

# NEWSBRIEF

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## ON YOUR MARKS

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## Prospective President drops by

Wright Hassall welcomed a leading figure in the UK legal profession to their offices recently.

Bob Heslett, who becomes the President of the Law Society next year, dropped by at Olympus House where he chatted with a number of staff.

"Wright Hassall is known to be a very good firm and it is an exemplar of a practice of its size, working across a wide range of disciplines," he said.

"While there I met a broad range of employees, from the young trainees just starting out through to more experienced members of staff and it was certainly a useful and informative visit."



(L-R) Wright Hassall managing partner Peter Beddoes, trainee solicitor Claire Cram and partner Andrew Potts with future Law Society President Bob Heslett.

## New regulations for recovering rent arrears

Major changes to the system formerly known as distraint, that archaic system of removing a defaulting tenant's property for sale as a means to recovering rent arrears, are imminent.

Although there is no definite date by which the new Commercial Rent Arrears Recovery system will come into effect, this note is intended to prepare you for the inevitable.

Not only has the phraseology been updated but also the system of seizing goods has been completely overhauled. The following is an indication of the likely new provisions.

- Bailiffs are now known as Enforcement Agents and Distress is now known as Taking Control of Goods. Only Enforcement Agents can take control of goods.

- Taking control of goods cannot occur at a property that is let or occupied as a dwelling, unless that use is in breach of the lease or any superior lease.

- Taking control of goods can only occur where the lease, either legal or equitable, is recorded in writing.

- Taking control of goods can only occur in relation to actual rent, as opposed to other sums reserved as rent and, in the case of Agricultural Holdings, only for rent that is due in the 12 months preceding the service of the Notice.

- Before control can be taken of goods, a Landlord must serve a Notice on his defaulting tenant detailing the procedural and financial consequences of failing to remedy the situation. The Notice will be valid for three months and it is suggested that the period of Notice will be 14

days, but formal regulations remain incomplete.

- The notice period can be shortened if there are reasonable grounds to believe that the tenant may relocate or dispose of the goods. To secure such an order, it is likely that proof will be required that the tenant has so acted in the past.

- Regulations will also set a minimum level of rent arrears that may be recovered under the scheme. This limit is likely to be set around the £200 mark.



Jane Senior prepares landlords for the imminent changes to the system known as distraint.

These reforms are arguably long overdue, especially given the current Human Rights climate, although they erode a valuable 'self-help' remedy available to the Landlord. We will be able to comment more authoritatively once the regulations have been published.

If you have any queries regarding the new or current procedures, please contact either Jane Senior on 01926 880712 or Ben Clements on 01926 884602. Alternatively they can be emailed at the addresses given below.

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[ben.clements@wrighthassall.co.uk](mailto:ben.clements@wrighthassall.co.uk)

## Golf course incidents highlight H&S issues

Two recent cases of a breach of Health and Safety, where Wright Hassall acted for a prosecuting District Council, have highlighted where responsibility for health and safety matters must reside.

Both cases involved golf courses. In the first a ball collector on a driving range was hit in the Adam's apple by a drive whilst collecting balls in an unguarded tractor. The tractor had no grille or windscreen because the latter had been broken by a ball in a previous incident and had not been replaced. The employee suffered breathing difficulties and had to go to hospital. The defence thought the matter suitable for caution only. The bench disagreed, however, on the following basis:

- there was no revised risk assessment following the broken windscreen;
- the grille and windscreen were not replaced;
- there was no instruction not to use the unguarded tractor;
- there was no instruction not to collect balls whilst the range was in use.

The company was asked to pay just under £6000 in fine and costs.

In the second case, at a different course, the greenkeeper badly injured a finger while trying to repair a broken scarifier which restarted unexpectedly. The owner of the course genuinely believed that he had no Health and Safety responsibilities at all because he had four staff. There was no health and safety policy, no risk assessments written or unwritten, no training on the use of the scarifier or procedure to be followed if repair were required. The owner was ordered to pay £10,000 in fines and costs.

Duty holders who do not implement basic health and safety systems will struggle to come up with a credible defence in court that could result in hefty fines being imposed. If you need any assistance with Health and Safety Enforcement please contact David Elliott, Ian Besant or Suki Harrar.

# Can't pay, won't pay

Although there are circumstances when you will be unable to recover a debt (for example if your customer disappears without trace or simply does not have the means to pay) there are ways to strengthen your position as creditor.

The best time to start is at the beginning of a new trading relationship. Find out everything you can about your customer – this information will be invaluable if they find themselves in financial difficulty.

## 1. Who are you trading with?

The identity of your customer may not be as obvious as you think. Whilst dealing with an individual, are they trading on their own account? Are they a sole trader? Are they in partnership with others? Or are they a director or employee of a company? Understanding this will dictate who is responsible for payment of debts. If you are dealing (or suspect that you may be dealing) with a limited



**Elaine Crowder explains how good housekeeping will improve the chance substantially of recovering a debt.**

company then check the central register at Companies House as each company has a unique registration number.

## 2. Contact information

Obtain all available contact details including:

- the full postal address of the business as well as home addresses for sole traders and those in partnership or the registered office address of a limited company
- telephone and fax numbers relevant to each address
- email or web addresses

Armed with the right contact information you have a better chance to discover early on if your customer is experiencing financial difficulty. Potential losses can

be minimised by placing a stop on business and making an arrangement for payment of accrued debt.

## 3. What is their financial position? Do they have the means to pay you?

There is an inherent risk of bad debt where goods and/or services are provided without prior payment so it is easier to pursue a bad debt if you know who is responsible for payment. In the case of a partnership, not only is each partner liable but also money or assets can be recovered from the partnership itself. This is not the same with a limited company as money and assets can only be recovered from the company and not the individual directors unless they have given guarantees.

The more information you have about their financial situation, the easier it will be to recover debt. Obtain their bank details and take copies of any cheques. If they are employed, get the name and address of their employer. Above all, keep this information up to date – a lot of useful information can be divulged to you by your customers unwittingly in the course of their dealings with you. Use this to your advantage.

There are a number of ways you can recover your money if things do go wrong. If a debt of £750 or more has accrued and is not in dispute, you can threaten bankruptcy proceedings (against an individual) or winding up proceedings (against a company). Alternatively you can threaten to take them to Court. If you choose the latter, by taking proceedings and securing a Judgment against your customer, the law allows you to take the following steps to recover the debt: seizure and sale of goods; freezing money held in a bank account or shares; deductions from earnings; or a charge against property.

Finally, make sure you have a procedure for chasing for payment and adhere to it. An ad hoc system can and will be used by your customers to their own advantage. As your customers become familiar with your procedures they should pay you within a timescale that you find acceptable.

A longer version of this article can be found on Wright Hassall's website: [www.wrighthassall.co.uk](http://www.wrighthassall.co.uk).

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## Rate update

The following increase in rates and limits on certain statutory payments and tribunal awards came into effect on February 1.

The limit on a week's pay (gross) for certain purposes has risen from £310 to £330 (section 227 Employment Rights Act 1996).

The basic award for unfair dismissal has risen from £9,300 to £9,900 (section 119 Employment Rights Act 1996).

The amount of a statutory redundancy payment has increased by the same amount (section 162 Employment Rights Act 1996).

The unfair dismissal compensatory award goes up from £60,600 to £63,000, save in certain circumstances, (section 124 Employment Rights Act 1996).

The guarantee payment limit for a day's pay during short-time or temporary lay-off is now £20.40 per day, subject to a maximum of five days or £102 in any three months, (section 31 Employment Rights Act 1996).

For further details please contact Ella Bond on 01926 884673.

## Tech talks

Wright Hassall's Technology Sector Group is planning to hold a series of regular technology lunches and seminars.

The sessions will provide an opportunity for those in the technology sector to receive up-to-date information on pertinent legal issues.

If you would like to receive details about these events please send us your email address. We also produce a regular e-bulletin called Reporter, which provides helpful information applicable to the technology industry. If you would like to be added to the list of recipients then please email Lindsay Ellis.

[lindsay.ellis@wrighthassall.co.uk](mailto:lindsay.ellis@wrighthassall.co.uk)

## Run on course for bumper entry

Organisers of the Wright Hassall Regency Run are hoping for another record-breaking year.

The 10km race through Leamington Spa had a record number of entries last year, with the winner setting the fastest time ever. The event also raised £22,000 for local charities – the most since it began.

The Leamington Round Table, which organises the event on Sunday April 6, is hoping to attract the biggest ever entry and has made significant changes to improve the race conditions. Runners will now be timed electronically, thanks to a strap on their ankle which will

automatically time when a runner crosses the start and finish lines. This will make recording times easier and prevent congestion at the end of the race.

The entry fee is £13 or £11 if club affiliated. All finishers will receive a t-shirt and medal, with the top three finishers receiving trophies. The closing date is March 30 but runners are advised to enter early to avoid disappointment. For further information contact Russell Hall on 07980 660 783 or email [marketing@wrighthassall.co.uk](mailto:marketing@wrighthassall.co.uk). Entry forms can be found at [www.wrighthassall.co.uk](http://www.wrighthassall.co.uk).

## WH step up fitness campaign

Committing to walk 200,000 steps to simply benefit your health may not sound like the most appealing idea.

But 10 determined staff at Wright Hassall fancied a challenge and agreed to walk 10,000 paces a day for four working weeks to improve their health.

The challenge, organised by Sport England, totals to roughly 100 miles of walking – approximately double the normal amount – and the committed participants have just finished.

Organiser Jennie Cuthill, who set-up two teams of five at the Olympus House office, saw an opportunity to improve her own health without taking up too much time from her daily routine.

Jennie said: "When I saw the task, I

thought it was a great idea to get a little bit fitter and to encourage others to improve their health. It's actually quite simple. You normally walk around 5,000 steps a day – but if you walk to the shops to get lunch and walk to work then you soon reach the target. There's the added bonus that it stops you using cars when you can walk somewhere, which is obviously beneficial to the environment.

"The two teams have done really well and we all look set to surpass the 200,000 target which we're proud of. We are all certainly feeling the benefit!"

Jane Senior, a partner at Wright Hassall, added: "Our team seem to have made minor adjustments to their daily routines and have succeeded. We hope to get even more participants for the next challenge."



(From left to right): Wright Hassall's Jennie Cuthill, Toni Ward, Indy Buray, Jane Senior, Richard Lane, Beverley Jones and Deanne Clay.

## Risks involved in uninsured damage

**During the sparring that normally occurs between landlord and tenant when negotiating the terms of a lease, the issue of who is responsible for damage and destruction caused by uninsurable risks has traditionally been a notoriously sensitive subject. After all, who wants to be responsible for reinstating premises when insurance monies are not available?**

In a standard tenant's full repairing commercial lease a landlord would generally accept the following:-

- landlord insures the premises against insurable risks;
- landlord reinstates the premises in the event of damage by an insured risk;
- rent and service charges suspended for so long as the Tenant cannot use the premises (following insurable risks damage);
- tenant's repair covenant qualified so that it does not apply where damage is caused by an insurable risk e.g. fire.

Given the above, a tenant might mistakenly assume that so long as the landlord is to insure leased premises, their interests will be adequately protected if the premises are damaged or destroyed.

First, it is likely that the risks which the landlord must insure against will be qualified by reference to specific risks e.g. fire. Second, it is likely that liability for insuring specific risks will be subject to insurance cover being not only available, but also on

economic terms. The result: premises may not be covered for uninsurable perils or only on uneconomic terms. In such circumstances, and in the absence of contrary provisions, the consequences of such risks effectively passes to the tenant.

### Code for leasing business premises in England and Wales

For a number of years tenants have managed with greater or lesser success to share the burden which might arise from an uninsurable risk. As the threat of the sorts of risks which might become uninsurable (such as terrorism, flooding and



**The Code for Leasing Business Premises in England and Wales has improved a tenant's bargaining position says Mark Miller.**

subsidence) has increased in recent times, so to have the stakes.

Recently, however, the tenant's bargaining position on uninsurable risk has been greatly strengthened by the Code for Leasing Business Premises in England and Wales, published in 2007. The Code is recognised by the commercial property industry and is aimed at promoting greater fairness between parties in commercial leases. One of its

recommendations is to shift the burden of insurable risks away from the tenant.

Essentially in respect of uninsured damage, the code recommends the following: -

- tenants should be entitled to terminate the lease if they can no longer use premises following damage by uninsurable risks, unless the landlord agrees to reinstate at its own cost.
- rent suspension should apply, following damage by an uninsurable risks as well as damage by an insured risk.

In essence the Code shifts risk of damage by an uninsured risk onto the landlord.

Although the code is still only voluntary, it carries considerable weight in negotiations, not least because government is threatening to make its provisions mandatory if its recommendations are not generally followed.

### Conclusion

Although negotiating the terms of uninsured risk remains dependent on the relative bargaining strengths of the parties, the Code provides the tenant with a much improved negotiating position. If the landlord will not accept liability for the entirety of uninsurable loss, a reasonable compromise can then often be struck.

For more information, please contact either Mark Miller or Harminder Judge of the commercial property team.

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## Court of Appeal finds in favour of the wife

In the autumn edition of *NewsBrief*, we touched on a pending Court of Appeal decision about whether or not a bankruptcy could affect a divorce settlement. The Court of Appeal's decision in the case of *Haines - v - Hill & Another* has now been handed down.

To summarise briefly, the matrimonial home was transferred to Mrs Haines as part of her divorce settlement. Subsequently Mr Haines became bankrupt and the trustees in bankruptcy pursued the former matrimonial home on the basis that it had been transferred at an undervalue, a position not supported by the District Judge. The trustee appealed to the High Court which allowed the appeal (to the consternation of family law practitioners). Mrs Haines then appealed to the Court of Appeal. The Court had to take account of the cross over of law between the Matrimonial Causes Act 1973 and the Insolvency Act 1986 and the conflicting interests that they protect.

Under the former, the Family Court has the discretion to ensure that each party to the marriage receives a fair share of the available property and will take into account certain matters. In particular, the Court will prioritise the needs of any minor child of the marriage.

The overriding aim of the Insolvency Act 1986 is to protect the interests of creditors which includes restoring assets which are considered to have been transferred or sold at an undervalue thus making



either the asset transferred or its value available for payment to the bankrupt's creditors.

In the present case Mrs Haines had been awarded the property as she had the sole responsibility for the care of the seven-year-old daughter of the marriage and the Court's overwhelming priority was to ensure that she and her daughter were in suitable accommodation.

The Court of Appeal found in Mrs Haines' favour. It did not agree with the High Court Judge that an agreement to forego or compromise ancillary relief claims is not capable of constituting consideration for the purpose of the Insolvency Act 1986.

Is there any protection for creditors?

The Court of Appeal decision does not mean a Trustee in Bankruptcy cannot apply for transactions at an undervalue in cases where the matrimonial home is awarded to the non-bankrupt spouse. However, the likelihood of such an application being successful is now extremely limited.

Whilst the Court of Appeal decision, in principle, protects ancillary relief Orders, the Orders can be attacked where it can be shown that an ancillary relief Order is the result of a collusion between the divorcing parties designed to adversely affect the creditors of the bankrupt spouse.

Another instance where an ancillary relief Order might be set aside is if there is some other element of fraud or misrepresentation, such as a failure by the wife to disclose all her assets.

This case does, of course, relate to a spouse's bankruptcy after a final ancillary relief Order is made and the outcome would be different where the spouse becomes bankrupt during the proceedings.

The full version of this article can be found on our website. For more information on the matrimonial aspects of this case, contact Gillian Jackson on 01926 880776 and for insolvency aspects, contact Petra van Dijk on 01926 880784 or Emma Easton on 01926 884653.

## The importance of plain English

**The importance for professional people – whether they be solicitors, surveyors, accountants, auditors or architects – in clearly defining in writing the extent of the duties they owe to their client and what they are responsible for undertaking, has been restated in a number of leading cases over the past few years.**

The legal relationship between professional people and their clients hinges on the contractual agreement between them and the duty owed to use reasonable skill and care when undertaking work.

The need for clarity was made clear in a leading case in the High Court, *Football League -v- Edge Ellison*. Edge Ellison was accused of negligence in advising on a commercial transaction between the Football League and OnDigital to broadcast football matches. OnDigital later went into liquidation with more than two years left of the

agreement and the major part of the licence fee of £315 million still unpaid.

The Court clearly stated that in cases where there are allegations of breach of contract or negligence the Court will first look at the solicitor's retainer (or contract) to determine the extent of the duties and responsibilities on the part of the solicitor. Such an exercise will be clearly based on any written documents such as letters and any verbal discussions.

The Football League were on the whole unsuccessful in their claim as the Court decided that the agreement between the Football League and Edge Ellison was clearly set out and did not extend to advice on the solvency of OnDigital.

Two other recent cases – one the High Court (*Marplace -v- Chaffe Street*) and one in the Court of Appeal (*Stone Heritage Developments Limited*

*-v- Davis Blank Furniss*) – have made it clear that the Court will also consider the instructions given by the client, the circumstances of the formation of the agreement between the professional and the client, and the sophistication, knowledge and experience of the client.

If any lesson is to be learnt from reading this article, it is to make sure that the extent of the agreement between the professional and the client is crystal clear.

Do you believe that your professional has done a poor job? Have you suffered any loss as a result of work undertaken by a professional? If so, you may have a claim, regardless of whether they are a solicitor, accountant, auditor, surveyor or architect.

For further information please contact Stuart Cutting on 01926 884678 or via email.

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## WH proves a race winner

The going is good for horse racing fans at Warwick Racecourse after Wright Hassall went the extra furlong to secure new alcohol licences for its bars and restaurants.

A fresh licence was needed at the course after recent £2.2 million improvements so that guests could continue to enjoy a drink.

And licensing expert Andrew Potts, from Wright Hassall, managed to overcome potential hurdles to get the licence past the post.

Warwick Racecourse is one of the busiest in the UK, holding 25 meetings throughout the year and welcomes in excess of 60,000 visitors each year.

Huw Williams, managing director of Warwick Racecourse, said: "The hospitality side of the racecourse is an essential part of our business both on race days and throughout the year for meetings, conferences and



*Andrew Potts, left, from Wright Hassall with managing director of Warwick Racecourse, Huw Williams.*

the other events we host."

Andrew said: "I have enjoyed hospitality over the years at Warwick Racecourse and it is a great regional asset. We have tied up its licence to ensure that racegoers can enjoy a tip and a tipple.

"Lucky, we have an expanding licence and gaming team and so we can make sure we are a safe bet!"

## Code aims to improve rehabilitation

**Most people, injured as result of someone else's negligence, if asked the question (on having their claim settled) "Was it worth it?" are likely to respond with a resounding "No!"**

Regardless of how skillfully their legal advisers negotiate the best possible settlement, most accident victims would prefer that the incident had never happened.

The courts equate pain and suffering and / or disruption to hobbies or normal daily life, purely in financial terms and, however good the levels of compensation, money is no substitute for health.

Recently, more emphasis has been placed on treatment and rehabilitation on the basis that a quicker recovery is a win-win situation, both for the injured individual and for the insurer.

The Rehabilitation Code provides for an independent assessment at an early stage of the injuries suffered, the treatment being received and crucially, whether private treatment may speed up that process. It may be as simple as extra physiotherapy for a whiplash injury instead of waiting on the NHS list, or it may be a planned care package with aids such as hand rails installed in the home, access to occupational therapists or psychological help.

The report is sent to both sides and then the insurer has the option to pay for the treatment or care. The report is designed to be fast, transparent and independent and cannot be used by either side as evidence to fight the claim.

We consider such an intervention in all cases, an

approach that is being supported by more and more insurers. For serious injuries, where liability is not in dispute, we also press for early interim payments, often to fund private operations or to help put in place care and rehabilitation packages that may last for many months.

A recent case can help illustrate the point that dealing with a personal injury or clinical negligence matter is not just about getting a financial settlement.

A pedestrian, waiting to cross the road, was hit when two cars collided in front of him. Air lifted to a specialist hospital, he suffered an amputation of half of one foot.

Thanks to his determination, and getting the right expert help, he was fitted with excellent prosthetic and orthotic equipment that allowed him to return to cycling, snow and water skiing, and to plan his return to wind surfing! Interim payments helped in paying for equipment, and his road to recovery was greatly helped by his being able to make good progress with the right support, in returning to his pre-accident lifestyle.

Similar support is being provided in the complicated field of brain injury, where great progress can be made with dedicated case managers and support workers. Accidents can happen. It is important to know that if they do, then exploring the treatment and rehabilitation options is an important part of the claims process. For more information, please contact Simond Towler on 01926 880729 or via email.

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## Contract essential as case proves

The importance of drawing up a contract has been highlighted after a copyright dispute involving a Midlands-based company reached the High Court.

IP Enterprises, an IT firm, was successfully defended by Wright Hassall, in a claim against its ownership of copyright for a piece of software being developed for pharmaceutical giant GlaxoSmithKline.

Meridian Associates had won a contract to develop the software – but went into liquidation. One of its staff left the company and set up IP Enterprises, which then agreed to take over the GSK contract after a meeting between his firm and a phoenix firm, Meridian International.

But neither drew up a contract. The only confirmation came in the form of an e-mail, sent by IP Enterprises, which outlined the main agreements – primarily that IP Enterprises would take control of the project. The e-mail was not disputed.

In court, Meridian said that in the meeting it was agreed it would own the copyright in the software once it was finished.

But Robert Ham QC, Deputy High Court Judge, found in favour of IP Enterprises because there was no clear agreement stating that copyright would be retained by Meridian.

Iain Colville, who defended IP Enterprises for Wright Hassall, said the case highlighted the necessity of signing contracts.

"Contracts must be properly drawn up and watertight so that any subsequent disputes can be avoided.

"In this case, Meridian's claims were dismissed by the Court because they had no proof of any agreement. IP Enterprises sent a clear outline of the agreements made at the meeting, which went unchallenged. But any legal challenge to the copyright ownership could have been avoided by involving lawyers at an earlier stage.

"Good legal advice is essential in these cases – and can save a lot of money and hassle in the long run."

## Wright Hassall continues to grow

Wright Hassall continues to go from strength to strength with the addition of three new members of staff.

Humphrey Halford has joined the commercial property team from Arnold Thomson in Towcester. Humphrey has more than 10 years specialist



experience and began his law degree by correspondence course towards the end of his 23-year service in the army.

Lisa-Marie Darby is the latest recruit to the expanding family department while IT and outsourcing specialist Lindsay Ellis joins the technology team.



*New recruits: Lisa-Marie Darby with Peter Lowe, head of the Family Department, above and left, Humphrey Halford is surrounded by his commercial property colleagues.*

## Act now to capitalise on CGT changes

The revised Capital Gains Tax proposals have been announced which gives a Capital Gains Tax planning opportunity.

■ From the 6th April 2008, the new flat rate of 18% Capital Gains Tax will come into force. It will no longer be possible to use indexation allowance or taper relief.

■ After lobbying, the new Entrepreneur's relief has been introduced for Capital Gains Tax of 10% on the first £1m of capital gain.

■ For people who own assets that were purchased before 1998, they can crystallise the available indexation allowance by transferring the asset to their spouse prior to 5th April 2008.

■ The spouse will receive the asset at the base cost of its original value after indexation allowance.

■ Therefore anyone who is married or has a civil partner can gift to their spouse/partner investment property, buy-to-let property, farmland or stocks, shares or investments owned prior to 1998, which would enable them to crystallise their indexation allowance.

■ As a result the base cost for the asset can be increased and possibly doubled.

■ This planning opportunity needs to be acted on before 5th April 2008.

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## Restrictions and restrictive covenants

There have been a number of cases in recent years that have dealt with the enforceability of restrictive covenants.

The case of Wayne Martin v David Wilson Homes Ltd (2004) EWCA Civ 1072 highlights the need to ensure that the wording of a covenant, restricting the number of dwellings, is precise.

More recently is the case of Winter & another v Traditional & Contemporary Contract Ltd [2007] EWCA Civ 1088. Here the issue is one of the level of compensation for a modification of a covenant under s84 Law of Property Act 1925 compared to damages in lieu of an injunction for breach.

The Court held that whilst the "negotiated share" approach is well recognised in proceedings for breach, under s84, compensation is based on the impact of the development on objectors and not on loss of opportunity. As compensation under s84 is likely to be substantially less than damages in an action for damages, a defendant in an action for damages would be well advised to apply for a stay on proceedings to allow an application under s84.

Lastly is the case of Lawtown v Camenzuli

[2007] EWCA Civ 949 concerning the effects of s610 Housing Act 1985, a little utilised provision (before now perhaps!).

Under s610 a Local Authority or person interested in any premises may apply to the County Court where:

a) owing to the change of character of a neighbourhood premises cannot readily be let as a single dwelling house but could be more readily let if converted into two or more dwellings, or

b) planning permission has been granted under part III Town and Country Planning Act 1990 for use of the premises as converted into two or more dwellings (and conversion is prohibited or restricted by lease provisions or restrictive covenant).

The court may, on application, vary the terms of a lease or other instrument imposing such a restriction.

The Court of Appeal held that the Court's discretion to vary covenants is one where it is to be exercised judicially having regard to the purpose of s610 to facilitate more intensive use of (usually) large dwellings. The statute provides for a variation to be ordered "subject to such condition and upon such terms" as the court thinks just. The emphasis of s610 is very much on "conversion" rather than construction of a separate dwelling.

Depending on which side of the fence you are on it is as well to bear in mind these cases when either selling or buying.

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## Helping hands

Wright Hassall presented a cheque for more than £6,400 to Macmillan Cancer Support recently. The monies were raised by a number of events held by staff during the course of 2007.

Zoe's Place Midlands, which provides 24 hour care for babies with multiple special needs, is Wright Hassall's chosen charity for 2008.

# Time for companies to take stock

All private limited companies are advised to review their articles of association as the Companies Act 2006 continues to be implemented through a series of Commencement Orders.

The most recent, which came into force in October last year, implemented a number of the more substantive changes to the previous regime. These are summarised below.

1. Annual general meetings are now optional.
2. All shareholders meetings can now be called on a 14, rather than 21, "clear" day notice period.
3. A company's articles of association may now provide for another person to be nominated to exercise some or all of the rights of a registered shareholder.
4. Shareholders of a company may ratify a director's negligent conduct in relation to the company by ordinary resolution.
5. The default approval level for short notice of general meetings of a company is now 90% of shareholders entitled to attend and vote.
6. The statutory 48 hour cut-off point for returning forms of proxy for general meetings applies to working days.
7. Elective and extraordinary resolutions have largely been replaced.

## Other changes introduced by the 2006 Act in October 2007

1. Written resolutions, which take effect as special resolutions, only have to be signed by 75%

of all shareholders entitled to attend and vote at a general meeting; and ordinary resolutions by a simple majority of all shareholders entitled to attend and vote at a general meeting.

2. Directors' duties have been codified for the first time.

3. Private companies (except those under the small companies' accounting regime) must produce a "business review" for any financial year beginning on or after 1st October 2007.

4. "Substantial property transactions" are now



**Mark Lewis looks at the most recent changes to affect limited companies as a result of the continuing implementation of the Companies Act 2006.**

defined as a non-cash asset which exceeds either 10% of the company's asset value and is more than £5,000, or which exceeds £100,000.

5. Shareholder approval is required for service contracts guaranteeing a director's term of employment which is longer than two years.

6. Minutes of general meetings, resolutions passed other than at general meetings and decisions of a sole shareholder need only be kept for 10 years.

7. A statutory basis for derivative claims by the shareholders against a company has been introduced.

8. Shareholders have the right to appoint multiple proxies.

9. Particular types of resolution, specified in the Act, override any conflicting provision of the company's articles of association.

10. Shareholders can now approve loans to directors by the company of more than £10,000.

11. The common law principle of unanimous consent can now only be relied on where the approval process is simply for the benefit and protection of the shareholders and not other persons or groups.

12. Shareholders cannot requisition resolutions at general meetings which would be ineffective, defamatory, frivolous or vexatious.

13. Companies formed after 1 October 2007, which incorporate the Companies Act 2006 Articles of Association Table A, will no longer have a provision in their constitution that the chairman has a casting vote.

## Changes introduced by the 2006 Act in April 2008

In addition to the changes referred to above, a further tranche of amendments under the 2006 Act will be introduced on 6th April 2008. Further details, and a longer version of this article, can be found in the legal resources section of our website.

## How reliable is your data protection?

After HMRC's loss of 25 million confidential child benefit records in November last year, data protection, privacy and information law have never been such hot topics.

The outsourcing of data processing to a "data processor" may suggest that the risks associated with data processing are also outsourced. However, companies owning the personal data must at all times have "appropriate technical and organisational measures" in place against the "unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data". This applies even when a data controller outsources the data processing to a data processor. In that case, both the controller and the processor must meet this security obligation.

So how can a data controller select a reliable data processor and ensure their safe handling of data while minimising the risk of a security breach? The main message to businesses wishing to limit their exposure is to:

- choose a reputable data processor offering guarantees (worded as above) in respect of the security of the data;
- have a written contract in place with the data processor;
- if the processor is based outside the EEA, find out how to transfer the data in a way that is fair and lawful and in a manner that ensures adequate levels of protection for the rights and freedoms of the individuals the subject of the data;
- carry out regular audits of the data processor.

Taking this approach should go a long way to ensure that your company does not fall victim to an equivalent of the HMRC debacle.

For more information, please contact Christine Mott or Claire Cram via email.

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## FORTHCOMING EVENTS 2008

- |   |                       |
|---|-----------------------|
| <b>12 March</b>   | <b>Seminar</b>        |
| Outsourcing and the SME   |                       |
| <b>20 March</b>   | <b>HR surgery</b>     |
| Networking for HR professionals                                       |                       |
| <b>6 April</b>  | <b>WH Regency Run</b> |
| <b>18 April</b>   | <b>Law Bytes</b>      |
| Networking for the construction industry: 'The mechanics of time'.    |                       |
| <b>23 April</b>   | <b>Seminar</b>        |
| Recent legislative changes for business. Are you up to date?          |                       |
| <b>24 April</b>   | <b>Seminar</b>        |
| Employment law update   |                       |
| <b>22 May</b>   | <b>Seminar</b>        |
| Inheritance Tax Planning  |                       |
| For further information email<br>caroline.venuto@wrightshassall.co.uk |                       |