



Long

THE BROADSHEET
FROM BIRKETT LONG
2012/2013

**With our South Essex office now open,
working with clients and business partners
is going from strength to strength**



Top Image: Have your cake and eat it - gifts that mitigate tax
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Middle image: A personal story about our charity of the year - Leukaemia and Lymphoma Research
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Bottom Image: Zombie companies - businesses that keep hanging on
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A YEAR IN THE LIFE

WHAT WE'VE BEEN UP TO!

Following our announcement in our last edition that we would be opening a South Essex office in Basildon in October 2011, working with clients and business partners in the area has been going from strength to strength. Just eight months after opening, our initial team was joined by lawyers and support staff from Wickford solicitors Brian Ruff, Angus and Jewers (BRAJ), who moved into our newly expanded offices in Christopher Martin Road in June (top left). BRAJ, which has a 50-year history, specialises in personal client work such as probate, tax, trusts, family law, conveyancing, personal injury and landlord and tenant work.

Managing Partner, Adrian Livesley, said the acquisition highlights our commitment to business in South Essex. "We have great confidence in the marketplace as well as an ongoing determination to thrive in a difficult economic climate."

The firm's activity hasn't been limited to Basildon however! In December 2011 we launched, with accountants Grant Thornton, the inaugural Essex Ltd survey. Essex Ltd is an in depth survey into the



performance of the county's top 100 companies and their industry sectors. The results provide a barometer of the county's overall business performance and this year's results will be announced at a dedicated event in December. To find out more visit www.essexltd.co.uk.

We also launched new fixed-price initiatives, including commercial lease reviews, an education law retainer scheme for schools and various services for businesses. Our education team continues to help schools with conversion to academy status and



our construction team has remained active - in particular assisting Sorba (UK) Ltd with the legal aspects of their construction of The Shoal sculpture in Stratford.

Birkett Long in the Community

Supporting local charities and our community remain a high priority. Examples of recent events and causes we have supported include Colchester Hospitals Charity where we raised £2,500 through a wills week and the Birkett Long £50 Challenge in aid of St Helena Hospice. Via the Challenge, local



businesses were given £50 and 3 months in which to make as much for the hospice as possible. At the time of writing the total raised is over £15,000 and the Challenge continues! In Chelmsford, 2012 sees the firm celebrating ten years in the city. We began sponsoring the cricket team at St Cedd's Preparatory School, with our sponsorship allowing the school to invest in cricket whites for 24 boys from year six (top right). Also in Chelmsford, our support of the Chelmsford Cathedral Choral Foundation continued with the Birkett Long LLP Concert. Following on from last year's concert given by the Tallis Scholars, this year's performers, the Swingle Singers, drew a big crowd to the event in September (centre).

Expanding into Basildon has meant that we were able to look for opportunities to support our new community. In June we provided financial backing for the restoration

of a John Wells painting, which is owned by the Basildon Arts Trust (centre top). Involute No 6, an abstract oil on board which dates back to 1979, was in need of cleaning and repairing. The firm also began sponsoring one of Basildon Athletics Club's stars of the future, Gemma Kersey (bottom right). Gemma is a 1500m runner and, having made the final of the 1500m at the Olympic trials this year, has hopes of making it to Rio in 2016.

Further afield, a team of our solicitors took part in Trailwalker UK, a gruelling 100km walk across the South Downs, in aid of Oxfam and the Gurkha Welfare Trust (bottom left). The team raised over £5,000 and all of them say the blisters were worth it!

More on our work in the community can be found on Twitter @birkettlong, on our website - www.birkettlong.co.uk/blinthecommunity or on our blog - www.birkettlong.co.uk/blog.

Turn to page 3 for details of our new Charity for the Year.

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Have your cake and eat it



Gifts that mitigate tax

As you may have seen on page 1, four brave members of Birkett Long entered the Trailwalker UK 2012 in aid of Oxfam and the Gurkha Welfare Trust. This gruelling walk involved trekking 100km across the South Downs in less than 30 hours, in the toughest conditions recorded by Oxfam. The constant rain and mud-swamped paths made the walk incredibly challenging but the team triumphed by completing it – with blisters and all – and raising more than £5,000 in the process.

If completing a 100km walk to raise money for your favourite charity is not something that particularly appeals, there are plenty of other ways in which you can give charities a helping hand.

All gifts that are made to UK registered charities through your will, regardless of the amount, are exempt from inheritance tax (IHT). So not only do you get to benefit a charity, you save money that would have been paid in tax.

The rules for making use of the possible exemptions are complex and we always recommend that you seek advice specific to your own circumstances. The rules that govern IHT say that the first £325,000 of your estate is not taxable. Anything over this amount may be charged at 40%, which makes it beneficial to use charitable exemptions where possible.

There are several options for leaving money to charities through your will. You can either give a fixed monetary gift or a percentage of your estate. If you give a minimum of 10% of the net value of your estate to a charity, then the IHT that your estate has to pay is reduced from 40% to 36%. You could specify that 10% of the net value of your estate is to be given to charity or make a monetary gift that is worth 10% of the net value of your estate.

For example, if your estate is worth £350,000 and you decide to leave £25,000 to a charity, your estate would be valued at £325,000 and would not be subject to IHT. If you had made no charity gift, your beneficiaries would have received £25,000 more but would have paid £10,000 of that money in IHT, reducing the amount to £15,000.

It is possible to give money to charity during your lifetime in order to reduce the value of your estate. As well as reducing IHT, this could provide you with Income Tax benefits.

Discounted gift trusts

With the substantial rise in property prices over the last 10-15 years, the £325,000 threshold for IHT can come into reach easily.

In theory a quick solution would be to make substantial

gifts and live for seven years. But although many people would like to give such gifts, in reality they require their investments or savings to provide them with a comfortable standard of living. Ideally, they would like to have their cake and eat it.

It is possible to keep a slice of that cake through a Discounted Gift Trust (DGT). This type of arrangement allows people to give away a sum of money yet retain the right to receive an income from it – usually set at 5% per annum to take advantage of the 5% tax deferred withdrawal facility under an Investment Bond. The balance goes into a trust for the person's chosen beneficiaries.

It is called a Discounted Gift Trust because the value of the gift may be discounted for IHT immediately. Factors taken into account include health and age, so the younger and fitter you are the higher the discount. For example, Mr Smith, aged 65 and in good health, invested £100,000 and took income at 5% per annum. His insurance company valued the initial slice as £60,000, which means a discount of 60% and a gift of £40,000. Should Mr Smith survive a full seven years after he made the gift, the total value of the DGT will be removed from his estate for IHT. The whole value of the bond will be held within the trust but the amount of regular withdrawals paid to Mr Smith will continue.

A DGT plan is not suitable for everyone but assuming you are in good health, likely to live seven years and require an income from your investments, this could be an excellent tool for IHT mitigation.

For information on leaving a legacy to charity in your will contact Kayleigh O'Donnell on 01245 453837 or email kayleigh.odonnell@birkettlong.co.uk

For DGT advice contact Paul Chilver on 01206 217614 or paul.chilver@birkettlong.co.uk

FLOODING: SINK OR SWIM?

Over the last few years we have seen widespread disruption and damage caused by flooding. The Met Office predicts that climate change will lead to an increase in extreme weather events, meaning the UK will have to learn to live with severe flooding.

The Government has an agreement with the Association of British Insurers, called the 'Statement of Principles', that commits insurers to continue to offer insurance to existing customers where they are at significant risk of flooding, but this will end in June 2013. The Government is now endeavouring to agree a successor arrangement with the objective of reaching an agreement with insurers which will keep property insurance at an affordable level without placing unsustainable costs on all policyholders and the taxpayer. Significant advances in flood risk mapping and forecasting will give insurers the ability to ascertain the potential flood risk to individual properties. The Government is making attempts to reduce flood risk by spending more than £2.17 billion in flood and coastal erosion risk management in England over a 4 year period. They anticipate that the benefit from this investment will be reflected in reduced insurance premiums in the future.

At Birkett Long LLP, we carry out an environmental search as an essential part of any property transaction. Apart from providing information on matters such as landfill sites and contaminated land it shows whether the property is in an area potentially affected by flooding, whether that is caused by coastal, river, surface or groundwater sources.

Our real estate department comprises of commercial, agricultural and residential teams. Team members are experienced professionals who aim to provide a high quality, speedy and cost effective service.

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Home news

OUR PEOPLE

In June we announced five promotions which are set to strengthen our senior team in the county. Wendy Kelly (chief cashier), Helen Pettican (quality manager), Emma Waters (solicitor in the wills, trusts and probate team) and Emma Wraight (solicitor in the commercial real estate team) have become Associates while Claire Read, head of wills, trusts and probate in Chelmsford, has been promoted to Equity Partner.

QUALIFYING TRAINEES

In September 2012 we celebrated the qualification of our second year trainees as solicitors. Hooray! Sarah Campbell and Calum Irvine have joined the family team, Katy Humphreys is working within the commercial litigation team and Kayleigh O'Donnell has joined the will, trusts and probate team.

NEW STARTERS

In addition to welcoming the BRAJ team, we have also seen several other members of staff join the firm.

Ian Dawes joined our commercial litigation team acting for clients in a wide range of commercial disputes including professional negligence and

cross border disputes. He has particular expertise in intellectual property.

Hayley Bruce is a member of the real estate team specialising in residential property and leasehold reform, such as lease extensions and collective enfranchisement claims. She also has experience of alcohol licensing and gambling applications.

Vicky Fakira joined our accounts team; Claire Neal and Sarah Watson joined our business development and marketing team as apprentice marketing administrator and marketing assistant respectively.

GIVING SOMETHING BACK

Liz Jones (pictured far right), a Partner in our child care team, has become President of Colchester and District Soroptimist Club.

Liz has been a member of the organisation since 1999. Soroptimists International is a world-wide organisation, working through



Left to right: Emma Waters, Emma Wraight, Claire Read, Wendy Kelly and Helen Pettican



Left to right: Calum Irvine, Kayleigh O'Donnell, Katy Humphreys, Hayley Bruce, Ian Dawes and Sarah Campbell

service projects to advance human rights and the status of women. Liz says "Throughout my year as President, we will have a focus on supporting the local women's refuge and my chosen charity is East Anglian Children's Hospice (EACH), which looks after children in the region with life threatening conditions."

Tax, trusts and probate specialist Emma Waters has become a trustee of The Art Ministry, which is based in Hadleigh. Founded in 1992, the charity runs creative sessions for the visually impaired, those with learning difficulties and the physically disabled amongst others.

Education and employment law specialist, Emily Brown (below left), has taken on a new challenge by becoming a governor at Colchester County High School for Girls. Emily, who runs the education department, will use her experience to support the school in its early stages as an academy.



Employment Law Breakfast Club - An informal, monthly club for employers which takes place at all three of our offices. Future topics include: age discrimination, family friendly procedures, and recognition and reward. Contact us for more information.

Due to begin November 2012 **Education Breakfast** - A new bi-monthly club for those involved in the education sector. Pre and post academy conversion topics will be covered. Contact us for the latest news.

4 December 2012 **Essex Limited** - Annual in depth survey into the performance of the county's top 100 companies and their industry sectors. Visit www.essexltd.co.uk for more.

Coming up in 2013 **Seminar on how to reclaim care home fees. Investments and legal advice seminar for individuals.**

For details on any of our forthcoming events visit www.birkettlong.co.uk/events or call 01206 217334.

The business interview

PETER ALLEN



As the firm celebrates 10 years in Chelmsford, Peter Allen, head of commercial department, partner and construction law specialist, looks back over the decade and gives his views on the future.

We are told we're in recession again but some financial commentators disagree with that interpretation. What's your assessment?

If we're not in recession, then the economy is certainly very flat. However, we are seeing spurts of activity every now and then, which is encouraging. There is a continuing nervousness among businesses, which generally exhibits itself in a lack of willingness to make long term investment in staff, company

infrastructure and capital expenditure, or at least a procrastination until the last possible moment!

How do you think Essex has fared during the last 10 years compared to the country as a whole?

I'm sure that Essex has boomed by comparison! It must be one of the most prosperous counties in the UK due to its location - close to the East coast ports, Stansted and London, and the innovative nature of its people. Although congested at times, the road and rail links are relatively good and we have benefited from work associated with the Olympics.

Your specialist area is construction - an area that's been hard hit over recent years. Do you see signs of growth emerging?

The main hit to the construction industry has happened within the past four to five years and may be further compounded by the fact that the building work associated with the Olympic Park has ended. However, the Government continues to spend a huge amount on infrastructure, even during a period of cut-backs. Schools, road building and refurbishment projects generate good revenue streams for many of our construction company clients. Among house

builders, we are seeing the top end of the market booming, especially in London, but on a less positive note, the first time buyer market remains flat as people struggle to save up the necessary deposit or are unable to gain the mortgage they require to buy relatively expensive properties in this area.

Is there a common denominator among your successful business clients?

It may seem obvious but the most successful are those who are hard-working and can innovate, either in what they do or in their delivery mechanisms. Some of our clients have overseas connections that have facilitated useful introductions and many make the most of modern technologies to gain competitive edge.

What changes have you seen in your clients over the past decade?

There is a greater emphasis on building and sustaining relationships within business. Clients are less keen to follow a path of litigation and we encourage them to go down routes that will resolve disputes with minimal damage to ongoing commercial relationships, such as mediation and adjudication.

What's your forecast for business in the next five years? Do you

see stability, decline or growth? Realistically, the economy is likely to remain fairly flat but that doesn't mean there won't be the chance of growth or opportunities. Innovation and flexibility will be essential.

Communication has changed significantly over the past decade with mobile communications, social media, etc. What's your favourite form of communication and do you have a gadget that you simply can't live without?

I like to communicate face to face. Visiting clients gives me a clear idea of their business needs and business culture and it's something I love to do. I recently visited a new client in Basildon and was fascinated to tour their manufacturing facility. Unfortunately, time doesn't always permit face to face meetings. As a firm we make good use of electronic communication to speed up response times and decision making, and our staff are active in several forms of social media.

I'm not a gadget freak but I would find it hard to live without my mobile phone, although I could happily discard my Blackberry!

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Zombie companies



The Q2 insolvency statistics in England and Wales were released on 3 August and show a slight decrease in the number of companies going into compulsory or creditors' voluntary liquidations.

Compulsory liquidations have been steadily dropping since the peak in 2009. So is this good news for companies and are we out of the worst effects of the recession?

Possibly not. What the statistics fail to show is that it appears that nearly one in ten businesses is struggling with cashflow and can afford to pay only interest on its debts. Research from insolvency trade body, R3, suggests that there are about 146,000 'zombie' businesses in the UK - businesses that probably should have gone bust, but are still hanging on. Signs of a 'zombie' company

include negotiating longer payment terms with suppliers and failing to pay debts when due. What will push many zombie companies over the edge will be their inability to afford to pay their debts at all if interest rates rise.

The Bank of England believes that interest rates may remain low for a little while yet but as we come out of recession, inflation is likely to rise and with it interest rates, which will push these zombie companies into insolvency. At that point we should, unfortunately, expect to see many such businesses fail. Traditionally,

more companies fail coming out of recession than going into it - they run out of cash even when the order book is starting to fill up. As experts in insolvency law, we can often find practical solutions for your business that may not have been obvious to you as a company director. For example, we may be able to restructure the company so that your business, and the jobs that depend on it, can survive the recession. We are always pleased to discuss matters on a confidential and informal basis.

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Social care reforms

Following the Dilnot Report last summer, ministers are still refusing to fully commit to the recommendations put forward for reforms to the social care and support system in England.

Andrew Dilnot, an economist, was asked by the Government to recommend a fair and sustainable funding system for adult social care in England. The circumstances that prompted the review are that the number of people aged over 85 has risen by two thirds since 2004. The result is that people are now living longer without the correct level of support in place. Some of the proposals put forward were:

- A lifetime cap on care costs for the elderly and disabled of £35,000 with the Government meeting any care costs over and above this cap. This was estimated to cost the

Government £1.7 billion per year to fund

- An increase in the means-tested upper limit from £23,250 to £100,000, above which people would be liable for the full cost of their care

Ministers have failed to give a conclusive answer on whether these recommendations are likely to be brought in, saying that they need to explore cheaper options first. This, as you can imagine, has disappointed those involved in the social care system. Jeremy Hughes of the Alzheimer's Society has hit back with his views, saying that 'millions of people had been promised radical reforms but today they have been massively let down'.

Talk amongst Government in the light of the Dilnot Report has suggested that they are looking at a number of alternatives, one

of which is an increase to the cap from £35,000 to £75,000 or asking people to pay an upfront fee in order to opt in. Those who do not opt in could be subject to unlimited care costs.

Given the current economic climate and the potential of footing the bill for any care costs over and above the recommended cap, the Government appears to be trying desperately to find cheaper options to bring about the necessary reforms to the care system.

Before the September Cabinet reshuffle, the now ex Secretary of State for Health, Andrew Lansley, announced that there will be some changes to the system from 2015. One suggestion is that a person can defer payment until after their death. This means that those

who need to go into care homes and are not entitled to state funding will have their fees paid for them and then recovered from their estate. This is known as the Loan Scheme and interest would accumulate on the loan. The question is...is our Government in a position to be able to cover the cost that such a scheme would require?

This leads many to question whether these proposals go far enough and whether the Government, by delaying a decision on the issue of funding, is in effect creating a greater problem for itself in the long term. This is an extremely topical area where changes are needed to ensure older and disabled people are not disadvantaged.

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