

# lindsays *life*

Issue 06



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the *life* of this magazine

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Welcome to the latest issue of *lindsays life*.

2014 will undoubtedly be an important year for Scotland from a sporting, economic and political perspective.

The Commonwealth Games come to Scotland, with all the promise, international profile and beneficial legacies that such a world-class event brings with it. We look forward to seeing Britain's athletes compete on the international stage, as well as to the economic and social benefits that will accrue to Scotland in the years to come. We look at this in more detail in our centre spread feature.

The economic climate has also begun to look more positive in recent months, and there has been much welcome activity in the residential property market, where I am pleased to say that Lindsays has enjoyed its busiest year ever. You can find out more about how the housing market is performing in your local area on page 7, or search for properties in your local area on our new property website, [property.lindsays.co.uk](http://property.lindsays.co.uk).

This edition of *lindsays life* looks at a range of other topics – from the perils of timeshare through to alternative ways to resolve disputes, and from the responsibilities of a charity trustee to the responsibilities of parenthood.

We are offering a free financial health check to clients and more information about this important initiative is featured on page 13. Please get in touch with us if you feel we could help.

Finally we have been very active recently on the recruitment front in order to enhance our teams and support our clients. We are delighted to welcome a number of new members to Lindsays, and you can find out more about some of them on the back page.

I hope you *enjoy* the magazine.



David Reith  
Chairman

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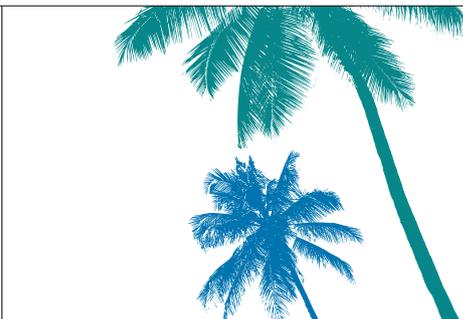
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# Love and marriage

## As Frank Sinatra so memorably crooned “Love and Marriage – go together like a horse and carriage.”

And indeed they do – but for some, unfortunately, the wheels come off. No one enters a marriage intending it to fail, but statistics tell us that a high number – now around 40% – of all marriages do not work out.

That is why more and more couples are opting to start their married life by taking what some still view as the unromantic step of entering into a prenuptial agreement.

And it’s not just those who are getting hitched – more couples who choose to set up home together and not to marry are seeking the peace of mind of a cohabitation agreement.

While no one would claim that entering into a prenuptial agreement is romantic, more men and women are seeking the clarity and peace of mind that such an agreement brings, as the financial tensions are removed and both parties know where they stand.

It therefore makes perfect sense to set out what should happen in the worst-case scenario of a separation or divorce. In particular, we are seeing high numbers of people in Scotland who have been through divorce seeking prenuptial agreements before embarking on a second marriage.

This is especially true where individuals have significant assets, or are seeking to protect their assets for the benefit of children from a previous marriage.

Times have changed. Where once, entering into such an agreement may have carried a stigma, nowadays they are commonplace and are a sensible part of an individual’s wealth management.

For those choosing to live together without marrying, a Supreme Court ruling last year brought the wisdom of cohabitation agreements into sharp focus.

Angus Grant was told he should pay Jessamine Gow £39,500 after the cohabiting pensioners’ relationship ended. The right to compensation for unmarried couples became available under section 28 of the Family Law (Scotland) Act 2006, but had not been tested in the Supreme Court until last summer.

“  
A cohabitation agreement brings clarity to a relationship, just as a prenuptial agreement does for couples marrying, and should protect the interests of both parties.”

Although the Supreme Court, led by Scottish judge Lord Hope, stressed that the ruling does not legally equate cohabiting couples with married ones, it does allow cohabitants to seek financial compensation on cessation of

cohabitation, similar to divorcing couples, but without the presumption of an equal division of assets.

The effect will be to widen the scope of possible claims at the end of a cohabitation. While no floodgates are likely to open, there may be many more cohabitation claims in the future – potentially thousands of cases – not because more cohabitations are going to break down, but because more claims will be worth making.

Cohabitants in Scotland should therefore carefully consider a cohabitation agreement specifying who, if anyone, is going to get what, if anything, in the event of a relationship breakdown. A cohabitation agreement brings clarity to a relationship, just as a prenuptial agreement does for couples marrying, and should protect the interests of both parties.

Interestingly, an increasing number of people who cannot find the time to arrange a prenuptial agreement ahead of tying the knot are returning from honeymoon and entering into post-nuptial agreements. The trend continues.

Whilst it is the rich and famous who make the headlines, these kinds of agreements are not just for celebrities. An increasing number of people are understanding that what may, at first sight, appear to be unromantic does actually provide peace of mind, and transparency, and that is a strong foundation for the future of the relationship.



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# Bringing up baby: A right royal checklist

As HRH The Duke and Duchess of Cambridge discovered this summer, having a baby is a very big deal.

While the world may not be watching most young couples as they go through the joy of starting a family, the event is one that will change the lives of those setting out on the road as parents.

Here, we provide some top tips to new parents, including royalty:

1. **Bringing up baby costs a lot of money:** Research conducted for a major insurance company showed that the cost of raising a child has increased by a whopping 58% since 2003, at a UK average of £222,458 from birth to 21 years old. Financial planning is a must!
2. **Taking time off for Mum and Dad:** Any working Mum is entitled to 52 weeks of maternity leave, and most will also qualify for 39 weeks Statutory Maternity Pay or, failing which, Maternity Allowance. For Dad, the allowance is less princely, with only two weeks paid paternity leave if Mum uses her whole Statutory Maternity Pay allowance! Either way, ensure you investigate what you may be entitled to and inform your employers.
3. **Home sweet home:** Many couples find the bijou flat they have enjoyed as a duo will not meet their needs as a trio. It is worth considering whether trading up the property ladder is necessary to ensure junior has all he or she needs to grow and prosper. If a move is necessary, the couple need to decide on ownership - for most, joint ownership will be the way, but couples can take a different view. For example, what is the value of separate properties being sold to finance the new pad? Has the property been in the family for some time? Is one partner providing all of the deposit finance? Then there's the question of a mortgage, and who is paying what.
4. **A little insurance:** They say that the only certainties in life are death and taxes, so while it may seem a morbid subject it makes good sense to plan. Certainly, couples raising a family and buying a home together need to take out life insurance - particularly when one or both participate in dangerous sports or past-times. The amount to be insured is entirely up to the couple concerned, but certainly should cover the mortgage in full and ideally should provide income cover as well.
5. **Don't forget the Will!:** Young couples taking the wise decision to draw up a Will are generally motivated by a desire to ensure their children are looked after in the unfortunate event of their deaths. Who is to have the guardianship of the newest arrival in those tragic circumstances? Grandparents may be getting a little old for the demands of child-rearing; siblings may not be available, and friends might be reluctant. It needs to be discussed and explored.
6. **Patter of tiny feet:** At some stage most married couples will inevitably be considering the future of their children. Childcare and school fees may be required. University fees may need to be paid, particularly south of the Border. Depending on your circumstances, you may be in a position to make financial gifts to help children out during their time at university, with buying their first home, or with a wedding. Alternatively, it might be appropriate to look at setting up trusts to protect assets for their future. In any case, married couples need to seek advice on the different ways in which they can assist their children financially and how best to do this with a view to saving inheritance tax and capital gains tax in the future.



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# Holiday Homes: With the best Will in the world...

It's the ultimate holiday dream – that second home abroad, sunshine and a relaxed pace of life away from the hustle and bustle of Edinburgh, Glasgow or Dundee.

Owning a holiday home in France, Spain or even further afield can also be a valuable asset that generates rent when you're not in situ. Purchasing such a property is often also viewed as an investment for the rest of the family to enjoy in years to come.

If you are considering a purchase abroad or already have such a property, it is important that you are aware of the potential pitfalls that can arise if not properly planned for.

## Making a Will

It is advisable to make a valid Will in the country in which your holiday home is situated. A Will made in the UK may not satisfy legal requirements in the country that you purchase your holiday home in, and that could lead to lengthy and costly problems. Inheritance tax laws for instance, vary widely from country to country.

For example, under French law you do not have carte blanche to deal with the property however you wish. By virtue of the French Civil Code, French law applies to land and buildings situated in France, irrespective of what you say in your Will.

## Title to the property

It also depends on how the title to the property is held. In France, one of the most popular countries for the British to own holiday homes, there are different ways of holding title to a property depending on whether the property is jointly or individually owned.

'En indivision' is the most common method of joint ownership where the property is held jointly, normally in equal shares. In this case, the title passes on death in accordance with French Succession Law, and there are two elements to consider – there is what's called the reserved part and then there is the remainder or unreserved part.

If you do not have children the position is reasonably straightforward but if you do have children, they are "protected heirs", which means that the surviving spouse cannot inherit all of the property belonging to the deceased spouse. French law overrides whatever is stated in a Will and gives the children the reserved part (a one half share of the deceased's share if you have one child, a two thirds share if you have two children, and a three quarters share if you have more than two children). The surviving spouse can only be left the unreserved part.

It means that if you have children, you cannot leave the full half share of your French property to your spouse, only the portion which is unreserved.

It is very important to ensure that your foreign Will does not conflict with or override your UK Will. The two must complement each other and professional advice should be taken at all times to plan your succession.

Remember, if you are a UK taxpayer, all of your assets worldwide are subject to UK Inheritance Tax and your holiday home could be subject to similar tax in any other country. To avoid paying twice, the UK has reciprocal tax arrangements with most countries in the world, but depending on the rate of Inheritance Tax in the country concerned, you may pay a higher rate.

## Probate

Finally, it is important to remember that if you are handling the estate of someone who has died owning property abroad, you will be required to seek Probate in that country as well. Probate gives you the legal right to distribute the estate according to the deceased's wishes.

“ Our golden rule is that you should make a valid Will in the country in which your holiday home is situated. ”

## Principal home

Should you decide to move to France and your French property becomes your principal home, a surviving spouse is entitled to remain in the property for the remainder of his or her life, irrespective of any children receiving their reserved portion of the title. There is no such automatic entitlement to remain in the property if it is not the principal home, therefore an agreement would have to be reached.

## Considerations within the UK

All of this does not mean however that you should discount the use of a UK Will. A UK Will should still be used for everything else, including money and household possessions in the country in which the holiday home stands.

This need not be as daunting as it sounds. We have many clients with property abroad and can put you in touch with suitably qualified and trusted lawyers all over the world through our Law Exchange International network contacts.



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# Beware the neverending timeshare

Thousands of Scots families could be facing a neverending holiday cost after buying “in perpetuity” timeshares.

Even when the timeshare owner dies, the liabilities involved in annual maintenance charges can continue – often for access to property that hasn’t been used in years and is unlikely to be used again.

This can see unsuspecting families facing annual costs running to hundreds, or even thousands of pounds with no end in sight. Even selling up can be fraught with difficulties in a market-place plagued by fraudsters and enormous over-supply and falling demand.

It can be tempting, when enjoying a sunshine holiday overseas, to imagine an annual return to the resort or villa you like. Timeshare can seem like an affordable way to enjoy a holiday home overseas, and indeed is sold on that basis. But please beware!

With timeshare, you buy the right to stay in an apartment, house or hotel on a resort for a certain number of weeks each year, often through membership of a “club” and usually for a one-off payment. Some contracts are for a set number of years, but many are “in perpetuity.” Owners and, in the case of the in perpetuity deals, their executors or beneficiaries also have to pay annual maintenance charges, which often increase each year.

The demand for timeshare hit a peak in the 1980’s, when huge numbers were sold. The Timeshare Consumers Association estimates that there are around 1 million timeshare owners in Europe – with almost half of them from the UK.

High-pressure sales techniques were often used, and on occasions still are, although some progress has been made in regulating this. I have been asked in the past for top tips on buying timeshare, and my top tip is **Don’t do it.**

However, there is an existing issue that many people do need help with. Many timeshare owners are now older, and often do not want to keep travelling to their timeshare year after year. When the owner of a timeshare dies, it is not only the timeshare which passes into the estate, it is also the liability to pay management charges. If there is no one who wants to take on the timeshare, this can result in indefinite delay and expenses in winding up the estate.

“When the owner of a timeshare dies, it is not only the timeshare which passes into the estate, it is also the liability to pay management charges.”

In the absence of a market for the timeshare, often the management company will not even contemplate repossession, even when a financial incentive is offered, preferring to recover management charges indefinitely. If you find yourself in this situation there is no easy answer but you should seek expert legal advice to see what remedies you may have.

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# No such thing as an *average* house price?

Mark Twain popularised the phrase “there are three kinds of lies; lies, damned lies and statistics.” It remains the case today that statistics can be dangerous, particularly if looked at in isolation and without context. Take ‘the average house price survey’ for instance.

Barely a week goes by without one organisation or another announcing statistics which apparently prove that house prices are rising or falling. The media have a seemingly insatiable appetite for these figures and reports. There are even occasions when one survey shows a ‘prices rising’ story while another survey brings about a ‘prices falling’ story. So where does the truth lie and how much stock should we put in these surveys and the resultant reports?

To answer these questions we first need to understand the statistics which are the basis of these surveys. Almost without exception the surveys are based on ‘average house price’ i.e. the organisation running the survey adds up the total value of the group of property transactions which it knows about and divides that total value by the number of transactions involved. The result is the ‘average house price’, or some measure of it.

Changes in ‘average house price’ however are not a realistic measure of changes in real house prices. For example, if Lindsays sells ten properties at £100,000 each this week then the ‘average house price’ for those properties this week is £100,000. If next week we sell nine properties at £100,000 each and one property at £1,100,000 then the ‘average house price’ of that group of properties is £200,000.

The Lindsays survey would show an increase in average house price between this week and next of 100%. Apply that same level of increase to the real value of your own property and its value has doubled in a week. Complete nonsense, of course.

So, it is fair to conclude that ‘average house price’ surveys provide little meaningful information in relation to actual house price change. This is because many factors other than real changes in house prices also cause fluctuations in the ‘average house price’.

## Factors to be mindful of are:

- Changes in the make up of the group of property transactions being used to calculate the average price. For example, if the property market were to see an increase in the number of first time buyer properties changing hands (which most experts would agree would be a good thing for the property market generally) this might reduce average house prices because most first time buyer properties are towards the lower end of the price scale.
- The extent to which average house price statistics are likely to be misleading will be greater the shorter the period of calculation. For example, an annual figure is likely to be more meaningful than a weekly or monthly figure.
- Mortgage providers are a regular source of average house price statistics. If a particular lender introduces a mortgage product which is popular with first time buyers or one which is popular with people buying bigger properties (who tend to have different mortgage requirements to first time buyers) then the popularity of this product can change the balance of the property transactions that the lender deals with in a particular period.

If you are thinking about selling your property and would like some free advice in relation to real house prices or would like a free property valuation then we will be happy to provide this for you.



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# How is the property market *performing* in your area?

Happily, the market has returned to levels not seen since before the crash.

Volumes of sales have been much improved year on year and we are now experiencing many more instances of competitive bidding arising from closing dates. Investors are returning to the market, attracted by higher yields and a more stable marketplace. First time buyers – so important to the general health of the property market – are also returning in higher numbers, attracted by more flexible mortgage options and by the availability of government-backed schemes.

How long this will continue cannot be predicted for certain. Sensible pricing remains key to a successful sale, allied to a comprehensive marketing platform.

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“

More properties are going under offer than at the same time last year, with most prices near to valuation or exceeding it on numerous occasions. In the past few months properties in desirable locations are selling within days and it's those properties that are attaining prices over the valuation. ”

Meg Hanlin  
Property Manager  
**Dundee**



“

Many buyers are focusing their attention on new properties as they are launched on to the market and these properties have been selling in days rather than weeks. In East Lothian the popular coastal towns of North Berwick and Gullane have seen some excellent results. ”

Jason Martin  
Property Manager  
**North Berwick**



“

Overall, the Glasgow market is showing signs of gradual improvement although it is price sensitive. The city centre is bearing up well and some outlying areas are following suit. It will be interesting to monitor the Commonwealth Games factor over the coming months. ”

Gail Pollock  
Director  
**Glasgow**



“

We've had record breaking sales figures throughout 2013. The traditional summer lull while buyers take their annual holiday did not materialise. This resulted in a shortage of stock in some categories, meaning upwards pressure on pricing. ”

Nicola Scott  
Property Manager  
**Edinburgh**





# Focus on Glasgow: The Commonwealth Games Legacy

The Commonwealth Games will see over 6,500 athletes from 71 nations compete across 17 sports in Glasgow from 23rd July to 3rd August 2014, with a global audience of 1.5bn expected to tune in.

But while the prestige and promotion will be important to the city, the Games is about so much more than those two weeks of excitement.

The legacy will deliver lasting change across Scotland in the years to come. Here, we focus on two key elements of the legacy - to inspire more Scots to get active, and the transformation of Glasgow's East End.



**Ian Beattie**  
Chairman of Scottish Athletics

**Ian Beattie is Chief Operating Officer of Lindsays. An ultra runner with a marathon personal best of under 3 hours, Ian is also the Chairman of Scottish Athletics and former Vice Chairman of SportScotland. Here, Ian shares his insight into the lead up to and the legacy of the Commonwealth Games 2014.**

It has been a marathon effort, but we are now on the home stretch as we build up to what promises to be an inspirational sporting event that puts Scotland on the world stage.

As someone immersed in athletics in particular and sport in general, and an advocate of the benefits of participation, I know Glasgow 2014 will provide a fantastic springboard - we all witnessed the surge in interest across all sports following the hosting of the London Olympics.

The legacy left behind by the Games will be multi-faceted, but one huge benefit will be the increased interest and participation in sport. When the spike in demand

happens we must be ready to accommodate and sustain it. A key role of Scottish Athletics is to get more people into the sport, into a structure which allows the best chances of progression and achievement, with the most talented performers being able to achieve success at the highest levels.

Those aims have to be balanced to accommodate all, from the fun runner through to the serious athlete. Scottish Athletics has a number of initiatives in place to help achieve this, such as the hugely successful Club Together programme. This programme provides clubs with additional resources and support that allows them to recruit more athletes, coaches, officials and other volunteers. The project currently provides paid posts, funded with local partners, to 17 clubs across Scotland, with an additional 8 clubs about to join.

For those wishing to take up running, the JogScotland initiative, Scotland's National Jogging Network, has tens of thousands of members and is continuing to grow. Scottish Athletics is working hard with our athletes who are preparing to participate in the Games, and aims to maximise the performance of our sportsmen and women. As a nation, we need to seek to excel and to have that mindset in all that we do.

I have high hopes for Glasgow 2014. The work which has gone into creating venues and the Athletes Village will bring lasting benefits, and the close-up view we, as a nation, will enjoy of world-class sportsmen and women competing for medals will inspire many of us to get out there and try for ourselves.

Focusing on the health and well-being of the people in Scotland and inspiring the next generation of Commonwealth athletes may well prove to be the most valuable of all legacies.



### Paul Stallan Architect and Masterplanner

Paul Stallan is an award-winning architect and masterplanner, and the creative vision behind the Athletes Village for Glasgow 2014. The high spec, low energy development will accommodate 6500 athletes over the Games, and leave a lasting legacy of regeneration in the East End for years to come.

The Athletes Village will be a fantastic place to stay for those competing in the Games, and is the culmination of many years of planning and focus.

In addition to housing thousands of elite athletes during the Games, the development is key to the rejuvenation of a previously derelict site – a project of real national significance.

In fact one of the things that helped Glasgow to win the bid for the Games was the lasting legacy of urban regeneration.

As part of the City Legacy Consortium I have been working with Glasgow City Council and the local communities for over three years to deliver an iconic project, and one that serves as a cornerstone for the transformation of local lifestyles as well as the physical space.

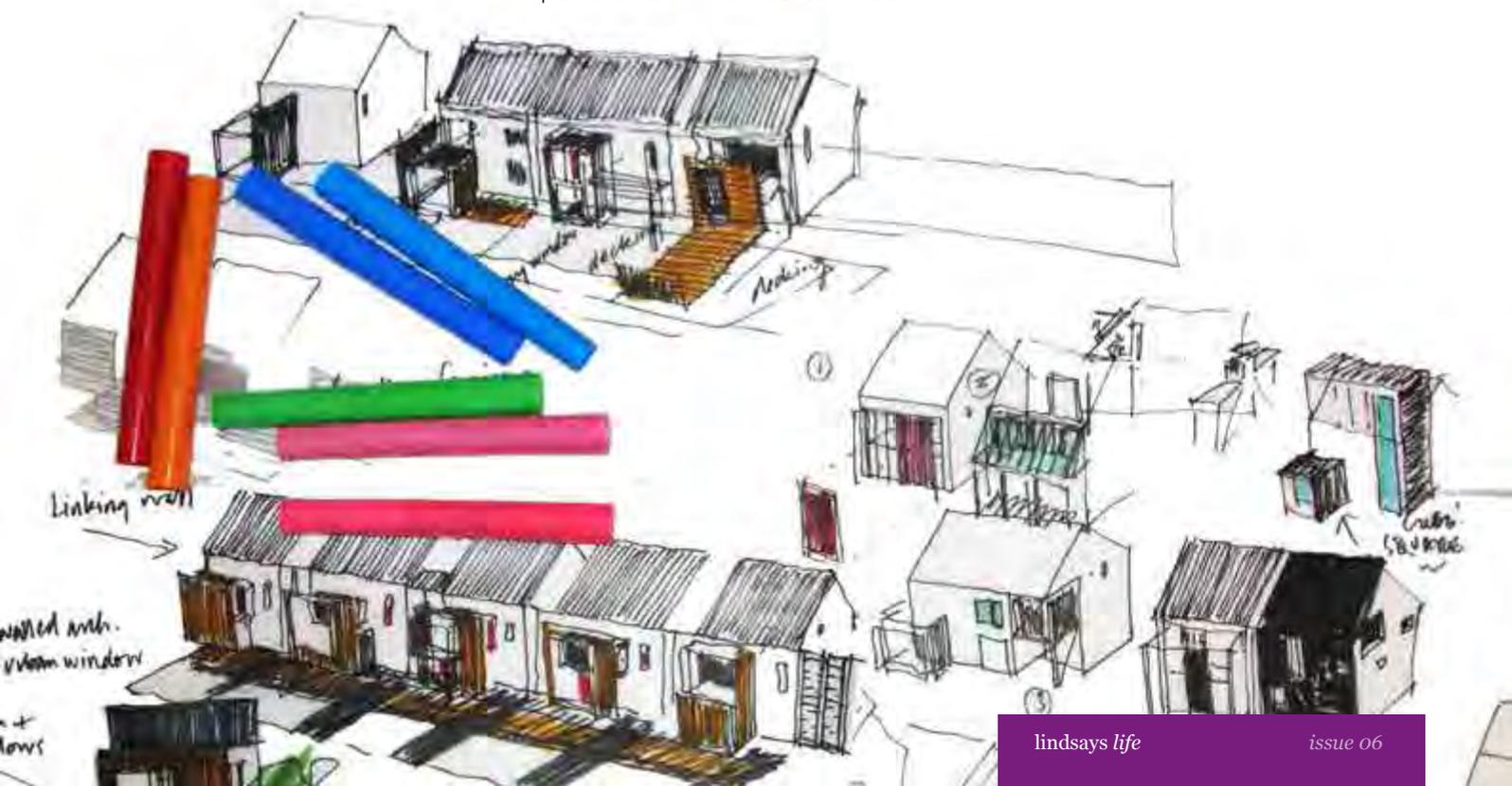
The village contains 700 homes and a beautiful new care home, which are designed to the highest specification. Scandinavian levels of insulation, innovative combined heating and power, and solar panels on all homes mean this is a first

- Scotland's first nearest zero carbon development, and the first Games to have zero temporary housing.

Once the athletes have gone, a retrofit will see the houses become family homes. The village will be knitted into the local community and will continue to evolve, with the ultimate aim being the repopulation of the area. The development also comes with enhanced public realm works, with a riverside walk and a forest park nearby, and further developments are planned to continue the regeneration of the East End.

Glasgow will be in the spotlight for an intense two weeks during 2014, but once the athletes have gone these homes will be central to the transformation of the East End of Glasgow, and to the Scottish economy, for years to come. As a local Glasgow boy, I'm delighted to have played my part.

*Stallan-Brand Architecture Ltd won the Placemaking and Masterplanning Consultant of the Year Award at the Scottish Design Awards 2013.*



# Thinking of starting a business?

If you are thinking of starting a business, sound planning and structuring is key to your future success. If you've decided to take the plunge or are wondering if entrepreneurship is for you, we've put together a handy checklist to help you maximise your chances of success.

1. **Sound planning is key:** Prepare a business plan to outline objectives, financials, resources needed and realistic timescales.
2. **What's in a name?:** Choose your business name carefully and ensure it is not already being used by someone else. Think about whether you can protect it through trademarking.
3. **Find trusted advisors:** Getting good legal, financial and tax advice is important for any business, no matter what size. Legal advice will be required in a wide number of areas, such as corporate advice for your business structure and start up paperwork, employment advice if you need to hire staff, or property advice for your premises.
4. **Take time to choose your business structure:** There are a number of structures available from operating as a sole trader to starting a limited company or partnership. Each has advantages and disadvantages.
5. **Funding:** If you need to attract capital or borrow funds from a bank, your business plan will be essential. Your funding requirements may dictate the best business structure for you. Have you checked to see what grants may be available?
6. **Regulatory requirements:** There may be specific requirements for the industry sector you plan to go into, for instance licensing requirements within the hospitality industry, or EU safety requirements for product packaging. Are you operating online? If so you will need to comply with UK e-commerce laws.
7. **Put it all in writing!:** It is essential that all agreements, contracts and terms and conditions are well defined and signed by all parties. Not only is this good planning, it will also protect against any future disputes.
8. **Training:** Don't be afraid to admit that there are areas you need to know more about, and then get the relevant training or support.
9. **Marketing:** Think about the best channels for your business, be it your website and social media, networking and events or printed resources such as flyers and advertising.



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# Employment law:

## *The art of compromise*

Settlement agreements are a popular way for employers and employees to end the employment relationship and avoid an Employment Tribunal, often reducing cost, management time and adverse publicity. Following a change in legislation, employer's use of them is likely to increase.

### What is a settlement agreement?

It is a formal contract entered into by an employee with their employer to terminate employment and settle all claims against the employer in return for a payment of compensation.

To be a valid and effective waiver of all claims, a settlement agreement must meet certain conditions:

- It must be in writing;
- It must relate to a "particular complaint";
- The employee must have received legal advice from an independent advisor on the terms of the agreement and its effect on their ability to pursue any rights before an Employment Tribunal;
- The independent advisor must have insurance or professional indemnity insurance covering the risk of a claim against them by the employee;
- The agreement must identify the advisor;
- It must state that all of the above conditions have been met.

### When is it appropriate for the employer to offer settlement?

In July 2013 compromise agreements were renamed "settlement agreements" and the concept of pre-termination settlement negotiations was introduced. These are "protected conversations", meaning an offer of settlement can be made to an employee without notice and without any formal process, which is usually required to fairly dismiss an employee. If the employee refuses an offer and their employment is later terminated for a fair reason, such as conduct or capability, then the offer cannot be referred to as evidence in support of the view that the subsequent dismissal process followed by their employer was a sham.

The new legislation applies to unfair dismissal claims but excludes automatic unfair dismissal or discrimination claims. Automatic unfair dismissals happen for a number of reasons including pregnancy or maternity, raising health and safety concerns, or whistleblowing on illegal activity. If an Employment Tribunal considers that there has been "improper behaviour" such as undue pressure on the employee to sign the agreement, the conversation can be relied upon as evidence at Tribunal.

### Negotiating settlement

The agreement sets out the terms on which the employee leaves their employment and deals with a number of issues:

#### Consideration and compensation

- There is no rule for calculating compensation, most frequently agreement will be via a commercial negotiation between the parties and their representatives.
- If nothing has been done to manage an employee's performance or absence then a settlement agreement "out of the blue" may be met with strong resistance.
- If the employee's solicitor has advised that they have strong claims against their employer, this may prompt negotiations for increased compensation.

#### Tax

- Payments up to £30,000 in compensation can be made to the employee tax free.
- Settlement agreements typically include a clause that requires the employee to indemnify the employer against any demands from HMRC for tax, interest and penalties on compensation payments.

#### Claw-back, warranties and indemnities

Employers can include a "claw-back" clause requiring the termination payment to be repaid if the agreement is breached or a claim brought against the employer. These are likely to be unenforceable so it is now more common to require a warranty from the employee confirming that the claims listed are the only claims they have, and that they indemnify the employer in respect of any breach or claim for which the employer suffers a loss.

#### Confidentiality

An advantage of settlement agreements is that disputes can be concluded privately. It is normally in both parties' interests for the terms of agreement to remain confidential, and a clause to that effect is often included, with disclosure only in limited situations (for example, to immediate family members or professional advisers).

### Can all claims be settled?

Once signed, a settlement agreement prevents an employee from bringing the particular complaint to an Employment Tribunal. Most agreements will also cover any other possible claim that an employee may have against their employer, except for personal injury claims which the employee is unaware of when signing, and accrued pension rights, which cannot be waived.

Blanket clauses to settle all potential claims are unlikely to create an effective and binding agreement as they won't relate to a "particular complaint". Instead settlement agreements should list all the specific claims to be compromised.

Settlement agreements cannot be used in all circumstances - employment legislation does not allow employees to settle claims in respect of the employer's failure to collectively consult with appropriate representatives in relation to collective redundancies and TUPE transfers.

Whilst settlement agreements may be seen as a remedy for all employment ills, allowing both parties to end an unhappy relationship swiftly and without significant legal costs, care needs to be taken by both parties when drafting and negotiating their terms.

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# Mediation: An alternative route to *resolution*

When disputes arise, it is all too easy for the parties involved to become entrenched and dig their heels in – but that often ends up dragging out the problem and costing a great deal.

There is another way. You may have heard of mediation, which is a form of alternative dispute resolution. Mediation is a way to negotiate a successful conclusion to a dispute. It is a voluntary process where both parties meet to try to resolve their differences and agree a solution.

A mediator is not a judge, but an independent trained facilitator who works with the parties and tries to direct them towards a solution.

So, what are the potential benefits to you, your family and your business? Mediation enjoys many benefits in comparison with traditional court action.

## Approach

Traditional adversarial court actions often damage relationships irreparably. Mediation is more conciliatory, so having resolved their disputes parties can often maintain an effective personal or commercial relationship.

## Speed and cost

It can be quicker than the traditional court process, which may take many months, involving lengthy correspondence, multiple court papers and appearances. Mediation usually results in a solution at an early meeting between the parties. It is generally less expensive, being a shorter and quicker process than traditional litigation.

## Flexible solutions

Solutions can be more flexible than those achieved through the courts. The courts are limited to dealing with particular types of dispute, with specific and sometimes restricted remedies. Mediation allows parties to explore all areas of a dispute, including broader issues, and come up with wide-ranging and innovative solutions to the particular problem.

## Confidential

Unlike the decision from a court, the mediated settlement has the advantage of being confidential, an important consideration in disputes involving sensitive personal or commercial issues.

## Less formal

Mediation is less formal and stressful than going to court.

## Less risk

Whilst you may be confident of your position, in traditional court procedure evidence is all important, and there remain risks. The evidence may not be as supportive as you expect; an important witness may not turn up, or a Sheriff may prefer the other side's witness, all leading to unexpected and unwelcome outcomes. In mediation, the emphasis is

on exploring solutions rather than testing evidence. As regards costs, each party usually pays only their own and so a major worry associated with litigation is removed, meaning budgeting tends to be more straightforward.

## High success rate

As it is a voluntary process, parties approach it with a view to reaching a solution, rather than defending themselves. This mindset is more likely to lead to an agreement, and crucially, evidence shows that these agreements are more likely to be adhered to than other settlements or court orders.

Mediation is used for all types of dispute and is particularly useful for:

- Business disputes including contractual disputes, negligence and debt recovery
- Family disputes, including divorce and child custody
- Housing disputes
- Workplace/employment disputes
- Neighbour disputes
- Planning and community disputes

## How do I find out more?

Contact us and we would be happy to discuss the benefits in more detail and how mediation can work in practice. Mediation can be used at any point in the course of a dispute, even after court proceedings are raised, but generally the earlier it is considered the more likely it is to be effective. Our dispute resolution team have experience of mediation and can guide you through the process to resolve your disputes more effectively.



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# Get set to make some savings

Saving for summer holidays, the expense of Christmas and a winter break – the continuing expenses of seasonal activities mean it is always a good time to review your personal finances and make them shine.

Many of us find it hard to make time for such things, but with the darker nights and cooler evenings it makes sense to book in some quiet time to review your financial position. Who knows, you may be able to make some savings to spend on that longed-for summer break in the sun! We have put together some simple steps to take to ensure you can endure the winter cosy in the knowledge that your personal finances are unlikely to give you cold shivers.

## Review your basics:

- **Evaluate your debt** – including your mortgage. Work out exactly how much you owe, who it is owed to, and what interest you are paying. Ensuring you are on the best available deal can literally save hundreds of pounds a month, reduce debt or enable you to pay it off more quickly.
- **Sort out your main bank account** – usually a current account. It is your financial 'living room'. Make sure that you are not paying direct debits or standing orders for services or products you no longer use or need – you'd be surprised how often it happens! If you run an overdraft, make sure you have an account with the lowest possible charges.
- **Revisit your insurances** – haul out those home, car and life insurance policies and make sure they are still up to date, and that they still provide the appropriate level of cover you need. Sometimes this can help reduce payments, but be prepared to pay more if you need to up your levels of protection due to changed circumstances since your last renewal.
- **Ensure your paperwork is up to date** – deal with any unopened statements and ensure you know exactly what you have, what you owe, and what you pay out.
- **Investigate bundled deals for television, phone and broadband** – there are a whole raft of deals out there, with big savings to be made.

## Plan for the future:

- **Check the interest rate that your savings are attracting** – are they gaining the best possible returns? Remember, interest rates initially designed to attract savers are often then reduced at a later date and introductory offers run out.
- **Make the most of your ISA allowance** – the tax benefits offered can make this a sensible way of saving. The ISA allowance is £11,520 – with half able to go into a cash ISA, while the rest can be invested in a stocks and shares ISA.
- **Take responsibility for retirement** - you will never regret the time you spend ensuring you plan for retirement – so dust off your pensions and give them a good look over. Do you need to pay more? Are you with the best providers? And what is the situation regarding your state pension – how much are you likely to receive and when? Find out more at: <https://www.gov.uk/calculate-state-pension>
- **If you are nearing retirement, think about annuity options** - the Open Market Option allows you to search and choose from thousands of providers to find the best rate for your individual circumstances. You can increase your annuity income substantially by taking the time to do this.
- **Plan for your nearest and dearest** – have you made a Will to protect all of your investments and your loved ones? If you do not have a Will, the wealth you have built up may not be passed on to the people that you would have chosen it to.

It is well worth the time and effort to periodically review your outgoings and investments to ensure that you are getting the best deal, both now and for the future.

## Is your financial planning on track?

Take advantage of a financial planning review with Lindsays, offered at no cost.

We will look at your current needs and existing arrangements, consider your long term goals and approach and outline the opportunities available to you.

### We can help with:

- a general review of your finances
- annuities
- tax planning and structuring
- investments
- mortgages
- protection products
- pensions and retirement planning
- care for the elderly, including nursing home fees

**Get in touch with your usual Lindsays contact to find out more.**

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# Contract farming: Don't just plough ahead

Farming succession is a far less certain arrangement than it once was, with many farming families now seeing their sons and daughters opting for pastures new and more secure.

Many farmers sell or lease their farms when the time comes to retire, but some are reluctant to completely give up the connection to their land.

For these people, and those whose children will want to farm in the future, contract farming can provide an alternative solution to a sale or lease; but those considering it should ensure they take advice from both their land agents and their lawyers, to avoid unintended and potentially costly consequences.

A contract farming agreement is a joint venture between a landowner or occupier and a contractor, with each party providing capital inputs and sharing the risks and the surplus. The arrangements are flexible, and can also appeal to those looking to expand without tying up large amounts of money, or those looking to cut down on their physical work and involvement.

The immediate benefit for most farmers is a reduction in the money they have tied up in the farm, as most of the machinery becomes surplus and is sold while they are still living in the farmhouse and running the business. Some may do this to enjoy less of a daily work commitment, while others may want to release capital to pursue other dreams.

On the other side of the dry-stane dyke, contractors can reap the rewards of economies of scale by taking on more acres, receiving a guaranteed payment per acre and working hard to maximise the surplus and therefore the overall payment. In most agreements, the contractor retains the bulk of the surplus.

“ A contract farming agreement is a joint venture between a landowner or occupier and a contractor. ”

However, while these agreements do offer a viable alternative to selling up and moving on, those considering entering such an arrangement should be aware that a poorly constructed contract can lead to unintended consequences, in particular relating to taxation and potential loss of relief from inheritance tax.

For that reason, it is essential that farmers consult with their land agents and also with an appropriately qualified lawyer to ensure that they are well protected from all angles.



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# When your council tax banding has no appeal...



If you have moved house recently and were shocked by the size of your new council tax bill, you can challenge the figures.

There are only limited circumstances when the Assessor can change a council tax banding. The Assessor may change the band where the property has increased in value following alteration, but only if the property has been sold after the alteration has been completed.

The committee decides each case on its merits and it is in the appellant's interest to do their homework to find out the banding value of comparable properties in the vicinity. The committee are empowered to reduce the council tax banding for a property.

The new homeowners have just six months from date of issue of the council tax notice on their new home to lodge an appeal. If appeal negotiations with the Assessor fail, then they have the right to appeal to their local valuation appeal panel.

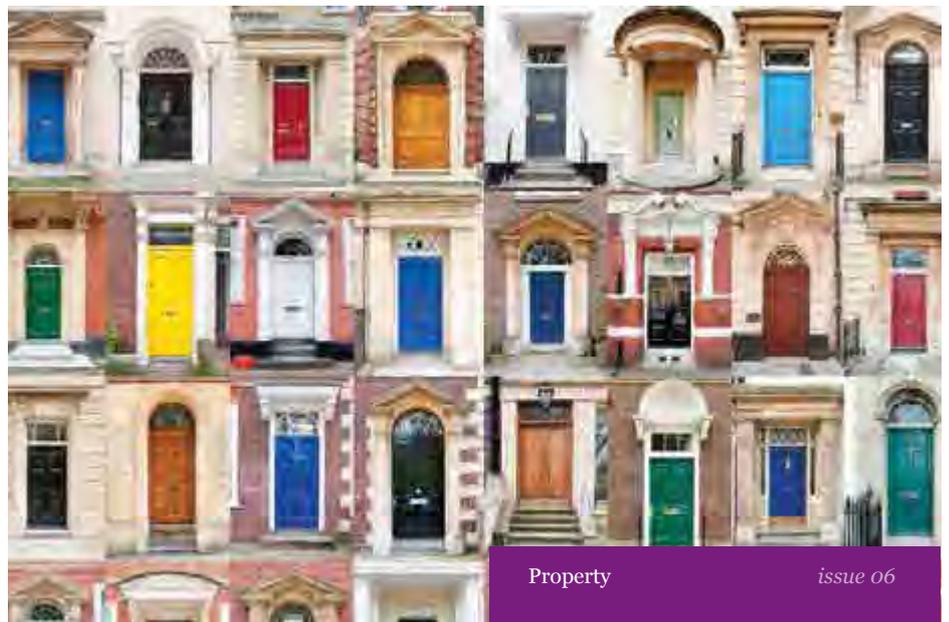
For council tax cases there is a right of appeal on point of law to the Court of Session.

The valuation appeal panel consists of independent lay members of the community who decide council tax and ratings appeals. The panel normally comprises of a chairman and three members appointed by the Sheriff Principal, all of whom give up their time voluntarily to sit on the panel. Procedure is informal and the appeal is of no cost to the appellant.

Although professional representation is unusual for council tax cases, we can give guidance on procedural matters and professional representation is often advisable for ratings appeals.

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# Becoming a charity trustee

Many people wish to give something back to their community by assisting a local charity or organisation – but those keen to help should also ensure they are clear on some key issues.

Where an individual becomes a trustee of a charity, certain legal responsibilities and obligations follow. In contrast, if you simply wish to become a volunteer and not a charity trustee or if the organisation you are joining is not a charity, these responsibilities do not arise.

Being a charity trustee is certainly more demanding than it used to be. Trustees must be aware of the legal provisions set out in the Charity and Trustee Investment (Scotland) Act 2005 and the requirements of the Office of the Scottish Charity Regulator (OSCR). If the charity in question is also a limited company, further responsibilities may arise under the Companies Act.

In my experience, the area of most concern to trustees (and this is understandable) is their potential personal liability if things go financially wrong with the charity. This is an area of genuine concern as even a well-run, long established charity can lose its funding very quickly. Ideally trustees

should limit their potential liability by being a trustee of a charity that operates as a limited liability entity. Such entities include a company limited by guarantee or a Scottish Charitable Incorporated Organisation (SCIO).

While it is often very rewarding for individuals to be charity trustees, before you become a trustee (or remain a charity trustee) you should give careful consideration to the issue of liability in these times of financial pressures on charities.



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# A mentally healthy life

Lindsays is proud to be a corporate partner of SAMH (The Scottish Association for Mental Health), and regularly run fundraising initiatives for SAMH. Here SAMH explain a little about their ethos.

You probably think about keeping physically healthy but how often do you consider your mental health? Every year one in four of us will experience a mental health problem. If you don't experience problems yourself, the chances are you know someone who does. At SAMH we believe there is no health without mental health and there are lots of ways you can look after your mental health and wellbeing.

If you're feeling anxious or unhappy, then the single most important thing you can do is to talk to someone about it. This can be difficult – people are often concerned about what others will think if we admit we're not coping. But friends and family might be glad to help, and sharing our feelings can help to get a fresh perspective.

But as always, prevention is better than cure, and there are things that we as individuals can do to protect ourselves. It's important to stay connected so why not arrange to meet that friend you've haven't seen for a while? Regular physical activity can help to improve how you feel so make time for your favourite hobby, or challenge yourself to try something new! All these things can help you look after your mental health and wellbeing.

Talking is one of the first steps to helping someone with poor mental health. You can find out more by visiting the website [www.SAMH.org.uk](http://www.SAMH.org.uk)



# lindsays

A warm *welcome* to....



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