

## Record catch for Mackinnons...

Welcome to the latest edition of Highlight@ mackinnons which turns the spotlight on legal issues in the fishing industry. Mackinnons is Scotland's leading firm for Fisheries Law and we are well-renowned in Scotland and beyond for our involvement in the fishing industry. In this issue of Highlight we are taking a look at a number of current topics of interest to our fishing clients.

The past year has been a most successful one for Mackinnons. Hard on the heels of our Top Ranking in Chambers Guide to the Legal Profession, we were named Property Team of the Year and Private Client Team of the Year in the Scott & Co. Legal Awards (see the back page for more details).

So, in 2012-13, whichever stock we fished for, we came up with a great catch!

**Keith MacRae** *Partner*

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Keith MacRae - Partner

## Always tell the truth....

The convictions and sentencing of Chris Huhne and Vicky Pryce on charges of perverting the course of justice caused much debate and discussion. Mr Huhne and his former wife Ms Pryce were prosecuted when it came to light that she had agreed to be named as the driver in a speeding offence when he had actually been at the wheel. Each was sentenced to eight months in prison.

Opinions have ranged from the sentences being entirely reasonable to them being over the top for what some see as a minor offence. Surely there's no real harm in taking the points on your licence for somebody else?

Well, offences which involve dishonesty in the justice system are treated very seriously indeed. Perverting the course of justice and perjury are offences which strike at the heart of our legal system. When you give evidence in Court you do so under oath or having affirmed that you will tell the truth. When we are required by law to give certain information the effect is the same, and there are potentially severe penalties if the information given is false. An example of this is the requirement by the Registered Keeper of a vehicle to say who was driving at the time an alleged offence was committed. This is what Chris Huhne failed to do and Vicky Pryce colluded with.

So why is this so important? It is often said that straightforward speeding is a victimless crime. The speed limits are there for a purpose, however. Penalty points are intended to prevent repeat offending and therefore cut down the risk of accidents. In order for the system to work, and for habitual offenders to be caught, the true identity of the driver has to be disclosed.

There have been other well-known figures who have ended up in jail for being less than frank in the witness box. Two of these, Tommy Sheridan and Jonathan Aitken, were convicted of perjury as a result of giving evidence on their own behalf while suing for defamation and libel after what had been said about them in the media. How great an irony that they should lose their reputations by not telling the truth while taking court action to uphold them. Jonathan Aitken will be forever remembered for what he said when he denounced The Guardian and Granada TV for what was said about him:

*"If it falls to me to start a fight and cut out the cancer of bent and twisted journalism in our country with the simple sword of truth and the trusty shield of British fair play, so be it."*

A great pity, then, that the simple sword was dropped somewhere along the way and he ended up being sentenced to 18 months imprisonment for perjury!

Our former Senior Partner Denis Yule was often asked by witnesses for advice before they gave evidence in Court cases. His answer was simple: "Always tell the truth ..."

## .....It's so much easier to remember"!

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## Fishing Prosecutions - An Update

The concept of administrative penalties first came into force in April 2008 under the auspices of the Aquaculture & Fisheries (Scotland) Act 2007. The idea was to decriminalise minor fishing misdemeanours. Avoidance of a criminal record and making savings for Marine Scotland and the Justice System, are advantageous to all sides.

As a result, the number of prosecutions dealt with by Crown Office has dwindled over recent years. Most Notices and fixed penalties are simply accepted and processed without issue by the individual.

In December, the industry was bolstered by the Government's success at avoiding EU cuts to Days at Sea Levels for 2013. The most recent success at Brussels in agreeing to end discards gradually between 2014 and 2017 restores some fairness for the industry, but the potential number of regulatory offences is still sizeable.

Annexe H of the Conservation Credit Scheme (CCS) dated 25th June 2012 details the penalties that will apply to particular activities/offences. The decision to dock days from a skipper's allocation rather than a monetary sum must always be seen as less punitive.

No Government statistics have yet been published to confirm the success or otherwise of the CCS Rules, but, in comparison to criminal prosecutions where potential maximum fines of £50,000 are available, it is easy to see the appeal of the system within the industry.

On a cautionary note, the approach adopted south of the border is inconsistent with Scotland. There have been several recent high profile cases where large five figure fines have been handed out by the English Magistrates' Courts. Such fines often appear wholly disproportionate to the nature of the offences involved and, worryingly, the financial status of the individual offenders. The Marine Management Organisation appear to prosecute with multiple charges wherever possible.

In relation to their administrative penalty process, this is set out within the Sea Fishing (Penalty Notices) England Order 2011. There are no similar administrative penalties involving Days at Sea. Given that the maximum level of fixed penalties is £10,000, it seems that this represents the starting level for magistrates when considering any case calling before the Courts.

For those skippers working between English and Scottish Waters, unless and until there is harmonization between Marine Scotland and the MMO on policy, the difference in sentence could be vast. Please take note!

For further advice, please contact **Martin Sinclair** on **01224 632464**.



Martin Sinclair - Partner



Come and see us on Stand 41 of the **Skipper Expo International** at the **Aberdeen Exhibition & Conference Centre** on the **10th & 11th May**

# Immigration Considerations for Crewing

Non-EEA seamen working in the UK fishing industry are subject to immigration control. If they are working on vessels operating within the 12 mile limit, they must obtain permission to work in the UK under the Points Based Assessment system, usually under Tier 2 (General).

Permission is conditional upon; the seaman being employed by a UK company which is a licenced sponsor; the role being one which cannot be filled by a UK worker and the role having a skill level of NQF 6. Fishermen are deemed to be borderline NQF 3. At present, it is impossible to bring seamen to the UK under Tier 2 and this is unlikely to change as the UKBA intends to increase the minimum skill level. The "Leave Outside the Rules" concession which allowed non-EEA seamen to work in UK waters without Tier 2 permission expired in September 2012 and there are no plans for it to be reintroduced.

Whilst non-EEA crew working on vessels fishing in international waters do not need permission to work, they do need clearance to enter the UK to join the vessel. Upon arrival in the UK the seaman must be able to show that he is under a contract to join a vessel which is due to leave UK waters. The UKBA in Aberdeen consider that the contract to join the vessel must be a contract of employment rather than a self-employed arrangement. In the absence of evidence of a contract of employment, the UKBA may refuse to give the seamen permission to transit through the UK. This only applies in respect of seamen holding identity documents issued under the ILO Convention. Those without ILO Convention documents must obtain a visa to transit through the UK under the usual immigration rules.

For further advice, please contact our **Katie Williams** or **Lesley Rennie** on **01224 632464**.



Lesley Rennie - Solicitor

## Weighing of Fishery Products – Implementation of Control Regulation

Marine Scotland recently issued guidance in relation to the requirement to weigh fishery products in terms of Council Regulation EC No 1224/2009 ("the Control Regulation"). Marine Scotland expects operators to weigh catches with effect from 18th February 2013, although an initial period of education will be in place until 1st May 2013.

In terms of the Control Regulation all fish must be weighed on an approved system unless a Member State has adopted a sampling plan approved by the Commission. Marine Scotland issued details of (i) the approved UK sampling plan for fish being sold by competitive auction in Scotland and (ii) of the requirement to weigh 100% of the catch when fish are sold privately/direct to a buyer.

The weighing provisions, as they apply to vessels landing into Scottish ports, state:

- all catches of fish to be weighed on landing, subject to the sampling plan prior to the fish being held in storage, transported or sold;
- weighing may take place on board a fishing vessel subject to the sampling plan;
- registered buyers, registered auctions or those responsible for the first marketing of fish are responsible for accurate weighing unless weighing takes place on board a fishing vessel, where it does the master shall be responsible for the accuracy of the weighing;
- the weighing figures must be retained for 3 years and shall be used for landing declarations, transport documents, sales notes and takeover declarations; and
- Marine Scotland may require that fish landed in Scotland are weighed in the presence of officials prior to being transported.

The UK sampling plan sets out a minimum representative sample of boxes to be weighed with a 5% tolerance between net weighed and gross weighed fish otherwise an increased number of boxes must be net weighed. For private sales at least 10% of the fish must be net weighed and the balance gross weighed, again with a 5% tolerance between the net weighed and gross weighed fish.

For further advice, please contact **Graham Jones** or **Kirstin McPherson** on **01224 632464**.



Kirstin McPherson - Solicitor



# "Simply the Best!"

## Mackinnons Solicitors triumph at Scott & Co Legal Awards 2013

At Edinburgh International Conference Centre on 28th March, Mackinnons, were awarded not just one, but two prestigious awards for their Private Client and Property work.

Designed to highlight the very best work that is usually a shared secret between client and the legal provider and to identify and recognise excellence in particular areas of the law, the event has been described as the "Oscars" of the legal profession.

Hosted by BBC presenters **Dougie Vipond** and **Louise White**, the event was a glittering black tie event held in the presence of some of the judges and attended by more than 500 guests.

Mackinnons had been told by the judging panel in January of this year that they had been shortlisted in two categories; Registers of Scotland Residential Property Team of the Year and Hotel Missoni Private Client Team of the Year. Twelve members of our team travelled to Edinburgh for the event.

Before the event, **Pat Gray**, a Partner in both the Private Client and Property Departments said "to be short listed for both of these awards, and to be the only firm in the North East, and indeed north of the central belt, recognised in this way is in itself a tremendous achievement for the firm and for our teams. We know the quality of work and service we provide day in – day out, to our clients but to have this acknowledged externally is extremely gratifying".

In awarding the **Private Client Team of the Year Award** sponsored by Hotel Missoni, the judges recognised the depth of the firm's knowledge and expertise and particularly the empathetic nature of the service delivered to the firm's extensive private client base across Scotland. They also described the literature available to clients and the quality of advice on offer as outstanding and well worthy of the award.

On what turned out to be an unexpectedly even more successful night for the firm, the **Residential Property Team** was then awarded **Registers of Scotland Residential Property Team of the Year**. Describing the firm's vision, presentation, expertise, quality and innovation the judges said that the team's work was truly outstanding.

Commenting after the ceremony, **Charles Scott**, senior partner said, "Tonight has been a very special night both in the history of Mackinnons and for Pat and her teams. The Awards are both richly deserved and true recognition of many years of hard work and dedication to the firm's clients."

Commenting on the firm's web site just after news had broken, two clients said "not bad eh, for a wee firm up in the north!!" and "just recognition for what we as clients have known for years – well done Mackinnons!!"

For further advice, please contact **Pat Gray** or our **Private Client team** on **01224 868687**.

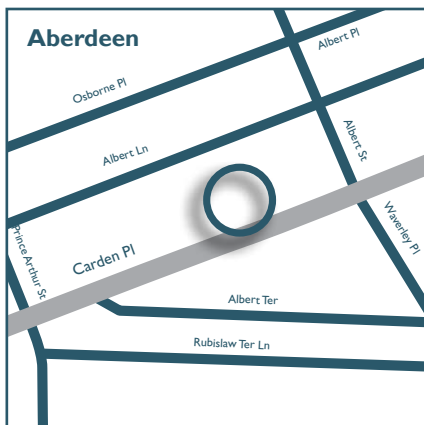


Pat Gray - Private Client Partner

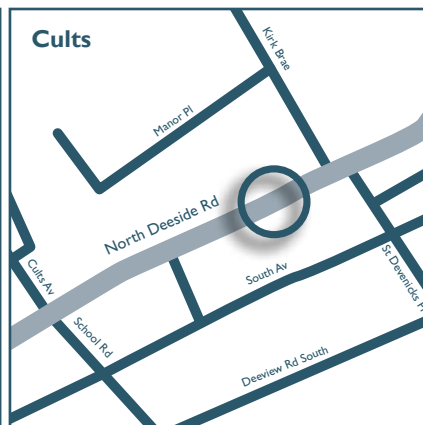
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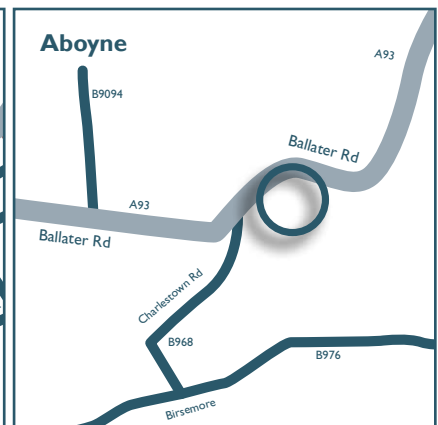
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