



# MANUFACTURING MATTERS

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# INTRODUCTION

Welcome to Manufacturing Matters, DLA Piper's specialist publication providing a round-up of legal news, sector updates and commentary for clients and contacts engaged in the manufacturing sector.



**Richard May**

Partner

Head of Manufacturing Sector

T +44 (0)7971 142 368

[richard.may@dlapiper.com](mailto:richard.may@dlapiper.com)

In the CBI's recent report on 'Maximising the UK's industrial opportunities', the strong argument is that we, as the British manufacturing sector, need to be instrumental in shaping a long-term industrial strategy for growth – for both the benefit of the sector and the wider UK economy. Whilst some of this can come from Government, the report argues that we should draw upon our existing strengths in the sector and look to what we can improve on. It reasons that a lot can be learnt from our international counterparts, with countries such as Germany, USA and Singapore having long-term strategic approaches to industry, trade and investment in place – which are paying dividends.

One initiative revealed in June earlier this year is the multi-million pound investment into engineering apprenticeships. David Cameron's Government has announced that apprenticeships are "at the heart of their mission to rebuild the economy", with the plan to create careers for an additional 100,000 engineering technicians by 2018.

The Government also confirmed the £100bn investment into UK infrastructure projects in June, supporting advancements in road, rail and energy developments. This will have a knock-on impact onto manufacturing industries, and is arguably a vote of confidence in the ability of the UK manufacturing and construction sectors.

Hopefully by drawing on our existing strengths, coupled with learning from our international counterparts and support from the UK Government, we are making the right steps towards rebuilding the UK manufacturing economy.

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Manufacturing Matters is compiled with current issues and trends in mind. If you would like to get in touch, please contact us by emailing [manufacturing@dlapiper.com](mailto:manufacturing@dlapiper.com).



# MAKING SIMPLE THE COMPLEX WORLD OF PRODUCT LIABILITY

Modern day product liability issues are a key concern for every manufacturer. It is hard to pick up a paper without seeing product recall dominate the headlines – from the horsemeat scandal to Boeing’s ongoing technical problems with Dreamliners – these types of issues are happening in an increasingly complicated environment and with increasing frequency.

However, there are steps that can be taken to protect against some of the complexities and to insulate your business from the worst of the damage associated with product liability issues.

## WHY HAS IT BECOME SO COMPLICATED?

Technological advances, globalisation and the trend for management to be dislocated from manufacturing plants and testing processes have all contributed to the creation of a complex environment for product liability.

The internet, 24/7 news broadcasting and social media enable concerns over product integrity to be expressed (sometimes inaccurately) in a matter of hours and on an international scale.

Businesses are increasingly becoming embroiled in these and similar issues, leaving them exposed to the reputational damage, litigation and prosecution associated with product failure or harm to consumers.

## RECALL THE PRODUCT OR TAKE OTHER CORRECTIVE ACTION?

Under the General Product Safety Regulations/Directive which apply in Europe, producers must take appropriate action in the event of learning that a product poses unacceptable risks to consumers. If necessary, this may include completing a full product recall.

Lesser corrective action, such as field repairs or fresh safety warnings, rather than a full public recall, can be sufficient and should be considered as serious options. If customer details are known or can be obtained, then it may be possible to conduct low-key, direct recalls, so long as they are effective.

## THE DOUBLE-EDGED NATURE OF PROBLEMS BEING SHARED...

Whilst broadcasting product integrity issues can be seen as a double-edged sword for business, the Organisation for Economic Co-operation and Development (OECD) considers the facilitation of information sharing to be essential in today’s global marketplace, estimating the cost of deaths and injuries from unsafe products to be more than \$1 trillion each year.

The cross-border dissemination of information can also mean that the higher regulatory standards prevail – another factor which is equally double-edged for business.

## TIPS TO SIMPLIFY THE POSITION IN THE EVENT OF A PRODUCT LIABILITY ISSUE ARISING

There are however a number of actions that can be taken to assist, and in particular to protect, reputation in the event of an issue arising:

- **Active management of the supply chain** – reflect on the T&Cs applying in the supply chain and check that terms are appropriate in the event of a product liability issue arising; in particular check limitation of liability clauses, governing law and jurisdiction provisions.
- Establish a **product safety committee** if not already in place, and ensure that it meets regularly with the full support of senior management.
- Be aware of the **differing regulatory regimes** into which your products are being supplied.
- Ensure **labelling** is suitable for each regime.
- Regularly review **instructions and warnings** on products, taking into account information from other recalls affecting your sector.
- As it is increasingly difficult to internalise product integrity issues, look to control the information available to customers. Develop a **rapid-response product recall plan**, and embrace the power of social media to provide customers with a quick and transparent response.
- Coordinate **international product liability strategies**, as taking a nationalistic approach is often redundant in today’s worldwide marketplace.
- Ensure **insurance** arrangements correctly reflect the current nature/circulation of products.
- Conduct regular **risk audits**.
- Control the **creation of documentation** when product integrity issues arise, and consider whether **legal professional privilege** will arise.

**Ultimately product safety is not negotiable.** The wrong call can swiftly destroy a hard earned reputation so if in doubt, play it safe.



**NEIL BOWKER**

T +44 (0)7971 142 555

neil.bowker@dlapiper.com



## AUTO ENROLMENT: ARE YOU READY?

From 1 October 2012, the Pensions Act 2008 introduced a duty on all employers to automatically enrol jobholders who meet specified criteria into a pension scheme. Employers must also contribute to that scheme for those jobholders. These duties are being introduced in stages from 1 October 2012 to 1 February 2018 with larger employers being subject to the automatic enrolment duties before smaller employers.

### Identify

The staging date will vary depending on the PAYE scheme; employers should assess their PAYE scheme and find out their staging date

### Review

Speak to your pensions provider and trustees to find out if your existing arrangements need to be reviewed

### Plan

Identify the employees you need to automatically enrol

### Collaborate

Work with other central functions to ensure they are aware; payroll, HR

### Implement

Put in place the necessary measures to implement the changes; timeframes, roles and responsibilities, legal compliance

### Communicate

Employees will need to be made aware of the changes; how they will impact and when

***All employers with 500 or more employees in their PAYE scheme will become subject to auto enrolment by November 2013.***

These duties will apply equally to both large employers as well as small employers, provided they employ at least one relevant jobholder (which includes part time, temporary and casual workers). The only real exemption is in respect of jobholders who are already active members of a qualifying pension scheme. Employees who do not meet the specified criteria may also be able to opt-in to a qualifying scheme.

The class of jobholders to whom the employers' automatic enrolment duties will apply is very wide. These duties apply not just to employees, but to any person who undertakes work or performs services personally under a contract. The eligible jobholders are all those working or ordinarily working in the UK, aged between 22 and State Pension Age, with qualifying earnings over £9,440 per year (2013 figure, to be updated over time).

For manufacturers, particular issues may arise in achieving and monitoring compliance in relation to the earnings threshold which triggers the auto enrolment requirements, as a result of high turnover of production staff, or temporary workers being engaged for seasonal products.

Whilst employees may voluntarily opt-out, there are safeguards built into the legislation to prevent an employer encouraging this or seeking to avoid the auto enrolment duties through its recruitment policy. Even employees who opt-out must be re-enrolled by their employer every three years.

Early consideration should be given by employers to the best way to comply with the requirements. Existing pension arrangements may be used provided they are compliant with the automatic enrolment requirements, or a new arrangement may need to be set up. Such arrangements must have minimum benefit or contribution levels.

Importantly, such qualifying arrangements must not contain any provision which would require eligible jobholders to express a choice (such as opting in or agreeing to a salary sacrifice arrangement) or to provide any information (such as completing an application form) in order to become or remain an active member. Employment contracts must similarly reflect these points.

***As a result of auto enrolment, pension contributions and administration costs are likely to increase for most employers.***

The new auto enrolment duties will have financial and operational consequences for employers so businesses need to start making decisions about which scheme to use, what contributions to pay and how to communicate this to employees. Employers need to be proactive in choosing a scheme that suits their business and their workforce; whilst the National Employment Savings Trust (NEST) is one option, it is not (contrary to popular myth) a default scheme. NEST will not apply if the employer does nothing. Compliance with the new duties will be a key focus area for the Pensions Regulator, which is to police auto enrolment. There are some hefty penalties for non-compliance by employers (including criminal sanctions for wilful breach), so decisions cannot be put off by employers for much longer.



**JEREMY HARRIS**

T +44 (0)7971 142 356

jeremy.harris@dlapiper.com

# MADE IN GERMANY

The production location Germany continues to experience a renaissance. The number of employees in the manufacturing sector is ever growing and companies are beginning to complain about scarcity of skilled labour. More and more foreign companies are choosing Germany as a production location as the certificate “Made in Germany” retains its value. For several years, Germany has also kept its top three position in the ranking of the world’s greatest exporters.

## EAST TO WEST

Companies that have shifted production to newly industrialised countries such as China or India in the past, mainly for cost reasons, have decided to relocate production back to Germany. According to a survey in 2010 by the Fraunhofer Institute, for every three companies shifting their production abroad, there is one company relocating production back; and every fifth project is being relocated back to Germany. In particular, the well-developed infrastructure, qualified employees, efficient production processes and sophisticated supply networks in Germany appear to often outweigh the benefits of production abroad, as does the high level of know-how protection available through various intellectual property (IP) rights.

## PATENT LAW

Especially for know-how driven industries, the protection of IP is a vitally important factor – and Germany is one of the leading places for innovation. With academic support, there are a large number of universities and research institutes in Germany. These provide companies with a unique platform to develop their IP.

Germany is also one of the leading legal jurisdictions for patent litigation in Europe. The German court system offers various possibilities for companies seeking protection of their intangible assets like patents, and every year about 700 patent cases are held in Germany with the judgments being recognised worldwide.

Germany is known for its swift and cost-effective court proceedings. The available remedies range from regular infringement proceedings to interim injunctions. These are typically available within days and their enforcement has become stronger, for example the inspection rights of IP owners have been recently increased. The bifurcated system of infringement proceedings and validity proceedings is a strategic advantage for patent holders, as they are able to enforce patents whilst their validity is argued before the Federal Patent Court.

## COMMERCIAL CONTRACTS

German contract law and the corresponding case law provides for a well-established and refined system for all kinds of production-related agreements. As for any legal system it is, at the same time, important to understand the specifics.

For example, in contrast to the Anglo-American approach, statutory law applies to the extent not explicitly excluded or amended in an agreement. This is particularly important as the default rule for warranty rights under German law, and also in B2B relationships, is based on the buyer-friendly EU consumer rights. German law generally provides for liability only in the case of fault, and not for strict liability. The direct damage under German law is very narrow and only includes damages to the contractual item itself, and does not include any other damages such as loss of profits. In turn, the consequential or indirect damage is very broad and may also include unforeseeable damages. This is important to understand for negotiations on limitations of liability. Whilst German law is very flexible with respect to individually negotiated agreements, for any provisions used on a repeated basis the rigid law on general terms and conditions applies. Under such law, limitations (e.g. statutory warranty rights and liability) are only permissible to a very limited extent. Clauses in breach of such law will not be upheld to the extent permissible, but considered invalid in its entirety with the consequence that statutory law applies.

## COMMERCIAL – GERMANY



**THILO VON BODUNGEN**

T +49 89 23 23 72 170

thilo.vonbodungen@dlapiper.com

## PATENT LAW – GERMANY



**JULIA SCHÖNBOHM**

T +49 69 271 33 262

julia.schoenbohm@dlapiper.com



## AN INTERVIEW WITH **NEIL MASKREY**

CHIEF FINANCIAL OFFICER OF  
SHEFFIELD FORGEMASTERS

**SHEFFIELD FORGEMASTERS**  
INTERNATIONAL



In this issue, we talk to Neil Maskrey, who joined engineering giant Sheffield Forgemasters (SFIL) as Chief Financial Officer in October 2008.

**Neil, you've now been at Sheffield Forgemasters for almost five years. What have you seen as the biggest changes that the business has been through in this time?**

There have been some enormous changes over the last five years and I feel very fortunate to have been with the business during this time. Since the MBO in 2005 – the point that the organisation that is today, came to be – we've seen the creation of a strong and very capable management team and have invested over £52m into the business.

There's a lot of dark art and skills here which you simply can't learn from a text book, so you need a good mix of those who have been here for a long time and those who can bring different experiences and a fresh perspective. We've now got what I see as the perfect blend of youth and experience to take the business forward.

**Looking ahead to the next five years, what are the biggest challenges and/or opportunities that your business faces?**

Energy remains one of the greatest challenges for us, both in terms of security of supply and also competitive affordability. Although we are careful and conscientious, the very nature of our business means we're a highly intensive energy user – we spend upwards of £10 million in any one year. It's a major variable cost influenced by a number of external forces. This means we really have to be on top of our procurement and we invest a lot of time and expertise internally to make sure we get our energy policy and structure right.

As for opportunities, future growth will be sustained against tough competition by driving technology at every turn, delivering greater engineering challenges and services for niche markets and new, emerging export opportunities. Taking on technologically challenging projects over and above our competitors remains a driving force for the business. In the last few years, we have manufactured more bespoke, technically challenging products than anybody else.

**What are the key areas of investment for SFIL?**

We heavily invest in three things – our people, our plant and equipment, and our products. Prioritising projects is vital – proactively seeking and reacting to new markets so that we don't miss any opportunities. Key is the coupling of high-technology, R&D and innovation to stay one step ahead in the search for new markets and finding ways to capitalise on existing markets through more efficient production, higher integrity of product and solutions to existing and new manufacturing problems.

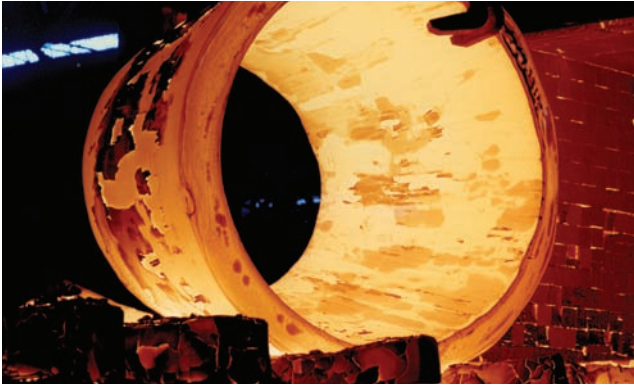
By discovering and developing high technology and complex niche products, we remain out of the reach of emerging nations' competencies for longer. We also encourage less technologically advanced nations to buy the technology in, creating a supply chain. This also allows for more technologically advanced countries to purchase bulk manufactured goods from the emerging economies, to create a sustainable trade flow.

To support a burgeoning client base and order book, we have taken the step to create subsidiary companies, Vulcan SFM, RD26 and Steel Propeller. Providing specialist services ranging from R&D to design consultancy, engineering production solutions to contract management, outsourcing and acquisition, they enable us to capitalise on project management, engineering production, design and outsourcing contracts – offering solutions to specialist undertakings and opening up a diverse market place.

**Which sectors do you see as positive for growth for SFIL?**

Off-shore oil and gas, civil nuclear, defence and capital plant.





### **And opportunities for the wider UK manufacturing market?**

High technology products and new markets. Growth through international trade takes two formats. First is to build on and develop trade with existing customers by providing the best possible support and service, in terms of technical expertise and quality of product. Second is to investigate emerging economies such as Brazil, India and Vietnam, to find new customers and markets to operate in. For example, we've been successful in Russia for over ten years now. Some of the latest markets to develop include suppliers of product in industries such as power generation, marine, defence and civil engineering.

Being able to react quickly to market conditions is paramount – obviously making the most of those that are buoyant but also being able to see the longer-term view. Many of the markets we operate in are cyclical, and whilst one area might be less active at the moment, it could still be a huge channel for us in the future.

### **For the UK manufacturing sector as a whole, what could the Government be doing more of to tackle manufacturing competitiveness?**

I would like to see the Government supporting energy initiatives to ensure security of supply and assist with cost competitiveness. Otherwise, the initiation and support of large infrastructure projects is crucial in bringing us closer to our customers and making us more competitive in a global market. There should also be more investment in training and R&D. These are the things that will bring real long-term benefits to the sector. The Regional Growth Fund is one platform to help in achieving this. They seem to have the right building blocks in place, but they just now need to deliver.

### **Has SFIL seen any issues with skills shortages/ skills surplus over the recent years?**

We invest heavily in our skills pipeline to avoid any shortage or surplus. The inherent skills within the business are critical to its success and the transfer of these skills to a younger workforce has been, and continues to be, fundamental to the company's development. We are a staunch champion of apprenticeships and their value to the UK, and we are currently training 50 apprentices. Together with public sector grants, we plough over £1 million into our apprenticeships training programme each year.

Virtually all of our apprentices stay with the company and 85% complete a minimum of four years of training. This gives us a solid foundation of home-grown specialists, many of whom are wanted the world over to deliver advancements in production for the emerging economic superpowers. The average age of our employees has reduced from the early 50's to early 40's and this helps us with our succession planning.

Plus, 100% of the company is owned by employees. The ethos and culture that this has created has carved a dynamic view of the future which, importantly, has been bought into by the whole team.

### **What effect have the changes in technology had upon your business?**

Our development of the product and process technology and design has had a massive impact, allowing us to create a very strong market lead in some key niche products. There remains considerable scope for more.

Technological advancements are moving fast, so large scale investment to update machinery and improve efficiency is an on-going priority. The levels of inward investment on product innovation, training and R&D far exceed industry averages, and keep the company ahead of its worldwide competitors.

The adoption of a technology-based business means the company continues to plough substantial resources into its R&D programme. All of our profits are reinvested into SFIL's future and we invest between 5-10% of our profits into R&D. This is compared to a national average of 3% and a Yorkshire average of less than 1%.

The group actively pursues diversification and growth via niche markets and high risk products. Rather than finding the development of economies in the Far East a threat to our existence, we have capitalised on our ability to provide a world-class product and actually supply key power generation components into these countries. This means we're winning high profile global contracts in China, India and Brazil. We also trade two ways by buying equipment from overseas.

### **We have seen a number of manufacturers 'back source' their manufacturing back into the UK – the 'buy British' campaign – what are your views on this?**

It is absolutely vital that manufacturers maintain a global perspective and aim to achieve a global presence. Although I wholeheartedly support British manufacturers, a 'little England' mentality will only be damaging in the long run. We operate in a global market and that is only going to heighten.

### **If you were to sum up British manufacturing in just five words, which words would you choose?**

Innovative, entrepreneurial, flexible, perseverant and private (in ownership terms – i.e. no longer nationalised).



## EVER-INCREASING ENERGY BILLS: IS CO-GENERATION OR TRI-GENERATION THE ANSWER?

This Government currently faces notable challenges in implementing a coherent energy policy. Despite best efforts to encourage low carbon sources of energy, incentivise new nuclear build (notwithstanding the high up-front capital costs) and ensure that low-carbon energy subsidies remain affordable, it comes as no surprise that large scale energy consumers are reaching for alternative sources of long-term, lower cost electricity and heat. According to analysts, one factor is certain for the energy market in the coming years; our energy bills, for domestic and commercial customers, will significantly rise. Shale gas offers a potential panacea were one to believe that the US model was capable of replication here. The jury is still out on whether or not this will be technically feasible or acceptable from a local community perspective. In any event, a coherent energy mix will remain vital in ensuring we all remain capable of operating our businesses on a sustainable financial platform.

If you are a high energy consumer, you may already be faced with increasing costs from initiatives such as the CRC Energy Efficiency Scheme. We are seeing that an increasing number of companies (and many of our clients) are looking to mitigate some of these increased costs through the use of 'embedded' generating facilities. Wind turbines and photovoltaic solar panels offer a source of energy, providing reduced consumption from the energy market. In addition, these sources provide, in certain circumstances, export tariffs under the Feed in Tariff (FiT) or Renewable Obligation Certificate (ROC) schemes.

Given however, the current lack of generic forms of energy storage and the relative inconsistency of generation from these sources, we are seeing that companies are generally turning to co-generation and tri-generation combined heat and power (CHP) systems to supplement and significantly contribute to their energy, heat and cooling requirements. Co-generation facilities will focus on the simultaneous delivery of

electric power and thermal heat from the same fuel source. Tri-generation facilities will focus on the simultaneous production of thermal heat, electric power and chilled water from the same fuel source. Combining these facilities with feedstock which is on-site or readily available, such as biomass or municipal waste streams (which would otherwise attract a gate fee at landfill as well as landfill taxes), will further offset the cost of such facilities.

Natural gas and a good quality CHP scheme also offers attractive incentives. We are seeing an abundance of our energy services company (ESCO) clients offering very attractive financing packages and long-term energy provision contracts whereby the capital expenditure of these facilities is fully funded and costed into the forward price per unit of energy acquired by consumers. Whilst there is always risk in forward fixing energy supply sources and forward fixing the cost of energy, these options present a compelling solution when deciding upon energy supply arrangements over the coming years.

Ensuring a mix of embedded generation together with direct supply arrangements will likely assist in mitigating the virtual certainty that the price per kilowatt hour of electricity on the open market will rise significantly in the coming years. Having some certainty over a baseload supply of energy may also mitigate against the risk of power outages in the not too distant future.



**DARREN WALSH**

T +44 (0)7841 317 545

[darren.walsh@dlapiper.com](mailto:darren.walsh@dlapiper.com)





# HEALTH AND SAFETY UPDATE: FEE FOR INTERVENTION IN OPERATION

On 1 October 2012 the Fee for Intervention or “FFI” Scheme came into effect under the Health and Safety (Fees) Regulations 2012. Where an inspection discloses a material breach of health and safety legislation by the business, the HSE can now charge businesses for its enforcement costs at £124 per hour.

Manufacturing businesses will be familiar with the charging schemes which apply in respect of environmental permits, and which have also been justified on the analogous “polluter pays principle”. However, such charging schemes enable costs to be recovered, essentially as a result of the subsistence of the permit, or in consequence of various applications made in respect of it. By contrast, the right of the HSE to charge under the FFI scheme depends on identifying a material breach of the law by the relevant dutyholder. That means there is a risk of the level of enforcement considerably increasing, by comparison with previous practice.

## COSTS TO YOUR BUSINESS

It will not surprise readers to learn that a recent estimate has been made that approximately 60 to 70% of HSE inspections now identify a material breach. That means that unless considerable attention is paid in advance to compliance, a rolling programme of HSE inspections could prove quite a costly exercise for companies.

Critics could have predicted that a high percentage of breaches were likely from the fact that the administrative arrangements for the scheme envisaged the sending out of invoices on a two-monthly basis before it had even begun. Supplementary guidance to inspectors also provides for cases where a contravention is not yet established, or it is not yet clear who is in contravention. The guidance provides a template provision for putting a duty holder on notice that costs may be recovered by indicating that enquiries are continuing.

Put plainly – if a business is unhappy with the finding of a material breach, challenging it will incur a costly series of invoices.

## THE PROCESS OF CONTESTING A MATERIAL BREACH

If you find yourselves unhappy following a material breach, the scheme allows firstly for an informal query to be raised with the HSE’s FFI team. Following this, there is also a formal two-tier disputes process consisting of a referral to an HSE senior manager, and if the dutyholder is still not satisfied, subsequent referral to the Disputes Panel. However, both levels of this formal dispute process are also charged for on an hourly basis if the dispute is not upheld.

Businesses will therefore need to be clear of their position if they wish to engage in the formal process, and it may be prudent to seek specialist legal advice.

The HSE has also stated that it cannot give any assurance that the fact that an invoice has been paid will not be used in evidence in any subsequent criminal prosecution. In reality, in any case where criminal proceedings are actually brought under health and safety legislation, there will be more substantial evidence either of injury to a person to whom a duty is owed, or of some specific contravention of the legislation.

Nevertheless, companies may wish to consider accompanying any remittance advice with an indication that the payment is not be taken as an admission of the alleged contravention for the purposes of any proceedings. It would also be helpful to record separately, at the same time, any reasons the company has, in the circumstances of the particular case, for disputing the allegation.

However, as always, prevention is better than cure. It would clearly be prudent to carry out a careful review of a company’s health and safety systems in advance of any planned programme of routine HSE inspections.



**TERESA HITCHCOCK**

**T** +44 (0)7971 142 254

[teresa.hitchcock@dlapiper.com](mailto:teresa.hitchcock@dlapiper.com)

# COMMERCIAL LAND AND TRESPASSERS: FACT OR FICTION?

Upon discovering that trespassers have invaded their property, the understandable reaction of commercial landowners is one of horror – given the general perception that landowners are powerless to take any action themselves. However, is this perception fact or fiction?

Manufacturing sites, particularly those that are vacant or those where land is easily accessible from the public highway, are common targets. Below are some common misconceptions and practical steps that landowners can take to protect their interests in the hope of avoiding expensive court action.

## **FACT: Trespassing on commercial property is not a criminal offence**

Unfortunately, this is correct in the majority of situations – trespassing on commercial land is generally a civil matter for a landlord to resolve themselves. Whilst squatting on residential land is a criminal offence, there is no equivalent for commercial land. However, mixed-use property with a small element of residential use (either current or previous) and land that is ancillary to a residential building could still be covered by legislation, meaning that the police should be persuaded to act and assist in removing trespassers.

## **FICTION: The police have no powers to remove trespassers from commercial land**

The police do have powers to remove trespassers from commercial land where there are six or more vehicles on the land, or if any of the trespassers have either caused physical damage or behaved in a threatening, abusive or insulting manner. The police however do not have to take action; it is effectively a discretionary power and they are not always willing to exercise their discretion and help.

## **FACT: Landowners can commit an offence themselves if they unlawfully remove trespassers**

Landowners must act with care when seeking to remove trespassers or instructing others to do so. They should never seek to ‘take the law into their own hands’ and should always act within the law to remove trespassers, otherwise they may face a claim for damages for unlawful eviction or be liable for criminal conviction or a fine.

## **FICTION: Landowners have no ‘self-help’ powers**

A private landowner has the right to invoke a ‘self-help’ remedy by instructing certificated bailiffs to persuade the trespassers to leave the land without a court order having been obtained. Such services are expensive and because of the legal limitations on action that can be taken, this route does not necessarily give a landowner certainty in terms of recovering possession.

## **FICTION: A trespasser can claim damages from a landowner for any injury suffered**

A landowner is only liable where there is not sufficient protection offered against known dangers. Landowners should always take reasonable care to place notices to warn people about dangers and to secure any dangerous machinery, buildings or site areas, particularly in respect of derelict or vacant property.

## **FACT: A landowner often needs to apply to the court for a possession order to remove trespassers**

The most reliable and conclusive action that a landowner can take is to make an application to the court for possession if all else fails. There is a set procedure under the Civil Procedure Rules to allow landowners to issue expedited proceedings against trespassers and possession orders are usually granted to take effect immediately.

## **FICTION: If a sale or letting of land is due to complete, the presence of trespassers can considerably delay completion**

In cases of particular urgency where it is essential that trespassers are removed immediately, there is an accelerated court procedure to obtain an interim possession order almost immediately after proceedings are issued and served. This procedure is more expensive, but can be highly effective in the context of a commercial transaction.

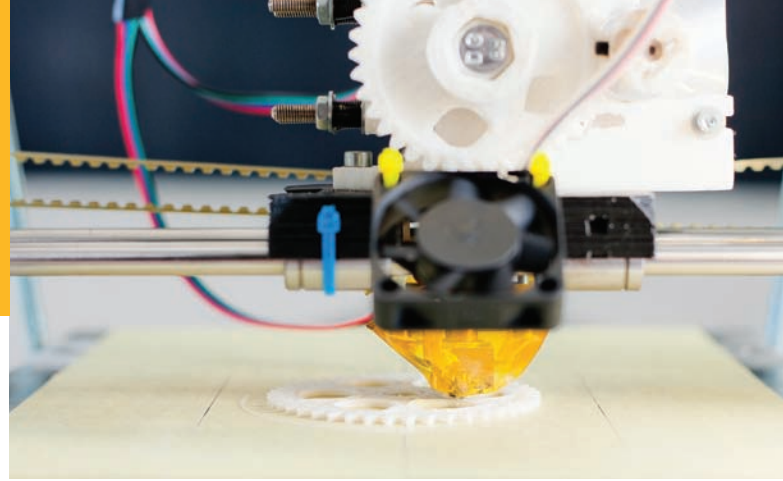


**LAURA HOLLOWAY**

T +44 (0)7971 142 440

[laura.holloway@dlapiper.com](mailto:laura.holloway@dlapiper.com)

# THE 3-D REVOLUTION IS HERE TO STAY



3-D printing is having a transformative impact on the way in which goods are manufactured, distributed and sold – in both the B2B and B2C market places.

The cost of a basic 3-D printer is now low enough for it to be viable for consumers to produce some products at home. In addition, 3-D printing allows the commercialised production of complex shapes, using not only plastic and composite materials, but also fabrics and molten metals.

Traditionally, products have been produced via large scale complex and expensive manufacturing processes which require products to be machined or molded into shape before being assembled together. These processes depend on economies of scale and create a considerable amount of waste.

In contrast, 3-D printers (once loaded with an electronic design file of the product design) build up a product in layers, with the layers being fused together in a process known as “additive manufacturing”. This process allows much more

complex products to be produced as a single item, whilst each 3-D printer can be used to produce many different products on a localised basis.

Accordingly, manufacturers should pay considerable attention to IP protection for all products which they design, so as to protect the value of their investment in new product design, to maximise the commercial opportunities that arise with 3-D printing and to deal with infringers. In so doing, manufacturers should consider the following actions:

- Apply for registered design right and patent protection in relation to any product design which qualifies for such protection.
- Incorporate aspects to the design of each product, no matter how functional, which have eye appeal – making the design registerable.
- Incorporate aspects of surface decoration onto as many products as possible – enabling potential actions for copyright infringement even if the underlying product design does not qualify for design right protection.
- Incorporate a representation of your trade mark(s) on all products (and component parts) – this will allow actions for trade mark infringement if the trade mark is copied.
- Keep records of all design drawings to establish the ownership and validity of the IP rights.
- Licence your electronic product design files to third parties who want to produce copies of the product on a commercial basis.
- Monitor the online distribution of your product designs and be prepared to take action against infringers.
- Utilise the criminal sanctions which are available in relation to copyright infringement and, if the new IP Bill is enacted into law, in relation to registered designs.
- Issue ‘take down notices’ to website owners who carry infringing material on their websites.

Threats for manufacturers	Opportunities for manufacturers
Consumers can legally and easily produce any product at home for home use because of the home copying exemptions to IP protections via a 3-D printer.	Products can be produced in smaller numbers, close to the point of demand on a timely basis without having to invest in expensive tooling and with reduced logistics costs and carbon footprint.
The unauthorised distribution of electronic design files to those who want to produce their own copies of the product, whether or not at home.	Manufacturers can licence the electronic design files for many product designs alongside the manufacturing and finishing instructions.
As the designs for functional products and spare parts are not protected by IP, anybody is able to use 3-D printers to legally produce such products without having to set up their own tooling to manufacture the product in question.	“High street print shops” can be established where consumers can order requirements for all manner of products, which the “shop” is licensed to produce and customise on a commercial basis by the design owner.
The use of low cost 3-D printers (rather than the previous expensive tooling/assembly lines) could encourage piracy in the countries in which the products are sold.	Similarly, authorised repairers can be encouraged to produce spare parts, with opportunities for the service side of manufacturing, to offer a bespoke “manu-service” for tailored products.



**RICHARD TAYLOR**  
 T +44 (0)7968 558 791  
 richard.taylor@dlapiper.com

For more information about our manufacturing capabilities, please email us on [manufacturing@dlapiper.com](mailto:manufacturing@dlapiper.com) or contact one of our sector specialists below:



**Richard May**  
UK Manufacturing Sector Head  
T +44 (0)7971 142 368  
[richard.may@dlapiper.com](mailto:richard.may@dlapiper.com)



**Noel Haywood**  
Corporate  
T +44 (0)7968 558 820  
[noel.haywood@dlapiper.com](mailto:noel.haywood@dlapiper.com)



**Peter Brook**  
Commercial  
T +44 (0)7968 558 838  
[peter.brook@dlapiper.com](mailto:peter.brook@dlapiper.com)



**Nigel Howard**  
Real Estate  
T +44 (0)7971 142 155  
[nigel.howard@dlapiper.com](mailto:nigel.howard@dlapiper.com)



**David Gray**  
Litigation and Regulatory  
T +44 (0)7971 142 204  
[david.gray@dlapiper.com](mailto:david.gray@dlapiper.com)



**Kate Payne**  
Employment  
T +44 (0)7971 142 385  
[kate.payne@dlapiper.com](mailto:kate.payne@dlapiper.com)

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