



## Brachers Business

Issue 2

### A timely investment for luxury watch retailer Watchfinder

Maidstone-based online retailer Watchfinder specialises in high-end brands such as Rolex, Cartier, Tag Heuer and Omega, and has recently opened its first London boutique in the Royal Exchange shopping centre next to the Bank of England.

Brachers is delighted to announce its role in advising specialist luxury watch retailer Watchfinder on the \$10 million (£6.18 million) investment it has secured from growth equity firms Piton Capital and Beringea. The investment is intended to boost sales and double the retailer's stock holding.

Corporate Partner James Bullock and Associate Matthew Simmonds led the team on the deal, which is the latest example of high-level corporate advisory work being retained by market leading regional firms rather gravitating to the City.

Stuart Hennell, MD of Watchfinder said "After considering a number of strategic options for the future, we are delighted to be taking on investment from Beringea and Piton, with whom we have a shared vision for the future. Their combined expertise in e-commerce, retail, and international markets should be a great asset."

The investment is intended to boost sales and double the retailer's stock holding.



They were available 24/7, understood what was important to us as a management team, delivered excellent legal advice and always understood the commercial rationale for the investment.

“Brachers’ corporate team really demonstrated their expertise in private equity work. They were available 24/7, understood what was important to us as a management team, delivered excellent legal advice and always understood the commercial rationale for the investment. They are a great team and we’re happy they were on our side in the negotiations.”

James Bullock commented: “This is a game-changing deal for Watchfinder and it’s great to see Kent-based businesses like this attracting investment of this calibre. It has been a privilege to work so closely with the ambitious and successful Watchfinder management team on this complex transaction.”



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## The new Public Contracts Regulations 2015

If you supply to the public sector, you need to be aware that the new Public Contracts Regulations 2015 came into force on 26 February 2015 as UK law, and will now need to be complied with by all Contracting Authorities who procure after this date.

Some of the changes that you as a supplier need to be aware of when bidding for public sector contracts are:

- The Regulations prohibit the use of a PQQ stage for contracts below £25,000 (£10,000 for central government) – this should make it easier for SMEs to participate.
- All contracts with a value estimated to be greater than £25,000 (£10,000 for central government) have to be advertised on Contracts Finder.
- Above the relevant OJEU thresholds, there are now altered and new procedures for Contracting Authorities (CAs) to use. In particular, the ‘Innovation Partnerships’ procedure offers a real alternative. The aim of the innovation partnerships procedure is to enable both the development and purchase of an ‘innovative’ work, service or product from the same supplier. Proposals would be submitted during the competitive process and then the ‘innovative’ solution would be developed after the award of the contract. This gives much more flexibility than the competitive dialogue procedure where discussions have to continue with bidders until the CA decides on the final solution that it wishes to tender for. We know that CAs are looking to work with the private sector to commercialise new products and services - this is potentially a great opportunity for CAs and suppliers to explore.

### Key changes

- the abolishment of Part A and Part B services (replaced by the new ‘light touch regime’)
- preparation of all documents before advertisement
- timescales
- changes to what can be used as selection and award criteria
- MEAT
- procedures available
- when a contract can be changed

- Suppliers will now give self-declarations and only the winning bidder will have to prove their status. It is hoped the UK will adopt the European Single Procurement Document (covering most of the standard PQQ questions) and suppliers will then hopefully be able to re-use the same form - saving time and money.
- A turnover cap has been introduced to help SME participation. Unless there is specific justification, CAs will not be able to set turnover requirements at more than two times the contract value. If there is a turnover requirement of more than two times the contract value, then ask why.
- CAs can now take in to account full life-cycle costs.
- CAs will have the power to ask for and evaluate evidence of social/environmental characteristics. So make sure your policies are in order in these areas and start collecting data and evidence of your company’s positive impacts to use in bids.
- Relevant skills and experience of individual staff members can be taken into account at the award stage, where it is relevant.

We are working with suppliers, service providers and contractors to help them understand the new Regulations and how to get the best out of them.

## Introducing Jonathan Askin

Jonathan is a Partner in the Commercial team and takes the role of lead partner at Brachers’ Discovery Park office in East Kent.

Jonathan advises both public and private sector clients on a broad range of commercial, contractual and public procurement law matters with extensive experience in both the health and life sciences sectors.

Jonathan is available to advise you immediately. Please contact him on 01304 892360 or email [jonathanaskin@brachers.co.uk](mailto:jonathanaskin@brachers.co.uk).





## The South East Food and Agricultural Debate

Brachers was delighted to jointly host the South East Food and Agriculture Debate with Insider, Smiths Gore and Hadlow College Group in Autumn 2014. Held at The East Malling Research Centre, the debate brought together the heads of five leading companies and a trade organisation to discuss a range of issues that are affecting the rural economy in the South East of England.

In this article, Sarah Webster, Brachers' Head of Agriculture & Rural, summarises some of the key themes which arose in the debate.

The sector is a huge contributor to the nation's economy, with a collective turnover of £92 billion last year and is responsible for 3.5 million jobs. In a highly competitive environment, manufacturers, producers and farmers are facing a host of challenges whilst working to provide high quality products to customers.

The breakfast was aimed at identifying challenges and what those in the industry are doing to overcome these difficulties.

Key messages that came out of this discussion were the importance of recruiting and retaining skilled workers, the need to innovate and diversify, the ability to access finance and the need to be more productive and competitive. All panel members identified the impact of branding as vital to their success.

### William Opie, Managing Director Bennett Opie



A manufacturing and distribution business, founded in 1880. In 1929 the family moved to Sittingbourne and began producing Kentish glacier cherries. They now sell a range of other products to supermarkets. In the 70's William began importing syrups to bars in the UK and then to coffee chains such as Costa coffee which experienced a mass growth in the last decade.

#### Key challenges

- **Price pressure** – The introduction of supermarkets such as Aldi and Lidl to the UK market has increased competition across the industry. Supermarkets are only concerned about the cost of a product and where it came from.
- **Supermarket own brands** – Supermarkets are pushing unique products out through their own brand. Branded products are the same in all supermarkets and a similar cost so the challenge is to keep a strong brand but also develop products for the supermarkets.

### Ed Martin, Manager Produced in Kent



Produced in Kent represents a group of 250 SMEs across Kent, many in the food & drink industry.

#### Key challenges

- **Exporting** – There is a lack of awareness from Kent businesses about exporting products. Many economies abroad have increasing disposable incomes that should be used to business' advantage to reach a wider market.



### Jack Cookson, Founder Nudge Drinks

Nudge produce a range of frozen fruit smoothies as 'fresh from frozen' giving the consumer a healthy and simple option to make smoothies. They are currently in the process of getting the product to market.

#### Key challenges

- **Product innovation** – Nudge has created a product not currently seen in supermarkets, they provide frozen fresh fruit in a sachet which can be blended with juice to make a smoothie, taking out the hassle of peeling and chopping fruit. The product also has a shelf life of two years.
- **Funding** – Nudge received funding from the Government's Start-up loan scheme and from The Prince's Trust.



### Angie Curwen, Managing Director Kent Crisps

Kent Crisps produce crisps using Kentish produce and Kentish flavourings. Originally they were part of the Quex Food group but completed an Management Buyout (MBO) to allow both companies to focus on core business activities.

#### Key challenges

- **MBO** – The MBO has allowed Kent Crisps and Kentish Oils to grow further and seek more investment opportunities.
- **Branding** – Kent Crisps recently re-branded and upgraded the product by manufacturing a gluten free and suitable for vegetarian and vegan options which have increased opportunities in new markets.
- **Exporting** – Kent Crisps are currently working with the UKTI to export to Europe and the Far East.



### Paul Ross, Director The Marvellous Meat Company

Selling Sussex beef to the London market. Their consumers have become more aware of the origins of their meat and are willing to pay a premium. They operate an online model, straight to retail with an overnight delivery service.

#### Key challenges

- **Quality/provenance** – The London market is prepared to pay a premium for quality meat which they know has been carefully reared in Sussex by local farmers.
- **Funding** – The Marvellous Meat Company have begun crowd-funding through a crowd-funding platform to raise £250,000 finance to help develop their website and branding.



### Fraser Thompson, Chief Executive Chapel Down Winery

Market leaders in producing English Sparkling Wine, Chapel Down produce a range of sparkling wine, red, white and rose.

#### Key challenges

- **Branding** – Chapel Down have created a powerful brand with a very recognisable look. Their aim now is to produce consistent messaging about who they are as a company and what they do.
- **Product diversification** – Chapel Down opened a shop and a restaurant, they now offer tours and wine tasting alongside their wines.
- **Innovation** - The UK climate can be challenging to produce wine and secure a long term supply of fruit, Chapel Down is now looking to technology to help.



# Why working together is of Paramount importance

Much interest has been stimulated by the proposed Paramount Park on the Swanscombe Peninsular but how can local businesses benefit from the new development?

Over 2,000 local residents and businesses attended consultation events last summer. Workshops and other events will be held in early 2015 so potential suppliers can discover more about the Resort's requirements and how they can get involved.

London Paramount are now working closely with Dartford and Gravesham Borough Councils on a comprehensive master plan. The Resort has already been accepted by the Government as the first "Business or Commercial Project" to be a Nationally Significant Infrastructure Project (NSIP).

London Paramount have said they will establish their own supply chain in construction, engineering and manufacturing, food and beverage, security, service providers, landscaping, telecommunications and ICT and utilities and, whilst the opening of the Resort will,

undoubtedly, bring thousands of much needed jobs, will its construction aid the locality meanwhile?

Cynics have pointed to Murcia, Spain where the European version of the theme park is taking shape. Last November, 72 million euros worth of construction contracts were awarded to just two firms - Ferrovial Agroman (the construction division of 7 billion Euro turnover Ferrovial, the owners of Heathrow) and CHM Obras e Infraestructuras (head-quartered in Alicante).

Industry leaders in Kent think small firms should be pushing for a share of the pie when contracts go out for tender. Constructing Excellence Kent Club founder member, Kevin Bush said:

"We need a way of making local companies aware of the opportunity coming up and for them to have some clout if they are not big enough to bid on their own."

Whatever the perceived barriers, local firms must promote and market themselves strongly, including possibly teaming up with local "rivals" to keep the work within the region. Whilst one of the major domestic or European contractors is likely to be the main contractor, 80% of the work will be sub-contracted (or even sub-sub contracted), so being on Approved Lists for these contractors is crucial.

Whether you wish to engage direct with London Paramount or work as a sub-contractor, attending the Meet the Buyer events will be key in forging strong links with potential clients. If you are interested in Supply Chain opportunities email [supplychain@londonparamount.info](mailto:supplychain@londonparamount.info) or call 0800 008 6765.

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**The full programme**  
**Summer - Autumn 2015**  
Public consultation events prior to submission of application  
**Spring 2015 - Autumn 2016**  
Detailed design and contractor appointments  
**Winter 2016**  
Decision by the Secretary of State  
**Winter 2016 - Spring 2020**  
Construction  
**Autumn 2019 - Spring 2020**  
Fit out and installation  
**Easter 2020**  
Grand opening

# Tougher penalties for health and safety offences on the horizon

The Sentencing Council has just completed its consultation on new sentencing guidelines for Health and Safety offences. Once adopted these guidelines will be used by courts when deciding the penalty to be imposed on businesses and individuals convicted of offences under section 33 of the Health and Safety at Work Act 1974.

- The guidelines will cover offences arising from a failure to comply with the general duties of an employer under sections 2 and 3 of the Act which relate to protecting the health and safety of both employees and non-employees. They will also apply to breaches of Health and Safety regulations such as the Provision and Use of Equipment Regulations and the Construction (Design and Management) Regulations.
- Fines imposed on organisations for Health and Safety offences have been criticised as too lenient and the indications are that the guidance will lead to tougher penalties to act as a deterrent.
- The consultation states that a fine should be: "sufficiently substantial to have a real economic impact which will need to bring home to both the management and shareholders the need to comply with legislation and achieve a safe working environment for workers and members of the public."
- Penalties will be based on an assessment of the culpability of the offender (how blameworthy they are) and the harm or potential harm caused. The size of the business will also be relevant, with different starting points for a fine depending upon whether it is a micro business with a turnover of not more than £2m, a small business (£2m to £10m), a medium business (£10m to £50m) or a large business (over £50m).
- Good businesses will already be complying with Health and Safety legislation, however the new tougher regime will act as an additional incentive to stay on the right side of the law.

Brachers are Health and Safety specialists and can advise on the mitigating factors to reduce the impact on your business and reputation.

**Fines imposed on organisations for health and safety offences have been criticised as being too lenient. Indications are that the guidance will lead to tougher penalties to act as a deterrent.**

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## Brachers appointed to NHS Commercial Alliance Framework panel

Brachers is pleased to announce it has been appointed to the NHS Commercial Alliance Framework, one of the largest procurement partnerships in England to provide legal services to the NHS.

The firm is contracted to the Framework for a period of four years. Brachers will deliver legal services across six selected areas:

- Primary Care
- Corporate and Commercial Law
- Employment Law
- Property Law
- NHS Governance and Public Law
- Health Law

The NHS Commercial Alliance is one of the largest NHS procurement partnerships in the country, available to all NHS bodies, public authorities and charities in England.

John Sheath, Head of Healthcare at Brachers commented: "We are thrilled with this appointment, which follows a very competitive tender process. We are pleased to have been successful on all lots we tendered for, as this is an ambitious national project. The NHS works hard to provide a high standard of care against the backdrop of

funding squeezes, lifestyle changes and an ageing population, and with the imminent General Election, these issues are once again coming to the fore. We are excited to be working closely with the NHS Commercial Alliance as they navigate through these challenges."

The Alliance is a partnership of two procurement organisations, East of England NHS Collaborative Procurement Hub and NHS Commercial Solutions, and aims to maximise spend efficiency and in turn deliver better quality healthcare. It also provides benchmarking and data analysis alongside other information to ensure members make better informed commercial decisions.

The appointment comes as the Healthcare team retained its national ranking in the 2015 edition of the Chambers & Partners directory, the leading independent authority on the legal profession, underlining the quality client service the team delivers.



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**We are pleased to have been successful on all lots we tendered for, as this is an ambitious national project. We are excited to be working closely with the NHS Commercial Alliance as they navigate through the challenges ahead.**

John Sheath, Head of Healthcare

These appointments reflect an exciting time at Brachers, with investment in expanding our offering across the south east and supporting growth in nearly all of the firm's practice areas, the aim of which is to serve our clients even more comprehensively.

Joanna Worby, Managing Partner



## Five senior appointments at Brachers

Brachers is delighted to announce the arrival of five new senior members of staff.

Brachers' commercial property team has recently expanded with the arrival of Maria Curtis and Barrie Jones.

Furthermore, Jonathan Askin arrives as a member of the Corporate and Commercial team, becoming the lead partner at Brachers' Discovery Park office in East Kent. Jonathan has held posts as senior commercial lawyer for the UK government and senior legal counsel at the Health Protection Agency (now Public Health England), and most recently worked at a boutique commercial firm. He primarily provides legal advice on all aspects of public procurement law.

Meanwhile Christopher Eriksson-Lee joins as a Partner in the Private Client team.

He has particular expertise in inheritance tax planning for clients with businesses and agricultural assets.

He will be joined by Paul Bryant, who will act as a tax and trust adviser. His expertise includes the completion of annual accounts and tax returns for trusts, alongside advising on tax compliance for personal clients.

Brachers Managing Partner Joanna Worby comments: "These appointments reflect an exciting time at Brachers, with investment in expanding our offering across the south east and supporting growth in nearly all of the firm's practice areas, the aim of which is to serve our clients even more comprehensively.

"Public sector cuts initially announced a few years ago are now only just

beginning to take effect, and we are therefore advising more and more around costs budgeting in procurement processes, to which Jonathan can bring outstanding expertise.

"It is also an interesting period for our private client team and commercial property teams individually: tax compliance is becoming an increasingly high-profile issue in the public consciousness, and in areas such as Thames Gateway, we are seeing a real drive for regeneration."



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## Litigation funding - what are the options?

Litigation can sometimes be costly and at Brachers, we understand this. While the majority of our clients fund their case through a private retainer, i.e. by paying our fees and disbursements as and when they are due, if funding is likely to be an issue for our clients we always try to find an alternative. Depending on the strength of a case, the following options may be available.

### Before the Event Insurance (BTE Insurance)

Businesses and individuals frequently have legal insurance which may cover the cost of pursuing and defending claims, yet this can be overlooked. We always encourage our clients at the outset to review their insurance policies in order to check whether their dispute is covered.

### After the Event Insurance (ATE Insurance)

Some insurers will provide ATE insurance where an insurer considers that the client has a good prospect of successfully pursuing/defending a claim. Should ATE insurance be provided, the client must pay a premium to the insurer. Depending on the nature of the dispute, the premium can be quite expensive, but the insurer might agree to defer payment until the case is successfully concluded. In the event the client's case is unsuccessful, the insurer will cover the opponent's award and costs, as ordered by the Court.

### Conditional Fee Agreements (CFA's)

CFA's usually work hand in hand with ATE insurance.

A CFA is an agreement between a solicitor and client whereby the client will only pay the solicitor's fees if their case is successful. In this event the solicitor will be entitled to their fees plus a "success fee", being a percentage increase in their fees (this can be as much as 100%). In the event the client's case is unsuccessful, the solicitor's fee will not be due, but the client will have to pay the opponent's award and costs themselves (this is where ATE insurance comes into play).

It is also worth noting that in the event the case is successful, the solicitor's fees can be recovered from the losing party but the success fee usually cannot.

### Discounted CFA's

Discounted CFA's work in the same manner as a CFA except the client pays something to their solicitor regardless of the outcome. For example the client may pay a lower hourly rate in the event that the client loses, but if he

wins, the solicitor's full hourly rate is chargeable and possibly recoverable from the opponent.

**We always encourage our clients at the outset to review their insurance policies in order to check whether their dispute is covered.**

### Damages Based Agreement's (DBA's)

DBA's work in the same way as a CFA except in the event the client's case is successful, the solicitor will be entitled to a percentage of the client's award (damages) in payment of the solicitor's fees. In the event the case is unsuccessful, the solicitor will not be paid anything, but the client will still be liable for the

opponent's award and costs (as such, ATE insurance may also be taken out to cover this risk).

### Litigation Financing

There are companies who offer litigation financing if they are assured that the client has a good prospect of successfully pursuing or defending the claim.

Unlike ATE Insurance, this type of funding is made available to the client at the outset of the claim (to cover the client's costs in pursuing/defending the claim). The client is only liable to repay the funding in the event the client's case is successful. In that event, the client will be liable for all fees and success fee (if applicable) due to the litigation financier. If the client's case is unsuccessful the client will not have to repay any of the funding.

### Your options

While all of the above options are available as a means of funding litigation, each case will be considered individually and on its own merits in order to establish whether any form of litigation funding is available for that particular dispute.



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## Debt Recovery - getting it right

Businesses are often troubled by late and non-paying customers and clients. Receiving prompt payment is arguably the most important factor in running a successful business.

Many businesses manage their internal debt recovery procedures very well but there are some that do not and they could reduce the risk of late payments by taking a just a few steps.

The issue most businesses face is that while it is appreciated that debt recovery is crucial to the successful running of the business, it can be very time-consuming. In extreme cases, invoices are even written off to avoid wasting management time on debt recovery.

Unfortunately, clients and customers soon learn that this is how a business operates and they exploit the situation to their advantage. The first step towards managing the process comes before invoicing and credit control.

Clear contract terms, including payment terms, help reduce the risk of unpaid debts or, when disputes arise, they lessen the scope for argument. If a payment is overdue, prompt action is needed and a business must stand by its position.

**Clear contract terms, including payment terms, help reduce the risk of unpaid debts.**

In my experience, issuing a claim, or just the threat of issuing it, will result in payment in the majority of cases. It is simply not in the debtor's interest to ignore these steps because delaying payment will only increase the debtor's liability, as the claim is likely to include additional entitlements to interest, compensation and recoverable legal costs.

Effective debt recovery is therefore an essential part of the financial toolkit. Prompt and effective action will unquestionably make a difference.



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## What's news?

60 second legal update

- Public Contracts Regulations in force from 26 February 2015 see main article on page 3.
- New ACAS code in force from 11 March 2015 clarifying workers' right to be accompanied to hearings.
- The Construction (Design and Management) Regulations 2015 in force from 6 April 2015 forming a key part of the health & safety legislation affecting all construction and engineering projects.
- Companies Act 2006 (Amendment of Part 18) Regulations 2015 in force 6 April 2015 bringing welcome clarification of the treatment of share buyback schemes.
- The Deregulation Act in force from 26 March 2015 introducing changes to the protection of deposits held on Assured Shorthold Tenancies.
- Shared Parental Leave (SPL) for parents of children who are born or placed for adoption on or after 5 April 2015.

# “Carrots, sticks, donkeys, bolting horses and ostriches” – protecting your business from competition

For the first time in years businesses face an increased employee retention challenge and an increased threat from competition by departing employees.

Many businesses increasingly find themselves dealing with the threats posed by the departure of key employees to competitors.

Preventing this threat is a multi-faceted problem that requires a specific response taking account of the needs of your individual business. This will often include procedural, technical and legal measures and not simply reliance on any single one of these.

Success depends on an effective blend of “carrot and stick”. This much used idiom apparently arose from owners of stubborn donkeys trying to get the unruly beast to move, by a mixture of providing incentives with a carrot, threatening with a stick.

Comparing your employees to stubborn donkeys is not the best start towards protecting your business. However, if you retain their services and maintain performance and motivation thus preventing them from joining a competitor through a combination of incentives, reward and motivation, the “carrots”, this is normally preferable to the “stick” of the threat of legal action.

In recent years the stick has, in part, been provided by the economy, the fear of not being able to find new employment and by more subtle legal factors such as the increased two years' service requirement for unfair dismissal protection and tribunal fees.

The carrot has been provided by offering job security in perceived tougher, economic times. With a potentially improving economy and increased willingness amongst employees to move onto pastures new, employers need to reconsider how impressive their carrots are and whether they need a bigger, better or at least newer stick.

This process starts with the humble contract of employment. A well drafted, properly tailored, up to date and clearly accepted contract is the ideal.

Unfortunately, after the proverbial horse has bolted and the former employee has joined the competition or is threatening to do so, we often find:

- **The contract is for a former role.** It no longer provides appropriate commercial protection or offers enforceable legal protection for the threat actually posed.
- **There is no written contract, or no signed one,** making it very difficult to prevent competition or protect your confidential information.
- **There is a contract, but it does not contain suitable restrictions or protections.** They are legally too wide or poorly drafted to be enforceable. Quite often they protect the business that you were five years ago not the business you are today.

We encourage our clients not to be an ostrich, burying your head in the sand, but to analyse the key threats to your business and how these are being protected.

Ensuring you are protected against unfair competition and use of your confidential information is becoming more pressing as more employees seek their next move in times of increasing economic confidence.



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