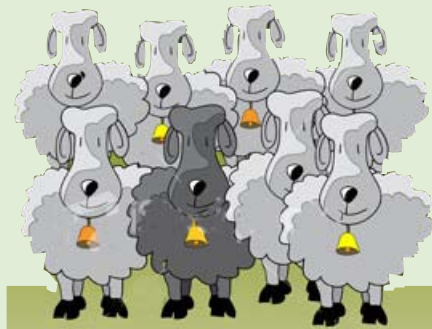


AND FINALLY .....

## The Story of the Wise Shepherd

A shepherd was tending his flock in a field when a new sports car screeched to a stop on the road nearby in a cloud of dust. The driver, a young man in expensive designer clothes and sunglasses, leans out of the window and shouts over to the shepherd, "If I tell you exactly how many sheep you have here, can I take one?" The shepherd looks up slowly at the young man, then looks at his peaceful flock and calmly answers, "Sure, why not?"



The young man steps out of his car holding a state-of-the-art palmtop pda, with which he proceeds to connect to a series of websites, first calling up a satellite navigation system to pinpoint his location, then keying in the location to generate an ultra-high resolution picture of the field. After e-mailing the photo to an image processing facility, the processed data is returned, which he then feeds into an online database and enters the parameters for a report containing several pages of analysis and results. The young man studies the data for a few more seconds and returns to the shepherd.

"You have exactly one thousand five hundred and eighty-six sheep, including three rams and seven hundred and twenty-two lambs."

"That's right," says the shepherd, mildly impressed. "Well I guess that means you get to take one of my sheep."

The young man makes his choice and loads the animal onto the back seat of his car, at which the shepherd says, almost as an afterthought, "Hey there, if I can tell you what your business is, will you give me back my sheep?"

The young man, feeling confident, agrees.

"You're a consultant," says the shepherd.

"Wow, that's right", says the young man, taken aback, "How did you guess that?"

"No guessing required," answers the shepherd, "You showed up here even though nobody called you. You took a fee for giving me an answer that I already know, to a question I never asked, and you know nothing about my business. Now give me back my dog."

This Edition of NETWORK ISA has been published by

**Independent Surveyors Training Ltd**  
on behalf of the ISA

*"Putting the Client First"*

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## NEWSLETTER

### Christmas 2007



### SPOT THE DIFFERENCE



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Publicity leaflet for the MOD

### HABITUS SURVEYORS LTD

*Habitus Surveyors Ltd* is on the brink of voluntary administration - three weeks after appointing the 'crisis management' firm, *Interco Associates* to undertake management of its debts.

This leaves many independent surveyors, including members of ISA, who have undertaken work for the company, unpaid and, in some instances, subject to large debts for survey fees which may never materialise.

One member with unpaid fees of £1,000 cites other surveyors in his locality where fees due from *Habitus* may amount to £20,000 or more - putting those individual practices at risk of demise themselves.

*Habitus Surveyors Ltd*, run by Chartered Surveyors, Peter McKendrick (RICS President 1997/98), Nick Butler and Andrew Cackett, together with non-CS directors Brendan Doyle, Mark O’Dolan and David Watling, is a wholly-owned subsidiary of **Location Matters Ltd**, and blames its troubles on government failing to deliver ‘HIPs mechanisms’, but other causes will undoubtedly include inappropriate management, poor financial control and under-pricing of the survey product. ISA is aware of aggressive tele-sales and web-marketing of survey and valuation services by Habitus salespersons to build market-share, charging fees at an unrealistically low level and then, if the location where the instruction has been accepted is not covered by a Habitus franchisee, ‘ringing around’ for a surveyor locally to do the work for a low fee with the promise of further instructions later on. We have also learnt of Habitus taking on large contracts for survey work from firms, of which *Ekins* is just one, often at uneconomic rates, and then farming out the instructions to surveyors at even lower rates.

ISA has a series of examples to demonstrate poor practice and undercutting of fees - for instance a mid-Victorian 7-bedroom, 3-bathroom, 4-reception room dwelling set in 40 acres with swimming pool, where a net fee of £511 was on offer by Habitus for undertaking a Building Survey which it had already accepted from *Woolwich Ekins*.

Another example involves a Building Survey of a 4-bedroom modern detached house with structural problems and Building Regulations breaches, where Habitus offered a net fee of £360, with an urgent proviso to include a mortgage valuation for *the Woolwich* and instructions that the mortgagor should be met on site for purposes of consultation in case “there was anything too onerous”!

Graham Ellis, an ISA Council Member, faced with similar offers of work at uneconomic fees, approached **Habitus Surveyors Ltd’s** Chairman Peter McKendrick in 2006 about an invitation he had received from sales staff, inviting him to carry out an HSV and mortgage valuation for merely £75. Despite the former president’s apparent embarrassment and promise to investigate, no further action was taken nor was any response received.

Habitus has also actively engaged in inviting ‘drive-by’ valuations at net fees of £25, but any professional surveyor undertaking work of this type must either be desperate for instructions or have little regard for competency, or both.

systems and for the next 10 years chancel repair liability will remain an interest that binds successive owners of a property even though it may not be protected by an entry in a register.

The Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003 (S.I. 2003 No. 2431) came into force on 13 October 2003.

*Liability to repair the chancel of any church was an overriding interest under section 70(1)(c) of the 1925 Act. The Order extends the overriding status of this interest for a transitional period of ten years.*

After 13 October 2013 the right to enforce the liability will be capable of protection by registration of a notice. The liability will no longer constitute an overriding interest. This means a buyer for value will take free of the liability unless it is protected by a notice on the Register.

## NEW MEMBERS

ISA is delighted to welcome the following new members who have joined this year

<b>Nigel Blanchard FRICS MAPM FBEng Dip HI</b>	Blanchard Consultancy	WINDSOR
<b>Ronan Bond BSc (Hons) MRICS MFPWS</b>	Bond Associates	HASTINGS
<b>Anthony Carey BSc (Hons) MRICS MCIQB</b>	Anthony Carey - Chartered Building Surveyor	GATESHEAD
<b>Ian Coulson FRICS</b>	Coulson Property Services Ltd	STOCKPORT
<b>David Evans FRICS</b>	David Evans Associates	STAMFORD
<b>Stephen Fairhurst BSc (Hons) MRICS</b>	SJ Fairhurst Associates Ltd	BOLTON
<b>Chris Gunn BSc (Hons) MRICS</b>	CM Gunn MRICS	REDRUTH
<b>Mark Hutchings MRICS</b>	Mark Hutchings Chartered Surveyors	READING
<b>Francis Maguire BS (Hons) MRICS</b>	Maguire Independent Ltd	BRIGG
<b>Michael Marriott MRICS SAVA</b>	Michael Marriott Chartered Surveyors	WESTCLIFF ON SEA
<b>Robin Michelmore FRICS</b>	Michelmore - Chartered Surveyor	ASHBURTON
<b>Stephen Sands MRICS MRTPI FCIOB MAPS MAPM</b>	P.A.S.S. Consultants	HAILSHAM
<b>Alastair Kinloch MRICS</b>	Property Works	MALLORCA
<b>Keith Greengrass</b>	Richmond Oak Surveyors	VERWOOD
<b>Roger Roberts BSc (Hons) MRICS FBEng FNAEA</b>	Roger Roberts & Company	SWANSEA
<b>James Roberts BSc (Hons) MRICS</b>	Simply Surveys Ltd	BRIDPORT
<b>Simon Deacon BSc FRICS</b>	Wheeldon & Deacon	SOUTHEND-ON-SEA

Church Council (“the PCC”)] simply asked Mrs Wallbank to pay for the repairs. She disputed the liability. In 1994 the PCC, as the responsible authority, served notice on Mrs Wallbank under section 2(1) of the Chancel Repairs Act 1936, calling on her to repair the chancel. When she still refused to do so, the PCC began these proceedings under section 2(2) of the 1936 Act to recover over £95,000, the estimated cost of the repairs.” Ultimately the Wallbanks were faced with a bill for £230,000 including costs.

Lord Scott of Foscote in the Aston Cantlow case summarises the obligation for Chancel repairs and its origin ...

*“A description, even a brief one, of the law on chancel repairs must, if it is to be comprehensible, start with mediaeval times when every parish had its parish priest, the “rector”. The rector had, by virtue of his office, a number of valuable proprietary rights which, collectively, constituted his “rectory”. These rights included the profits of glebe land and tithes, usually one-tenth of the produce of land in the parish. Responsibility for the repair of the parish church was, absent some special custom to the contrary (see Bishop of Ely v Gibbons (1833) 4 Hagg. Ecc. 156), shared between the rector and the parishioners. The parishioners were responsible for repairing the part of the church where they sat, the western end of the church. The rector was responsible for repairing the chancel, the eastern end of the church. The rector’s glebe land and tithes, the “rectory”, provided both for his maintenance and a fund from which he could pay for chancel repairs.”*

Since the time that the rectorial property was first defined, Enclosure Acts have converted certain rectorial tithes into rectorial property thus attaching chancel repair liability to the ownership of those lands. As rectorial tithes were widespread through historical parishes, so too is the liability to pay for an apportioned amount of the chancel repair liability for that parish. It is therefore very difficult to define what land within an historical parish boundary has chancel repair liability. It is possible but requires an expensive personal search of the national Archive.

*“The liability to pay for chancel repairs mainly affects rural communities, but it can apply in towns and cities {such as Brighton, Manchester, Bedford and Lancaster}, especially where ancient settlements now form part of larger urban conurbations.*

*Until then, homeowners should be wary because that cherished view of their local parish church just might come with a price tag attached.”*

The Government has acted on this issue and a Transitional Provisions Order covering chancel repair liability has been made and which took effect when the Land Registration Act 2002 came into force on 13th October 2003. The Order preserves the status of chancel repair liability within the Land Registration

The survey invitations referred to above - not unexpectedly - were declined by the ISA members who were approached, but ISA is aware of others taking on work where the fee is barely sufficient to cover secretarial services and expenses.

Apart from **Habitus Surveyors Ltd**, the Habitus Group is directed by those with marketing, rather than surveying backgrounds, determined to increase market share by aggressively undercutting fees of local independent surveyors by driving hard bargains - leading in some instances to poor quality work and public dissatisfaction. The company has clearly expanded too quickly and might have succeeded but for the ‘backwash’ following the American sub-prime fiasco, ‘Northern Rock’ and ineptitude on the part of government in its attempt to reorganise the house-selling process, all factors which are currently having an adverse effect on the UK housing market.

The tele-sales girls at Habitus have usually justified ‘low fees’ offered to surveyors by explaining that, *“there will be a more profitable job tomorrow”* and, moreover, that the company indemnifies the surveyor against third party PI claims - yet what happens if the employer itself becomes insolvent? Using the precedent of Merritt -v- Babb, in the event of a claim of negligent valuation or survey there is a real risk that an aggrieved client will pursue the surveyor personally if the company from which the survey or valuation was commissioned is no longer solvent.

Steve Dixon of Towergate, ISA’s PI advisor, recommends caution ... *“Any surveyor who has carried out work for Habitus under its PI ‘banner’ should notify his or her own PI insurers about the potential demise of Habitus and provide a schedule of all work undertaken for the company with a request that the same should be covered by the surveyor’s own PI policy”.*

### ‘Habitus’ - the Company Profile

Originally styled as **Habitus Independent Chartered Surveyors Ltd**, the Habitus brand has diversified, applying the ‘generic’ ‘Habitus’ name to various private limited companies including; **Habitus Surveyors Ltd**, **Habitus Information Ltd**, **Habitus Legal Ltd**, **Habitus Franchising Ltd**, forming a relatively complicated and incestuous network.

A holding company ‘**Location Matters Ltd**’ is the parent company for **Habitus Surveyors Ltd** and **Habitus Franchising Ltd**, owning the entire share capital of the last two. **Habitus Surveyors Ltd**, in turn, wholly owns

### ***Walsey Property Services Ltd.***

***Habitus Franchising Ltd*** is the vehicle through which the group sells exclusive territorial rights at the rate of £30,000 per local authority area. Although ISA has not been able to confirm exactly how many franchises have been sold, members who have enquired about franchising have gleaned a consensus that 100 or so local authority areas have been taken up, collecting capital of £3m or so for the company.

Accounts show that the ‘milch cow’ of the group, ***Habitus Surveyors Ltd***, was carrying aggregated losses of £805,420 at the end of April 2006 - almost a 10-fold increase on the aggregated loss of £87,734 shown at the end of the previous year, and presumably, significantly more today but with negligible assets to sustain it.

Whilst there will be few tears for the demise of any privately-owned limited company that ‘falls on its own sword’, there must be concern if a major part of the unsustainable debt can be related to remuneration drawn by the directors themselves - in this case £235,525 for the year ended April 2006 and £177,760 for 2005. Those individuals or firms who have purchased ‘Habitus’ franchises for survey work generated by ***Habitus Surveyors Ltd*** will undoubtedly be reading the small print of their contract with great care to see what recourse is available to recover what may no longer be deliverable.

ISA notes that David Watling FCCA resigned from ***Habitus Surveyors Ltd*** on 24 October 2007, followed by Chairman Peter McKendrick (former RICS President 1997-1998) on 13 November, two days before the ‘Crisis Management’ firm *Interco Associates* was appointed to process the firm’s debts - but to no avail.

Two years on, Habitus’ golden promise set out in its brochure to potential franchisees of ... *“immediate payment for all work centrally invoiced, ensuring no cash flow issues and reduced working capital requirements and ‘pay on completion’ fully funded by Habitus ...”* has a hollow ring and will provoke great bitterness in those chartered-surveyor professionals who are left with debts which are unlikely to be met. Particular irritation perhaps, since ***Habitus Surveyors Ltd*** is still actively advertising for instructions and is prepared to receive payment from the public for surveys which may never materialise. ***Habitus Franchising Ltd***, which has no Chartered Surveyor directors, is also prepared, as we go to press, to continue selling franchises.

### **Remember the Wallbanks and Beware of ‘Chancel Charges’**



Although most surveyors will be aware of Aston Cantlow -v- Wallbank, others may not, and the approach of Christmas serves as a timely reminder to take care when advising clients who are purchasing former church property.

Names such as ‘The Old Rectory’, ‘The Glebe’, ‘The Vicarage’ will provide warning that the premises might be liable at some time to payment of ‘Chancel Charges’ and any surveyor providing advice to a purchaser should recommend careful investigation by the conveyancer in the same way that advice might be given to commission a ‘mining records search’ or to confirm a ‘right of way’ or to recommend the need to confirm easements for private service systems.

In essence ...

Mrs. Wallbank inherited a farm which was not adjacent to the parish church (St John the Baptist Church in Aston Cantlow) but it was within the parish and when she inherited the property she also inherited the liability to repair the chancel. The case went to the House of Lords and she and her husband lost - Lord Rodger of Earlsferry sums up .....

*“ ... As owners of Glebe Farm Mr and Mrs Wallbank are the lay rectors or impropiators of the parish church and, as such, potentially liable to pay the cost of repairs to the chancel. By 1990 the chancel was in disrepair, [the Parochial*