

SPRING 2008

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Market-leading publisher expands portfolio



Harvey Ingram LLP
solicitors



Simon Astill
managing partner

It has been an incredibly busy start to 2008 and it's hard to believe we are already more than a third of the way through the year.

The firm has undergone some big changes, with a new management team, a wave of promotions, new starters and key appointments, plus plenty of big business wins for our clients.

Our new management structure is outlined in detail on page three. Some of our top-performers have also been rewarded with promotions which reflect their efforts, skill and professionalism. At the same time I am also delighted to welcome more new starters to our rapidly growing ranks, which takes the firm's headcount to nearly 300 staff.

The firm continues to go from strength-to-strength, and we are proud to see our Birmingham office mark its second anniversary.

Inside, we have outlined just a snapshot of some very prestigious deals already completed on behalf of our clients this year. But it's also fair to say 2008 has not just been all about hard work.

Our networking initiative Leicester Young Professionals got the year off to a flying start when it hosted a storming performance from Rob Charles and his Blues Band in the austere surroundings of Leicester's City Rooms.

Elsewhere staff have been busy raising money for Cancer Research UK, with a marathon effort in the Relay For Life at the Leicester Tigers' Welford Road ground, plus a monumental fund-raising drive from some very musically-literate colleagues, with a band performance that helped a West Midlands' cancer charity land around £17,000.

It has been a pleasure working on my first Briefcase as managing partner and I hope it proves to be an enjoyable read! If you have any comments or feedback, please contact me - your views are always very welcome.

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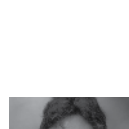
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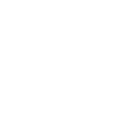
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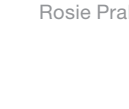
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Front cover from left to right are: Johanne Cosgrove, Robert Thirlby, Rosie Prabakhar and John Stobart.

New management team unveiled

Our new management team was unveiled earlier this year and took effect from 1st April 2008.

The firm's new managing partner is corporate law partner Simon Astill. He was trained in the City of London and has been a partner with the practice since October 2001. Simon was directly responsible for the opening of our Birmingham Corporate office in April 2006, and oversaw its relocation to larger premises in Edmund House in Birmingham city centre towards the end of last year.

Simon has taken over from Chris Finlay, who has stood down after seven years as managing partner. During his time at the helm, our turnover has grown by more than 80% and profits have increased by around 65%. He also oversaw the conversion of the firm into a limited liability partnership and the rapid expansion with the opening of two new offices in Birmingham and a fourth site in Milton Keynes, which will deal specifically with uninsured loss recovery work. During his period in office, the 31 partner firm has also achieved accreditation under IIP and the Positive about Disabled People scheme.

Simon will be assisted by Robert Rose, who has become the firm's first deputy managing partner. Robert is a specialist medical negligence lawyer who has been a partner since 1998 and currently heads our largest team.

Phillip Lane has also stepped down as senior partner, to be replaced by Stephen Woolfe. Phillip has fulfilled this role since November 2002. Stephen is a former managing and senior



▲ (from left): Simon Astill, Stephen Woolfe and Robert Rose

partner, as well as being chairman of the Heart of the National Forest Foundation, chairman of Leicester LiftCo and a former President of Leicestershire Chamber of Commerce.

Chris Finlay said: "It has been a real privilege to manage such an outstanding law firm over the past seven years, in a time of so much change for the firm and for the profession as a whole. I am delighted to be able to hand over to

such capable successors and I have no doubt that Harvey Ingram will continue to go from strength to strength under their management."

Simon added: "I would like to thank both Chris Finlay and Phillip Lane for their tremendous work over the past seven years and look forward to working with Robert Rose and Stephen Woolfe to build on the progress made during that period."

Onwards and upwards for specialists

We are delighted to be able to announce a new set of promotions for some of our top-performers, who have now been appointed associates. They are Ateeq Ahmed, Sonia Bachu, Beth Lyon, Katherine Marshall, Katherine Neal, Sarah Stephenson and Kimbra Welch. All seven are specialist lawyers and reflect the diversity and skills we offer.

Beth Lyon in our Social Housing team specialises in housing management and is also heavily involved in the firm's Knowledge Management initiative.

Sarah Stephenson in our Property Investment & Finance team deals with buying and selling freehold and leasehold commercial property, secured lending work, pension related property transactions and landlord and tenant.

Kimbra Welch a member of our Employment Law team specialises in all areas of Employment Law and is a member of the Employment Lawyers Association.

Sonia Bachu is a member of our Family Law team and specialises in family law, in particular dealing with financial disputes upon divorce.

Katherine Marshall also in our Family Law team specialises in primarily resolving financial disputes on separation.

Katherine Neal is a member of our Trusts & Probate team and specialises in wills and probate, contentious probate and tax planning.



▲ Managing partner Simon Astill at the back, (from left) with Beth Lyon, Sarah Stephenson, Kimbra Welch, Sonia Bachu, Katherine Marshall, Katherine Neal and Ateeq Ahmed.

Ateeq Ahmed is a member of our Corporate Finance & Transactions team based at Edmund House in Birmingham, where he works on company mergers, acquisitions and disposals, private equity deals, management buy-outs, group reorganisations and general corporate advisory work.

Managing partner Simon Astill said: "It's always a pleasure to be able to reward talent. All seven are outstanding professionals and a real credit to the firm. I am delighted to see them promoted to associate level."

Simon is pictured with the seven associates.

Growth paves the way for the recruitment of more talent



▲ James Brown

▲ Nick Bone

▲ Frances Bunston

▲ Lauren Greenhalgh

▲ Marion Kinshuck

▲ Manjit Kooner

▲ Mike McMahon

Our continued expansion is paving the way for the arrival of more talent with new recruits joining our specialist teams.

James Brown is very experienced and has joined our Trusts & Probate team as Trusts Manager, based at New Walk in Leicester. He joins from Roythorne & Co in Spalding. He began his career at the NatWest Bank where he was a member of its trustee and income tax team for 12 years.

New employment associate **Nick Bone**, is based at Edmund House in Birmingham and was recruited to oversee the expansion of our employment work in the West Midlands. He has a vast experience of employment law and has represented companies and staff alike at tribunals across the UK. Nick currently sits on the Discrimination Law Association's executive committee and has been the Midlands' representative for the Employment Law Association.

Frances Bunston and Lauren Greenhalgh have joined our Family Law team.

Frances joined following more than four years at Thomas Flavell & Sons in Hinckley. She has already amassed a lot of experience in divorce, ancillary relief, Children's Act cases, cohabitee and property disputes. She studied at Nottingham Trent University and subsequently completed her LPC at De Montfort University in Leicester.

Lauren qualified three years ago and joins us from Berryman in Nottingham, where she specialised in family law. She now deals with a wide range of family matters including cohabitation, separation, divorce, financial disputes and children matters.

Marion Kinshuck joins our Commerce & Technology team based at Edmund House in Birmingham. She joins us after a brief spell as a locum in Legal & General's legal department.

Marion has many years of experience advising companies and local authorities on agency and distribution agreements, and commercial agreements. She particularly enjoys acting for housing associations and other public sector clients. Marion has taught at Aston and De Montfort Universities and will be presenting courses for Central Law Training later in the year, as part of its programme aimed at people working in local government and social housing.

Manjit Kooner has joined our Property Investment & Finance team following a secondment with the firm in February 2007. When she qualified as a solicitor she briefly worked at Tollers in Corby, before returning to us in February this year.

Corporate law specialist **Mike McMahon** joins our Corporate Finance & Transactions team based at Edmund House in Birmingham. He joined the firm following two years at Geldards in Nottingham. Mike studied at Manchester University before qualifying as a lawyer.

Shoe Zone

The year got off to a flying start for our corporate team with a string of deals for a host of big-name firms.

In January, thousands of jobs at struggling Leicester shoe firm Stead & Simpson were safeguarded after we helped broker a rescue deal with rival Shoe Zone. It meant 200 Stead & Simpson stores, which also trade as Shoe Express, Lilley & Skinner and Peter Briggs, will now be in the hands of Shoe Zone. The rescue deal was put together and completed within 10 days by a team, made up of retail, pensions, employment and corporate specialists led by partner Roy Botterill. The others included Lee Hennell, Chris Nuttall, Adam Gilbert, John Simon and Kimbra Welch.

Shoe Zone chief executive Anthony Smith said: "This was a superb acquisition for us and I knew we could rely on Harvey Ingram to get it tied up very quickly."

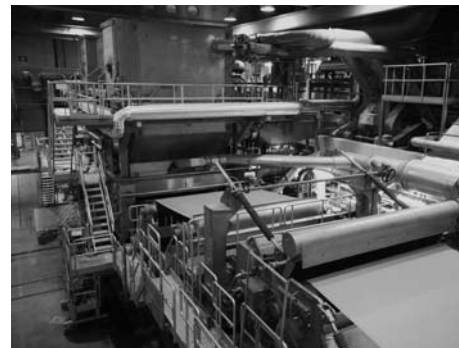
It came hot on the heels of another big deal brokered by us at the end of last year, which enabled the firm to acquire the 260-outlet Shoefayre, which had been in the hands of the Co-operative Group.



Standard Motor Products Europe Ltd

More jobs were safeguarded when we paved the way for Standard Motor Products Europe Ltd, to buy Kettering car parts firm Kerr Nelson. All staff have now been transferred to SMP's site in nearby Wellingborough, where they continue to provide vehicle parts, spares and advice to the motor industry.

SMP's group finance director Suky Chahal said: "We are delighted with the acquisition of Kerr Nelson and the way it was handled."



LPC Group

In February, partner John Stobart helped secure a £65.5 million credit facility from Icelandic lender Landsbanki on behalf of Leicester-based specialist paper manufacturer LPC. We have been working for LPC for the past five years and already helped it grow its business throughout Europe.

But the latest deal was by far the biggest yet. John said: "This was a very complex financing deal. A number of arrangements had to be consolidated first and work was done on a number of property and commercial negotiations. It was a very busy couple of months. LPC is hugely successful and ambitious firm and I am delighted to have been involved in helping pave the way for its further growth."

Maplelord

Leicestershire independent financial adviser Maplelord was bought by Nottingham-based IFA Four Corners, in a deal overseen by us. Maplelord managing director Trevor Harrington said: "The acquisition of IFAs is a notoriously complex area, but I am delighted with the way by which Harvey Ingram concluded the negotiations."

Richard Roberts Group

On the international front, Edinburgh Woollen Mills' manufacturing arms Heather Mills and Mackinnons of Scotland, were acquired by Richard Roberts Kandy, based in Sri Lanka. We have already completed a host of negotiations across the Indian sub-continent and Far East, thanks to its network of overseas intermediaries. Andrew Bryars, chairman of Richard Roberts Group, said: "This is a superb acquisition for us. The team at Harvey Ingram has been a great help and we are delighted with the way the negotiations were quickly concluded."

PLUS Flotation

Elsewhere, we also paved the way for Chilean uranium mineral firm U3O8 Holdings plc to float and trade on the specialist PLUS Market. It followed 12 months' preparation work by corporate lawyers Stephen McElhone and Rosie Prabhakar, who pulled the companies admissions document and commercial agreements together. Conrad Windham, U3O8 Holdings plc chief executive officer, said: "The team at Harvey Ingram has been a great help in readying our PLUS Market flotation and as a result we look forward to being able to press ahead with plans to assess more potential mineral sites in South America. I would like to give special thanks to Steve McElhone, who has been invaluable throughout."



▲ Pictured from left to right are Johanne Cosgrove, Robert Thirlby, Rosie Prabhakar, John Stobart.

Ulverscroft Group lands youngsters' foreign language leader La Jolie Ronde

Ulverscroft Group Ltd, the worldwide leader in large-print publications and unabridged audio books, snapped up children's independent foreign language learning specialist La Jolie Ronde, for an undisclosed sum. La Jolie Ronde's audio and print schemes are already very well-established among teachers and are used by tens of thousands of children across the UK every week.

Founded in 1983, La Jolie Ronde offers, unique, carefully structured foreign language courses designed for three to 11-year-olds. The schemes have a solid track record and enable youngsters to progress year after year. The acquisition was overseen by us and is a prestigious addition to Ulverscroft's hugely popular portfolio of large-print and unabridged audio books, and part of its planned development in the media sector.

Ulverscroft Group chairman Robert Thirlby said: "I am delighted to have acquired La Jolie Ronde. It's a superb acquisition and is a very good fit with our business. I am very pleased with the way these very complex negotiations were concluded by Harvey Ingram."

The deal was overseen by corporate specialists John Stobart and Rosie Prabhakar. Partner John Stobart said: "We were delighted to be able to help Ulverscroft Group's strategic acquisition of La Jolie Ronde in the educational sector. This type of deal reflects our flexibility and capability in tackling the demands of very complex transactions in the multi-media and educational sectors, requiring skills with intellectual property rights, trademark and copyright issues, as well as commercial and corporate finance agreements."

Birmingham goes from strength-to-strength

Birmingham partners Rick Smyth and Mat Harvey, welcomed three new key appointments Marion Kinshuck, Mike McMahon and Nick Bone. Between them they bring a lot of experience, specialising in commerce and technology, corporate finance and employment law respectively.

The corporate team at Edmund House is increasingly in demand despite having just marked its second anniversary. Among the recently concluded deals was the sale of monitoring firm Argus Environmental to RSK Group Plc.

Our team of specialist corporate and environmental lawyers paved the way for the acquisition and helped ensure it offered the very best value and terms to Argus Environmental's shareholders.

Partner Rick Smyth said: "This typifies the kind of deal we specialise in. The completion of this acquisition followed a complex set of negotiations, and despite a number of commercial and contractual challenges, they were all resolved smoothly and satisfactorily for all concerned."

Our Birmingham team also worked closely with Jasper Corporate Finance, which provided detailed analysis throughout.

The completion of the Argus acquisition comes hot on the heels of a diverse range of deals overseen by us, which recently handled the management buy-outs of Dunlop Systems & Components, mobility specialist Evac + Chair, Wrap Film Systems Ltd, Pet Products and Monsal Ltd.



▲ Pictured from left to right are Marion Kinshuck, Mike McMahon and Mat Harvey, at Edmund House in Birmingham.

Partner Mat Harvey said: "We've been extremely busy. At the moment it looks like management buy-outs will continue to be a

major area for us. Given our size, expertise and flexibility, we are well placed to be able to work on deals of all sizes."

Blazing a trail for Team Leicestershire at MIPIM 2008

Our support at the world's leading property event MIPIM is paying dividends, says Team Leicestershire.

This year's delegation was the strongest ever sent to represent the region and marked the third consecutive year we have been at the international property showcase in Cannes.

The delegation included representatives from Harvey Ingram, Invest Leicestershire, Leicester Shire Economic Partnership, Leicester Regeneration Company, Leicester City Council, Miller Birch, Cannock Developments, Pick Everard and Summers-Inman.

Partners Phillip Lane and Martin Jones, specialists in development and construction respectively, our delegates at the four-day trade fair. Partner Philip Lane said: "This year's event marked the third consecutive year Harvey Ingram has been a key player in the drive to promote the opportunities for investment in the Leicestershire region and we were delighted to be joined for the first time by a number of fellow private sector sponsors.

"If Leicester and Leicestershire are to attract new businesses and the level of investment necessary to sustain their ambitious plans for growth and regeneration, Team Leicestershire's presence at major property events such as MIPIM is essential. The market place is increasingly competitive and we at Harvey Ingram are therefore pleased to be part of Team Leicestershire and contribute towards their objective of bringing a share of this market to the region."

Leicester Regeneration Company chairman Neil Morris said: "It was very encouraging that we were sought out more this year than in previous years."

Former Leicester Tigers and England rugby union star Tim Stimpson said: "Once again, having been out to MIPIM to help promote Leicestershire and listened to the presentations of the other members of Team Leicestershire, I think Leicester is in good hands and will enjoy a great future."

Robin Pointon, Leicester Shire Promotions' director of development, said: "The strongest ever presence from Team Leicestershire, with more sponsors than ever before, has helped to ensure we can take forward even more business opportunities and increasingly use MIPIM as an important tool within our investment marketing strategy."



Plugging into London 2012

We are now registered on the official London 2012 procurement website to help provide legal advice and services for contractors working on the Olympics.

The event represents a tremendous opportunity for the UK as a whole and organisers predict more than 50,000 contracts will be awarded during its run up.

Roy Botterill, head of our Corporate Finance & Transactions team, has now listed the firm on London 2012's dedicated procurement site, having already dealt with the IOC and worked on several contracts for the 2004 Olympics in Athens.

He is also chairman of the East Midlands Development Agency Business Opportunities Group. So far more than 20 contracts have been awarded in the East Midlands since the beginning of the year as a direct result of the Olympics - and more are expected to follow soon.



Harvey Ingram LLP
solicitors

“Big bang” for claims regime



Jonathan White, business development manager in our Corporate Personal Injury team, outlines the dramatic impact of new Government legislation on the claims industry.

In April 2007, the Lord Chancellor announced proposals to completely re-write the rules governing low value litigation, particularly, personal injury, road traffic and employers' liability claims.

The Government is about to introduce new legislation which has significant consequences for businesses.

Consequences for businesses

Under the new rules, companies will be expected to deal with claims far quicker. Failure to respond promptly to claims could lead to a refusal of indemnity from an insurer, or a significant increase in legal costs. Under current legislation businesses and their insurers have nearly four months to respond to a claim with a decision on liability.

But under the new rules, insurers will be expected to communicate their decision on liability within 15 working days in the case of a road accident and 30 working days in employers' liability and public liability cases.

The result is that unless claims are reported to insurers immediately, the new time limits will almost certainly be breached and insurers may refuse to provide indemnity.

Advantages to business

The main advantage with the new regime is that the whole claims process should be faster and cheaper. This should in theory lead to a reduction in insurance premiums if liability insurers pass on the savings made. For those companies bringing claims for uninsured losses such as damage to company vehicles or property, claims should be dealt with far more quickly and efficiently.

Under the proposals parties to litigation are given the option of asking a Judge to resolve a dispute without a formal hearing. This should simplify the claims process and limit downtime for the businesses and individuals. The regime will also see the introduction of fixed costs for different types and stages of litigation to reflect the work needed to comply with the new process.

Conclusions

If, as expected, the proposals provide for very strict time limits it is very unlikely the insurance industry will be able to cope, particularly in the short term. Those companies that sit on claims and fail to refer or investigate them promptly will be penalised whilst those companies with efficient claims handling procedures could see the benefit of reduced premiums once the changes have bedded in.

The devil will inevitably be in the detail and we await with interest the exact wording of the legislation which was due to be announced during April 2008.

For further information, please contact Jonathan White on 0116 257 6145 or email: jonathan.white@harveyingram.com

Personal injury team receives corporate accreditation

The Association of Personal Injury Lawyers (APIL) has recognised that Harvey Ingram LLP has one of the region's leading personal injury practices.

APIL has recently launched an attack on rogue players in the personal injury industry through a campaign that urges potential claimants only to approach law firms that it has endorsed. Only two practices in Leicester received this sought after accreditation, which is only awarded to personal injury practices that meet rigorous criteria.

APIL has also recognised three members of Harvey Ingram's team who have demonstrated exceptional experience and expertise in the area of personal injury law.

Jonathan White, Corporate Personal Injury business development manager, said: "Over recent years unregulated claims handling companies have proliferated and as a consequence members of the public often do not know whom to trust. Individuals who have suffered an injury have difficulty distinguishing a reputable law firm specialising in personal injury from an unregulated claims management company. We are very proud to have received the APIL accreditation, which demonstrates our long term commitment to providing top quality legal advice to injured people."

Expanding our world service



Jitendra Patel, partner in our Corporate Finance & Transactions team, specialises in mergers, acquisitions and disposals, including cross-border transactions of companies and businesses.

We were one of three key regional firms that fronted a Far East trade mission to cement business links with China's rapidly growing 'Tiger economy'.

During the five-day stay, partner Jitendra Patel made dual-language presentations to scores of Chinese businessmen and intermediaries in the south western cities of Chongqing and Chengdu, in the Sichuan province. It boasts a population of nearly 120 million.

He was working in close collaboration with colleagues from Cooper Parry and HSBC, as part of a business delegation that joined the East Midlands China Business Bureau trade mission. He was building on work done by our international team, which has already seen overseas links with correspondent firms opened up elsewhere in China, India and Vietnam.

During the Far East trip a series of seminars and business meetings were held aimed specifically at Chinese companies looking to invest in the UK.

It followed on from a very productive trade mission in November last year, when we got a first-hand look at the vast opportunities on offer.

Jitendra Patel said: "The potential of the South East Asian economies simply cannot be underestimated and this mission offered another massive opportunity for Harvey Ingram.

"The Chinese economy has been booming - and is growing year-on-year. Given we all now live in a global economy, we simply can't afford to get left behind and miss opportunities to open up new trading frontiers. Last year's trips were a great success and we've been able to build on them further. This latest trade mission offered a superb opportunity to cement links already made and also to get to know Chinese companies wishing to invest in the UK.

"As part of our visit, we hosted a series of dual-language seminars and business meetings to ensure we firmly establish our contacts in the region - and stay ahead when it comes to being able to offer our services to both new and existing clients."

For more information about international trade requirements, contact Jitendra Patel on 0116 257 6199 or email: jitendra.patel@harveyingram.com



Harvey Ingram LLP
solicitors

Endeavouring to do the right thing?



Kinnary Vyas, a solicitor in our Commerce and Technology team, explains some common legal terms.

Best endeavours, reasonable endeavours and all reasonable endeavours?

Unfortunately these are

not just phrases we lawyers sprinkle liberally into contracts just so that they sound “legal” and mystify the general public for the sake of it!

They have significant meaning in legal terms and can make a difference to the type of obligation a party is under in a contract.

What exactly is “best endeavours?”

The next time someone requires you in a contract to use your “best endeavours” to comply with an obligation in that contract you might want to think about what this actually means for you. Apart from an absolute requirement to do something, such as “the buyer shall pay an agreed fee”, “best endeavours” is the next most onerous requirement to achieve a particular objective, while the alternative “reasonable endeavours” would be the least onerous. The phrase “best endeavours” has been considered a lot by the courts in the past and, rather unhelpfully, in the case of Sheffield District Railway Company v Great Central Railway Company (1911), when the court stated that it “means what the words say; they do not mean second best endeavours”. While this may not be the most illuminating of definitions, subsequent cases suggest that while “best endeavours” is an onerous requirement, it is neither an absolute obligation nor a guarantee to do something.

With a best endeavours obligation, the party contracting to use their “best endeavours” must:

- take all those steps in its power which are capable of producing the desired results
- take steps which a prudent, determined and reasonable obligee acting in his own interests and desiring to achieve that result would take (IBM United Kingdom Ltd v Rockware Glass Ltd [1980]).

This means that you should do everything in your power to comply with the obligation and this may involve significant expenditure but would not require action resulting in “the certain ruin of the Company or ... the utter disregard for the interests of shareholders” (Terrell v Mabie Todd & Co Ltd [1952]).

So essentially you are required to do everything in your power to achieve the result but not so much that you could go bankrupt!

“Reasonable endeavours”

Reasonable endeavours is less stringent than best endeavours and may require:

- limited expenditure by you to achieve the result; but
- it does not require you to sacrifice your commercial interests; and
- it involves balancing your contractual obligations against all relevant commercial considerations.

So it allows you to take into account matters such as your relations with third parties, your reputation and the cost of a particular course of action.

“All reasonable endeavours”

Usually the parties end up with the compromise “all reasonable endeavours”. There is not so much case law dealing with this phrase, but again the courts have come to the rescue with yet another enlightening insight and have stated that it is “probably a middle position somewhere between the two, implying something more than reasonable endeavours but less than best endeavours” (UBH (Mechanical Services) Ltd v Standard Life Assurance Co [1986]).

Practically speaking

From a practical point of view, the best thing to do is to spell out the extent of a party’s obligations and even if you do use the shorthand of “best endeavours”, it is important that the particular obligation is sufficiently certain so that you can actually enforce it. For example, an obligation to use your best endeavours to obtain an export licence, is a sufficiently certain obligation and capable of being enforced.

The use of such phrases in a contract requires careful consideration and drafting because otherwise it could result in a fairly useless and meaningless clause.

Careful drafting is also needed to set out the specific steps a party should take to comply with a particular obligation, including for example:

- to what extent is it required to incur expenditure?
- how long should that party continue to pursue the achievement of that obligation?

As is the case with many legal issues, the comments made by the courts outlined above related to specific circumstances and facts for each case. A court’s interpretation of a “best endeavours” obligation will ultimately depend on the facts before it. This article is intended to remind you to pause before agreeing to a particular type of “endeavours” obligation.

In simple terms:

- If someone places an obligation on you to do something, you should only agree to use “reasonable endeavours” to do it.
- If you are placing an obligation on someone else to do something you should insist that:
 - either they shall do it (i.e. an absolute requirement); or
 - if they will not agree to this, that they shall use “best endeavours” to do it

For further information or if you have any other queries on legal jargon in commercial contracts, please contact Kinnary Vyas on 0116 257 6190 or email: kinnary.vyas@harveyingram.com

Comparative Advertising



Pina Mazzotti, a solicitor in our Commerce and Technology team, outlines the possible changes to the law surrounding comparative advertising.

The law relating to adverts comparing the characteristics

of a competitor's products or services, to those of one's own goods and services may soon change, if Europe's highest court follows the recommendations of one of its top advisers. It is more likely than not that the European Court of Justice (ECJ) will follow the Advocate General's opinion.

In order to stop your brand being used for comparative advertising, it was argued that you should have the comfort of relying on your registered trade marks. However, in light of a recent high profile case which has been referred to the ECJ, the Advocate General has issued an opinion recommending that trade mark owners should not have the right to sue for trade mark infringement in relation to comparative advertisements.

The case concerns the dispute between O2 and its rival Hutchison 3G ("3") about 3's use of bubbles in its advertising campaign. The firm 3, emerged onto the UK mobile phone market in 2003 and became one of the first providers of 3G technology. A year later, 3 used television advertisements that made a price comparison between 3's rates for those of its competitors, claiming 3's were cheaper.

Although the price comparison was not inaccurate and the adverts were not misleading in this way, they used a distorted version of O2's bubbles, along with Vodafone's flying commas, T-Mobile's pink triangles and Orange's spinning orange square. O2 sued 3 saying that it had violated its trade mark.

The Advocate General has agreed with 3's defence that the use of a competitor's mark in comparative advertising is simply to identify its rival and this is not trade mark infringement because the point of the advert was to draw a distinction between its goods and those of its competitors.

The Advocate General commented that, as long as an advertiser does not take unfair advantage of the reputation of the trade mark, a comparative advertiser can use marks including brand imagery and variations of the competitor's trade marks, such as the distorted bubbles. This is likely to afford the advertiser more freedom in the way in which they use a competitor's marks.

If the court agrees, then it would follow that trade mark owners would not be able to sue for trade mark infringement even if the comparison was misleading. Trade mark owners would instead have to rely on the existing Control of Misleading Advertisement Regulations, which implement the Comparative Advertising Directive in the UK.

The OFT and other enforcement bodies would step in to help protect the trade marks and businesses may have to show an "unfair advantage" has been used to oppose the negative effects of comparative advertising.

Stop Press

In a shake-up to the way in which trade mark applications are processed, the UK Intellectual Property Office is introducing a new fast-track system which became available online from 7 April 2008.

For £300 - in addition to the current standard fee of £200 - applicants can request that their trade mark application be examined within ten business days of it being filed - beginning on the business day immediately following the filing date of the application and ending on the day the IPO sends the examination report to the applicant.

If the report is late in being sent, the fast track fee will be refunded. Standard applications currently take around one month from their filing date to be examined.

For further information on comparative advertising, how best to protect your trade marks, or any of your intellectual property, please contact Pina Mazzotti on 0116 257 6166 or email: pina.mazzotti@harveyingram.com



Harvey Ingram LLP
solicitors

Conflicts of interest – new guidance



Christopher Nuttall, a solicitor in our Corporate Pensions team looks at new guidance from The Pensions Regulator on conflicts of interest.

The Pensions Regulator's 2007 survey on occupational pension scheme

governance showed that trustees may not be identifying conflicts of interest where they exist. It revealed a lack of formal procedures in respect of conflicts of interest with only 29% of pension schemes maintaining a register of interests and 35% having a specific policy to manage conflicts of interest as they arise.

As a result of its findings, TPR has issued draft guidance on conflicts of interests. The guidance covers five key principles:

Understanding the importance of conflicts of interest

Trustees should have a clear understanding of the circumstances in which they may find themselves in a position of conflict of interest and should seek legal advice as necessary.

Conflicts of interest policy

Trustee boards should agree and document their policy (or procedures) for identifying, monitoring and managing its conflicts and keep that policy under review.

Identifying conflicts of interest

Trustees should consider any conflicts that may arise in the future and notify the trustee board as soon as practically possible. Trustee boards should maintain an up-to-date register of each trustee's interests.

Evaluation, management or avoidance of conflicts

Trustee boards should, following legal advice, implement procedures for evaluating and managing conflicts that have been identified in a way that ensures that decisions are not compromised by conflicted trustees. Minutes of meetings should clearly detail conflicts which may arise during a decision-making process and record the action taken by trustees to manage the conflict. Independent legal advice should be sought by trustees where a material conflict of interest is identified or when legal advice is required to help decide the best approach to be used to attempt to manage a conflict.

Managing adviser conflicts

Trustees should actively manage their relations with advisers to ensure that advisers are able to provide independent advice.

The guidance is clear that conflicts of interest need to be properly identified, monitored and managed. An individual may find themselves in a position which might constitute a conflict of interest because of their role or because of a specific situation. For example:

Role-related

- where a trustee is a significant shareholder in the sponsoring employer and where as a result of his holding is able to exercise a degree of influence over decision making at a company level.
- where a trustee is a director or senior employee of the sponsoring employer.
- where a trustee is a member or beneficiary of the scheme.
- where a trustee is also a union representative or employee representative.

Situation-specific

- funding decisions where the trustees' views on the strength of the employer covenant, assumptions to be chosen or affordability may differ from those of the sponsoring employer.
- funding decisions which are unduly influenced by a trustee who also holds a senior role within the employer.
- trustee involvement in corporate transactions involving the sponsoring employer where the interests of the scheme as a creditor may diverge from the benefits accruing to other parties to the transaction.
- employer-nominated trustees may become privy to sensitive information relating to the employer which could have an impact on the scheme.
- a decision by trustees to wind-up/close the scheme to future accrual which may conflict with the views of employee representatives or the interests of active members.

Trustees who are also directors of the employer will also need to consider, and seek legal advice on the requirements of the Companies Act 2006 and the obligation on company directors to avoid a situation in which they have, or can have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company where such a situation arises.

The failure to deal with a conflict of interest in a proper way could result in trustee actions being set aside and / or personal liability for the trustees. TPR says that it would expect trustees to seek legal advice in those cases where a conflict is identified to assess the best way to attempt to manage it.

For further information on identifying where decisions are or could be perceived to be coloured by conflicts and advice on how those conflicts could be managed, please contact Christopher Nuttall on 0116 257 6187 email: christopher.nuttall@harveyingram.com

Landlords take a share of the blame - environmental breach



Debra Mansfield, partner, Head of Regulatory and Trading and member of the Construction and Engineering team, specialising in environmental law. She highlights how landlords can be as equally accountable for the actions of their tenants.

As an owner of property subject to a lease, should you be concerned about the actions of your tenant? We believe that a recent decision by Halesowen magistrates may well have implications for you. In that case the Environment Agency ("EA") persuaded the magistrates that the owners of the property were equally accountable for the actions undertaken by their tenant concerning the illegal treating, keeping or disposal of waste.

The facts of the case were that a unit on a small industrial estate was occupied by a tenant - a skip hire company - which operated a waste transfer station although the site waste management licence was held by another company, which we believe was associated to the tenant. The site was subject to a number of inspections by the EA following a history of problems with excessive waste at the site and, having discovered a number of operational problems, the waste management licence was suspended in November 2006. In follow up action at the beginning of 2007, the EA wished to undertake interviews under caution of officers of both the skip-hire and the waste management

licence companies and the landlord company. We understand that the company holding the waste management licence declined to attend the interview and that company was dissolved a month later.

In February 2007 the directors of the skip-hire company which operated the site - the tenant - admitted a number of offences at Halesowen Magistrates' Court under section 33 of the Environmental Protection Act 1990, which prohibits the unauthorised or harmful deposit, treatment or disposal of waste. Having secured that conviction and firm in its belief that landlords are equally accountable for actions undertaken by tenants, the EA brought proceedings against the landlord company for knowingly permitting the treating, keeping or disposing of controlled waste, without or not in accordance with a waste management licence. This case was heard by Halesowen magistrates late in March of this year.

The court was told that although the directors of the landlord visited the site regularly to collect rents, they did nothing to stop the occupiers disregarding the terms of the waste management licence. It would be thought that if there had been issues over excessive waste these would have been evident on site inspection or, at least, some of the other tenants of the industrial estate would have voiced complaint to the landlord company. In any event, the landlord company was fined £30,000.00 and had to pay the EA's costs of £2,255.64 despite them pleading in mitigation that they felt their hands were tied because no written lease was in place and also despite them having picked up a clean-up bill of £18,000.00 once the tenant had left the site - a costly lesson to learn.

In bringing the prosecution successfully, it is clear that the EA has the power to investigate landlords in their own right as the blatant disregard for breaches of licence conditions is a serious offence, a view echoed by the magistrates in announcing sentence - the court made it clear that the landlord company should have acted more responsibly by insisting that a proper written lease was entered into, so that the company had more control over the activities of the occupiers of the site.

Could we see more prosecutions of this type in the future? We believe it is likely where there has been a serious environmental breach - but where will the battle lines be drawn? Our advice to landlords and managing agents of properties is to ensure that the occupation of property is fully and appropriately documented. When drafting the documentation full account needs to be taken of the potential risks of the proposed user of the property by the perspective tenant. In that regard we pride ourselves on the close liaison between our teams - members of our property group are able to draw on the expertise of their colleagues in other specialised areas such as environmental law and construction.

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

Business Lease Code – impact so far?



Caroline Sutcliffe, a solicitor in our Retail team comments on the impact of the Lease Code one year after its publication.

The Code for Leasing Business Premises in England & Wales 2007 was published in March 2007. The Code's objective is to assist landlords and tenants in maintaining efficient and fair relationships while optimising flexibility and choice. The Code represents the Government's third attempt at a voluntary document for assisting negotiations and replaces the 2002 Code, which was widely ignored.

What is the Business Lease Code?

The Code is made up of three parts. The first consists of 10 requirements to make a Lease 'code-compliant'. The second is an Occupiers' Guide designed to give tenants the information necessary to negotiate the best deal available to them, while the third part is a model Heads of Terms, which parties can use as a checklist.

The 10 requirements forming the basis of the Code are lease negotiations, rent deposits and guarantees, length of term break clauses and renewal rights, rent review, assignment and sub-letting, service charges, repairs, alterations and user, insurance and ongoing management.

The provisions of the Code

One of the more contentious issues in a lease is repair. This is an area which is also contentious in the Code. To follow the Code on repair is to provide for something rather different to what typically has been agreed in the market place. The Code proposes a significant onslaught against the concept of 'full repairing leases' by specifying that repairing liabilities should be appropriate to the length of term. With the length of the average lease currently being less than six years, it effectively means that normal long-term repairs should be shelved in most cases and short-term 'patching and making good' should be substituted.

Generally speaking the Code is fair and reasonable. None of the provisions are rocket-science and almost invariably, they simply state the position which a well advised tenant would expect.

What are the benefits to landlords and tenants?

The potential benefits are:

- Relationship - greater trust between parties and good start to what potentially could be a long-term business relationship.
- Speed – transactions should complete quickly and there is less room for conflict, therefore tenants trade more quickly and landlords stream of rental income will commence earlier.
- Badge - landlords gain pride at being seen to be fair and reasonable.
- Reduction of litigation – The Code seeks to achieve a fair and reasonable lease. An inflexible and onerous lease is most likely to lead to disputes in the courts.
- Costs – if the landlord drafts a landlord-biased lease as a starting point then the costs incurred in negotiating the lease to a more acceptable middle ground will be increased.

Is the Code being used?

Generally there appears to be a growing awareness of the Code, but not a significant shift to compliance with it yet. The Government has not officially said over what period it will monitor the Code. The Code is written in a plainer and more concise language than its predecessors making it more accessible and user-friendly. Most of the content will already be good practice for many landlords and the past few years have shown how practices that once seemed radical, become standard over time. But a barrier to compliance appears to be the fact that the Code is voluntary and for that reason is difficult to use as an argument in lease negotiations.

Conclusion

Even though the Code is not being used to a great extent in its own right, it is a useful starting point for landlords and tenants and practitioners as to what is 'fair and reasonable' in the market place, although as has always been the case, a lot depends on the bargaining power of the parties and covenant strength of the tenant. While there is a general interest in the Code and a desire on the part of both the landlord and the tenant to comply, the reality is that until landlords and their advisers use a precedent lease that is Code-compliant as a starting point, little progress is likely to be made towards the goal of non-compliance. The property industry, however, has been thrown down the gauntlet by the Government to adopt the Code willingly and it has been made clear that they will legislate if market practices do not alter. *Watch this space.*

For a copy of the Code visit www.leasingbusinesspremises.co.uk

For further information on the Code and other commercial landlord and tenant issues, please contact Caroline Sutcliffe on 0116 257 4445 or email: caroline.sutcliffe@harveyingram.com

Harvey Ingram gets a slice of action at the Domino's Pizza awards

For the second consecutive year, we have been a key sponsor at this year's Domino's Pizza annual awards ceremony, held in March at Celtic Manor Resort, near Cardiff in Wales.



The firm sponsored the High Standards Award. Head of Retail Richard Miller with solicitors Darren Smith and Caroline Sutcliffe, and head of Commerce and Technology Simon Bates, attended the two-day Domino's Pizza Franchisee Vendor Show. The event was rounded off with the annual Franchisee Awards Banquet, in gale force conditions, in a Marquee at the top of a big hill. This year a 'Rocky Horror Pizza Show' theme was adopted and there were more than 1,000 participants at the awards ceremony.

Domino's Pizza Group have been a client of the firm for nearly three years and the Retail team has been instructed on over 110 acquisitions with a vast geographic spread ranging from Alton in Hampshire, to Washington, near Newcastle Upon Tyne.

Managing knowledge for future success

We are a knowledge organisation, which is why we view our Knowledge Management (KM) initiative as one of the ways forward for constant improvement, ensuring we stay ahead in the dynamic and ever-changing world of the legal services sector. Our knowledge is what differentiates us from our competitors and has been the driver behind our rapid year-on-year growth. We intend to continue this success by optimising the way we use our knowledge in order to provide the best possible service to our clients. Through KM, we intend to create a best practice knowledge and information sharing model, using our knowledge and experience even more effectively across all areas of our practice, streamlining processes and perfecting the delivery of knowledge across the firm.

Our KM initiative is spearheaded by the Library and Information team and involves staff from all areas of our organisation - from dedicated knowledge fee-earners to administration. The initiative is not simply a question of our solicitors being able to locate the relevant document. The best practice ethos at the heart of our KM and overall strategy means we make sure it is an integral factor in every area of the firm. Client relationship management, quality control and risk management, to name but a few, are areas in which KM is now playing an important role.

To help press ahead with this we have recently made significant investment in the Hummingbird Enterprise DM application - the same software used to great effect by some of the largest law firms in the country. Hummingbird facilitates all of the KM practices undertaken by our staff, as well as performing the vital role as a Know-How depository, a one-stop shop guaranteeing that our solicitors and support staff are able to access our best knowledge resources with ease.

A careful deployment of KM applications, coupled with a dedicated and systematic approach on the part of our solicitors and support staff, ensures that our processes are designed to deliver the best and most relevant information to the right member of staff, at the right time. This, in turn, allows us to deliver the best service to our clients.

Asset protection – sometimes where there's a will there's not a way



Katherine Neal, an associate in our Trusts and Probate team, highlights the importance of having a valid and appropriate will.

We are all familiar with the refrain that we must have a will and we will have all

heard the horror stories about what can happen if you don't - all your assets passing to the Duchy of Cornwall in the worst case scenario!

What is less common, but an increasing problem, is having a will that is not valid or is in fact inappropriate for your circumstances. This can be equally as problematic and even more costly. You may remember the high-profile Sherrington case a couple of years ago when a solicitor, of all people, signed a will drafted by his step-daughter that dis-inherited his children from his first marriage and passed everything to his second wife. That case went all the way to the Court of Appeal and cost the estate and the family huge sums of money in legal fees, not to mention the emotional heartache of having to pursue the claim in the first place.

As you would expect, the law relating to the validity of wills is complex and typically much of it is enshrined in case law that dates back to the 19th century. To be valid, all wills must be completed in accordance with certain rules. If they fail on any one of the rules they will be invalid and your estate left intestate, leaving us with a potential Duchy of Cornwall problem.

For example, wills must be witnessed by two independent people who must witness in each others presence and in the presence of the person making the will. It is easy to get these formalities wrong and you only know there is a problem when the person has died and you come to try to administer their estate.

We are also seeing an increasing number of cases where people have made wills but they are so old that they are completely out of date with their current circumstances. This means that disappointed potential beneficiaries are forced in to taking proceedings against the estate to try and put right what they may see as an injustice. This is particularly pertinent where the deceased has been married more than once and has children from one or both relationships. In previous years we would have warned clients against such claims, given the costs involved, but with increasing house prices and general increased wealth it is now more worthwhile to pursue these actions. In addition, where second families are involved it is often the principle that is more important, than any actual wealth.

Finally, in recent years we have seen more and more people coming into the will writing market, whether this is WH Smith providing kits for DIY wills or will writing companies. While increased competition is good for customers, there are invariably increased risks. Not least, one of these risks for consumers is the lack of recourse and insurance in the event that things go wrong. Your solicitor will always be insured and regulated to make good any loss to an estate where a will has been incorrectly or negligently drafted.

Poorly drafted wills have become such a problem in recent years that The Law Society is just about to launch a campaign re-enforcing why you should use a solicitor and the risks associated with doing it yourself.

Common mistakes include incorrect execution and problems with the language used in the Will. By way of example, the word "money" has no real legal meaning and if you were to say: "I leave all my money to so and so," then this is likely to be invalid and the gift will fail.

In response to the increasing demand for specialists in this area Harvey Ingram has recently set up a Midlands wide team to deal with problems arising from wills and the administration of estates.

The team is a cross group venture taking experts from our Dispute Resolution and Trusts and Probate teams.

The new team is headed by Barry Jervis and includes Katherine Neal, who is currently the only person in Leicestershire to have completed the Association of Contentious Trust and Probate Specialists (ACTAPS) qualification, Clare Sillery from Trusts and Probate and Andrew Wilkinson from Dispute Resolution.

For further information, please contact Katherine Neal on 0116 257 4449 or email: katherine.neal@harveyingram.com

Solicitor of the year

Associate Katherine Neal was named Solicitor of the Year at Leicestershire Law Society's annual dinner and presentation.

Judges scrutinise candidates' performance and look for leadership, contribution to the firm, commitment to clients and clear evidence of innovation and creativity.

Katherine qualified as a solicitor in 2000. She joined our Trusts and Probate team two years ago after a lengthy stint working in London.

Pre-nuptial agreements – no bar to a happy marriage



Sonia Bachu, an associate in our Family Law team, outlines the value of pre-nuptial agreements.

Paul McCartney and Heather Mills' long-running and high-profile divorce has pushed pre-nuptial agreements back under the spotlight.

Pre-nuptial agreements are frequently linked with celebrities - but they are not just for the rich and famous. Research shows that four out of ten divorcees believe a pre-nuptial agreement could have paved the way for a fairer, more amicable, less costly and faster settlement.

Pre-nuptial agreements are not currently legally enforceable in England and Wales. However, in the event of a marriage or civil partnership breakdown, the courts will nearly always consider them as one of the relevant factors when dealing with a settlement, provided certain guidelines have been followed.

Both parties must prove they had legal advice, made full financial disclosure and were under no duress when entering into the agreement. Pre-nuptial agreements should also be signed at least 21 days before the marriage takes place, to avoid suggestions a partner was pressured into an agreement on the eve of their wedding.

It may sound like a lot of effort but there is a groundswell of support among family lawyers for pre-nuptial agreements to become legally enforceable - except where there is a risk of 'significant injustice.'



Despite pre-nuptial agreements' growing popularity, they are underpinned by very little case law as it is felt only a small percentage of couples are going into them, amid fears that they may not be upheld. In the few cases that have reached the courts, judges are willing to enforce at least some of the terms – as long as they are deemed fair.

Although the Government considered making pre-nuptial agreements enforceable ten years ago, to help cut the cost of financial proceedings, the proposal was never pursued.

There is growing opinion that pre-nuptial agreements could become enforceable within the next five years, with more and more judges taking them into account and willing to give weight to them.

The recent case of so-called serial divorcee Susan Crossley has highlighted the issue. She was believed to be worth £18million after three previous

separations from wealthy men, which prompted the Judge to scrutinise her pre-nuptial agreement. Mrs Crossley had challenged its contents - despite a marriage of a little over a year - amid claims she was not aware of the extent of her husband's assets in offshore accounts. Mrs Crossley finally opted to drop her case on the eve of a High Court hearing. It was later regarded as a benchmark after being singled out by Lord Justice Thorpe, who described it as a "paradigm case" and of "magnetic importance" for pre-nuptial agreements.

The case is now believed to be the nearest we are likely to get to a definitive ruling while the law remains as it is.

For further information about pre-nuptial agreements, or other family matters, please contact Sonia Bachu on 0116 257 6148 or email: sonia.bachu@harveyingram.com

Possession Claims: Criminal Convictions and the Court's discretion



Beth Lyon, an associate in our Social Housing team, comments on a recent Court of Appeal decision and the practical implications it may have for a landlord when pursuing a claim for possession.

The case is *Sandwell Council v Hensley* [2007] EWCA Civ 1425, which was decided in 2007. The council sought possession of a property let on a secure tenancy. Although the tenant had some rent arrears, the main issue was that the tenant had been convicted of various criminal offences relating to the cultivation of cannabis. The most recent conviction resulting in a custodial sentence was in 2005.

The latest conviction prompted the council to claim for possession and the council relied heavily on the various offences of which the tenant had been convicted. The council also filed various witness statements in support of its claim that the tenant had been using the property to cultivate cannabis and that he was causing a nuisance to his neighbours. In his defence, the tenant claimed that he was growing the cannabis for his own personal use and that he had not been causing any kind of nuisance to his neighbours. The District Judge found in the council's favour and made a possession order, but suspended enforcement. The council appealed against the suspension.

The Court of Appeal allowed the council's appeal on the basis that in the event that the tenant has been convicted of a serious offence, a court should only suspend the order if there were cogent evidence demonstrating that the previous conduct was likely to cease. In this

case the tenant had admitted that growing cannabis was a hobby and had shown no sign of discontinuing the pastime if he stayed in the property. Therefore an outright possession order should be made.

Landlords may wish to rely upon this case to assist an application for possession after a tenant has been convicted of a criminal offence which affects the tenancy in some way. However it must be noted that the decision in the case does not change the basic principles of reasonableness that must be applied when a court is considering making or suspending an order for possession.

For further information on possession claims or any aspect of social housing law, please contact Beth Lyon on 0116 257 6121 or email: beth.lyon@harveyingram.com

Home Information Packs and the sale of new houses



Rajdeep Sumal, a solicitor in our Social Housing team, comments on the use of Home Information Packs on new developments.

Since 14 December 2007, every individual home put on the market, no matter what size, must have

a Home Information Pack (HIP). It brings together valuable information at the start of the process - such as a sale statement, searches and evidence of title - which is intended to save a purchaser money, time and stress.

The HIP must also include an Energy Performance Certificate that contains advice on how to cut CO2 emissions and fuel bills.

A newly built home will also require a HIP, however there are differences in the way the scheme operates for these properties, particularly in the way that the Energy Performance information is presented. Prior to 6 April 2008, the sale of a new home built to the most recent Building Regulations (Regulation 17C, Part L, 2006) was exempt from the need to have a HIP, but from that date an Energy Performance Certificate is required on the construction of all new dwellings.

New homes marketed "off-plan" before they are complete will not have a full Energy Performance Certificate as this can only be produced following a physical inspection of a completed building. In these cases, the HIP will contain a Predicted Energy Assessment.

Although each new dwelling will require its own individual HIP, much of the information will be standard to the development, with consequential savings in the preparation of HIPs. For example, the searches for the property and title information may cover a wider area, if the property has not yet been allocated an address and individual titles have not yet been created.

As with all HIPs, developers will need to plan ahead and assemble the relevant information ahead of marketing.

For further information on Home Information Packs or any aspect of social housing law, please contact Rajdeep Sumal on 0116 257 6122 or email: rajdeep.sumal@harveyingram.com

Inheritance Tax and the New Transferable Nil-Rate Band



Sarah Fitzhugh, a solicitor in our Trusts & Probate team, provides an update on Inheritance tax and Nil-Rate Bands.

Alistair Darling unveiled amendments to the inheritance tax regime in his pre-Budget report, which came into force in October last year. The amendments mean that where the inheritance tax-free allowance of one of the partners, to a marriage or civil partnership, has not been fully used on death, then the unused portion - as a percentage - can be used to increase the allowance on the death of the survivor.



The Basics

Everyone has a tax free allowance (the nil-rate band) that can be used upon death of £312,000 for the tax year 2008/2009. As transfers between partners to a marriage or civil partnership are usually inheritance tax exempt, leaving the whole estate to the surviving partner, which in the past has meant the loss of a valuable allowance.

Utilising the Transferable Nil-Rate Band

Partners are now able to leave everything to each other upon first death and upon second death, the personal allowances, plus a 100% uplift, will be available for use against the survivor's assets. The survivor merely needs to retain accurate records on first death, to enable a claim to be made on their subsequent death. Provided the survivor died after 9 October 2007, the claim can be made, regardless of when the first death occurred.

Nil-Rate Band Discretionary Trusts

Most tax planning arrangements entered into before the announcement of the transferable nil-rate band, centred on the use of a nil-rate band discretionary trust. The trust would effectively ring-fence the tax free allowance on first death, while allowing the survivor access to those funds as a beneficiary of the trust. On the death of the survivor, the trust was often wound up and the fund divided between the remaining beneficiaries - usually children and grandchildren - although the trust could continue for up to 80 years.

The Way Forward

It is said that 'nothing in life is certain except death and taxes' and clients should continue to take professional advice regarding their particular circumstances. While the transferable nil-rate band is to be welcomed in many cases, many others may continue to be better served by the incorporation of a nil-rate band discretionary trust within their wills. The flexibility of the nil-rate band discretionary trust can protect assets from third-party claims, such as nursing home fees, can ring-fence assets for first families and can prove effective in securing business property and agricultural property tax relief. With the frequency with which tax law changes, clients may also feel that they would prefer to 'wait and see'.

By incorporating a nil-rate band discretionary trust within their wills, clients are able to make the decision at the time of the first death and can consider the circumstances at that stage.

If the nil-rate band discretionary trust route no longer seems appropriate this can be wound up within two years from death in favour of the surviving partner, and the transferable allowance will be available for use on their subsequent death.

For more information, please contact Sarah Fitzhugh on 0116 257 6135 or email: sarah.fitzhugh@harveyingram.com

Homophobic banter is not always discriminatory



Nick Bone, an associate in our Employment Law team, comments on a recent tribunal case.

A heterosexual worker tormented for years by banter and innuendo from colleagues implying he was

homosexual, because he had attended a public school and lived in Brighton, has failed to win his harassment case.

Stephen English took on Thomas Sanderson Blinds Ltd at Brighton Employment Tribunal, where it was claimed he had been subjected to years of sexual innuendo from colleagues, who suggested he was gay. The tribunal heard the source of the torment came from a manager after learning that Mr English had gone to a public school and lived in Brighton.

Mr English brought a harassment claim against his employer under the Sexual Orientation Regulations 2003. However, after hearing the facts, the tribunal reluctantly dismissed his case saying that he was not covered by current regulations - despite accepting that the banter had an impact on his dignity and had created a hostile and intimidating atmosphere at work.

Mr English's appeal was again reluctantly dismissed, the appeal concluding that the Regulations did not protect him, since the banter was not based on a perception or even incorrect assumption that he was homosexual.

Employment law specialist Nick Bone, has been following the case. He said: "This is an interesting situation that has clearly posed a headache for the Employment Appeal Tribunal. The great irony here is that it was accepted by all parties that the claimant was not gay - despite the relentless torment - but if he had been, then there is absolutely no doubt that the tribunal would have found in his favour."

"In my view, the tribunal felt its hands were tied as it believed that the decision was not in the spirit of the legislation, which should be able to offer protection against this sort of banter - regardless of the claimant's sexual orientation."

This case is still not yet resolved as Mr English's lawyers have indicated that they will be taking the case to the Court of Appeal. It therefore seems likely that the issues in this case will be looked at again in some detail. A date for the Court of Appeal hearing has not yet been set.

The Court of Appeal will have to consider the implementation of EC law by the UK Government. The EC Equal Treatment Framework Directive 2000 provides that harassment is unwanted conduct "related to" sexual orientation, where as the Sexual Orientation Regulations define harassment as unwanted conduct "on the grounds of" sexual orientation.

As the homophobic banter in this case was not based on the perception of the employee or on an incorrect assumption that Mr English was homosexual, the unwanted conduct was not "on the grounds of" his sexual orientation.



If the Court of Appeal finds that UK law fails to properly implement the EC Directive, this case could have far reaching consequences for discrimination law, not only sexual orientation, but also on age, disability and religion or belief. A change to the definition of harassment to bring it in line with the EC Directive could mean that employees who are teased in relation to an area of discrimination might be entitled to bring claims.

Even if the legislation is not changed, the case should be read with caution. Employers should still take any banter regarding sexuality seriously and consider taking disciplinary action against perpetrators in order to avoid claims of constructive unfair dismissal and claims under the Protection From Harassment Act, as well as psychological personal injury claims.

For further information on employment matters, please contact Nick Bone on 0121 214 1218 or email: nick.bone@harveyingram.com

Keep a close eye on the clauses



Emma Anderson, an associate in our Dispute Resolution team, comments on the importance of contractual clauses.

The courts have recently emphasised the importance of properly drafted contractual dispute resolution clauses being drawn up in contract documents and then being adhered to by parties when the contract begins to unwind.

Contractual dispute resolution clauses are contained in many commercial contracts to provide a procedure and structure for settling disputes in the event that a contract begins to break down, or there is disagreement over its terms.

The recent decision of the courts in the case of Douglas Harper v Interchange Group Limited highlights the importance of understanding these clauses and the court's willingness to penalise a party who does not comply with the procedures contained within them.

The dispute between Mr Harper and Interchange Group Limited revolved around an Asset Sale Agreement under whose terms Mr Harper was entitled to receive payments by way of commission on specified transactions.

In accordance with a clause of the agreement, monthly commission statements were sent to Mr Harper setting out the basis on which the payments were to be made. The same clause stated that Mr Harper had 28 days to agree the statement, or to notify Interchange of the basis on which he objected. In the event of any objection, the parties then had a further 28 days to resolve the issue, failing which it would be referred for expert determination.

On several occasions Mr Harper made general comments about the statements and raised objections. Critically, however, Mr Harper failed to follow the dispute resolution mechanism set out in the agreement. Notably, the objections he raised lacked sufficient particularity and were not related to a specific commission statement.

In subsequently issuing proceedings to claim a higher rate of commission on a number of transactions, Mr Harper argued that the contractual dispute resolution clause was not expressed to exclude any other right of action if the procedure under it was not followed. He also argued that the procedure set out in the relevant clause related solely to mathematical calculation disputes, and did not apply to issues of construction of the contract.

The court rejected Mr Harper's arguments and made it clear that the steps set out the dispute resolution clause constituted "a comprehensive agreement between the parties of a contractual mechanism for resolving disputes about payments to be made" by Interchange to Mr Harper. The court also rejected the Mr Harper's contention that the mechanism was only intended to apply to mathematical calculations.

Having failed to invoke the contractual dispute mechanism, the court ruled that Mr Harper was not entitled to bring an action for breach of contract.

What is clear from this case is that there are benefits from including a well drafted dispute resolution clause within a contractual document. It can provide certainty by ensuring that all parties fully understand what will happen in the event of a dispute, or a breach of the agreement. It also enables the settlement process to begin at an early stage so potentially saving time and money.

The case also highlights the importance of understanding the clause, adhering to it and the potential consequences of not doing so. In practical terms, when reviewing an agreement or considering a dispute resolution clause, it is important to consider, for example, whether or not it is in fact workable, whether it provides you with suitable recourse in the event of a dispute, or whether it is too onerous. Equally, if things go wrong you must ensure that you follow the procedures set out in the clause. Taking account of issues such as these should hopefully mean that you are not caught out in the same way as Mr Harper was.

For further information, please contact Emma Anderson on 0116 257 6141 or email: emma.anderson@harveyingram.com

Corporate Manslaughter and Corporate Homicide – an update



Mark Jones, an associate in our Construction and Engineering team, outlines the impact of this new legislation on the building sector.

At the beginning of April 2008, the law on corporate manslaughter changed when the Corporate Manslaughter and Corporate Homicide Act 2007 came into force. The Act creates a new offence in which an organisation will be guilty of, if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

The Act is intended to remedy a defect in the previous law which meant that organisations could only be convicted of manslaughter if a “directing mind” of the company (e.g. a director) was also personally liable. In practice, this was hard to prove in large organisations. However, from April, it is believed that the new law will make it easier to convict companies, both large and small.

The new offence is intended to sit alongside the existing duties owed by organisations under the law of negligence, such as duties owed to employees, duties owed as the occupier of premises, and duties owed as a result of carrying out construction operations – for example, under the CDM Regulations. An offence will only be committed if there is a “gross” breach of such a duty, that is a serious breach falling far below the standard normally expected.

The prosecution will also need to show that a substantial element in the breach is the way in which the organisation’s activities are managed or organised by its senior management. Senior management are those whose jobs include making significant decisions about the organisation, whether it is at head office, regional, divisional, or operational level.

This is new. The prosecution will not be concerned with failures on the part of individuals, but instead with how an activity was being organised and managed. Consideration will be given to the systems of work in use, the training given to employees, the adequacy of their equipment, the quality of supervision and management, as well as more general issues such as the organisation’s strategic approach to health & safety, risk assessment and auditing.

On conviction an organisation can expect to be fined, heavily. Also, the court can make a publicity order requiring the convicted organisation to publicise the conviction and details of the offence. So, what should companies do to ensure that they do not fall foul of the Act? All employers must already comply with health & safety legislation, and the Act does not affect this. However, what it does do is provide an opportunity for organisations to satisfy themselves that their systems for managing health and safety are adequate at all levels of the organisation, because if they are not and a fatality occurs they are facing the possibility of a substantial fine which could jeopardise the viability of the business.

For further information, please contact Mark Jones on 0116 257 6133 or email: mark.jones@harveyingram.com

Events

Event	LYP Table Football
Date	22nd May 2008
Time	6pm – 8pm
Venue	Time Bar, London Road, Leicester
Event	Heads Up! Seminar
Date	4th June 2008
Time	8am – 9.45am
Venue	Edmund House Offices, Birmingham
Event	LYP Breakfast Event
Date	10th July 2008
Time	8am – 9.30am
Venue	TBC
Event	Property Forum Event
Date	2nd October 2008
Time	6pm – 8.30pm
Venue	Walkers Stadium, Leicester

For details of all our forthcoming events visit:

www.harveyingram.com/events

or contact Daljit Flora, our marketing events organiser on 0116 254 5454 or email: daljit.flora@harveyingram.com

News round-up

Top-performing legal secretary lands regional award

Legal secretary Debbie Shipley, has been presented with a regional award after clinching top marks in her latest round of exams. She came first among hundreds in the Institute of Legal Executives' Level 3 practice exam following her top-performing effort in a pair of gruelling, two-hour examinations.

Debbie specialises in conveyancing and has worked in our residential property team for nearly five years. She said: "I don't think anyone was as surprised as me when I heard about this. But I am delighted to be presented with this award." Managing partner Simon Astill said: "This a tribute to the professionalism and ability of Debbie - and the rest of the team around her - which is always on hand for guidance and support. It's always good to see our talent recognised in this way."

John Wells, chairman of the Leicestershire branch of the Institute of Legal Executives, presented £50 of book vouchers to Debbie and paid tribute to her effort. He said: "This award is a credit to Debbie and her effort. It doesn't get presented very often. The last time was in 1999 and again went to the person who got the highest exam results from the Leicestershire area."

Supporting Leicestershire Cares

Leicestershire Cares' annual celebration event at the Tigers' ground prompted a good turnout. Leicestershire Cares is a county-wide volunteering initiative that has helped thousands of employees support community projects, youth groups and schools throughout Leicester and Leicestershire. Our staff have already been involved in a host of projects, such as the schools' Right to Read scheme and helping advise young job seekers on interview techniques.

Firm named in the top 100 Best Professional Firms to Work For in 2008

We were named in the Managing Partners' Forum's inaugural league table of the top 100 Best Professional Firms to Work For in 2008 - and among the UK's top 25 law firms.

The table is linked to the Sunday Times' list of the Top 100 Best Companies To Work For and compares everything from accountancy firms, to architects, management consultants, engineers and surveyors. A rigorous examination of more than 150 UK companies was carried out by the MPF, with eight criteria including leadership, management style, personal growth and well-being closely scrutinised.

Despite the firm being up against big names like KPMG, Ernst & Young, Deloitte and BDO Stoy Hayward, we were placed at 73 in the overall table of the UK's top 100 best professional firms and at 21 as Britain's best law firm. HR manager Anthony Thorn said: "This is an impressive result given some of the other far bigger employers we were up against. The findings are largely based on staff feedback and highlight the effort and ethos of the entire firm. It will prove to be a great tool in helping us recruit and retain more talent in the coming months."

The Managing Partners' Forum was formed in 1995 and is the premier association for those involved in the management of professional firms.



Pictured from left to right is John Wells, chairman of the Leicestershire branch of the Institute of Legal Executives, with head of Private Client Group and Family Law Jane Cowley, managing partner Simon Astill, Debbie Shipley, partner Henry Doyle, Leicestershire branch of the Institute of Legal Executives' committee member Mary French and the branch vice-chairman Phillip Partridge.

Staff join marathon Cancer Research UK fund-raiser



▲ Katherine Marshall, Paula Fowle, Sian Bell, Tracey Barrett, Louise Whitehead, Julie Scothern and Wayne Vickers

A 17-strong team of determined staff helped raise thousands of pounds by joining a marathon, non-stop 24-hour, sponsored relay around Leicester Tigers' Welford Road ground on 3rd May 2008.

The team was named the Harvey Ingram-blers and among thousands of others across Britain taking part in Cancer Research UK's national Relay For Life event. The long-distance Welford Road relay got underway at midday on May 3. Our team estimated it clocked up around 700 miles within 24 hours, by completing non-stop circuits of the pitch, before the gruelling fund-raiser finally came to an end at midday on May 4.

The venue was open to all and the event organisers created a lively, carnival atmosphere with fairground rides and live music at the Tigers' ground.

The Harvey Ingram-blers adopted a Hawaiian theme on the big day donning grass skirts and colourful shirts to complete the challenge. The team was led by Paula Fowle, a trusts' administrator, Cancer Research fund-raiser and one of the charity's Relay For Life committee member.

She said: "With one in three in the UK developing cancer at some stage in their lives, everyone will know someone who has been affected by this terrible disease. The Relay For Life was a superb challenge and a fantastic opportunity for us to help raise money for Cancer Research's pioneering and lifesaving work.

"I am delighted with support we have had from the staff, clients and friends."

The team's fund-raising was helped with a very sizeable donation from bank Coutts plus a string of internal staff events including jeans days, cakes and samosa sales and raffles. The grand total is still being collected but is around £4,000.



▲ Rick Smyth is second from left, pictured with fellow Demons of Tune band members.

The Demons of Tune's £19,000 monster fund-raiser

Birmingham corporate finance charity band the Demons of Tune, which features bass player and partner Rick Smyth, raised around £19,000 for charity thanks to a storming, sell-out session at the Jam House in Birmingham. The band is made up exclusively from Birmingham's professional community. The fund-raiser sold all 600 tickets six weeks in advance - simply through word of mouth.

Money raised goes to West Midlands' charity Ladies Fighting Breast Cancer. The figure will be added to the £22,000 for other worthy causes from the band's last two Jam House extravaganzas.

The Demons play everything from Dexy's to disco, and from Motown to Meatloaf.

Rick Smyth said: "It's a pretty straightforward formula and our success is due to the fact that we love to play floor-fillers that people love to hear - and definitely don't take ourselves too seriously. It also helps that we work in the same close-knit business community as the audience. We are thrilled by the tremendous support we received again this year."

Proceeds come from both ticket sales and corporate sponsorships from us and a host of other Birmingham-based professional firms.

LYP blows away the winter blues

lyp

More than 70 people packed into the austere surroundings of Leicester's City Rooms in February, to blow away the winter blues with the help of a storming performance by Rob Charles and his Blues

Band. It marked the second of this year's Leicester Young Professionals' networking events and included a slap-up buffet and string of competitions.

Event Co-ordinator Gayle Folkard, a trainee solicitor, said: "There was a superb atmosphere with a fantastic turnout - just what was needed given the time of year!"

Each participant was assigned one half of a famous musical duo and tasked with finding the other half of their musical partnership. The winning duo was Paul McCartney and John Lennon - LYP members Richard Kirby, of Vantis and Haseet Anil, of PKF (UK) LLP. Both won a pair of tickets to see Jake and Elwood's The Best Blues Brothers Show In the World...Ever! at De Montfort Hall. Rob Charles and his Blues Band also provided music for a Name That Tune quiz, which was won by Louise Whitehead, Frances Bunston and Lauren Greenhalgh, of Harvey Ingram, and Ryan Holden and Martin Crutchley, of MDA Consulting.

LYP is now in its sixth year and membership is continuing to grow. New member organisations at the Winter Blues Night included Mattioli Woods, Brett and Randall Insurance Brokers, Thomas May & Co, RKH and Innes England. They were joined by regulars from Cooper Parry, PWC and PKF (UK) LLP.

More events are in the pipeline. The next is a table football tournament at Time Bar, London Road, Leicester, on 22nd May 2008.



▲ Pictured from left to right are Andrew Wilkinson, Gayle Folkard and Clare Sillery.

**For more details please contact
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LYP committee continues to build on its success

The LYP is going from strength to strength and is now in its sixth year thanks to a string of extremely successful events this year.

The role of membership secretary has recently been filled by Lauren Greenhalgh, while Steve Conway has been recruited to the post of website officer, to help progress the LYP's presence on the internet.

The lawyers -v- the pension consultants

Harvey Ingram FC took on Mattioli Woods for a friendly 11-a-side football match at Friar Lane's Aylestone ground, off Whittier Road, Leicester.

The game was arranged as a direct result of January's successful LYP Winter Blues' night, when we first informally discussed the idea behind a company football match with new members Mattioli Woods.

HIFC got the first half off to a good start by going 2-0 up by half time, but Mattioli Woods came out stronger after the break and scored following a penalty award, before the game was sealed by the lawyers with a third, decisive goal towards the end of the match.





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