

# Law & Legal Affairs



Brian Inkster, of Inksters Solicitors, has helped his firm into the 21st century by attracting new customers through social networking sites over the internet

## Moving with the times

Christopher Mackie talks to a legal firm that has ventured online to attract new customers and talk to peers through social networking sites

**A**CROSS the tiled entrance hall of Glasgow's Baltic Chambers, up past the carefully restored cut glass windows in the stairwell, and down a long, quiet corridor lies the home of an unlikely set of legal services pioneers.

At the end of that corridor, behind a featureless door, in an office piled high with documents, boxes and books, sits Shetlander Brian Inkster, the principal of Inksters Solicitors.

Despite a relatively low profile in office terms, Brian and his small team, have, over their ten years in business, forged an increasingly high profile with some eye-catching innovations in the way they win business and service clients.

Chief among those is a whole-hearted embrace of the importance of their website and the possibilities it offers them as working lawyers. From online payment facilities for clients, to allowing prospective purchasers to register notes of interest on the website, the firm has not been scared to use the internet to operate.

"What I have seen is us getting business we would never have received before, purely through the website," Mr Inkster explains. "Although we have a specialisation in crofting law or servitudes, people might not have been fully aware that Inksters do that type of work. Unless somebody recommends us, how is some-

body going to know that Inksters can deal with crofting law, or family law?"

"But that's true of any kind of law firm," he adds. "Unless it is telling people this is what we do-how do people know?"

Despite the use of IT, Inksters-sectoral expertise remains traditional. The firm was set up in Shetland on 1 May, 1999 as a sole practitioner operation dealing with all the legal needs of islands-based clients. It still services Shetlanders effectively from offices in Glasgow and the client profile is, Mr Inkster reveals, still balanced 60-40 in favour of islanders.

This core support has helped the firm fight the current downturn. "That has al-

**twitter**

ways been a steadfast side of the business," he says. "In some respects, areas of work, such as domestic conveyancing has gone down in Shetland, but others areas haven't been too affected. We always get repeat business."

The operation now deals with family and private client work, property transactions and retains a specialism in crofting law. "There are not that many crofting lawyers in Scotland," Mr Inkster adds.

He has also seen an increase in demand

for work on parking disputes, after being on the winning side in a nine-year case - Moncrieff v Jamieson - that went all the way to the House of Lords and recognised, for the first time the servitude of parking rights in Scotland. The full story of the dispute is listed in fascinating detail on the inksters.com site, just one facet of a web offering that offers what analysts would call "added value" to the firm's clients as well as interested web surfers.

For Brian Inkster, the information and effort put into his firm's site is not just a marketing tool or way of distinguishing his team from their rivals - it represents the future for legal services.

"It is the way [firms] should be working," he says. "They shouldn't see it as working harder - they should be looking at what is going on in the world. Why should law firms be different from any other business? Law firms need to see themselves as a business."

He continues: "We need to do the law - it is important that you do the law well - but you have to be providing the service to clients, running a modern business."

"The way the world is going - podcasts, videos webcasts are becoming normal. People are used to seeing things in that sort of format, so why should they not see legal information in the same way?"

Also becoming a normal part of the daily working life for Mr Inkster are his regularly updated Twitter pages. As well as a personal offering on the micro-blogging site, which allows users to post mes-

sages of 140 characters or less, he is the custodian of the firm's Twitter output. This takes the form of a main stream of messages, as well as themed "tweets" on topics such as crofting law, the property market and family law.

The firm's Twitter profile proudly proclaims it to be the first by any Scots law firm, and Mr Inkster eagerly reports that he beat legal soothsayer and advocate of technology Richard Susskind to the social network.

"I have been quite surprised by the power of it," he explains. "Not necessarily in connecting with clients and getting work, but connecting and networking with other professionals and solicitors. Suddenly the world seems a much smaller place when you are communicating with solicitors in America, or Tel Aviv."

But what practical use does the site have to justify the amount of time he spends using it?

"For the purposes of information sharing, I think it is very good," he says. "You get information immediately to you and if you are following people with particular interests, you get information coming to you and you can choose to go further. As a result of that, you have more of a knowledge of what is going on, not just in general, but in specific areas you might be interested in - whether it's legal marketing or legal news."

He cites a recent case where another

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### Legal Update

#### PEOPLE

■ **COMMERCIAL** property partner Mike Fitzgerald has left Dundas & Wilson to join HGJ Gateley Wareing, the firm has announced.

■ **AGRICULTURAL** law specialist Hamish Lean has been appointed as a partner in the private client department of Stronachs.

■ **MORAG** McIntock has been appointed as the new district procurator-fiscal for the Borders. She is a former senior procurator-fiscal depute based in Greenock. Meanwhile, Craig Harris has been named the new district procurator-fiscal for Oban.

#### NEWS

■ **THE** Scottish Criminal Cases Review Commission (SCCRC) concluded 104 cases in the year to 31 March, 2009, bringing the total number it has considered since its inception in 1999 to 1,043.

The body received 106 cases during last year, and referred seven back to the High Court for further review. The number of cases accepted for full review dipped to 65 per cent from the 74 per cent rate during 2007-8.

The commission said the drop was partly due to an increase in resubmitted cases where no new grounds were found.

The commission reported that two cases submitted during the last year were still to be scrutinised and 47 cases were under ongoing review. It also confirmed that the High Court had made decisions on 11 cases referred to it by the SCCRC.

#### AWARDS

■ **EDINBURGH** University marked its centenary of women in law event by awarding honorary degrees to two African judges.

Justice Julia Sebutinde of the Ugandan High Court, and Justice Unity Dow, the first woman to be made a high court judge in Botswana, were presented with Doctor of Laws qualifications as part of the University's "100 Years of Women in Law" which celebrates the graduation, in 1909, of Scotland's first female law graduates

#### EVENTS

■ **THE** Scottish Young Lawyers Association will hold its AGM in the Edinburgh and Glasgow offices of Burness tomorrow at 5:45pm.

New members have been encouraged to attend either event which will be linked via video between offices.

# Law & Legal Affairs

## Court Shorts

### Judge's telly teens

■ LORD Brailsford might have found a solution to one of judicial life's great frustrations – television screens invariably remaining blank whenever they are switched on in a courtroom.

When the monitors in his court threw a wobbly, he mused: "It never fails to amaze me how the courts cannot make relatively simple technology work. We should have a supply of 14- and 15-year-old kids handy to make these things work."

### Dean demands dress code diligence

■ IF MARKS & Spencer has seen a sudden surge in sales of straitlaced white blouses, the sort trendy young things would call "middle-aged frump", then dean of the Faculty, Richard Keen, QC, might be the unlikely person to thank/blame.

Prompted by isolated reported sightings of trendy young things among the female bar attired not *de rigueur* – allegedly one brazen hussy had short sleeves on a jacket – dean Keen decided to nip it in the bud with a timely reminder of the dress code.

It stipulates: "A lady advocate should wear a black or dark grey suit or dress with a white shirt or blouse... hosiery should be black or a neutral colour, and shoes black."



### A brief reminder

■ MUNGO Bovey, QC, is nothing if not thorough – sometimes to a fault. So, at the beginning of a case in the appeal court, Lord Nimmo Smith thought it wise to issue a timely reminder: "Would you please bear in mind that we have only today and tomorrow for the hearing of this case."

### Ruling ruled right

■ THE senior immigration judge (SIJ) would no doubt have been chuffed to learn from Lord Hardie that his ruling had been upheld on appeal in the Court of Session, but not so pleased to be told he had achieved it in such a cack-handed fashion.

"Ironically, the SIJ who reconsidered the case reached the correct decision, but for entirely the wrong reasons," said Lord Hardie.

### Findlay uses appealing language

■ YOU can love him or loathe him, but you can't deny Donald Findlay, QC, has a wonderful way with words, as evidenced by an opening remark to the appeal court: "At the present

time I do not anticipate detaining the court overly long on this particular ground of appeal, although I live in hope that further inspiration may come to me."

### Ironic interruption

■ MANY things can happen to interrupt the smooth running of a criminal trial, and you just knew that if anything was to throw a spanner in the works of a fire-raising case at Edinburgh Sheriff Court it would be evacuation of the building... caused by a fire alarm.

### Dig out a joke

■ THE pavement examiner told the court that various considerations determined whether a hole was classed as a category one or a category two defect, for example a depth of 20mm. But "this is not written in stone," they added.

### Sheriff sceptical on scoff claims

■ THE man claimed to a sceptical Sheriff Ken Maciver that he smoked so heavily it amounted to virtually a cigarette every ten minutes of his waking day. "When this was explored in cross-examination, he suggested that he didn't sleep very much and that he was a poor eater," the sheriff said. "I cannot speak to the former, but he certainly did not

give the physical presentation of the latter."

### Early finish prompts good Craik

■ IT IS rare for a trial to finish within, rather than beyond, its allotted time, and by a clear day and a half is positively miraculous. Certainly, temporary judge Roger Craik, QC, seemed stunned that a case in front of him had made such rapid progress.

"The good news is that I can wish you good day... the weekend is approaching and I can allow you to escape into the sunshine," he said in discharging the jury... just after lunch on Thursday.

### Refreshingly frank

■ NO-ONE could question the honesty of the sales rep who gave evidence in a commercial action and agreed a message to a customer had stated: "I need to send you our exciting standard terms and conditions of sale, which should help if you have any insomniac tendencies. These also feature on the back of all our invoices, should you be unlucky enough to lose this set, and wish to refer to them."

# The times they are a-changing and firms must keep in step

Mike McGregor warns that the downturn means legal practices will require a whole new mindset

THE cyclical impact of the current downturn for law firms in general is pronounced. Traditional revenue opportunities, such as mergers and acquisitions, corporate deals and real estate, have, for many firms, simply dried up or fallen sharply.

This has been offset, in part, for those firms with corporate restructuring teams and also for those with strong litigation offerings.

For many firms, 2008 (typically most firms report to an April period end) proved to be a record year in terms of revenue and profit performance – and consequently for the partners, record tax payments – the final instalments for an April 2008 year end due in January 2010.

The expectation for 2009 is that most firms will report lower results compared with 2008, as the effect of the downturn started to bite through the last quarter.

For some firms with greater exposure to the real estate sector, the fall in profitability is already significant and financial exposures in the funding of these firms are starting to manifest themselves.

Many firms, therefore, are taking steps to strengthen their balance sheets by ensuring that the firm has an appropriate level of funds available.

For the typical firm, its source of funds is threefold:

- working capital optimisation;
- new capital from the partners;
- and bank debt

The first option is about ensuring honesty in the ultimate recovery of unbilled client matters, and ensuring properly managed

billing and cash collection disciplines. Making discretionary partner drawings contingent upon achieving cash collection targets is a key feature of those firms with the best working capital practices.

The second is often, in practice, a simpler option for many firms. This sees partners raise and introduce capital individually and/or capitalise undrawn profits in the firm.

Bank debt, depending upon the performance of the firm, will be comparatively more difficult to raise, potentially more costly and, if raised recently, is likely to feature a number of financial and non-financial covenants to which the firm is required to adhere by the lender.

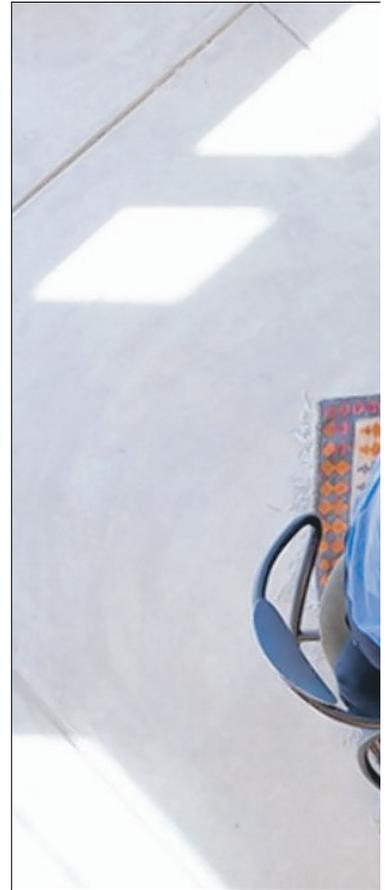
In certain situations, the bank will require the partners to introduce new capital as a pre-condition of their support.

The primary worry for managing partners is what the landscape in 2010 and 2011 will look like. Many commentators are suggesting that the market for legal services in the UK is unlikely to return to 2008 levels for a number of years. This means that the structural change arising in the traditional mix of services offered by law firms is likely to be sustained for some time.

At the same time, the effects of the downturn are being felt by the clients served by law firms. In turn, they will seek to intensify the pressure on pricing for routine legal services and weigh up the benefits of bringing more work in-house. More than ever, the market and buyers of legal services will be looking for greater clarity on firm differentiation.

So, not a great time to be managing partner perhaps – or is it? One thing is for sure:

The firms that will prosper are those that are now developing winning strategies



Firms and their clients are all currently

you might not be able to beat the market, but you can certainly beat the competition. There lies the opportunity for those managing partners who wish to take advantage of the current downturn by taking action now that will position their firm to win on differential, once markets regain momentum.

Taking stock of the firm's situation is vital, in terms of making candid assessments of the economy, markets served, how the firm is positioned and what its options are.

Only then can the firm start to develop coherent business responses around strengthening the firm's balance sheet, optimising performance, building confidence among its various stakeholders and, most importantly, positioning the firm for the future.

Many firms have been focused on locking down the necessary and often unpleasant

## Advertising through social networking

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Scottish solicitor asked for help locating a style document on Twitter and his firm was able to help.

"It has a friendly feeling where people are working together," he says. "For small practices that could be good. To be part of Twitter, or a similar network, to be able to shout out to people..."

He adds: "It's not that difficult – it's only 140 characters!"

Earlier this year Inkster announced it had become the

first firm in Scotland to join the QualitySolicitors.com stable, having signed up to become part of a network that provides a solicitor matching service for clients looking for particular expertise. The site claims to monitor the quality of service provided by firms, effectively giving each member a kite mark.

"There are plenty of websites listing solicitors or referring people to firms, but the fact they had this quality element, looking for firms of a certain standard, and they were going to be

doing feedback from the client, seemed a good concept," Mr Inkster says.

The firm pays a membership fee to be listed on the site, which was set up to counter the brand and marketing power of the larger firms as the profession moves towards the advent of what has become known as "Tesco-law".

"While that is part of it, it is still a good concept to have a group of solicitors providing a quality mark saying we provide a good quality service and that is

being monitored by the organisation," Mr Inkster says.

But where does he stand on the debate surrounding alternative business structures (ABS)? Is he, as he has been in the technological field, willing to embrace the changes ABS will offer?

"There are pros and cons," he admits. "Why should someone that is not a lawyer not be involved in the ownership of a law firm? But then again, how do you preserve the integrity of the legal profession? It's a difficult

# TOMORROW

## Medical Matters: John Garner watches his expenses



feeling the effects of the downturn, but it is how they react to it that will prove the difference in the long term

Picture: Alamy

near-term actions around headcount rationalisation and cost-reduction.

The firms that will succeed and prosper are those that are now turning their attention to developing winning strategies that position the ability and mindset of the firm as one of competing to win.

This will require action around identifying and securing those activities from which the medium-term sustainable growth will come for the firm – possibly very different from previous stalwarts – transforming the business model and manner in which legal services are delivered and capturing opportunity through acquiring or merging with other firms and/or strategic hires.

● Mike McGregor is associate partner and legal specialist at Deloitte in Scotland.

### LAST QUARTER'S FEES TAKE A TUMBLE

ACCORDING to Deloitte's *Quarterly Legal Sector Survey*, the fee income at the UK's top 100 law firms decreased by 4.3 per cent in the quarter ended on 30 April 2009. The consultants found that the quarterly results had a notable negative impact on the full year results for many firms, with more bad news expected on fee income in the current quarter.

The number of chargeable hours recorded per fee earner in the top 100 firms declined 7.1 per cent in comparison to the same period last year. This drop was more marked among the top ten who suffered an average 11.5 per cent drop.

Despite an overall drop in chargeable hours over the full year, Deloitte did see an increase in fee income of 1.7 per cent. This was, however, due to the decline in sterling which had a great impact on international firms.

Mike McGregor says the dip in chargeable hours demonstrates how tough firms found it in the final quarter of the year: "Many firms will be hoping that they start to see an improvement in their results through an increase in new instructions as business confidence improves and - importantly - the full effect of recent cost control measures."

## internet site boosts trade for legal firm

balancing act. As long as there are regulations that protect the consumer and ensure that they are still getting advice from legally qualified people, I don't think it is a huge problem.

Although Inksters would seem to be the type of firm that some cite as being ripe for the changes offered by ABS, perhaps by sharing overheads with an accountant or surveyor, he is sceptical of just how drastic an impact the changes would make. "How is it going to affect a practitioner providing family law ad-

vice going to court, or acrofting lawyer?" he asks. "It might take away an element of domestic conveyancing, because they might set up some sort of mass project. But even so, domestic conveyancing can have a lot of problems involved with it. It can be a fraught experience for people when they are moving house. They want somebody who has a good handle on what they are doing and can provide clear legal advice."

● www.inksters.com  
● www.twitter.com/inksters



Brian Inkster and his team are feeling the benefits of networking

### Lightbulb Moment

#### Jacko the smooth inventor

■ IN THE aftermath of the untimely death of Michael Jackson, among the little-known facts to emerge is that the singer was also a patented inventor.

Fans of his *Smooth Criminal* video, in which Jackson and his dancers appear to lean at impossible angles, will have wondered about the technique used to achieve this amazing effect. In the video, cables were used and edited out later, but for subsequent live shows this method was not practical. Jackson and his co-inventors devised a hollow-heeled shoe that would latch onto pegs periodically protruding from the stage floor.

#### Sweet smell of victory?

■ THE European Court of Justice (ECJ) has given its judgment in the case brought by L'Oréal against imitation perfume manufacturer, Bellure.

L'Oréal had complained about the use by Bellure of comparison lists which made use of L'Oréal registered trademarks claiming that the Bellure perfumes smelled like certain L'Oréal perfumes.

The ECJ found that Bellure's use of packaging and bottles similar to those of L'Oréal took unfair advantage of the company's trademarks.

The decision will be welcomed by brand owners, but will give the manufacturers of lookalike products (including supermarket own-brand products) and those engaged in comparative advertising that goes beyond simple comparison of objective criteria, cause for concern.

#### War of the flowers heads to Europe

■ THE High Court has given a decision on the question of Google AdWords in a case brought by relay flower network, Interflora, against Marks & Spencer (M&S) and Flowers Direct.

By the time of the hearing, Interflora had reached an agreement with Flowers Direct and Interflora's claim only continued against M&S.

The high street giant has been using the trademark Interflora (and various misspellings) as a Google AdWord to promote its own flower delivery website.

The court refused to grant Interflora an interim injunction to stop this and referred the question on the use of

trademarks as AdWords to the European Court of Justice (ECJ).

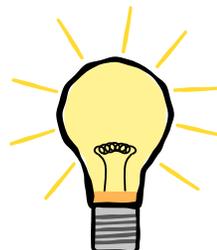
Brand owners will anxiously wait for the decisions from the ECJ, in the hope that the legal position on the use of trademarks as sponsored keywords will be clarified.

#### 'Green' patents to be fast-tracked

■ THE UK Intellectual Property Office (IPO) has introduced a scheme through which parties applying for UK patent protection for an invention relating to "Green or environmentally friendly technology can request fast-tracking of their patent application. The scheme came into force on 12 May.

Previously, applicants were required to provide a good business reason to illustrate why the IPO should deal with a particular application over and above other pending applications.

The ability to speed up the process could help applicants, especially early stage companies where demonstrating novelty of idea can help obtain funding.



#### Unholy row over Black Sabbath

■ OZZY Osbourne has filed a lawsuit against a former bandmate for rights associated with

the name Black Sabbath.

Osbourne has accused Tony Iommi of wrongly claiming to have sole rights to the band's name. Iommi claims Osbourne relinquished his legal rights to the name Black Sabbath, registered by Iommi as a US trademark in 2000, by leaving the band several times and having no part in the line-up from 1985 to 1997.

Osbourne claims it was his "signature vocals that accounted for the band's success and seeks lost profits, unspecified damages and recognition that all four of the band's founder members are co-owners of the trademark.

Addressing Iommi directly, Osbourne said: "We've all worked too hard and long in our careers to allow you to sell merchandise that features all our faces."

The case emphasises the importance of clearly identifying the owner(s) of any trademarks before they are legally registered, and subsequently ensuring any changes are accurately recorded with the trademark authorities.

● Marks & Clerk provides intellectual property advice worldwide. Contact it at: scotland@marks-clerk.com or visit www.marks-clerk.com