

TUPE 2006

New Transfer of Undertakings (Protection of Employment) Regulations (TUPE) came into force in April 2006. The new Regulations will affect all business transfers as well as changes in service provision e.g. a contract cleaning service.

While most of the Regulations do no more than codify developments arising from the Courts and Tribunals following the 1981 Regulations, there is some new law which requires the transferor to provide certain information to the transferee.

The required information includes employees' names and ages as well as contractual terms, disciplinary records and information of any Court or Tribunal case, claim or action which the transferor has

reasonable grounds to believe an employee may bring against the transferee arising out of the employee's employment with the transferor.

Where a transferor fails to comply with the new duty of notification by not providing the information or by providing deficient information, the transferee can complain to an Employment Tribunal which can make an award of compensation. The Regulations provide that the minimum amount of compensation must be £500 per employee in respect of whom the duty to inform arose.

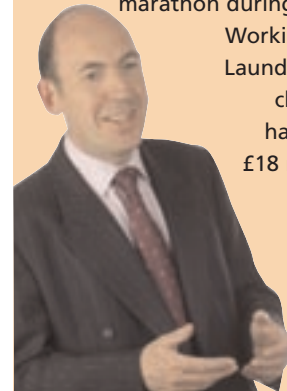
At this level, compensation costs can quickly mount for the transferor so it is essential that any information prepared for a transferee is accurate, up to date and full.

John Morris was part of Law Society's Employment Law Committee which advised the Government on the new legislation. He has written a guidance document on the new regulations - 'TUPE Regulations 2006 - Key Issues' costs £150 plus VAT.



£18 million supermarket sweep

Burnetts' John Noctor was at the helm during a recent deal which saw the sale of a key site on Cumbria's west coast to supermarket giant, Tesco. Two years of talks culminated in a 12 hour negotiation marathon during which Workington's Laundry Field changed hands for £18 million.



John Noctor

Discipline & Grievance Seminar



Burnetts is working with two of the North East's leading event organisers, Weightman Associates and People Resource Consultancy to deliver a short course on "How to Handle Discipline & Grievance at Work". The one day course runs from 9.15 am to 4 pm (with a lunch provided) on Wednesday 14th June, 2006 at Carlisle Racecourse and costs £195 plus VAT per delegate.

Client Survey

Thank you to everyone who took part in our client survey at the end of 2005. The results have been very useful in helping us set priorities for the year ahead. The winner of the prize draw was Lynn Whinn of the Houghton Nursery Group. We are keen to keep our focus on communicating with clients - another survey will take place in December 2006.

CCF Corporate Members' Evening

Burnetts will be co-sponsors of the Cumbria Community Foundation's Corporate Members' Evening at Carlisle Cathedral in July 2006.

Since 1999, the Cumbria Community Foundation has grant-aided over 1,600 organisations and over 1,200 individuals through distribution of £4.4m in grant aid.

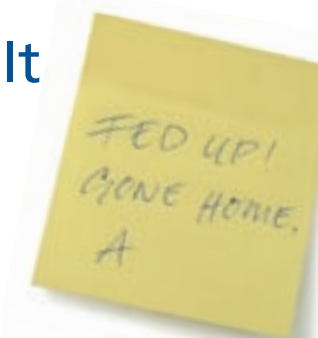
Along with H & H, Burnetts is sponsoring a night of energetic Eastern European music as part of the city's Summer Music Festival. As well as exciting music, the charity's corporate members will also enjoy a light supper at the nearby Fratrty.



A biannual update for Burnetts commercial clients

June 2006

Beware the Post-It Note Grievance



John Morris, Burnetts Senior Partner has issued a strong warning to employers not to be caught out by new employee grievance procedures after recent Employment Appeal Tribunal judgements.

There have now been several rulings against employers who had not appreciated that any written complaint from an employee would have to be treated as an official grievance, whether or not that had been the employee's intention.

New statutory procedures for dealing with grievances were introduced in October 2004. The aim was to give the grievance procedure more credibility with employers and to encourage parties to resolve their differences without litigation. Under the new legislation, an employee cannot pursue claims, like

discrimination or constructive unfair dismissal, against their employer in a Tribunal unless they have previously raised a written grievance.

John Morris is Head of the firm's Employment Law department and a member of the Law Society's Employment Law Committee. He said, "Employers should be aware that any complaint in writing should be treated as an official grievance and potentially the basis of an Employment Tribunal claim. It does not matter whether the written complaint is a letter, memo, email, text message or even a Post It note! Nor does it matter if the complaint is 'concealed' in a more general or even a positive document."

He continued "My advice would be to err on the side of caution - if employers receive a complaint in writing from an employee, it should be treated as a grievance and should trigger the three stage grievance procedure."

If a grievance is not recognised or is ignored, it could give rise to a complaint of constructive unfair dismissal and, in any event, any award made by a Tribunal in favour of an employee must usually be increased by 10% and may be increased by up to 50%.

Burnetts is co-hosting a seminar on Discipline & Grievance in June. See the back cover for details.



John Morris

Reception Celebrates Growth

In March, Burnetts hosted a special reception to celebrate the growth and re-location of one of its leading teams. The Medical Law team of Burnetts Solicitors has moved from the city's Victoria Place to purpose-built offices at Rosehill. The move will allow the team to double in size and will make practical improvements for clients.



As well as needing more offices for specialist lawyers like the team's new expert, Ruth Keenleyside, the extra space also means there is room to store the huge volume of paperwork which supports each client's case. Most importantly, the Rosehill office is fully accessible to disabled clients.

Representatives from local charities, voluntary sector organisations and local businesses were amongst those who attended the reception.

Solicitor Julie McCallion has also joined the Medical Law team.

Also in this issue..

- Cosy Smoking Shelters
- MBO Advice
- Meet Civil Kerry
- New TUPE legislation

New Education Contract Secures National Ranking

Burnetts secured third place ranking in the national league table of legal advisers to the further education sector earlier this year.

The employment law team was awarded a three year contract to provide legal advice to Sandwell College. The West Midlands College has over 15,000 students and employs more than 800 staff.

Burnetts was awarded the contract following a fiercely competitive formal tender process. Senior Partner, John Morris is himself a nationally recognised authority on employment law. He said, "Burnetts has built up a strong reputation for its employment expertise and is now one of the top three legal firms in England for advising the further education sector."

"Because of the number of staff they employ, most colleges need a robust team of employment lawyers for support and advice so we were successful because we had such relevant expertise - our education clients often call upon us, not only for employment disputes and training, but also for drafting contracts to the standards needed for specialist areas such as compliance with Articles of Government."

Burnetts Employment department includes Partners, John Morris, Kuba Strycharzyk and Joanne Stronach, and Associate Solicitor Natalie Ruane.

Burnetts currently advises 10 colleges of further education and holds the number three position in the Further Education Sector Legal Adviser rankings behind national giants, Eversheds and Birmingham's Martineau Johnson. The tables are produced by Caritas Data for their annual Further Education Financial Yearbook.

From left to right; Kuba, Natalie, John and Joanne.



For further details of education sector, adviser rankings visit www.furthereducation-online.com



Firm gets Future Proof

Burnetts is preparing for the future with a quartet of promotions to bring enhanced energy to its partnership.



Head of our Agricultural Department, William Green, has been promoted to Partner, while Joanne Stronach, an employment solicitor, becomes the firm's youngest Partner.



Victoria Watson, a clinical negligence lawyer, is upgraded to Associate Solicitor as is Alex McKnight, a litigation specialist.



Tom Leach, Burnetts Managing Partner said, "The appointment of new partners is about recognition as well as preparation for the future. William has made great progress in the establishment of the Agriculture section at Rosehill and is very well thought of by other professionals. Joanne is highly regarded by her clients and has established a high profile in the area through her involvement in local business organisations."

From top to bottom; William, Joanne, Victoria and Alex.

Civil Kerry Joins Litigation Team

Edinburgh born, Kerry McAdam has joined the firm's Civil Litigation department.



Kerry, 33, graduated from UCLAN in Preston before completing her Legal Practice Course at York's College of Law. She qualified in 2005 after completing her training contract at another local firm, Hough, Halton and Soal.

The diversity of the work within the Civil Litigation department attracted Kerry to Burnetts. She said, "It's a huge area of law which covers every kind of dispute - you can face novel legal problems daily. There is also plenty of contact with clients. For me, that's excellent since working with people is a part of the job I really enjoy. Whether you are working for an individual or a business, helping clients to resolve a dispute is rewarding as well as challenging."

Post-flood wrangles with builders over shoddy construction work, inheritance claims and commercial contract disputes have all increased the level of work in Burnetts' Civil Litigation department. Kerry, whose position was newly created to deal with the department's growth, will be working on disputes for individuals and small businesses.



Kerry McAdam

MBOs Need Experienced Advisors



Management Buy Outs (MBOs), the process by which a business is bought by its existing management, are increasingly common as global companies continue to re-structure and streamline their businesses. They can be an excellent opportunity for an experienced local management team to take control of the business they run. Nonetheless, seeing through an MBO requires huge commitment from the management team and can be a complex process. Skilled legal and financial advisors are essential as Cumbria businessman David Foster recently discovered.

A local financial adviser with C H Jeffries (Pensions and Financial Planning) Ltd for 20 years and managing director for 10, David Foster decided to buy the business after Willis Group, which bought the independent brokers in 2004, decided it did

CH Jeffries logo to come

not require the pensions and financial planning arm of C H Jeffries as part of its local operation.

With the guidance of David McGill of Burnetts and Alison Watts, Corporate Finance partner at Armstrong Watson, David entered into talks with the Willis Group and, after months of negotiations, a deal was completed which has successfully ensured the future of the Cockermouth business and kept it within the regional economy.

David McGill from Burnetts said, "Due to the nature of an MBO it is essential for a member of the management team to take both financial and legal advice. It is vital that the team appoints competent lawyers with an established management buy-out track record. The legal documentation involved in an MBO can be complex despite (and often because of) the MBO

team's detailed knowledge of the company concerned"

He continues, "The MBO process requires careful management as the MBO team is negotiating with its employer and, if the deal falls through, this can make future working relations difficult. A good team of advisers can often take the heat out of the situation and avoid much of the personal friction which may arise when negotiating terms with employers."

Willis continues to support the Cumbrian region through the growth of its general insurance business from its local Cockermouth and Carlisle operations.

The Bank of Scotland's website at www.bankofscotland.co.uk/corporate/finance/ has a useful FAQ section on MBOs.

Cosy Smoking Shelter Might be Costly



Burnetts' Alan Chapman is warning businesses not to rush into buying cosy new smoking shelters ahead of next summer's smoking ban.

Partner, Alan said,

"The forthcoming ban on smoking in enclosed public premises will affect every business. Fortunately, the experiences in Scotland are giving us a good indication of some of the problems English businesses might face. The main issue appears to be confusion over what legal smoking facilities can be provided."

Under the Health Bill 2005 - 06, it's proposed that it will be an offence to smoke or to allow smoking in enclosed public premises, designated places, and also in vehicles from the summer of 2007.

Shelters which do not meet the legal requirements are those which are wholly or substantially enclosed. There are already websites selling smoking shelters as a "solution" to the ban, but says Alan, some of the structures on offer would constitute enclosed premises and wouldn't be legal. If you want to provide a shelter, Alan advises extra care to ensure it will comply with the statutory requirements.

Failure to prevent smoking or to display "no smoking" signs will both be offences under the new law as will the act of lighting up itself. Enforcement officers will be able to issue fines of up to £50 for individual smokers or £200 for the owners / operators of premises.

Contact Alan Chapman or James Stables for further information.



Alan Chapman