



## Default Retirement Age to be Phased Out



demonstrate that a retirement age is objectively justified, so employers should make sure that the age chosen can be defended before deciding to use a compulsory retirement age. An employee will still have the right to request to work beyond the compulsory retirement age where one is in operation.

Where an employer chooses to impose a retirement age and this cannot be objectively justified, it could face claims of age discrimination and/or unfair dismissal.

The consultation, Phasing out the Default Retirement Age, can be found at <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/p/10-1047-default-retirement-age-consultation.pdf>.

The consultation closes on 21 October 2010.

The Government intends to abolish, by 1 October 2011, the Default Retirement Age (DRA) of 65 contained in the Employment Equality (Age) Regulations 2006 and has published a consultation document on how this is to be achieved.

Under the proposals, there will be a six-month transition period beginning on 6 April 2011. From this date, employers will not be able to issue any notification for compulsory retirement using the DRA procedure. Between 6 April and 1 October, only employees who were notified before 6 April and whose retirement date falls before 1 October can be compulsorily retired using the DRA.

From 1 October 2011, the DRA will be abolished and the consultation proposes relieving employers of the administrative burden of the associated statutory retirement procedures. From that date, individual employers will only be able to operate a compulsory retirement age if this can be objectively justified as a 'proportionate means of achieving a legitimate aim'.

As the consultation points out, it is not easy to

*'... employers should make sure that the age chosen can be objectively justified before deciding to use a compulsory retirement age.'*

The Government's proposals will impact on many employment rights, such as pension schemes and age-related benefits and this consultation specifically seeks views on the consequences of removing the DRA with regard to insured benefits and employee share plans.

This is a radical change in employment law and we would advise you to consider its implications for your business without delay.



**Richard Stephens** is a partner in the employment department and can be contacted on: 020 8370 2875.

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### PARTNER'S COMMENT



Taking us into Autumn is a variety of features which will help you plan ahead. Our special feature for the season focuses on Lasting Powers of Attorney (LPA) and introduces a discounted fee of £350 for LPAs (contact our W&P department on 020 8370 2899 for further information). We will also be launching an LPA road show to give free talks about the virtues of protecting loved ones. Always committed to the environment, if you would prefer to receive your next edition by email please notify us at: [market@vanderpumps.co.uk](mailto:market@vanderpumps.co.uk).

**Mark Heselton, Partner**

# Get Business Agreements in Writing

A father has been left with a bill for £120,000 in legal fees after claiming that he owned half of his son's courier business. The company, Time Critical International, was started in 1996 by Roger Marsh's son, Simon, with a £10,000 payout he received from the Criminal Injuries Compensation Board. Simon received the payout as a result of injuries he sustained when he was trying to stop two men from attacking his father with iron bars.



Simon Marsh told the High Court that he believed that the attack came after his father was accused of violence towards his ex-wife. From its modest beginnings, Simon Marsh's company now has a £17.5 million turnover and makes an annual profit of £5 million. Roger Marsh told the High Court that he had spent his life helping his dyslexic son Simon to build the business.

Roger Marsh asked the High Court to declare that he and his son were in partnership and that he was therefore entitled to half of the company's assets. Simon Marsh told the High Court that his father was 'living on another planet' if he believed that he owned half of the business. The judge, Sir Edward Evans-Lombe, ruled that Simon Marsh's evidence was preferable to that of his father, which he held to be 'to a very large extent fictitious'. Roger Marsh told reporters after the hearing that he never thought he needed to have anything in writing, adding, "You don't when you're dealing with your own son."

Failing to put essential business agreements in writing is a recipe for disaster. We can advise you on all aspects of commercial law.



Patrick McGrath

Contact Patrick for advice on business agreements on: 020 8370 2855. <http://www.vanderpumpandsykes.co.uk/company-commercial-lawyers-solicitors-enfield>



## No Valid Will Means Estate Divided

It took the High Court to sort out a family feud after one of three brothers was accused of siphoning off more than £50,000 from his late mother's estate in the weeks before her death.

The brother claimed that his mother had always intended for him to inherit her entire estate but was ordered by Mr Justice David Richards to repay more than £58,000 to his late mother's estate. The woman had made a will in 2005 leaving her entire estate to him, but that will was never executed.

In this case it was accepted that the elderly lady was mentally alert, so there was no good reason why her wishes should not have been properly documented: if you want your estate to be distributed according to your wishes, you must execute a will.

**Inderjit Ahitan is a solicitor in the Wills & Probate department and can be contacted on: 020 8370 2899.**

## The Danger of Will Changes

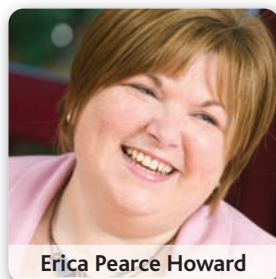
**A woman who changed her will but didn't take professional advice caused unexpected problems for her family recently when they had to go to court to work out what the codicil she added meant.**

She and her second husband made identical wills which provided that their own interest in their house passed to their own children and the rest of their estate was divided between their children and stepchildren equally.

When she inherited money from her family, she added a codicil to her will saying that if she predeceased her second husband, that money 'should be divided equally between my grandchildren'.

Her husband predeceased her. When she died, the court had to decide the meaning of the codicil. Strictly, the inherited money would pass to her children and stepchildren but the clear intention of the codicil was to pass the inherited money to her grandchildren.

After hearing evidence from the family that her intention was for her grandchildren to inherit the money, that was the ruling of the court.



Erica Pearce Howard

**Erica Pearce-Howard is a solicitor in the Wills & Probate department and a member of Solicitors For the Elderly (SFE) and can be contacted on: 020 8370 2899.**

# Important Court Decision on the Deposit Protection Scheme



Tenancy Deposit Schemes (TDSs) were introduced under the Housing Act 2004, and require landlords who take deposits from their tenants either to insure that deposit, or to hold the deposit within a recognised scheme. The TDS was brought in to safeguard tenants' interests as some landlords were failing to pay back deposits at the end of the tenancy, despite there being no damage caused to the property and the rent having been fully paid.

The recent case of *Draycott v Hannells Letting* has important implications for landlords who rent out residential properties. The Draycotts moved into a property at the end of February 2008, which was let to them through an agent, Hannells Letting. The Draycotts paid a deposit of £2,700 into Hannells' account on 4 March 2008.

Under the relevant TDS legislation, the deposit needs to be either insured or deposited with a scheme within 14 days of receipt. Tenants also must be provided with information about the scheme. In this case the relevant scheme was the Deposit Protection Service, which holds the full deposit until the end of the tenancy. Hannells did not lodge the deposit with the DPS until 19 March 2008, and the Draycotts did not receive the information about the scheme until the 21 May 2008.

The court ruled that while the scheme specified that the deposit had to be lodged, the fourteen day requirement was not an 'initial requirement' of the scheme. If a penalty had to be paid for lodging the deposit after the two weeks expired, it would be the letting agent who was responsible rather than the landlord. Hannells had paid the deposit in accordance with the law but not within the fourteen day timescale, but the Draycotts did not commence their claim until after the deposit had been lodged with the scheme. As a result, no penalty was payable.

**Jenny Howe is a solicitor in the litigation department and can be contacted on: 020 8370 2890. <http://www.vanderpumpandsykes.co.uk/litigation-dispute-resolution-lawyers-solicitors-enfield>**



Jenny Howe

## £5 Million Divorce Settlement 'Not Enough'



**The ex-wife of a multi-millionaire sought leave to appeal against the amount awarded to her in the couple's divorce settlement on the basis that it did not reflect the true growth of her husband's wealth during their marriage.**

Earlier this year, Victoria Jones was awarded £5 million of her ex-husband's total estimated fortune of £25 million. The High

Court found that 60 per cent of the value of Mr Jones's company had been established before the marriage, which is why Mrs Jones was only entitled to 20 per cent of his wealth. Both parties had fought bitterly over the settlement and each had accused the other of dishonesty when disclosing their respective financial positions.

Mr Jones's legal team argued that his ex-wife was a woman of independent means who had a substantial amount of money before she married him. Her ex-husband was a self-made

man, who began his working life as an apprentice in the Scottish offshore oil and gas industry. He sold his company, Dominion Technology Gases, for the sum of £32 million, approximately one year after separating from his wife.

In considering whether Mrs Jones had a right to appeal, the Court of Appeal heard that the High Court's decision was at odds with the

evidence. Accounting records showed that Mr Jones's company was only worth £3.2 million when the couple married.

The Court of Appeal gave permission for Mrs Jones to appeal on the basis that she had, at least, an arguable case. The appeal will be heard at a later date.

We can advise you on any family law or wealth protection matter.

**Mark Heselton is a partner in the family department and can be contacted on: 020 8370 2876. If you are getting divorced or have any other family matter, we can help you through every stage of the process. For full details of our services please log on to: <http://www.vanderpumpandsykes.co.uk/family-lawyers-family-solicitors-enfield>**



Mark Heselton



## Helping You to Plan Ahead

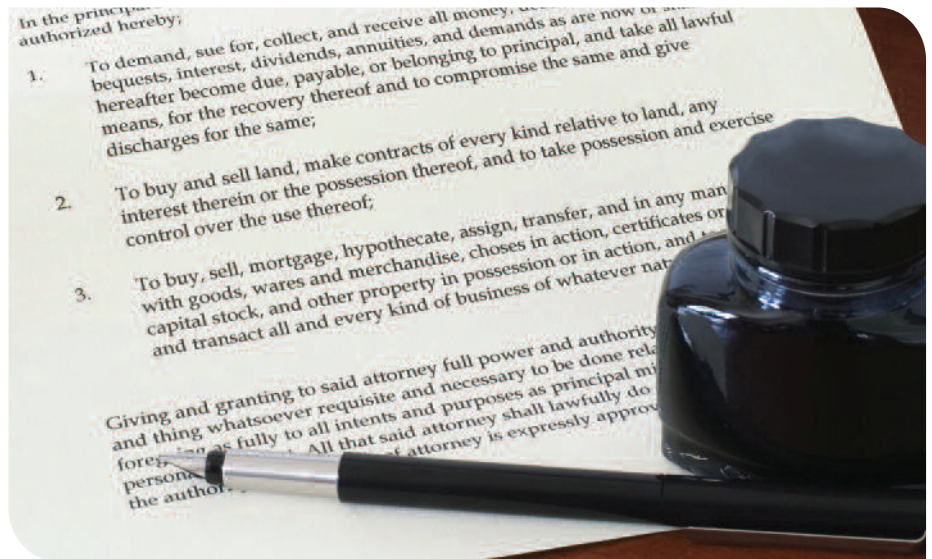
### We are living longer, that's the good news

Unfortunately, dementia and other mental illnesses are increasingly taking their toll on families.

**A Lasting Power of Attorney** can help chosen family members or friends assist you with decisions that arise.

Two types of LPA's are available so that your affairs can be looked after by someone else.

**Setting up an LPA is a sensible precaution for many people giving peace of mind.**



### Services which can help you plan ahead

- Making a Will
- Probate
- Setting up and Managing Trusts
- Lasting Powers of Attorney & Deputy orders
- Minimising Inheritance Tax

### Property and Affairs LPA

A Property and Affairs LPA enables an appointed person to help with your financial and property affairs.

If you were to lose capacity, decisions regarding your personal welfare can be arranged through a **Personal Welfare LPA**.

If you already have an Enduring Power of Attorney (EPA), you may wish to consider making a Welfare LPA to compliment it.

If you do not prepare an LPA, you may risk the following:

- Assets in your name being frozen if you lose the capacity to deal with them
- An application to the Court being made so that someone suitable is appointed as your "Deputy"
- Ongoing involvement of the Court
- The process becoming a costly and drawn out affair

**Creating an LPA is your opportunity to safeguard your personal wishes and decide who you want to manage your affairs should your abilities deteriorate.**

**At Vanderpump & Sykes, we help people to make effective decisions in important areas of their life**



## Helping You to Plan Ahead

### No one likes to think about their own death and this is probably why most people don't make a Will

However, if you do not make a Will, the people you would like to inherit your estate may not get what you would like them to have.

**It's especially important that you make a Will if you have young children, a handicapped spouse, you are separated, divorced, or have an unmarried partner.**

Anyone over the age of 18 can make a Will. Even if you already have a Will it may be out of date or invalid because of:-

- Change in family circumstances
- Concerns regarding long term care costs for you or other family members
- Marriage
- Divorce
- Foreign property
- Guardianship
- Co-habitation

Making a Will and updating it regularly ensures that changes in legislation and your circumstances are covered. Whatever the size of your estate or the complexity of your arrangements, you will find the expertise of Vanderpump & Sykes' team of specialists valuable in helping you put together a Will.

## Last Will — (( and )) — Testament

### The Probate legal system can be complex

Sorting out paperwork and administering the estate is the last thing that you may feel like doing after losing a loved one. At Vanderpump & Sykes we can help you handle all the formalities with or without a Will. We can help as you require including:-

- Registering the death
- Arranging the funeral
- Identifying assets and liabilities, administering them until they can be sold or transferred
- Selling any property (leasehold or freehold)
- Paying any debts or liabilities owed by the estate including inheritance tax
- Dealing with tax returns and any arising trust funds

We deal with estates of all sizes and pro-actively seek tax saving opportunities as they arise. We keep the beneficiaries and executors informed of progress at all times and are always available to answer any queries when they arise.

Contact us on: 020 8370 2899 for help with preparing your Will or Administering the estate of a loved one .

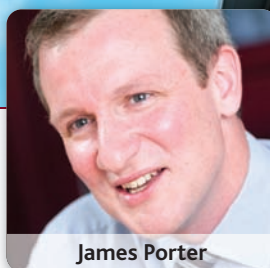
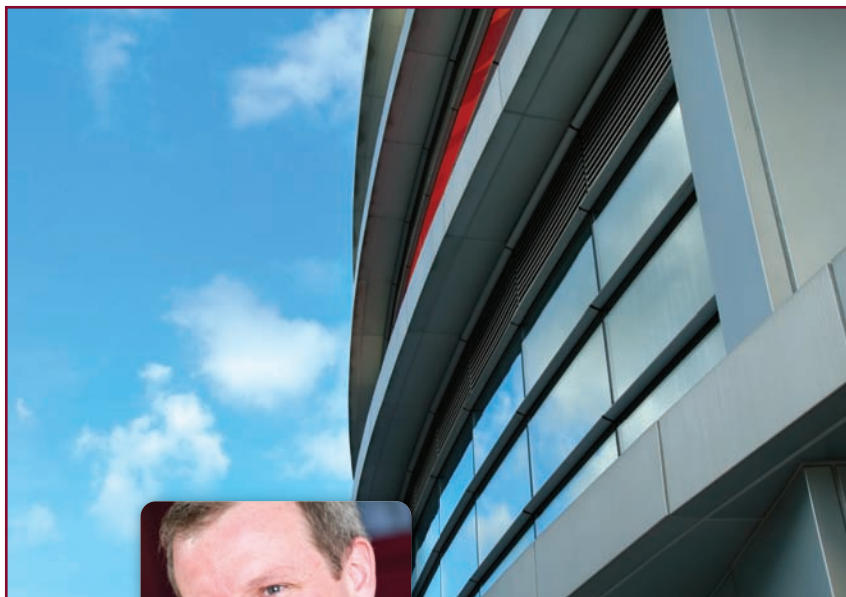
## Developers Have Last Say In Water Connection

The Water Industry Act 1991 gives a property developer an absolute right to connect the property to the public sewerage network.

This is unless the sewer constructed does not meet the reasonable standards of the statutory sewerage provider. When the Welsh Water Authority refused builder Barratt permission to connect to its sewerage network at the point at which Barratt wished, the case ended up in the Supreme Court. Welsh Water refused on the basis that the network lacked sufficient capacity. It suggested connecting at a different point, which would have required Barratt to obtain the consent of another party.

The Supreme Court rejected Welsh Water's argument. The Act confers no express right on the sewerage undertaker to select the point of connection or to refuse permission to make the connection on the ground that the point proposed by the developer is open to objection.

This decision will come as a relief to developers.



James Porter

If you are a developer contact James Porter for advice on: 020 8370 2865. <http://www.vanderpumpandsykes.co.uk/commercial-property-lawyers-solicitors-enfield>

## Incorrect Service Defeats Service Charge Claim

Landlords seeking to recover services charges above £250 (the statutory minimum amount), which require a notice be served on the tenants, should make sure they serve the relevant notice correctly! In a recent case, a landlord had to do works on a building and sought to recover the cost via the service charge to the tenants. In the usual way, a notice was served on the tenants.



Stephen Quay

However, one of the tenants had moved out and sublet to a new tenant. The tenant passed their new address on to the landlord's managing agents, but they failed to pass it on. The effect of that error was that when the notice was sent, it was sent to the flat, not the tenant's new address.

The landlord sought to recover the service charge and the tenant declined to pay on the ground that she had not been served with the correct notice.

The Lands Tribunal agreed with the tenant. The lease required the notice to be sent to her last known place of abode or affixed to the flat. By sending it to the flat, the landlord had not complied with the terms of service.

The moral for landlords is to double check that you have get the service of notices right, or you may find that you are not able to recover repair costs from your tenants via the service charge.

Stephen Quay is a partner in the commercial property department and can be contacted on: 020 8370 2853 or email: [stephenquy@vanderpumps.co.uk](mailto:stephenquy@vanderpumps.co.uk)

## The Importance of Being Flexible

Something that our Marketing Executive, Monica Myrie, is beginning to realise! Having signed up to perform 108 yoga sun salutations for charity at the YogaShow (Olympia) on 30th October, flexible is probably an understatement. Says Monica 'the sun salutation is a sequence of 12 movements and so I am actually going to be doing 108 x 12 yoga movements – gulp!

My minimum target is £108 with funds raised going to The Special Yoga Centre which helps children with special needs such as: Downs Syndrome, cerebral palsy, epilepsy, autism, ADD/ADHD and other physical and developmental difficulties. Yoga brings many benefits to these children and their carers and so it is a worthy cause".

Anyone wishing to support this charity event can logon to: <http://www.justgiving.com/Monica-Myrie>

# In Brief

## The Equality Act 2010 – Changes

The Equality Act 2010 replaces nine major pieces of discrimination legislation and other ancillary measures that have been introduced over the last forty years to protect people from unfairness and discrimination on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These are now called 'protected characteristics'.

The Act extends some protections to characteristics that were not previously covered and also strengthens some aspects of equality law. The core provisions of the Act come into force on 1 October 2010.

The Arbitration, Conciliation and Advisory Service (ACAS) has produced a table showing 'what's new and what's changed: at a glance', which can be found at <http://www.acas.org.uk/CHttpHandler.ashx?id=2840&p=0>.

## House Sale Freeze Follows Maintenance Arrears

A wealthy man, who owed more than £78,000 in arrears of child maintenance, has had an order served on him by the court which prevents him from selling his house unless the arrears are settled.

The man had failed to pay any maintenance for more than 12 years and it was thought that he might try to put the proceeds of the sale of his house beyond the reach of the Child Support Agency, which is now part of the Child Maintenance and Enforcement Commission.

The Commission sought the order over the four-bedroom property to ensure that the arrears of maintenance are made good.

In appropriate circumstances, the Commission has the power to order the possession and sale of properties or the imprisonment or banning from driving of those who build up substantial arrears of child maintenance.

## FTSE 350 Directors to Face Annual Re-election

In an attempt to further improve corporate governance, the Financial Reporting Council (FRC) has introduced changes to the UK Corporate Governance Code. These include a clearer statement of the board's responsibilities regarding risk, a greater emphasis on the importance of getting the right balance of skills and experience on the board, and a

recommendation that all directors of FTSE 350 companies should be required to stand for re-election every year.

The ability of shareholders to challenge, at every Annual General Meeting, the reappointment of directors seen as underperforming will send shivers down the spines of many City board members.

The new Code can be found at <http://www.frc.org.uk/corporate/ukcgcode.cfm>.

## Draft Code of Practice on Equal Pay

The Equality and Human Rights Commission has published the final draft statutory Code of Practice on Equal Pay, which has been laid before Parliament. The Code does not itself impose legal obligations but gives guidance on an employer's obligations under the Equality Act 2010, to ensure that women and men receive the same pay and other contractual benefits when they are doing equal work, and sets out good practice. This includes a five-step model for carrying out an equal pay audit.

When considering an equal pay claim, tribunals and courts will take into account any part of the Code that is considered relevant to the proceedings.

The Code of Practice can be found at [http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/equal\\_pay\\_code\\_final.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/equal_pay_code_final.pdf)

## OFCOM Proposals to Get Tough Over Copyright Violations

OFCOM has consulted on a draft initial obligations code of practice designed to prevent online copyright infringement. The code, entitled 'Online Infringement of Copyright and the Digital Economy Act 2010' will:

- enable those whose copyright has been violated to require Internet Service Providers (ISPs) to notify their subscribers if the Internet Protocol addresses associated with them are reported by copyright owners as being used to infringe copyright;
- require ISPs to keep track of the number of reports about each subscriber; and
- require ISPs to compile, on an anonymous basis, a list of those who are reported on above a threshold to be set in the initial obligations code.

The copyright owner will be able to apply for a court order to obtain personal details so that they can take action against those included on the list. It is proposed that the

person whose copyright is infringed will have to pay 75 per cent of the cost of notifying the online infringer and the ISP will have to pay 25 per cent.

The draft code of practice can be found at <http://www.ofcom.org.uk/consult/condocs/copyright-infringement/condoc.pdf>.

The Digital Economy Act increases the maximum penalty for online copyright infringement to £50,000.

## Employer Pays Price for Super Salesperson

An employer whose bonus scheme for sales staff was not tightly worded enough was recently left to count the cost after an appearance in the Court of Appeal.

The employer hired a salesperson on a contract which included bonuses for meeting sales targets. The salesperson generated sales far in excess of what was anticipated and claimed very substantial bonuses as a result.

The salesperson's contract had a clause which allowed the employer to limit the bonuses paid during the year, but this provision was not invoked during the year, despite the salesperson's sales figures running well ahead of expectations throughout the period.

The employer sought instead to rely on another clause, which allowed the bonus to be capped at 100 per cent of salary. By concession, the employer did not apply the clause strictly and allowed a bonus of 130 per cent. This, however, was still less than the employee considered was due to her.

The Court of Appeal considered that such clauses could only apply in exceptional circumstances and that the circumstances of this case were not exceptional enough to warrant the application of a bonus cap. In the absence of a more tightly worded capping clause, the bonus, which amounted to more than £100,000, was payable.

Further legal articles on private and commercial matters can be found on: <http://www.vanderpumpandsykes.co.uk/document-library>



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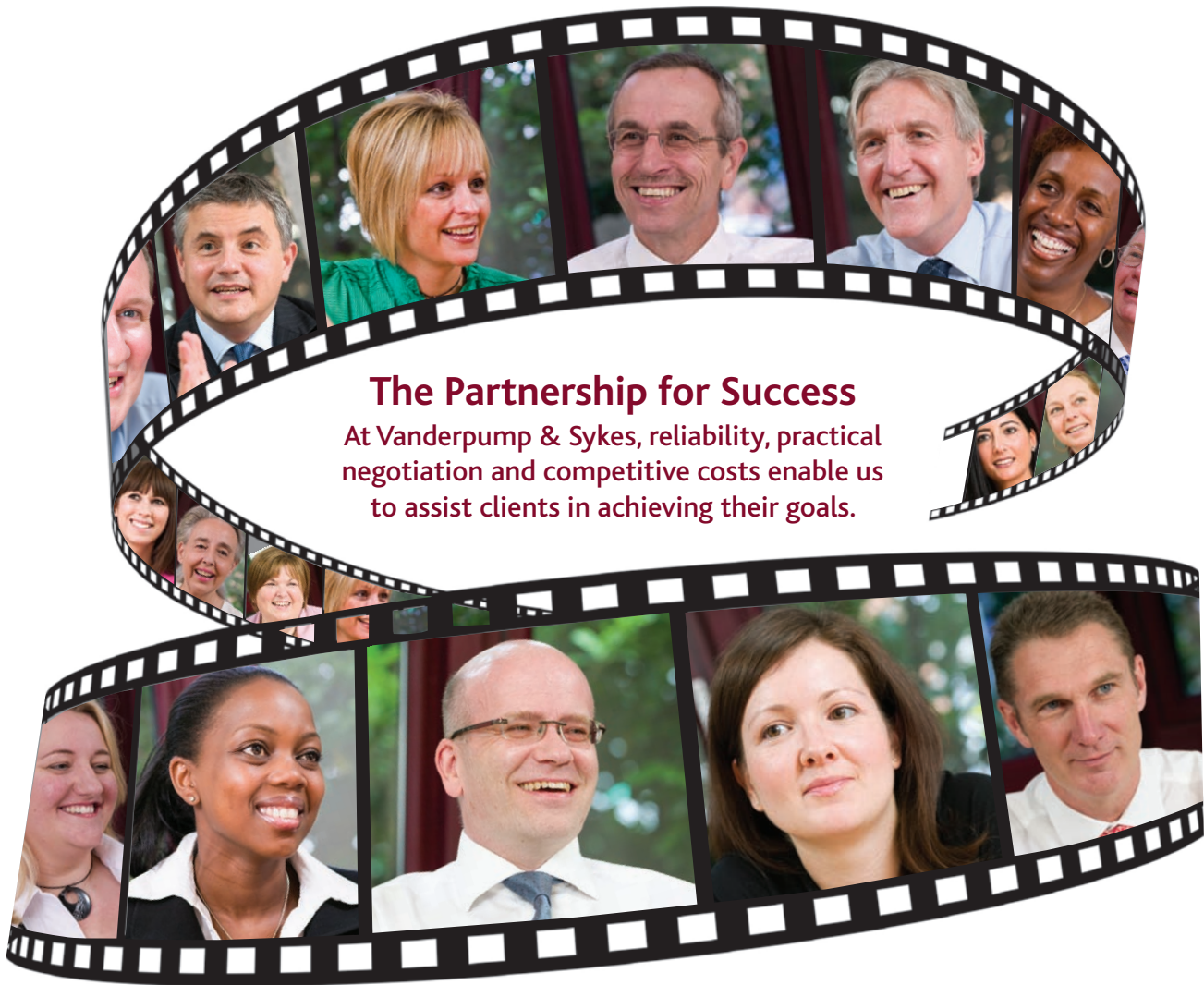
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### The Partnership for Success

At Vanderpump & Sykes, reliability, practical negotiation and competitive costs enable us to assist clients in achieving their goals.

Established since 1899, Vanderpump & Sykes is a well respected North London partnership offering a wide range of services to business and private clients. A friendly, dynamic firm, we employ people who fit within our traditions of integrity, excellence and commitment to clients. Our aim is to keep our clients for life, by delivering a high level of customer service and technical expertise.

For help and advice on any of these issues contact us now:

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