

FOOD+ DRINK



Welcome to our latest edition of **Food & Drink**, designed to bring you topical content and comment from our people working in this dynamic and growing sector.

In this issue we cover matters such as the proposed sugar tax and reflect on the successful crisis management seminar held in conjunction with the Scottish Food and Drink Federation in March — you can read an article by one of our speakers, Mandy Deeley, inside.

We look forward to seeing some of you at the Scotland Food & Drink Excellence Awards Dinner in June at the EICC where we are once again category sponsor for Best Alcoholic Drink.

George Frier

Head of Food and Drink

T +44 (0)141 566 8520

M +44 (0)771 153 0208

E george.frier@shepwedd.co.uk

Stop Press...

Cavalier attitude to food safety spells six-year jail sentence

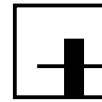
The six-year sentence on the owner of a takeaway restaurant in England who was guilty of manslaughter for recklessly ignoring an allergen request by a customer has sent shockwaves through the food sector. It highlights the need for rigorous attention to ingredient segregation and supply chain audit processes to ensure that FBO's (both wholesale and retail) are not liable for causing death or injury through mis-labelling or indifference to the issue of allergenic reaction and wider food safety laws – whether as a result of their or their suppliers' negligence or (as here) recklessness. *Read Mandy Deeley's article on Crisis Management, inside.*

What does the new Scottish Parliament mean for your business?

The Scottish Food and Drink Federation is hosting a workshop in conjunction with Shepherd and Wedderburn and Grayling, which will look at the post-election landscape.

The SNP has formed a new Scottish government, but this time, because it is a minority government, we anticipate greater political bartering and compromise, some of which will take place against the backdrop of the EU referendum on 23rd June.

The event is being held in our Edinburgh office on 8th June from 9am – 1pm. Further details and information on how to book can be found [here](#).



Stopping issues from becoming crises: a plan is key

Following on from her involvement in the Scottish Food and Drink Federation's Crisis Management Workshop in March, **Mandy Deeley**, Senior Associate in our commercial disputes team, discusses how food business operators should be preparing for potential future crises.

In April 2016 alone, the Food Standards Agency announced 11 UK-wide food recalls or withdrawals due to undeclared allergens, and a further eight food recalls due to possible contamination or the presence of a foreign object such as glass or plastic. This continues a trend in the rise of product recalls in the food and drink industry, which according to the FSA grew by 78% in 2015. As well as reflecting the growing number of people in the UK who suffer from food allergies and intolerances, this might also suggest that both the industry and the regulators (Food Standards Scotland (FSS) and the FSA) are improving their testing and detection of such issues. After December 2016, further nutrition labelling regulations will come into force, and so it can reasonably be anticipated that more incidents will arise.

What are your core obligations?

Food business operators in the UK must ensure food is safe and traceable (with both its origin and destination known) and to ensure that descriptions are not false or misleading. If there is a problem, then you must cooperate with the authorities to withdraw or recall products. These obligations fall primarily with the operator under whose name the food is marketed, or for operators outwith the EU, the importer. Where the FBO fails to comply, there is potential criminal liability, as well as regulatory implications and possible civil claims.

How can you prepare for a product issue?

The presence of a small amount of undeclared soya in a particular product may seem trivial, but for those who are allergic it could provoke a major reaction. Although Mars stated that the discovery of a small piece of red plastic earlier this year in one of its products was an isolated incident, the company took wide-ranging steps to recall products, estimated to cost them millions of dollars. Could your business survive a similar incident?

Preparation is key

Although crises often involve evolving, unpredictable problems, they can still be planned for. Indeed, in the current culture of regulatory involvement, having proper procedures in place to deal with any crisis and to investigate near-misses, is essential, and is a focus of the regulators. Both legal and commercial considerations

need to be taken into account, and your plan will need to be tailored to your particular business.

Escalation is a major risk

If and when an issue does develop, it is crucial to recognise this early and follow your plan to avoid it becoming a crisis. Ideally you should deal with the issue before it gains publicity, particularly if it is internal rather than having been triggered by an external event, so the first the public hear of your problem is that you have solved it. As this may not always be the case, you will have to consider issues of public statements, communication with employees and customers, contractual obligations, and insurance requirements.

The matter may originate with a supplier rather than any act or omission of yours.

Communications are important

There is a narrow line between taking responsibility for an incident and taking the blame. The best approach is to explain what you are doing to fix the problem, including discussions with the Regulator (FSA) and providing appropriate practical advice to those who may be affected.

Assemble a Crisis Team

This should include legal, operational and if necessary PR. Take advice on the wording of any statement. You may need to address ill-informed and/or hostile social media comment.

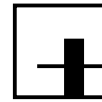
During this public scrutiny, you will also have to carry out your own investigations into what went wrong, and you may also have to deal with or prepare for regulatory, criminal or civil investigations. In general any regulatory action or prosecutions following an incident will take into account your cooperation with the investigation, your record, what steps you took to prevent the risk and how you reacted to the issue.

In conclusion:

1. Assess risks
2. Have a response plan
3. Assemble a response team and allocate clear tasks
4. Communicate with Regulators / work with them
5. Be proactive even when faced with a need to be reactive.

Mandy Deeley is a Senior Associate in Shepherd and Wedderburn's Commercial Litigation division.

E mandy.deeley@shepwedd.co.uk
T +44 (0)131 473 5383



Sweet Drinks, Sour Tax?

The surprise announcement in the Chancellor's March budget that high-sugar drinks would be subjected to a levy in two years' time has polarised opinion between health campaigners and manufacturers. The government claims that the levy, based on two tiers of tax (those over 5g sugar per 100ml and another for those over 8g sugar per 100ml) would raise £520m per annum, although it is unclear how this figure was decided.

Public health campaigners have supported the move, and shares in leading drink manufacturers fell following the announcement.

Health officials in Liverpool have even gone so far as to "name and shame" what they understand to be the worst offenders including Lucozade, Ribena and other household brands. Their justification for their stance is the high level of dental decay and childhood obesity.

Various manufacturers and associations have countered these assertions, pointing to significant reductions in soft drink sugar content in recent years, and the failure to tackle high levels of sugar in many foods such as some well-known brands of pasta sauces.

It remains to be seen what form the sugar tax will take and whether it will be challenged by manufacturers or trade associations in the same manner as the SWA (Scotch Whisky Association) challenged the Scottish government's decision to impose minimum unit alcohol pricing in Scotland as discriminatory.

Meantime, mindful of the pressures, manufacturers should no doubt use the two-year window to seek both to lobby for a graduated approach to the tax and, perhaps more importantly, to encourage innovation in the sector as well as education of the benefits of low calorie or sugar-free drinks. But having surprised commentators with the announcement in the Budget (which had not been trailed in advance) it would be embarrassing for Mr Osborne if his headline grabbing announcement ends up being a very diluting serving when finalised.

We will continue to monitor the position and provide updates.

Diary Dates

2 June

Scotland Food & Drink Excellence Awards 2016

Edinburgh International Conference Centre (EICC)

Tickets are available now from Scotland Food and Drink's [dedicated online portal](#).

8 June

The Scottish Food and Drink Federation: 'What does the new Scottish Parliament mean for your business?'

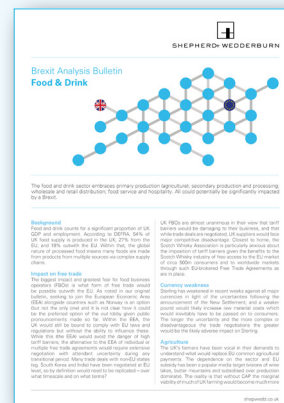
1 Exchange Crescent
Conference Square
Edinburgh
EH3 8UL

Workshop in conjunction with Shepherd and Wedderburn and Grayling.

23 June

EU Referendum

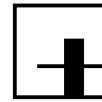
▶ Watch our recent Brexit webinar [here](#) anytime.



Is your business EU referendum ready?

[Click here to read our Food & Drink Brexit Analysis Bulletin](#)





Key contacts



George Frier

Head of Food and Drink

T +44 (0)141 566 8520

M +44 (0)771 153 0208

E george.frier@shepwedd.co.uk

George is a Corporate partner in our Glasgow office. He has acted for many household name companies, with a particular focus on domestic and cross-border acquisitions and joint ventures, commercial contract advice, and restructurings. He has many years' experience with food distribution and supply issues, food manufacturing companies, and of the complexities of the fish farming and whisky industries.



Joanna Boag-Thomson

Partner

Intellectual Property,
Brands and Trade Marks

T +44 (0)141 566 8570

M +44 (0)775 387 1607

E joanna.bt@shepwedd.co.uk



Danny Lee

Partner

Corporate Finance

T +44 (0)131 473 5141

M +44 (0)787 649 5998

E daniel.lee@shepwedd.co.uk



Liz McRobb

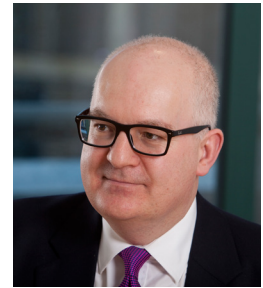
Partner

Commercial Contracts,
Outsourcing and Procurement

T +44 (0)141 566 8502

M +44 (0)779 864 6887

E liz.mcrobb@shepwedd.co.uk



John Schmidt

Partner

Regulation and Markets

T +44 (0)207 429 4967

M +44 (0)788 400 4396

E john.schmidt@shepwedd.co.uk



Patrick Bell

Partner

Corporate Banking and Finance

T +44 (0)131 473 5355

M +44 (0)797 014 8582

E patrick.bell@shepwedd.co.uk



Mandy Deeley

Senior Associate

Commercial Litigation

T +44 (0)131 473 5383

M +44 (0)787 211 7801

E mandy.deeley@shepwedd.co.uk



Kevin Clancy

Associate

Health and Safety/Regulatory

T +44 (0)131 473 5798

M +44 (0)788 961 5573

E kevin.clancy@shepwedd.co.uk



Stephanie Mill

Solicitor

Environmental, Planning and
Waste Management Compliance

T +44 (0)141 566 8523

M +44 (0)77 387 39571

E stephanie.mill@shepwedd.co.uk