

WINTER 2005

## In this issue:

- Recent done deals
- Changes affecting employers
- Civil Partnership: the rights of same sex couples
- Projects Team celebrates 1st birthday
- Investing in Leicester's future
- GINEM's Leicester launch



## Team help ESPO move to new HQ

THE  
SYMBOL FOR  
LEGAL EXCELLENCE



Harvey Ingram LLP  
solicitors



Chris Finlay

As the end of the year draws near and the festive season fast approaches, we have a few reasons of our own to celebrate.

Our Projects Team is having a party in early December to celebrate its first birthday. The team's handling of a particularly large land acquisition for the Eastern Shires Purchasing Organisation (ESPO), is also detailed in this edition of Briefcase. It's been a busy year for the team, whose entertaining yet informative seminars have met with high praise from clients.

We have maintained and improved our rankings in this year's Legal 500, most notably in the areas of Corporate and Commercial, Commercial Litigation, Employment, Tax/Trusts/Probate and Commercial Property. In all of these categories we have achieved first-tier status.

Twelve new solicitors and four new trainees have joined our ever-expanding team of lawyers. As the firm continues to go from strength to strength, we have also recruited additional solicitors into our Corporate Finance and Transactions Team and our Trusts and Probate Department, who will be starting with us over the next three months.

**For further details of our forthcoming events, news and Briefing notes, please visit our website at:**

**[www.harveyingram.com](http://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.

# Contents



## page 3

Projects Team marks successful collaboration



## page 4

Recent done deals



## page 5

Chopstick challenge for Leicester Young Professionals



## page 6

Summer fun in the sun!



## page 7

Four new trainees



## page 8

Changes affecting employers



## page 9

Six of the best



## page 10

Living wills: the present and the future



## page 11

Civil Partnership Act: the rights of same sex couples



## page 12

Nil-rate band wills: an introduction



## page 13

Team makes over 700 applications



## page 14

A welcome and a welcome-back



## page 15

Couples' commitment key to positive divorce settlements



## page 16

New OFT Codes Approval Scheme



## page 17

Be clear over ownership of IP rights



## page 18

Corporate Manslaughter Bill



## page 19

Cohabiting couples and pensions

# A successful collaboration



Associate Jonathan Fear, solicitor Louise Whitehead, solicitor Jatinder Kandola and partner Nina Murray Smith on site at ESPO'S new Grove Park plot.

**Our Projects Team has marked a successful collaboration with the Eastern Shires Purchasing Organisation (ESPO) at ESPO's new Grove Park building.**

The team managed the land acquisition, planning issues and construction documentation on ESPO's behalf. The building consists of 120,000 sq ft of warehouse space for storage and distribution, and 30,000 sq ft of office space. It will accommodate around 300 staff and is scheduled to open in February 2006.

Partner Nina Murray Smith, associate Jonathan Fear and solicitors Jatinder Kandola and Louise Whitehead visited the site with ESPO's Ed Walsh, assistant director (strategic procurement), and Philip Jones, assistant director (operations), to see the work in progress.

Ed said he was impressed by how smoothly the whole project had been handled. "I have been impressed by the professionalism shown by Jonathan, Nina and the rest of the team," he said.

"They were very responsive and attentive. It took just eight weeks to get all the legal work tied up, with the contracts actually signed and exchanged. We were working to tight deadlines and they achieved them with ease."

The team has handled many large projects since its launch in November last year, including the on-going regeneration of a 272-acre former mining/coking works site on behalf of emda and a new custody suite for Leicestershire Constabulary at Freemans Common.

Jonathan said: "This is probably the most visible Leicester project we have handled since our launch nearly a year ago. Having a dedicated team of specialists meant we were able to work to a very tight timescale."

**For further details on our Projects Team, please visit our website at [www.harveyingram.com](http://www.harveyingram.com)**

## This year's Legal 500 results – “a client base widely envied by newer arrivals in the market”

We have reached top-tier status in five practice areas of this year's Legal 500, the UK's definitive annual guide to law firm and legal practitioner performance. The 18th edition of the guide, which bases its opinions on interviews with clients, legal professionals and associates, says we have a 'widely envied client base'.

First tier rankings were obtained by our Corporate and Commercial, Commercial Litigation, Employment, Tax/Trusts/Probate and Commercial Property Teams. Also highly commended were our Family, Housing Association, Licensing, Sport, Pensions, Intellectual Property, Insolvency/Corporate Recovery, Personal Injury/Clinical Negligence, Construction, Planning and Banking and Finance Teams.

Many individuals were again singled out for mention. The Corporate Team's John Stobart was praised for his extensive experience of high-value transactions, particularly in the media sector, with both John and

Roy Botterill, described as 'headline names'. The team typically completes about 50 transactions annually, many of which are in the £1m to £2m range.

In the Employment Law Group, one of the biggest in the region, partner John Simon is recommended for his contentious expertise while managing partner Chris Finlay is praised for his extensive tribunal experience.

Chris Saul of the Commercial Litigation Department is described by clients as 'down to earth and good at what he does' while employment head John Simon is said to 'stand tall' in the seven-partner team, which is responsible for almost one quarter of the firm's total revenue.

Mark Dunkley and Stephen Woolfe of the Trusts Department are respectively praised for their private tax and trusts/pensions work. The department is benefiting from its growing pensions capabilities and charitable trusts are also a source of work.

Phillip Lane, one of seven partners in the Commercial Property Department, is singled out as 'spot on', whilst Richard Miller is 'good value for money' and associate Lee Hennell 'an asset'. The department is described as 'excellent', with a service that is 'readily accessible and lacking weaknesses'.

Managing partner Chris Finlay said the placings were a tribute to the good team work within the firm as a whole.

"Once more, we have made significant gains and maintained our strong standing in the regional rankings," he said. "The Legal 500 is a widely respected barometer for the legal profession and we're proud to have made such a good overall impression. It shows the strength of our team building as well as the quality and commitment of our staff."

# Recent done deals

## 1. Bostik Limited

We have recently completed the acquisition of a business called Biscem based in the South West. Biscem is a well known brand in the cementitious products industry, producing cement and tile adhesives.

Bostik Limited is one of the UK's premier brands in cement and tile adhesives and part of Total Fina Elf Group, which is an international organisation.

## 2. Premier Group

We were delighted to be involved with the acquisition of Nigel Lynn Associates. Premier Group is based in Ireland and we were engaged as English solicitors acting on behalf of an acquisition with a total value of circa £6 million plus. We dealt with all English law aspects on the acquisition of the recruitment business of Nigel Lynn Associates, which was carried out from 16 UK offices. The business raised some very interesting issues as regards employment (with over 400 employees based at different locations throughout the UK, retail property and pensions matters).

## 3. SEAC Limited

We acted for the MBO team on the acquisition of SEAC Limited from Halma Plc. SEAC is a leading manufacturer of specialised fastening solutions to a range of industries. The SEAC business was considered to be a non-core part of Halma and an assertive and dynamic management team was put together to successfully put forward the acquisition of the business.

## 4. Flogas

The acquisition of two business, Midland Bottled Gas and Mobile Gas Limited on behalf of Flogas UK Limited. Flogas UK is part of an international organisation, DCC, based in Ireland. We have now been engaged by Flogas to act on approximately 12 acquisitions over the past year and a half and are delighted with our relationship with them.

## 5. Centre for Enterprise

We acted on the restructuring of Centre for Enterprise, which created a new subsidiary business, Skills for Enterprise Limited. This is an interesting addition to our expanding public sector work. We now act for a large number of clients in the public sector on corporate and commercial matters.

## 6. Gordon Davis Chemists Limited

We recently acted on the acquisition of ME Dunn Limited and on the acquisition of two other businesses on behalf of this client company. We have now dealt with approximately seven acquisitions over the last two years on behalf of this increasingly expanding client.

## 7. Supaturf Products Limited

Acting for the company on the sale of the sports and amenity product business (line marking systems, water management systems and turf painting systems – used in International Rugby matches etc.) to Vitax Limited.

## 8. Rowleys

We acted on the acquisition by Rowleys of the accountancy practice of DSJ UK Limited. This is a further addition to our increasing portfolio of professional practices for whom we act in the East Midlands.

## 9. Kettering Town

We have recently acted for the shareholders of Kettering Town on the sale of the Company to a consortium fronted by, amongst others, Paul Gascoigne. A high profile deal which reflects our growing expertise in sports law and our geographical reach outside Leicestershire.

## 10. Unique Window Systems

We acted for the management buy out team on the buy out of Unique Window Systems from All In One Windows Limited.

## 11 Royal Bank of Scotland

We acted for the Bank on their funding of the acquisition of Avery Healthcare Limited.

## Pending Jobs

We also have an enviable stream of new deals coming through the system which should be completed by December or January in the new year. These include:-

- a £7 million acquisition of a business in the packaging industry.
- a £6 million acquisition of a business in the aggregate industry.
- a £20 million acquisition of a construction related business.
- a £26 million disposal of a retail business.
- two separate acquisitions for one client with an aggregate value of over £40 million

**For advice in relation to corporate deals, please contact Roy Botterill on 0116 257 4431 or email [roy.botterill@harveyingram.com](mailto:roy.botterill@harveyingram.com)**

# Events

## Employment Law Group Seminar -

### Age discrimination

**Date: 1st December 2005**

**Time: 7.45am - 9.30am**

**Venue: The Club Lounge, Leicester City Football Club**

## Projects Team

### 1st Birthday Party

**Date: 7th December 2005**

**Time: 6pm - 8pm**

**Venue: The Showrooms Bar and Restaurant, Charles Street, Leicester**



**Further details of all our forthcoming events can be found on our website at [www.harveyingram.com](http://www.harveyingram.com)**



Main picture (from left): Emma Hawkes (Grant Thornton), Pina Mazzotti (Harvey Ingram LLP), Wayne Bowers (The Royal Bank of Scotland), Lindsay Wheatcroft (Harvey Ingram LLP), Chris O'Neill (Grant Thornton) and Caroline Sutcliffe (Harvey Ingram LLP).

# Chopstick challenge for Leicester Young Professionals

Making new contacts all comes with the territory for members of Leicester Young Professionals (LYP). On Thursday 13th October the first evening event of the LYP year was a Chinese night which began at Entropy on Dover Street, where members met for a drink, then progressed to Flame on Granby Street where they enjoyed a Chinese buffet meal.

More than 50 people attended the event and a good proportion tackled eating with chopsticks before throwing in the towel and moving onto forks! Only a handful of diehards managed to make it through three or four courses using the traditional Chinese eating method.

LYP is a networking group set up by Harvey Ingram and is now in its fourth year. It offers members, all aged up to 35, the chance to meet, socialise and network in an informal environment. Membership is made up of professionals from organisations such as Harvey Ingram, Barclays Bank, Grant Thornton, Howes Percival, MacIntyre Hudson, PKF, The Royal Bank of Scotland and Vantis Numerica.

Following popular demand, six evening events are now to be held over the course of a year, rather than four, and future events are to include a cheese and wine evening and a night at the races. Four breakfast meetings are also held each year, in conjunction with LANSCA (Leicestershire and Northamptonshire Society of Chartered Accountants).

Caroline Sutcliffe, a founder member of LYP said: "Our first evening event of the year, the Chinese Night, proved hugely popular. Membership and events continue to grow and as the enthusiasm and demand are thriving, we will carry on organising a variety of enjoyable events. The group is entering its fourth year and represents a fantastic opportunity for young professionals across the county to meet and socialise in an informal environment."

**For further information about the Leicester Young Professionals please contact Carley Ferguson on 0116 257 4439 or email [carley.ferguson@harveyingram.com](mailto:carley.ferguson@harveyingram.com)**

THE  
SYMBOL FOR  
LEGAL EXCELLENCE



Harvey Ingram LLP  
solicitors



Staff and their friends  
and families in  
It's A knockout

# Summer fun in the sun!

This year's annual Summer Party was a resounding success thanks to a scorching hot day, an excellent turnout and a great venue in the form of the Rothley Court Hotel.

Over 270 staff, partners and children from both our Leicester and Birmingham offices enjoyed a fun-filled day, culminating in a BBQ and an action-packed Harvey Ingram version of 'It's a Knockout'. The contest was won by 'The Harvey Wallbangers' captained by Nadine Kirby, who just pipped John Jones's 'Bostin Banging Brummies' team to the post after they had led for much of the competition

With entertainment on offer for all ages including archery, circus skills and a children's clown, there was never a dull moment. The chocolate fountain proved a particular hit and 18 litres of delicious liquid Belgian chocolate were eagerly consumed throughout the afternoon until the fountain had run dry!



Here's what a few of our staff had to say about the day:

**“An excellent venue and something for everyone”** Maddy Grider

**“Brilliant! I thoroughly enjoyed it”** Jan Walker

**“Excellent! - One of the best I have attended.  
It will be hard to improve upon”** Jeannette Kershaw.

Roll on next year!

# Four new trainees

**A warm welcome to Clare Sillery, Kate Godber, Adam Gilbert and Sandeep Pahal, who have just joined us as trainee solicitors.**

Kate Godber's first seat will be in our Trusts and Probate Department. Born and bred in Leicester, Kate, aged 25, said she was keen to join the firm because of its local connection and because she believes it has a caring reputation to the city's community.

"It is exciting to be part of an organisation that has such regional presence," said Kate, who obtained a BA Hons in Italian and Business Studies at Hull University, and also obtained a GDL at the College of Law and her LPC at De Montfort University, Leicester.

Kate, whose hobbies include reading and travelling, is a member of Leicester Young Professionals and the Leicester Trainee Solicitors Group.

Adam Gilbert, whose first seat will be in our Corporate Finance & Transactions Team, is used to diving in at the deep end. An advanced scuba diver and keen golfer, Adam is also a member of Leicester Young Professionals. Adam, 24, was born in Bulwell and obtained his LLB Law degree at Nottingham Trent University and his LPC at Nottingham Law School. He also has a diploma in Professional Practice.

Sandeep Pahal, aged 24, worked for an in-house barrister at a former placement and is also a member of Leicester Trainee Solicitors Group and Leicester Young Professionals. She enjoys walking and reading and was born in Birmingham.



Trainees Sandeep Pahal, Clare Sillery, Kate Godber and Adam Gilbert are welcomed on board by partner Kathryn Hart (centre), who is responsible for recruiting trainees.

She studied at the University of Leicester and completed her LPC at De Montfort University. Her first seat will be in our Personal Injury Department.

Clare Sillery, aged 24, was born in Birmingham. She studied for her LLB Law degree at the University of Leicester and undertook her LPC at Cardiff Law School. Her first seat will be in our Residential Property Department.

Clare, who enjoys reading, yoga and walking, and is a member of Leicester Young Professionals and the Leicester Trainee Solicitor Group, said she was keen to work in Leicester as she has always lived in the region. "Harvey Ingram has a great reputation for being client focused, so I was keen to work for the firm," she said.

Commenting on their appointment, partner Kathryn Hart, who is responsible for recruiting trainees, said: "Having interviewed these people two years ago it's good to finally welcome them on board. We regard our trainees as the partners of the future. I came here as a trainee myself and know that it is one of the most interesting times in your career because you get to see all aspects of the firm and work with both corporate and private clients.

"I'm sure Clare, Kate, Adam and Sandeep will greatly enjoy the next couple of years whilst themselves becoming assets to Harvey Ingram."

## Investing in Leicester's future

**We have become one of the first businesses to join Invest Leicestershire's new Principal Partnership Programme.**

During the year-long deal we will help to financially support Invest Leicestershire's work and, in return, will be put forward to companies looking to relocate or expand in the county.

Invest Leicestershire, part of Leicester Shire Promotions, aims to help businesses relocate within the county and assist those coming in. We'll be offering legal expertise and local understanding and insight to these organisations.

Senior partner Phillip Lane said:

"As a business that is already based in and committed to Leicester and Leicestershire, we recognise the importance of the role Invest Leicestershire has to play in promoting the city and the county as areas in which to expand and develop. From Invest Leicestershire's point of view, they are looking to get financial input to help them run things and part-fund their people and we are delighted to be working together on this exciting project."

Martin Peters, Chief Executive of Leicester Shire Promotions, added: "Invest Leicestershire has had a successful year, with many firms choosing to move to, or expand in, Leicestershire. This new commercial partnership with Harvey Ingram means we can offer even more to potential movers."

THE  
SYMBOL FOR  
LEGAL EXCELLENCE



Harvey Ingram LLP  
solicitors

# Changes affecting employers

New Government employment legislation comes into force on two designated dates each year - 1st April and 1st October. Some of the more important changes that came about this winter concern sex discrimination, the national minimum wage, trade unions and employment tribunals. Johanne Cosgrove, a solicitor in our Employment Law Group takes an in-depth look at these issues.

## Sex Discrimination

The Employment Equality (Sex Discrimination) Regulations 2005 amend the Sex Discrimination Act 1975, clarifying obligations on employers to prevent discrimination in the workplace.

The changes include:

1. A free-standing right for an employee to claim that they have been sexually harassed. Whilst this largely clarifies existing law, the main change is to extend the definition of harassment to cover both unwanted sexual advances but also unwanted behaviour which is not necessarily of a sexual nature (for example, placing tools on a high shelf to make them difficult for a female engineer to reach, because male workers do not appreciate having to work with a woman).
2. Confirmation that less favourable treatment of women who are pregnant or on maternity leave constitutes sex discrimination. Less favourable treatment would cover, for example, dismissal, refusal to employ or failure to consider opportunities for promotion.
3. A new definition of indirect discrimination to bring it in line with other equality legislation. For example, if working hours are changed for all employees to require weekend working, this could amount to indirect discrimination as the difficulties experienced with childcare would affect a greater proportion of women than men.
4. Employers facing a potential discrimination claim will now only have eight weeks to respond to a Sex Discrimination Act questionnaire lodged by an aggrieved employee. Failure to respond can count against an employer in a subsequent Tribunal claim.

Unless employers can clearly show that they have up-to-date (and enforced) discrimination policies and that staff have been properly trained, they will be liable for the discriminatory acts of their employees.



Therefore, employers are advised to review policies and consider implementing training to reduce the risk of liability in a sex discrimination claim.

## National Minimum Wage

The rates increased as follows:

- Workers aged 22 and over - £5.05 per hour
- Workers aged 18 to 21 - £4.25 per hour
- The rate for workers aged 16 to 17 remains at £3 per hour

## Trade Union

The remaining sections of the Employment Relations Act 2004, which deal mainly with trade union recognition and de-recognition ballots and requiring unions to provide notices in advance of ballots on industrial action and any subsequent industrial action came into force.

## Employment Tribunals

It is now mandatory to use the new employment tribunal ET1 and ET3 forms when lodging and responding to claims. Failure to use the prescribed form will result in the response being rejected and the employer will be unable to defend the claim.

## The Future

Looking to the future, on 5th December, changes will be introduced to the Disability Discrimination Act ('DDA'), significantly increasing the number of individuals who will be classed as disabled by removing from the definition of disability the requirement that a mental impairment be clinically well recognised.

The definition of disability will also be extended so that individuals with cancer, HIV and multiple sclerosis will be deemed to be disabled, irrespective of any effect on normal day-to day activities.

On 6th April 2006, the new TUPE Regulations are due to be implemented. Amongst other changes, it will require employers to provide transferring employees with access to a similar occupational pension scheme, as that provided by their former employer.

From 1st October 2006, age discrimination legislation comes into force, rendering any discrimination on grounds of age in relation to recruitment, promotion and training unlawful, except where this can be objectively justified. There will no longer be an upper age limit on unfair dismissal and redundancy claims and an employer must inform an employee in writing at least six months before their intended retirement, as well as consider a request to work past the default retirement age of 65.

Finally, from April 2007, paid maternity leave is to be extended from six to nine months.

**If you would like any further information on any of the above topics, then please contact Johanne Cosgrove on 0116 254 5454 or email [johanne.cosgrove@harveyingram.com](mailto:johanne.cosgrove@harveyingram.com)**



New solicitors  
Jonathan Hill, Kimbra Green,  
Sonia Bachu, Suki Bisla,  
Kinnary Vyas and Ian Sanders.

## Six of the best

Echoing the recent success of our esteemed British cricketers, we've scored a six of our own – by appointing half a dozen talented solicitors.

Sonia Bachu has joined our Family Law Group. Sonia studied law and history at Lancashire Polytechnic then trained at Rich & Carr in Leicester, remaining there for a number of years. Having initially specialised in personal injury and family law, Sonia found herself drawn increasingly towards the latter, and will be dealing with the majority of aspects of family law.

Ian Sanders and Sukhdip Bisla have both joined our Commercial Property Department. Suki studied law and business at Warwick University and graduated in 2002 and is working in our pension investment team. Originally from Coventry, she trained at DLA in Birmingham.

Ian joins us from Browne Jacobson in Nottingham and he specialises in commercial and residential property development work for well-known regional developers. He trained at Marrons in Leicester and has been qualified for six years.

Kinnary Vyas specialises in commerce and technology, in particular commercial contracts. She has been qualified for seven years. Having initially worked in corporate finance law, Kinnary moved into commercial work whilst working as an in-house lawyer for BUPA. Prior to that she was with Walker Morris in Leeds.

Originally from Doncaster in South Yorkshire, Jonathan Hill has just completed his two years training at corporate and commercial firm emw Law in Northampton and Milton Keynes and has now joined our Commercial Litigation Department.

Kimbra Green, who joins our Employment Law Group, is from Leicestershire, and studied law at Lancaster University. She trained and qualified with Edge & Ellison and then became a lecturer at De Montfort University on the Legal Practice course. Whilst doing this, she remained a consultant for a firm of solicitors. In 1999 she joined Doncasters plc, an engineering group of companies, as their in-house solicitor before moving to Wolters Kluwer (UK) Ltd five years ago where she undertook a number of roles, the most recent being as an employment specialist in the in-house legal team.

Commenting on the appointments, senior partner Phillip Lane said: "Recruiting solicitors of the highest calibre is becoming increasingly difficult in a competitive market. We are therefore delighted to welcome our new colleagues to the firm who will all add further strength to the specialist teams they will be joining."



## An age-old case of discrimination...

**John Simon head of our Employment Law Group gives an overview of forthcoming regulations which will impose a number of measures on employers if they are to avoid age discrimination issues.**

The Government has now published draft regulations which outlaw age discrimination in the work place. The regulations will come into force on 1st October 2006 and will affect a significant change in the attitudes employers will have to adopt towards all employees – both old and young.

The regulations will impose upon employers:

- A default retirement age of 65. Employers will be unable to force retirement on an employee at an earlier age unless this can be justified (which in many cases will not be easy)
- A duty to consider requests to work beyond the retirement age
- A ban on discrimination on the basis of age. This will protect both the young and old so that employers will be unable to advertise for a "young dynamic sales executive" or a "very experienced sales executive with a minimum of 10 years' industry experience"
- Removal of the current upper age limit of 65 for unfair dismissal and redundancy claims

The regulations are intended to enable employees of all ages to realise their full potential. Employers, however, are going to have to consider very carefully their attitude to their employees from an age perspective if they are not going to fall foul of the regulations.

The final regulations will be produced in the new year.

**For further information on the proposed age discrimination and for advice, please contact John Simon on 0116 257 4413 or email [john.simon@harveyingram.com](mailto:john.simon@harveyingram.com)**

*See page 4 for details of our next Employment Law Group seminar.*

# Living wills: the present and the future

**Darren Perry, an associate in our Trusts Department, stresses the importance for healthcare providers to organise advance planning and training in order to avoid potentially emotive issues and claims.**

A living will (also known as an advance directive) is a document, made by a person who is still competent, which sets out their wishes concerning their future health care to be carried out at a time when they are no longer competent and unable to express their wish for themselves.

These documents were primarily introduced via organizations such as the Terence Higgins Trust which attempted to give people the opportunity to express the way in which their future healthcare should be dealt with.

A living will generally involves a combination of the following elements:

#### **Refusal Directive**

In essence where someone refuses treatment when suffering a given condition.

#### **Instruction Directive**

This is where someone requests a particular treatment.

#### **Healthcare Proxy**

Where a person nominates another to make health care decisions for them.

#### **Expression of views**

This is where the person expresses his/her views but without giving any specific directions.

The root of any living will is the refusal directive but this has been held to be valid in certain circumstances only. It must be made by a person with the requisite capacity who must have contemplated the position they actually find themselves in ie it is highly specific and as such can be an extremely difficult document to prepare. Whilst such directives can be valid conditions apply and cases such as **Re T (Adult: Refusal of Treatment) and Secretary of State to the Home Department v Robb** make it clear that the person must have contemplated the following:

- The position which has arisen and the refusal must have been intended to apply to the particular situation which has actually arisen (i.e. the person must have considered the actual issue which has arisen when making his decision)
- The person must have understood the consequences of refusing the treatment concerned



- The directive does not request any unlawful intervention
- The directive does not request treatment which doctors involved consider to be clinically inappropriate
- The person must have been competent when making the decision. For this purpose the case of **Re C (Adult: refusal of medical treatment)** sets out that the person must be able to understand and believe the information relating to the treatment and, based upon this, fully consider the information before making a decision.

The problem with this area is that it deals with a very sensitive area and cases such as *R (Burke) v The General Medical Council* and others (which involved Mr Burke, who suffers from a degenerative brain disease, attempting to ensure that he be fed and hydrated until he died of natural causes- he did not wish doctors to decide that his life was not worth living and withdraw such assistance) show the emotive elements at stake.

In an attempt to codify the area concerning Living Wills the Mental Capacity Act 2005, which is expected to be implemented in April 2007, provides a statutory framework for advance decisions to refuse treatment. The provisions of the Act provide that such directives will be binding where the following conditions are met

- An advance decision to refuse treatment can be made by a person who is at least 18 and has the capacity to make it.

- An advance directive may be oral
- The decision needs to specify the treatment to be refused
- The decisions must be valid and applicable to the treatment
- The decision can be withdrawn or overridden by any later Lasting Power of Attorney or action which is clearly inconsistent with the decision concerned.
- An advance decision is not applicable if the person who made it still has capacity or if the treatment involved is not the treatment specified in the decision or if any circumstances specified in the decision are absent or that there are reasonable grounds to believe that circumstances exist which the maker did not anticipate at the time of the decision which would have effected his decision had he known about them.
- In relation to life sustaining treatment the decision must contain a written statement signed and witnessed that the decision is to apply to the treatment even if life is at risk.

Our team believes that whilst the provisions of the Mental Capacity Act relating to Advance Directives effectively mirror the existing common law, the Act clarifies the position and incorporates provisions specifically targeted to aid healthcare professionals. But the drafting of such documents requires a considered approach and any provider of healthcare must, at the very least, consider training its staff to ensure it is able to deal with often difficult and emotive issues and avoid any potential claims.

**If you would like further information, please contact Darren Perry on 0116 254 5454 or email [darren.perry@harveyingram.com](mailto:darren.perry@harveyingram.com)**

# Civil Partnership Act: the rights of same sex couples

From 21st December English law will change to allow same sex couples to enter into legally recognized relationships which will give the couples rights similar to those enjoyed by conventional married couples.

As recently as June 2003 a consultation paper on the legal recognition of same sex couples was introduced, the Bill dealt with difficult issues but, despite many stumbling blocks, the Civil Partnership Act was given Royal Assent in November 2004.

The proposed change is a far-reaching one and will allow civil partners a number of rights otherwise denied to them. With the introduction of the Act, civil partners are afforded much more protection but they also need to be aware of the potential problems to ensure that they take advantage of the new rules rather than fall into the traps waiting for the unwary.

What then are the main provisions of the Act in relation to wills and inheritance, taxation and trusts and what benefits do they offer?

## Wills and Inheritance

### The Benefits

This was traditionally a very awkward area for couples for, unless a valid will had been completed, the other partner had no recognised rights under the intestacy rules (these being the rules which deal with the distribution of an estate for someone who has died without leaving a will). This meant that the unfortunate survivor had no right to inherit under the estate of their partner as of right. This can be compared with the rights of a spouse who, depending upon which relatives survive, is entitled to a statutory legacy (the amount depending upon the relatives who survive) and a share in the remainder of the estate (called the residuary estate).

After the introduction of the Act partners who have undergone the registration procedures are now given the same status of a married couple for inheritance purposes. This means that where someone dies without leaving a will his, or her civil partner, will receive the same benefit that a married partner would receive. However, it must be said that relying upon the intestacy provisions should never be encouraged;

a will should always be completed to ensure that the wishes of the deceased are carried out.

### The Problems

It is a little known fact that when someone marries the act of marriage revokes an existing will. The same occurs when a civil partnership registration occurs and as such anyone contemplating such a ceremony should ensure that their will is updated. It is possible to complete a will which is said to be in contemplation of the marriage (or civil partnership) and which is not revoked by that marriage.

Also, it is believed that where someone has undergone a civil partnership abroad before the introduction of the Act, any will they have will be automatically revoked when the Act comes into force. Again, this is a worrying aspect to the Act and anyone who is considering such an action or who has already entered into such a ceremony needs to consider making a new will.

## Taxation

### The Benefits

One of the most valuable benefits marriage carries is that of the allowances it allows to spouses for taxation purposes. Whilst the rights themselves have not yet been introduced it is intended that civil partners will receive all of the benefits received by married couples. For example, with regard to Inheritance Tax (which is the tax which is payable upon death), civil partners are now able to take full advantage of the tax planning opportunities offered by Nil-Rate Band Wills to save up to £110,000 in Inheritance Tax.

### The Problems

A tax known as Pre-Owned Assets was introduced to counteract certain tax savings schemes which were prevalent over the last few years. This tax was introduced to effectively create an income tax charge and will take effect where a settler still continues to benefit from certain assets placed into trust. Also, if the spouse of a settler benefits the tax charge is triggered. The problem here is a civil partner would also trigger the event, this needs to be considered carefully by anyone who is effected by such an issue since professional advice is required.

## Trusts

### The Problems

A problem arises in connection with existing trusts in that for certain trusts it is necessary to specify who can benefit. Traditionally a spouse was referred to as such but this will not encompass a civil partner. As such anyone with a trust who is considering a civil partnership needs professional advice to ensure that his or her partner is capable of benefiting.

Also, for tax reasons it is generally inadvisable to have the spouse of the settler as a beneficiary. Recently the Revenue considered a case where a gay settler had not included a spouse, the Revenue took the view however that the introduction of the Civil Partnership Act meant that he could enter into such a relationship at some point in the future and taxed him as if he still retained an interest in the trust.

Whilst the introduction of civil partnerships is long overdue there are a number of traps which the unwary can fall into. Anyone who is considering Registration should take expert advice to ensure that not only do they take full advantage of the taxation benefits it offers but that they also avoid the problems it raises.

**If you would like further information in relation to these issues, please contact Darren Perry on 0116 254 5454 or email [darren.perry@harveyingram.com](mailto:darren.perry@harveyingram.com)**

**For more general advice in this area in connection with matrimonial issues, please contact Jane Cowley, head of our Family Law Group on 0116 257 4435 or email [jane.cowley@harveyingram.com](mailto:jane.cowley@harveyingram.com)**

# Nil-rate band wills: an introduction

It seems as though every newspaper which deals with financial issues is talking about Nil-Rate Band wills, but what are they and do you need one? Whilst the area is complex the basic approach is straightforward and anyone who is considering Inheritance Tax planning should, at the very least, take time to consider whether they too need to update their will to reduce or wipe out their Inheritance Tax liability.

**Firstly, a few basic terms need to be explained:**

## Inheritance Tax

When someone dies their estate is subject to the payment of Inheritance Tax, unless an exemption or relief applies or the total value of the chargeable estate is less than £275,000.

## Spouse exemption

There are a number of reliefs and exemptions available but for the purposes of this article the only one which is relevant is spouse exemption. Essentially any benefit due to a spouse (and shortly to a registered civil partner) is free of tax.

## Nil-Rate Band

For the estate of someone who dies the Nil-Rate Band (currently £275,000) is free of tax but the balance is subject to tax at 40%, unless an exemption or relief applies.

For the purpose of this article we shall assume that we are dealing with a married couple who own their house jointly and, because their children have left home, have managed to accumulate savings.

They prepared wills when their children were younger but are now worried that they are out of date, their main concern is that their house has increased in value over the years and they are now worried that the wealth which they have worked so hard to acquire will be swallowed up by the taxman on their death.

With the existing wills (written so that everything passes on the first death to the other, then to their children) the position is:

## Inheritance Tax Position on Death of Survivor (without Nil-Rate Band trust)

	£
House (held in joint names as tenants in common in equal shares)	350,000
Mr Owston - insurance policies and shares	50,000
Mrs Owston - insurance policies and shares	50,000
Mr Owston - cash assets	70,000
Mrs Owston - cash assets	30,000
Total	£550,000
Less Nil-Rate Band available on the death of the survivor	275,000
Total	£ 275,000
Inheritance Tax thereon @ 40%	£ 110,000

The problem is that their existing wills do not take full advantage of the Nil-Rate Band of the first of them to die. If, however, a Nil-Rate Band trust is used on the death of the first of them to die then this will result in the following:

## Inheritance Tax Position on Death of Survivor (with Nil-Rate Band trust)

Assets as above	£	550,000
Less assets which passed into Nil-Rate Band trust on the death of the first of Mr and Mrs Owston to die	(275,000)	
Nil-Rate Band available on the survivor's death	(275,000)	
Taxable Estate	Nil	
Inheritance Tax thereon @ 40%	Nil	

Simply by effectively using the Nil-Rate Band available to each of them by will planning Mr & Mrs Owston can save Inheritance Tax of £110,000.

## How does a Nil-Rate Band trust Work?

A Nil-Rate Band trust is inserted in each will to operate on the first death only by incorporating a gift to trustees of a sum equivalent to the Nil-Rate Band in force at the date of death. On the first death a cash sum or assets equivalent to the value of that amount are placed in the Discretionary trust for the benefit of a number of possible beneficiaries which would include the surviving spouse.

Whilst the trustees can distribute the fund to any one or more of the beneficiaries at any time the surviving spouse has three options after the happening of the first death:

(a) Either he/she might like the trust to be wound up and have the money back in their own hands. This would allow the survivor to be certain of his/her own position, but would leave the survivor with the Inheritance Tax problem once more; or

(b) The fund could be wound up in favour of the children straightaway; or

(c) The trust could be allowed to continue until the death of the surviving spouse. In this case the full use of both Nil-Rate Bands is preserved and the maximum amount of tax is saved.

## What Problems are there?

Nil-Rate Band Discretionary trusts are a relatively straightforward method of saving Inheritance Tax and are widely used in will planning. However, in order for them to be of practical advantage Mr and Mrs Owston would need to ensure that the assets within their estates were held by them equally, i.e. in their own individual names, so far as is possible. Where assets are held in joint names generally speaking these pass automatically on death by survivorship rather than by the will and, because of this the wills themselves would not operate in the way in which Mr and Mrs Owston wish them to.

The only way in which they can maximise the saving of Inheritance Tax is to separate their assets so far as is possible so that each of them has assets in their individual names to ensure that there is sufficient value to pass into the Nil-Rate Band trust on the first death. Where the asset is land or property it should be held as tenants in common so that each person's share also passes in accordance with that person's will.

Inland Revenue accepts that properly run Nil-Rate Band trusts are effective but it is important that the trust is run properly and separate from the assets of the survivor. The survivor can benefit but Inland Revenue will carefully check to ensure that the trust is not merely a sham. With this in mind it is important that expert advice is taken on the proper running and wording of such a trust to ensure that it is, and remains, effective. Written minutes of trustees meetings (which should occur at least once a year) and the decisions taken should be kept.

## I've heard about loan/charge schemes within the trust- what are those?

Wherever possible it is sensible to avoid using a share in the main residence or an asset passing into a Nil-Rate Band trust but sometimes this cannot be avoided. Similarly, the survivor might wish to have all of the cash assets for himself/herself rather than be beholden to the whim of a trustee. In these cases loan/charge schemes can be used to avoid problems; in essence, rather than placing assets into the trust everything is paid or transferred to the survivor in return for a loan from the survivor or a charge over the assets transferred.

Upon the death of the survivor the loan/charge acts as a liability against the estate of the survivor to reduce his/her estate for Inheritance Tax purposes. Again, as long as it is clear that the Nil-Rate Band trust is run as a separate trust with formal trustees' meetings etc. being held and written minutes of meetings kept, then Inland Revenue should accept it as such and the taxation advantage still be obtained.

## Nil-Rate Band trusts: do I need one?

If you are married or a partner in a registered civil partnership (after 21st December) and the value of your joint estates exceed £275,000 then you do.

Every married person/registered civil partner should consider including a Nil-Rate Band trust in their will as an integral part of their tax planning. It is a fairly easy way to save a substantial amount of tax but anyone considering such a step should take expert advice. There are many pitfalls for the unwary, and so as to ensure that the trust works correctly, and is worded correctly, it is important that appropriate advice is sought."

Harvey Ingram LLP has appropriate expertise in this area and its qualified staff are able to give bespoke expert advice on practical approaches to Inheritance Tax mitigation.

**If you would like further information, please contact Darren Perry on 0116 254 5454 or email [darren.perry@harveyingram.com](mailto:darren.perry@harveyingram.com)**

# Team successfully makes over 700 applications under Licensing Act 2003

**Frank Whale, a partner and head of our Licensing Team, examines some of the effects of registering under the Licensing Act.**

Since the beginning of February, more than 190,000 applications had to be made to various local councils country-wide to register premises under the Licensing Act 2003. These included all pubs, clubs, restaurants, off-licences, supermarkets and registered members' clubs and even extended to take-away food suppliers who trade beyond 11pm in the evenings.

For many years our Licensing Team has built up an excellent reputation and Frank Whale has been recognised as an expert in the Legal 500. Between early February and August the team had the mammoth job of co-ordinating more than 700 applications for clients and were incredibly relieved when the deadline arrived and they had received confirmation from all councils involved that they had received the applications.

There has been widespread concern over whether or not councils would be able to process all applications before the deadline of 24th November and there was a considerable lobby to try to delay the implementation of the new Act because it was becoming clear that the vast majority of premises looking to register under the new Act wanted to extend their hours. The team then had to travel from council to council dealing with hearings where generally local residents had opposed such requests.

Our team was instructed on the first appeal to be made to Leicester City Magistrates Court against a decision by Leicester City Council and has dealt with the first four of five appeals. It is still accepting instructions from clients who require the team to represent them at appeal hearings.

Even when the deadline was fast approaching, a lobby of Conservative and Liberal Democrat MPs were still trying to make a last ditch attempt to block the implementation of the Act on 24th November. They were trying to invoke an obscure procedure known as Praying Against a Statutory Instrument which failed. However, there is still to be a further attempt in the House of Lords to delay the final implementation of the Act from 24th November through to June 2006. The

team thinks this is unlikely, not least because if there was a delay and the Act did not come into force until after Christmas, it would be most unreasonable to the 90% plus of premises who have made expensive applications to register themselves in time. This not only includes pubs, restaurants, nightclubs and supermarkets but also thousands of non-commercial premises such as sports clubs and village halls.

One of the largest operators of licensed outlets in the country has already estimated that the cost of transfer of their premises under the new Act has now exceeded £4 million. Add to that the likelihood that if the old regime, whereby extensions of hours was obtained through the Magistrates Court, was left in force over the Christmas period, then it is likely there would be more than 100,000 premises needing to apply for and pay for over 400,000 special permissions to sell alcohol past the normal 11pm deadline during this period.

Generally any premises that sell alcohol, supply alcohol on behalf of a club, or provide regulated entertainment or late night refreshment are required to obtain licences under the Licensing Act 2003. If you are interested in any premises that operate any of these activities or intend to do so yourself, you will need to apply for appropriate licences.

What was initially championed as being a simple piece of legislation has developed into a mammoth series of guidance notes and directions which have made it incredibly complicated. At the same time the control was removed from the magistrates and placed in the hands of local councils. So not only do we have new legislation, we also have a new authority to whom applications need to be made.

In addition, the Government made it clear that it requires licensing decisions to take into account local considerations and be made by locally elected people. So each council can now look at the applications in a slightly different way.

There are going to be various cases going through to the high courts to decide some very fundamental issues that have not been clarified in the Act or the guidance. James Purnell MP, on behalf of the Department for Culture, Media and Sport said that when the 190,000

applications have been processed, a review of the guidance to the Act will be needed. He also suggested this would start as early as the end of November.

Whilst this is a deregulation Act and it is true that many premises will now finish with greater licensing hours than they had previously it ought also to be noted that under the Act there are far greater powers to interfere with the operation of a business if things do start to go wrong and some of the extended powers are as follows:

- Powers to issue closure orders increased and increased penalties for breach of licensed condition. Maximum fine up to £20,000 or six months' imprisonment or both Increased penalties for selling alcohol to children. Fine increased up to £5,000 with the ability to suspend or forfeit licences for a first offence
- Increased penalties for members of the public who obtain or attempt to obtain alcohol for a person who is drunk. Maximum fine up to £1,000
- Personal licences can be suspended or declared forfeit on conviction for a criminal offence
- Increased rights for local residents, the police and other interested parties to make objections by way of representations to applications
- Final decision made by elected local councillors accountable to local voters
- New mechanism for reviewing any existing licence and Club Premises Certificate
- Tougher penalties for irresponsible retailers. Maximum fine of £1,000 and potential suspension for up to six months or forfeiture of Personal Licence following conviction for offences of allowing disorderly conduct on the premises or making/allowing sales of alcohol to people who are drunk

Over the next year the team believes they will start to see just how the new Act will work in practice and how tight a control local councils will exercise over the Licensed Trade.

**For further information in relation to this article or Licensing please contact Frank Whale on 0116 257 4405 or email [frank.whale@harveyingram.com](mailto:frank.whale@harveyingram.com)**

# A welcome and a welcome-back

Our Commerce and Technology Team has welcomed a new face into its fold, whilst at the same time welcoming back another member of the team.

Kinnary Vyas has recently joined the team. Kinnary's previous experience includes time spent in private practice, undertaking an in-house lawyer role with BUPA, and lecturing at the College of Law. She has been qualified for seven years. Having initially worked in corporate finance law, Kinnary moved into commercial work whilst working for BUPA.

Meanwhile, Lucy Newton has returned to work after the birth of her daughter. Lucy has been with the firm for five years, dealing with general commercial matters and competition law issues.

Our Commerce and Technology Team is headed up by partner Matthew Talbot and includes senior associate Margaret Davies and solicitors Pina Mazzotti, Lucy and Kinnary. The team was formed earlier this year as a specialist team arising from a merger of our existing intellectual property and commercial units and is unusual in that it combines contentious and non-contentious work.



Pictured, from left, are:  
Kinnary Vyas, Pina Mazzotti,  
Matthew Talbot, Margaret Davies  
and Lucy Newton.

"Both myself and Pina Mazzotti are litigators, unlike Margaret, Kinnary and Lucy who deal with the non-contentious side of things, but there is a major overlap in our work, especially on the intellectual property side," said Matthew. "It made sense to group together as one team and all five members can advise on any commercial matter or concern clients may have."

The team's main services include all areas of intellectual property including trade marks, copyright, design rights, passing-off and patents; websites and software including drafting of website and intranet development agreements, website terms and conditions, domain name protection, privacy policies, computer misuse and hacking, software licensing, on-line marketing; trading agreements/conditions

including drafting of supply, distribution and agency agreements, trading terms and conditions, marketing and promotional agreements, confidentiality agreements; competition law; consumer credit law and data protection/freedom of information.

Matthew said: "The team welcomes Lucy's return and Kinnary will also prove a valuable asset to the team and the clients it services."

**If you would like further information about the team please contact Matthew Talbot on 0116 257 4427 or email [matthew.talbot@harveyingram.com](mailto:matthew.talbot@harveyingram.com)**

## Projects Team celebrates 1st birthday

Our Projects Team is having a party at the Showrooms Bar and Restaurant, Charles Street, Leicester on 7th December 2005 to mark its first birthday. It's been an eventful year for the team, which brings together expertise from across the firm and is made up of eight partners and supported by a number of associates and assistant solicitors.

Its launch at the end of last year was followed up by a series of seminars throughout 2005, giving clients updates on activity in specific areas like Planning and Site Assembly, Construction and Funding, Management, Health & Safety and Disputes. The seminars adopted a Magic Roundabout theme following a fictitious project through various highs and lows. Attendees, including emda, The Heart of The National Forest and representatives of a number of banks, architects, project managers, surveyors and engineers

locally and regionally praised the team's approach which provided them with a lot of information in an interesting and entertaining way that was easy to absorb.

The Projects Team is able to offer advice, guidance and consultation at every stage of a project from conception, through the tender process and construction to the resolution of disputes and completion.

During its first year, the team has handled a number of high profile projects including the on-going regeneration of a 272-acre former mining/coking works site on behalf of emda, a new custody suite for Leicestershire Constabulary at Freemans Common, and the new 150,000 sq ft ESPO building at Grove Park, Leicester which is scheduled to open in February 2006.

Team member and partner, Martin Jones explains: "We have handled a number of large projects during our first year and our team approach has been particularly welcomed by clients. Having a legal expert locally and all within the same building with experience in every relevant field is a distinct advantage. Each member of the team has worked hard and is looking forward to celebrating this milestone with clients and professional contacts, who have supported the team since its launch."

**If you would like to attend the birthday party, please contact Daljit Flora in our marketing department on 0116 254 5454 or email [daljit.flora@harveyingram.com](mailto:daljit.flora@harveyingram.com)**

# Couples' commitment key to positive divorce settlements

**Chris Nuttall, a solicitor in our Family Law Group, describes the rare instances where the behaviour of one spouse could impact on the division of finances in divorce cases.**

"The husband was a teetotaler, there was no other woman, and the conduct complained of was that he had drifted into the habit of winding up every meal by taking out his false teeth and hurling them at his wife."

This is the Dundas separation case, described by Sherlock Holmes in *A Case of Identity*. The great detective was engaged in clearing up some small points in connection with it, but for those facing the large upheavals of divorce, settling matters can seem far from elementary.

Mr Dundas's behaviour, although uncommon, is sufficient to start a divorce based on it. Unreasonable behaviour was the cause of the irretrievable breakdown of the 45% divorces granted in 2004.

In the painful aftermath of separation, many people assume that the court will punish a spouse for past behaviour when deciding how to split the finances. But when it comes to splitting the money the court's attitude is future-focused. The court looks at what each person needs for their future lives and the contributions each has made or is likely to make to the family in the future. Like Mr Dundas, many people behave irrationally when their marriages break down, but only a minority behave in such a way that their conduct will be taken into account in making the financial order.

Most people are able to agree how their finances should be split, with each having the help of a solicitor to advise on what might be a fair division. The starting point is always a full and honest disclosure of each person's personal assets.



The court will only consider complaints about the other spouse's behaviour if it is excessive and goes substantially beyond the limits of acceptable marital conduct. The conduct has to be such that it would, in the opinion of the court, be unfair to disregard.

If, on weighing up the conduct, the court thinks that it is relevant to the adjustment of the family finances, it may then reduce the entitlement of the spouse whose conduct is in issue to reflect its seriousness in the context of the marriage. Because of this, grave financial recklessness after the separation may well amount to relevant conduct and reduce the claim and entitlement of the reckless spouse to financial provision, as may a finding by the court that one party has embarked on a deliberate course of conduct to defeat or diminish the claims of the other.

On the other hand, adultery and violence during the marriage are not likely to be relevant, unless, in the case of violence, it was extreme and had a lasting emotional effect on the spouse on whom it was inflicted.

Every married couple is different and requires a solution to suit their own needs and resources. However, the Court of Appeal recently held that the judge was entitled to take into account the fact that the wife was committed to the marriage and that it had broken down because her husband had formed an association with another woman. The judge was not limited to an award based on need or to putting the wife 'back on her feet'. The court endorsed the nature of marriage and the value of commitment; the wife's good conduct being part of her contribution to the marriage. This should, at least, cause Mr Dundas to stop hurling his false teeth at his wife and start using them to find a new way of communicating with her instead.

**If you would like further information please contact Chris Nuttall on 0116 254 5454 or email [christopher.nuttall@harveyingram.com](mailto:christopher.nuttall@harveyingram.com)**

# New OFT Codes Approval Scheme



**Kinnary Vyas, a solicitor in our Commerce and Technology Team, takes a look at the recently-launched Consumer Codes Approval Scheme and shows how its logo could bring real benefits to businesses and consumers alike.**

According to research recently commissioned by the Office of Fair Trading (OFT), more than 75% of consumers would value a logo to help them choose fair dealing businesses.

The OFT's new Consumer Codes Approval Scheme logo should therefore be a badge of approval businesses want to achieve.

The scheme was recently launched so that businesses who have signed up to an OFT Approved Code of Practice can display the logo. Under the scheme, certain business organisations, acting as a code sponsor, can apply to become part of this scheme and businesses that are members of such organisations can use the scheme's logo to show that they adhere to an approved code of practice.

Consumers can use the OFT website to find businesses in their post code area that have signed up to an OFT approved code. The ultimate purpose is for consumers to be able to choose to deal with businesses that trade fairly and deliver higher standards of customer service than expected at law.

## Requirements for OFT approval

OFT Approved Codes must ensure that consumers are given:-

- Clear and fair contract terms
- Clear information about goods/services being purchased
- Access to a straightforward customer complaints process
- Extra help if they are vulnerable consumers
- Protection for deposits paid by them where a business stops trading

OFT approval for a code of practice can only be gained after evidence has been submitted that the code is effective and delivers real benefits to consumers. Even after approval has been awarded, the performance of the code and code sponsors will continue to be monitored by the OFT, which has the power to withdraw approval if code sponsors fail to ensure compliance by their members.

Trade bodies wishing to achieve OFT approval for their code of practice have to go through a process consisting of two stages:

**Stage 1** - the code of practice must meet core criteria set down by the OFT. The code sponsor must ensure that its code has measures to allay or remove concerns of consumers and undesirable trading practices in its particular sector

**Stage 2** - the code sponsor must show that its members are abiding by and implementing the code, and that consumer disputes are being dealt with properly and resolved adequately

After passing both stages, an evaluation will be carried out to see how effective the code is and OFT approval may be given only after this process has been completed.

## Scheme Benefits

Whilst codes of practice are generally voluntary and not legally enforceable, the OFT's scheme is aimed at inspiring consumer confidence and this, it is assumed, will be for the benefit of both consumers and businesses alike.

In guidance produced by the OFT entitled Inspire Customer Confidence (available to download at [www.offt.gov.uk](http://www.offt.gov.uk)), it is suggested that an OFT Approved Code of Practice offers several benefits to businesses and their customers including the following:

It helps customers identify trustworthy businesses

It could be a powerful marketing tool for businesses

It develops best practice in a sector and encourages businesses to respond to market change, thereby sharpening their competitive edge

Codes of practice generally will not be considered by the OFT if they govern business-to-business transactions, if the members of the trade organisation operate outside the UK or where they fall within another recognised Government scheme.

Any body capable of administering a voluntary consumer code and influencing the raising of standards can approach the OFT and ask for its code to be considered. Such an organisation can be either a trade association or even a group of businesses.

## Recently approved Codes of Practice

The Association of British Travel Agents (ABTA) and The Vehicle Builders and Repairers Association Limited (VBRA) are two examples of trade bodies which have received OFT approval for their codes of practice.

**For further information in relation to this article please contact Kinnary Vyas on 0116 254 5454 or email [kinnary.vyas@harveyingram.com](mailto:kinnary.vyas@harveyingram.com)**

# Be clear over ownership of IP rights

**Pina Mazzotti, a solicitor in our Commerce and Technology Team, stresses how important it is for businesses to establish from the outset who owns their intellectual property rights.**

Recent research by the Patent Office has revealed that more than 70% of UK businesses are not aware of the value of their intellectual property (IP) and the risk of losing it when selling their business. Similarly 40% of businesses wrongly assume they own the copyright when they ask a sub-contractor to develop software or websites for their business.

It's imperative to protecting IP rights and be clear as to who is the true owner of those rights.

The UK Patent Office has recently followed the Court of Appeal decision in *Markem v Zipher* and concluded in a dispute over the inventorship and ownership of a patent that the same belonged to the employer rather than the inventor.

It may surprise you that the inventor of the patent was not entitled to ownership of the intellectual property rights (IPR). The law is that the inventor is primarily entitled to a patent, however, this is subject to the exception where there is an employer/employee relationship. In these circumstances the employer is granted automatic ownership of the patent.

The key test when considering whether or not an invention is owned by the employee or the employer depends on whether or not the invention arose from

the employee's normal duties and responsibilities. An employee is a person working under a contract of employment. As an employer you may therefore wish to reconsider provisions within your own employment contracts to make it clear that any IP rights arising within the workplace and/or within that job role remain the property of you as the employer.

The position is similar with copyright, design rights and registered designs.

The area where ownership of IP rights causes more difficulty is when you are appointing a third party such as a software consultant, website designer, photographer or artist. In these instances, the ownership of the copyright in the products produced are likely to remain with that third party unless they are clearly assigned to you in writing, preferably in the form of a Consultancy Agreement or an assignment document such as a Licence.

When drafting employment contracts or commissioning third parties, we would suggest an amount of consideration is given to the following key areas:-

- The job title should be clearly described
- There should be a clear declaration of ownership of IP rights
- There should be an assignment and/or licence with provisions to deal with all existing rights and future rights in commissioned works

- You would want an obligation on employees to disclose all inventions to the employer
- Where protection of confidential information and IP rights is a key part of your business, you may want to consider detailed restrictive covenants in your contracts of employment, (i.e. to restrain disclosure of that information)
- Finally, if you are considering acquiring or selling your business interests, always ensure that value is afforded to your company's intellectual property rights

The intention of this article is to highlight the importance of protecting and valuing your IPR. If you require any assistance, particularly if you are having any dispute over the ownership of IPR or you are commissioning third parties, please contact our commerce and technology team. Similarly, our employment team can provide assistance in drafting employment contracts and our Corporate Team with the business sale situation outlined above.

**If you require any further information on the contents of this article then please contact Pina Mazzotti on 0116 254 5454 or email [pina.mazzotti@harveyingram.com](mailto:pina.mazzotti@harveyingram.com) or Matthew Talbot, head of the Commerce and Technology Team on 0116 257 4427 or email [matthew.talbot@harveyingram.com](mailto:matthew.talbot@harveyingram.com)**

## GINEM promotes business growth in Leicester



Our commitment to regional business development was again highlighted when we co-hosted a Leicester launch for the Growth Investment Network East Midlands (GINEM).

The non-profit-making organisation, which helps entrepreneurs locate advisers and sources of finance through its website [www.ginem.co.uk](http://www.ginem.co.uk) and regional networking events, was kick-started with funding from emda and is now funded by subscriptions from member organisations.

The founder members of GINEM are some of the leading organisations within the East Midlands involved in preparing projects for investment and introducing them to funders.

Leicester is the fourth branch to be successfully launched by GINEM, which has already launched in Northampton, Melton Mowbray and Lincoln.

John Stobart a partner in our Corporate Finance & Transactions Team said: "We were delighted to host this launch event for GINEM in Leicester. GINEM is already a success and will bring great benefits to many organisations in the region. We were delighted to be involved and to be able to offer our support."

## Hatfield and Corporate Manslaughter - repercussions for organisations

Rafique Patel, a partner in our Dispute Resolution Department and a member of our Projects Team looks at events following the Hatfield rail disaster and the effects the draft Corporate Manslaughter bill could have on organisations and individuals.

The Hatfield rail disaster in October 2000 has prompted health and safety developments which will be welcomed by senior executives, but not by corporations.

After the express train de-railed travelling at 115 miles per hour, killing four and injuring 102, manslaughter charges were brought against five executives, along with Balfour Beatty and Network Rail, under Section 7 of the Health & Safety at Work Act “for failing in their duty as employees to take reasonable care for the health and safety of other persons who may be affected by their acts or omissions at work”. The prosecution claimed a catalogue of safety breaches before the disaster amounted to a cavalier approach to passengers’ safety. These included a replacement rail lying alongside the faulty one for almost six months, no speed restrictions and a backlog of essential work.

Counsel for the five executives argued that it was wrong to make the railway industry liable for an under-resourced network they inherited from governments who neglected it for over 40 years. Many safety breaches took place at lower levels of the organisation so it was questionable whether the senior executives were properly culpable.

Balfour Beatty pleaded guilty to failing to ensure non-employees were not exposed to health and safety risks and were fined £10 million. Network Rail was convicted of the same and fined £3.5 million.

The five executives were acquitted. It is believed this was because the safety breaches took place at lower levels of the organisation so the jury felt it unsafe to convict them. Manslaughter charges against Balfour Beatty and Network Rail were also dismissed.

Under the law of manslaughter, it is necessary to convict “the controlling mind” of an organisation. Charges have failed against individual employees because personal gross negligence could not be proved.

Future Developments: Individuals or corporations?

The draft Corporate Manslaughter Bill introduces a new offence which will not apply to individuals but will be dependent upon “a failure by senior management in the way in which they manage or organise the activities of the organisation”. If it becomes law, it will be easier to convict organisations of manslaughter, where there has been a senior management failure, and unnecessary to first convict individuals. The focus is likely to shift from bringing manslaughter charges against individuals to corporate manslaughter charges against the organisation itself.

The HSE will continue to act where authorities consider there has been a breach of legislation. Criteria to be considered are the roles played by individual directors and managers and whether the offence was committed with their consent or attributable to their neglect.

For further information please contact Rafique Patel on 0116 257 4446 or email [rafique.patel@harveyingram.com](mailto:rafique.patel@harveyingram.com)

# The myth of the ‘Common Law Spouse’

**Annabel Whitaker looks at how the law affects co-habiting couples who subsequently separate, and details some of the pitfalls that could await them.**

Imagine the scenario – you have lived as man and wife for many years, you use your partner’s surname, you own property together, you have joint bank accounts, and you have children. Your relationship deteriorates, and you decide to separate.

You have always considered yourself to be your partner’s spouse, and friends tell you you will be protected legally. In reality however, you have no such protection. In law you do not share the same protection as married couples, and you are extremely vulnerable.

So how will the countless couples who choose not to marry be treated by the courts in the event of a dispute?

The present law is inadequate. Old principles of trust and property law are invoked to give varied results. Indeed in a recent case of *Stack v Dowden*, heard in the Court of Appeal, it was decided that even though the shared home was held by the couple jointly, this did not necessarily entitle each party to an equal share. The financial contributions made by each party were examined in order to calculate each party’s financial interest in the home.

As an unmarried partner, you do not have the automatic right to receive maintenance, even if you have sacrificed your career and your own employment prospects in order to support your partner and care for the home.

Neither do you have an automatic right to inherit.

The Law Commission has founded a project looking at the law relating to cohabiting couples, for those living together in relationships bearing the hallmarks of intimacy and exclusivity but who have not formalised their relationship through marriage or civil partnership.

The key issues to be reviewed include:

- Whether cohabiting couples should have access to any remedies providing maintenance payments, lump sum payments, or transfers of property from one party to the other, in the event of separation.
- The existing remedies providing capital awards for any children of the relationship
- The possibility of the surviving partner having automatic rights to inherit
- The enforceability of written agreements made between cohabiting couples

The results of the review are to be published next spring, hopefully with recommendations for changes in the law to protect cohabiting couples to be made the following year.

In the meantime it is vital that those wishing to cohabit appreciate the uncertainty of the law should situations arise, and perhaps seek to regulate their relationships by entering into living together agreements.

If you would like further information please contact Annabel Whitaker on 0116 254 5454 or email [annabel.whitaker@harveyingram.com](mailto:annabel.whitaker@harveyingram.com)

# Cohabiting couples and pensions

**Legislations concerning married and unmarried couples is complex and a few policy checks may be needed to ensure partners and families are suitably provided for. Chris Nuttall, a solicitor in our Family Law Group, looks at some of the common anomalies and gives advice on planning for the future.**

"Age will not be defied," wrote Francis Bacon in his essay 'Of Regimen of Health' in 1625, the penultimate year of his life. Nevertheless, nearly nine million workers in the UK are neither saving for a pension nor have a partner who is saving for retirement.

On average, nearly a third of adult life is spent in retirement. The basic state pension is less than a fifth of the national average earnings so everyone should start to save early. Last year, cohabiting couples made up 13% of all families in the UK, with half of these being headed by someone aged under 35. Between 1996 and 2004, the number of cohabiting couple families increased by more than 50%. These young, unmarried families need to check the rules of their pension scheme carefully as, often, their definition of 'family' does not include an unmarried partner.

Nearly two-thirds of pension schemes covering public sector workers (such as teachers, nurses, and local authority employees) will not pay a pension to an unmarried partner. Unmarried couples in these schemes will need to find another way to provide a lump sum or regular income for their partner if one of them should die.

The state pension has pitfalls for unmarried couples. Married couples (and from 2010 same-sex couples who are registered civil partners) can claim additional state pension. The amount of this depends on a person's eligible earnings since 1978. Unmarried couples cannot claim any additional state pension. A married person (and from 2010 a same-sex civil partner) can claim state bereavement benefits or receive state pensions based on their spouse's (or civil partner's) National Insurance record. There is no similar protection for unmarried partners.

However, unmarried couples are presumed to be financially interdependent and mutually supporting for income-related purposes. They are treated as a single household or family unit whose resources and needs are combined when assessing eligibility for pension credit and other income-related 'safety-net' benefits. Pension credit is a state benefit for pensioners



on low incomes aimed at ensuring they have a minimum amount to live on.

Most occupational and personal pension schemes are set up so that the scheme decides who should get any lump sum and pension if you die. On the death of a scheme member, these schemes often pay a lump sum and pension to dependent partners regardless of marital status. Unmarried partners should check that their particular scheme does and, if so, make sure that they have nominated their partner to receive it.

Whether you are cohabiting, married or registered same-sex partners, pensions are a useful way to protect and provide for your family on retirement and in the event of death.

Tax relief on contributions to a pension scheme allows largely tax free savings to be built up, and part of those savings can be taken at retirement as a tax-free lump sum instead of taxable pension. So start saving - you're not young forever you know!

**If you would like further information please contact Chris Nuttall on 0116 254 5454 or email [christopher.nuttall@harveyingram.com](mailto:christopher.nuttall@harveyingram.com)**

**LEICESTER**

20 New Walk Leicester LE1 6TX  
T : 0116 254 5454 F : 0116 255 4559  
E : [mail@harveyingram.com](mailto:mail@harveyingram.com)  
W : [www.harveyingram.com](http://www.harveyingram.com)

**BIRMINGHAM**

30 St Paul's Square Birmingham B3 1QZ  
T : 0121 262 6550 F : 0121 236 9599  
E : [mail@harveyingram.com](mailto:mail@harveyingram.com)  
W : [www.harveyingram.com](http://www.harveyingram.com)

THE  
SYMBOL FOR  
LEGAL EXCELLENCE



Harvey Ingram LLP  
solicitors