international newsbrief

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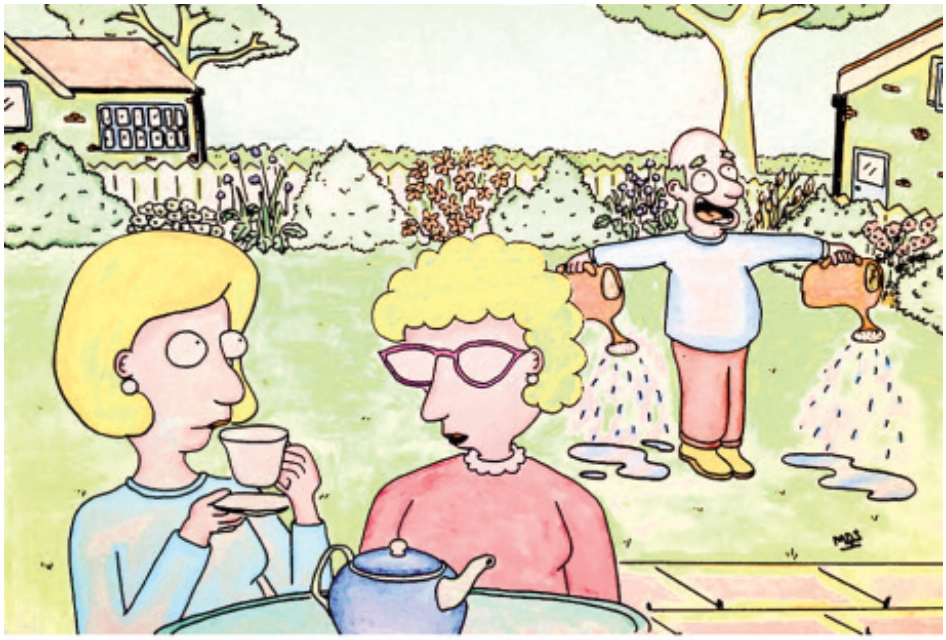
Winter 2014/2015

International Newsbrief contains reports and commentary on a selection of recent topical developments in England and Wales and is specifically targeted at lawyers and other business professionals outside the jurisdiction. We also include some news of recent developments at S&B.

If you or your clients would like any advice on the issues raised then please do not hesitate to contact the author of the relevant article or your usual S&B contact.

LONDON'S BANKERS - KRUGCIFIX AND REDEMPTION



"He retired from banking in 2008, but I think he's still finding it hard letting go."

The Krugcifix – a banker stands arms outstretched, a bottle of Krug in each hand, pouring the contents of each bottle onto the floor. This scene, particularly shocking (even to a lawyer) for its boorish arrogance and futility, was witnessed by one of our staff in the days before 2008. It is tempting to think that the credit crunch delivered karmic retribution to this banker but sadly, he continues to ply his trade and remains hugely overpaid.

Scandals

And it turns out that some bankers were not only obnoxious but corrupt as well. There have been a series of scandals. The CCP Research Foundation estimated that the global banking industry paid out or set aside more than £166bn in fines, settlement fees and provisions between 2009 and 2013.

Towards the end of the last decade, it became clear that payment protection insurance had been mis-sold to customers on a more or less universal basis. Amounts reclaimed to date are estimated at £22 billion, and most of the UK population are still receiving regular text messages inviting them to lodge claims.

The next scandal to hit was the mis-selling of swaps. Britain's regulatory watchdog estimated that 90% of swaps sold to small and medium sized businesses did not comply with one or more of its regulatory requirements.

In 2012 the LIBOR rate-fixing scandal brought down Bob Diamond, Chief Executive of Barclays, and its Chairman Marcus Agius. But many banks worldwide were implicated and total fines from UK and US regulators for banks involved was

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approximately $3 billion. Banks also faced a welter of litigation from transaction counterparties.

More recently a fresh scandal erupted – the rigging of foreign exchange rates - five banks were fined a total of £2bn by UK and US regulators – £1.1bn from the UK regulator and the rest from US authorities.

Other fines for banks have included: breaching sanctions against Iran (Standard Chartered); money laundering for Mexican drug barons (HSBC); electricity market manipulation (Barclays); gold price rigging (Barclays); and assisting tax evasion (Credit Suisse).

Effects on London as a business centre

Despite all this, new skyscrapers are still going up in the City. In 2013, one of them, the Walkie Talkie, melted a nearby parked Jaguar with its innovative curved glass structure. But these days London's reputation does not burn as brightly as its skyscrapers.

Last year, New York replaced London as the world's leading financial centre in the Global Financial Centres Index, a survey of global business leaders. London had been top for seven years. *'This seems to be based on a number of factors including ... uncertainty over Europe, the perception that London might be becoming less welcoming to foreigners and perceived levels of market manipulation,'* wrote the report's author. London suffered the largest points drop out of the top 50 centres.

The Government has introduced new tougher prudential measures designed to make institutions more robust and has enacted the Financial Services (Banking Reform) Act to make it easier to punish miscreants. But individual prosecutions of bankers have not occurred and it is hard to escape the feeling that the wrong people are being punished. Fines hit the institutions themselves and are probably passed on to customers in one form or another or depress the earnings of pension fund or government shareholders.

Meanwhile the EU has enacted a bonus cap for bankers. The UK has fought the cap all the way and challenged its legality in the European Court of Justice. Though now the UK government looks likely to concede defeat. The EU sees the cap on bonuses as a means of curbing excessive and improper behaviour – the UK government believes that the cap would be circumvented anyway and would also damage London's ability to attract business and professionals.

This is the dilemma for the UK government – London competes with New York to be the world's leading financial centre, vying to make itself attractive especially to Asian businesses and investors. Financial services providers are attracted to come here by light touch regulation and low taxes, with 90% of senior City staff saying they are prepared to move abroad to avoid caps on bonuses and heavier regulation.

But at the same time London's survival depends on it being seen as a sound and trustworthy place to do business. That means eliminating corrupt behaviour and rebuilding the reputation of London's financial services professionals.

And in a further twist, London's attractiveness is also partly because of Britain's membership of the EU. Some New York banks have been considering moving to Ireland as the Eurozone banking union threatens to isolate Britain and amid fears that Britain may leave the EU altogether.

Effects on bankers

This is all a world away from the lives of most bankers and financial services professionals in the UK. One million or so people in the UK work in financial services, around half of those in London and the South East. For all the talk of bankers' bonuses, the average across the industry is around £13,000.

Unfortunately, the consequences of the sins of the few have been visited on the vast majority of honourable, hard-working and trustworthy financial services professionals in the UK.

Ordinary bankers have seen the value of their nest egg of shares dissipated, and bear the brunt of the increases in regulation (seemingly ineffective in preventing major abuses) and face the everyday hostility of customers who love to complain about banks. Since the financial crisis in 2008 banks have reportedly received 20 million customer complaints (out of approximately 50 million adults in the UK).

This is perhaps one of the saddest outcomes of the crisis and the scandals. Bankers' reputation has plummeted. In the British Social Attitudes Survey 30 years ago, 92% of people thought that banks were "well-run". Now only 19% think that. And in a recent survey bankers were the third least trusted professionals with only 11% trusting them – only journalists and politicians fared worse. (Lawyers came in at 35% - hardly cause for celebration).

Redemption?

It is unlikely that bankers will ever again be treated with the same reverence and respect as they were before the turn of the century. And it remains to be seen whether the UK government will be tempted to encourage further growth and greater wealth in the sector, to the possible detriment of morality. But our hope (not a particularly steadfast one) is that new regulations and sanctions will target individual bankers behaving badly and will hit them hard. Rooting out the bad apples will hopefully engender a more sober and respectable behaviour and the British banking industry will emerge, chastened and humbled, to reprise its leading role in a new krugcifix-free world.

BANKER JOKES

One of the minor benefits for lawyers of the banker's fall from graces has been that they now often replace us in jokes like these…

Why don't sharks attack bankers? *Professional courtesy.*

A young banker decided to get his first tailor-made suit. As he tried it on, he reached down to put his hands in the pockets but to his surprise found none.

He mentioned this to the tailor who asked him, *"You're a banker, right?"* The young man answered, *"Yes, I am."*

"Well, whoever heard of a banker put his hand in his own pocket?"

Hospitals report that the hearts of bankers are in strong demand by transplant patients, because they've never been used.

What's the problem with banker jokes? *Bankers don't think they're funny, normal people don't think they're jokes.*

LEGAL UPDATE 2014

We bring you our choice of legal items from 2014. For more sober legal analysis of UK legal developments see the numerous legal updates via our website, or get in touch with relevant practitioners at our firm (www.stevens-bolton.com).

An English photographer is still battling to assert his copyright over photos taken on his camera by a macaque. David Slater was photographing the endangered species of crested black macaques in Sulawesi, an island in Indonesia, back in 2011. One of the macaques ran off with his camera and took hundreds of photos with it. Most of them were blurred shots of the ground but the macaque struck gold with the selfie below, which made headlines around the world.

Copyright © D Slater / a macaque

Unfortunately Mr Slater has not struck gold, because Wikimedia, the company behind Wikipedia, has included the photograph in its royalty-free database, and last year the US Copyright Office ruled that the copyright in the photograph did not belong to Mr Slater. In new guidance the USCO ruled that "because copyright law is limited to 'original intellectual conceptions of the author,' the Office will refuse to register a claim if it determines that a human being did not create the work…the Office will not register works produced by nature, animals, or plants. Likewise, the office cannot register a work purportedly created by divine or supernatural beings, although the office may register a work where the application or the deposit copy states that the work was inspired by a divine spirit."

Mr Slater was unhappy with the ruling. *"It's all based on a technicality. I own the photo but because the monkey pressed the trigger and took the photo, they're claiming the monkey owns the copyright,"* he said. "There's a lot more to copyright than who pushes the trigger on the camera. I set up the shot, I was behind all the components in taking that image".

Under UK law it is also the case that animals cannot own copyright, However in this case there may be an argument that the photographer made a creative contribution to the work by setting up the tripod with the correct lighting, even if the macaque decided not to make use of the tripod for her photographs. The operator of the equipment does not necessarily own the copyright, for example a film or TV company will own the copyright of what their cameraman films.

As long as he is not a monkey, it seems.

Another famous selfie-taker is of course Kim Kardashian, famous in particular for taking selfies showcasing her large buttocks. She is author of an upcoming book, *Kim Kardashian selfish*, which will exclusively feature selfies of and by the celebrity. Ms Kardashian was reported to be consulting her lawyers about whether she was able to restrain photos posted on Instagram by Jen Selter, the "*internet bottom sensation*" as described by Closer magazine, in which Ms Selter's own posterior featured prominently.

As the Guardian speculated *"somewhere in California, a crack team of lawyers may at this very moment be working around the clock to copyright buttocks on behalf of*

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Kim Kardashian" and the paper envisaged *"a dystopian future, in which no man or woman is legally allowed to have buttocks without first applying to Kim Kardashian for a licence"*.

But internet website IPKat is less scornful when analysing the position under EU law. If [if – Ed] the buttocks had been enhanced by plastic surgery, then it may be arguable *that they could be a "production in the artistic field"* that is sufficiently original. In addition, the pose of a subject may contribute to the overall originality of, say, a photograph, although this author does not see similarities in the poses of Ms Kardashian and Ms Selter beyond the obvious. Compare the two selfies below and see what you think - *[forget about it, you are lucky I even agreed to the macaque photo – Ed]*

Animals may not be able to own copyright, but they can now be the subject of pre-nuptial agreements. Solicitor Vanessa Lloyd Platt, in association with the charity Blue Cross, have pioneered the Pet-Nup agreement, a pro forma pre-nuptial agreement which can be downloaded for free from the Blue Cross Website. It prompts the parties to set out who will get custody of the pet in the event of a relationship breakdown. It also deals with visiting rights, whether the pet will be allowed to breed, who is the registered owner of the pet's microchip, and what happens during holidays. Presumably courts will give effect to this agreement as they will any other contract, although the family courts are unlikely to intervene on behalf of the pets – legally (at least for the time being) pets are chattels in the UK, and less important in the eyes of the law than children (some non-British readers may have thought the UK would have it the other way round).

Talking of cameramen and copyright (but not monkeys), Sky has been vigorously defending its rights to broadcast live football matches in the English premier league. All these matches are shown live somewhere in the world and quite a few of them are shown live in England to those who have stumped up the requisite subscription fee (though never the ones kicking off at 3pm on Saturday because it is illegal to broadcast football matches between 3pm and 5pm on Saturdays, under the Broadcasting Act 1996).

As a result of spiralling subscriptions, especially for pubs who must typically pay around £15,000 per annum to show Sky matches, and the easy availability of various international channels with an appropriate dish and decoder, it has been commonplace for English pubs to show matches broadcast by foreign channels. In 2012 the ECJ defended the rights of a Portsmouth pub landlady to use a Greek decoder to show matches - national laws which prohibited the import, sale or use of foreign decoder cards were contrary to the freedom to provide services. But it was a pyrrhic victory because the court found that the Premier league still had copyright in various surrounding media such as the premier league logo, on-screen graphics, or if the League's anthem is heard before kick-off or at half time. If the football could be shown without these elements then in theory there would be no copyright infringement. But this seems to be impossible because the feeds from foreign channels are Sky's own pictures with the EPL surrounding media.

In some dimly lit pubs it is still possible to find premier league games beamed in from abroad – the punters generally prefer the commentary in Greek, Dutch or Arabic to the monotones of Sky's coterie of ex-British footballer summarisers - but these landlords are slowly being hunted down by Sky's lawyers. Given that BT and BSkyB paid a combined total of £3bn in 2012 for their rights to show matches until the end of next season, you can understand why.

THE IMITATION GAME

Olivia Perrott
Intellectual Property, Associate

On 17 October 2014 the High Court broke new ground by granting an order that all major internet service providers (ISPs) in the UK must block access to various websites selling counterfeit goods. This was the first application of its kind in Europe, with the possible exception of the Danish case of Home A/S v Telenor A/S. This is a major boost to brand owners in the fight against online counterfeiting and shows that the English courts recognise that ISPs should share the burden of tackling online trade mark infringement with brand owners.

Is time running out for geneuinefakewatches.co.uk?

Background

The claimants, owners of the Cartier and Mont Blanc luxury brands and a number of registered trade mark rights, applied for an injunction requiring the ISPs (which included BT, Virgin Media and Sky) to block access to six websites selling counterfeit goods which infringed their trade marks. The websites were wholly dedicated to infringing activity and there was no dispute that the activity on the websites amounted to trade mark infringement.

Injunctions of this kind had previously been granted by the English courts requiring the major ISPs to block access to file sharing websites which facilitated large scale copyright infringement. The difference in this case was that, unlike in the copyright infringement context, there is no specific legislative provision under UK law for the court to grant an injunction against ISPs whose services are being used to infringe trade mark rights.

The court considered two main questions: (i) whether it had jurisdiction to grant the injunction sought in a trade mark infringement context, and (ii) whether on the facts of the case it was just and proportionate to grant the injunction.

Decision

Does the court have jurisdiction to grant the injunction?

Mr Justice Arnold ruled that the court had jurisdiction to grant the injunction by virtue of its general power to grant injunctions in all cases where it appears to be just and convenient to do so. In any event, the general power had to be interpreted in accordance with EU Directive 2004/48 (the "Enforcement Directive"), which provides that rights holders are entitled to apply for an injunction against intermediaries whose services are used by third parties to breach an intellectual property right.

Is it just and proportionate to grant the injunction in this case?

In considering whether the court should exercise this power to grant the injunction, the court had regard to the following points in particular:

- the likely efficacy of the measures: evidence suggested that measures used by ISPs in implementing orders to block access to file sharing websites had been "reasonably effective";
- the cost of the measures to the ISPs: the implementation costs would be limited because the ISPs already had the required technology in place for blocking access to file sharing websites;
- whether the measures would result in barriers to legitimate trade: it was possible to tailor the measures in such a way that legitimate users and websites would not be affected;
- the overall proportionality of the measures having regard to their likely cost and efficacy.

The court concluded that the cost was justified by the likely effectiveness of the measures, and it was therefore proportionate to grant the orders.

The decision also set out the court's view of the effectiveness of other methods available to trade mark owners to tackle online

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infringement, and concluded that in many cases site-blocking by ISPs is the most effective method of tackling infringement.

Impact on brand owners

This is a very significant development for brand owners, who were previously limited in their options as to how to tackle online sales of counterfeit products, particularly when the parties responsible for the business are outside the jurisdiction (as is often the case). The English court expressed its view that injunctions of this kind against ISPs are clearly permissible under EU law. Brand owners across Europe will therefore be encouraged to pursue similar relief in their home courts with confidence that it is an effective and attainable method of asserting their trade mark rights.

[A fuller version of this article was first published in Intellectual Property Magazine on 31 October 2014, and can be found at the following link: http://www.intellectualpropertymagazine.com/trademark/censorship-of-online-counterfeiting-has-begun-104077.htm]

AVIATION

DON'T FLY OFF PISTE

Richard Mumford
Head of Aviation

It is that time of year when senior executives, wealthy individual clients and others jump on board a chartered private aircraft and head for the world's premier ski resorts.

Lawyers from Stevens & Bolton LLP go on a skiing trip

Flying in private jets is an expensive business and so the temptation to charter an unregulated aircraft at lower costs is strong. However, it can have devastating consequences. If money is an issue, then fly with easyJet. Never cut corners in aviation.

To fly passengers for reward (i.e. payment, whether that is termed a charter fee or hidden in other ways such as payment for fuel and crew), the operator of that aircraft must hold an Air Operator Certificate (AOC). The AOC is not just a piece of paper. It is a licence from the CAA (if the aircraft is registered in the UK, but the equivalent licence from the local authority whichever state the aircraft is registered in) that brings with it rigorous requirements for training, maintenance and record keeping. It also brings with it auditing rights for the CAA to make sure those things are being done. In short, an aircraft with an AOC is far safer than one without.

Many exclusive resorts are located near to elevated airfields with short runways. AOC holders will have rules governing the types of aircraft that can land on different runways and in different conditions. Those rules do not necessarily apply to aircraft flying without an AOC and so the pilots of those aircraft might be prepared to take greater risks.

If something goes wrong, then an aircraft flying an illegal charter will likely invalidate its insurance so that the passengers are not covered. It could even invalidate the passengers' own insurance policies, including any travel or life insurance. This is not just about the claims those passengers might have. If the aircraft has an incident that causes loss or harm to a third party then increasingly lawyers might look to bring proceedings against the individuals involved.

Paying for and flying in an illegal charter could well include the commission of criminal offences, and in more than one state. Although prosecutions have been historically rare, there is a strong momentum towards greater enforcement and it is widely believed that, in the UK at least, prosecutions are increasingly likely.

So, in short, don't take the risk. A lax attitude to regulation in aviation is an indicator of a lax attitude to the aircraft generally and so its crew and maintenance. These are not risks that are worth running because they have fatal consequences. If a client is in any doubt, ask to see the AOC or speak to a broker or other advisor.

HOLIDAY HEADACHE FOR UK EMPLOYERS

Hannah Ford
Employment,
Senior Associate

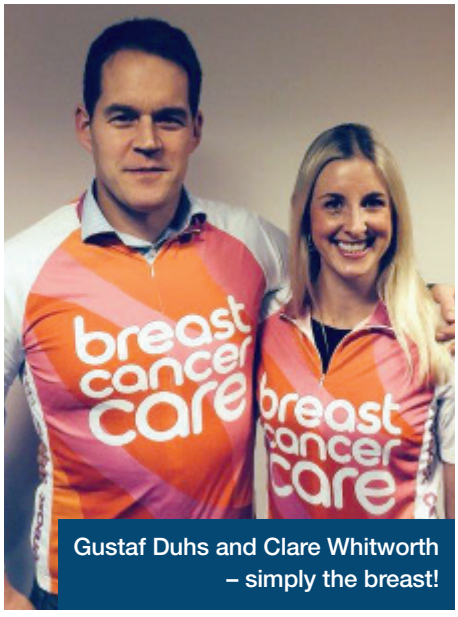
In the UK workplace, two recent decisions have prompted a significant move towards the protection of paid holiday for employees.

In *Lock v British Gas*, the European Court of Justice decided that where a worker's normal remuneration involves certain types of commission, this must be factored into holiday pay, since excluding such payments may deter employees from taking holiday altogether. More recently in the case of *Bear Scotland Ltd v Fulton and ors* the UK domestic Employment Appeal Tribunal decided that certain periods of overtime must be included in the calculation of holiday pay. This pay boost applies only to the basic four weeks holiday that a worker is entitled to under European Law. It does not apply to the extra eight days provided by the Working Time Regulations under UK law. Claims for backdated holiday pay can be made, provided the deduction (i.e. the overtime earned and not paid) was made in the past three months or was as part of a series of deductions, one of those being in the last three months. The judgment did not specifically deal with whether voluntary overtime was included and therefore this remains an area of uncertainty for employers.

The decisions have naturally provoked a backlash from UK employers who are grappling with how to calculate their potential liability and decide on the appropriate course of action. Employers operating in sectors with high levels of overtime and commission (such as retail and utilities) in particular, face significant potential exposure.

Since the Bear Scotland decision is likely to be appealed, it may be premature and potentially complex for employers to settle historical and future liability at this juncture. On the flip side, employers risk negative publicity through inaction or see their potential liability increase if they simply 'sit tight'. Despite this, given the prospect of an appeal many employers are doing exactly that and adopting a 'wait and see' approach whilst simultaneously investigating the potential impact on their business by auditing historical holiday patterns and payments. The one thing that is certain is that these cases are not the final word on the calculation of holiday pay in the UK.

TOUR DE LAW



Gustaf Duhs and Clare Whitworth – simply the breast!

During November, S&B took part in the inaugural Tour de Law cycle challenge on behalf of Breast Cancer Care. For two days we raced tirelessly against 19 other law firms on spinning bikes to raise money for the charity.

The aim was to cycle as far as possible to try and do the equivalent distance of London to Paris and back again. S&B made it to Paris and were back to the English channel after a huge effort on the second day by many in the firm, with individual glory at stake for each firm's fastest man and woman racer.

Upon returning from the British cycling team's training camp where he had imparted his wisdom and training techniques to an attentive Bradley Wiggins, Gustaf Duhs spoke of his pride at being crowned S&B's fastest man in the firm:

"Sure, I may be a fine athlete but it was still satisfying to claim this victory," he mused, whilst quaffing a Lucozade energy drink. He continued: "Yet any personal pride was surpassed by the fantastic support and team spirit shown by so many at S&B."

Our very own cycling champion concluded: *"However, even this cannot compare to the generosity shown by Team S&B who raised a sizzling sum of £1,200 for the charity"*.

Indeed, we couldn't have put it better.

ENGLISH COURTS HELP NON-ENGLISH COURT PROCEEDINGS

Laura Beagrie
Dispute Resolution, Professional Support Lawyer

English courts can help you with home court proceedings in more ways than you might think. But first, a quick constitutional lesson – when we talk about England, read Wales too, but not Scotland or Northern Ireland (they have their own separate legal systems).

English courts: leaning over backwards to help

What if someone in England has been mixed up in a wrongdoing and might have crucial information about a claim relating to that wrongdoing, but they would not be a potential defendant?

If that information would help make out a claim against the actual defendant, or identify who is the correct defendant, it may be possible to get an English court "Norwich Pharmacal order" requiring that person to deliver the information.

What if there has been fraud, and information is needed to trace the assets wrongly taken?

It may be possible to apply for a "Bankers Trust order" requiring a third party in England (normally the wrongdoer's bank) to provide confidential information to help trace those assets.

What if there is a concern that when an intended defendant finds out about a claim, he will dispose of his assets to make the judgment worthless?

If a defendant has assets in England that he might try to dispose of, or the defendant is resident in England, application could potentially be made for a "freezing order" which freezes a defendant's assets to prevent him disposing of them to frustrate a court judgment, even a non-English judgment. The application can be made prior to commencing court proceedings, and also after judgment. The sanctions for disobeying a freezing order are a fine, imprisonment or the seizure of assets. The court can also be asked to make a "disclosure order", requiring the defendant to give details of the assets they hold.

What if the concern is that the intended defendant in England will destroy evidence needed for trial, or destroy property belonging to the claimant?

It might be possible to apply for a "search order", allowing the claimant's representatives (plus an independent solicitor, to monitor the situation) to enter the defendant's premises and search for, copy and record anything specified in the order, without any notice being given to the defendant.

What about serving court proceedings on a defendant who is in England?

If the EU Service Regulation applies to the claimant's country, court proceedings must be served under this Regulation which allows for the transmission method (being the usual method), post, direct service and using diplomatic or consular agents.

Where the EU Service Regulation does not apply but the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters does, service can be effected in England under that Convention. The Hague Convention also allows direct service by informal methods including postal channels, judicial officers, officials or "other competent persons", providing the jurisdiction does not object, which England has not done, although it has stated a clear preference in this case for service to be carried out through a solicitor in this jurisdiction.

If the claimant's jurisdiction is not subject to the EU Service Regulation or party to the Hague Convention and there is no other specific bilateral agreement in place between the UK and your country, there is nothing in English law which prevents service being effected here using any particular method. The 'official' way of

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effecting service in these circumstances is for the claimant's consular authorities to ask the Secretary of State for Foreign and Commonwealth Affairs in the UK to request the court to serve the documents.

However, in all circumstances the form of service would still need to comply with the claimant's country's legal requirements on service.

What if a defendant has been sued in their home court but think they should have been sued in England, for example where a contract contains an exclusive jurisdiction agreement in favour of England?

If the claim is being defended in a non-EU member state court, an "anti-suit injunction" might be obtainable from the English courts restraining the claimant from pursuing those proceedings. Alternatively an application could be made for an "anti-enforcement injunction", which would not prevent the claimant pursuing those proceedings, but would prevent it from enforcing any judgment in England.

Under the Brussels Regulation it is not possible in an EU member state to obtain an anti-suit injunction for a claim started in another EU court. However, it might be possible to issue English court proceedings here for damages for the breach of the exclusive jurisdiction clause and from 10 January 2015 the Recast Brussels Regulation comes into effect, pursuant to which it will be possible to issue court proceedings in England.

What if an English witness is not willing to give evidence or provide documents for use in court proceedings?

It might be possible to get the information with the assistance of the English courts by using "letters of request" (also known as "letters rogatory").

The English courts have obligations to carry out examinations of witnesses under EU rules, the Hague Convention and various other bilateral treaties, but any country's court can ask for help from the English courts to obtain evidence. The procedure is largely the same irrespective of where the court proceedings are. The home court will issue a letter of request, containing the information sought, and send it to the English courts, together with a certified translation (unless it is in French, in which case the translation is carried out here!). Either an agent named in the application or the Treasury Solicitor will arrange for the examination of the witness, appointing an approved examiner and arranging a date and time. An application must then be made to court for an "order for examination" which, if successful, is served on the witness and the examination takes place.

It is important to note that the English courts will not order a person to give evidence which he or she would not be compelled to give in English court proceedings.

Will the English courts help enforce a judgment from another court?

Yes.

Where the judgement is uncontested (i.e. the debtor has admitted the debt in a consent order approved by the home court, or never defended the claim, or did not defend the claim after initially objecting to it) and from an EU member state (other than Denmark), registration is very easy using the European Enforcement Order (EEO) Regulation. Following a successful application for an EEO certificate by the home court, the English court will issue a case number and the judgment is then enforceable in England as if it were an English judgment.

Otherwise judgments may be registered because they are judgments from EU member states (under the Brussels Regulation), or from Iceland, Switzerland and Norway (under the Lugano Conventions), or because they are judgments from those countries with which the UK has bilateral treaties allowing for enforcement of their judgments here by registration. The procedure is largely the same for all of them. An application is made to the English courts to register the judgment, providing evidence showing entitlement to register the judgment. The court then issues an order for registration, which is sent to the debtor. Once the time for the debtor to apply set aside the judgment has expired, the judgement can be enforced in England.

Judgments from certain jurisdictions (e.g. the US, China or the Russian Federation) cannot be registered in England so the only way to enforce the judgment is under the English common law, which means bringing fresh legal proceedings in England and suing upon the judgment as a debt. The claimant will normally apply for 'summary judgment', a procedure which allows the court to give a quick, early judgment avoiding the usual litigation process of disclosure of documents, evidence and trial. The courts will normally grant summary judgment as long as the judgment is a final one, it is not against public policy and it was given by a court regarded by English courts as competent to do so.

As an alternative to registration or suing upon the judgement as a debt, where the debtor owes more than £750, it is not a debt which can be disputed by the debtor on substantial grounds, and the debtor has no claim of their own which would reduce the amount of the debt to £750 or less, English insolvency proceedings could be used instead by way of an application to make the debtor insolvent. If they do not pay within 21 days of a formal demand for payment (a "statutory demand"), steps can be taken to make them insolvent – so if they do have the money but were simply refusing to pay, this can be a very quick and effective way of enforcing the judgement in England.

In conclusion…

The English courts have wide powers to potentially help with home court proceedings prior to issue, throughout the proceedings and after judgment has been obtained.

THE LIFE SCIENCES TEAM AT S&B

As might be expected from the range of practice areas represented, the team deals with the full range of issues that face businesses active in this space. Although there is commercial sensitivity around much of the work that is undertaken, the variety of issues encountered is demonstrated by published articles written by members of the team in the last six months, which include:

- Legal issues around outsourcing in the pharmaceutical sector
- The anticipated impact of the Unitary Patent Court
- IP vs Competition law in patent settlement cases (e.g. so called 'pay for delay')
- IP issues arising from research and development
- When does an app become a regulated medical device?
- Regulatory issues arising from increased consolidation in the sector

Much of the work has an international focus with recent work including advising on commercial and regulatory issues around the launch of a US medical product in the UK, as well as advice on EU regulatory issues around importation and export of pharmaceutical products.

Life Sciences team achieving new legal highs

David Wilkinson, who heads up the Life Sciences team comments *"We've seen sustained growth in our life sciences practice. It is a fascinating area to operate in and we work closely with clients engaged in ground-breaking R&D. And the work plays to S&B's strengths. The variety of issues requires a full service offering and close collaboration between practice areas. We can offer clients the quality of service they need but at rates that allow us to work really closely with clients' businesses. Indeed one thing that has worked particularly well for life sciences clients and for us is being able to second lawyers or act under a retainer in place of, or as additional support for, in-house counsel. We look forward to continued close cooperation with clients in this area".*

If you would like to learn more about the S&B Life Sciences team, or would like copies of any of the articles mentioned above feel free to contact David Wilkinson or your usual S&B contact.

TALKING HEADS

In this edition of International Newsbrief we interview ***Richard Baxter, Senior Partner and Corporate Partner***

So what does the senior partner at S&B get up to?

That's a leading question! I became senior partner in 2012 following six years as managing partner and before that I was head of our corporate and commercial team. While I enjoy being involved in management, I am first and foremost a corporate/M&A lawyer, and in my senior partner role I can devote more time to client work than was possible as managing partner. I had also hoped to play a bit more golf, but so far that hasn't happened…

My senior partner role puts me at the centre of the firm's strategic development, as opposed to day to day operational management, and my job description also includes being the firm's "culture champion" – a positive culture is one of the main planks of our strategy. I am also involved at the moment in working groups looking at such diverse topics as innovation at S&B, CSR, the entrepreneur sector, how we remunerate our partners and updating S&B's core values.

Back to client work, we have certainly been very busy this year – and like many of us my work is often international. I recently led a team which completed an acquisition involving us working with associate firms in France, Germany, Netherlands, Poland, Italy, India, Singapore, Malaysia, Dubai and Hong Kong. We were able to assemble a team of firms able to do exactly what the client wanted at the right price in each jurisdiction, recognising that some were more important to the deal than others – this flexibility is a key benefit of our approach of working with independent firms we know well, rather than forcing clients into a more rigid approach as can happen with larger firms with their own international offices.

What was your first deal at S&B?

I joined S&B from Clifford Chance over 20 years ago, and was pretty much immediately thrown into handling the sale of a technical design business to a listed group that was undertaking a huge consolidation exercise and that year completed around 70 acquisitions. We were selling a partnership business, which at that time gave the buyer the opportunity to save UK stamp duty by completing the deal and keeping all documents out of the UK. It was the heady eighties and the buyer had a standing agreement with its advisers that in such cases 50% of the stamp duty saved could be spent on the deal completion and following celebrations, so everyone ended up completing in Paris, staying at the George V and having a large celebration at Maxim's – the buyer closed down some years later and even very wealthy corporates are more careful with their money these days I think!

How has the firm changed over the years?

Of course we are larger and the range of specialist practice areas and sectors we focus on has grown significantly – the S&B gene pool has never been so strong. And yet I'm very happy to say that we do still take our culture very seriously indeed, and I strongly believe that's one of the most important ingredients of our success. Flexible working was a rarity when I started at S&B, but now it is important in attracting and retaining the talent we want. We have also moved over time from a number of regional offices to our single office approach, which has helped with cohesion and allows us to marshal resources quickly and efficiently for the benefit of our clients.

More recently, as a result of the efforts of our International Practice Group, led by Ken Woffenden, the strength and depth of our international relationships with other law firms and professionals has grown strongly, and partly through that we have seen an ever-growing international client base.

Another area of development has been our "Lawyers with Business Skills" initiative, which has many elements designed to ensure that our lawyers are more than excellent technical lawyers. We want to ensure that our team is commercially-minded and able to mix confidently in the client world, becoming trusted go-to advisers creating and protecting value for our clients.

Our progress was recognised recently with a short-listing in the "UK law firm of the year" category at the prestigious British Legal Awards 2014 – hopefully next year we'll go one better and win it!

And what about the future?

Forecasting how law firms will develop in the future is a notoriously difficult business – in all jurisdictions I imagine! While you can never rule anything out completely, our plan is to remain strongly independent and to continue to combine organic growth with selected high quality lateral hires and team bolt-ons. With the deregulation of the market for UK legal services and competition from new market entrants looking to shake up the legal sector in many ways, it's essential that we continue to innovate and drive ourselves forward, including long term succession planning where the quality of our younger partners and lawyers gives us great confidence in the firm's future success.

Ken Woffenden - Managing Partner & Corporate
+44 (0)1483 401260
ken.woffenden@stevens-bolton.com

David Wilkinson - IP & IT
+44 (0)1483 401207
david.wilkinson@stevens-bolton.com

Jonathan Porteous - Banking
+44 (0)1483 401233
jonathan.porteous@stevens-bolton.com

Laura Hassall - Corporate (and Editor of IN)
+44 (0)1483 406973
laura.hassall@stevens-bolton.com

Stevens & Bolton LLP | Wey House, Farnham Road, Guildford, Surrey GU1 4YD
Tel +44 (0)1483 302264 | Fax +44 (0)1483 302254 | www.stevens-bolton.com

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