








# On the face of it...

## MAY 2010 NEWSLETTER

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## ANGEL UNDERWRITING JOINS THE CATLIN GROUP

We are pleased to announce that with immediate effect Catlin Holdings Ltd has successfully acquired the business, intellectual property and infrastructure of Angel Underwriting Limited.

The Angel brand and identity along with all of our existing underwriting, claims and accounting teams will continue as part of the Catlin Group from our present location in Colchester, Essex.

Inevitably, as with all transactions of this type, there will be some changes. However, we expect to keep these to an absolute minimum and are committed to deliver the same high levels of service and continuity that our agents have come to expect from us.

Catlin has been Angel's main Insurer on its range of Professional Liability products since 2007 and has been instrumental in elevating Angel Underwriting into a recognised and established market for Directors and Officers Liability and Professional Indemnity insurance in the UK.

Being part of the Catlin group will enable Angel to continue and accelerate our growth, improve our service and develop the range of products available to our agents.

If you have any questions about these changes I would be more than happy to discuss them with you either by telephone or in person and I ask you to contact me at the address below.

We look forward to your continued support.

Yours sincerely,

Mark Shreeve

Director Angel Underwriting

[mws@angelunderwriting.com](mailto:mws@angelunderwriting.com)

## CATLIN ACQUIRES ANGEL UNDERWRITING STRATEGIC HOLDINGS LTD

LONDON – Catlin Group Limited ('CGL': London Stock Exchange), the international specialty property/casualty insurer and reinsurer, announces that Catlin has acquired the professional indemnity and directors' & officers' liability book of business underwritten by Angel Underwriting Ltd (Angel)..

Angel, based in Colchester, Essex, was established in 2004 as a specialist underwriting agency specialising in insurance coverage for Professional Indemnity and Directors' & Officers' liability. Angel has underwritten business as a coverholder on behalf of Catlin UK (Catlin Insurance Company (UK) Ltd.) for the past several years.

Mark Shreeve, Angel's managing director and founder, will join Catlin UK as director Angel Underwriting. The Angel office in Colchester will become a Catlin UK regional office.

Richard Clapham, underwriting director for Catlin UK, said:

"I am very pleased that Catlin has acquired the business of Angel together with the excellent team based in Colchester. I look forward to working more closely with Mark and his team to strengthen Catlin's position in the UK regional professional indemnity and D & O markets"

Catlin UK writes numerous classes of non-life insurance for UK businesses and professionals and operates from offices in London, Glasgow, Leeds, Birmingham, Ipswich Tonbridge, Hitchin and now Colchester. Catlin UK has a financial strength rating of 'A' (Excellent) from A.M.Best Company.

Mark Shreeve, director Angel Underwriting said:

"Today is an important step forward for Angel, the resources from the Catlin Group will allow us to accelerate growth whilst continuing to deliver the same high levels of service our agents have come to expect".

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BIBA 2010



**BIBA 2010**  
CONFERENCE & EXHIBITION  
ExCeL London, May 19-20

Professionalism in a changing world



See us on  
stand K10

We are now only days away from this years BIBA conference which is being held at the ExCel Centre in London's Docklands on Wednesday, May 19<sup>th</sup> and Thursday, May 20<sup>th</sup>.

Attendance this year will be free to all brokers, you can get your complimentary invitation by [clicking here](#). If you log on to [www.biba.org.uk](http://www.biba.org.uk) and pre-register you can also ensure fast track entry to the show on either day.

Don't forget to come and see us at stand K10 to hear the latest news from Angel including details of our acquisition by Catlin and what this will mean for us and for you.

As in past years we will be handing out delicious hand made chocolates. You will also have the chance to get your hands on one of the Angel Jute shopping bags giving you the opportunity to enter our Jute bag holiday competition, [click here for more details](#).

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## THE BRIBERY ACT 2010

The Bribery Bill received Royal Assent on the 8<sup>th</sup> April and now becomes the Bribery Act 2010. The Ministry of Justice anticipate that the new bribery offences are likely to become effective in October 2010.

Until now UK Bribery legislation has been a mishmash of many different fragmented and outdated laws dating back to the late 1800s and early 1900s. Similar to the way the new Companies Act streamlined and updated our corporate legislation in 2006 the new Bribery Act aims to bring together and update these laws into a single piece of legislation. The result is a new US style piece of legislation which will give the UK some of the toughest anti bribery laws in the world. In addition to new personal offences (which include raising the maximum sentence for individuals convicted of bribery to 10 years imprisonment) one of the key planks of the legislation is a new corporate offence, where the company benefits from the corrupt act as opposed to the individual. For example, under the new offence a company can be prosecuted and the courts impose an unlimited fine if it is found that it commercially benefited from a bribe and failed to prevent it. Whether the company can be shown to have known about it or not, in future, responsibility will lie with the company to show prosecutors that it had done everything reasonably possible to prevent bribery and corruption. Companies without proper procedures in place will not be able to rely on the "we didn't know about it" defence to protect them from prosecution.

It is important to note that the broad scope of the Act means that directors could be held liable not only for their own actions but also for the actions of others within the company if appropriate steps have not been taken to prevent the risk of bribery and corruption within the organisation.

There can be little doubt the new offences will make it easier for the authorities to bring prosecutions to stamp out the use of bribes, backhanders, inappropriate gifts and other forms of corruption used to secure valuable commercial contracts, especially overseas.

### What can you do?

Exposure to the new law can be managed in two key ways. By reducing risk through effective risk management and by transferring some of the financial risk to an Insurer.

Firstly, in preparation for the Act coming into force it is essential that all companies and especially those with overseas contracts check that they have adequate anti-corruption procedures in place and if necessary strengthen their existing policies. All company employees, not just those in management or sales, should be made aware of the company's policy on anti bribery and corruption.

Secondly, should something unexpected happen the company's insurance policies can provide vital financial protection from legal costs as well as provide fast access to the necessary legal expertise. Often when things go wrong they tend to go wrong quickly. Having the right legal representation in place from an early stage can prevent further escalation and potentially even resolve matters. This is especially true when company executives become the subject of investigations from UK or overseas authorities and local or foreign legal representation may be urgently needed (if there are overseas sales or contracts, companies should make sure that their insurance policies will respond to an action overseas in a foreign jurisdiction). Directors and Officers and Corporate Liability Insurance can offer financial protection for legal defence costs for both the Directors and Officers personally as well as the company. It would not however normally extend to the payment of any fines imposed as these are uninsurable in the UK.

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## CHARITY INVESTIGATED BY THE CHARITIES COMMISSION FACES DATA PROTECTION SANCTIONS

When the Charities commission received in excess of 160 complaints about the National Bullying helpline their initial enquiries were centred on its statutory objective to increase public trust and confidence, however it soon became clear that it was the way in which the Trustees were managing the confidential information they held and what they did with it that was of greater concern.

Trustees are prohibited from benefiting personally from a charity, except in certain particular circumstances. If the Commission finds that trustees have used a charity to benefit personally the consequences may include a requirement to repay monies to the charity, the trustees being replaced and possibly even criminal proceedings for fraud. Under the requirements of the Data Protection Act 1998 all charities are obliged to have in place adequate policies and procedures to ensure that obligations of confidentiality are not breached.

In the case of the National Bullying helpline the founder used the helpline to solicit business for the consultancy firm she runs with her husband who is also a trustee.

New powers granted to the Information Commissioner as of 6<sup>th</sup> April 2010 permits it to impose increased fines of up to £500,000 for serious breaches of the Data Protection Act 1998. Whilst this is limited to serious contravention there is no limitation on the size of the Company that can be subject to the penalty but the Commissioner will take into account the size of the business when deciding the appropriate fine. Small to medium sized companies and charities are more at risk to this further financial exposure. A notice of intent must be served by the Information Commissioner before the penalty is imposed. This will allow an opportunity for representations to be made.

In a survey of SMEs carried out by the British Standards Institution in 2009, 20% of responding businesses admitted breaching the Data Protection Act 1998, 50% admitted that there was no individual in their business with specific responsibility for data protection compliance, and 65% said they do not provide data protection training for their staff. It does appear that data protection compliance amongst more than half of UK SMEs is not a priority and places them at risk of breaches occurring.

Whilst the cover provided by a Directors and Officers or a Trustee Indemnity policy is not able to pay any fines that are imposed since it is against public policy, it will cover the cost of defending an action and the costs incurred in any formal or regulatory hearing or investigation regardless of the likely outcome.

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## LEGISLATIVE UPDATE

### Equality Bill 2010

The Equality Bill has successfully passed through the House of Commons, received Royal assent on the 8<sup>th</sup> April and will shortly become the Equality Act 2010. The Bill attempts to create a single consolidated act to deal with all areas of discrimination law and is expected to come into effect in October.

An important addition was brought in when the House of Lords amended the Bill to make further provision and extension to race discrimination. The Bill has been drafted to allow Government to alter the definition of race to include caste; this would possibly extend racial discrimination to circumstances and issues relating to occupation, culture, social class and politics etc.

The Bill also bans employers asking for health information (including disability related information) before offering individuals a job to further avoid the possibility of disability discrimination.

Key provisions of the Equality Bill which employers should be aware of include:

- ⊗ The extension to include protection for indirect discrimination and discrimination by association.
- ⊗ The requirement for employers to review pay differences between genders.
- ⊗ Provision of wider powers for Employment Tribunals.

The aim of the Bill is to:

- ⊗ Harmonise the existing discrimination law.
- ⊗ Strengthen discrimination law.
- ⊗ Protect the case law changes.
- ⊗ Make the legislation more understandable.

The long passage of the Equality Bill through the House of Commons and the House of Lords has also created a much wider awareness of discrimination which increases the potential for individuals to claim against their employers.

For further in depth analysis of the Equality Bill please refer to previous articles in our January and March

newsletters which are available in the media section of our web site or by [clicking here](#).

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### Employment Tribunal Fast Track Scheme

The Ministry of Justice has introduced a fast track enforcement scheme that became effective on the 6<sup>th</sup> April 2010 and helps claimants move to enforcement as soon as possible when employers fail to pay awards ordered by Employment Tribunals.

High Court Enforcement Officers are offering an extended service which means that an officer will complete the court process of claimants and move speedily to enforcement. There is an applicable court fee of £50 which is added to the debt owed by the employer and a writ is issued for seizure of assets to meet the debt. The Ministry of Justice published research in May 2009 which showed that 30% of people granted awards were not paid at all and only 53% were paid in full.

This scheme is to be reviewed after two years and it is anticipated that in addition to swift enforcement actions for employment tribunal awards, Acas settlements will also be added to the scheme.

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### Whistleblowing Update

Since our last newsletter Employment Tribunal's power to automatically pass Claim Forms (or extracts from Claim Forms) to regulators in cases which include/relate to a Public Interest Disclosure has come into effect.

The amended ET1 Claim Form has been available since 6<sup>th</sup> April 2010 and include a new question 5.3 which asks "if your claim consists of, or includes, a claim that you are making a protected disclosure under the Employment Rights Act 1996 (otherwise known as a 'whistleblowing' claim), please tick the box below if you wish a copy of this form, or information from it, to be forwarded on your behalf to a relevant regulator (known as a 'prescribed person' under the relevant legislation) by the Tribunals Service."

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## RECENT EMPLOYMENT AND DIRECTORS CASES UPDATE

The following are brief summaries of some recent cases which we hope will be of interest:

### SANCTIONS FOR FAILURE TO CONSULT IN REDUNDANCY SITUATIONS

#### *Shanahan Engineering v UNITE*

The recently decided case of *Shanahan Engineering* in the Employment Appeals Tribunal has provided some further guidance on collective redundancy situations.

In 2007 engineering company *Shanahan* had a contract for work to build two generators at a power station owned by Alstrom. The work was of a short term nature so from the outset the Company and the union *Unite* were aware that there would be a need to make a number of redundancies at the end of the contract. At the end of April 2008 the construction work encountered some technical difficulties and it was decided it would be best to build the generators singularly as opposed to simultaneously. Because of this change Alstrom expected *Shanahan* to immediately reduce its workforce to only those necessary for building one generator at a time.

*Shanahan* decided how many individuals it would need to make redundant and agreed the process of selection for these anticipated redundancies with *Unite*. As a result around fifty employees were notified on May 1<sup>st</sup> and made redundant on May 2<sup>nd</sup>. The terminated employees applied to the Employment Tribunal for protective awards on the grounds of failure to follow the proper consultation period of 30 days. In response *Shanahan* claimed that it was not reasonably practicable for them to comply with the usual consultation obligations because of their "special circumstances".

The Employment Tribunal upheld the employee's claims and awarded them protective costs for a full 90 days. The Tribunal considered that although the difficulties were unexpected and may have meant there were "special circumstances" for not being able to comply with the 30 day consultation period before the first dismissal it did not relieve the employer *Shanahan* of its obligation to consult entirely. The fact that no attempt at even a short form of consultation was made was not acceptable.

*Shanahan* appealed the decision at the Employment Appeals Tribunal. The EAT upheld the Employment Tribunal decision that some form of consultation should have been undertaken but asked the Employment Tribunal to reconsider the 90 days protective award because it felt the 90 day award would be a measure of a sanction against the Company and in this case, although the Company should not be excused of its obligation to consult, there were mitigating circumstances which should be taken into account.

The case demonstrates that even in special circumstances which were outside the Company's control it will find it very difficult if not impossible to relieve itself of the obligation to consult with employees before redundancy.

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## POSTPONEMENT OF HOLIDAY LEAVE

### *Shah v First West Yorkshire Ltd*

The *Shah* case is the first case in which the employment tribunal has followed the European Court of Justice's decision in *Pereda v Madrid Movilidad SA*. In the ECJ *Pereda* case it was held that when sick leave coincides with an employee's holiday leave then the holiday could be postponed and if necessary go into the next holiday year. It seems likely that this approach will also be followed in future Employment Appeal Tribunal cases, although there is not a requirement to do so, and needs to be considered by employers to ensure they do not face similar claims.

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## DIRECTORS CONFLICT OF INTEREST UNDER NEW COMPANIES ACT 2006

### *Thermascan v Norman*

One of the first actions to be brought under the new Companies Act 2006, the case concerned conflicts of interest and the appropriation by directors of their company's business opportunities.

Mr Norman, a thermal engineer, had been an executive director of Thermascan Limited (Thermascan) since 1997. Thermascan conducted specialised surveys of commercial property, typically for insurance purposes. It used infrared technology to scan factories and warehouses for problem signs such as a hot spot indicating an electrical fault and possible fire risk.

On 10<sup>th</sup> September 2008 Mr Norman gave one month's notice to Thermascan to terminate his contract of employment. On expiry of the notice he also resigned as a director. Within a month he commenced employment with Sykes & Co, a building and property maintenance company. His job was to head up a new preventative maintenance division providing thermal engineering survey services. However four months after starting he was made redundant. A few months after being made redundant and after the expiry of his post restrictive covenants from his old company Thermascan Mr Norman decided to set up his own business called Hotspot-Thermography. The new Company provided thermal imaging surveys and had a similar client base to that of Thermascan.

Thermascan sought an injunction to stop their ex-director from setting up a competing company. In seeking the injunction Thermascan sought to rely upon section 170 of the new Companies Act 2006 which states a Director has a statutory duty even after resignation to a) avoid conflicts of interest and b) not to accept benefits from third parties. Thermascan were ultimately unsuccessful in their application but only after lengthy legal proceedings and a ruling by the Court of Appeal.

The Court of Appeal decided that an ex-director would only be in breach of their continuing obligations where their resignation was influenced by a desire to acquire an identifiable business opportunity for the Company for themselves. Mr Norman's decision to start his own Company, which involved contacting the same customers of his previous company Thermascan, was not sufficient in itself to show an identifiable business opportunity.

It is perhaps significant that in this case it appears there was no conspiracy to move customers or business opportunities during the time Mr Norman was a Director of Thermascan. However, irrespective of the outcome of this particular case this action of Thermascan clearly demonstrates the growing willingness of companies to pursue remedies outside of the usual post termination restrictive covenants to protect their business. Raising the prospect of significant personal financial exposure to directors in areas they might not have previously considered. Directors and Officers Insurance could pay the legal defence costs and any settlements made in such cases.

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# WIN £500 IN TRAVEL VOUCHERS

## ANGEL JUTE BAG COMPETITION

Now that summer is just around the corner you may have started shopping for items to take with you on your summer holiday, if so don't forget to take your Angel Jute bag with you and take a picture of you with it so you can enter our "I use Just One Bag" competition and have the chance to win £500 worth of travel vouchers.

To enter the competition, all you have to do is take an Angel eco friendly jute shopping bag somewhere "special," take a photograph there including both you and the bag, and send the picture to us.

The picture needn't be somewhere exotic or far away it just needs to be something "special", so it could be you and the bag posing with a famous person, or on top of a mountain, in a submarine, at a concert, or on the London Eye. The most "special" in the opinion of our judge will be the lucky winner!

Launched at the Angel Underwriting Broker Forum in Exeter, the new jute bag has been designed with this competition in mind. Their next outing is next week at the Excel centre in London for the 2010 BIBA conference on 19<sup>th</sup> and 20<sup>th</sup> May. We will also have them at the Angel broker forums that we will be hosting around the country during 2010.



If you are not able to make it to any of these events then Gary Green, Angel's Business Development Director will be happy to arrange a visit and deliver one to you in person.

To give you an example of what we are looking for, there are some examples on our web site, to see them, visit our website competition pages at

[www.angelunderwriting.com/uk/Media/JuteBagCompetition/JuteBagCompetitionGallery.aspx](http://www.angelunderwriting.com/uk/Media/JuteBagCompetition/JuteBagCompetitionGallery.aspx)

"It was the fact that one of our brokers told us they took their Angel Jute Bag everywhere – even on holiday – that was the inspiration for the competition," said Angel Business Development Director Gary Green.

The competition is open to agents registered with Angel Underwriting and is free to enter. There is no limit to the number of pictures you can submit. Entering is easy, all you have to do is go to

<http://www.angelunderwriting.com/uk/Media/JuteBagCompetition.aspx> from where you can upload your pictures, there is no limit to the number of entries per person.

All pictures will be judged by Mark Shreeve, CEO of Angel Underwriting, whose decision will be final. All entries must reach Angel Underwriting by 30<sup>th</sup> September 2010 and must

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include the entrants name and contact details. The winner will be notified shortly afterwards and announced in the October 2010 Angel Newsletter.

If you are not already registered as an Angel agent you can call 01206 215500, email [gg@angelunderwriting.com](mailto:gg@angelunderwriting.com), or go to [www.angelunderwriting.com](http://www.angelunderwriting.com) and register on line to be able to take part in the competition.

Entries can be emailed to Angel at [gg@angelunderwriting.com](mailto:gg@angelunderwriting.com).

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