

COMMERCIAL LAW



Taylor Bracewell
Your solicitors | Your success



**A guide to running a
business**

Running a business can be extremely stressful, and sometimes you wonder how you will have the time in the day to get everything done.

There is so much to think about in the day to day running of a business and all too often we can find ourselves neglecting the most important things.

At Taylor Bracewell we know it is important to understand how your business works and get handle on your needs to ensure we can “taylor” our advice to your circumstances.

There are so many issues to consider when running a business, and no one tells you what to do. This booklet is designed to highlight some of the important issues that all business owners should consider, including:

- The Essential Documents

Terms and Conditions, Shareholders Agreements, Directors Agreements

- Your Business Premises

What do you need to consider?

- Employment issues

Everything from hiring to firing

- Bulletproof

An insurance policy to protect your business against all employment liabilities

- Commercial Disputes

What happens if your business gets into a dispute – are you equipped to deal with this?

- Your Personal Protection

Making a Will and a Lasting Power of Attorney to protect you and your family in the worst case scenarios

- Protecting the Business for the future

What would happen if you or a business partner were to separate from a spouse or partner – would that impact the business?



The Essential Documents

Limited Company.

Articles of Association

Every company in England and Wales must have Articles of Association. These set out the rules for running the company, creating a binding contract between the company and its shareholders.

When registering a new limited company, you will need to file the Articles of Association at Companies House. A company has two options, it can either use the model articles provided under the Companies Act 2006 or create its own, tailor-made articles specific to the company.

Shareholders' Agreements

A shareholders' agreement is an agreement between the shareholders of a Private Limited Company which regulates the relationship between the shareholders, providing greater control and clarity in respect of the running and operation of the company.

There is no legal obligation to have a shareholders' agreement, however it is good practice to have one. There is no requirement to file it at Companies House, which means its content can be kept confidential.

When setting up a company with family or friends it is easy to assume that nothing will go wrong in the future and hopefully nothing will. However, if the worst should happen, you could end up with nothing. A fully considered and well drafted shareholders' agreement can act as a safeguard and give shareholders protection when disputes arise.

LLP

LLP Agreements

This is a legally binding agreement between all the members. It outlines the rights, duties, responsibilities and liability of each member and sets out how the partnership will be managed and run. This agreement is not a compulsory requirement, however it can help to avoid any misunderstandings or disputes between members.



Partnership

Partnership agreement

A partnership agreement is written to reflect and maintain the mutual trust and commitment between the partners of a business. This type of agreement does not have a formal structure and sets out the terms of the shared ownership, providing legal protection for each partner should a dispute arise.

If there is no partnership agreement, then the partners are operating a 'partnership at will' governed by the Partnership Act 1890. This default agreement will state that each partner has an equal share of the capital and profits, and that any partner can trigger a dissolution of the partnership with immediate effect. Unfortunately, the Act is very old and quite general and is unlikely to cover any point in adequate detail.

All Business Structures

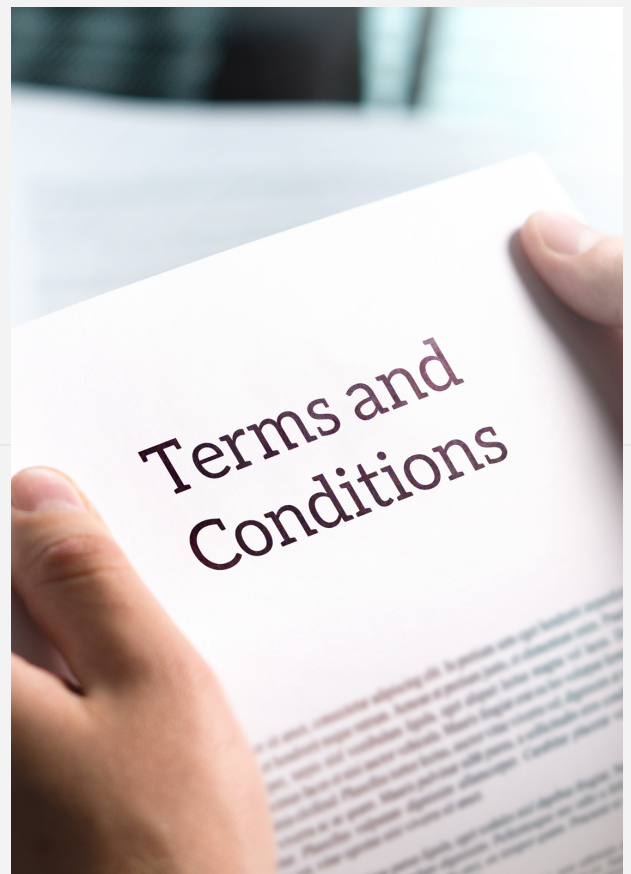
Terms and Conditions

It is essential to maintain standard up to date terms and conditions. These terms create the framework for your business.

The business will normally use this document for most transactions and this boosts efficiency and reduces both time and cost. As a result of continued use your business and it's customers become familiar with their rights and responsibilities and can be confident that their interests are protected.

Standard terms and conditions provide certainty to the contracting parties, each party knows their obligations under the contract. This avoids confusion and reduces the risk of litigation.

Using it's terms and conditions, a business can limit its potential liability under a contract to reasonable losses, rather than risk being liable for all losses. This gives the business some protection means that any damages it may have to pay should not put the business at grave financial risk.



Your Business Premises

Every business has different needs whether leasing premises or purchasing a freehold property.

Our Commercial Property Team has a wealth of knowledge and experience in assisting businesses of all sizes in acquiring the perfect premises and helping with their ongoing needs.

Our team can assist with:

- Leases
- Sales and Purchases
- Licences to Carry out Works
- Licences to Assign
- Variations to your current Lease

We appreciate that businesses need to run as efficiently as possible and without their premises they do not have a business hub to trade from. We are here to assist with all your commercial property needs.



Top Property Tips from our commercial property team



- Find the perfect premises don't settle for second best.
- Make sure that your business is able to carry out your trade from the premises - restrictive covenants can bite you!
- A lease maybe the right option. Consider leasing premises as an alternative to buying property.
- Always consider if you need more than legal help.
- Check if planning permission is required for your use of the premises.
- If you have a Lease always keep the Landlord happy – make sure your rent is up to date and if you want to do any works always check your Lease to see if the Landlord has to consent to these
- Instruct us as early as possible – we can help from start to finish.

Employment Issues

Employment is a complex and ever changing area of the law. Many businesses only understand the importance of the law surrounding employment when they have a challenging employee, or worse... if they have been threatened with Tribunal action. To prevent being in this situation, it is worthwhile spending the time getting the basics right from the start.

Your employees are the most important asset and recruiting the right people is expensive and time consuming but when done properly, employees are more likely to remain within the business, work hard and ultimately cause fewer issues.

The contract of employment is the first and foremost document that you need. Employers are required to provide employees with a written copy of the main terms of their employment within two months of starting work. It should contain information such as the employee's job title, salary and their holiday entitlement. tailoring the contract can help protect your business from competitors poaching your staff or trade secrets and can help you to reclaim certain monies from employees in the event their employment comes to an end.

The staff handbook contains all the details the employee needs about the workplace, and includes the company's policies and procedures. It should be used as a guide for managers to ensure consistency in treatment. In today's world, this is extremely important and can help defend you against employee claims.



Bulletproof Protection Plan

Our Bulletproof Protection Plan is the ultimate guide through the employment law minefield. The main perk of bulletproof is you have immediate and unlimited access to advice from an employment lawyer who will provide draft letters and understands how each client operates their business.

Upon joining (and thereafter on a yearly basis), we draft/review your contracts of employment and staff handbook to ensure that the 'groundwork' is up to date and tailored to your business— it is surprising how many employers cut and paste handbooks from the internet!

We take great pride in getting to know our clients and their businesses – our service and advice is tailored to each client ensuring the best possible service.

One of the big factors that differentiates us from HR advisors is that our clients have 'legal privilege'. Any correspondence or communication with your HR advisor is at risk of being disclosed in legal proceedings. Whereas all communication with us is privileged. This means that you can be completely honest with us as this cannot be disclosed to an Employment Tribunal, because we are legal professionals. This is a huge benefit because our clients can explain their ideal outcome and we can help navigate them towards this goal, whilst keeping them within the law.

You can also opt for our insurance plan to cover risk and cost incurred by your organisation if a claim is made by an employee or former employee. It also covers the cost of any awards or settlements.



Commercial Disputes



You would hope that your business never encounters a dispute as they can cause disruption to your business, both in terms of management time spent in dealing with the dispute and in monetary terms, particularly if Court proceedings are necessary.

Whilst it is impossible to set out in this guide every possible dispute a Company could face, the most common forms of dispute that we encounter are allegations of breach of contract and debt recovery. Debt recovery is especially important to a business, as reducing bad debts improves your cash flow.

It is always preferable to avoid having a dispute in the first place so we have set out below things you ought to consider in order to protect yourself as far as possible: -

- Know exactly who you are contracting with. We often come across the situation where it is unclear from the paperwork who the contracting parties are. At Companies House there are numerous companies that have similar names so it is essential that the full, and correct names of the contracting parties are identified at the outset.
- Investigate the finances of the company you are proposing to contract with. You can obtain credit checks on companies for a small fee, or, at the very least, you can check the company's last filed accounts at Companies House for free.
- Ensure as far as possible that any contract is in writing, containing all of the agreed terms and signed by both parties

- If an agreement is reached verbally, confirm what has been agreed in writing.
- If you wish to rely on your standard terms and conditions, ensure that they are sent to the other party at the very outset, and before any work is carried out. Many companies send out their terms and conditions when they render an invoice. At that stage it is too late and you cannot rely on your terms and conditions.
- Have a robust Credit Control Policy, and consider ceasing work in the event that you are not being paid.

If a dispute does arise then it is important that you seek legal advice as soon as possible. There are Court Rules and Procedures that parties must follow.

Companies must now have a Document Retention Policy in place to prevent relevant documents being destroyed or deleted. The Courts will now expect parties to demonstrate that they have understood their obligations to retain documents and will require evidence of the Retention Policy in place. It is essential that you take advice as soon as any dispute might arise.



Top Tips When Running A Business

Work out what your end goal is

You need to know what you are working towards – what will your business look like in 5/10 years time if your plans all work out? Make sure your staff know where you want to take the business, you can't always do it alone and need your team on board to get you there.

Check out your competition

You need to carefully analyse what other businesses do and why. Does something they do work well and do you want to replicate this? Is there something you definitely want to avoid doing?

What is your USP

Why will you stand out to your competitors? How can you promote this? Maybe it is a service you offer rather than a product – Identify it and make the most of it.

Market yourselves

Make sure you shout about your business. Tell people how great you are and why.

Be creative

Is there something you can do that others aren't doing yet. Can you get ahead of the market?

Don't be afraid to change direction

If something isn't going right, change your plan, adapt to what the market wants.

Make sure your customer service is a priority

The customer is always right, especially now in the world of social media

Have the right advisors in place to help you throughout the lifetime of your business

Mistakes can be costly, take advice to ensure what you are doing is the best thing for you and your business



Personal Protection



When you own a business it is more important than ever to ensure that your affairs are in order.

There will be a number of factors that you wouldn't necessarily associate your business as having an impact on – in particular a Will and a Lasting Power of Attorney.

Wills

When you own a business it is essential to consider what would happen to that business if you were to die.

If you own the business as a limited company with other directors then the chances are the business could continue – but how does this affect your beneficiaries? Would you want them to inherit the value of your interest in the business or would you actually want them to be able to step into your shoes and take part in running the business?

If you are a sole trader then could the business actually continue without you?

If you have an informal partnerships – for example a family business – then this would automatically end on the death of one partner and the partnership can no longer carry on.

All of these factors need to be considered and the appropriate provisions incorporated into your Will.

Lasting Power of Attorney

Have you ever considered what would happen if you were unable to run your business due to ill health?

Would anybody be able to take on your role?

What if this was a long term problem – how would this be addressed?

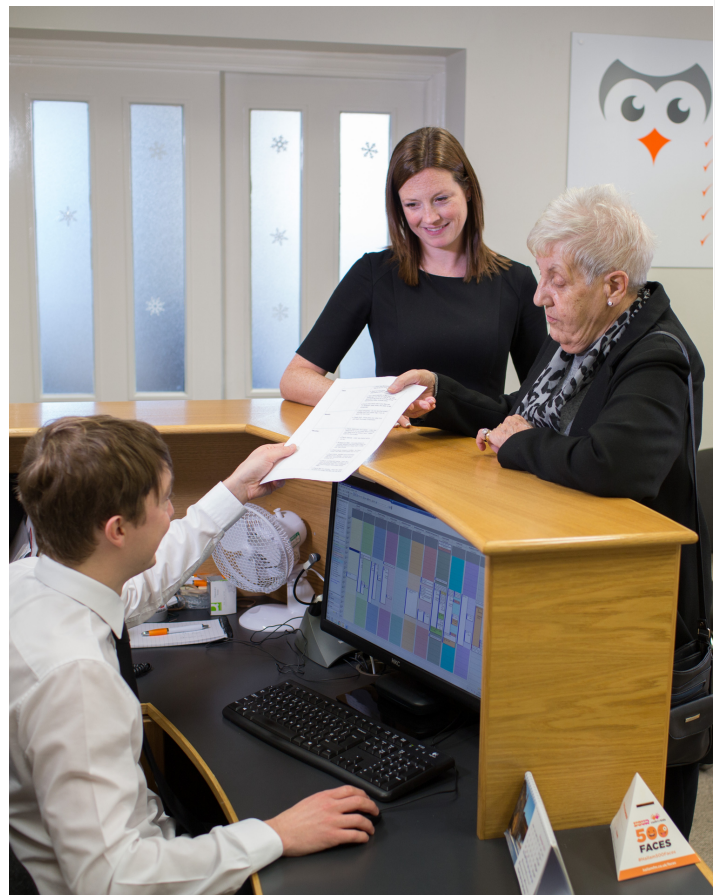
Practically, you may think that there are several people, be it family or friends, that would help out if it was necessary. However legally there is probably no one who has the necessary authority to step in and deal with matters on your behalf. It is essential to ensure that you have put everything in place to allow your business to continue.

This may involve setting up a Power of Attorney to stipulate who can step into your shoes and run the business in the event that you are unable to.

This document needs careful planning, to ensure that your needs are met, whilst the interests of the business are also protected.

Whilst it may be a natural consideration to think of a spouse stepping in to your shoes, it may be that they are ill equipped to deal with this position, and actually wouldn't wish to do so.

Our experts can discuss all these issues with you in detail and find the best possible solution both for you and your business.



Protecting Your Assets

A pre-nuptial or post nuptial agreement is a written agreement drawn up by a couple prior to or shortly after marriage.

The purpose of the agreement is to enable you to express how you would want your assets to be divided in the event of a divorce. The agreement should include reference to your business.

Important considerations for a pre-nuptial agreement

- Consider the extent of any assets brought into the marriage by one or both parties
- How will the assets be divided upon any subsequent separation
- How will the needs of any children be met regarding housing and financial support
- Does the agreement meet the needs of both parties if they divorce
- Should there be a spousal maintenance payment
- What will happen to any assets acquired during the marriage jointly or in separate names
- How will pensions be shared
- How will one or both parties' shareholding in a company be dealt with on divorce
- What will happen to the other spouse if they are an employee of the company
- What will happen to any gifts or inheritance received
- How often will the agreement be reviewed
- Who will pay the costs of the agreement
- What provision will be made in your will
- Instruct solicitors at least 4 months before the marriage if possible.
- A post-nuptial agreement can be entered into after marriage and will carry weight providing it has been signed willingly and both parties have taken advice and exchanged disclosure.





Taylor Bracewell can help you with all aspects of:

Commercial Property
Employment law
Business Disputes
Business/Company Law
Personal Injury Claims
Medical Negligence
Disputes
Family Law
Charities
Wills, Probate and Trusts
Asset Protection
Inheritance Tax Planning
Powers of Attorney and Court of Protection



Taylor Bracewell Solicitors is a dynamic and forward thinking legal firm with offices in Doncaster and Sheffield. Established for over 100 years, and very well regarded within the legal sector, Taylor Bracewell has weathered the drastic changes in the legal landscape and has emerged as one of the most vibrant and well-respected law firms in the region. Constant evaluation of how we deliver our services and innovative ways of working has made it possible for us to offer something different to the legal market.



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