



# Inspiration just got closer...

**M**anches LLP opened a new office in the heart of Reading's business district in May 2008. For the last two decades, the firm's Oxford lawyers have been advising some of the region's best known companies, gaining local knowledge and working alongside the leading dealmakers.

In 2007, Manches was part of the winning team that claimed the Thames Valley 'Deal of the Year' Award for the sale of the Rowse Honey business to Wellness Foods. We also advised on the refinancing by HSBC of the Four Pillars Hotel chain, one of the largest banking deals in the Thames Valley, which has been short-listed for the Thames Valley 'Deal of the Year' Award 2008. In addition, we have been short-listed for overall 'Corporate Law Firm of the Year 2008'.

Intermediaries and clients (such as Peter Brett Associates, Siemens plc, The Sunlight Service Group Ltd and Thames Valley Housing Association) have welcomed the greater accessibility that having a local Manches presence provides. We have won two major new clients since opening. Both are confidential for now but are Thames Valley-based renowned

technology companies. Richard Smith, Managing Partner comments: "With a rapidly growing level of work in the region, it made sense for us to open a Reading office. Our teams of lawyers offer the full range of advice and high quality service that Manches is known for, with a focus on corporate, technology, employment, disputes, IP and real estate work, together with private client issues."

*"A satisfied regional client base reported back on an excellent depth of knowledge and an ability to deliver on expectations."*


**Chambers & Partners UK 2008**

## Recent work

 **Cardno** Acting for Cardno UK Limited on its acquisition of water engineering software company Micro Drainage Limited for c.£13 million. Cardno is an

international provider of professional services for the development and improvement of physical and social infrastructure and is listed on the Australian Stock Exchange.

Acting for the shareholders of Richards Gray Holdings Limited on its sale to MacDonald Dettwiler and Associates Limited for an initial consideration of circa £17 million. Richards Gray is a leading provider of personal local authority searches and Home Information Packs while MDA, listed on the Toronto Stock Exchange, provides a broad spectrum of advanced information solutions worldwide.

 **we7** Acting for We7 Limited on its \$6million Series 'A' Funding Round. The round was led by musician Peter Gabriel, Eden Ventures and Spark Ventures. We7 has pioneered innovative technology which allows advertisements to be 'grafted' on to the front of music tracks based on a consumer's personal demographics.

 **NANOPORE** TECHNOLOGIES Advising Oxford Nanopore Technologies Limited on its £10 million Series 'B' Funding Round. The company is a spin-out from Oxford University which is developing nanopore technology for use in DNA sequencing.

 **ADILI** .com Acting for Adili plc on its admission to AIM and associated private placing. Adili

floated just over a year after launching as an online shop for ethical fashion ([www.adili.com](http://www.adili.com)) and offers fashionable and stylish clothes and accessories from a range of ethical brands.

Handling, on behalf of the seven UK Research Councils, the negotiation and completion of a £40 million, 10 year IT outsourcing contract with a major technology supplier for their new Shared Services Centre in Swindon.

Acting for the Tolkien Estate in its on-going claim against New Line Cinema Corporation for multi-million pound unpaid royalties concerning the three 'Lord of the Rings' movies.

Advising Basingstoke-based The Sunlight Service Group on environmental liability issues arising from a programme of brownfield land disposals for mixed use development, as well as acting for their Healthcare division on the acquisition of multiple sites to service multi-million pound PFI decontamination schemes.

Acting for Thames Valley Housing Association on the acquisition (and subsequent development of land for affordable housing) of land from Reading Borough Council and Taylor Wimpey.

Acting on the surrender of Christie Digital Systems' existing lease and the taking of two new leases at Units 200 and 300 Ashville Park Wokingham.

Acting for London Underground Limited on its interface with the £360 million commercial redevelopment of the Cannon Street Station site. This is a complex project involving London Underground, Network Rail and Hines, which will result in the rebuilding of the ticket hall at Cannon Street Underground Station.

Advising Bouygues (UK) Limited on the development and part leaseback of a site in Dagenham for Bouygues to build a mixed-use commercial and residential (affordable housing) development, centred around a new library for the London Borough of Barking & Dagenham.

**"A nine-strong corporate team... 'one of the leading Oxford firms.' ... market sources felt was an entirely justified reputation as 'a class act.'"**

Chambers & Partners UK 2008

# Fair's fair?

## Consumer protection strengthened

**The Consumer Protection from Unfair Trading Regulations 2008 that came into force on 26 May 2008, apply to all businesses that deal directly with consumers and replace much of the existing trade descriptions and pricing legislation.**

They introduce a general ban on unfair trading by prohibiting commercial practices which are misleading, aggressive or unfair. Although the actual offences are quite well defined, the list of factors which might be taken into account in determining whether an offence has been committed are, in some cases, non-exhaustive. This might create some difficult judgments for marketing teams and may lead to some inconsistency in enforcement by trading standards authorities.

The Regulations set out 31 specific commercial practices which are considered automatically unfair. They seek to cover a very broad range of situations and include, for example:

- Advertising to children;
- Falsely claiming the endorsement of a public or private body;
- Falsely stating that goods will only be available for a limited time;
- "Bait advertising" scams that advertise a product as a special offer without having it in stock or only having a token stock.

The Regulations also provide a list of "main characteristics" in relation to products about which a business must not make false or misleading statements, for example, benefits of the product, specification and results to be expected from its use.

### Key implications

Any business could be investigated or prosecuted, even in the absence of any consumer complaint. Some offences under the Regulations can be

committed even where information is factually correct and where there is no intention to commit an offence.

In common with many other regulatory offences, directors, managers, secretaries and other corporate officers can be prosecuted as well as, or instead of, the company. Penalties upon conviction can be an unlimited fine and up to 2 years' imprisonment.

There are defences available to some offences, but only if a defendant can prove by evidence that it exercised all due diligence to avoid the offence and that it was due to a mistake, reliance on information supplied by another person, act of default of another person, accident, or another cause beyond the defendant's control. An additional defence is available to advertisers who can prove that they did not know and had no reason to suspect that publication would amount to an offence under the Regulations.

You may want to consider:

- Reviewing your practices and procedures, especially of sales and advertising teams.
- Updating training for relevant teams and directors, and keeping records that this has been done.
- Reviewing procedures relating to any trade code of practice with which you must comply or with which you claim to comply.
- Reviewing general and specific document retention policies, with particular regard to the requirement to prove due diligence defences.
- Consultation with local trading standards officers (or as part of any home authority relationship).

Simon Emmerson, Dispute Resolution Partner  
[simon.emmerson@manches.com](mailto:simon.emmerson@manches.com)



## Data protection the inside story

**T**he silver lining to the recent high profile losses of personal data is not only that public awareness of protection of their personal information is now at an unprecedented level, but there also appears to be a political will to make sure the UK 'does' data protection properly. Speaking to around 80 in-house lawyers at a Manches seminar in Reading on data protection, Ian Bourne, Head of Data Protection Projects at the Information Commissioner's Office (the ICO) provided a fascinating insider's view of the data protection regime within the UK.

Following the loss by HMRC of 25 million people's personal data in October 2007, there has been a flurry of reports commissioned into how it happened and what can be done to put it right. There is now a political imperative to put things right and for the ICO, this is likely to mean increased resources.

The ICO would like to use these resources to allow non-consensual audits, to verify organisations' compliance with the Data Protection Act. At present, the ICO can only be invited by organisations to run an audit and, not surprisingly, these organisations tend to be those who have nothing to hide.

## Life sciences grows locally

**L**ife sciences is big business in the Thames Valley, from major players such as Bayer, Eli Lilly, GE Healthcare, Reckitt Benckiser and UCB Celltech, down to emerging University spin-outs.

The largest UK venture capital deal in 2007 was local (£88.9m for EUSA Pharma) and the region is recognised internationally - 25% of local deals attract at least one US-based investor. The sector is experiencing greater than average growth levels locally, with a healthy balance between start-ups (such as Syntaxin) and inward investments, like Wyeth. Private funding has increased steadily, with 31 Oxfordshire Bioscience Network region companies undertaking 46 funding rounds, raising a total of £414 million since 2005. A survey undertaken by Reed Scientific showed that over the next two years, c. 66% of local companies intend to secure further financing, mostly in the £2.5 - £10 million range and around 80% expect to recruit between 500-1,000 new people.

Manches has for many years been at the forefront of life sciences in the region. We are active in the Thames Valley Life Sciences Network (TVLSN) and

The ICO is also exploring the possibility of introducing a 2-tier structure in relation to the notification fee. Most organisations that control and process people's personal information are required by law to notify the ICO and pay a £35 fee, which is the same from the smallest trader to the largest corporate. The idea is that whilst 90% would continue to pay the £35 fee, larger organisations would pay a substantially higher fee.

There has also been much lobbying recently to force organisations who discover that there has been a loss of people's personal information to automatically issue a blanket notification to those concerned. But Ian pointed out that such a notification should be one element of sensible 'breach management', and should also be proportionate to the breach. Not all losses carry a downside and a risk analysis should be carried out before notification, in order to avoid unnecessary alarm.

Ian sketched out a vision for the future where systems will be designed to enhance privacy ("privacy by design"), personal information is only used where necessary and a "data minimisation" approach is adopted. Time will tell whether such a vision comes to pass, but with identity cards still being a stated policy aim of the current Government, we should all hope that the state gets its own house in order sooner rather than later.

Piers Clayden, Commercial/IP Partner  
[piers.clayden@manches.com](mailto:piers.clayden@manches.com)

sponsor OBN. We are recognised by both The Legal 500 and Chambers & Partners directories as leaders in the field, with our three leading partners each having over 20 years' experience in the sector. We act for dozens of life sciences companies in the region, including Avidex (now MediGene), UCB Celltech, Genzyme, EUSA Pharma, Oxagen and Evotec - and others that have since been acquired - advising on commercial/IP issues, especially licensing, and employment. We also specialise in handling corporate spin-outs from universities, including the Universities of Oxford, Imperial, UCL, Warwick and Sussex.

We predict continued success in this sector. Its successful entrepreneurs mostly seem to recycle their capital and expertise into growing further businesses; there are a string of successful dealmakers locally; there is world-leading research undertaken by the Universities of Reading and Oxford (and increasingly via the Diamond Light Source - a new scientific facility on the Harwell Science and Innovation Campus); and the region has reached a critical mass that helps it attract further business.

Jim Kinnier-Wilson, Head of Life Sciences  
[Jim.kinnierwilson@manches.com](mailto:Jim.kinnierwilson@manches.com)

## It's not all work

**T**he Manches Cup With over 700 lawyers, 70 yachts and the majority of the top 50 UK law firms participating, the Manches Cup is one of the largest sailing events in the yachting calendar, raising money for charity.



**M**otor racing We are again sponsoring Theale based team Eclipse Motorsport's entry in this year's Britcar 24 hour race at Silverstone on 20/21 September. This is the 4th running of the event and it is growing in popularity each year. Owned and run by John Griffiths and Chris Pollard, the team finished 10th overall in 2006 (and 1st in class), improving to a splendid 5th overall in 2007 out of a field of 60 entrants.



Additionally, partner Simon Emmerson, is a part-time race driver and competes in the 750MC Formula Four championships. His highest finish recently was 8th out of 27 qualifiers and he is hoping to improve on this in the 2008 season.



**R**owing Projects Solicitor, Briony Cavell's passion is rowing. After qualifying, she took a year off before joining Manches and competed in the Commonwealth Regatta, winning a gold medal in the women's eights. She is currently competing for a place in the GB squad for the 2008 European championships.

# The impact on corporate deals of the Companies Act

**A**t 1,300 sections, the Companies Act 2006 is the longest piece of legislation ever passed by Parliament. One of the Government's key objectives was to encourage a culture of "enlightened shareholder value", promoting the success of the company for its members and, importantly, for other stakeholders. Alongside this aim was a more prosaic one: to ease the regulatory and administrative burdens on business, especially for smaller private companies.

But how, on the ground, has the Act affected the way deals are done in the M&A market?

One of the most notable changes was the introduction (effective from October 2007) of a statutory statement of directors' duties in section 172, which requires a company director to act in a way that "would be most likely to promote the success of the company for the benefit of its members as a whole". These factors include the interests of employees, the impact of a company's operations on the community and the environment and the likely long-term consequences of their decisions.

Does this mean a change of approach for directors considering M&A transactions involving their

companies? The sale or acquisition of a company is a major event in its corporate life and directors on all sides will need to consider the implications of a proposed deal with these factors in mind. It may be that boards find it useful to articulate in more detail the reasons for the transaction in their board minutes, with specific reference to those statutory considerations.

The Act also includes new duties on directors in relation to conflicts of interest, which come into force in October 2008. The new provisions distinguish between proposed or existing interests in transactions and arrangements with the company, which must be disclosed but need not be approved; and all other conflicts, which must be avoided unless approved by the board. M&A transactions (and particularly MBOs) often present directors of companies with conflict of interest considerations, and boards will need to be familiar with the new law.

The deregulatory thrust of the Act helps to simplify deal execution in a number of small but useful ways. Shareholder written resolutions, for example, are no longer required to be unanimous, which may provide a welcome alternative to

convening shareholder meetings. The mechanics of completion – always a challenge in the heat of a transaction – may also be simplified by the fact that a single director can (under witness) now execute deeds on a company's behalf. These changes may also facilitate pre-sale restructurings.

In M&A terms, perhaps the most significant change brought about by the Act is on leveraged transactions. The prohibition on the giving of financial assistance by private companies has, broadly, been abolished with effect from 1st October 2008. This will be welcomed by sellers and buyers, as target companies will be able to give security in connection with an acquisition of a company's shares, without going through a time consuming and expensive "whitewash" procedure. However, they will still need to consider maintenance of capital rules and the duties of the company's directors.

It remains an unresolved question as to whether lenders will require a non-statutory alternative to the whitewash procedure which, despite its cost and complexity, did provide them with some comfort that the debt assumed by target companies could be supported.

Market practice will take some time to develop and so it remains to be seen whether the abolition of the financial assistance prohibition and the other changes described above will yield the transactional benefits promised by the Act.

Richard Stevens, Corporate Solicitor  
richard.stevens@manches.com



## Our people

### Private client promotions

On 1st July 2008, Alexandra Lewis and Tom Gilman were appointed partners within the Manches private client department in the Oxford office.



Alexandra has been a valued member of the Manches' family department in Oxford for more than seven years. Specialising in divorce law, cohabitation, pre-nuptial agreements, disputes concerning children, and civil partnerships, Alexandra was the first trained mediator across all Manches' offices, and the first trained collaborative lawyer.



Tom joined Manches from Boodle Hatfield in 2005 and he has been leading the tax and estates planning team for the last two years, advising a broad range of clients with valuable personal assets on all aspects relating to wills, tax planning, and estates administration.

### Projects team expands

Giles Clifford, the partner in charge of Manches projects team comments: "The team has recently grown to six lawyers, all specialising in the negotiation and operation of major contracts for PFI, PPP and other complex projects. Manches now has the largest projects team in the region dedicated to this type of work. We act for significant clients like London Underground, Bouygues (UK) Limited, Inhealth Sterile Services Limited and Impregilo UK. Frances and Jo will be valuable additions to the team."



Frances Death-Lever started her career working as part of the in-house legal team of an international utilities company, before training as a solicitor with M&A Solicitors LLP, in Cardiff. Frances joined in July 2008 and has significant PFI/PPP expertise. She has a particular interest in the waste industry, and has also handled schools and academy projects.



Jo Waite joined the team in August 2008. Since qualifying in 2002, she has been working as part of the contracts and environmental law team at Oxfordshire County Council, where she specialised in UK and EU procurement law and practice. She has an LLM (Masters) in Commercial Law and experience of a wide range of public sector contracts, with a particular emphasis on waste-related work.