately. Failure to do so constitutes a breach of director's duties, rendering each director liable for the difference between what could have been recovered by the company if they had sought repayment immediately upon another director becoming aware of it and the amount that is finally recoverable in respect of that indebtedness.

This decision is a reminder to all directors that under the current law, loans to directors are unlawful, and clarifies that failure to take steps to put a stop to such practice and recover the indebtedness will have personal consequences for the director concerned.

For further information, please contact Rick Smyth on 0121 632 2312 or email: rick.smyth@harveyingram.com

Teams compete for Harvey Ingram LLP trophy



◀ **Left:**
LHA-ASRA Group's
winning netball team.



◀◀ **Far left:**
Our winning football team.

Organisations from all over Leicestershire came together for our annual sports tournament at Leicester University Sports Field, Oadby.

The tournament, now in its sixth year, incorporated teams from clients and contacts including LHA-ASRA Group Limited, Grant Thornton UK LLP, Vantis, Tenon, PKF, Leicester Surveyors, Cooper Parry, KPMG, RBS and HSBC as well as our own firm, competing for trophies at netball and six-a-side football.

LHA proved to be worthy winners of the netball tournament, defeating our 'A' team with a 7-3 scoreline. The firm's A and B teams both performed well in the divisional stage to top their respective groups, with LHA and Tenon also qualifying for the knock-

out stages. LHA won through convincingly to the final, while the other games witnessed a battle for firm pride, with our A and B teams competing against each other. The former managed a 2-0 win to set up an exciting finale. In a close match, it was LHA who eventually won through with a 7-3 scoreline.

In the men's six-a-side football, a total of 11 sides participated in the event for which Tenon, LHA, Grant Thornton and our team won through from their groups to participate in the knockout stages.

Our firm did so at the expense of Vantis with a penalty shoot out following a tie in their division. Grant Thornton saw off Tenon with a convincing 3-0 win, whilst we saw off last year's winners with a 2-0 victory. The final was a rather tense affair, although it was our team who lifted the trophy with a narrow 1-0 win.

Following the tournament, the winning teams were presented with their trophies by senior partner Phillip Lane at the Old Library pub in Oadby.

Reduce, Re-use and Recycle

Proposals to reduce the carbon footprint of the construction industry



Debra Mansfield, a partner in our Projects team specialising in commercial property and environmental matters, details the positive impacts of the Government's new Reclaimed Scheme funding.

Everyone is familiar with the green mantra 'Reduce, Re-use and Recycle' and at long last we believe the construction industry is receiving firm encouragement from the Government, with funding of a Reclaimed Scheme.

It cannot be denied that construction materials have a significant impact on UK sustainability. From statistics available, it appears that in the UK they annually account for:

- 420 million tonnes of material consumption averaging seven tonnes per person;
- 20% of the total national ecological footprint;
- 19% of the total national greenhouse gas emissions;
- 30% of all road freight on UK roads.

The embodied environmental impact is generated during extraction of raw materials, processing and manufacture and transportation. It is clear that direct substitution of reclaimed materials for new in any construction or building work would radically reduce the environmental impact of that particular item. It would remove the need to extract more raw materials and it would largely remove the need for processing and manufacture.

Transportation impacts would be reduced too as reclaimed materials tend to be sourced locally and it would divert waste from landfill. But how acceptable would that be to the market?

Lifecycle analyses using environmental profiling techniques indicate that comparing reclaimed with new materials shows an environmental impact reduction of 96% when using reclaimed steel and 79% for reclaimed timber. The environmental savings are often achieved with little or no additional expense making reclaimed materials an extremely cost effective way of achieving environmental savings and cutting carbon emissions.

The support being given to the demolition business to encourage promotion of the use of its wastes is by a DEFRA grant of over £95,000 to the Bioregional Development Group, an entrepreneurial, independent environmental organisation whose aim is to encourage commercially viable products and services from local renewable and waste resources.

The aim of the Reclaimed Scheme is to create a supply chain of reclaimed, renewable and sustainable building materials and to act as matchmaker for materials scheduled for disposal with new construction needs, effectively to put together reclaimed materials with end users. All materials would be marketed before they are extracted so only those needed would be taken.

For further information, please contact Debra Mansfield on 0116 257 4421 or email: debra.mansfield@harveyingram.com



Cracking the code of copyright



Andrew Wilkinson and Pina Mazzotti, solicitors in our Dispute Resolution and Commerce and Technology teams, look at some of the copyright issues highlighted by the high profile court case involving *Da Vinci Code* author, Dan Brown.

The law of copyright was put to the test earlier this year when the High Court in London heard a case brought by authors Michael Baigent and Richard Leigh against Random House, publishers of the novel, *The Da Vinci Code*, which has earned author Dan Brown over £140 million.

Baigent and Leigh's *The Holy Blood And The Holy Grail*, co-written with Henry Lincoln, was originally published over 20 years ago and was a 'factual' book which argues that there is evidence that Jesus married Mary Magdalene, had one or more children, and that those children or their descendants emigrated to what is now southern France. Once there, they intermarried with the noble families who would eventually become the Merovingian dynasty, championed today by a secret society called the Priory of Sion.

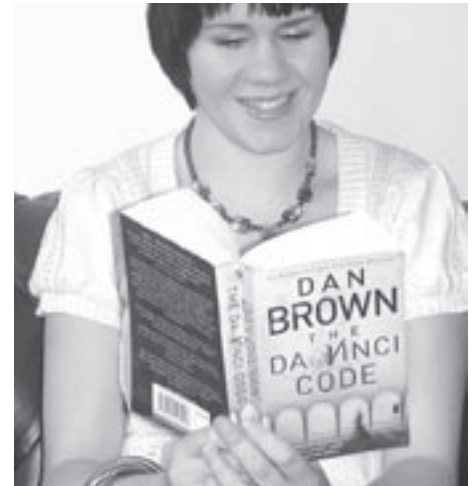
This idea was the basis for Dan Brown's fictional novel originally published in 2003, which relied on an alleged conspiracy by the church to cover up the truth about Mary Magdalene. The novel has sold over 60.5 million copies and spawned a 2006 movie starring Tom Hanks and Audrey Tautou.

In the High Court, Baigent and Leigh alleged that the "whole architecture" and "central theme" of *The Holy Blood And The Holy Grail* had been lifted into Brown's multi-million copy-selling novel. Brown had admitted to using the book, but claimed it was only one of many sources he had used when writing the novel. He had however used one of the authors' names for one of the characters in the novel, Leigh Teabing (the surname being an anagram of Baigent).

Mr Justice Peter Smith, however, found that there was no "central theme" in the *The Holy Blood And The Holy Grail* and their alleged "central theme" was an "artificial creation for the purposes of the litigation working back from the *Da Vinci Code*". The judge went on to say that even if the central themes had been copied, they were of too low a level to be capable of protection by copyright law.

Furthermore, there was no "architecture" in *The Holy Blood And The Holy Grail* as argued by Baigent and Leigh, and in any event, Brown had not copied any such "architecture". There was therefore no copyright infringement by copying of a substantial part of *The Holy Blood And The Holy Grail*.

The case raised an interesting point — to what extent can authors copy ideas from others and use an idea in their novels? Had the case been decided differently, it would have opened the floodgates to hundreds of claims for theft of ideas. The court however decided that the law should be left as it is.



The case confirmed the existing law on copyright, which derives from the Copyright, Designs and Patents Act 1988, and which states that ideas themselves are not protected, but it is the expression of those ideas which gains protection. The result of the case was welcomed by authors and publishers all over the world; in fact anyone whose work is inspired by the work of another. In order to decide the case any other way, the judge would have had to distort the current law and would have in turn created a due diligence headache for any publisher wishing to publish a book — they would have to be sure that any ideas in a particular novel were entirely original.

The case continues to rumble on with a possibility of an appeal early next year. Despite Random House incurring legal costs of over £1.3 million, it does appear that both books benefited financially from the publicity generated during the trial. Indeed *The Holy Blood And The Holy Grail* entered the UK Top 10 book sales chart during the trial, and the movie of Brown's novel went on to take over \$750 million worldwide.

For more information on copyright or any other area of intellectual property, please contact Pina Mazzotti on 0116 257 6166 or email: pina.mazzotti@harveyingram.com

Five carry the baton in corporate challenge



▲ Back row: Will Irving and Sean Moran. Front row: Jeanette Kershaw, Paula Fowle and Kate Manley. The team who carried the baton for us in the recent Cooper Parry challenge.

Five fit members of our staff carried the baton for the firm when they took part in the Cooper Parry Corporate Challenge recently.

Team Harvey Ingram LLP, consisting of Will Irving, Sean Moran, Jeanette Kershaw, Paula Fowle and Kate Manley took part in the event at Wollaton Park, Nottingham on 10th September.

This event is arranged as part of the Robin Hood Marathon and took the form of a relay with each of the team members running between two and three miles, then passing their baton to the next runner

to complete the total half marathon distance of 13.6 miles.

After a very early and chilly start, the team finished 43rd out of 58 teams with a time of one hour, 58 minutes. Having completed his leg, Will carried on and ran the remainder of the race in the same time. The team had a good day and raised a substantial amount for charity.

The Cooper Parry Corporate Challenge is the UK's largest corporate relay and this year raised around £50,000 in total.

Events

Event	Employment Law Group Seminar - Age Discrimination
Date	15 th November 2006
Time	7.45am – 9.30am
Venue	Walkers Stadium
Event	Business Advisors Club Seminar
Date	6 th December 2006
Time	7.45am – 9.30am
Venue	Rose Rooms, Belmont House Hotel
Event	Leicester Young Professionals - Christmas Breakfast
Date	7 th December 2006
Time	8.00am – 9.30am
Venue	Harvey Ingram offices
Event	Leicester Young Professionals - Valentines Jazz & Cocktails
Date	8 th February 2007
Time	TBC
Venue	TBC

For details of all our forthcoming events look on our website at:

www.harveyingram.com

or contact Daljit Flora, our marketing events organiser on 0116 254 5454

or email:

daljit.flora@harveyingram.com

Fun and nostalgia for Young Professionals

Leicester Young Professionals, the networking group set up by our firm, has just launched its fifth year and a calendar of events featuring nostalgic, sporting and traditional themes is already taking shape.

In its launch event, the group held a 'Pick A Winner' race night at Devonshire Place, which attracted more than 60 members split into teams to take part in a competition with a horse-racing theme. The winning team from PKF, named The Stallions and Fillies, won £180 towards the cost of a meal at Case Champagne Bar and Restaurant. The event was sponsored by us, PKF, Goy Harris Cartwright, RBS, Weightmans and Tenon.

Next on the agenda was a 'Grease' themed 1950s-style breakfast, which featured waffles and pancakes, smoothies and other traditional American fare of the decade. The annual charity quiz night, which this year had a Halloween theme, took place at the Hogshead Pub with many attendants donning witches' hats and ghostly clothing to get themselves in the mood. The LYP is delighted to have used this event to raise money for the Cystic Fibrosis Trust. A Christmas breakfast meeting is planned for December 7th at our Leicester office and next year's events will include a Valentine-themed jazz and cocktail night, beer festival, curry night and summer treasure hunt.

Caroline Sutcliffe, solicitor in our Retail team and president of the LYP commented: *"Membership is thriving as is the enthusiasm and demand for high quality events. The group represents an invaluable opportunity for younger professionals to forge links with other disciplines."*



▲ Getting ghoulish at the LYP Halloween-themed event are: (back, from left) solicitors Lindsay Wheatcroft, Christopher Nuttall and Kinnary Vyas. (Front) Andrew Wilkinson, Caroline Sutcliffe and Darren Smith.

The LYP group was formed in September 2002 and offers its professional members, all aged up to 35, the opportunity to meet, socialise and network in an informal environment. LYP has almost doubled in size since its formation, now boasting around 250 members.

For more information about the LYP, please contact Matt Coleman on 0116 254 5454 or email: matt.coleman@harveyingram.com



▲ Associate Nelum Rani, pictured with Louise from Tote and Les from Global Events presents the winning certificate to Seema Parekh, Chris Glew, Gina Smith, Gareth Singleton, Rebecca Murphy and Alex Kenwood, all from PKF.

Team re-organised to provide dedicated service

Our Dispute Resolution team has been re-organised to operate as a dedicated unit led by partner, Chris Saul. The team also comprises partners Sean Moran, Frank Whale and Rafique Patel, associates Emma Anderson and Nelum Rani and solicitors/legal executives Adrian Day, Matthew Duckworth, Pina Mazzotti, Jonathan Hill, Andrew Wilkinson, Annabel Whitaker as well as Richard Clewlow, John Spencer and Karen Griffin.

The team deals with all aspects of dispute resolution and commercial litigation and includes a debt recovery section headed by Frank Whale. He and his team members John Spencer and Karen Griffin carry out debt recovery work for a large number of local and national businesses.

The Dispute Resolution team offers a full range of services to businesses, directors and private individuals and its work includes giving advice on all areas of the law, including commercial contract disputes, warranty claims, shareholder disputes, intellectual property disputes, advising pension scheme trustees and lease recovery work. The team also specialises in contentious probate and professional negligence claims.

"In today's market it is essential that a specialist team is available to deal with all areas of both litigation and dispute resolution," says Chris. "Alternative methods of dispute resolution, especially in the form of mediation, are becoming increasingly important and enable us to look at creative solutions to the resolution of commercial disputes outside of the litigation arena."

The Companies Bill, with its focus on directors' duties and shareholder actions, is likely to be a growth area for both litigation and dispute



resolution and the significant changes brought about by the Consumer Credit Act 2006 (the majority of which are yet to come into force) are likely to be of great importance to clients during the course of a consumer credit agreement and on termination.

The Dispute Resolution team is about to launch a new page on the firm's website and is involved in seminars with the other teams within the firm to keep clients up-to-date with issues in litigation and dispute resolution fields. It is also a

member of Eurojuris which enables the team to broaden its service in Europe and offer links with specialist legal advisers throughout the European Community.

For further information about our Dispute Resolution team, contact Chris Saul on 0116 2574411 or email: chris.saul@harveyingram.com

Widower's case should teach a valuable lesson



Robert Rose, a partner and head of our clinical negligence practice, details the case of a widower and his sons who pursued a successful negligence claim against an NHS trust.

Martin Smith, the widower and executor of the estate of Wendy Ann Smith, has now received compensation after our Personal Injury team helped him to successfully pursue a clinical negligence claim against the Sherwood Forest Hospitals NHS Trust which cared for Wendy prior to her death on 15th February, 2002.

Wendy, who was born on 23rd January, 1960, had a history of diabetes dating from April 1996 and was insulin dependent. On 31st January, 2002 she attended Newark Hospital complaining of shortness of breath and vomiting. She was diagnosed with a chest infection causing a hyperglycaemic state. No detailed tests were done on the day of her admission.

On 1st February, 2001 she became short of breath. She began to deteriorate and later in the afternoon there was evidence of her developing pneumonia. It was only at this stage that the severity of her condition was fully appreciated by the treating clinicians.

She was transferred to the Kings Mill Hospital into an Intensive Treatment Unit on 1st February, 2002 at 11pm with a diagnosis of pneumonia and

hypoxia. She was ventilated, but by 6th February, 2002 she developed septicaemia and renal failure. She was transferred to the Queens Medical Centre on 8th February, 2002. By 12th February, 2002 she was weaned off a ventilator but was reported as suffering from severe brain damage. She died on 15th February, 2002 – the cause of death being recorded as hypoxic brain injury, pneumonia, diabetic ketoacidosis and acute renal failure.

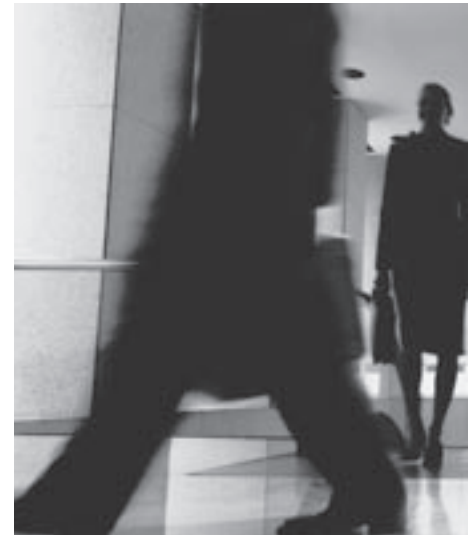
After being instructed to act on behalf of Martin and his two sons, who are now aged 20 and 13, we sent a letter of claim on 22nd October, 2004 to Newark General Hospital but received no response in connection with the question of causation and liability, therefore court proceedings were issued on 26th May last year.

On 6th September, 2005, Sherwood Forest Hospitals NHS Trust admitted it had been negligent following Wendy's admission to Newark General Hospital and further admitted that if it had not been negligent it is likely Wendy would have survived with appropriate treatment.

Mr J. Worrall, Chief Executive of Sherwood Forest Hospitals NHS Trust, also wrote to Mr Smith on 5th December to apologise for the errors made during Wendy's admission to Newark General Hospital and indicated that he understood there had been a delay in the doctor diagnosing the diabetic ketoacidosis condition.

As well as expressing his regret, he said "valuable lessons" had been learned and changes made to prevent any such reoccurrence.

The tragedy of this case is that we gathered evidence that, had Wendy been managed competently then she would have made a



full recovery with a full life expectancy – the trust admitted as much. In particular, if proper investigations had been performed when she was admitted to Newark Hospital, then the conditions she was suffering from would have been revealed and she would have been transferred immediately to an intensive care unit where a full recovery would have taken place. In particular, she would have survived the pneumonia she contracted, her renal function would have been brought back to normal and she would never have suffered brain damage.

Wendy was a healthy woman of 42 years' of age and her loss to the family can never be compensated by way of money or the apology. However, Mr Smith has allowed us to publish details of this case in the hope that it can help prevent such a tragedy happening to someone else.

For more information about this case or any other matters relating to clinical negligence, please contact Robert Rose on 0116 257 4406 or email: robert.rose@harveyingram.com

Pensions:

The new scheme-specific funding regime



Christopher Nuttall, a solicitor in our Corporate Pensions team, discusses some of the issues to consider in order to comply with the Pensions Regulator's new scheme funding regime.

The first valuations carried out under a new scheme funding regime are now being carried out, and trustees need to make sure they have covered all aspects to ensure they comply with it.

Pension fund deficits are widely interpreted as an indicator of the risk that a pension promise will not be met. The FRS17 accounting standard of measuring these deficits has revealed that many schemes now have deficits. In fact, the Pensions Regulator (TPR) estimates that the combined FRS17 deficit of UK-based schemes is £100 – 130 billion, with a substantial proportion in smaller companies.

The most commonly cited reason for the deficits is recent adverse developments in the financial markets. Changes to rules governing early leavers and the inflation-proofing of pensions have also made pension promises more onerous, while increasing life expectancy has increased the cost of meeting them.

Central to the new scheme funding regime is the need for trustees and sponsoring employers to agree on a prudent scheme-specific funding plan which should aim to see the pension scheme able to meet its liabilities (now known as its technical

provisions). TPR says that it will challenge any funding plans which are not set with sufficient prudence, even if there is agreement between trustees and employers.

Where the scheme's assets are worth less than its technical provisions, the trustees must prepare a recovery plan. TPR will take an interest where recovery plans last more than 10 years and where inappropriate assumptions have been used. It is not clear how TPR will decide what is inappropriate but it will compare the technical provisions with the FRS17 accounting standard and the cost of buying out the benefits provided by the Pension Protection Fund.

It is essential for trustees to form an objective assessment of the employer's financial position and prospects and its willingness to continue to fund the scheme's benefits. This will inform decisions on both the technical provisions and any recovery plan needed.

Trustees should aim for full funding of the technical provisions as soon as possible, within what the employer can reasonably afford. If no payment into the fund is possible, trustees might consider accepting, for example, a letter of credit from a bank or insurance company; ring-fenced assets which can be available to the scheme; an agreement for a sum to be paid into the scheme should the employer become insolvent; or even a guarantee from another company within the employer's group.

Some trustees may have a conflict of duty or interest. For example, trustees who are directors of the employing company may have a conflict between their duties to the pension scheme as trustees and their duties to shareholders.



As many trustees are scheme members, and may also be employed by the company, they may have personal conflicts of interest, too, so they will need to take specialist legal advice and may even need to appoint an independent trustee to help resolve the situation.

Where the employer and the trustees cannot agree on funding, TPR can intervene. For example, TPR can set the contribution rate and can modify future accruals of benefit. However, recent cases suggest that a well-thought-through recovery plan, with well advised objective trustees, is unlikely to be rejected by TPR, even if the funding plan falls below TPR's trigger points.

Our pensions team can provide specialist legal advice in these situations. We can also provide an independent trustee service through our associated company, New Walk Trustees Limited, to help prevent conflicts of interest from paralysing negotiations and to agree the scheme-specific funding as smoothly as possible.

For further information, please contact Christopher Nuttall on 0116 257 6187 or email: christopher.nuttall@harveyingram.com

Complying with the leasing laws



Beth Lyon, a solicitor in our Social Housing team specialising in housing management issues, provides some timely advice for landlords.

Houses in Multiple Occupation

One of this year's hot topics has been the licensing of Houses in Multiple Occupation following new housing legislation which came into force in April 2006.

Landlords with properties that are used as a shared house with shared facilities by more than one family, or that have been converted to bedsits or individual flats with shared facilities or are self-contained flats not meeting 1991 Building Regulations should take advice as to whether a licence is required. It is compulsory in some circumstances to have a licence and the consequences of not having one is a fine of up to £20,000.

The licence, where required, will specify the maximum number of people that may live in the property and will contain requirements regarding gas, electricity and furniture safety, smoke alarms and tenancy agreements.

Local authorities set their own charges for dealing with licensing and charges vary considerably. The following are examples of the wide range of fees:

- **Leicester City Council**
£510 (discount of £90 for multiple properties)
- **Blaby District Council**
£395 (discount for multiple properties)
- **Harborough District Council**
£500 (no discounts)

Possession of properties let on assured shorthold tenancies

It should be relatively easy to obtain possession of a property let on an assured shorthold tenancy. It is not necessary to prove any grounds and provided the paperwork is in order, the court has no discretion and must make an order for possession.

Here are a few tips to make sure you get it right:

- When granting a monthly tenancy, the commencement date and the rent due date should be the same. If the tenancy is a weekly tenancy, the start day and the rent due day should be the same. This will make calculating the notice period much easier.
- Use a recognised form of notice or have it professionally drafted. If the notice is wrong, the proceedings to obtain possession will fail.
- When serving the notice, allow time for service. Add two days for postal service and one for personal service. The method of service should be provided for in the tenancy. If it is not, send the notice by first class post and recorded delivery unless it can be handed to the tenant.
- The date specified in the notice must not be sooner than six months after the tenancy started. If possession is required during this period, a different procedure must be used.



- After the notice period has expired, possession proceedings can be commenced.

It will soon be possible to issue claims for possession online. For more information visit www.hmcourts-service.gov.uk/onlineservices/pcol

For further information on these and other housing management matters, please contact Beth Lyon on 0116 257 6121 or email: beth.lyon@harveyingram.com

Beware – the jaws of the OFT are ready to clamp down...



Simon Bates, partner and head of our Commerce and Technology team specialising in competition law, warns against some of the risks surrounding cartels.

The title, The Enterprise Act 2002, does sound rather financial, certainly boring, and surely cannot be of interest or relevance to a busy business? Wrong! The Enterprise Act 2002 for the first time makes it a criminal offence for an individual to engage dishonestly in a cartel activity. The offence is punishable by up to five years' imprisonment.

The Enterprise Act was introduced because it was felt that the Competition Act 1998, under which a company could be fined up to 10% of its worldwide turnover for entering into a cartel, was an insufficient deterrent.

A cartel can include price-fixing, market sharing, bid-rigging and giving or taking of cover prices. Practices such as giving or taking cover prices are endemic in certain industries. This does not stop such practices being illegal and a popular soft target for the Office of Fair Trading (OFT).

We have considerable experience in advising on cartel investigations. When the OFT comes knocking, the initial reaction of most directors tends to be one of denial – *"We have done nothing wrong. Of course we don't enter into cartels."* It may then transpire that an individual



below director level has come to some sort of cartel arrangement with a competitor. That individual's reaction is usually one of honest surprise – *"I had no idea I was doing anything illegal."*

So why the fuss by the Enterprise Act in 2006 when it has been around since 2002?

To date, the OFT has refrained from exercising its powers under the Enterprise Act. However, we have recently been involved in what is understood to be the first Enterprise Act investigation by the OFT. This investigation indicates a shift in policy by the OFT to clamp down even harder on cartels. Accordingly, we are likely to see many more Enterprise Act investigations over the next 12 months.

Whilst we can certainly advise should you or your organisation be unfortunate enough to be investigated by the OFT, any such investigation is likely to last around three years and will put those

involved through considerable stress and costs. Instead, organisations should be seeking advice on whether any of their arrangements or activities constitute cartels. Even if the arrangement or activity constitutes a cartel, we can advise on the steps that can be taken before an OFT investigation starts to obtain immunity from prosecution.

Just as importantly, we can give training to sales people and other staff on what constitutes cartel activity and the consequences of being involved in a cartel. By training relevant staff, organisations are far less likely to find themselves unexpectedly involved in a serious investigation.

For further information, please contact Simon Bates on 0121 632 2310 or 0116 254 5454 or email: simon.bates@harveyingram.com

New trainees come with varied experience



▲ Senior partner Phillip Lane (centre) with the new trainees and newly-qualified solicitors. (From left) Jay Vaghani, Sarah Brack, Gayle Folkard, Mumtaz Desai, Andrew Wilkinson, Annabel Whittaker and Sonia Lall.

We have just welcomed four new trainee solicitors on board, two of whom have already amassed some impressive professional experience.

Jay Vaghani has initially joined our Personal Injury team. Born in London, Jay attended the Universities of Leicester and London. He served an internship at Bloomberg, where he worked with the Financial Instruments and Legal departments and has also worked as a paralegal at Dechert LLP, Clifford Chance LLP and Ogier.

Sarah Brack has initially joined our Corporate Finance and Transactions team. Born in Darlington, County Durham, Sarah was educated at Leicester and De Montfort universities. Her work experience to date includes a year as a European MP's assistant and eight years as constituency office manager for the Rt Hon Patricia Hewitt MP.

Sonia Lall has initially joined our Trusts and Probate team. She read law at the University of Leicester and did her LPC at the College of Law, Birmingham. This is her first work placement as she was previously a full-time student.

Gayle Folkard will initially be working in our Residential Conveyancing team. She was born in Leicester and attended Leicester Grammar School before going on to study law at Sheffield University. She completed her LPC at Nottingham Law School, and was tempted to join our firm after spending a week here on a summer vacation placement.

Three gain qualification

Congratulations go to three of our former trainee solicitors who have just qualified as solicitors.

Both Andrew Wilkinson and Annabel Whittaker are now part of our Dispute Resolution team, whilst Mumtaz Desai has joined our Commerce and Technology team.

New Collaborative Law service for clients



Jane Cowley, partner and head of our Family Law group, has become one of the first in the region to offer clients a collaborative law service, which is still a relatively new concept in the UK.

Collaborative law can be used to help clients to resolve their matrimonial disputes outside of court and requires collaborative lawyers representing both parties to work together as a team, with the mutual aim of containing conflict and helping families to restructure in an amicable way. It avoids the confrontation and emotional upheaval that can be associated with the courts.

Jane said the service is particularly beneficial for couples who seek a civilised, respectful resolution of issues and are looking to retain a friendship with their former partner, especially where children are involved and the best co-parenting relationship is sought.

"It is all about fixing the problem rather than apportioning blame so we can provide a quicker, less costly, method of resolving disputes," said Jane. "It offers better protection for children because it avoids the emotional harm sometimes associated with litigation, and is a good choice for those who value privacy and do not want their problems to be aired in court."

Collaborative lawyers can also consider pre-nuptial agreements, living together agreements, and civil partnerships. The service can be used in any dispute where disputing parties want a contained, creative, civilised process that builds in good legal advice.

The Family Law group has extensive experience in handling divorce and separation cases, financial disputes, private company shareholding issues, pension disputes, disputes concerning children, pre-nuptial agreements and co-habitee agreements, all of which have been recognised in The Legal 500 and Directory of Legal Experts.

For further information on collaborative law or any aspect of family law, please contact Jane Cowley on 0116 257 4435 or email: jane.cowley@harveyingram.com



Unexpected and radical changes to the taxation of Trusts

No-one who listened to or read the Chancellor's Budget speech in March this year could have anticipated the sweeping changes made to the taxation of trusts and, to a certain extent, wills.

Although there was only an innocuous comment about the modernisation of trusts, the post budget literature and press coverage has made it quite clear that the Government intended to radically change the structure and taxation of trusts, though its reasoning for such changes is not apparent.

The new regime was introduced by the Finance Act 2006, which was given Royal Assent over the summer and, although the changes have been watered down to some extent, the Act does introduce a new taxation regime for trusts as well as introducing entirely new taxation regimes for certain types of trust.

Everyone interested or involved in lifetime tax planning, on-going trusts and wills should be aware of the changes and the effects they have.

For further information, please contact Katherine Neal on 0116 257 4459 or email: katherine.neal@harveyingram.com or contact Mark Dunkley on 0116 257 4402 or email: mark.dunkley@harveyingram.com

Haunt nearly over for the ghost of trustee in bankruptcy



Nelum Rani, an associate in our Corporate Recovery and Insolvency team and Sean Moran, who heads up the team, discuss an issue which has repercussions for both bankrupts and trustees.

Many ex-bankrupts have discovered to their cost that a trustee could come back to 'haunt' them when they were discharged from bankruptcy — by attempting to realise their interest in the ex-bankrupt's principal residential property.

On the making of a bankruptcy order, property and land belonging to the bankrupt automatically vest in the trustee and become part of the estate in bankruptcy, but trustees have generally tended to defer any action to realise the value of a bankrupt's home because its value was not deemed sufficient to justify action on behalf of the creditors.

However, rising house prices in the 1990s led to a change of trend. Home values rose so much that trustees began to look at trying to realise the increased equity — often many years after the ex-bankrupt was discharged from bankruptcy.

The Enterprise Act 2002 changed all that and from 1st April 2004, a three-year time limit was imposed on a trustee to act in relation to the bankrupt's residential property, otherwise their interest would automatically re-vest in the bankrupt. Under transitional provisions, the three-year time limit for bankruptcies commencing before 1st April 2004 will run from that date, ie until 1st April 2007.

Trustees therefore have until 1st April 2007 to take the following action:

- realise the bankrupt's interest by applying for a Court Order for Sale or Possession, or
- apply for a charge, or
- reach an agreement with the bankrupt or the bankrupt's spouse or co-owner of the residential property to "buy-out" the trustee's interest

The trustee is also under pressure to get it right first time because there is only one chance to obtain the necessary order. If refused, the interest in the property will revert automatically to the bankrupt.

It is advisable for both the bankrupt and his or her trustee to deal with the issue for the benefit of all parties. In particular, the following matters need



to be addressed in determining the value of the bankrupt's share in any property:

- the true intentions of the bankrupt and any co-owner or spouse at the time the property was purchased
- the contributions made by any co-owner or spouse to the purchase price or the costs of improvement and mortgage of the residential property
- whether it is appropriate to reduce the bankrupt's share

of the property by deducting the value of any business loans secured against it

- whether it is appropriate to apply for an annulment of the bankruptcy itself on the basis of payment of the bankruptcy debts, expenses and statutory interest, including the trustee's fees and any legal fees.

So, with the clock ticking down, now is the time for trustees in bankruptcy to act or risk the bankrupt's creditors losing out altogether.

For further information please contact Nelum Rani on 0116 257 6160 or e-mail: nelum.rani@harveyingram.com or Sean Moran on 0116 257 4410 or e-mail: sean.moran@harveyingram.com



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