

A warm welcome from us all at Mackinnons to our latest offering of the Highlight magazine.

Now that the drama of the Scottish Referendum has abated (and the nights are drawing in!), we hope that this edition of Highlight will provide some interest to our clients.

The past few weeks and months have distracted away from many of the day to day issues of commercial and public life. With that in mind, we felt that a focus on some, all important, legal reminders would be beneficial.

Our Commercial team will provide a useful aide memoire for a typical business acquisition transaction and on the Litigation side, there are some key issues for the employer when dealing with an employment liability claim.

The controversial topic of Employment tribunal fees is reviewed critically, one year on from its introduction, whilst the Private Client department offers advice regarding windfall payments during or post employment.

We are also pleased to be providing two employment seminars later in the autumn, to be held separately in our Aberdeen and Aboyne offices. We hope these will provide some benefit to clients as well as an opportunity for some informal discussion.

With good wishes to you all.

Martin Sinclair *Partner*

martin@mackinnons.com



In this issue...

Could You Do Better In Business?

Impact of Employment Tribunal Fees

Employers' Liability Claims

Unplanned Employment Payments

Employment Seminar Details

ISSUE
06

Could You Do Better In Business?

Now that the economic recovery is underway and while interest rates remain low and crucially, also wages, this may be the time to join the growing number of entrepreneurial Scots who are setting up their own businesses.

The acquisition of an established business as a going concern can be an attractive proposition if you are willing to do the groundwork in reviewing all aspects of the business before making the commitment. Whether you are buying the shares in an existing trading company or simply purchasing its business and assets, you will wish to assess that business's financial records, contracts, staff details, insurance arrangements, intellectual property rights, evidence of statutory compliance and other business records.



Fiona Thomson - Consultant

Some key considerations include:

- If you are acquiring business premises as part of the package, different concerns arise if the premises are owned outright or leased by the business. In either case a full survey of the premises will be needed, paying particular attention to the condition of buildings and their state of repair, the lease documentation or title deeds. The right questions must be put to the sellers to elicit any relevant information from the history of the premises such as whether flooding has been experienced or if there are timber specialist or asbestos issues. The building's energy performance rating is also an important consideration.
- If the business includes the sale of food or drink then a range of particular issues arise, from licensing through to specialist equipment and food hygiene compliance.
- For leasehold premises, landlord's consent is normally required for the transfer of the lease and the landlord requires to be satisfied on the identity of the new tenants and their ability to meet their obligations.
- The acquisition of fittings and fixtures and plant and equipment requires some investigation of the condition of valuable assets and assurance that they are owned outright by the sellers. Evidence of proper servicing and maintenance will also be needed.
- The intangible assets of a business including goodwill, the business name and intellectual property rights require to be validated and computer records and the business website must be shown to be in good order and capable of transfer.
- Contracts should be inspected in relation to servicing and maintenance of plant and equipment and supplies of materials and stock, as well as any valuable ongoing contracts for supplies to be made by the business to its client base.
- Statutory compliance covers a wide range of issues from availability of all necessary licences to continue conducting the business, to data protection compliance, local authority licensing, food hygiene, planning and building standards compliance and a disclosure of any current statutory designations or notices which affect the business or premises.
- Staff contracts should be inspected and consideration given to employers' obligations which are inherited under the TUPE regulations.
- Business rates liability requires to be investigated including any available exemptions or rights to appeal the rateable value.
- Transitional arrangements for handover of the business should be addressed such as completion of current contracts, apportionment of prepaid outgoings and income between the seller and the purchaser and any handover arrangements from the sellers either pre or post completion.

With funding for business acquisitions now more readily available than it has been since the credit crunch, there has never been a better time to take the plunge.

Staff News

We are delighted to announce the appointment of Diane Howie to our growing private client department.

Diane will be dealing with Wills, Powers of Attorney, Executries and Trusts, and will be based in our Cults and Aboyne offices.



Impact of Employment Tribunal Fees

The introduction of the Employment Tribunal and Employment Appeal Tribunals Fees Order (EATEAF) 2013 has undoubtedly created the biggest single deterrent to claims being brought in the last year.

Whilst statistics are regularly interpreted, or misinterpreted, the Citizens Advice Bureau have confirmed that in their assessment, throughout the UK, 7 in 10 potentially successful cases are not now being pursued whilst comparative figures in Scotland suggest there may have been a drop of as much as 80% in the number of cases being brought.

Claimants can be requested to pay up to £1,200 in order to pursue a claim before a Tribunal Judge. There are no guarantees that expenses will be awarded against the unsuccessful party although one further deterrent for the wavering Claimant is that expenses can be awarded against any vexatious claimants.

Gillian Guy from the CAB has fairly stated that **"people with strong employment claims are immediately defeated by high costs and fees."**

As in all employment situations, a balance requires to be achieved. The days of employees lodging claims without fees or risk in the hope that some settlement payout might be gained are gone.

Some hope remains however that the current imbalance will be reversed.

Unison raised Judicial Review proceedings of the situation in the English High Court and a separate Judicial Review was raised in the Court of Session, Edinburgh.

Whilst the English case led to a comment from the Lord Chancellor that arguments of discrimination, inequality and prejudice in enforcing EU rights may have some foundation, it was simply too early to make such an assessment having regard to the timing of the Judicial Review in May 2014.

Lord Bracadale, who heard the Scottish Judicial Review case expressed sympathy in relation to such submissions before him and rather than dismissing the action as premature he preferred to *sist* (or temporarily halt) the case in order to allow for it to be fully reviewed when analysis could be made of year end claims lodged with the Employment Tribunal's offices.

There will be a General Election in May 2015 and although the present situation may have suited employers, alongside the 2 year qualifying period for any unfair dismissal claim being brought, the general consensus is that the fee situation will have to be radically amended.

Claimants who have had to pay the fees in pursuit of claims will be keenly awaiting the outcome of the Judicial Review proceedings to learn whether there will be any rebates.



Martin Sinclair - Partner



Sarah Murdie - Solicitor

Employers' Liability Claims

Employers' liability insurance is an important consideration for the modern employer and a vital business expense. This obligatory insurance covers the cost of compensating employees who are injured or become ill through work. Employers need to be alert to potential claims as soon as they arise. They also need to know how to deal with them appropriately to limit exposure. Here we discuss the key considerations for employers when dealing with employers' liability claims.

- Keep a substantive record of any accidents or incidents which occur within your company and full contact details of any witnesses to the accident. This information will require to be passed on to the solicitor dealing with the claim and witnesses may be able to provide invaluable information regarding liability. This is required in terms of the Reports of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013, in any event.
 - Staff training records and risk assessments should be maintained and kept up to date. Claims are often brought a significant period of time after the accident and having well organised records to look back on is crucial.
 - Notify your insurer of any claim immediately. There are time limits for dealing with claims and your insurer will make sure your claim is dealt with appropriately and passed on to a solicitor if necessary. Failure to notify your insurer timeously could also be a breach of the policy terms, allowing insurers an option to void the policy, although that is rarely exercised.
 - Ensure that the Pursuer (the claiming employee) has sued the correct Company. If not, raise this with both your insurers and solicitor as soon as possible.
 - Consider whether there are any contractual issues which require other parties to be notified and brought in to the claim (for example, if there are hold harmless agreements in place). This is also relevant in cases of industrial disease or deafness claims where the employee has been exposed in various places of work. The previous employers will require to be identified and brought into the claim.
 - Consider whether Risk Assessments and Training ought to be updated in light of a particular incident or claim.
- With all Employers Liability claims, a proactive approach is required and every case is different. Whether an employer is strongly defending a claim where it is believed there is no merit, or admitting liability; agreeing a reasonable settlement and therefore keeping legal expenses to a minimum, these key considerations should be borne in mind.

Unplanned Employment Payments

At various stages in your working life, you may receive a substantial cash payment, whether in the form of a bonus, a pension lump sum, or an award from a tribunal, for instance. Whilst this will bring with it clear benefits, there are also often unforeseen consequences which may require specialist advice.

One of the first issues which will arise is in relation to taxation. Depending on the circumstances, the lump sum may have an impact on your income tax position, and it would be wise to take tax advice at an early stage, often even prior to receiving the payment. In many cases the receipt of a substantial sum will also have an impact on the value of your estate for inheritance tax purposes, and again, it would be wise to take advice as early as possible. As an example, in some circumstances it may make more sense for inheritance tax purposes to take an increased income rather than a lump sum from a pension. Then regular gifting out of income (which is presently exempt for inheritance tax purposes, if done in accordance with the strict rules regulating this) could be an option instead of making large gifts to family members which remain part of the estate for inheritance tax purposes for seven years after the date of the gift.

Another related issue would be the need to make or update your Will. Although we recommend that Wills are reviewed every 5 years, it is also crucial to give some thought to your Will if you receive an unexpected windfall. For instance, if the cash payment pushes your estate over the inheritance tax threshold of £325,000, you may wish to think about inheritance tax planning. In addition, you may wish to consider trust provisions to protect young or vulnerable beneficiaries.

We can help you to get the most out of your lump sum for you, your family, and your future. We will always listen to your circumstances, consider your wishes, and help you to reach a conclusion that is the best fit for you.



Ashleigh McConnell - Partner

Employment Seminars

TOP TEN TIPS FOR EMPLOYERS...

Come and hear from our employment team in Aberdeen or Aboyne.

Please RSVP to:

Nicola Elder

Mackinnons, 14 Carden Place
Aberdeen AB10 1UR

01224 632 464

Email: nicola@mackinnons.com

Friday 31st October 2014

14 Carden Place,
Aberdeen AB10 1UR
8.30am - 10.30am

SPOTLIGHT TOPIC:

**Social Media in Business –
The Pros and Cons**

RSVP by 28th October 2014.

Tuesday 11th November 2014

Ballater Road, Aboyne,
Aberdeenshire AB34 5HN
5.45pm - 7.45pm

SPOTLIGHT TOPIC:

**The Dangers of Family
in Business**

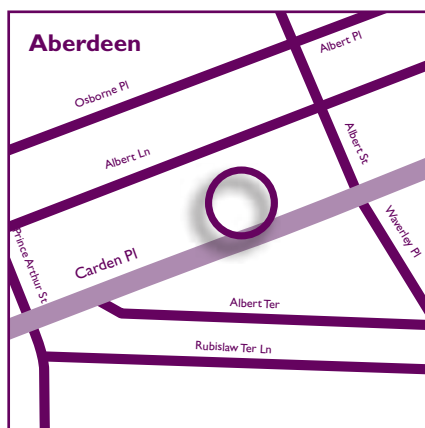
RSVP by 7th November 2014.



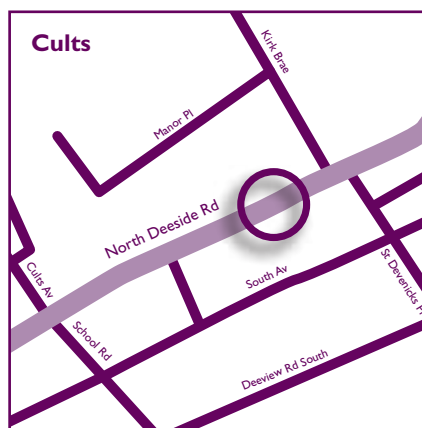
Use your smart phone to scan this code
or visit www.mackinnons.com
for more information.



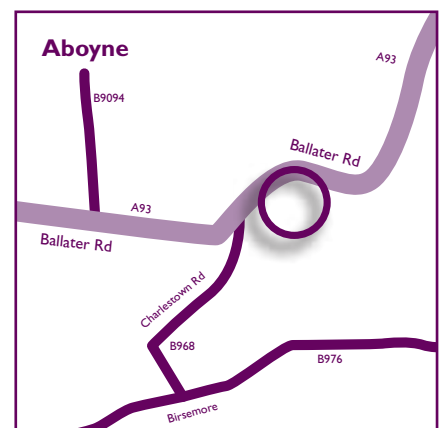
Offices located at:



14 Carden Place
Aberdeen AB10 1UR
Tel: 01224 632464



379 North Deeside Road
Cults, Aberdeen AB15 9SX
Tel: 01224 868687



Ballater Road
Aboyne, Aberdeenshire AB34 5HN
Tel: 013398 87665

www.mackinnons.com