

NEWSLETTER JULY 2011

FEE PROTECTION INSURANCE

Fee Protection Insurance is available to the firm's clients via Abbey Tax Protection.

The insurance arrangements cover the professional fees which arise in connection with income tax self assessment full enquiries, corporation tax self assessment full enquiries, corporation tax accounts investigations, employer compliance disputes and HM Revenue & Customs VAT disputes.

Cover is available at the following rates:

Client Status	Fee per Annum
Personal taxation clients	£30.00
Company directors	£30.00
Partners – in partnership	£30.00
Sole traders	£120.00
Partnerships – as distinct from the partners	£120.00
Companies – as distinct from the directors	£120.00

The fees are payable for scheme years commencing 1st September.

Clients may join the scheme at any time during a scheme year in which event a reduced premium will apply for that scheme year.

Clients at 1st July 2011 have received full details of the scheme. New clients from 1st July 2011 receive details of the scheme prior to the annual renewal on 1st September. Further information regarding the scheme is available to all clients upon request.

THE COST OF CARE HOMES

For a number of years the subject of pensions and pension funds has been regarded, to use the common parlance, as toxic in that there is an increasing concern that with longer life expectancy the government will not be able to fund pensions solely through the State Pension. However, as many of our readers will be aware, a second toxic matter has emerged which some regard as equally, if not more, problematical as pensions - the funding of care for the elderly and the disabled.

As with pensions this problem has arisen, in the main, due to the fact that we are living longer and many more individuals will, in future, require care and assistance in their old age. But who is to pay? In reality, care for the elderly and the disabled is especially worrying in that at present there is virtually no government assistance at all, save for those with relatively modest capital or if there are serious medical conditions. Contrast this with the pension problem where at least there is some government assistance in the form of the State Pension.

The central problem when providing care for the elderly and the disabled centres around the ever-increasing cost of care homes and it is important that we understand what the government proposes to do and what we should be doing in relation to these costs.

The government's proposals

The rules and regulations governing the funding of care homes for the elderly and the disabled are complex and advice should be sought from experts, including the various government departments, eg social services.

In relation to care homes the situation at present is that you have the right to choose whichever care home you want to live in. However, the funding of the care home fees by the government is dependent on a financial assessment which is carried out on each applicant.

The financial assessment works out how much you can afford to contribute towards the care home. Currently if you have more than £23,250 of capital you will be assessed as being able to meet the full cost of your care. If you have between £14,250 and £23,250 the capital between these amounts will be calculated as providing you with an income of £1 per week for every £250 of your savings. If you have £14,250 or under your capital will be ignored in calculating how much you have to contribute to the cost of your care. (Note that the figures are different in Wales.)

If you have a long term health condition then you will receive funding for the cost of nursing which will be paid for by the NHS.

From the above it will be seen that a large number of individuals (ie those who have more than £23,250 of capital) will have to provide their own funds for paying for a care home.

For this reason, the government has commissioned an independent report to consider the present system and, if necessary, to recommend changes. This report recommends that individuals should not have to pay more than the first £35,000 of their care costs during their remaining lifetimes. In addition, they should not have to pay even that if their assets, including their homes, are worth less than £100,000.

As can be seen, this is a material change to the present figures and it remains to be seen to what extent the government will accept the findings of the report and what action it will take, if any, to amend the present regulations.

Action by individuals

The most important piece of advice that can be given is not to wait and see what the government will do following the recent recommendations. This could take a considerable amount of time and some individuals may need care sooner rather than later.

It is important that, wherever possible, funds are set aside as early as possible for the cost of caring for old age or disability. Sometimes, especially in the case of the young and healthy, this advice falls on deaf ears. To these individuals, old age seems light years away and they tend to put it out of their minds (as, indeed, have many when it comes to providing for retirement in the form of a pension). But time marches on and putting aside even a small amount over a number of years will go a long way to funding care when the time arrives.

There are a number of schemes on the market when it comes to saving for old age but it is important that you take expert, impartial advice when considering any scheme, as there have been a number of instances of mis-selling in the past.

A final piece of advice. Some of our readers will have read about and maybe considered taking out some form of equity release on their homes to fund their stay in a care home. Equity release schemes involve selling your house for a lump sum which can be used to fund a care home when the time arises. You are able to continue to live in your house until this time. We would strongly advise clients to approach us first before signing up to any equity release scheme. Whilst such schemes do have their advantages in some circumstances, there have been many reported instances of the mis-selling of these schemes.

ASKED TO GIVE A REFERENCE? –BE CAREFUL WHAT YOU SAY

Picture this scenario. A company contacts your business and requests a reference from you about an ex-employee of yours who it is thinking of employing. All too often we give a general, bland response, without giving much thought about any potential liabilities there may be in relation to our reference.

An employer is not usually under a duty to provide a reference on a former employee, so if you don't want to respond for whatever reason, you don't have to. But bear in mind that you should be consistent in your response policy. If, for example you always respond, but in one particular instance you decide not to, you might expose yourself to a claim for discrimination, depending on the circumstances.

In spite of the above, there are a number of instances when an ex-employee is legally entitled to a reference. These are:

- Where the employee's contract of employment specifically states that a reference will be provided or this is implied in the contract because the employer has always, in the past, provided employees with references.
- Where you have given an assurance to the employee that you will provide a reference.
- Where an employee leaves because of a dispute and as part of the settlement agreement, you agree to supply a reference.
- If the law or other binding regulation specifically requires you to provide a reference.

Even if the scenario regarding your ex-employee does not fall into any of the above categories, it usually makes sense for you to give a reference as, if you refuse to do so, the employee might attempt to bring a claim for victimisation. However, if you are satisfied that you would be able to defend yourself against any such claim, you could refuse.

There are a number of basic considerations, should you decide to give reference, as follows:

- Make sure that you mark any reference "Strictly private & confidential. For the attention of the addressee only". In addition, ensure that you do not breach the Data Protection Act 1998 in any way by the misuse of personal information about the employee.
- Make sure that you use reasonable skill and care that the facts you state in the reference are true and accurate.
- Ensure that any opinions you state are fair and reasonable.
- You must give a balanced view, even if the information you give is accurate. For example, if your reference contains nothing but negative points which are accurate but you have failed to set out any positive points, you could have a problem if it transpires that there were a number of positive points.

- You do not have to provide detailed information in your reference if you don't want to. Provided that any summary you give is true, accurate and fair, this is acceptable. Indeed, it is quite acceptable merely to limit the information in your reference to facts such as the date the employment commenced and ended and the position the employee held in the business.
- If you only have a limited knowledge of your employee, state this fact.
- If, during the course of their employment, the employee has been the subject of disciplinary action, be careful how you refer to the facts. Only state the facts relating to the action if you believe they are true and you have fully investigated the facts relating to the action.

Be aware of the dangers if you get things wrong in relation to your reference. If you have been misleading or unreasonable in what you say, you may expose yourself to a claim by the employee. In addition, you may find yourself facing a claim from the new employer if any details in your reference are factually incorrect.

Two final points to bear in mind. Firstly, do not be tempted to give informal, off the record, information over the telephone in the mistaken belief that no one could prove what you said. In a climate where it is quite common for telephone conversations to be recorded, you could be exposing yourself to a claim either by the employee or the new employer. Secondly, be aware that under the Data Protection Act, the employee is entitled to obtain a copy of any reference you submit by making a subject access request.

DIFFICULT TIMES FOR RETAILERS – SAFEGUARDS WHEN MAKING PAYMENT

In today's economic climate, with an increasing number of businesses failing, it is important that consumers attempt to safeguard themselves when dealing with a business that might fail. In particular, there are two methods of payment which should be considered when making payment to suppliers for goods or services.

Payment of annual transactions

Individuals may enter into agreements with suppliers which cover a period of time. For, example, you may join your local gym at an annual fee or pay for house or car insurance for a period of time. It might be worth thinking about making payment by direct debit on, say, a monthly basis if you have any doubts about the financial stability of the organisation supplying the service. If the organisation fails part way through the period then you simply stop your direct debit.

Obviously you must consider whether this is worthwhile if the supplier or your bank charges you an additional fee for making payment in this way, but if it doesn't then there is nothing to lose.

Payment by credit card

If you make a purchase using a credit card (but note – not a debit or charge cards such a Switch or Delta) the card company is "jointly and severally liable" under the Consumer Credit Act. This means that the card company is equally responsible, with the supplier, for any breaches of contract or misrepresentations. Of course, if the supplier goes bankrupt, this would usually be regarded as a breach of contract.

This protection is only available for goods or services which cost between £100 and £30,000.

In addition, the credit card company is also liable even though you make only part of the payment, for example a deposit using your card.

THE BRIBERY ACT 2010

The Bribery Act 2010 (the Act) came into force on 1 July 2011.

In practice, the Act will only affect a minority of businesses, mainly those who trade in overseas countries where the incidence of bribery is more likely, but the Act could affect companies that only trade in the United Kingdom.

Those businesses that are likely to come across bribery in some shape or form should note that the Ministry of Justice has issued guidance in relation to bribery and this can be found at <http://www.justice.gov.uk/guidance/bribery>. Those businesses that are most at risk in relation to bribery within their organisation are advised to read this guidance, together with the Quick Start Guide to the Bribery Act which can also be found on the Ministry of Justice website. The Ministry has commented as follows on its guidance:

"The Bribery Act 2010 creates a new offence under section 7 which can be committed by commercial organisations which fail to prevent persons associated with them from bribing another person on their behalf.

An organisation that can prove it has adequate procedures in place to prevent persons associated with it from bribing will have a defence to the section 7 offence.

The guidance, published here under section 9 of the Act, will help commercial organisations of all sizes and sectors understand what sorts of procedures they can put in place to prevent bribery, as mentioned in section 7."

It is important that businesses, when dealing with third parties in areas where bribery might be more likely, carry out satisfactory due diligence procedures on any third party who might be susceptible to bribery, either receiving or making.

In addition, the organisation should have adequate training and internal control procedures for sales agents and other third parties carrying out services for the organisation.

The Quick Start Guide referred to above is especially useful and covers topics such as:

- What is covered by the Act?
- When could my organisation be liable?
- How do I assess risk?
- Do I need complex procedures in place?
- Can I provide hospitality?

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