

## Dickinson Manser

S O L I C I T O R S

### Expansion into Broadstone



(left to right) Gareth Yeoman, Gary Cox & John Newbold

**The Poole based Firm is pleased to announce the expansion of their practice with the addition of the former Broadstone Office of McQueen Yeoman solicitors.**

Resident Partner at Broadstone, Gareth Yeoman, joins Dickinson Manser as a Partner, with his former Partner John Newbold joining as a Consultant, along with thirteen other staff. Gary Cox, Senior Partner at Dickinson Manser explains "We warmly welcome the former McQueen Yeoman staff to Dickinson Manser and are delighted that Gareth joins us as a Partner. He and John both have very considerable experience and a large and loyal following in property law and private client matters."

Bringing the Firm to eight Partners and fifteen other legally qualified staff, the addition of McQueen Yeoman's former Broadstone office and staff "represents a significant step forward for the Firm" says Gary Cox, "enabling us to offer an even greater depth of experience and specialism both to existing clients of the Firm but in particular to McQueen Yeoman's former Broadstone clients who will now benefit from the all round service that we can offer in the village, including Wills and Probate and Litigation". Dickinson Manser are now located at 5 Parkstone Road, Poole and 221 The Broadway, Broadstone.

### leaders in law.....

On the commercial front, Partner Mark Daniels heads the Firm's company & commercial property practice with his team of six lawyers. This team includes John Newbold, who is now based at the Poole office.

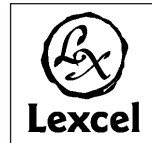
In Poole, Partner Roger Oakes heads the residential conveyancing team, with Gareth Yeoman performing the same role in Broadstone. Gareth also continues to service Broadstone's portfolio of commercial & residential property developers, with assistance from Solicitor, Paul Wintle.

Andrew Carswell is the contact Partner for civil and commercial litigation work, who with his team of two, deals with employment, landlord and tenant, contract disputes and other such litigious matters.

On the private client side, Partner Gary Pick heads the experienced team of wills, probate and inheritance tax planning specialists with Partner Richard Killer heading the family law department.

The Firm also shows its commitment to staff development by holding the Investors in People Award whereby staff are given the tools necessary to provide the highest level of client service.

### Legal excellence award



**The Partners and Staff of Dickinson Manser are extremely pleased to announce that the firm has been awarded Lexcel, the Law Society's Practice Management Standard.**

Lexcel has been accredited to less than 500 of the 8,000 or so firms of solicitors in England and Wales and there are very few holding it in the Bournemouth/Poole/Christchurch conurbation.

Senior partner, Gary Cox, says "to acquire Lexcel we had to demonstrate that we run an efficient practice with a strict adherence to procedures which ensure a high level of client care. Lexcel is not awarded lightly and therefore we were particularly pleased to acquire accreditation on our first attempt".

Partner in charge of marketing, Mark Daniels, adds "Lexcel is a great step forward and is naturally part of our ongoing plan constantly to improve on the high quality of service we already provide to our clients. This is particularly important with our recent expansion into the Broadstone market".

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# legaleye

## assignment of contracts

**When you sell the assets of your business you will often find you have to have contracts checked to see if they too can be transferred (assigned) to the buyer of the assets.**

If the contract says nothing about this then the benefit of that contract can be "assigned" as long as notice is served on the other party.

In *Explora Group plc v Hesco Bastion Ltd and The Trading Force Ltd*, the court said that where a contract did not restrict assignment of its terms then the

benefit of it could be assigned to someone else without the prior permission of the other party.

This is an issue which often arises on contracts and the case confirms the existing law.

In practice make sure that your contracts contain a clause saying if the agreement can be assigned or not. Some clauses will specify that assignments within a group of companies or as part of a bona fide reconstruction or amalgamation are allowed.

In other cases assignment will be allowed if the other party to the agreement consents, such consent not to be unreasonably withheld or delayed.

## price fixing of football shirts



**This Autumn the Competition Appeals Tribunal upheld a finding of breach of the Competition Act 1998 when football companies including the Football Association and Manchester United and JJB Sports had fixed the price of the shirts.**

A business diary of one of the participants of the illegal secret meetings was analysed by the Office of Fair Trading for the appeal. Some crossed out entries that were not then readable could

be read after they were forensically treated. JJB alone was fined £8.37m. Manchester United FC, Umbro, the Football Association and others were also found guilty, but all:sports and JJB appealed their case to the Competition Appeals Tribunal (CAT). Details of the diary kept by one man emerged during the appeal. In an entry scored out in three colours of biro, it said: "Agree Man United and England prices with everybody."

In another, scored out with marker pen but revealed by forensic examination, it said: "Phone Mike Ashley to review Man United [kit] launch and other issues."

If you want advice on EU or UK competition law then contact us for further information.

## e-conveyancing

**In October it was announced that the Law Registry is going to pilot a full e-conveyancing system in 2006.**

In addition they hope to have registered all land on the public register by 2014. Land registration has been a very slow process for a long time and even now some land is still unregistered.

## anti-social behaviour orders

**It is now possible to obtain an anti-social behaviour order in appropriate cases.**

In a recent decision *R (Stanley & Others) v Commissioner of Police of the Metropolis*, the court looked at a case where anti-social behaviour orders had been made against the defendants. A leaflet publicising the orders was then circulated in most of the area where the persons subject to the order were prohibited from travelling - the exclusion zone.

The local authority which had obtained the orders also put details about them on its community web site and published a report of the proceedings in its newsletter. Was this lawful? It included photographs of the people and their names, ages and details of the orders against them.

The people concerned applied for judicial review that this publicity was unlawful and a breach of the Human Rights Act 1998. The court did not agree. It said an anti-social behaviour order had to be published in order to make it effective and what the local authority had done was legal.

## Do your documents contain hidden data?

**Anyone who sends documents by email should be careful they send the correct version.**

Information such as the author of the document is given in parts of document files. This information is known as "metadata". Corrections, comments and deletions are other examples of metadata. Some readers will remember the trouble last year when metadata showed that a Government Iraq document was written by a university student.

A new web site has been set up to deal with this. Those running it say "The dangers of metadata are a growing concern as businesses continually rely on electronic communications," stated Joe Fantuzzi, president and CEO of Workshare, sponsor of the new web site. The numbers of people affected by an accidental slip of sensitive metadata are rapidly increasing, making content security a growing priority for content creators and IT teams alike. Metadatarisk.org will help identify the risks for today's workers, allowing them to do their job efficiently and keep their content secure without having to worry about the hidden information they may be sending out to co-workers, competitors or clients."

If you do run into problems in this area contact us for advice.

# Legal eye



## email marketing lists and the ASA

**The Advertising Standards Authority has held that an on-line DVD rental company that sent marketing emails to addresses on a list that it had bought thinking the individuals had consented, had breached the rules.**

Moviechoices.com bought a database of 216,000 customer email addresses from a liquidated company. The people on the list had consented to receiving email from the list seller and Moviechoices.com thought that they had also opted in to receiving email marketing from third parties. It had a contractual term saying this.

According to the ASA, the contract for the sale of the database "stated that the customers whose

e-mail addresses were being sold had given opt-in consent to receive electronic communications from third parties". The contract also included declarations from partners of the liquidated company: "I confirm that the customer database . comprises a list of e-mail addresses of former customers of the company all of whom, to the best of my knowledge and belief, have agreed to receive electronic communications from third parties". The ASA said Moviechoices.com should have asked for evidence that the individuals had consented. Moviechoices.com was told to acquire the explicit consent of consumers before sending them commercial e-mails in future.

In practice this means when buying mailing lists it is not enough to rely on promises from the provider, but instead ask to see copies of the consents they were given.

## husband, wives and dividends



**Some readers may be likely to suffer higher tax bills because a married couple lost a tax case at the end of September.**

Geoff and Diana Jones jointly run Arctic Systems. They were issued with a £42,000 back tax bill by the Inland Revenue under section 660a of the legislation under some rules created in 1936. These prevent spouses going into business with each other and paying dividends to them in order that the income

of the husband or wife would fall in a lower tax bracket. The case was heard by the Special Commissioners of Income Tax in June this year and supported by Professional Contractors Group (PCG).

It was only recently that the Revenue began to enforce this 1936 rule by targeting married couples who have equal shareholdings in a company and split dividend payments evenly; but where one of the pair does most of the day-to-day work. If the dividends exceed the value of the work done by the person, the Revenue will require the money to be refunded.

## most expensive fax mistake in history?

**Five German banks narrowly escaped a £69m fine from the European Commission which was recently lifted. The fine was imposed 3 years ago because they had engaged in anti-competitive practices.**

However a European Commission lawyer sending the Commission's case to the Court sent 100 pages of legal argument the wrong way up so only the blank side of the fax showed.

Thus no argument was put so the banks won.

Human error was blamed. The banks had formed a cartel which fixed exchange fees for foreign currencies in the run up to the euro. It was the second highest fine ever annulled by the court. The Commission however has a month in which to ask the Court to re-open the case. It is not yet clear if it will but the case does illustrate the importance of checking faxes carefully and in particular sending terms and conditions on the back of forms or purchase orders where they are faxed.

## tax and the small business

### IR 35

**Ensuring you stay on the right side of lawful tax avoidance but ensuring you do not engage in illegal tax evasion is hard for many companies.**

It is lawful for example to ensure both husband and wife work so they each have a single person tax allowance. They reduce the tax compared with if only one of them worked but that would not be illegal tax evasion. However in more complex cases the rules are not as clear.

There are special tax rules to catch one man businesses operating through a limited company with only a very few clients. Where most of the income is drawn as dividends this will be treated as if it were earned income from employment of the individual concerned. Many IT consultants for example had set themselves up as limited companies. In a recent case Usetech Ltd v Young the court looked at these tax rules called "IR35". Here a man provided his services through his own limited company which in turn offered its services to a recruitment agency. An earlier case R (Professional Contractors Group Ltd) v Inland Revenue had confirmed this principle.

Anyone who operates in this way with few clients is at risk of the IR35 rules applying. They can be avoided if a large number of contractors have shares in a limited company but this would have to be over twenty people before the regulations could be avoided.

### in cash?



**Not all local businesses are aware that they may need under money laundering legislation to be careful about accepting payment in cash.**

Some garage chains for example, now prohibit purchase of expensive cars in cash because the implication of someone presenting £50,000 in used notes to buy a new vehicle is that they must be laundering the money.

There remains a general right to pay for goods by any means but of course there is no legal obligation in most cases on anyone to sell, thus conditions for the means of payment can be imposed - e.g. by bank transfer only or direct debit or cash even.

Solicitors, accountants and others have duties to report money laundering without telling their client. In October 2004, the Law Society began a challenge to the relevant parts of the Proceeds of Crime Act 2002 which imposed that duty because in many cases it places the solicitor in a difficult position - of on the one hand having duties of confidentiality to the client and on the other being obliged by law to make the disclosure. Currently 80% of consent requests received by the National Criminal Information Service (the body to whom notifications of suspicions are made) are from solicitors.

### waste disposal

**There has been huge controversy over EU laws for disposal of waste. Legislation relating to disposing of used fridges is already in place causing problems for businesses and councils all over the country. The Government issued the final consultation paper on draft regulations and guidance to bring into effect the provisions of the Waste Electrical and Electronic (WEEE) and Restriction of Certain Hazardous Substances (ROHS) Directives.**

Both Directives aim to reduce the adverse environmental impacts of electrical and electronic equipment, particularly when it becomes waste. The Consultation on the WEEE Directive sets out the regulatory framework for implementation of 'producer responsibility', effective from August 2005.

### intellectual property protection for clothing and designs

**In a recent case *Lambretta Clothing Co Ltd v Teddy Smith (UK) Ltd* the court looked at protection for designs.**

Unlike patent protection which protects inventions and trade marks which protect names and logos, design law protects shapes.

In this case the court held that unregistered design right was not available for the juxtaposition of colours on a standard garment.

Two dimensional designs can only be protected by registration as registered design right which, following changes made by the Registered Designs Rules, allows even computer icons to be protected by registered design right.

However if no registration has been sought the lesser "unregistered design right" sometimes applies but not in this case. Here the defendants said even if they did not have design right protection they would therefore have artistic copyright in the same way if they made a painting or drawing. The judge did not agree and saw no reason why there should not be a "gap" in the legislative coverage between copyright and designs law.

The lesson for readers is to ensure they register any designs which are important to their business. Sometimes it is sensible to consider a mini-intellectual property audit, whereby your contract terms protecting IP rights and the rights you register and protect are examined to see how your rights could be better managed or organised to achieve best protection.

Retailers will also be required to offer consumers free take back of WEEE from August 2005. This is a huge change in the law less than a year away now.

The consultation also confirms the Government's aim to continue to work with business to establish the National Clearing House (NCH) for WEEE. The NCH which is widely supported by stakeholders, will co-ordinate the collection of WEEE from central sites and administer the allocation of obligations to producers.

From July 2006, the ROHS Directive will restrict the inclusion of certain hazardous substances, including some heavy metals in electrical equipment.

Contact us for further information on waste disposal and other related issues.