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£10,000 for Charity in our 250th year

2013 marked Sydney Mitchell's 250th year in business. To celebrate this, and the firm's success in the Birmingham Law Society Legal Awards, we pledged to raise £10,000 for our nominated charities; the Maria Watt Foundation and the Birmingham Women's Hospital Neonatal Unit.

We were delighted to hit our target and we would like to thank all of our staff, clients and professional contacts for their support and generosity over the last 12 months.

There have been many events to help us reach our target including: Charity Quiz Night, Balloon Launch in the Summer, Charity Ball, Raffles, Charity Bake Off, and numerous Dress Down Days.

Charity Ball

Over 200 people joined in the Sydney Mitchell Charity Ball held at the National Motorcycle Museum raising over £3,500. Everyone enjoyed the evening, and entertainment included dancing to a live 7 piece band, casino tables and a prize-laden tombola.

Charity Quiz

Over £2,200 was raised at our quiz night, and the 6th Annual Quiz is

planned for 25th February at the Orange Studio in Birmingham City Centre. For those who would like to take part this year, please visit our website to enter a team.

Bake Off

Staff took part in a competition to find the most creative and talented bakers in our offices, whether making curries, cakes or savouries. Everyone paid to take part in the tasting sessions, with over £450 raised and our very own Paul Hollywood, Mary Berry, Sue Perkins and Mel Giegyroyc acting as judges.

Raffles

Raffles were many and varied, and all supported by staff, local businesses and professional contacts, who donated prizes raising £1,100 over the year.

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Fahmida Ismail, Partner and Karen Moores, Partner, Launch 250 Balloons to Celebrate 250 Years.



Sarah Archer – Tombola at Charity Ball Event

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Husband who hid assets faces new settlement

If you have negotiated a divorce settlement and then find out that your ex-spouse has been less than open when disclosing their personal finances, the court will reopen the matter if there is sufficient evidence to do so.

In a recent hearing, the court was told by the ex-wife of a businessman that he had been less than entirely truthful when he had made his financial disclosures. She claimed that her ex-husband had substantially undervalued his assets by claiming that shares he owned in a company had no value because it was not trading, when the turnover was in fact in excess of £50 million. She alleged that the shares were worth more than £700,000.

In addition, she claimed that he had failed to disclose other investments he held that were worth more than £800,000.

The wife successfully applied for the previously agreed financial settlement of £1.8 million to be set aside so that a new settlement, based on the true position, could be negotiated.

Says Mauro Vinti, "The courts insist that the disclosure of assets and income in such circumstances is correct

and complete. Failing to be open and truthful can lead to unpleasant consequences."

Please contact Mauro for help on **0121 746 3300** or m.vinti@sydney Mitchell.co.uk.



Duty of care could not be delegated, rules Court

A widely reported recent case has potential implications for those entrusted with the care or safety of others who delegate that responsibility – for example by the use of subcontractors.

The tragic case concerned a boy who suffered brain injuries whilst taking part in a swimming lesson organised by his school. The swimming lessons had been contracted out to an independent provider, which employed a qualified swimming instructor to provide the tuition and supervision.

The local authority (for the school) claimed that it was not liable for the boy's injuries, arguing that it had delegated the duty of care it owed to the children to the service provider. On behalf of the boy, it was argued that the duty of care of the school was a direct ('personal') one which was not capable of being delegated: the council had a duty to take reasonable care to ensure the performance of functions it undertook even where

these were undertaken indirectly.

The case went to the Supreme Court, which ruled that the duty of care could not be delegated by the council. It stated that a defendant will have a 'non-delegable' duty of care when:

- The claimant is a vulnerable person (e.g. a child) or a person dependent on the defendant for protection against the risk of injury;
- There is a pre-existing relationship between the claimant and the defendant which places the claimant in the care or custody of the defendant and from which it is reasonable to impute that the defendant owes the claimant a 'positive duty' to protect him or her from harm;

- The defendant, not the claimant, has complete control over how the defendant's obligations to the claimant are performed; and
- The defendant has delegated those obligations to a third party and the third party has been negligent in the performance of the delegated function.

On this analysis, the council was found liable for the child's injuries.



For advice on your responsibilities in similar circumstances, contact Mike Sutton in our Personal Injury department on **0121 698 2200** or email pi@sydney Mitchell.co.uk.

Corporate Insolvency and TUPE – Court of Appeal gives guidance

In a case which raised new issues on the inter-relationship between insolvency rules and the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), the Court of Appeal has dismissed the unfair dismissal claims of four employees who lost their jobs at Crystal Palace Football Club as it sank into administration (Crystal Palace FC Limited and Another v Kavanagh and Others).

The club, which was at that time owned by Crystal Palace FC (2000) Limited, was near the bottom of the Championship and in dire financial straits at the end of the 2009/2010 season when the employees were summarily dismissed by the administrator, who was anxious to sell the club as a going concern. Matters were complicated by the fact that Selhurst Park Stadium was owned by a different company and this too was in administration. At the time of the dismissals, the administrator had been in negotiations with a consortium which ultimately bought the club through a corporate vehicle, Crystal Palace FC Limited (CPFC).

The employees commenced Employment Tribunal (ET) proceedings against CPFC on the basis that their dismissals had been unfair and the company was liable to compensate them by virtue of TUPE. Whilst it was common ground that the principal reason for the dismissals was not the transfer itself, as no agreement had been reached with regard to this at the date on which the dismissals took place, the employees claimed that their dismissals were unfair by reason of Regulation 7 of TUPE because they were for a reason connected with the transfer that was not an economic, technical or organisational reason entailing changes in the workforce. The ET dismissed their claims but their challenge to that decision was subsequently upheld by the Employment Appeal Tribunal.

Allowing the company's appeal and restoring the ET's decision, the Court of Appeal noted that although the

dismissals had been 'connected with the transfer', the administrator had had genuine economic reasons for dispensing with the employees' services that were not related to the sale of the club. Noting the 'unique features' pertaining to the financial affairs of football clubs, which commonly have few assets other than their squad of players, the Court found that the administrator's principal motive was to reduce the club's wage bill in order to continue running the business and to avoid liquidation.

Although the club's disposal as a going concern was the administrator's ultimate objective, the sale to the consortium was only hoped for at the time of the dismissals. The Court also noted that the dismissals had not made the business of the club 'a whit more attractive' to a potential purchaser. It was only because negotiations for the parallel sale of the stadium dragged on beyond the time during which the administrators could continue to pay all the staff that the employees had to be dismissed.

In its judgment, the Court noted that the case had raised 'fundamental issues' relating to the interaction between corporate insolvency rules and the employment protection provided by TUPE. The ruling means that any potential liability arising out of the dismissals remained with Crystal Palace FC (2000) Limited and did not pass to CPFC following transfer of the club's assets.



Contact Leanne Schneider Rose on **0121 698 2200** if you are thinking about acquiring a business out of Administration and Norman Rea on **0121 746 3300** who advises on Employment issues arising out of Insolvent business.

£10,000 for Charity in our 250th year continued

About the Charities

The Maria Watt Foundation is a local charity whose aim is to promote understanding about leukaemia and other cancers that affect children, teenagers and young adults. This was set up in 2005 by Diane Watt after the tragic loss of her daughter Maria who had planned to go to university to become a lawyer.

The Birmingham Women's Hospital Neonatal "Tiny Babies, Big Appeal" is the Neonatal appeal at Birmingham Women's Hospital. All donations will help care for sick and premature babies, not just in Birmingham but throughout the West Midlands.



Collective redundancy consultation – Government granted leave to appeal

Under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992, employers have a duty to consult with appropriate representatives of employees concerning forthcoming redundancies if 20 or more employees are to be dismissed at one establishment within a 90-day period.

In May this year, in a decision involving the protective awards payable to employees made redundant by Woolworths and Ethel Austin, the Employment Appeal Tribunal (EAT) ruled that the words 'at one establishment' should be deleted from the Act, in order to give effect to EU Council Directive 98/59EC, which it is intended to implement, and protective

awards were payable to former employees who had worked at stores with fewer than 20 members of staff (USDAW and Another v Unite the Union and Others).

The effect of the ruling would be that the duty to consult would be triggered when 20 or more employees were to be dismissed as redundant from a business as a whole, irrespective of the number of people employed in each individual workplace.

Until the EAT's decision, the Secretary of State for Business had declined to become involved in the proceedings as he had 'nothing to usefully contribute about the consultation process between the parties'. Following the ruling, however, he applied for permission to appeal the decision.

The EAT accepted the Secretary of State's apology for declining to attend the earlier hearings and

granted the permission. There were compelling reasons for allowing an appeal, including a parallel reference to the European Court of Justice, the importance of the ruling in terms of its effect on business as a whole and the value of the claims.

However, permission was granted on condition that the Secretary of State indemnifies the claimants for their reasonable costs in the Court of Appeal.

STOP PRESS – The Court of Appeal have now referred this case to the Court of Justice of the European Union (CJEU).



Norman Rea can keep you informed of developments in this important case. If you require further details, please telephone

0121 746 3300 or email Norman at n.rea@sydneymitchell.co.uk

Joint accounts and mental capacity

If you are concerned about the future mental capacity of a relative or any other person with whom you have a joint bank account, it makes sense to consider setting up the appropriate power(s) of attorney.

The British Bankers' Association's guidance for members advises them

to freeze all joint accounts if one of the account signatories becomes mentally incapable.

Should this happen, the account will remain frozen until the bank concerned receives a valid power of attorney.

Even where there is an appropriate power of attorney in place, there is likely to be some minor disruption. However, where no such power exists, it can cause significant difficulties, especially where the account

concerned is used for everyday living expenses or in connection with the operation of a business.



Contact Ravinder Sandhu for advice on the use and creation of powers of attorney on **0121 698 2200** or by email to

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