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Transparency



bto News

In this edition

Sentencing uncertainty in uncertain times?

The 2015 Sentencing Council's Definitive Guidelines on Health and Safety Offences etc. came into force in England and Wales on 1st February 2016. The 2015 Guidelines extend in their application to non-fatal Health and Safety offences and propose a matrix by which fines are to be calculated.

Regard should be had in each case to the level of **culpability** – ranging from low to very high – and **harm** – ranging from a low to high likelihood. The Guidelines unabashedly state their aim as being to increase unsatisfactory fines to a level that "*would be felt by Directors and shareholders*" in order to improve compliance.

Since their introduction, there has been much debate about whether they would apply to cases prosecuted in Scotland. It should be noted that Scottish Courts have never shied away from imposing significant fines for Health and Safety breaches. By example, in 2005, Transco plc was fined a record £15 million over the Larkhall gas explosion which killed a family of four, and in 2013 Svitzer Marine Ltd was fined £1.7 million following the sinking of the Flying Phantom tug boat, with the loss of three lives. With hefty fines already a real possibility for companies facing prosecution in Scotland, many businesses, facing criminal proceedings, have been worrying about the potential impact a significant penalty would have on their business, should the Guidelines be applied to their case.

The Guidelines, which practitioners had tried their best to keep out of Court, were first applied in May 2016, when Scottish Power Generation Limited plead guilty to a non-fatal breach of Section 2(1) of the Health and Safety at Work Act 1974. Using the Guidelines, the Sheriff imposed a fine of £1.75m, reduced by 30% from £2.5m, to take account of the early plea. The company appealed against sentence.

In its judgement, issued on 3 November, the Appeal Court stated that *"In relation to the 2015 Guidelines, there is no need to use it in a mechanistic or formulaic fashion";* that the sentencing court should follow traditional Scottish sentencing practices to arrive at a 'starting point' for sentence and then have regard to the Guideline as *"a cross check "* to that starting point.

Ultimately, the fine was reduced on appeal to £1.2m, the starting point being £1.5m, reflecting a 20% discount. The Appeal Court thus ratified recent judicial trends seen in non-Health and Safety cases of lowering the discount applied to early pleas.

Whilst the Appeal Court can be commended in its attempts to avoid being overly prescriptive and to preserve the sentencing court's discretion, what its decision does not do is address what the sentencing court should do if the figure reached in the 'traditional' way and the figure recommended in the Guidelines are wildly different.

What should the Court then do? Substitute the figure stated in the Guidelines? Retain its own initial assessment and dismiss the Guidelines, or perhaps split the difference? The Appeal Court's decision is silent on this.

This uncertainty presents practical difficulties when advising clients who are subject to H&S prosecutions in Scotland. The Crown plays no role in sentencing in Scotland, and so will offer no view on culpability and harm, in terms of the categories provided for in the Guidelines. Given that a difference in category being applied by the sentencing Court can amount in practical terms to a difference in level of fine by many thousands of pounds, we may well see more cases running to trial, adducing evidence in mitigation, in an effort to lower the levels of culpability and harm to be applied. With a reduction in discount for early pleas of guilty, a client may feel it is better to take their chances at trial.

In such times of uncertainty, it is more important than ever to seek expert legal advice immediately following an incident. BTO's top tier specialist health and safety team prides itself in providing solid expert advice to guide individuals and organisations through this increasingly tumultuous process.

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Tis the season to be jolly...

…but can employers be liable for the actions of employees at work social events? With the festive season firmly upon us, the English High Court has provided a useful and timely reminder about who will be liable for inappropriate behaviour by employees at or following work social events.

In *Bellman v Northampton Recruitment*, M was the Managing Director of NR Ltd and shareholder of the Company. After the employer's Christmas party at a golf club, a number of staff (including M and the Claimant, B) returned to a nearby hotel and continued the party into the early hours. This was not a planned extension of the party, albeit the majority of the Christmas party guests did go back to the hotel, and the taxis, as well as some of the alcohol which was consumed at the hotel, were also paid for by the Company.

A heated discussion arose about a work matter between M and B and M lost his temper. This took place in the presence of employees in the hotel bar area and resulted in M assaulting B. B was punched twice and knocked to the floor unconscious. As a result, he hit his head and suffered brain damage. B subsequently raised proceedings in the High Court against NR Ltd, asserting that it was vicariously liable for M's conduct. B asserted that the post event drinks were a seamless extension of the Christmas party, that the heated discussion had been in relation to work topics and M had been trying to assert his authority, which was in the course of and closely connected to employment. B did not bring proceedings against M personally. The question for the Court was whether the employer was vicariously liable for the injuries that were sustained.

The Court considered the authorities in this area and rejected the claim. It held that it is difficult to identify the boundaries of this form of liability. It decided that a line could be drawn in this case between the Christmas party at the golf club and the continuation of the party at the hotel. Had the assault taken place during the Christmas party, the employer would have been liable because there would have been a sufficient connection with M's employment and the assault. As it happened after the event had finished, the claim was dismissed. Although the assault happened as a result of discussions relating to work-related matters, that only had a limited impact on the question of liability. The case gave rise to questions of delictual liability rather than strict employment law, but the judgment is an important reminder of the extent to which employers can be held liable for actions of employees. It provides a useful analysis of the law in this area and reminds us that liability does not automatically end when working hours cease.

As we are in the midst of the party season, it is prudent for employers to take steps to limit any potential exposure to liability. This can include:

- Informing staff that any continuation to the Christmas party, is not a work event
- Issuing or re-circulating a code of conduct and equal opportunities policy to staff prior to the social event taking place and ensuring that they have received sufficient training in relation to diversity, equal opportunities and anti-discrimination
- Where there is violence, take disciplinary action.

Taking such steps may help in limiting liability on the employer, in the event that a claim arises because of conduct occurring at or after a social event.

See judgment **here** and **click here** for further discussion by Associate Douglas Strang on planning a happy holiday season. Enjoy your festive parties with care!

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The GDPR is coming! You now have 18 months to comply!

Secretary of State Karen Bradley MP appeared before the Culture, Media and Sports Select Committee on 24 October 2016 and stated:

"*We will be members of the EU in 2018 and therefore it would be expected and quite normal for us to opt into the GDPR and then look later at how best we might be able to help British business with data protection while maintaining high levels of protection for members of the public."*

It is anticipated that a fuller and more formal statement will be issued by DCMS in due course.

Where are we with Guidance? The ICO has provided an Overview to the GDPR which sets out some detail about the key issues in the Regulation. **Of note:** The ICO also issued Updated Guidance on Privacy Notices which has a section identifying the changes coming with the GDPR. These changes are substantial and will impact significantly on data controllers. Currently, there is only an obligation to provide the name of the data controller, the purpose(s) of any processing and enough information to ensure that processing is fair.

There is an obligation under the GDPR for privacy notices to be in a "concise, transparent, intelligible, and easily accessible form, using clear and plain language." BUT, there is also an obligation to provide more information than is currently required. At the ICO's Scottish Conference in June 2016, the ICO's advice was that the information required in terms of transparency by Article 13 GDPR could be split into two categories, with the information required by subsection (1) being more important than the information required by subsection (2). The less important information could be provided elsewhere i.e. by providing a link to a webpage. Below, the categories of information required are split into two columns.

Article 13(1)	Article 13(2)
Identify and contact details of the controller.	The period for which the data will be stored/criteria used to determine that.
Contact details of the Data Protection Officer if one is required.	The right to request: access to; rectification of; erasure of; restriction of processing; or to object to processing; and the right of data portability.
Purposes of processing and the legal basis of the processing.	The right to withdraw consent to processing,
Where the processing is based on legitimate interests processing, the legitimate interests pursued by the controller or third party.	The right to lodge a complaint with the ICO.
The recipient or categories of recipients of the data.	Whether the processing is based on a statutory or contractual requirement, and the consequences of failing to provide such data for the data subject.
Information about transfers to third countries.	The existence of any automated decision making/ profiling etc.; how it works and the consequences of this processing for the data subject.

It is of significance that the data controller is required to state and therefore think about the legal basis for any processing that is taking place. In addition, if relying on the legitimate interests condition (which of course public sector bodies cannot do), then they must state the legitimate interest pursued. Even the exercise of thinking about these issues will improve practice and understanding of data processing going forward. For more info visit our **GDPR updates** webpage.

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Changing climate

Section 63 of the Climate Change (Scotland) Act 2009 provides for regulations to be made for (1) the assessment of the energy performance of existing non-domestic buildings and (2) building owners to take steps to improve the energy performance of affected buildings.

Relevant regulations were eventually introduced earlier this year in the form of The Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016 ("the Regulations") which came into effect on 1 September 2016. From that date, owners of affected buildings, on sale or lease, are required to instruct the preparation of an "Action Plan" of measures to improve energy and carbon performance and reduce emissions of greenhouse gases.

The new rules will affect non domestic building in Scotland erected prior to 2002 with a floor area greater than 1000 m².

What steps are required?

A new type of building professional, or otherwise "Section 63 Assessor", must attend the property to prepare the Action Plan. The Assessor will set out in the Plan the prescribed measures required to improve the energy performance of the building. The Action Plan which will be available publically and the recommended measures could include:

- installing draught-stripping to doors and windows;
- upgrading lighting controls
- upgrading heating controls
- installing an insulation jacket to a hot water tank;
- upgrading low energy lighting
- insulation in an accessible roof space and
- replacement of a boiler.

Implementing the measures identified in the Action Plan can come at a significant cost and the Regulations provide set timeframes by which these must be addressed by the owner. The building owner's options are:

- to carry out the improvement measures within 42 months
- to monitor energy consumption

If opting to monitor energy consumption, the building owner must report on the building's efficiency by producing Display Energy Certificates (DEC). The purpose of this alternative is to provide the building owner with the opportunity to demonstrate improved energy performance through changes other than immediate building improvements. The DEC certificate must be displayed in a clearly visible place at the property and renewed every year. In the first year, the DEC will estimate the energy consumption and emissions from the building and thereafter, record actual consumption and emissions. Failure to renew the DEC annually will result in the owner losing the right to defer and the owner will then be required to carry out the necessary works.

Buildings exempt from the Regulations:

- Buildings constructed to 2002 building standards or more recent standards
- Temporary buildings with a planned time of use of 2 years or less
- Workshops and non-residential agricultural buildings with low energy demand
- Green deal improved properties

Transactions exempt from the Regulations:

- The sale or lease of a building at any time before the construction of the building has been completed.
- The renewal of an existing lease with the same tenant.
- The grant of a "short term lease" (defined as a lease for a period of not more than 16 weeks which does not include any option to extend its duration) where the building has not been let by the owner during the preceding 36 weeks.

If the owner of an affected building fails to provide an Action Plan on sale or rental or complete improvement works, within the required timescale, they will be liable to be issued a penalty charge of £1000. Non-compliance will also hold up transactions involving affected buildings as the purchaser's or tenant's representatives will require the Plan to be exhibited at the outset. It is important, therefore, to ensure that in preparation of the marketing of larger buildings or premises, due consideration is given to whether the Regulations apply and if so, to commission an Action Plan.

Further information can be found on the Scottish Government's website: **click here**.

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Shareholders' Agreements - a worthwhile investment?

There is no legal requirement for shareholders in a private limited company to have a Shareholders' Agreement. Shareholders in SMEs may therefore be inclined to save themselves the costs of putting such an Agreement in place. A Shareholders' Agreement can, however, be useful in anticipating challenging situations which shareholders may encounter and setting out how those situations are to be dealt with.

Some of the advantages of having a Shareholders' Agreement are as follows:

1. Regulating the management of the company

Management of the company is typically left to the directors. There may, however, be certain key decisions that the shareholders do not wish to leave to the discretion of the directors, particularly if there are shareholders who are not also directors. These key decisions can be identified in a Shareholders' Agreement and reserved for determination by the shareholders.

2. Controlling the issue and transfer of shares

By including pre-emption provisions in a Shareholders' Agreement, shareholders have a means of avoiding dilution on the issue of new shares and preventing the introduction of external third party shareholders into the company on a proposed transfer of shares.

3. Minimising the potential for disputes

It is difficult for parties in business together to envisage falling out, but it happens. A Shareholders' Agreement can provide a framework for resolving disputes, so that they do not result in the company grinding to a halt.

4. Providing certainty around consequences of certain scenarios

Uncertainty around the impact on the company of changes in a shareholder's personal circumstances can be minimised by specifying in a Shareholders' Agreement what is to happen in the event of any such changes arising, e.g. if an employee shareholder ceases to be an employee, then the Shareholders' Agreement can provide that he must transfer his shares.

5. Providing protection for shareholders

A Shareholders' Agreement can provide protection for minority shareholders. It can require certain key decisions to be approved by a specified shareholder majority set at a threshold which requires consent from minority shareholders. "Tag along" provisions can also be included to allow minority shareholders to join in on a sale by the majority shareholders, so that they are not left behind. Protections can also be built into a Shareholders' Agreement for majority shareholders, e.g. "drag along" rights allowing majority shareholders to force minority shareholders to sell to a third party buyer.

6. Imposing post-exit restrictions

The risk of a departing shareholder competing with the company or soliciting its clients and customers can be mitigated by the inclusion of non-compete and non-solicitation covenants in a Shareholders' Agreement. These would apply to shareholders for so long as they hold shares in the company and for a period after they cease to hold those shares.

9. Demonstrating stability

Shareholders who have spent the time to put a Shareholders' Agreement in place can use this to demonstrate to banks and creditors that they are well-organised and that their company is stable and subject to good corporate governance. This can be helpful in encouraging those banks and creditors to deal with the company.

These are just some of the reasons why a well-developed Shareholders' Agreement can be of advantage to a company and a worthwhile investment in the long run. If nothing else, it will allow those running the business to do so in the knowledge that there is a framework in place to deal with the more challenging scenarios that can arise in the course of a company's lifetime.

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Websites - Look before you leap...

Does your business have an online e-commerce platform or marketing website or are you in the process of developing a new website? Despite the ubiquity of the internet, we see a surprising number of issues arising from businesses launching or redeveloping their websites without obtaining adequate advice about domain names, intellectual property and data protection.

Protecting your Intellectual Property (IP)

Development of a strong brand is more important than ever and conducting competitor research has never been more critical. Now that most businesses are online their IP is much more public. This also means that previously geographically distant businesses are much more likely to become competitors in the online market place. Some confusion has arisen for new businesses which have assumed incorrectly that because a company name or domain name is available, the name is "not in use" and, consequently, they are free to use the name.

It is also necessary to conduct searches with the World Intellectual Property Office to determine if anyone has a registered trade mark that might be infringed by the proposed name and to consider if anyone might have a common law trademark (a pre -existing unregistered use of the name) which might be infringed by the name proposed.

Businesses must take care that the overall appearance of their website does not infringe the trade dress of their competitors by replicating the appearance of a competitor's site. Issues have arisen for clients in respect of infringement of copyright images, often inserted into sites by developers who have had insufficient regard to the source of content and its ownership. We can provide advice about the licensing issues associated with using digital content. We can also guide you through the process of instructing a web developer and the contractual considerations necessary to ensure that your developer performs their obligations and does not expose you to allegations of IP infringement or inadequate security.

Domain names

Common problems arise where domain registrants are contacted by organisations claiming to be Registries who have been contacted about the registration of trademark or brand identical or similar domains. While some businesses may seek to make defensive registrations of trademark identical or similar domains, the increase in the number of new domains approved by ICANN (The Internet Corporation for Assigned names and Numbers) means that it is not realistic for many businesses to register all of the domains corresponding with or similar to their brand. This intentional expansion of the domain space highlights the distinct difference between the functions of domain names as address identifiers pointing to a specific location on the internet and trademarks as a badge of origin for goods or services.

For many businesses, vigilance is the key to ensuring that other similar domains are not being used to redirect traffic intended for their site to direct competitors. It is possible to challenge domain registrations which infringe trademarks before the appropriate registry. Website operators that are concerned about competing domains should obtain advice about which domains to register and about the prospects of having trademark identical domains transferred under proceedings before the appropriate registry.

Privacy

Do you understand what information your website gathers and have you got a privacy policy that covers your activity?

The British Pregnancy Advisory Service ran into trouble because it did not understand that its website stored its site user's sensitive data in a way which was insecure and breached the seventh principle of the UK Data Protection Act 1998.

To protect against such breaches it is essential that:

1. the contract you have with your web developer defines their responsibility to ensure that your site is secure and that you have appropriate independent testing of its security features;
2. you have an appropriate privacy policy and provide adequate notice about the cookies you have used on your site to track users; and
3. the information requested in your online forms is adequate and not excessive.

From IP infringement, to reputational issues and data protection compliance, talk to our Technology & IP team for advice about how you can avoid some of the common pitfalls of online trading.

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Simple procedure

On the 28 November 2016 the Sheriff Court Small Claims and Summary Cause procedures were replaced with a new Simple Procedure. This new procedure is to be used for financial claims up to £5000 or where specific implement is sought.

Claim Form sent to and registered by the Court.

After a Claim is registered, the Court issues a **Timetable** to the claimant containing the last date for service and the **Last date for a response**. The claimant then arranges **service** on the respondent before the last date for service.

Case admitted

By the **Last date for a response**, Defender pays the claim or lodges a time to pay application.

Case disputed

By the **Last date for a response**, Defender lodges a **Response Form.**

Within 2 weeks of the Court receiving the Response Form, the Sheriff issues the **first written orders.**

The Sheriff's **First Written Orders** can:

1. refer parties to Alternative Dispute Resolution ("ADR")
2. arrange a case management discussion (meeting between the parties and the Sheriff with the aim of discussing the claim)
3. arrange a hearing (which will be the final hearing on the evidence)
4. if the Sheriff thinks that a decision could be made without a hearing, indicate that the Sheriff is considering doing so,
5. use the Sheriff's powers to dismiss a claim, or decide a case as having no real prospect of success, or that the claimant's case or the respondent's response are incompetent.

The Rules and Forms for Simple Procedure have "*been designed with the party litigant in mind*". This is nothing new as party litigants were always encouraged to raise and defend small claims cases in the past. In practice, solicitors will continue to represent individuals and commercial clients in court actions raised under the new Rules. What is new is the spirit of the new Rules to maximise the use of electronic communications between parties and the Court.

The online portal by which Simple Procedure cases are to be managed has been delayed and the latest update is that it should be available from early 2017. The concept of an online portal is to be welcomed but it is a development which is likely to take some time to bed in (for solicitors, parties and court staff alike).

Whilst the Rules and Forms are drafted in a manner to provide step by step guidance, it will remain to be seen whether the Courts are prepared to take a stronger line with a party litigant's compliance with the Court rules and the strength of their claim or defence. That is something that will need to be enforced if the new procedure is to speed up the process and to provide cost effective dispute resolution. Should that not occur, we may find that cases default to a case management discussion – in effect a First Calling under the existing procedures.

The judicial expenses that may be awarded under the Simple Procedure broadly reflect those that may be awarded under the existing procedures, with the exception that there will be no award of expenses for claims under £200.

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Business succession planning

Planning for succession, when you have not just family but business interests to consider, is never an easy thing to think about. You will have to consider a number of different issues and you may need to come to terms with some difficult realities…

If you already have a Will in place then you have taken the first step in your succession plan. But this is only part of the bigger picture. Every business owner needs to have an exit plan one way or another and it might come into play before you die. Either way, this process inevitably involves detailed planning and can never start too early. Here are some general tips for how to approach your exit plan.

1. Face up to the realities

You need to accept that you will not always be around to run the business. Contrary to popular belief, you are not going to live forever! If you want the business to keep going then you need to think about how to achieve this.

It is important to go into the process with your eyes wide open. Succession planning is never easy and it involves you making some difficult decisions which may not please everyone. However, if you are willing to face up to the potential challenges then these can be addressed as part of the process and lead to the best outcome possible.

You do not want to be making these decisions at a time of crisis. This could lead to hasty decision making which could cause serious difficulties for your family and the business. It is important to achieve as smooth a transition as possible.

2. Set your aims and objectives at the outset

Think about whether you want to sell the business or pass it onto the next generation. If you are selling, you need to consider who is going to buy the business and think about what they are actually buying. Are there assets to sell or are you simply selling the name?

If you are passing the business on, you need to think about timings and how this is going to work going forward. Who is going to be involved in the decision-making process? Is there to be a distinction between who runs the business day-to-day and who is entitled to the income produced?

3. The family

If you are looking to pass the business onto the next generation, then don't go into the process with rose-tinted glasses about the people and personalities involved. Think about whether you are prepared to hand over the reins to the next generation and how best to achieve this. Remember that there is a distinction between running the business on a daily basis and simply receiving a share of the profits.

If there is to be a generational shift, then everyone needs to understand their new roles within the business. Part of the process is the education of these involved and this is particularly important for those who are not actively involved in the business.

4. And what about you?

You need to think about what you want out of the business when you exit to make sure that you have something to live on during your retirement. If you are simply gifting your interest to the next generation then this is not likely to generate a capital sum. You may wish to think about retaining some sort of income from the business or include earn out provisions as part of the exit arrangement.

5. Tax

The tax implications are critical to your business exit plan. Although most schemes can be structured in a broadly tax efficient way, this does need some planning. It is important to be aware of the potential tax consequences, particularly if you are passing your interest on to the next generation, and appropriate professional advice should be obtained at the earliest opportunity.

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Family Law (Scotland) Act 2006 – ten years later

There is a warning in a recent Inner House decision that people should be very careful about what they agree in a Pre-nuptial or Post-Nuptial agreement.

Ten years ago, the Family Law (Scotland) Act 2006 significantly altered the landscape of family law in Scotland.

One of the biggest changes it made was the introduction of cohabitants being able to make limited financial claims against each other in the event of their relationship terminating or on the death of one cohabitant.

The law is very clear: couples living together do not have the same rights as married couples and civil partners. However, the law remains unclear as to exactly how much couples will be entitled to if their relationship breaks down or if one of them dies.

The Act provides that claims can be brought when one party has derived an economic advantage and the other party has suffered an economic disadvantage as a result of the cohabitation. However, identifying an economic advantage or disadvantage is not straightforward. Everyone's circumstances are unique and as a result, there isn't a set rule as to how such a claim might be quantified.

> **"It is … appropriate that those who choose not to marry are not automatically put in the same legal position as those who do. However, it is concerning that 10 years on there is still doubt and uncertainty in quantifying claims."**

The court generally adopt a broad brush approach by looking at the parties' respective financial positions before the relationship and again after the relationship ended. The courts do not expect couples to keep a detailed financial accounting throughout their relationship.

Many people now choose to cohabit rather than marry and for that reason the introduction of cohabitant's rights is very welcome. It is also appropriate that those who choose not to marry are not automatically put in the same legal position as those who do. However, it is concerning that 10 years on there is still doubt and uncertainty in quantifying claims.

Case law is of limited use as each case turns on its own facts and circumstances. There is also a lack of cases progressing through the court to give clear guidance on how cohabitation claims should be determined. This suggests that parties are negotiating with each other and reaching a resolution themselves without risking the uncertainty that court action will inevitably bring.

It is therefore sensible and prudent, if you are moving in with your partner, to consider having a cohabitation agreement drafted. This can provide very clearly for what is to happen in the event that your relationship subsequently breaks down.

There are very strict time limits to initiate a cohabitation claim. Following the break down in a relationship, a financial claim will be time barred if not raised in court within 12 months. After the death of a cohabitant, the time bar is even shorter at just 6 months. It is therefore imperative that early advice is sought, in either case.

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BTO Update

Firm-wide Senior Promotions

In April 2016, BTO's Chairman **Alan Borthwick** announced three partner promotions: **Scott Wyper** of BTO's well respected corporate team, **David Young** of our Commercial Dispute Resolution team, now one of the largest litigation teams in Scotland, and **Claire White** within the "first class" Insurance Personal Injury team.

Ross Brown of our Private Client team, servicing individuals and their families, **Cara Docherty** of the Professional Discipline & Clinical Defence team, which acts for all the main medical defence unions and their medical arms, and **Michael Collins** of the Insurance team were all promoted to associate.

Left to right: Ross Brown, Cara Docherty, Scott Wyper, Alan Borthwick, David Young, Claire White and Michael Collins.

ADVantage BTO

In July 2016, two of BTO's insurance team associates, **Mark McCluskie** and **Stephen Waclawski** passed their civil Solicitor Advocate exams and were admitted as Solicitor Advocates.

Mark, based in Glasgow, focuses predominantly on litigation arising from damage to property and providing insurance policy coverage advice. Stephen works in our Edinburgh office and focuses on motor claims, employer's liability, public liability and occupier's liability.

With two criminal and fifteen civil Solicitor Advocates, BTO now has one of the largest and strongest in-house advocacy teams Scotland.

New Consultant

Rhona Wark, a highly experienced commercial litigator and employment lawyer joined BTO in September 2016. Rhona's practice includes advising individuals and businesses across a broad range of sectors from financial services, to property, construction and retail.

Congratulations to **Rhona Cameron** of our personal injury team, **Kelly-Anne Harkins** of our Residential Property team and **Jamie Reekie** of our Commercial Dispute Resolution team, who were all appointed as Senior Solicitors in November 2016.

News

BTO moves into “Faslane”

In April 2016, BTO officially opened its office in Faslane naval base. At Faslane, BTO provides legal services to serving and retired members of the armed forces, civilians working at the base and contractors. The office is manned currently by **Denise Laverty**, an accredited specialist in family law who is qualified as a solicitor in Scotland, England and Wales.

ARMED FORCES LEGAL ACTION
SHOWING OUR SUPPORT

Laura joins board of Scottish Cyber Security Organisation

In October 2016, **Laura Irvine** was appointed as a director of the **Scottish Business Resilience Centre** (SBRC) due to her experience in cyber security law. Laura is a criminal Solicitor Advocate and associate in BTO’s Data Protection Defence Team. She is also a regulatory lawyer with experience of all aspects of the criminal justice system. The SBRC is a unique organisation, providing liaison between Scottish Government, Police Scotland and business, the objective of which is to *‘create a secure Scotland for business to flourish in’*. Laura has been a guest speaker at many high profile cyber security conferences in the past 12 months.

Scottish Business Resilience Centre
Creating a secure Scotland for business to flourish in

Best results yet for BTO in latest Legal 500

We are delighted to announce five top-tier rankings, three new rankings and advancements within seven legal categories in the latest edition of The Legal 500. Tier 1 rankings include: personal injury (defender) which goes “the extra mile to get results for its clients”, professional negligence and medical negligence (defender), which provides an “excellent and personalised service.” The leisure and hospitality team achieved tier 1 status in the real estate category and our health and safety team is rated “top of the pile”.

The LEGAL 500
UNITED KINGDOM
LEADING FIRM
2016

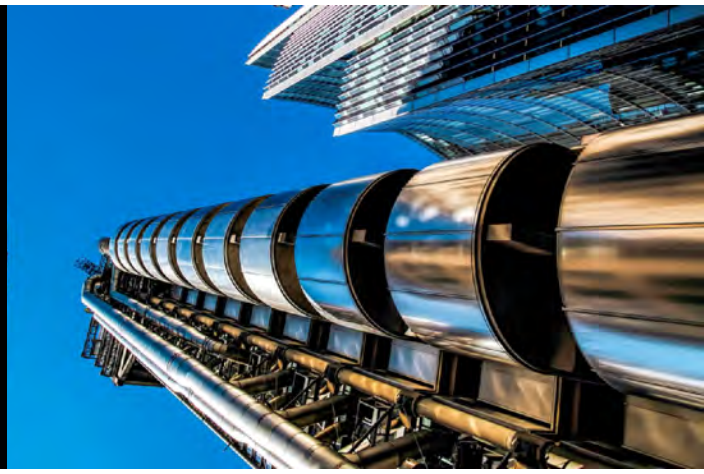
Lindsay masters internet law

Lindsay Urquhart graduated with an LLM in Internet Law and Policy in November from the University of Strathclyde. This qualification has given her a more comprehensive knowledge of the regional and international issues affecting tech, intellectual property, ecommerce, data privacy and domain disputes. Lindsay’s very topical dissertation focused on developments in data protection law. Congratulations Lindsay!

Events & Conference Highlights

Scottish Summit: Lloyd's of London

On 19 May 2016, BTO's insurance team hosted **The Scottish Insurance Summit f**or a range of professionals working in the insurance sector. Speakers covered a variety of topics, including: Employers' Liability, Think Cyber - Think Resilience, Secondary Victims: Does the law reflect the times? and Health and Safety Update: Individuals in the Dock.



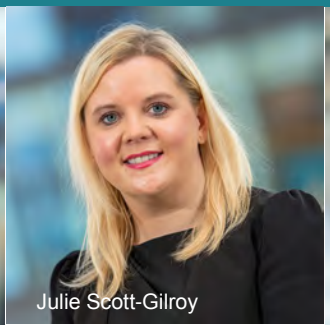
Could the Fringe be a fraud fest for cyber crooks?

In August, **Paul Motion**, Solicitor Advocate and head of BTO's Technology and Data Defence teams, returned to the Edinburgh Fringe to spotlight growing cybercrime risk in the entertainment industry. Paul identified areas of risk affecting performers, managers and visitors at the Fringe and provided suggestions to effectively manage this risk.

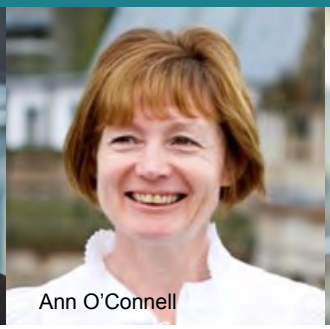
Knowledge exchange

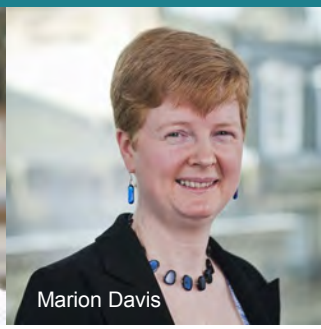
Representatives from BTO's Construction and Engineering team have been guest speakers at several key events this year. **Caroline Earnshaw** and **Julie Scott** were invited to speak at the Annual **RICS Construction and QS Conference** in Glasgow in April. **Claire Mills** provided a workshop at the launch of **CITB** client based approach guidance for the use of community benefits in construction contracts with a discussion on the best way to maximise the use of community benefits**.** Our consultant and accredited construction law specialist, **Ann O'Connell,** presented *The New JCC and SBCC 2016 Construction Contracts – A User's Guide* at a recent sector conference. **Marion Davis**, an accredited specialist in charity law, has been much in demand for her training sessions in charity law and governance matters.


Caroline Earnshaw


Julie Scott-Gilroy


Claire Mills


Ann O'Connell


Marion Davis

Events & Conference Highlights

Claims Club Summit

BTO's insurance team sponsored the Claims Club Summit in London in October. Post's annual conference is a key event in the insurance claims sector bringing together the industry's biggest names to debate up-to-the-minute topics.

Bill Speirs manning BTO's stand.

Succession planning

On 28 November, the Federation of Master Builders hosted its Scotland Networking Conference, celebrating 75 years of the FMB. BTO's **Ross Brown** was a guest speaker briefing FMB members on succession planning.

Ross Brown (Services for you and your family team) Sandra Cassels (Head of BTO's Construction & Engineering team) and FMB Scotland President

When media stops being social...

BTO sponsored and exhibited at the **Property Managers Association Scotland Conference** on 12 November 2016. Solicitor Advocate **Laura Irvine** was a guest speaker discussing: "*When Media Stops Being Social…Property Management and the Twittersphere.*" She was supported by colleagues Grant Hunter and David Young of the firm's Property Management Services team.

Mock Court – Senior School Competition

This year litigators **Stephen Waclawski, Jamie Reekie** and **Lewis Richardson** volunteered as tutors for the Scottish Schools Seniors Mock Courtroom project - a competition run by a charity led by Gerald Murphy of Chamberlain McBain. Schools involved were: Leith Academy, George Watsons, Falkirk High, Dunbar Academy, Ross High, St Mungo's Academy and Kirkcaldy High. The Pursuer team from Kirkcaldy High was crowned the overall winner. Well done!

Golf Outing at Glenbervie Golf Club 2016

IoD Dinner

David Hoey, Chairman of the **Institute of Directors for Glasgow and the West** was Master of ceremonies at the recent IoD Scotland Annual Conference Dinner at Gleneagles. David, who is an accredited specialist in employment law has also continued to provide regular training sessions for various Chambers of Commerce in order to support the Scottish business community.

Insurance Institute of Manchester Dinner 2016

Festive drinks at Blythswood Square Hotel

Quarriers Noel Lunch

Sponsorship

In June 2016, BTO sponsored the **"All the wonderful things"** exhibition at Gayfield Creative Spaces in Edinburgh, where artists sold their art to support the charitable work of Art in Healthcare. The charity improves the healthcare experience of people across Scotland with displays of visual art in hospitals, treatment centres and care homes. Artists included, among others, Barbara Rae, Matthew Draper, Kate Downie and Toby Paterson.

Margaret O'Connor (Chief Executive, Art in Healthcare), Duncan Mawby (BTO partner), Lesley Gordon (BTO partner and Board member of Art in Healthcare), Sandra Cassels (BTO partner), Ann Oram (Artist), Hilary Mounfield OBE (Chair of Art in Healthcare Board), Sarah Knox (Artist), Shonagh Ure (Harpist) and Emily Learmont (Artist).

"Summer" by Ann Oram

BTO also sponsored the creation of an original work of art by Ann Oram. A limited edition of 75 prints of "Summer" was launched at the exhibition and all proceeds from sales of the print will support the work of Art in Healthcare. Alan Borthwick, BTO's chairman, said: *"We see sponsoring 'All the Wonderful Things' as a great opportunity to support artists and Art in Healthcare in its aim to create inspiring environments that will have a positive impact on the wellbeing of patients... We wish the charity every success in its fundraising efforts."*

Edinburgh Art Fair

On 17 November, BTO hosted drinks and canapés in our Edinburgh office before a trip to the private view of the **Edinburgh Art Fair** at which Art in Healthcare provided artist talks and demonstrations.

The sponsorship agreement between BTO and the charity has attracted a New Arts Sponsorship Grant from Arts in Business Scotland using funding provided by the Scottish Government via Creative Scotland.

Thank you for your support!

art in healthcare

Arran Cycle

A BTO team braved gale force winds and challenging hills to cycle round Arran for **Alzheimer's Scotland** on 3 September. So far this year, the firm has raised **£5693.97** for the charity. Congratulations to all who have contributed to raising these funds!

We've got SOUL

BTO is delighted to continue its sponsorship of the Scottish Orienteering Urban League. This partnership has been a great success and will continue into 2017 with many urban races already planned.

Partners David Hoey, Grant Hunter, Paul Motion and Marianne McAvenna (Marketing Manager)

It's goodnight from me and goodnight from them

Finally, some of the partners and I hijacked the news studio at STV recently and I was in charge for once. The studio is very compact in reality and a lot less intimidating than you'd think. Perhaps a career change is on the horizon for some of us….although phones haven't started ringing yet!

In the meantime, thank you for taking the time to read our newsletter. We hope that you have enjoyed it and we look forward to working with you next year. On behalf of all at BTO, best wishes for a peaceful and prosperous 2017.

Best wishes
for 2017
from all at BTO!

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