

HAWKINS HATTON ADVISE ON SALE OF CHILDREN'S HOMES

We have advised on the sale of Clifford House, the specialist operator of residential children's homes and schools in Herefordshire.

The business has been acquired by Advanced Childcare which will enable the merged operation to offer local authorities a wider range of high quality homes across rural, semi rural and urban environments.

We acted for the former owners of Clifford House John Brierley, Nick Nenadich and Linda Gresty who retain their existing fostering division which will continue to operate as an independent business.

Under the deal 14 residential homes in the Hereford and Leominster area will come under the Advanced Childcare umbrella. The business employed over 200 people who will remain working in the homes.

We worked closely with accountants Price Pearson, who take a hands on approach and so together we were able to advise the directors on all aspects of the sale including due diligence and complex regulatory and legal issues.

Colin Rodrigues, our corporate partner, said: "The enlarged business will be able to provide even more options and expertise to local authority social service departments requiring child care provision through both homes and fostering. It was a good strategic fit for our clients who will continue to operate an independent fostering business."

Advanced Childcare has a team of behavioural management experts and operates 35 specialist children's homes to meet a range of requirements. The company currently works with over 40 local authority partners.



Left to right, John Brierley, director, Clifford House Fostering, Linda Gresty, managing director, Clifford House and Colin Rodrigues, corporate partner.

In This Issue

- Selling Shares In
Light of the Bribery Act 2010
- Hawkins Hatton play lead role
In Estate Agents Deal
- Deal has all the signs of success
- Auto-Enrolment – Are you Ready?

SELLING SHARES IN LIGHT OF THE BRIBERY ACT 2010



On 1 July 2011 the Bribery Act 2010 (the "Act") came in to force and introduced significant changes to anti-corruption legislation within the UK. A potential purchaser of shares in a private limited company will need to consider the impact of this legislation as part of the due diligence exercise.

The Act deals with offences such as:

- 1) offering, promising or giving a bribe;
- 2) requesting, agreeing to receive or accepting a bribe;
- 3) bribing a foreign public official to obtain or retain business; and
- 4) failure to prevent bribery by a commercial organisation.

The offence of "prevention of bribery by a commercial organisation" in particular is extremely wide. It effectively makes a company liable for the acts of any person associated with it at any level where the act is for the benefit of the company. Thus not just employees but also subsidiary companies and agents are included. As this is a strict liability offence there is no requirement to prove involvement or guilt on the part of the organisation. However a company does have a defence

available to it provided it can demonstrate it has adequate procedures in place to prevent bribery. There is no definition within the Act of "adequate procedures" although the Ministry of Justice does provide some helpful guidance. The extent of procedures required to be maintained by a Company is dependent upon the likelihood of bribery within a Company. It is prudent however for a director to consider the following:

- 1) carrying out a risk assessment to consider the likelihood of the Company being exposed to bribery, in particular whether the company trades in sectors where bribery has been known to take place e.g. betting or deals in cash;
- 2) whether the procedures are proportionate to the risk that the company may face which will also depend on the size of the company; and
- 3) carrying out due diligence on those a Company engages.

A director should continually monitor and review how a company conducts business in light of the requirements of the Act since any failure to comply with the Act can result in a Company facing an unlimited fine. Further, where a Senior Officer of the company has consented or omitted to act to prevent an offence, he or she could also face a substantial fine or even imprisonment.

When selling a company if procedures are not in place a vendor can expect that the potential purchaser will seek comfort contractually against any potential liability under the Act and insist on warranties if not indemnities in respect of the same. In extreme cases, if breaches of the Act are identified during the pre-sale due diligence exercise a potential purchaser may reconsider whether to proceed with the purchase altogether as in these uncertain economic times it does not take much to "blow a deal off course".

If you would like more information on the above please do not hesitate to contact **Ruth Murday** on rmurday@hawkinshatton.co.uk

HAWKINS HATTON PLAY LEAD ROLE IN ESTATE AGENTS DEAL

We played a lead role in the sale of Midlands estate agency firm Burchell Edwards to Connells.

Under the deal Connells acquired Burchell Edwards' independent network of 16 estate agency branches in the Midlands including those trading under the Ashley Adams brand. We acted for the six directors and shareholders of Burchell Edwards.

Burchell Edwards employs 110 staff across its 16 offices throughout the West and East Midlands including operations in Derbyshire, Staffordshire, Birmingham, Nottinghamshire and Leicestershire. As well as residential sales, lettings and mortgage advice Connells has also acquired Burchell Edwards' conveyancing firm Be Legal.

Michael Bruce, a director of Burchell Edwards, worked alongside us and accountants Michael Duffy Partnership in securing the deal. He said: "Connells are an excellent fit with our business offering the same services through a wider network which will provide better opportunities for our staff."

"The advice provided through the Hawkins Hatton team was very proactive and commercial throughout the process."

Colin Rodrigues, our corporate partner added: "We were delighted to be able to work with the team at Burchell Edwards in bringing about a successful sale of the firm given that we have worked with Burchell Edwards for a number of years."



Michael Bruce (left), director Burchell Edwards, Kenny Bruce, Burchell Edwards (centre) and Colin Rodrigues, corporate partner, Hawkins Hatton

DEAL HAS ALL THE SIGNS OF SUCCESS

Two sign manufacturing companies in Surrey are pointing in the same direction after joining forces in a deal which involved our firm taking a lead role.

Messagemaker Displays, the leading supplier of LED displays, has been sold to Stocksigns for an undisclosed sum. We acted for Guildford based Messagemaker who will be relocating to Stocksigns' headquarters in Redhill following the sale.

As part of the deal our corporate team and Kate Jones from David Cutter & Co advised Paul Bubb, the chairman and financial director of Messagemaker, drawing up the heads of agreement and consultancy contracts for two of the company's key employees.

Mr Bubb, one of the founders of the business, will be staying on in a consultancy capacity for the next 12 months, working alongside senior executives at Stocksigns Group which has a £7million turnover, employing more than 60 staff.

Since its formation 15 years ago Messagemaker has grown to become one of the leading providers of moving message LED displays serving customers throughout the UK and Europe.

Colin Rodrigues said the deal would enable the shareholders to realise their investment in the business, whilst giving Stocksigns the opportunity to grow further and diversify into new LED markets.

"This deal had all the signs of success as both parties will be able to move forward positively and realise their future ambitions," he added.



Kate Jones (left), David Cutter & Co and Ruth Murday (right), Hawkins Hatton

AUTO-ENROLMENT – ARE YOU READY?

Next year will see the start of a huge revolution in the provision of workplace savings with the introduction of the Pensions auto-enrolment regime, under which employers will be compelled to offer most of their workforce a pension. This process will be phased in stages depending on the size of the business and the government will decide in January 2012 when this will commence. However current thinking is that in respect of businesses which have less than 50 employees this will be after the next election which is in 2015. In respect of firms with more than 50 employees but less than 3000, again current thinking is that this will be in June 2013.



Existing pension arrangements may need to be changed to accommodate the auto-enrolment regime hence now would be a good time for employers to review their existing pension arrangements.

Preparing for the transition on both a practical and financial level will require employers to make some significant decisions since the impact of auto-enrolment extends beyond pensions. Auto-enrolment will impact on the entire benefits programme including, communication, data management and corporate transactions not to mention the extra cost to the employee benefit spend.

The sooner preparations are made, the easier it will be to comply with the legislation. The UK's larger employers have only one or two years before their staging dates to comply with the new regime or they could face penalties of up to £10,000 a day.

While a number of uncertainties remain, the framework is largely in place for employers to start considering what preparations they need to make. There are cost issues for employers as they will have to pay a prescribed minimum level of contribution. The auto-enrolment regime will apply to most employees aged between 22 and the state pension age, unless the employee chooses to opt out.

Employers will have the option of using an existing scheme to meet the auto-enrolment requirements or participating in the new 'industry wide occupational scheme', the National Employment Savings Trust (NEST). Either way the employer will face significant costs hence the key strategy for businesses is to plan for this anticipated cost.

Employers can address some of the problems presented by auto-enrolment by considering a reduction in employee benefits. However, in practice employers will encounter employees who are reluctant to relinquish contractual benefits. This becomes even more complex where unions are involved. Thus the best advice is to ensure that any salary increases take account of the costs of auto-enrolment. As once a salary has been made it forms part of the contracted rights of the employee and cannot be unilaterally reduced.

Hawkins Hatton are joining up with Torquil Clark to have a seminar in the New Year in respect of auto-enrolment. If you are interested please contact Colin Rodrigues at Hawkins Hatton at crodrigues@hawkinshatton.co.uk or Ian Hill at Torquil Clark at ian.hill@torquilclark.com for further details.

Wishing you all a Merry Christmas
and a Prosperous New Year
from Everyone at

HawkinsHattonLLP
— CORPORATE LAWYERS —