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## Tales of the unexpected

Good management is all about protecting your business – against any reduction in income and profitability, against the consequences of unknowingly breaking the law, against competitor activity and, of course, against unforeseen disasters of countless varieties.

Protecting your business is also the overriding theme of this issue of Business First – protecting it through planning, through understanding the law and through applying those simple rules of good management.

The summer's riots in a number of English cities have been an alarm call for firms the length and breadth of the land, as the ever-present danger of business interruption featured on news bulletins and front pages. That is why in this issue we highlight the value of planning in preparing for the unexpected.

This has also been a bumper year for new, amended or expanded legislation. We look at how the laws covering migrant and agency workers might affect your business; we also examine how recent case law has made the nuptial agreement an increasingly important tool in protecting business assets, and we consider how social media is affecting the recruitment process.

Making the wrong decisions about the working environment and technology can prove costly, and our special focus on the considerations that lead to effective home-working is designed to help you choose the right course for your business and your people.

We always try to make Business First an easy-to-digest distillation of legal knowledge combined with business insight that will help make your venture evermore successful. I hope we have succeeded with this issue.

**David Wilford**  
Editor

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# Contents

## FEATURES

- 2 - 5 Business development**  
Crisis? What crisis? (Oh, THAT crisis)  
Learning and development can drive your business objectives
- 6 - 7 Family law**  
The nuptial agreement – protecting your business assets
- 8 - 13 Commercial law**  
How to agree not to disagree  
The new rules on agency workers  
Agency workers – (some more practical implications)  
Migrant workers – what is the precise legal position?
- 14 - 15 Marketing**  
Breathing life into the corporate event
- 16 - 19 People management**  
All my staff are going to London 2012 - what do I do?  
Facing up to Facebook (lol)
- 20 Finance**  
You say evasion...I say avoidance
- 21 - 23 Employment**  
Pensions for every employee  
The pros and cons of working from home
- 24 - 27 Technology**  
The technology challenges of flexible working  
(Un)clouding the issue
- 28 - 29 CSR**  
Countdown to cutting carbon
- 30 - 31 LawNet members**  
Find a LawNet solicitor near you
- 32 Contributors**  
Contributors to this issue



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# Crisis? What crisis?

## (Oh, THAT crisis)

Pre-planning is the most effective element in handling a crisis that could damage your business, says Richard Elsen.



**The summer's riots across the country shook the nation as millions of pounds-worth of damage to property was inflicted, compromising many businesses through major disruption and lost sales. The preparedness of local business communities to deal with this catastrophic and destructive emergency was severely tested and in many cases found wanting.**

Businesses with proper crisis planning measures and effective protocols in

place fared better than others, having the resources to act quickly and decisively in response to events. Many of those affected were small companies with no plans in place designed to deal with major business disruption, and those are the businesses that suffered the most.

### Protecting your reputation

As a result, these companies found that the time taken to return to some semblance of normality was much longer than they would have liked. However, dealing with challenging situations is not just about lost sales and quantifiable monetary

loss, which can be mitigated through insurance. More important, an ineffective response to a major incident, particularly in communications terms, can severely damage a company's reputation in the longer term.

It is a common misconception that only big corporations need to invest in crisis planning. Even if your business employs just a handful of staff, you should have a crisis communications plan in place. All too frequently, businesses and brands recognise the real value of risk assessment and crisis management systems and

**“An ineffective response to a major incident, particularly in communications terms, can severely damage a company’s reputation.”**

processes only after the event. Fortunately, creating an effective plan can be a relatively straightforward process; it is well worth committing the necessary time, resource and level of engagement that such an important task warrants.

### A communications policy

The first step is to define an overarching communications policy for your organisation. At the very minimum this policy should contain the following four key elements:

- Openness and accessibility
- Truthfulness
- Responsiveness
- No secrets.

For your organisation to successfully maintain and preserve on-going and positive relationships with its key stakeholders (including employees, shareholders, suppliers, the local community, clients and customers) then it must meet their expectations. The four key elements cited above form the cornerstones of building such relationships and must be in place. At a time of major crisis they will go some way towards protecting the reputation of your business as they will have become established as an integral part of its culture.

Once this communications policy has been established, you can start to put your crisis plans in place. The best place to start is to conduct a thorough risk assessment of your organisation. Carefully think through all the possible risks to your business, including those that seem very unlikely.

They might include an accident happening to an employee at work, a fire in the building, a natural disaster, a dispute with a supplier, a change in legislation or even, as recent events have shown, damage and theft caused by social unrest and

vandalism. Imagining and thinking through every situation, then identifying how best to respond to them, will ensure your business is as ready as possible should a crisis occur.

### Setting the priorities

You will need to establish communications priorities which identify with whom you should communicate, when and how. When a corporate crisis hits, speed is of the essence and setting priorities in advance will pay dividends as well as giving you a structure enabling you to better deal with the situation. You should take four main priorities into account:

- Those people most affected
- Employees
- Those indirectly affected
- The media.

In an emergency situation it may be that communications across the four priority groups require almost simultaneous activity. But the order of priority is important because it provides channels of communication which come into effect at different times. This means that those higher up the priority list receive “undiluted” information ahead of others, which has not been distorted by possibly emotional third parties or by those such as the media who might sometimes be prone to misreporting the facts.

With your communications policy in place and priorities identified for each situation, you will be well-placed to start addressing the issues at hand. While each scenario will be different there are common approaches that you should adopt in line with your policy.

The business should speak with one voice, usually through an appropriate senior figure. If the media needs to be informed (when the event is of a suitably serious

nature) the company should do so quickly, so as to set the record straight and ensure that the facts are correct. You should cooperate with journalists, communicating clearly in an open manner so as to avoid any wrongful suspicion of cover up or secrecy.

### Keep it simple

Leadership, which is competent and engaged early, is also very important. A crisis situation can quickly become very fluid and so prompt action based on solid decision making is invaluable. Stick to simple messages which are easily understood and in line with the communications policy of openness, truthfulness and responsiveness.

As many businesses recently learned, events that are out of your control can pose serious threats. While dealing with crises will always be difficult, preparation and pre-planning can make the return to “business as usual” easier and will reduce the risk of long term damage often associated with poor or “comatose” handling of a situation.

### In Short:

- **Businesses with crisis-planning procedures in place recover faster than those without**
- **Be open and accessible, truthful and responsive in your dealings with all audiences**
- **Prioritise your audiences to decide whom to address with the greatest urgency**
- **Ensure that your business speaks consistently, with one voice.**

# Learning and development can drive your business objectives

Driving value from your training and development programme demands far more than simply holding a few workshops and seminars, says Neil Denny.

“When resources come under greater pressure, training often becomes the first casualty.”



**“The training budget is expendable. Training is a waste of money - a luxury for the best of times.**

**What with everything else we have going on right now, training is simply not a priority.”**

This is a typical comment heard in companies the length and breadth of the country in the difficult economic times of recent years. It is all too easy for companies to turn their back on investment in training when there are so many other areas that need to be funded.

**How can we demonstrate the value in the training that our companies invest in?**

- Was it worthwhile?
- Who benefitted, and how?
- What was the benefit and what does it add to the bottom line?

Many businesses invest in training without careful consideration of these questions. When resources are readily available this might be tolerable. We send our people off on a course, or bring a consultant in. We might see our staff being enthused or even inspired. They might learn new approaches to areas of their work or personal development and they might share

that knowledge with their teams. When resources come under greater pressure, however, then this approach means that training often becomes the first casualty of boardroom re-adjustments.

How we utilise our training budget needs much deeper and more strategic consideration. In fact, let's stop talking about training altogether. Let's talk instead about how we are going to drive learning and development, about change, growth; let's talk about results and achieving our set business objectives.

**The long-established Kirkpatrick principles of learning and development evaluation can help. They are;**

- Response
- Learning
- Behaviour
- Results.

Response, the first point of four, is as far as much training evaluation goes. This is the sheet that trainers hand out at the end of the training session to measure delegates' satisfaction with what they have just experienced against various criteria. But those criteria rarely relate to the business objectives. And the sheets do little or nothing to evaluate how much has been learnt.

Learning can best be evaluated through testing. This might be a simple question and answer exercise, completed as part of the training or after the event. There might be formal grades or pass/fail criteria. Alternatively there might be a self-assessment process.

Testing can also be built into the training event itself in more creative ways. Delegates could write their own questions and then split into teams to test each other, as if they were on a game show. The output from these games, such as flipchart sheets or question cards with answers, can demonstrate to the company what has and has not been learnt.

After considering the response and measuring what has been learnt we can then go further still and explore how the learning impacts behaviours back in the workplace. The Kirkpatrick principles now start to require more time and effort from the organisation itself.

The time required to evaluate how behaviours have changed should not be underestimated. This sort of behavioural appraisal is a shift away from the position from which much training is commissioned. Considering and evaluating behavioural changes



requires the organisation to be more involved in the training it provides.

One alternative is to involve the training provider beyond the training event itself. Ask him or her about follow-on sessions or coaching conversations to evaluate and report back on behavioural impact.

Much training is frustrated in its effectiveness because once delegates return to the workplace, they face all those pressures and conventions that had shaped their original behaviours in the first place. Organisations need to understand what the new behaviours ought to look like and give permission to the delegate to develop and display them after the training has been completed.

We can start to see that when delegates provide the right responses on the training day itself, then they are enabled to learn new processes or information.

This sort of learning shapes new behaviours. Effective learning and development will have already identified which new behaviours will support the organisation's business objectives and how they will do so. This brings us to the last

of the Kirkpatrick principles: results. What results do we need to see against those business objectives?

**Learning and development should therefore be an integral part of any discussions about business objectives:**

- What results do we need to see in order to further our business objectives
- Bearing that in mind, what behaviours do we need to see among our people?
- What skills or information needs do they require to learn to drive those new behaviours?
- And therefore, how do we want our people to respond to the training event itself?

Learning and development is about so much more than just the training event alone. Ask your training providers about how each of the Kirkpatrick principles could be measured, and work together to design programmes specifically geared to your own business objectives. It should be clear that this will require

greater input into programme design and follow-on and reporting after the event. The results, however, will represent the best possible spend of your training budget, backed up with agreed and documented reports on progress against business objectives.

The more companies that take this approach, the less often we'll hear the sort of comment that opened this article.

**In Short:**

- **Learning and development is about far more than a training event alone**
- **Management needs to consider carefully how they want training to add value to the business**
- **Consider the Kirkpatrick principles: response, learning, behaviour and results**
- **Work with your training provider to create programmes geared to your business objectives.**

# The nuptial agreement – a vital tool in protecting your business assets

No one likes to think of the possibility of separation before or early in a marriage – but not protecting your business assets with a nuptial agreement is an unnecessary risk, says Martin Ridings.

“Although there is still a degree of uncertainty surrounding the enforceability of nuptial agreements, there is also a presumption that parties will be held to them.”



**Divorce is an unpleasant period in anyone’s life but the level of emotional distress it causes is far greater when the parties**

**become embroiled in a bitter battle over finances.**

This is one reason why pre-nuptial agreements have come a long way over the last few years. Originally, they were ignored as a matter of policy for fear that discussing what should happen on separation would encourage couples to separate. In recent years, however, the weight attached to such agreements has increased significantly.

A prominent case that hit the headlines last year concerned the husband of a German heiress who was held to the terms of a pre-nuptial agreement they entered into in 1998, three months before their marriage.

The husband declined the opportunity to obtain legal advice even though the agreement was signed in Germany where such agreements are legally binding. However, the general principle it highlighted is that parties will now be held to the terms of an agreement freely

entered into with a full appreciation of its implications, unless it would be unfair to do so. No doubt there will be arguments about what constitutes fairness but the general principle remains.

The courts have come about as far as they can within the confines of the existing legislation. The Law Commission is currently considering responses to consultation on nuptial agreements, with a view to reporting on such agreements next year. Already, though, there is increasing pressure for the law to be changed. Although there is still a degree of uncertainty surrounding the enforceability of nuptial agreements, there is also a presumption that parties will be held to them. This is making them increasingly attractive to those who wish to protect their assets – including their business assets.

## Business planning

Careful planning is the bedrock of a successful business. You wouldn’t expect a bank to lend money to a company without a business plan, for instance. But how many business owners consider a nuptial agreement to be part of the overall plan? Those that don’t could be missing a trick.

In the absence of an agreement, the court will take business assets into account when deciding on financial provision following marital breakdown. While the courts are always reluctant to do anything which could damage a business when dealing with a marital breakdown, they could take the view that such damage is unavoidable.

In any event, why take the risk? The courts have extremely wide discretion when deciding how to deal with assets on divorce. While this is designed to provide flexibility, it also means that there is a considerable degree of uncertainty. This in turn can lead to increased costs, as it is often possible to argue on any number of issues, meaning that an agreement that restricts this opportunity should help to reduce the prospect of litigation and therefore substantially reduce costs on a divorce.

Although “pre-nup” is the most familiar term to many, it is also possible to enter into an agreement following marriage. Such post-nuptial agreements are arguably on safer ground than those made before marriage, as there can be no argument that there was insufficient time



to obtain legal advice or that one party was put under duress.

#### Regular reviews

Any agreement should contain provision for regular reviews, whether triggered by a significant event, such as the birth of a child, or simply by the passage of time. This ensures that the agreement is kept up to date and that it will take into account any changes to the business interests of either party.

It is vital that both parties provide a full picture of their financial circumstances. In the case mentioned above, the court felt that it was sufficient to consider whether there had been any material lack of disclosure when considering whether the agreement should stand. In other words, according to that decision each party must have access to all the substantive and relevant information on which to base their decision to enter the agreement, but not necessarily to every tiniest detail.

#### Other requirements and considerations

In addition to disclosure, there are a few basic rules to follow to guard against a

future legal challenge. Failure to take them into account will make the agreement more open to challenge:

- The parties must have separate and independent legal advice
- For pre-nuptial agreements, the agreement should be signed at least 21 days in advance of the wedding.

Many would argue that entering into an agreement is not the most romantic way to start married life, and this is entirely understandable. However, life is not as simple as it once was. Large numbers of people are entering marriages or relationships having already been married before. They may have children to whom they wish to leave the business or otherwise ensure that their “first family” is provided for.

In addition, people are marrying much later in life than used to be the case, making it more likely that they will have built up substantial assets prior to the marriage that they may be keen to protect.

The fall-out from a bitter divorce leads some to decide against ever marrying again which can itself put pressure on subsequent relationships. In this light, perhaps the pre-nuptial agreement is not as unromantic as it at first appears.

#### In Short:

- **The growing presumption that nuptial agreements will be enforced is making them more attractive**
- **Without an agreement in place, courts will take business assets into account**
- **An agreement should always include provision for regular review**
- **Each party must have access to relevant information on which to base their decision to enter an agreement.**

# How to agree not to disagree

James Lunt explains the importance of shareholders agreements for owner-managed companies.



**For any owner-managed company, it is a fundamental need to have a shareholders agreement in place to provide clarity**

**on important issues and decisions made by the company. An agreement of this sort helps to avoid potential disputes and offers a mechanism for resolving any disputes that may arise.**

A shareholders agreement should ideally be entered into on incorporation, but it may in fact be agreed at any time. For anybody who wants some degree of flexibility, such an agreement may be met outside the company's articles, allowing the terms to remain private.

Most agreements will cover a range of matters including but not limited to the following:

- Regulation of decision-making
- Pre-emption rights and transfer of shares

- Issue of further shares
- Restrictions on other directorships and shareholdings
- Deadlock provisions
- Confidentiality agreements
- Dividend policy.

By documenting an agreed approach to these and other issues, the shareholders agreement avoids uncertainty and possible dispute in connection with such fundamental aspects of company governance.

#### Regulation of decision-making

A shareholders agreement may alter the statutory position regarding decision-making. The Companies Act 2006 enables certain decisions to be made by the board of directors without shareholders approval. Certain other decisions must only be made with shareholders consent, requiring either a simple majority or 75% of the votes.

Under a shareholders agreement, the shareholders may, for example, agree that certain decisions will require all shareholders to vote in their favour before the motion may be passed. This could cover decisions such as whether or not to enter into substantial contracts including borrowing, to remove or appoint new directors or to amend the company's articles.

For an owner-managed company, this will provide all director/shareholders with the certainty that no major decisions will be made without their consent.

#### Pre-emption rights and transfer of shares

A shareholders agreement may also regulate the sale of shares by:

- Including full pre-emption rights where any shareholders intending to sell their shares must first offer them to the continuing shareholders. The agreement

**“If agreed at an early stage, a shareholders agreement will help avoid disputes during the life of the Company.”**

may ensure that shares are sold at a price determined in accordance with its terms

- Ensuring that a defaulting shareholder's shares (for example, if the shareholder were guilty of gross misconduct or made bankrupt) are offered for sale to the continuing shareholders
- Dealing with what should happen in the event of a shareholder's death. The agreement may stipulate the shares are offered for sale to the continuing shareholders and again provide the means of valuing the shares.

Under such circumstances, it is important to consider whether or not the continuing shareholders will have the means to buy the deceased shareholder's shares. To make sure that they do, it would be advisable to arrange life assurance policies for each director/shareholder with the policies held in trust for them. (This is known as a Shareholder Protection Trust.)

If such a trust is in place, the shareholders agreement could also incorporate a “cross option” agreement, which grants the continuing shareholders the option to require the deceased's estate to sell them the deceased's shares. It also grants the personal representatives of the deceased

shareholder the option to sell the shares to the continuing shareholders.

In the event that either of these options is exercised, the proceeds of the life assurance policies pay for the shares. Furthermore, as the life assurance policies are held on trust and a cross option agreement is in place, the life assurance monies will not be subject to inheritance tax under the current tax regime as they do not form part of the deceased's chargeable estate. Instead, the shares will form part of the deceased estate but provided that they are shares in an unlisted company they will benefit from Business Property Relief.

#### Issuing further shares

A shareholders agreement may also include restrictions on the allotment of shares. For example, it may not permit further shares to be allotted unless they are first offered to the existing shareholders. It may also prevent further shares (which would permit one shareholder to hold more than a certain number of shares) from being allotted.

Equally, the agreement may include restrictions that prevent a shareholder from holding any shares or limit the percentage of shares they hold in other companies. It may also prevent a director from taking other directorships while an officer of the

company. These provisions are beneficial when the company wishes to ensure that each director devotes his or her full time and attention to it.

#### Deadlock provisions

Deadlock provisions address the situation that arises when an equal number of shareholders are in favour or against a particular proposal. Such provisions may be drafted to deal with serious disagreements where no common ground can be found. It will provide the parties with a mechanism for resolving the dispute.

#### In Short:

- **A shareholders agreement sets out clearly how decisions are made**
- **It may also regulate the transfer and issue of shares and address what should happen in the event of a shareholder's death or terminal illness**
- **It can also identify how a deadlock on a decision may be resolved**
- **It also allows shareholders to agree on other aspects of the company's governance.**





# The new rules on agency workers

Employers need to catch up with the new rules governing agency workers – Morag Dalziel reports.

**“The regulations do not apply to the genuinely self-employed or to those who work through their own limited liability company...”**

**The Agency Workers Directive was implemented in the UK on 1 October 2011 through the Agency Workers Regulations 2010, which are set to have a significant impact on the rights of agency staff and serious financial implications for those companies that frequently engage them.**

Given this, companies who do engage agency staff – and particularly those who do so on a longer term basis – would be well advised to fully acquaint themselves with the new legislation before it comes into force to ensure they’re fully prepared for what lies ahead.

The Regulations only apply if there is a three-way relationship where agency workers are supplied by an agency to a hiring organisation to work “temporarily for

and under the supervision of” that hirer. They do not apply to the genuinely self-employed, to those who work through their own limited liability company, or to those working on a service contract managed by a party other than the hirer organisation.

However, they do apply to workers contracted to an “umbrella company” (ie workers who work through a service company but who are not genuinely self-employed).

In essence, the Regulations entitle agency workers who have completed a qualifying period of 12 weeks in any particular job to the same (or no less favourable) basic working or employment conditions that affect comparable employees. “Basic working and employment conditions” only

include terms relating to pay, duration of working time, night work, rest periods, rest breaks and annual leave.

## Calculating the qualifying period

In order to calculate the qualifying period, continuity will normally be considered to have been broken if there is an interruption of six weeks between assignments in the same job. There will also be a presumed break in continuity when an agency worker takes up a new role with the hirer, where all or the main part of the duties in the new role are substantially different from those in the old one. However, breaks between assignments due to a number of specified reasons, such as sickness (of up to 28 weeks), jury service or pre-determined closure periods do not break the qualifying period – the clock is merely paused. In addition, the 12-week qualifying period is

not broken if the agency worker is placed with the hirer for a second assignment by a different agency, unless the gap between assignments is six weeks or more or the new role is substantially different to the first one. This is because the 12-week qualifying period relates only to the length of service with the hirer, irrespective of which agency places the worker.

An agency worker will be able to bring an Employment Tribunal claim to enforce their rights under the Regulations; any such claim can be brought against the agency and/or the hirer. The Tribunal will calculate compensation for a breach on a “just and equitable” basis, with no upper limit on awards. It will also determine liability for the award between the agency and the hirer, according to the extent to which it finds either to be liable for the breach.

#### Information request

After completing the 12-week qualifying period, an agency worker can ask their agency for relevant information about the basic terms and working conditions of comparable employees in the hirer’s organisation. If the agency fails to provide the information within 28 days of the request, the agency worker may make the request direct to the hirer, who then has 28 days to respond.

If either the agency or the hirer fails without a reasonable excuse to respond or the response is late, evasive or equivocal, then the Tribunal can draw an inference from the failure or delay in any proceedings that may follow.

It should be noted that the Regulations will not change the employment status of agency workers and will not make them employees. The Regulations do not give employees any rights. This means that if an agency worker is paid more than a comparable employee, the Regulations don’t give the employee the right to raise a claim under the Regulations alleging less favourable treatment.

#### Reviewing the roles

Before the Regulations are implemented, hirers should assess their use of agency workers, looking at factors such as the

normal length of assignments to see how often the 12-week qualifying period will be met. They should also review their agency workers’ roles to see if there are comparable employee posts, and work out whether the agency worker is paid a lower rate than the comparable employee. As well as basic pay, this should also take into account other payments such as overtime, commission and bonuses which are directly attributable to the amount or quality of work done by individuals.

Having carried out this exercise, a hiring organisation may well find that any increase in costs arising from the Regulations are less than anticipated; in certain cases agency workers might be paid more than comparable employees. However, if it appears that the continued use of agency workers will considerably increase costs as a result of the

## Some more practical implications...

**There are many factors regarding the new regulations that hirers and agencies need to be aware of, says Sara Barrett.**

Hirers must be prepared to take the hit of the extra cost and administrative burden taken to comply with these regulations. Agencies, meanwhile, must ensure that they obtain all the relevant information from the hirer to comply with their requirements under the regulations.

Naturally, both hirers and agencies will want to limit their exposure to any claims by trying to pass over liability to the other party. It is important that they both consider the terms of their contracts with each other and take legal advice on the effects of the terms to ensure that they are protected.

#### Comparable treatment

Despite the 12-week rule, it is vital to remember that from day one of a placement, agency workers cannot be treated less favourably than a comparable employee of the hirer regarding their access to facilities and amenities. But if there is no comparable employee, then there is no entitlement to “equal” treatment.

In certain cases, however, less favourable treatment may be objectively justified (such as where the hirer is attempting to meet a genuine business objective, and the treatment is a necessary and appropriate means of doing so).

Hirers should also be aware that the regulations include anti-avoidance provisions. They should be wary of re-employing agency workers who have previously worked for them, or associated companies on two previous occasions, because such a structure of assignments may be viewed as an attempt to prevent the agency worker from receiving equal treatment.

Regulations, it might be worth considering alternatives such as setting up a bank of directly employed zero-hours staff.

#### In Short:

- The new rules affect agency worker contracts of 12 weeks or longer
- The qualifying period relates to the length of service with the hirer, irrespective of which agency provides the worker
- Compensation for breaches of the Regulations has no upper limit
- The Regulations do not provide any rights to employees.

# Migrant workers

## – after all the confusion, what is the precise legal position?

The complexity of Government measures to control the inflow of migrant workers means that many employers do not understand the rules: Pritti Bajara outlines the key considerations.

**“All pre-existing work permit and UK entry schemes have now been replaced by a single points-based system.”**



**With the arrival of the coalition government in May 2010 came a raft of new measures to control workers**

**coming into the UK from outside the European Economic Area (EEA). Several changes to the immigration rules emerged in quick succession, often accompanied by copious Home Office guidance, complicated transitional arrangements and short timescales for implementation.**

In fact, in a report published earlier this year, the UK Border Agency’s (UKBA) own Independent Chief Inspector admitted that UKBA staff found the frequent changes in policy guidance, “confusing, inconsistent and lacking in defined terms”. Is it a wonder therefore that practitioners, workers and employers are confused too?

### Points make prizes

So, after the turmoil, where do we stand today? First and foremost, all pre-existing work permit and UK entry schemes have

now been replaced by a single points-based system.

This has five tiers which prioritise certain types of applicant over others. The tiers are:

- Tier 1 - Exceptional Talent (eg scientists, entrepreneurs and leaders in the field of arts)
- Tier 2 - Skilled with a job offer (eg teachers and nurses)
- Tier 3 - Low Skilled (eg construction workers)
- Tier 4 - Students
- Tier 5 - Temporary (eg concert musicians).

Under the point-based system, points are awarded to migrant workers based on various criteria such as skills, experience, English Language competency, maintenance and age. Each tier has different point requirements.

Migration under Tier 3 is currently suspended. I want to deal here mainly with Tier 2 migrants who, in practice, will be of most relevance to businesses.

However, this is an exceptionally complex topic and there are severe penalties for businesses getting this wrong. I therefore recommend that employers should refer to the UKBA’s website ([www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)) for further detailed guidance on this issue.

Under Tier 2, businesses can generally only recruit non-EEA nationals for occupations where there is a skills shortage in the UK (a skills shortage list is also published on the UKBA website), where a vacancy cannot be filled by the UK resident labour force following proper advertising or where the individual is coming to the UK via an intra-company transfer.

### Sponsorship

Sponsorship is a key element of the points-based system. Non-EEA migrant workers (except those in Tier 1) must have a licensed UK employer to sponsor them. This has a dual purpose: first, to ensure that businesses are suitable and fit employers; and second to assign some responsibility to businesses to



ensure that the immigration rules are not abused.

#### How to become a sponsor

If your business wants to employ migrant workers you will first need to apply for a sponsorship licence from the UKBA. The UKBA will either award your organisation an A or B-rated licence, depending on your ability to comply with the UKBA's stringent sponsorship requirements.

Once you have a sponsorship licence, and subject to the migrant worker meeting the relevant point requirements, you can issue individual migrant workers with a Certificate of Sponsorship (CoS). The CoS is a unique registration number, not a paper certificate, and the migrant worker needs a CoS to apply for entry clearance to take up employment before coming to the UK.

The UKBA monitors sponsoring organisations closely, and you may expect to receive visits from UKBA Compliance Officers after your licence has been issued. If the UKBA discovers any failures to properly issue certificates, or to comply with their rigorous record-keeping or reporting requirements, this could lead to fines, up to two years' imprisonment and your licence being downgraded or

withdrawn. A conviction for knowingly employing illegal migrant workers is also likely to lead to disqualification from being a company director.

#### Caps

On 6 April 2011, the Government introduced immigration caps on the number of non-EEA nationals permitted to work in the UK, and the quota for Tier 2 migrant workers is 20,700 each year. However, some migrant workers are exempt from this quota. Accordingly, the Government has created two categories of Tier 2 certificates: restricted (quota-related) and un-restricted (quota-exempt).

#### Unrestricted certificates

The UKBA issues an annual supply of unrestricted certificates to Tier 2 sponsors who can in turn issue these to non-EEA Tier 2 workers who are already in the UK, to workers taking positions with a salary of at least £150,000 and for intra-company transfers on salaries over £40,000. However, there are stringent restrictions on how long this category of worker can remain in the UK.

#### Restricted certificates

For all Tier 2 positions that do not fall under these exemptions, sponsors need to apply on a monthly basis for restricted

certificates. Sponsoring businesses are not allocated individual quotas; instead they must compete for visas from a set monthly total number of certificates.

Early reports show that the number of applications for restricted certificates has been lower than expected, perhaps due to employers confusion over how the new system works. Only time will tell whether the new immigration system will have the desired effect of creating a more transparent and objective process to better identify and attract those migrants who have the most to contribute to the UK economy.

#### In Short:

- The rules surrounding migrant workers are highly complex, and you should seek detailed guidance on them
- Sponsorship is a key element of today's point-based system, which you need to understand before seeking to employ a non-EEA worker
- The penalties for not abiding by the UKBA rules are both sweeping and stringent.

# Breathing life into the corporate event

When it's done for the right reasons, at the right time and in the right way, the corporate event is far from dead: Jon Gardner provides some handy hints.



**“If nobody ever asks ‘why are we doing this?’ it may be that your events strategy needs a re-think.”**



**With everyone Tweeting, Facebooking, and LinkingIN, you could be forgiven for thinking that business only happens**

**electronically and that nobody ever meets face-to-face any more. So surely the corporate event is dead? Not necessarily – get it right, and you may find your company can get more out of its corporate events than ever before.**

#### **Why are you doing it?**

If it is an annual dinner, for example, and nobody ever asks “why are we doing this?” it may be that your events strategy needs a re-think. If on the other hand such an event enables you to engage with new and old customers and get important market feedback, then clearly it is worthwhile.

#### **Plan well ahead**

Two or three months suddenly becomes a very short time when the clock is ticking and the date of your event is staring you in the face.

#### **Seek early responses from key attendees**

Whenever you do a mass postal or email shot, there is a pretty standard rate of attrition and you should not expect all of your invitees to attend. Give them a cut-off date, send a reminder, and then execute your mailings to your B and C lists (which you have also prepared in advance).

Get provisional telephone or e-mail acceptances from key people before you do your mass mailing, and secure their

approval for any publicity...so you can say she or he has already confirmed their attendance.

#### **Avoid key dates**

If England are playing a World Cup match, it might not be the best day to organise a corporate event. Unless, of course, you're offering clients hospitality at the match or if you know them all so well that you understand they'd love to be doing anything BUT watch the game.

#### **Take precautions**

On the day, everything can go wrong. And a great deal most probably will. Your delegates are held up in the snow and the media have gone elsewhere to cover a breaking news story they considered more important than your event. Some things

you simply cannot control, so there's no point getting stressed about them. What you can do though is take sensible precautions...

Ask yourself if it really is such a good idea to expect people to travel from all over the UK to be somewhere for a Monday morning event during December, January, or February?

Also, have a number of objectives for your event (other than simply relying on a huge attendance).

Consider the additional PR and marketing objectives that can be served by holding the event and getting the message out to market, such as better perception of your company in the local community or achieving valuable PR exposure in connection with a charity or other good cause. These are the sorts of things that can make an event a success, even if the attendance does not meet your expectations.

#### **Consider a media partner**

If you are trying to fill hundreds or even thousands of spaces at a major national event, think: "who could help us achieve the best reach in the sector?" It may be that a national trade magazine would be happy to sponsor or support your event for the branding opportunity and a chance to meet your delegates. In return for that exposure, they may be prepared to help you with the marketing of the event, which could save you money and ensure a higher quality and number of attendees.

#### **Be realistic about expectations**

Your event may be the most important thing that day, week, or year – to you. But try and see it from an outsider's perspective. Why would they want to attend your event, what is their incentive or motivation? Being realistic may save a lot of disappointment down the line. People's time is precious to them, so you must offer something useful, different, unusual, enjoyable or exciting, if you expect people to give up their time. Preferably a good event will include all of the above.

#### **Resource up**

Organising events is extremely labour-intensive and you may want to consider outsourcing the entire management of your event to an external agency. There are many excellent event management agencies who will be delighted to quote for the work. An event management company will charge you for leaving no stone unturned and delivering precisely what is asked of in the brief.

#### **Evaluate**

How do you evaluate the success of an event? It would be useful to analyse what new relationships were forged, what old ones were enhanced, and try and put some sort of a monetary value on the performance of the event. Even if at a very crude level you can say "we kept 10 corporate clients happy and that represents £250,000 retained annually", you should be able to do a rough cost-benefit analysis and decide whether to invest more (or less) in the annual dinner or event next time.

#### **Finally, enjoy!**

If people enjoy your event, it suggests that you have got most of the key ingredients correct, so you will probably find that all your other objectives for the event are easily achieved.

In summary, well thought-out, planned and executed corporate events still have an important role to play in business; the more we rely on technology and lack of face-to-face contact, the more that this will become apparent and the need for highly targeted corporate events is likely to increase.

#### **In Short:**

- **Consider and evaluate why the expense and effort involved in holding a major event are worthwhile**
- **Plan well ahead, and gain early confirmation from your most important guests**
- **You cannot control everything, but you can take sensible precautions**
- **Consider a media partnership and professional event management support.**



## All my staff are going to London 2012 ...What do I do?

Don't get blown away by excessive holiday requests for the Olympics. Plan your staffing needs for next August now, say Tim Gofton and Matt Malone.



**It's official – there's less than a year to go to the London 2012 Olympics. The countdown is well and truly underway, and**



**as an employer you need to start planning now about the possibility that some of your staff may ask for time off to be**

**volunteers. And that's quite aside from the others simply wanting to attend the events (provided they've been lucky enough actually to get some tickets).**

Some 250,000 enthusiastic souls have put their names forward to be volunteers at the games (they'll be called "games makers"), and those selected could be looking for at least 10 days off work – 20 days if they volunteer for the Paralympics too.

### **Inevitable questions**

Nobody wants to dampen their enthusiasm, but employers need to be

prepared for the inevitable questions: "I've been selected... of course, you're going to give me the time off aren't you? And er... will it be paid?"

A client of mine received a holiday request for 2012 back in 2010 – some people do like to plan early. Also, we Brits are good at national pride, and I'm confident that as soon as the events kick off even today's cynics will be swept up in the moment and asking for time off.

So assume that you're going to receive more requests than normal for holiday, unpaid leave or flexible working. How do you address the situation?

If you have a small workforce and a large proportion of your people want time off, talk to them now and invite suggestions about how the business can best manage things. This is a great way to get their buy-in. Perhaps it will be first come first served or a shared rota: one person can

have week one off because her tickets are for diving, another should take week two because he has tickets for the closing ceremony.

### **The right to refuse**

It may be a simple fact that you cannot operate your business with a reduced workforce, particularly if you expect an increase in trade due to the games. That's OK. You can take into account the needs of your business when awarding time off; generally speaking, you do have the right to refuse a request for unpaid time off or flexible working. Just make sure you do it in good faith and with reasonable grounds. Above all, be consistent.

If you do have to say no, it doesn't have to be doom and gloom – there is a real potential opportunity to strengthen employee engagement during the games. Screening some events with food, drink and a party atmosphere should be successful team-spirit and morale

**“There is a real potential opportunity to strengthen employee engagement during the games.”**

boosters. Be careful though with excessive internet viewing – what does your IT policy say about streaming live television?

For those businesses close to Olympic venues, there are a number of events – the triathlon, marathon and road cycling for example – that are free to watch. You could use these as opportunities to improve staff morale by holding away days or at least closing early – pack a picnic and cheer on the action!

**Not everyone is interested**

Be prepared to cater to the needs of those employees who are simply not interested in the games. They are likely to agree a “holiday match”. Again, any such offers should be operated consistently and our advice is to stick to annual leave or unpaid leave.

Another word of caution. Be clear about the standards of behaviour you expect from your staff, particularly if they are supporting different teams (and even more particularly if they’re at a work event where the beers are flowing). Unwanted or inappropriate behaviour towards others based on the nation they are following

could constitute discrimination. As an employer, you can be held liable unless you can show you took reasonable steps to prevent it.

Remember, too, ensure that those who couldn’t give a hoot about the games don’t feel excluded or vilified for not joining in – that too could give cause for a grievance. In real terms, these scenarios are unlikely – but you never know...

**Managing “sickness” absence**

Sickies – you know they might happen. Staff call in sick so they can watch an event or as a result of post-event celebrating or commiserating. Be upfront about this with your people – a gentle reminder and nod in the direction of your sickness absence policy is a good thing to do. Remind staff that if they are unwell during key events you may require medical evidence or proof they visited a GP. That will focus the mind!

Finally, there could be travel disruption for those who live near Olympic venues. Anticipate that now. You can only require staff to take reasonable steps to find alternative means of getting to work (or

working from home), but you can insist they follow your procedures relating to unauthorised absence and notification of transport disruption. If you haven’t got a travel disruption policy (remember those pesky ash clouds) now’s the time to develop one.

Ultimately it’s all about celebrating the games with your people. Good communication, advance planning and clear, documented procedures should make it a smooth and extremely enjoyable period of 2012.

**In Short:**

- **Start planning your holidays’ policy for August 2012**
- **Consider how you can use the games for staff motivation**
- **Ensure that people are not discriminated against for their allegiances**
- **Take in account the feelings of those who are not interested in the games.**



# Facing up to Facebook (lol)

Is it legal to use Facebook and other social networking sites to “snoop” on your employees? Sarah Whitmore updates her status...



**Has an employee thrown a sheep at you recently? \*  
Or poked you? \*  
Or tagged you? \***  
If so, you're not alone.

**Employee/employer relations are increasingly being played out on a Facebook page near you – and it's a trend which is accelerating with staggering speed.**

While some employers are doing all they can to ban all social networking in the workplace, others see it as an invaluable marketing tool. And, of course, a gift to the recruitment process.

#### Living lives online

We've long since grown accustomed to the memo and fax being replaced by email and the internet at work. Meanwhile the internet has revolutionised management, customer support, research and sales.

But it's the social networking sites which are really ringing the changes. It's said that 13.7 million users in the UK alone log on to such sites and that British users spend on average 191 minutes each month on Facebook.

Younger people have an expectation of internet or email access at work and think nothing of living out their lives online – often, when compared to the over 35s, with very low awareness of privacy issues.

But where does this leave the employer or potential employer when it comes to using Facebook and similar sites during the recruitment process? It's very easy to Google and then “friend” a candidate to be able to access astonishing amounts of personal information about them.

#### Checking out job candidates

According to a recent US survey, employers are most likely to use search

engines such as Yahoo! or Google to check out job candidates online (41%), followed by Facebook (29%) and LinkedIn (26%).

Some employers view these access points as an opportunity to vet candidates. A potential employee's profile may include information that they probably wouldn't dream of including in their CVs – not just on their education, work history and career interests, but lists of their favourite music and movies, holiday and party photos, family information, blog entries, links to profiles of their friends, and much more.

The question is: is there anything unlawful in checking out a candidate on line? The law in this area is, relatively speaking, new. The Human Rights Act 1998 brought into UK law the European Convention on Human Rights in October 2000. The key “right” in this area is Article 8, the “right to privacy and to respect for family life”. This right can extend to a right to privacy with

**“The ‘unauthorised’ monitoring or ‘lack of prior warning’ is key to how the law tackles the misuse of computer facilities.”**

regards to correspondence, telephone calls, emails and internet use in the work place.

With the Facebook generation this will also increasingly extend into the right in Article 10 to “freedom of expression” – and test it thoroughly. In 1997 the Alison Halford case (which pre-dated the Act) demonstrated how this right comes into play in relation to the workplace.

### Listening in

Alison Halford was a senior police officer who was bringing an action against the Police in Merseyside relating to

the use of policies. The first part of any internet policy invariably confirms that there will be monitoring. It tells employees that they are not free to use the business systems for their personal ends, and that if they do so the employer will have the right to look at what they are doing.

### Removing the protection of privacy

While employees have the benefit of Human Rights Act protection, when it comes to the monitoring of their activities at work they are more exposed when their activities occur in open view to the public. The case law in this area has confirmed that putting information up in

legitimate, job-related reason for asking them, and they are suggestive of unlawful discriminatory motives.

The flipside is that ignorance of the facts is a defence – if you don’t know about something, it follows that it cannot be the reason for a decision. The same thought process applies to the information on Facebook. Once you have seen the photographs of an employee with her children, you can’t avoid the risk that you will be accused of taking that into account when deciding to appoint another candidate.



discrimination. The force provided her with a telephone in her office for use on police business, which they then tapped, to discover what she was up to in relation to the litigation against them.

The European Court of Human Rights held that since she had not been given any prior warning that her calls might be monitored she had a reasonable expectation of privacy, even though she was using her employer’s facilities and equipment. The interception of her calls was therefore a breach of her human rights.

It is the “unauthorised” monitoring or “lack of prior warning” which is key to how the law tackles the misuse of computer facilities. Employers need to ensure that employees are aware of the risk that they might be monitored and do not have an “expectation of privacy”; generally speaking, this may be achieved through

a public forum removes the protection of privacy and allows employers to use that information to justify dismissals if it affects how they are performing their job or impacts on the business.

But you do need to be wary when it comes to potential employees, whose characters and background you might be tempted to check on Facebook. Although candidates would not be able to complain about your accessing their profiles per se, there may nonetheless be other claims that could follow.

Under conventional wisdom, HR professionals and others conducting employment interviews are trained to avoid certain types of questions (do you have children, who will look after them if they are ill? etc). Contrary to what many believe, most such questions are not strictly speaking illegal. Rather, they are inadvisable because there is no

### In Short:

- Be careful when using sites like Facebook in the recruitment process
- Social networking sites often include information that candidates wouldn’t dream of including in their CVs
- Placing information in the public arena removes the right to privacy
- However, if you have seen a candidate’s personal details, it may be assumed that you used them in reaching recruitment decisions.

\* These are some of the silly things you can do on Facebook...



# You say evasion, ...I say avoidance

The Government is seeking to make any form of legal tax avoidance virtually impossible. Shimon Shaw assesses the chances of success.

**“UK Uncut claim that there is £95 billion in lost tax as a result of avoidance and evasion.”**



**As I write this piece, a wealthy group of international individuals are asking to be taxed more, including American**

**investment guru Warren Buffett. By way of contrast, the UK has just entered into an agreement with Switzerland to catch those citizens using Swiss accounts to evade UK tax. UK Uncut claims that there is £95 billion in lost tax as a result of avoidance and evasion by large corporations and high net-worth individuals. It's the tax version of the wild west.**

Most people agree with the concept of state taxes. However not all agree with the amount of tax they pay or indeed with individual taxes. The result is the tax gap – the difference between what HM Revenue and Customs (HMRC) thinks it is owed and the amount it actually receives.

## **Avoidance-evasion, evasion-avoidance...**

Avoidance is legal. It is arranging one's affairs to reduce the amount of tax that one has to pay, making use of lower rates, loopholes, reliefs and more. Evasion is illegal. It is lying to the taxman (actively or by omission) about the level of your tax

liability or simply not paying your taxes. Much turns on the question of whether a loophole is an invitation to exploitation.

Just because you can, doesn't mean you should, says HMRC. The counter-argument is that it is the Government's responsibility to draft proper legislation and the tax authorities are doing their best to plug any holes that might exist.

## **Broadening the definition**

The Government has been broadening the definition of tax avoidance so that almost any steps that lead to less than the maximum amount of tax being paid are unacceptable. For example, the disclosure of tax avoidance schemes (DOTAS) rules in the Finance Act 2004 define offensive behaviour as including that which leads to “relief or increased relief from, or repayment or increased repayment of [...] tax”, or “deferral of any payment of tax”.

In theory (though unlikely in practice) these rules might mean that taking two five-year leases rather than one ten-year lease would be avoidance since some of the stamp duty would be deferred for five years. It is almost a human rights type of argument – if it is legal to avoid tax, should

HMRC be allowed, nay required, to clamp down so heavily on it?

HMRC is now seeking to develop a General Anti-Avoidance Rule (GAAR). This would be a prohibition on avoidance in general, enshrined in law. Graham Aaronson QC is currently reviewing whether a workable GAAR can be introduced into the UK tax system. However, by its very nature a GAAR cannot be precise – and this can be dangerous. Actions previously believed not to be taxable may suddenly become taxable if HMRC decides that they should have been. Is this really what we want from our democracy?

## **In Short:**

- **HMRC argues that tax loopholes are not an invitation to exploitation**
- **It is seeking a tax environment in which anything that reduces the tax that's paid is unacceptable**
- **The General Anti Avoidance Rule would prohibit tax avoidance.**

# Pensions for every employee...

Failure to comply with the key requirements of the Pensions Act 2008 that comes into force next year carry harsh penalties, Sean McDonough warns.

“Breaches of the regulations attract a potential fine of up to £50,000 and possible two-year prison sentence.”



In an important move that will impact every business with employees, the auto enrolment provisions of the

Pensions Act 2008 come into force on 1 October 2012.

The Act was introduced by the last Labour government in an attempt to solve the country's pension crisis. Quite simply, individual employees have not been saving enough towards the increasing cost of their retirement and the Act is designed to address those concerns by encouraging employees to build up a pension pot.

## Automatic obligations

From 1 October next year employers face a range of new obligations that will require them to:

- automatically enrol job holders (which covers most employees over the age of 22 who earn more than the basic tax level) into the employer's qualifying pension scheme, within three months of the start of their employment. This includes temps and agency workers
- provide employees with the relevant information they will need
- collect contributions from the point of enrolment and pay pension contributions for any employees who elect to remain enrolled in the scheme.

## Impact on employers

In order to comply, employers are required to use either:-

- their existing pension schemes
- a new scheme specially set up to comply with the regulations, or
- the national Personal Accounts scheme.



It is important that any existing schemes are professionally reviewed to ensure that they comply with the new regime.

Employers operating money purchase schemes or personal pension scheme will be required to contribute at least 3% of the jobholder's qualifying earnings (earnings between £5,035 and £33,540). Total contributions by the employer and jobholder together must represent at least 8% of these qualifying earnings.

Broadly, employers will be required to pay contributions of 1% during the first four years after the rules are changed, rising to 2% in the fifth year and the full 3% from the sixth year onwards.

Jobholders may opt out of the arrangements, but this decision is only valid for three years after which they are automatically opted back into the scheme.

While the regulations represent a step in the right direction for the Government's pension coffers, they also add to the already significant regulatory and administrative burden carried by employers of all sizes.

All the indications suggest that very few businesses have so far taken steps to address the issues raised by the new rules. With breaches of the regulations attracting a potential fine of up to £50,000 and possible two-year prison sentence, you should at least review your existing schemes in time for the change.

## In Short:

- **The new pension regime will affect the vast majority of UK businesses**
- **From 1 October 2012, employers will need to enrol employees into the auto-enrolment scheme**
- **Any existing pension arrangement must be reviewed for compliance with the new regime**
- **Severe penalties may be applied to businesses and individuals that do not comply.**

# The pros and cons of working from home



Home-working might be the employment option of the future – but make sure that employees can cope with the psychological challenges, says Les Brown.



**There clearly are mutual benefits to be gained by having workers operate from home. There are savings in overheads.**

**Workers also feel generally less stressed and usually find ways to allocate their time efficiently. There is no travel time or transport expense, and not having to adhere to a rigid working programme is recognised as a genuine incentive to be productive. “Water cooler” moments are reduced, so an individual’s focus is always on the job in hand with no distractions from other employees.**

In fact, having experienced the advantages, few homeworkers want to be pulled into the formality of day-to-day commitment and normal working hours – so it may be one route to creating a happy “crew”.

Businesses with staff who operate remotely are particularly capable of withstanding unpredictable disruptions. If it snows and the roads snarl up, then the business has the perfect set up and does not have to worry about struggling on with reduced capacity. This applies just as much in an emergency situation – consider the events

that are popular in insurance exclusions such as riots, civil disruption and terrorism.

#### **Staff retention**

Being too much of a stickler for the traditional model of business working could cause a raft of situations to arise leading to the loss of a valued member of the team. Changes in family responsibilities, issues of ill-health and disability could all prevent an employee from being on site.

Using technology that enables remote working instead means that an employee who might have otherwise been lost can

**“Before permitting home-working, a senior team should look at how they can maintain proper management control.”**

be retained. We have a key solicitor in my firm whose family has committed to a number of years in Oman. We have been able to retain this specialist as part of our team with a minimal impact on her ability to contribute appropriately to our services. The employee is delighted at the prospect of continuing with us – as are our clients.

When workers are happy and appreciate the working environment, their loyalty increases and their work ethic improves. So if you successfully sort out working hours, health and safety issues and remuneration, the business can really benefit.

#### **The emotional price?**

Of course, we shouldn't forget those home-run businesses, which have different benefits and challenges to take into account. Certain tax advantages, personal flexibility and efficient use of time are some

of the merits – but does this convenience sometimes come at an unseen price? It can be a lonely experience, with no camaraderie. The reduced overheads that result from no expenses related to external premises have to be weighed against the isolation of not being in a traditional working environment. Nevertheless, even with the daily home and office juggle, many people already understand how to balance the demands of their home and working lives. Where the individual is motivated and disciplined, this needn't be a concern.

I predict that the number of businesses either run from a home office or whose staff operate in their own domestic setting will burgeon in years to come. I also believe that the majority of these will run equally (or even more) efficiently than in a traditional working environment. Why not take a look and see if home-working could work for you? But first ensure that your

home-workers still feel part of the team and do not become isolated from the day-to-day companionship of the workplace.

#### **In Short:**

- **Consider in detail the impact of home-working on your business performance**
- **There is a “trust issue” to bear in mind – but often home-workers are more productive**
- **Flexibility about home-working can enable the business to retain employees whose circumstances have changed**
- **Remember that home-workers can become isolated unless they're made to feel part of the team.**





# Meeting the technology challenges of flexible working

Veronica Hartley lives four hours away from her West End office, coming in only for meetings and events. Here she describes the technology solutions that help her work this way.



**Now that almost everyone has high speed internet at home and a smart phone in their pocket, flexible working has become**

**accessible to most businesses. The various advantages are fairly obvious: time is not lost commuting, expensive office space is saved, work-life balance can be improved, high quality staff (women with children in particular) are more easily retained and snow, volcanic ash and other such events need not prevent business continuing as usual.**

These benefits, coupled with the pressures to cut costs and to continually adapt, mean that every business should at least be considering whether flexible working

arrangements could suit them. After all, as US environmental pioneer Stewart Brand said "Once a new technology rolls over you, if you're not part of the steamroller, you're part of the road".

Small businesses in particular are seizing the opportunities to be had by offering their staff flexible working opportunities. Of course, technology is great... when it works. As small businesses usually do not have whole departments dedicated to IT, there are a few pitfalls worth considering before taking the leap.

#### **Speed/bandwidth**

Beware those who use Asynchronous Digital Subscriber Line (ADSL) for their internet connection, which allows

broadband data access over normal phone lines. ADSL allows higher speed for data downloading than uploading, hence the word "asynchronous" in the name. This may offer perfectly adequate internet speeds in the office, but it can seem like wading through treacle when working remotely, which is a problem that is only exacerbated the more people there are logging-in remotely.

Discovering this problem after spending lots of time and money on the software to permit remote working is less than ideal, especially as it may be necessary to install the fibre optic lines for faster upstream access. The good news is that leasing these lines has become more and more affordable in recent times and

**“As small businesses usually do not have whole departments dedicated to IT, there are a few pitfalls worth considering before taking the leap.”**

it is definitely worth shopping around. Since my firm upgraded to a 10 Mbps synchronous connection, working from home has become much easier and less frustrating.

#### How to connect

The two main options are to connect via a Virtual Private Network (VPN) or to use a Remote Desktop Protocol (RDP). A VPN is an adapter that allows you to connect to a network from outside that network, as if you were within it. RDP is like taking over a computer and being able to use it remotely, without actually sitting in front of it.

Which option suits a particular business is beyond the scope of this article, but it may well be worth trying out a free method of accessing your computer remotely before committing to a potentially expensive system.

#### Licences and software

Some (but not all) software products carry additional charges for licences that allow you to use them over remote systems. Whether such charges apply is a question worth asking when buying any software product to ensure future flexibility. To this end, it is also possible to utilise software that is entirely internet-based.

In my firm's experience, the internet-based accounting system meant nothing needed to change for this system to be accessed remotely, whereas digital dictation software carried high costs and had a lot

of associated set-up. The silver lining was that the remote digital dictation turned out to be even easier to use than the office-based system, and dictation is now possible on a smart phone even while travelling.

#### Configuration

This can be more time-consuming and complex than one would expect, compounded by any IT support staff having to provide assistance remotely. One example from my own experience highlighted the difficulty of setting up printers to print documents that are being accessed remotely.

#### Security

Security is always an issue when people are connecting to the network from outside, because there is less control over offsite computers. Unless restrictions are put in place, users connecting to the Local Access Network (LAN) via remote access can do everything that they could do from an onsite computer. It can often be a trade off between flexibility and security. Additionally, some internal network security options may interfere with conferencing software.

#### User training

All users, even those who are based in the office, may need to be brought up to speed with remote-working technologies, for example if video-conferencing software is used to conduct face-to-face meetings remotely.

#### Business continuity

It is sensible to have a fall-back position in case power or phone lines are lost. This would normally involve having a secondary connection method, such as a mobile “dongle” or secondary phone line. If workers are based where mobile phone reception is poor, a repeater with an aerial placed in an elevated position can help.

I hope that this has not put you off, as remote working can increase productivity, motivation and well-being – and there are definitely solutions for all the potential problems. Testing the systems before they are needed is the key. Then the only problem is to avoid being distracted by the view out of the window.

#### In Short:

- **Technology that works is the key to effective remote working**
- **Use a “synchronous” line for remote internet connection**
- **Check out whether VPN or RDP is more appropriate for your business**
- **Check if your software licences allow free remote use, and consider the security, training and continuity needs of your business.**



# (Un)clouding the issue

Cloud computing is the here and now – Geoffrey Sturges considers some of the legal implications for users and providers.



**It still seems very new, but it's actually been here for a number of years.**

Wikipedia says Cloud Computing is: “the use and access of multiple server-based computational resources via a digital network... Cloud users may access the server resources using a computer... smart phone, or other device. In cloud computing, applications are provided and managed by the cloud server and data is also stored remotely in the cloud configuration. Users do not download and install applications on their own device... all processing and storage is maintained by the cloud server.”

Email service providers have been doing this for years (as have their customers who can only view their emails online). The approach became fully commercial with the advent of Software as a Service (SaaS), where users rent, rather than buy and install, the use of online software applications. The current excitement over cloud computing may be partly down to marketing and partly because consumers are starting to use off-site data storage.

## Emerging trends

Eventually no one will need storage-heavy servers, PCs, laptops or tablets, and all our applications and data stores will be

hosted remotely. And as with each new technological development in whatever field, the law and contracts will inevitably lag behind. Today, in fact, I'm seeing two distinct trends in contracting for the provision of cloud services.

The first comes from the major cloud service providers and involves contracts which reflect the nature of the service they are selling. Because they are big boys, however, such contracts tend to exclude their liability for anything and can have rather odd, even unreasonable, provisions. For example, they might include the right to amend the service without notice or to withdraw it without any obligation to help customers transfer their data. Where such terms are used for consumer sales, they probably fall short of the Office of Fair Trading's (OFT) consumer contracts requirements.

In such a case, the small business or consumer user of the cloud service can be disadvantaged by such terms. In some cases, too, this will be done with a tick in a check box to signify their acceptance of terms that they have not actually read. Large users will not be so disadvantaged as they will negotiate bespoke deals.

The second trend can be found in the contracts of smaller cloud providers.

Unless these have “borrowed” big boy terms, they often do not appear to reflect the fact that the providers are no longer attending their customers' premises to install software. Today, they might be just selling them the use of a password to access and use software and to store their data.

## Unnecessary costs

In this case, small cloud providers are disadvantaged. Their contracts look amateurish, and if they come across a customer who wants terms that cover the services they actually provide, they will incur costs in legal arguments over something they should not have proffered in the first place. If there is a dispute over the service provided, they'll have to admit that their contract does not cover what they sell. In particular, they are most unlikely to have limited their liabilities effectively.

All those users of the services who do not have a bespoke deal are likely to face one big problem – disaster. When and if a cloud provider goes bust, ceases to provide the service or suffers the destruction or failure of its server “farm”, how is the user to ensure the continuity of IT usage? Ideally it should have back-up servers (not in the same location, nor owned or operated by the same provider) on to which all traffic



**“Eventually no one will need storage-heavy servers, PCs, laptops or tablets, and all our applications and data stores will be hosted remotely.”**

from the primary servers is replicated. That, however, comes at a cost.

#### **Rented applications**

While it's possible to get the cloud provider to host the customer's existing software applications (subject to consent from any third party licensors of that software) it's more usual for the provider also to rent software applications to the user. This means the user only pays for the software for as long as it's required, providing some substantial cash flow advantages.

While this model works well for standard off-the-shelf software, customers are often prepared to pay the provider to build new applications. Here the customer needs to realise that when the rental contract comes to an end they will, unless the contract provides otherwise, lose all the benefit of that bespoke development.

This is a similar situation to that faced by those buying website development and hosting services who, unless the contract

provides for portability, can find that they lose the website if they want to change host.

#### **Stuck in the middle**

Smaller providers without their own data-hosting facilities also have a habit of not using customer contracts which are 'back to back' with the hosting contracts they have accepted. This means that when the host falls down on service but is not in breach of its contract or service level agreement, the provider can find itself stuck in the middle – liable to its customer and with no right of recovery against the host.

The silver lining inside this cloud is that these contracts will settle down eventually. The OFT and Information Commissioner will criticise big providers for their consumer terms and will change them for consumers and small businesses. The legal precedent writers will come up with contracts suitable for different kinds of cloud computing. Smaller business customers and their

lawyers, armed with access to suitable precedents, will start to insist on sensible contract terms when buying cloud services.

It'll brighten up later...

#### **In Short:**

- **The law and contracts are lagging behind recent developments in cloud computing service provision**
- **Small businesses must check the terms and conditions of their cloud service providers**
- **Many smaller cloud service providers need to update their contracts to reflect more accurately what they do**
- **Be prepared for a backed-up service in case of disaster – it's worth it.**

# Countdown to ...cutting carbon

As the CBI calls for mandatory carbon reporting, how should you set up internal systems to help your employees reduce their carbon footprint? Debra Mansfield has some of the answers.



## The basic question is deceptively simple – why save carbon?

Our everyday activities, both at home and at work, and everything we buy, produce and use, cause carbon dioxide and other gas emissions that we are told contribute to climate change. Some available statistics show that the average UK resident is responsible for more than 15 tonnes of carbon dioxide emissions a year. Although that is below the per-person emissions of countries such as the USA and Australia, to meet global targets it must drop to between two and three tonnes of carbon dioxide each year by 2050.

And apart from external pressure, there are many reasons to encourage employees to make informed decisions about carbon reduction:

- It reduces energy costs
- It enhances business reputation
- It motivates employees
- It helps to satisfy stakeholders
- It enables you to manage regulatory compliance proactively.

### How to get started

The good news is that it is not complicated to get started and that there are some easy wins to be had at the outset which will help build momentum. Get people involved – ask for volunteers and set up a small team

taken from all areas of your business. They can act as the ambassadors for the policy.

Measure the current carbon footprint – several online tools are available – to make it clear where you are starting from. Encourage discussion to raise awareness. Consider, if you do not already do so, using employee awareness stickers and posters produced by the Carbon Trust: “Office lights left on overnight use enough energy to heat a house for about five months”. Then set and monitor realistic environmental targets and keep everyone involved by providing feedback and asking for suggestions. Carbon reduction, in fact, could be a good team building exercise.

**“There are some easy wins to be had at the outset which will help build momentum.”**

### Easy wins

It is important to remember that you don't need to invest lots of money or make big changes. The right combination of small changes, which cost nothing, can reduce your energy bills. Tips learnt at work can also be used at home by your employees and vice versa.

Computers and other electrical equipment should be turned off after use, printing

huge producers of paper documents. So consider using electronic payslips, for example, which will also do away with the envelopes in which paper slips are placed.

A secure password-protected electronic system will save staff time (as no one needs to deliver them around your premises) as well as saving paper and in some cases postage. In fact, independent research shows that UK businesses could

and reporting standards for the global hospitality industry. This is based on the formation of a new Carbon Measurement Working Group to ensure that customers and investors can compare hotel carbon emissions on a like-for-like basis.

What's more, it is not only customers who will review your environmental credentials. Increasingly, we are told, that

should only be done when necessary and should be double sided, make the most of natural light and turn off lights when a room is not being used. Don't have the heating on in warm weather and, if circumstances permit, turn it down a degree. These steps will not only cut carbon emissions but will save you money, adding to the bottom line.

All staff members can participate in recycling and with a bit of thought it can be easy to achieve good results with some beneficial outcomes. For example, used postage stamps can be sent to a charity to help them raise cash – give them to a local one, and your business will be contributing to its community.

### Reducing the use of paper

Make technology work harder for you. Huge amounts of carbon are emitted during the life cycle of paper, during its manufacture, its transport and its use in printing, and HR and payroll teams are

save 994 tonnes of carbon dioxide every year simply by eliminating payslips.

Another area where it is easy to use carbon emissions is travel; ask yourself if a journey is really necessary and consider the use of video or telephone-conferencing.

### Why sustainability matters

As already suggested, there are sound business reasons for taking such steps. Achieving leadership in your sector or supply chain with lower carbon products and services will enhance your reputation. Increasingly, consumers are making choices based on a company's environmental credentials which is why many businesses are looking to position their company as eco friendly - green credentials are a new status symbol.

For example, 12 of the world's largest hotel chains have announced that they will take part in a major new initiative designed to deliver carbon footprinting

people prefer to work for environmentally responsible companies, so having strong policies will help you stay as an employer of choice.

### In Short:

- Simple changes can help significantly reduce a company's carbon emissions
- Turn off lights, computers and other equipment after use
- Wherever possible, use electronic documentation in place of paper
- Reduce travel through the use of telephone and video-conferencing whenever you can.

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Page 2: **Crisis? What crisis? (Oh, THAT crisis)**

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Neil Denny  
Mogers Solicitors LLP  
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Martin Ridings  
Myers Lister Price Solicitors  
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Page 8: **How to agree not to disagree**

James Lunt  
Cullimore Dutton Solicitors  
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Page 10: **The new rules on agency workers**

Morag Dalziel  
Miller Samuel LLP  
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Page 11: **Agency workers (some more practical implications)**

Sara Barrett  
George Davies Solicitors LLP  
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Pritti Bajara  
Clarkson Wright & Jakes Ltd  
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Page 14: **Breathing life into the corporate event**

Jon Gardner  
Beyond PR  
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Tim Gofton, Matt Malone  
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Page 18: **Facing up to Facebook (lol)**

Sarah Whitmore  
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Shimon Shaw  
Matthew Arnold Baldwin LLP  
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Sean McDonough  
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Page 26: **(Un)clouding the issue**

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