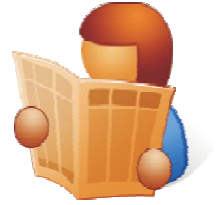




## Newsbrief 2009 **welcome**



Welcome to the early Spring edition of the R&N newsbrief 2009.

It would be very easy for all of us to become despondent on the business front as a result of all of the bad news with which we are bombarded. However when we at R&N look back on the last 12 months I feel we can be pleased with the way we have been able to adapt to our clients' needs. We have always adopted a very flexible approach and because of the experience within our offices I am sure we will be able to assist many of our clients to get through the difficult months ahead.

We at R&N have had to adapt ourselves to the changes in the market place but we have tried particularly hard to ensure that whatever changes we have put in place, they do not affect our ability to deliver a first class service to our clients.

I hope that you will find something of interest in the newsletter, whether it is one of the articles relating to legal issues or simply details of one of our lunch clubs that you might be interested in coming along to, or indeed the new breakfast club that Graham Knights is shortly to launch.

Naturally if you have any thoughts or comments on our newsletter, or if there is anything you would like to see us talk about in our next newsbrief then please let us know as we are always pleased to get feedback.



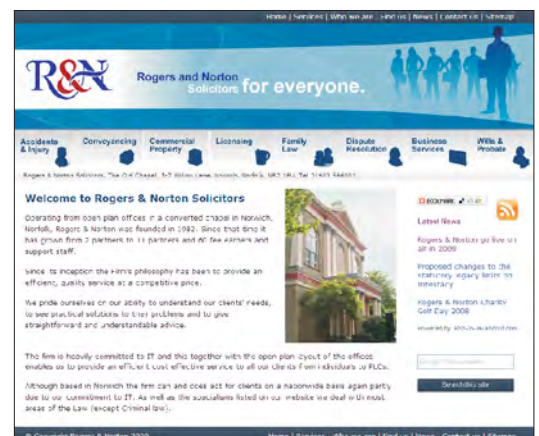
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## New website [www.rogers-norton.co.uk](http://www.rogers-norton.co.uk)

The new R&N website was launched in November 2008. We hope you like the new design and layout which we feel has a much more eye friendly look and feel.

The redesign was handled internally by our IT department and we hope to expand on the features and content available online in the coming weeks including the introduction of a real-time conveyancing quote facility.

Please browse [www.rogers-norton.co.uk](http://www.rogers-norton.co.uk) and experience our new site. If you have any feedback (good or bad!) please send an email to [web@rogers-norton.co.uk](mailto:web@rogers-norton.co.uk).





## Community working together



### Guide Dogs

#### Our chosen charity for 2009

We at R&N are delighted to announce that our chosen Charity for 2009 is Guide Dogs and the majority of our fund raising efforts during this year will be for its benefit. We are holding a fun Quiz Night at the Oasis Sports and Leisure Centre on the 26th February 2009 to kick off the fundraising and have plans for other events throughout the year including fashion shows and golf days, more of which is explained elsewhere in this newsletter. For more information on Guide Dogs or for further detail on any of our fundraising activities this year please contact Graham Knights, our Practice Manager on 01603 675618 or [gjk@rogers-norton.co.uk](mailto:gjk@rogers-norton.co.uk).



### Charity Golf Day

#### 22nd May 2009

R&N are holding a Charity Golf Day in aid of Guide Dogs on the above date at Sprowston Manor when our clients and business contacts are invited to enter a team of 4 players at a cost of £180.00 which will include bacon roll and coffee on arrival, followed by golf, dinner and prize giving. We hope to have an after dinner speaker to entertain our guests and a demonstration by some guide dogs on the day to show the excellent work they do. We have had some rounds of golf donated at various venues around the country and these will be offered to the highest bidders on the day with all proceeds being given to the Charity and we are very grateful for the generosity of those Clubs.



The event will be limited to a maximum of 28 Teams and if you are interested in entering a Team on the day or you would like to sponsor a hole by placing a banner on the course at a cost of £40.00 please give us a call. All proceeds of the day will be donated to the Guide Dogs and for further information please contact Graham Knights, our Practice Manager on [gjk@rogers-norton.co.uk](mailto:gjk@rogers-norton.co.uk) or 01603 675618.

### R&N and Future Radio

#### Legal Hotspot

R&N has joined forces with the Norfolk Community Law Service, and Future Radio, to offer listeners to the community radio station a free legal clinic. A 'Legal Hotspot' is to be aired as part of Future Radio's Community Chest programme on the last Wednesday of every month at 11am. Listeners have the opportunity to put questions to lawyers, which they will then answer live on air.





## Ladies Lunch Club

### Professional Ladies Only Networking Club

Amy Walpole, a Partner in the Firm's Family department has been hosting the popular Professional Ladies Only Networking Club for over 2 years. 'PLONC' was launched by Amy to raise the awareness of female professionals locally and to provide like minded business women with an opportunity to share views, offer advice and support and promote their business in a friendly and relaxed environment. PLONC lunches are held bi-monthly at various city centre locations with an interesting guest speaker at each event who provides the PLONC ladies with an insight into their area of expertise. PLONC has helped many form great business relationships, as well as many great friendships. Last year the PLONC lunches grew in success, despite the Credit Crunch, and each event attracted around 50 attendees. Currently PLONC can boast 130 members from a variety of different professions and businesses.

Amy also hosted an outing to Ladies Day at Newmarket Races in July which provided a day out from the office and was enjoyed by all. In these uncertain economic times PLONC events are an excellent way of spreading the word about your business and providing some light relief from the pressures and strains of business at the same time.

We are sure that the success of PLONC will continue in 2009 and Amy already has some great guest speakers lined up including...

- 1st April 2009 Joanna King from Success management
- 11th June 2009 Claire Gulliver - Norfolk Development Officer for the 2012 Olympic Games for Norfolk County Council
- 4th August 2009 Sarah Buckley from The Globe Travel Health Centre

If you wish to be added to our members' list or simply require further information about any of our events please contact Amy on 01603 675648 or e-mail [ajw@rogers-norton.co.uk](mailto:ajw@rogers-norton.co.uk).

## WIMPS Lunch Club

### Wednesdays in the Month Professional Society

The WIMPS lunch club, founded by Graham Knights on behalf of R&N over 20 years ago, continues to thrive meets bi-monthly at a local restaurant. Traditionally this has been Don Pepe's, St Benedicts.

Our lunches are attended generally by around about 20 – 25 of the ever changing membership. We are always keen to encourage new members so if you are interested in a very informal lunch where you will have the opportunity of meeting old friends and making new business contacts then please give Graham Knights a call on 01603 675618 or email [gjk@rogers-norton.co.uk](mailto:gjk@rogers-norton.co.uk).





## Breakfast Club Launch

### An early start

We have for some time been considering the launch of a new initiative to promote business by way of a Breakfast Club but we are aware there are many clubs available to professional people in Norwich. We do feel however that breakfast clubs are not as time consuming as lunches and with this in mind we are proposing to hold a series of breakfasts on a quarterly basis but with a view to exchanging ideas and getting away from the "hard sell" image which seems common these days at breakfast clubs. We will be based at an excellent venue the Theatre Royal in the centre of Norwich which has good car parking facilities close to hand.

We intend that these breakfasts will be somewhat different to other versions with a slightly more reasonable start time of 7.45am for 8.00am. Theatre staff have arranged an excellent breakfast menu for us at a reasonable cost.

The first meeting is scheduled for Tuesday 21st April which is co-incidentally the Queen's birthday. Our guest speaker will be Peter Wilson from the Theatre who will talk to us about his role as Director and Producer of the "Sign of the Times" to be staged at the Theatre in May. Tickets will be limited to 40 places and will be sold on a "first come, first served" basis. Membership of the Breakfast Club will be free. The cost of the breakfasts (choice of continental or full English) will be £12.00 per person and cheques should be made payable to Rogers & Norton please.

If you would like more information on our Breakfast Club or would like to be included in the membership list please contact Graham Knights on 01603 675618 or [gjk@rogers-norton.co.uk](mailto:gjk@rogers-norton.co.uk).

## Future Events

### Business Leaders Lunch

We are currently exploring the opportunity to host a business leaders lunch bi-annually to an invited audience where we will have a guest speaker attending to answer questions over lunch. Further details to follow.

### Fashion Show

We hope to hold a fashion show for the ladies later in the year at a venue to be decided in aid of Guide Dogs. Further details will follow, but if you would like to register your interest for this event please contact Graham Knights.

### Rogers & Norton Classic Golf Day

Our annual golf day will be held at Bawburgh as usual on September 11th when contacts and clients will be invited to enter teams, as in previous years, to coincide with the MacMillan Nurses World's Biggest Coffee Morning. If you are interested in receiving more details about this event please contact Graham Knights.



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**Practice Manager**

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# Collaborative Law

## Family matters



Undoubtedly many of you will have read our recent article published in the EDP on 6th January 2009 regarding the Collaborative process. For those of you who missed it we wanted to ensure that you are aware of the collaborative concept as it may be suitable for either you personally or your clients who are separating or divorcing. For those of you who are accountants, IFA's, pensions specialists or other professional advisers you may have been involved in a Collaborative case to assist parties reach a resolution which is better for them.

Collaborative Law is a relatively new process for divorcing or separating couples to work together as a team with trained professionals, to resolve disputes without going to Court. The process was initially an American concept which has been successfully introduced in the UK. Collaborative law is a system whereby each party to the proceedings has the support, protection and guidance of his or her own Resolution trained Collaborative lawyer but rather than negotiations being conducted by way of correspondence or telephone conversations, all parties meet and discuss matters face-to-face. Each party has their lawyer by their side throughout the whole process which means that legal advice can be obtained at all stages and both parties retain as much control as possible throughout the process.

The main elements of Collaborative Practice are set out in a Contract called a Participation Agreement signed by all parties which underpins the principles of Collaborative Law and the agreement that a resolution will be achieved without applying to the Court. All parties must agree to act in good faith and must appreciate that their opinions and views may differ but these need to be expressed in order to reach a fair settlement for all parties.

The majority of negotiations will take place at what is called a 'four-way meeting' whereby the aims and objectives of the process are discussed. Having all parties in attendance ensures that all parties remain in control of the process and the scope for

misunderstanding is reduced. Meetings are minuted and action points for future meetings agreed to ensure that a resolution can be agreed.

A benefit of the Collaborative process is that it is not driven by court timetables so the process can be built around the family's priorities and needs. In complex cases other professionals can be introduced, such as pension specialists, tax advisors, accountants or people specifically trained to assist children in divorce or separation, to assist with negotiations.

Once an agreement has been reached, the lawyers can then draw up a legally binding document which is signed by all parties and can assist in the implementation of the agreement.

The Collaborative process can be less emotionally challenging and more amicable and dignified than traditional litigious methods of resolving family disputes. The Collaborative process also avoids attending court which is often a daunting prospect for many parties.

The Collaborative process was first introduced in Norfolk in 2005. R&N were one of the founder members of the Norfolk Collaborative Law Pod which now has 20 lawyers as members. Clients involved in this method have felt in control of the settlement reached, which provides for an amicable relationship to continue in the future. A client of this firm who has used this process commented, "For me, this method of divorce means that all the important things – like the children and finances- can be talked about around the table in a calm, frank and sensible way. It seems like such an obvious way to do things."

Amy Walpole and Colin Grooms are both trained collaborative lawyers and are very experienced in dealing with disputes in this manner. For more information about Collaborative Law contact Amy or Colin on 01603 666001 or send an e-mail to [collaborative@rogers-norton.co.uk](mailto:collaborative@rogers-norton.co.uk).



# City Living Developments

## Good news for Norfolk



Clients of Rogers & Norton, City Living Developments which are specialist builders and developers, have recently unveiled plans for a large expansion that will see their opening a new factory in our area.

The factory will be used to produce modular buildings, many of them for hotels. The buildings constructed will then be transported to a site to be slotted into foundations.

City Living Developments is looking for a factory to fulfil a new contract that could see the company manufacturing modular buildings for 25 hotels over the next five years.

While the eventual location of the factory is still to be determined, the company have indicated that Norwich tops the shortlist of likely locations.

Chairman of City Living Developments Garry Coaley believes that Norwich has a strong skills base that makes it a very attractive proposition. Any developments in this area would be in addition to their four major developments in Norwich which includes the £120m St Anne's Wharf development.

The new factory would create at least 200 jobs in a wide range of construction and administrative roles

and the company hope to confirm its location in the next two months.

Mr Coaley tells us that modular building is becoming increasingly popular. Off-site quality controlled factory manufacture offers considerable cost savings and ensures a consistent and high quality finished product, whilst reducing on site times by up to 40pc. This means that City Living can speed up construction times.

Mr Coaley says that this will make City Living Developments more competitive by lowering the base price of units for hotel operators or home buyers, but maintain its margins and minimise exchange rate risk in a much tougher financial climate.

Mr Coaley also tells us that he is looking at a number of developments which could see the company staying in this area for another five or 10 years and beyond.

City Living Developments are also planning a premium brand leisure resort in Norfolk which will consist of a 150 bedroom luxury hotel with spa facilities and a golf course.

R&N are naturally delighted to act for such an innovative client.



# Beware Greeks bearing gifts

(Or it sounds too good to be true so probably is)



**N**o it is not the title of a Brad Pitt epic, rather a relatively recent practice employed by insurance companies which contact individuals who have been involved in accidents direct. This practice is occurring with increasing frequency and is an attempt to settle claims where the insurers consider independent legal advice is unnecessary.

Insurers often contact those involved in accidents within a matter of days in fact often hours after the accident when the individual is still traumatised by the accident and barely able to appreciate what has happened to them.

The object of the exercise is to achieve the settlement of claims without the individual having access to independent legal advice. The insurers argue that the involvement of solicitors adds to the delay and does not achieve anything from the individual's viewpoint. The fact is that the insurer which represents the party who was at fault can hardly be considered to be acting in the best interest of the injured party and does not act independently to establish what the injured person should or should not receive in relation to their claim.

It is a myth to suggest that it is not in the best interests of an injured individual to seek independent legal advice. There are many issues, not just who is at fault, whether you have suffered an injury and what you can claim for in respect of your injuries and other losses. We at Rogers and Norton can guide our clients through the claim and avoiding the potential pitfalls so as to ensure that appropriate compensation is obtained in all cases.

It is also a myth to suggest that solicitors cause delays. Invariably these arise as a consequence of the lack of response from the insurers and not as a consequence of the solicitors being dilatory in the handling of claims. Unless the injuries and the losses that sustained are identified properly it is easy for issues to

be overlooked and claims settled at an under value.

In truth solicitors such as R&N are paid by the other party's insurers so there is no cost to our clients in engaging us. We will invariably be prepared to accept instructions on a No Win No Fee basis which means put simply that whatever compensation is recovered is kept by the client.

Insurers being commercial concerns wish to settle claims cheaply and quickly. The business of capturing these accident victims is a key issue for insurers who wish to avoid having to pay the true value of the claim and the cost of solicitors instructed by those individuals.

So if you are involved in an accident and are contacted by the other party's insurers, make sure that before you do anything you obtain your own independent professional legal advice which Rogers & Norton offers at no cost to you thereby safeguarding your position and ensuring that you recover your full entitlement in terms of compensation for your injuries and resulting financial losses.

Its free and we are local so are best able to assist you if you are unfortunate enough to be involved in an accident and suffer an injury as a consequence whether the accident is on the roads at your place of work or elsewhere. We are always prepared to undertake home visits if circumstances prevent your attending at our offices.



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# Employment Update

## Long-term Sickness Absence : Holiday Entitlement



**H**ow do you deal with an employee's holiday entitlement when they are absent from work for a long period due to ill health? A lot of employers will currently have no mechanism in place for the accrual of holiday in such circumstances however a recent decision by the European Court of Justice ("the ECJ") is likely to change this.

The case of *Stringer v HMRC* was originally heard by the Court of Appeal in April 2005 where it was decided that employees were not entitled to accrue paid holiday whilst they were absent from work due to sickness. On appeal to the House of Lords the question was referred to the European Court of Justice ("the ECJ").

On 20 January 2009 the ECJ issued their judgment which could have far reaching effects on the way in which employers approach this situation. The ECJ have held that:

- An employee who is absent from work for the whole of an annual leave year is entitled to four weeks' paid holiday even though they have not been to work; and
- The right to take that paid holiday will not be extinguished at the end of that year if they have been absent for the whole of the annual leave year.

Therefore employees will now be entitled to be paid at some point for any holiday accrued whilst on sick leave, whether that be at the time or whether it is carried forward to the next holiday year.

Employers must note that this judgment will affect any employee who is currently on long-term absence

due to sickness and therefore a careful review of their position as well as consideration as to how to provide their holiday entitlement will be required. In addition many employers may also require a review of their contracts or staff handbook to ensure that the decision is taken account of within their sickness/long-term absence policy.

The House of Lords still need to make a finding in this case in light of the judgment from the ECJ which will hopefully provide some guidance as to how employers will need to implement this system. It is highly unlikely that it will uphold the decision of the Court of Appeal. Until we get their decision employers will need to ensure that they have implemented procedures for their employees to accrue holiday whilst on sick leave.

If you would like us to review your contracts and staff handbook or if you need any further advice on this or any other Employment Law matters then please contact Phil Kerridge for further information.



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# Company & Commercial

## Company names and the Companies Act 2006



**T**he Companies Act 2006 brought in new provisions from 1st October 2008 relating to Company name's and the introduction of a Company Names Tribunal.

Under the previous Companies Act, the Companies Act 1985, the incorporation of a company simply prevented the incorporation of another company with an identical or too similar name to a company already incorporated. It did not stop another company trading under the identical or similar name. Under the 1985 Act if a company wanted to object to another company's name as it felt it was too similar to its own the decision to force the offending company to change its name was at the discretion of Companies House which would usually only agree if the name was almost identical to that of an existing registered company.

Under the 2006 Act anyone can file an objection with the Companies Names Tribunal if the new company has a name that is the same as that associated with the complainant company (and in which the complainant has goodwill in a business associated with that name) or the new company's name is sufficiently similar that its use in the UK could mislead people by suggesting that the companies were connected.

A clear benefit of the provisions in the 2006 Act is that the complainant does not need to be the owner of a registered company. Also, the name must not now be 'sufficiently similar' (rather than 'too like' under the 1985 Act) meaning it should be easier to make a

successful complaint. If the Company Names Tribunal upholds a complaint then it has the power to make an order forcing the offending company to change its name.

The 2006 Act does set out some defences to such a complaint which includes the defence that the defendant has made a substantial investment in the creation of the company. This suggests that companies who want to make a complaint must do so as quickly as possible to reduce the chances of the defending company being able to rely on this ground. There are name watching services available which provide early warning systems as to companies using similar names to existing companies. With this information the company can make a decision earlier as to whether they want to take the matter further with the Company Names Tribunal.

In short, the new provisions in the 2006 Act mean that it is now more likely that complainants challenging the incorporation of companies under similar names will be successful although it is worth noting that the primary focus of these new provisions seem to be on situations where the name has been deliberately registered by another in order to take advantage of a brand owner's goodwill and to extract money from the other company.



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# Corporate Manslaughter and Corporate Homicide Act

On the 26th November 2008 Rogers & Norton in conjunction with the Heath Lambert Group presented a seminar to over 60 delegates at Dunston Hall, Norwich on the impact of the Corporate Manslaughter and Corporate Homicide Act 2007.

Philip Kerridge provided an overview of the law leading to the passing of the Act which came into force on the 6th April 2008. Mark Hambling then considered how the new Act would be enforced and looked at practical considerations that could be applied to improve the culture of safety in the workplace and avoid the effects of the Act in the unfortunate event of there being a fatality.

Steve Seekings of the Heath Lambert Group provided input from the insurers' perspective on the new Act and considered how appropriate risk management strategies could be applied to ensure safety in the workplace whilst at the same time obtaining as comprehensive as possible cover for your business.

Finally the seminar considered the impact of the Corporate Manslaughter legislation on driving on company business. With the input of Scott Ingham of Matrix Global Services Limited this topic was discussed and provoked lively debate as regards to the extent to which an employer is liable for employees driving on the employer's business.

The new Act is substantially different to the old offence of Corporate Manslaughter by Gross Negligence in that it no longer considers the actions of a controlling mind. Instead it considers the manner in which its activities are managed by its senior management.

An example of the change can be seen by considering some of the previous tragic disasters:-

The Herald of Free Enterprise tragedy in March 1987 – 187 people died.  
Southall Rail crash in September 1997 – 7 people died  
Ladbroke Grove junction collision in October 1999 –

31 people died

The Hatfield derailment in October 2004

Potters Bar train crash in 2002 – 7 people died

Larkhall gas explosion – 3 people died

The common factor, aside from the tragic element, in relation to all of these examples is that prosecutions were brought against individuals of the companies involved for gross negligence manslaughter which were not successful. The reason being it was impossible to identify the individual(s) who were the guiding mind and therefore grossly negligent.

The seminar considered these prosecutions in comparison with the Lyme Bay Disaster where four youths died and a successful conviction of manslaughter was brought against the Managing Director. This was a smaller company and it was the Director of the Company himself who took the decision to take the youths out canoeing which led to the disaster.

The seminar initially concluded that under the old legislation there was a clear problem with the law as the guiding mind principle created a situation where larger organisations could often escape prosecution, as a result of it not being established who had the guiding mind.

The new Offence seeks to remove the obstacles for successful prosecutions of large companies by an organisation being liable if:

*The way in which their activities are managed or organised:*

- a) Causes a person's death; and
- b) Amounts to a gross breach of the relevant duty of care owed by the organisation to the Deceased.

The Act also requires consideration of the way in which the activities of an organisation are managed by the senior management as their actions will need to be a

substantial element of the breach. In effect the actions of one guiding mind is no longer relevant to succeed in a prosecution.

The prosecution must also establish that there was a gross breach which is defined as:

*“conduct falling far below what can reasonably be expected of the organisation in the circumstances”.*

In each case this will be a question for the Jury to consider on all of the facts.

Aside from the gross breach the Act requires it to be proven that there is a duty of care as between the organisation and the Deceased. This will be a question of law which the Judge will decide based upon the law of negligence and the various Statutes that regulate the relationships as between employers and employees and subcontractors and contractor to name a few. It is unlikely that the duty of care will be restricted to an employer and employee relationship as the Court will look at all of the relevant factors so as to establish whether there is a duty of care.

Finally, the activities of the senior management must be a substantial element of breach and therefore the Court will be looking at who are the senior managers and considering what actions they have taken.

Although there has not as yet been a successful prosecution under the act the seminar considered the Courts powers in terms of fines, remedial orders and publicity orders. It was commented that the sentencing guidelines in relation to the offence (due to be published in Spring 2009) are likely to recommend fairly substantial fines with a starting point being at 5% of an organisations gross annual turnover for a plead of guilty to a first offence. A comparison was made to the fine that was levied for breach of Health and Safety law upon Transco following the Larkhall Disaster of £15 million, which was the highest applied to date. It was noted that based upon Transco's turnover at the time the fine under the new legislation could have been between £75 million and £150 million!

The seminar also considered the powers of the Court to apply alternative sanctions involving remedial orders requiring steps by the Company to remedy breaches which lead to the fatality.

The publicity will require an organisation to publicise details of its own convictions which could have a substantial effect upon shareholders and the public perception of the organisation.

The seminar concluded by confirming that the new

legislation did not create a personal liability but is a liability of the corporation and in that respect it abolishes the previous offence of corporate manslaughter by gross negligence. The Act builds on existing legislation and the law of negligence to create the new offence which it is expected that the prosecuting authorities will be under some pressure to pursue in appropriate incidents. By way of guidance Mark Hambling advised organisations to think about the following key factors moving forwards:

- Who are your senior managers?
- Once you know who they are, are they aware of their roles?
- Consider a Health and Safety compliance audit
- Encourage a top down approach to health & safety. Ensure that the importance of health and safety is considered at board meeting levels perhaps appointing a board member with specific responsibility for it. Encourage and support a culture of health and safety compliance throughout the workforce;
- Ensure that your risk assessments are regularly audited, tested and up to date;
- Ensure a sufficient budget is allocated to health and safety and training; and
- Engage the workforce in all matters of health and safety

The seminar was presented by Mark Hambling and Philip Kerridge of this Practice. Should there be any questions or indeed should you require any guidance in relation to the impact of the legislation Mark or Philip can be contacted on the details below:



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