

East Midlands

Finance Leaders

INTELLIGENT PERSPECTIVES FROM BREWSTER PARTNERS RECRUITMENT GROUP | ISSUE 1 • APRIL 2020

Why are employers who pay
the National Minimum Wage
still being fined by HMRC?

The 'F' Word...

Furlough

and what it means
for businesses

by Emma Tice, Partner, Employment Law
and HR, Geldards LLP

What makes you unique?

In this first edition we speak to Mark Lister, Finance Director of Sherwin Williams and Michelle Cook of Wolffkran who offer us a fascinating insight into their professional journey to date.

In this issue...

Geldards
law firm

WOLFFKRAN



SHERWIN
WILLIAMS

WALKER
MORRIS



CASTLE
SQUARE
CORPORATE FINANCE



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In this issue...



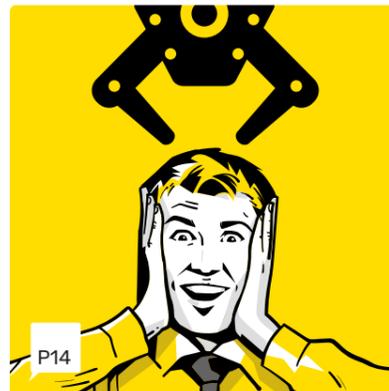
P4

The impact of Furlough and other employment law changes
by Emma Tice, Partner, Employment Law and HR, Geldards LLP.



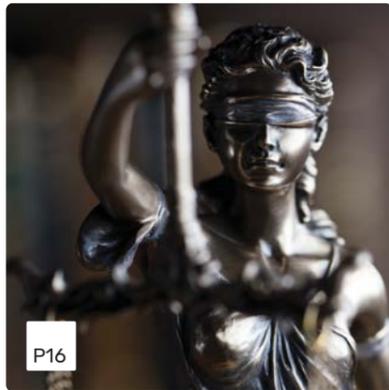
P10

What makes you unique?
Michelle Cook, Head of Finance, WOLFFKRAN Ltd



P14

The benefits of an effective recruitment & selection policy
by Chris Burns, Client Director, Brewster Partners.



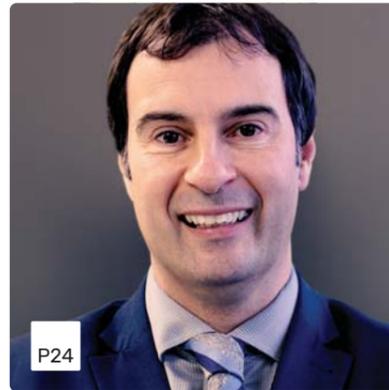
P16

Why are employers who pay the National Minimum Wage still being fined by HMRC?
Employers are suddenly struggling to comply with the regulations that govern it.



P20

Funding Markets
Kevan Shaw, Castle Square Corporate Finance talks to us about the Mergers and Acquisitions markets in 2019.



P24

What makes you unique?
Mark Lister, Regional Finance Director, Industrial Wood (Europe) Division, Sherwin-Williams.

What's happening?

A warm welcome to our very first edition of East Midlands Finance Leaders (EMFL). Brewster Partners as a business will be well known to many of you, but a new name to others. We have been a leading recruitment partner and trusted advisor to Finance Professionals across Yorkshire & Humberside for almost 10 years, and October saw us open our first East Midlands operation in Castle Donington, where we are ideally placed to work with candidates and clients right across the East Midlands region.

I find myself in the strange position of writing this introduction for the second time in three weeks, which is testament to the impact the COVID-19 pandemic has had on every aspect of our personal and professional lives. We have witnessed a huge economic impact, both globally and locally, and as finance and business leaders, we have had to tackle unprecedented challenges for ourselves, our staff and our organisations.

Undoubtedly the impact has been significant and in terms of timeline, particularly steep. The concluding

and hospitality with the possibility of extended lockdowns in these areas.

It is easy to be pessimistic in these times, but those of us who experienced the last global slowdown in 2008, know that taking quality advice and positioning our businesses to bounce back will be key. Here in the East Midlands, we had seen our economy in a relatively strong position coming into 2020, with our region officially the fastest growing regional economy in the UK in 2019. The results of the General Election and clarity on Brexit led to many of our clients in the region

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weeks of March saw nearly a million new applications for Universal Credit and the BBC estimate that more than 9 million workers will be furloughed in April under the Governments' Job Retention Scheme.

Having spoken to many of our clients and candidates, there is a huge amount of uncertainty with regards to the short-to-medium-term economic outlook. While most experts agree that the UK economy will rebound in 2021, estimates on the remainder of 2020 vary, initially depending on the length of our current lockdown. PWC estimate an impact on GDP of between -4% and -8%, having previously predicted growth of 1% before COVID-19. This is expected to vary by sector, with potentially bigger implications in transport, leisure

reporting 'firmer market confidence'. The eventual return to improved global trade will certainly help contribute to what we hope will be an equally steep return to economic recovery.

I would personally like to thank everyone who has contributed to this first edition. We hear from Emma Tice, Employment Partner at Geldards LLP who talks more about the details of Furlough, contractual changes and returning to work, as well as a recap on the April Employment Law changes.

We also feature articles from Mark Lister from Sherwin-Williams, Michelle Cook from Wolffkran, Laura McLellan and Andrew Rayment from Walker Morris LLP as well as Chris Burns from Brewster Partners.



Ian Machell

Ian Machell,
Director & Head of Midlands Region
Brewster Partners Recruitment Group
E: imachell@brewsterpartners.co.uk

I hope you enjoy our first edition of EMFL and find it an interesting read. Should you have any feedback or suggestions for future editions of this magazine please don't hesitate to get in touch.

Keep Safe • Stay Connected

THE ONE ABOUT

The impact of Furlough

and other employment law changes



by Emma Tice, Partner, Employment
Law and HR, Geldards LLP



Last year saw a pretty quiet year for employment law, all things considered, as we were inundated with issues surrounding Brexit. We were then hit with the coronavirus pandemic early 2020, which further concealed these changes. But they have now come into force nevertheless, all apart from one anyway.

The result of that is that a number of relatively significant employment law changes have snuck their way in as of April this year and have done so under many people's radar. Are you sure that your business has captured and accounted for all of the changes? Well, read on to make sure...

In employment law terms April is usually our busiest point of the year, with a lot of new changes coming into effect around this time. This year has been quite exceptional, to say the least.

What changes have come in?

Quite simply they break down into two categories, the usual annual changes and then exceptional one-off changes.

What usual annual changes have come in?

We see the usual increases in national minimum wages and also increased to many statutory payments. The headlines are set out below:

- **National living wage** – for workers aged 25 and over increased to £8.72 per hour
- **National minimum wage** – for 21-24 year olds increased to £8.20 per hour
- **National minimum wage** – for 18-20 year olds increased to £6.45 per hour
- **National minimum wage** – for 16-17 year olds increased to £4.55 per hour
- **Apprentice rate** – for those under the age of 19, or in the first year of an apprenticeship increased to £4.15
- **Accommodation offset** increased to £8.20 each day.

We also see many statutory rates increase at this time each year. This year the maximum weeks pay for the purposes of calculating statutory redundancy pay has increased from £525 to £538; the statutory guarantee pay (paid to those who may be laid off) increased to £30 per day; and the maximum amount of the compensation awarded for loss of earnings in a successful unfair dismissal claim rose to £88,300.

What exceptional changes have come in?

Where do we start? There are many. I will take you through them on the next few pages *(in a nod to the reported Friends reunion that we will see later this year – hopefully)*

The impact of Furlough and other
employment law changes continued

The 'F' word one

A whole new principle has been created in employment law since March 2020 called Furlough. This had never been seen in the UK previously, although it is common in the United States.

Furlough
update

Essentially this is similar, although not the same, as lay off. During a period of furlough an employee cannot do any work. They can have contact with their employer, can do volunteer work and can complete training. It is important to keep in touch with your employees, even when they are on furlough.

In order to be furloughed an employee, this is a change of contract (as no work and likely reduced pay). Therefore you must make sure that you go through an appropriate process with your employees. You must also ensure that you have agreement from employees to furlough in writing. This is important to be eligible for reclaim from the Government but also from a normal employment-law perspective.

The Government has also introduced a scheme called the Coronavirus Job Retention Scheme (the Scheme), in order to cover some costs of furloughed employees. Under the Scheme you can reclaim 80% of an employees usual wage costs, up to a cap of £2,500. This is calculated differently depending on whether an employee has normal pay or if their pay differs. For the former, you take the salary as at 28 February 2020. For those whose pay differs, you need to take the higher of the same month in 2019 or the average earnings over the 2019/20 year. We have received additional guidance to confirm the following:

- You can claim for regular payments that you are obliged to pay. This will include car allowance, regular overtime, compulsory (or contractual) commission etc.

- Furlough pay is still subject to PAYE and NICs.
- Employer's NIC and auto-enrolment pension contributions can also be reclaimed from the Government.
- For employers who pay enhanced pension contributions, coronavirus is classified as a 'life event' and so amendments can be made to contributions during this time – remember to get agreement in order to vary the contract of employment in this way.
- Furlough has to be for a minimum period of 3 weeks. It seems possible to bring an employee back into work for a period and re-furlough them, provided the re-furlough is again for a minimum period of 3 weeks.
- Only employees on the payroll (or TUPEd in after) 28 February 2020 are eligible under the Scheme.
- We think that employees can take holiday during furlough, without breaking the furlough but that this would have to be paid at full pay, and so the employer must 'top up' pay for periods of holiday.
- The claims would be made by the company via an online portal, which should be open from 20 April 2020 with first payments being made by the end of the month.
- At the time of writing, precisely how you claim or how often you can claim remain unclear, but what seems clear is that you should be able to claim for payments up to 14 days in advance of you making the payments to the employees.
- Employers may choose to 'top-up' pay to 100% but they don't have to – this is the Company's choice.

This is a complex new introduction to UK employment law, and it is worthwhile taking advice on it.

The 'BIG' one (IR35)

This was a topic in itself and is a complex area in itself. It was scheduled that from 06 April 2020 the off-payroll working rules that currently apply to the public sector would be introduced to the private sector.

It has been confirmed by the Government that this has been postponed, and instead will come into force in April 2021.

This is a welcome extension on this complex area anyway, which would have been almost impossible to prepare for with the current COVID-19 situation.

So, watch this space on this one... it will come in 2021!



Your business will be caught if it fulfils two of the following:

- A turnover of £10.2 million or more
- A balance sheet total of £5.1 million or more
- 50 or more employees

The Information and Consultation One

Information and consultation thresholds relate to the minimum number of employees (as a percentage of total number of employees) who must request for the employer to negotiate an agreement on informing and consulting its employees.

The form that the information and consultation agreement takes is subject to negotiation and agreement between employer and employees. It could be a formal works council or collective agreement with a trade union type arrangement or something less formal altogether.

Prior to 06 April 2020 the threshold required for a request to set up information and consultation arrangements is 10% of employees, subject to there being a minimum number of 15 employees.

From 06 April 2020 this threshold has been lowered to only 2% of employees, but still subject to the 15 employee rule.

The reason for the reduction in the percentage of employee support required, is because the Government believe that high levels of employee engagement improve organisational performance and productivity, and lead to more fulfilling work – a common theme in the Good Work Plan.

The statutory sick pay one

Given the coronavirus pandemic, the Government have made temporary changes to the legislation dealing with statutory sick pay for employees who are self-isolating due to either having symptoms (7 day period) or a member of their household having symptoms (14 days).

Clearly if staff can work from home they may be able to still work if well enough. However if they can't, then the Government have confirmed that SSP will be payable from day one, rather than having the usual three waiting days before SSP is due.



It is important to note that these enhanced SSP provisions are applicable to those employees who are self-isolating. This does not apply to social distancing or shielding. There is an important difference. Those vulnerable employees who may be shielding or those of us who are now in social isolation due to lock down cannot claim SSP – only if we are formally self-isolating due to ourselves or a member of our household displaying symptoms.

The Termination Pay Tax One

The changes relating to pay in lieu of notice (PILON) and post-employment notice pay (PENP) came in two years ago now.

Essentially this means that even if you don't have a PILON clause in the contract, and you make a payment to the employee after their employment comes to an end, you must tax the amount that the notice pay would have been. It closed a loophole where such payments could be made tax free.

From 06 April 2020 we have seen further restrictions in the way terminations payments are treated for tax purposes.

The £30,000 exemption will still apply – that is (subject to the above) the first £30,000 of genuine compensation for loss of employment is tax free.

Previously anything over that would be subject to tax only and not national insurance deductions. However, for any payments made on, or after 06 April 2020, any amounts over the £30,000 exemption will be subject to both tax and national insurance deductions.

The Parental Bereavement Leave One

From 06 April 2020 we have a new right to take family-related leave for those parents who suffer the loss of a child under the age of 18 years old, or a stillbirth from 24 weeks onwards.

The right is to take two weeks of leave, which can be taken together or in two periods of one week. The leave can be taken at any time from the death of the child/stillbirth up to 56 weeks afterwards, most notably this covers the first anniversary of their death.

There are certain notice requirements, which aren't overly onerous, and differ depending on when the worker wants to take the leave. They are a maximum of one weeks' notice for leave taken after the first 8 weeks, but flexibility can be facilitated by the employer (as you would imagine).

This is a day one right, meaning there is no minimum service requirement in order to be eligible for the leave. However, to be entitled to pay they must have been engaged for a period of 26 continuous weeks, or more. Parental bereavement pay is available at either 90% of salary or the statutory rate, whichever is lower.

The legislation also accounts for employees being subjected to a detriment or being dismissed related to this leave, being a stand alone claim in its own right.

Summary

What with Brexit, and then Coronavirus, many of these changes have flown somewhat under the radar, and many employers may find themselves in a position where they haven't accounted for the changes.

If you need any further advice or assistance in drafting new contracts or policies or getting your business into shape, please do not hesitate to contact me.

For anyone who references this article, I will honour a discount to my usual hourly rate.

Emma Tice, Partner, Derby
Telephone: +44 (0)1332 378311
Email: emma.tice@geldards.com



The impact of Furlough and other employment law changes continued

The Contracts of Employment One

Three main changes came into force in relation to the contracts that you have to issue to staff who start work for you.

1. Workers

The first, and arguably the most controversial one, is that not only should contracts (or Statement 1 Statements to be precise) be issued to employees, but from 06 April 2020 if you engage any workers, they are also entitled to be given a contract containing the exact same content as an employee. Now, we shouldn't confuse this with giving workers the same rights as employees – this is not what this change does. It provides for more transparency for workers, to be aware of their rights and obligations. However, don't get caught out – don't give the same contract to your workers as your employees. If you do, you will be at risk of your workers claiming that they are in fact employed and opening a whole new can of worms.

2. Timing

Before 06 April you had to provide the contract within 8 weeks of the employee starting work with you (although I would always have said best practice was to get it issued relatively soon). However, for any new employees or workers you engage, you need to provide their contract to them on or before their first day of work. What this means in reality is that it should go out to them with their offer letter, with a view to them bringing back the signed copy on their first day (at the latest). There is limited information that can be given within the first 2 months of them working for you, but this really is limited.

3. Information

Section 1 of the Employment Rights Act 1996 sets out the information that must be contained in the contract. In short, this has now been extended. This means that all of the below need to be included in the contract, provided to the employee or worker on or before their first day of work:

- Names of employer and employee
- Date that employment starts and period of continuous employment
- Any probationary period – including its duration and any conditions attached to it
- Job title or brief description of the work
- Place of work
- Pay (or method of payment) and interval of payment
- All other benefits provided by the employer
- Hours of work, including normal working hours
- Specific days and times of work – this includes the days of the week they are required to work and whether they are variable. If so, how they may vary.
- Holiday entitlement and pay
- Any other paid leave they are entitled to
- Any training provided by the employer, including whether it is compulsory and whether it must be paid for by the employee.
- Terms related to work outside the UK for a period of more than one month.
- A person to whom the employee can appeal any disciplinary issue to
- A person to whom the employee can raise a grievance to
- Information on the length of time a job is expected to last (if temporary or fixed term work)
- The notice period



This only leaves extremely limited information that can be provided after the person commences work for you. The big changes, meaning many employers will need to re-visit their standard contract templates are the details of ALL other benefits provided by the employer – as many employers will provide benefits not accounted for in the contract; The greater detail required in terms of working hours – meaning you must be more specific and explain how they may vary. This is much more prescriptive; the obligation to include in the contract all other paid leave the employee is entitled to – this will include adoption, maternity, paternity, shared parental, parental bereavement, compassionate and other types of leave (previously contained in the Handbook which now needs reflecting in the contract); Training provided by the employer – this needs to be listed out and realistically will be different for each employee, or at least each type of role – so gone are the days of the one size fits all contract.

It is worth remembering that these changes only affect those staff who start on or after 06 April 2020, and not existing staff. If you haven't changed your templates – this needs actioning now!

The Agency Workers One

As we haven't had many changes on agency workers for a couple of years the Government has decided to give us two for one this year.

1. Key Information Document

The first change is the introduction of a Key Information Document. This is a document that the employment business (i.e. the business ultimately benefiting from the agency worker's services) has to provide to the work-seeker before agreeing the terms under which they will work. Essentially, it sets out a skeleton of the terms they could expect to work under if taken on for the engagement.

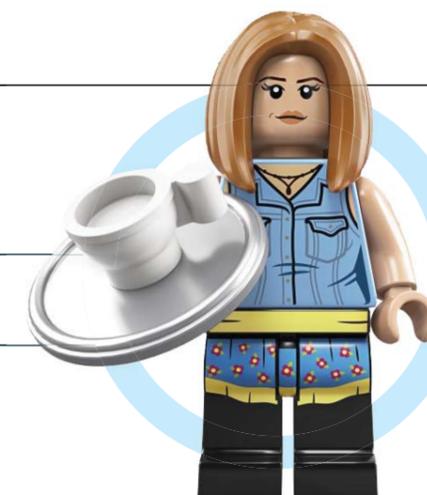
There are a number of formalities that the Key Information Document has to comply with, in terms of its form and how it looks. It must be headed as 'Key Information Document'; it must have a certain wording underneath that heading; it must no more than two sides of A4 in 'readable' size text and font; it must be clear and concise and easy to read; it must be separate to any other document; and the employment business must be

able to evidence that it has been given to worker-seeker.

Thereafter the Key Information Document needs to contain certain information in relation to the type of work, rate of pay, who is paying them and any deductions that will be made to their pay.

The biggest barrier in this will be the requirement for the employment business to evidence that it has been provided to the work-seeker, when often the employment business isn't the one with contact with the work-seeker at that early stage. So, employment businesses will have to be hot on the heels of any agency to ensure that they are passing the document on to their work-seekers.

Employment Agency Standards Inspectorate will enforce compliance with this and so it isn't something to be scoffed at.



2. Removing the 'Swedish Derogation'

Generally speaking, agency workers must have pay parity with directly engaged workers. There is an exception where the so-called Swedish Derogation applies. This is essentially where the worker has a direct and permanent contract with the agency, which exists even between work assignments. If this exists, then the requirement for pay parity dissolves. However, as of 06 April 2020 this exception is being removed and the Swedish Derogation being abolished. You must also inform any affected workers by no later than 30 April of the removal of this.

The Holiday Pay One

Unless you have been hiding away for the last five years, you can't have escaped the Holiday Pay One – this is something that has faced significant scrutiny by our Employment Tribunals over recent times.

The position is now clear that certain elements of additional pay such as bonuses, commission, overtime, on-call payments, standby payments, shift allowances (and the list goes on) should all be considered when calculating holiday pay, if they are intrinsically linked to the job the worker is performing and paid to the worker 'sufficiently regularly'.

The reality is that this has significantly broadened the categories of worker where employers need to calculate average pay for holiday pay, each time that employee takes annual leave – a headache right? Well, we have all just got our heads around this and the fact that if the worker is in receipt of any of the above and you have triggered the need to pay average holiday pay,

then you need to calculate that average over the 12 weeks before that period of annual leave.

Well, from 06 April 2020 this changes again. The reference period is extended to 52 weeks, meaning that you need to take the worker's average pay from the 52 weeks before their annual leave in order to calculate the holiday pay that is due to them. This is still a complex issue and many employers still haven't dealt with the original issue – so a good point to take action. Contracts and policies may need amending due to this change and you will certainly need to amend your method of calculation, to account for the longer reference period.



The Holiday roll over one

Due to the COVID-19 pandemic, Government has also made some new law about carrying over holiday.

You can carry over the four weeks European holiday entitlement unable to be taken due to this pandemic for up to two years. This is in addition to being able to agree to carry over the 1.6 weeks (bank holiday entitlement) for up to one year by agreement, and any enhanced contractual entitlement again as you like with agreement.

This is to ensure that employees don't lose out and also that upon the economy recovering, employers won't have employees trying to bunch holiday together when the employer wants to get them back to work.



WHAT MAKES YOU **UNIQUE?**

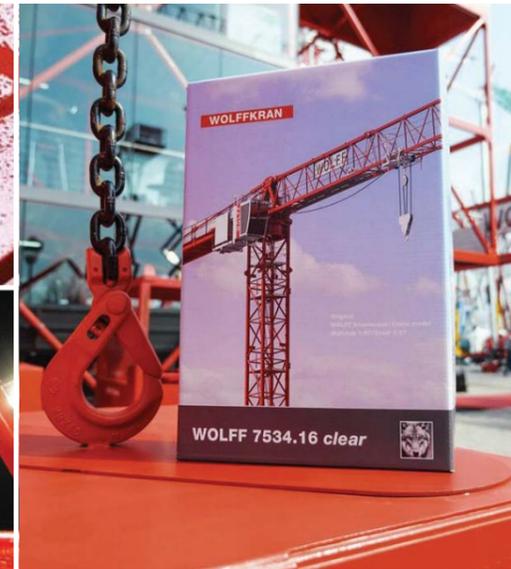
Michelle Cook, Head of Finance, Wolffkran Limited

Michelle has worked in Finance since 1993 and in 2003 joined HTC as an Assistant Accountant. In 2007, she became CIMA qualified advancing to Management Accountant, and in January 2015 was promoted to Financial Controller. From November 2018 she has taken on the role of Head of Finance at Wolffkran Limited.

As the leader of the pack, WOLFFKRAN since sets standards in technology and service, integrates state of the art drive technology in its cranes, and continuously develops new models – for more efficiency and safety during transportation, assembly and operation on the construction site.

With its own rental fleet of approx. 700 cranes, WOLFFKRAN is one of the largest providers in this area today. It underlines the flexibility and dynamism of the crane construction specialist, who serves customers nationally and internationally as a manufacturer and service provider.

What makes you unique? *continued*



Q1.

What lead you to a career in accountancy?

At 18 I was not really sure what career path I wanted to take, my first role was a Receptionist/Accounts Assistant which gave me an insight into Accounts which I found to be of interest to me.

I did not set out with a defined plan to be a Financial Controller, nor Head of Finance for that matter, but I always wanted to learn and accepted when given opportunities for self-development, which in turn resulted in a natural career progression.

Q2.

What made you decide to follow the AAT route rather than go to University/Graduate route?

It was something I just fell into really, it wasn't that I had a preference for one over the other. Again in my first role a colleague of mine recommended doing GCSE Accounts to see if this was definitely the route I wanted to take. After completing this I carried on to do A-level Accounting which gave me at the time exemptions from the first stage of AAT. I wanted to continue my studies and gain the qualification that would open doors to other opportunities. Upon completion of AAT I obtained exemptions from the first stage of CIMA.

I do feel like I had the best of both worlds by gaining working experience whilst studying at the same time.

Q3.

What are some of the major challenges you have encountered during your time at HTC?

I joined HTC in 2003 as Assistant Accountant shortly after the company had relocated to Sheffield. During my time at HTC the company has encountered some phenomenal highs from being exceptionally busy, along with some devastating lows from the aftermath of the economic downturn between 2008 and 2013 sadly resulting in redundancies.

In May 2015 tower crane manufacturer Wolffkran acquired HTC, this was an exciting time for HTC to become a fully integrated part of the Wolff family and not only filled the employees with restored confidence but customers too.

Q4.

What challenges do you think the business will encounter in the next 12 months?

The implications of Brexit for the UK Construction industry still remains unclear, however a no-deal Brexit would cause numerous problems when it comes to importing and exporting goods.

The new VAT reverse charge that will apply from 1st October has caused a few concerns, in particular ensuring that our accounting system is updated to deal with the reverse charge and making sure all staff who are responsible for VAT accounting are familiar with the reverse charge and how it will operate. We also aim to switch to monthly VAT returns to minimise the effects on cashflow.

Q5.

Would you change anything about your career if you had the chance?

I do think I took the long way round with regards to my studies while I was finding my feet; however, the path I chose has been character building and given me an exposure to a variety of roles and duties within the finance department which has given me the tools to coach my team and the confidence to lead the department.

I'm not advocating that we all move to a four-day week but we can certainly take the learning from what these companies are doing with smart work and smart rest.

Q6.

What advice would you give anyone considering accountancy as a career?

Get as much exposure to different roles and gain as much experience as possible and from this you will understand what you are good at and find the role to which you are best suited.

I always advise my colleagues to take every opportunity for self-development that is available to them whether that be training courses, as Wolffkran is very supportive in offering its employees training which benefits both the company and the individual, or gaining experience in learning different roles by offering to help another member within the team during busy periods.

If your focus is more on what you can do for a company than the other way round then you will in turn progress in your career.



The benefits of an effective recruitment & selection policy

by Chris Burns, Client Director, Brewster Partners, Accountancy & Finance Recruitment



Recruitment can sometimes be frustrating with all of the policies and procedures that there are to follow. There is a vacancy in your team and you want it filling as soon as possible to get your team back up to full capacity, but it's not always that easy.

Although it can sometimes seem like another hoop to jump through, having an effective recruitment and selection policy ensures a transparent and fair recruitment process that helps HR/Recruitment professionals to select the right candidate.

But what exactly are the main benefits of having an effective and rigid Recruitment and Selection policy:

Transparency in the process

Following policy procedures means that all parties involved are well informed where they are at every step in the recruitment process, thus giving everyone confidence that the end result will be met. Transparency is also very encouraging for a candidate, keeping them informed at every possible point increases their confidence of the business they are about to join.

Allowing for merit-based hires

With an effective procedure in place, the risk of any level of discrimination can be totally eradicated. It means that each application is considered in the same way, regardless of the sex, gender, nationality, race or age of the candidate. It also provides a level of reassurance to the candidate involved as it means they can take legal action at any point if they feel their application is being discriminated against.

Consistency

If a recruitment process isn't consistent naturally it will give inconsistent and inaccurate results. To avoid this it is essential to ensure that the recruitment and selection process is the same for every candidate to prove their effectiveness. We advise that a standardised, pre-developed process it applied at all times. Finally, references should always be taken with every hire, again to achieve a level of consistency.

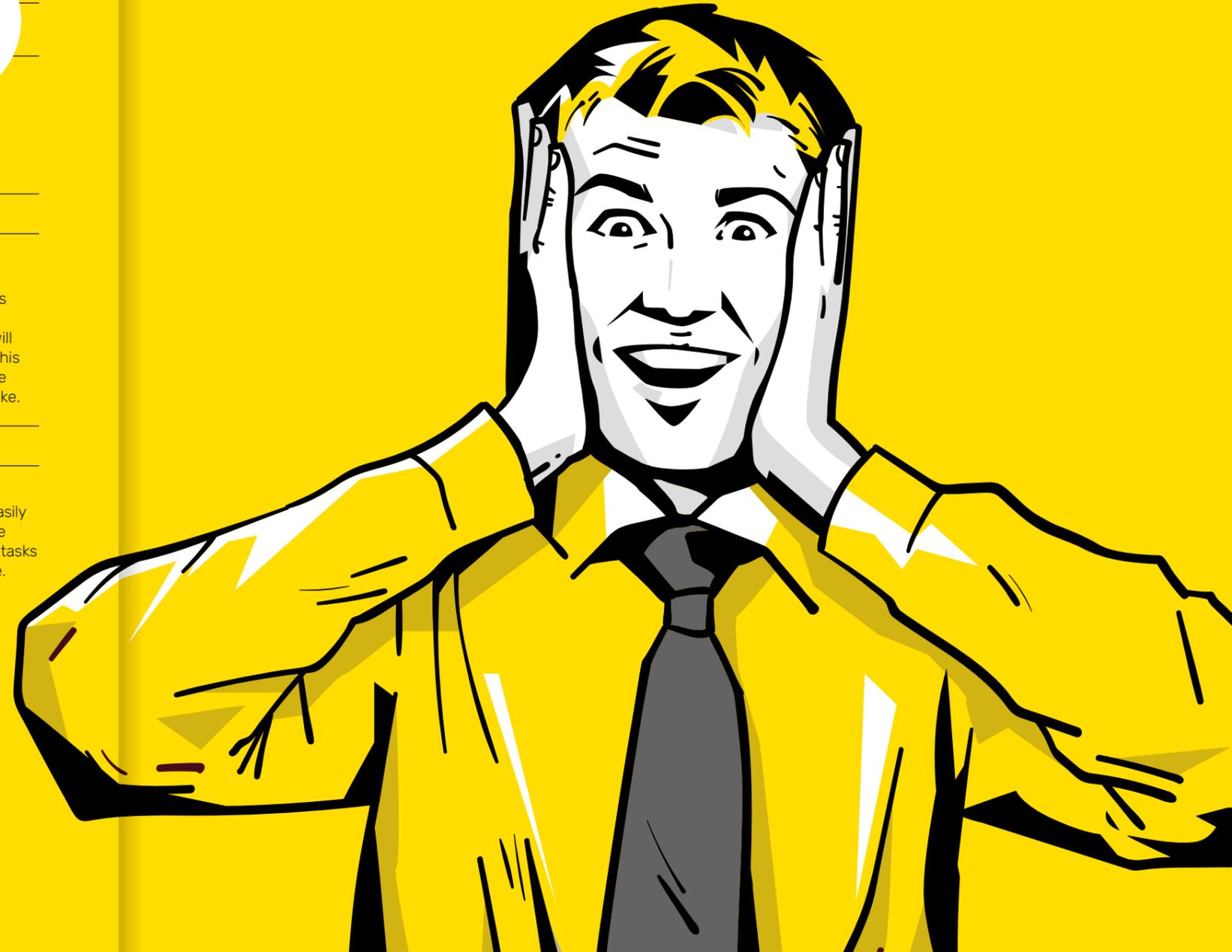
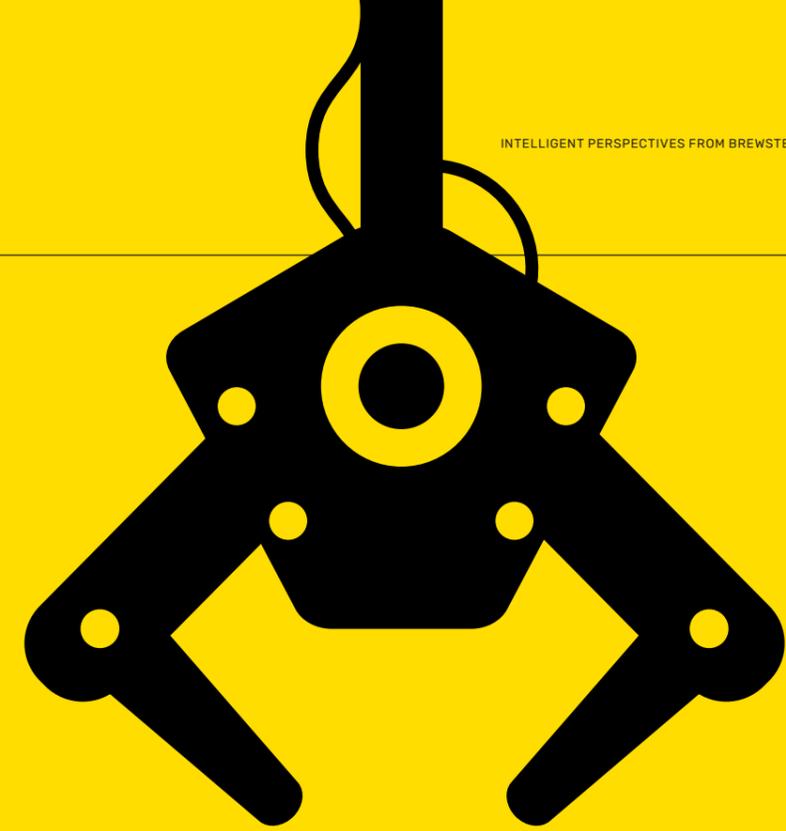
Credibility

When a business is displaying and practicing an effective recruitment and selection policy, it demonstrates to potential employees that they have a high level of credibility and will encourage them to apply. Sadly, in this day and age there are an abundance of companies that transpire to be fake.

Help to write job descriptions

With an effective recruitment and selection process, businesses can easily put together job descriptions that are accurate and clearly highlight which tasks will be performed for a particular role.

In conclusion, recruiting the right staff into your business is crucial as it helps reduce staff turnover and can result in faster growth for your business. A huge part of getting this right lies with a successful and efficient recruitment and selection policy.



Why are employers who pay

the National Minimum Wage

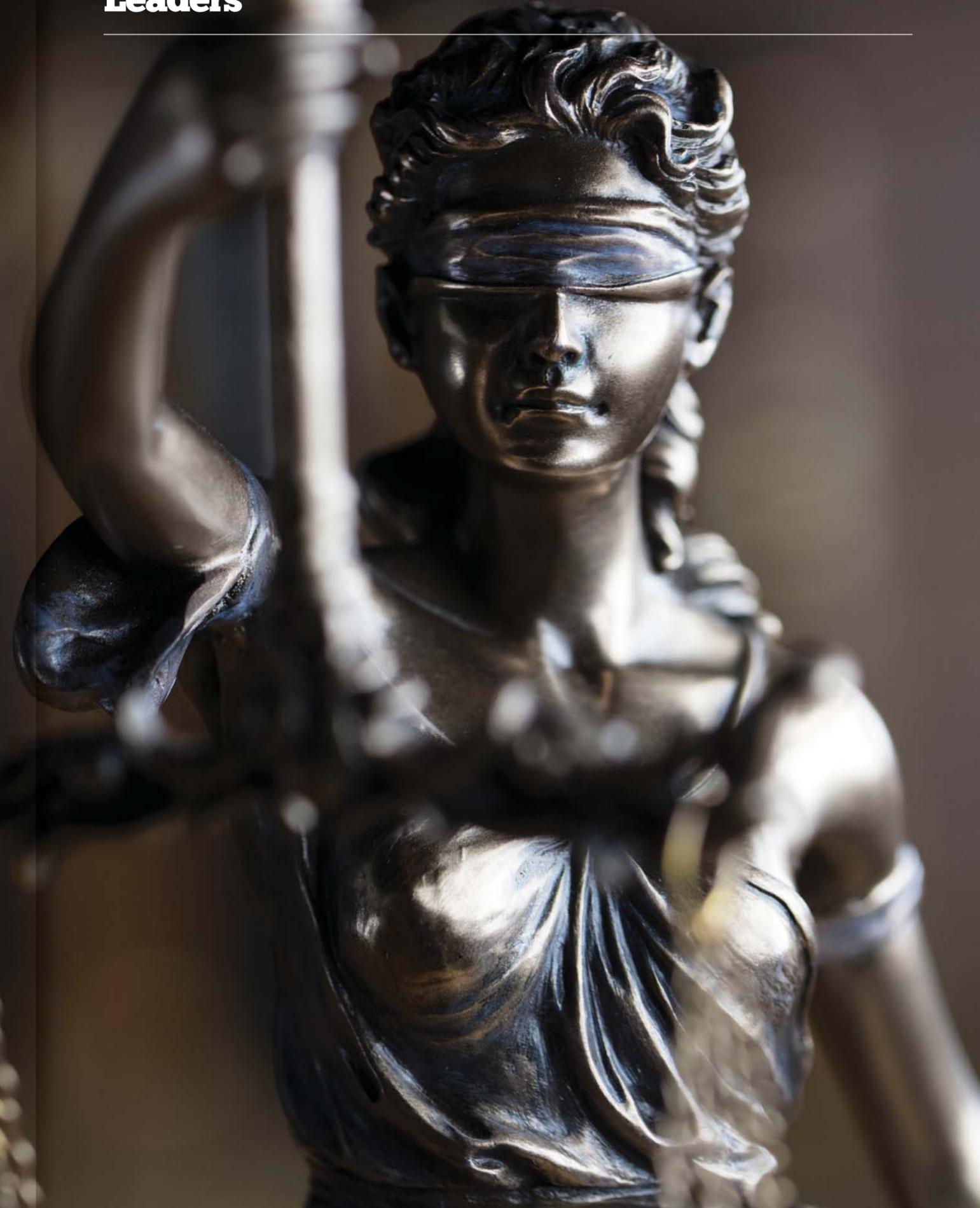
still being fined by HMRC?

The UK's National Minimum Wage (NMW) was introduced 20 years ago, so why are employers suddenly struggling to comply with the regulations that govern it?

Yes, they have become more complicated over that time, there are now five rates: Apprentices, under 18s, 18-20s, 21-24 and over 25s. The rate for over 25-year-olds was rebadged as the 'National Living Wage' in 2016 (not to be confused with the voluntary living wage set by the Living Wage foundation). The NMW rates increase year on year but are well publicised and there should be no excuse for an employer failing to apply the new rates. However, ultimately, it is not that straightforward. The majority of employers who we have seen audited by HMRC (HM Revenue & Customs) for NMW compliance have been fined in some respect, despite paying the correct amounts, and in many cases, in fact paying more.

HMRC has been tasked with auditing companies to ensure compliance with the regulations and has received an increased budget, resulting in more than double its number of enforcement officers. Any company with hourly paid employees is likely to be in the sights of HMRC, but with certain industries being of particular interest, including hospitality, retail and manufacturing. The government has also created the position of Director of Labour Market Enforcement, part of the jurisdiction of the role is to look at how NMW compliance is enforced and whether stiffer penalties (which are already significant) should be imposed.

Continues overleaf →



National Minimum Wage – Why are employers who pay NMW still being fined by HMRC? continued

So why are employers who pay the correct rates still being found to breach the NMW Regulations?

It is not simply a case of meeting the increased costs, which may be complicated enough and have knock on effects for employees such as reductions in premiums and headcount cuts, but even when paying the correct rates an employer could still be in breach of the complicated regulations. The 'intention' of the employer is not a defence, nor is ignorance of the detail of the Regulations.

Employers policies and practices are unintentionally getting them into hot water with HMRC. We have seen numerous examples of this, some key areas of risk are highlighted below:

- **Pay that counts towards NMW** – employers need to be careful that they are only including the following in NMW calculations: salary, incentive pay if it relates solely to performance (for example Commission) and bonuses. Employers should not be including the following: overtime pay, shift premiums, tips and gratuities, allowances, benefits in kind, advances of loans or pensions payments.
- **Work uniform** – If an employee has to supply any part of their own uniform (including shoes) the cost of purchasing these items should be deducted from their pay when calculating NMW. What this means is that the employee must receive the NMW after that deduction. We have even seen the cost of a pair of socks be considered under this category. Compliance with a dress code does not constitute a deduction for NMW purposes, as long as it is genuinely a code (with sufficient flexibility) and does not in fact prescribe that specific items should be worn.
- **Working time** – An employee's 'working time' might seem straightforward – you would think that you simply calculate the time spent on shift doing the job. But additional activities at the start or end of a shift can also count toward working hours, such as security searches, team briefings, or drug and alcohol tests – the time spent going through these processes will also be working time and should be paid at the NMW rate. Similarly, if employees work through an unpaid break, this becomes working time for which they should be paid NMW.
- **Travel time** – may also be caught where it is travel between assignments or travelling to meetings or training.
- **Changing time** – If you require employees to get changed at work (for example for food hygiene reasons or to change into PPE) the time it takes them to get changed should be included as working time and they should receive NMW for it. We have even seen this applied for the time it takes to put on a pair of gloves at the beginning of a shift.
- **Training** – where it is a requirement of their role, time spent in training must be paid at NMW rates, this includes any inductions.
- **Salary Sacrifice** – where an employee is a member of a salary sacrifice scheme, including ones for the payment of pension or childcare vouchers, then they must receive the NMW rate after this deduction has been made. If instead the deduction drops them below NMW, even though they have opted into the scheme, this will be considered a breach of the Regulations. The result of this is that the higher paid employees may be able to benefit from the tax efficiency of a salary sacrifice scheme that the lower paid employees cannot.
- **Deductions** – HMRC will consider that other areas of deduction, even where it is "opted into" by the employee will reduce NMW pay, for example, payments into savings schemes, social clubs, meals and even the purchase of items from the employer where this is done by way of a deduction from pay. Again, NMW will need to be met after these deductions.
- Similarly, any other payment, which whilst not necessarily opted into by the employee constitutes a deduction from their pay, such as a payment for a locker or the deduction of an administration fee for an attachment of earnings order.
- **'Salaried Hours' contracts** – if you pay employees a monthly salary, HMRC will only categorise this as a 'salaried hours' contract if it contains an 'ascertainable' number of hours that the employee is expected to work in the year – expressed in the number of hours per month or year. It should not refer to hours per week (which most do). If the contract is not truly a salaried hours contract an employee must receive NMW for every hour they have worked in a month and this cannot be averaged out over the year. This will particularly cause problems for employers who have peaks and troughs of work or seasonal variances.
- **Provision of accommodation for example for hotel employees** – the employer can only charge £52.85 per week as rent. If you charge more than this, the additional amount will count as a deduction from the NMW rate, as will charges for utilities or deposits relating to the accommodation.
- **Work experience/placements** – there are only certain prescribed types of work experience that you do not need to pay NMW for, so if you offer work experience, you need to check it falls within one of these exceptions.
- **Record keeping** – It is a criminal offence under the NMW regulations not to maintain proper records showing that the NMW has been paid by the business for at least the last three years. There is also a presumption that an employee has not been paid the NMW unless an employer can prove to the contrary.

The above is just some of the areas that employers have been caught out by HMRC for breaching the Regulations, there are many others.

Why would you be audited and what happens in an audit?

An audit by HMRC can arise either following a complaint or simply because you are a target sector and it is 'your turn'. You are likely to receive correspondence from HMRC advising you that you have been selected for an audit, however, Enforcement Officers do have the authority to simply turn up unannounced. They also have the authority to speak to your employees and remove documents from site, again without warning.

An investigation will start with an initial meeting with your assigned HMRC

Enforcement Officer, where you will be asked a series of questions relating to your policies, practices and record keeping. The Officer will then follow up with a request for you to respond in writing to certain questions and to provide copies of certain policies and records.

The Officer may then request to arrange interviews with your employees, this could be across numerous sites and you will not be able to be present. Following the interviews and their initial review of information requested, they may send follow up requests and then they

will report back their findings, including informing you of any potential breaches they have identified. You will then have the opportunity to respond either with your agreement or reasons why you disagree (ideally supported by evidence). This negotiation part of the process may involve various iterations.

Finally, HMRC will confirm the result of the audit and issue any penalty notice (see below).



What are the potential penalties for a breach?

1. HMRC will order the business to make arrears payments to all employees and ex-employees who have been underpaid, going back six years ('the Underpayment').
2. HMRC will impose a penalty of up to 200% of the total Underpayment. I.e. you will make the arrears payments to each employee and ex-employee and then will pay twice the total amount again as a penalty to HMRC.

This penalty is capped at £20,000 per relevant employee and so has the potential to become a major fine.

3. HMRC will order that any breaches are corrected going forwards.

You are likely to have heard of the 'Naming and shaming' regime, whereby employers were named on a published list for findings of breaches by HMRC. However, this has temporarily been

suspended, but is expected to return in 2020 and this has the potential to cause reputational damage.

Focus on compliance with NMW is likely to remain an area of interest to HMRC and the press for the foreseeable future. We therefore recommend that you review your employment contracts and practices for compliance now.

Laura McLellan, Director,
and Andrew Rayment, Partner,

Walker Morris LLP
33 Wellington Street, Leeds, LS1 4DL
DX 12051 Leeds 24



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FUNDING MARKETS

by Kevan Shaw, Director, Castle Square Corporate Finance

From our perspective at Castle Square Corporate Finance, 2019 was a strong year in the Mergers and Acquisitions markets, in spite of uncertainty caused by Brexit, political turmoil in the UK and the general election.



We saw strong deal activity across all kinds of transactions including, Management Buy-Outs, corporate acquisitions and disposals, refinancing and growth capital fundraising, backed by both debt and Private Equity.

An unusually large proportion of the transaction types that we saw was in terms of companies looking to raise funds for growth, either for new products/ideas or to fund growth in market leading products gaining traction in 'new economy' areas, such as technology or renewable energy.

Valuations of good quality companies were robust across all transaction types and the funding markets were particularly strong, having been so for a good few years now. UK based clearing banks, have been actively lending as a whole for a number of years now, with the number of banks

pushing out cashflow led term debt to companies with strong and cash generative profit streams, rather than the lending focus being on fully secured asset backed debt, being in the majority, rather than the minority.

However, in recent months and notably since the general election brought clarity in Brexit, a couple of the clearing banks operating in the UK that are headquartered elsewhere in Europe, seem to be adopting a more cautious stance, but for no particular reason other than waiting to see how Brexit pans out in terms of its impact on the UK economy.

Fortunately, this stance is very much a minority one, with availability of debt in the UK funding markets currently at unprecedented levels in terms of liquidity, the number of active lenders and the range of debt funding options available.



Kevan Shaw, Director, Castle Square Corporate Finance

Kevan created Castle Square Corporate Finance in October 2009, during which time, he has advised on vast Merger & Acquisitions deals, including Management Buy-Ins/Buy-Outs, Development Capital Fundraisings and Disposals.

Funding Markets continued



So what debt options are available to UK corporates?

In addition to cashflow led debt typically via up to five-year term loans, most UK clearing banks carry a full range of Asset Backed Lending (ABL) products to fund working capital, for example, Invoice Finance, Stock Finance, and trade finance, all will be active in property lending.

However, there are an ever-growing number of challenger banks attempting to disrupt the traditional banking market. These funders lead with innovative lending solutions, which typically involves

Some of these Asset Backed Lenders also now offer cashflow led loans as top up lending, albeit on shorter lending timeframes than the banks. A number also are able to deploy loans under the Enterprise Finance Guarantee Scheme, where a proportion of the loan is backed by security from government.

Over that last five years or so, we have also seen significant liquidity created in the UK debt markets via the rise of debt funds, where numerous institutions have

The debt funds can focus more on lending to medium sized or larger corporate entities.

In terms of smaller companies, debt funding options, in circumstances where a traditional bank will not lend, include the regional growth funds and a number of IT led lending platforms providing unsecured loans at the sub £500,000 level alongside peer to peer lending platforms.

If equity is needed for a transaction or for growth capital, the Private Equity markets are equally strong.

For established companies there is an ever-increasing number of Private Equity firms approaching us, having raised new funds and looking for opportunities. There are Private Equity options for all sizes of equity funding requirements, large or small, should debt options not be available or appropriate.

Not all companies will be able to attract Private Equity, as, while there is significant liquidity around in this aspect of the equity market, Private Equity firms tend to back companies that are investment ready in terms of having strong managements teams, quality product and service offerings, growth prospects in the right markets and with robust systems and infrastructure.

Fast growing early stage companies also have funding options via the Venture Capital Trust (VCT's) markets. In 2019 and into 2020, there have been and are ongoing significant VCT fundraisings as investors are attracted to by the 30% tax relief on investment.

2019 was a buoyant year in terms of corporate finance activity. In 2020, we have already seen an increase in the number of fast-growing companies approaching us about funding for growth, long may this trend continue.

keeping things simple by providing term loans and revolving credit facilities to fund acquisition, growth and working capital, instead of the traditional banking model which would split the lending into multiple streams of asset backed facilities.

There are also more specialist Asset Backed Lenders active in the market than ever. These companies provide a stronger ABL offering than the banks in terms of delivery of quantum of facilities, flexibility and a fuller range of ABL products. Some also offering more complex funding lines into niche areas such as construction finance, funding against valuations of work done.

raised funds in the same way as Private Equity institutions, but with the strategy of deploying in long-term debt offerings.

While this kind of debt is more expensive than more traditional banking or ABL debt, with costs typically 8 – 10%, it offers real positives in terms of structure, to support Buy-Outs, acquisitions or growth capital, in that, depending on the approach of a particular fund, key features are:

- It is cashflow led finance, rather than focusing on security or assets
- Cash is provided by loans or revolving credit facilities, so offers simplicity
- The clearing banking stays with the incumbent lender
- The debt can amortise over up to 8 years
- Loans can include repayment holidays
- Debt can be structured partly or wholly on long terms bullet repayment

The investment criteria of VCT's is determined by legislation, and in order to qualify for the generous investor tax relief, the criteria pushed VCT funds towards smaller, earlier stage and hence higher risk investments, which in turn provides a liquid equity market for eligible businesses.

One thing worth a final mention on the banking markets, is that the attitude and approach of the traditional UK based clearing banks changes significantly in Private Equity transactions, with debt structures focused more on cash flow led finance and longer-term debt structures.

For example, in a typical Private Equity sponsored deal, up to two thirds of any debt can be on a bullet repayment, sometimes up to seven years in terms, with only one third of the debt amortising over a typical five-year period.

If there is a Private Equity Sponsor present in a transaction, typically there will be a buy and build acquisition strategy or an organic growth story, so significant amounts of amortising debt would be counterproductive and therefore the bullet based structures allow a company to generate cash to fund acquisitions or growth.

quality and safer debt, generating a yield, in what by its nature will be a quality business, with a quality management team, backed by an investor with 'deep pockets' if follow on funding is needed.

So, overall, the funding markets are buoyant, 2019 was a buoyant year in terms of corporate finance activity. In 2020, we have already seen an increase

Over that last five years or so, we have also seen significant liquidity created in the UK debt markets via the rise of debt funds, where numerous institutions have raised funds in the same way as Private Equity institutions, but with the strategy of deploying in long-term debt offerings.

On their part banks are willing to lend longer term and without tangible asset security as they see this kind of debt as

in the number of fast-growing companies approaching us about funding for growth, long may this trend continue.

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WHAT MAKES YOU **UNIQUE?**

**Mark Lister, Regional Finance Director, Industrial Wood
(Europe) Division, Sherwin-Williams**

Mark has 16 years experience in the Industry having joined Sherwin-Williams following their acquisition of the Sayerlack business from Arch Chemicals.

His career started (in Internal Audit) at English, Welsh & Scottish Railways Ltd (now DB Cargo Ltd) in 1995, where he stayed for 6 years, progressing to a Financial Controller. Then moving on to progressively senior roles at Pegler Yorkshire, Coldseal and Montracon.

At Sherwin-Williams, Mark has worked not just in the UK, but also in Sweden, Italy, Ireland, US, France and Spain. Whilst essentially being a Finance person, Mark spends more time in the business partnering area where he adds value across a wide spectrum of the business.

Continues overleaf →

SHERWIN-WILLIAMS.





What makes you unique? continued

1. What led you to choose a career in Accountancy?

I am from a family of Accountants (my Grandfather had a family practice), however after completing my Business Studies degree, I chose the route of Finance in industry.

The route through Finance was slightly different to the norm as I've generally been an Accountant in more Commercial and Operational business surroundings.

Tackling the MBA at a young age (graduated at 30) before completing my Chartered Accounting qualification, I hope, gives me a different approach to solving problems & influencing/motivating the business with a more entrepreneurial approach backed up by a very strong technical finance background.



As I would advise any young Accountants in playing a long game, I looked to build my foundation of experience, hence my move (away from Commercially focused financial roles) from EWS Railways into a Financial Accounting role in a Manufacturing business (by joining Pegler Yorkshire).

With such a culture change, it was a challenge, though the aim was to strengthen my adaptability & flexibility in dealing with different business situations.

My time spent at Coldseal (a 'traditional' double glazing company!) was invaluable; a business going through a period of transition, was a very interesting experience and it provided a fantastic grounding (in a direct SME).

In 2004, I moved to Arch Chemicals, a US based Chemical manufacturer & progressed into a couple of FC roles which enhanced both the technical accounting side (from a UK, European and US reporting aspect) and more importantly the commercially focused business partnering role. There, I helped drive accounting/business improvements across different countries as well (Spain, France, China, Singapore, US, Brazil, South Africa)

I then joined Sherwin-Williams in April 2010 as we moved across through an acquisition to another US MNC.

2. What is your largest achievement in career year to date?

Academically, it was really satisfying to obtain both my professional qualification and MBA.

My A-level results in leaving school should have been better, so I was determined to achieve more, academically. The professional qualification gives me such a strong technical background, whilst the MBA enhances my 'partnering' approach to my current role.

Work-wise, Sherwin-Williams is a culture and a team where we never rest on our laurels.

I am presently serving as the regional lead on a large systems project, and also supporting our local team within their modules. This work is focused on process and data for both our line of business and Corporate teams. It's a great global team project where I'm honoured to play a key role.



3. You work for a very large US Multi-National business; does this give you the opportunity to work internationally?

I've been very lucky, in that the last 16 years, through various roles, I've spent a lot of time outside of the UK, working with local teams in Sweden, Italy, Ireland, US, France, Spain etc where I've led projects to assist with business improvement.

It's been enjoyable to engage with the teams to successfully deliver various goals that ultimately allow us to serve our customers better.

This skill set is then very transferable, as working within different cultures and businesses gives me a real empathy on how to approach more challenging tasks.

4. What is the future for FD roles?

It all depends on the size of business, as very large businesses sometimes favour the route of shared service functions, so it's a case of working closely to ensure the financial integrity remains as robust, whilst using efficiencies saved to integrate the financial teams within the Commercial and Operating parts of the business to drive decision making & aim to match pound notes against all business decisions.

5. What do you most enjoy about your role?

We try to ensure we stay close to customer demands by keeping tight to the local market. Through the large variety of business demands and dynamics, can be a whirlwind, when we remain focused on the needs of our customers and suppliers, we are able to stay the course!

Finance has a footprint in the vast majority (either from data, process or reporting aspect); so it is essential that my role partners & leverages experience in start to finish 'cross-functional' areas, to collaborate with the Commercial & Operations teams, to deliver business process improvements and to ensure data integrity to assist/drive robust business decisions.



6. What advice would you give to a young accountant?

As mentioned previously, build the experience and education. Put yourself forward for project works within the business, take the opportunity to travel, get on courses (not just financial).

Get involved with the other parts of Finance, such as M&A, Tax, Investments, Credit etc... it may not be regular parts of a current role, however it will differentiate you, if you can speak to many different subjects.

On a personal basis, listen, absorb and also be heard when you need to be. 'have a seat at the table'.

Finally, don't be afraid of change... in my experience, I haven't had more than 2 quarters without something fundamentally different taking place, which is a fast pace, so be prepared; embrace and then drive change itself.



7. How do you maintain a good, healthy Work/Life balance?

Despite such a busy and rewarding work schedule, I also manage to replicate the same at home too!

Married, with a young family (our 2nd arrived in July 2018), it is great to experience such pleasures as first words, first steps, happy faces etc. The young children are also in the "football way" already, in regularly attending games at the Keepmoat Stadium to watch Doncaster Rovers.

I also still find the time to watch the England national team home & away, including the 2018 World Cup, 2019 Nations League finals & am looking forward to this year's European Championships.

Any further spare time would be taken up by walking our Airedale Terrier, going to concerts or more travel... No time to slow down... not yet!



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