



# For Business

THE UK AND THE EU

Head of the commercial department, Peter Allen, comments on this newsletter's theme of the referendum result:

The votes have been counted and we are going to leave. As a county all areas of Essex voted to leave and in East Anglia only Norwich, Cambridge and South Cambridgeshire voted to stay.

So what does this all mean to us? The only sure thing is that everything will be uncertain for some time. This is never a good thing for business and in the lead up to the referendum there had been a stalling of projects. Since the result I have already had one client pull out of a property development. Hopefully this will not be the start of a trend.

In this edition of For Business we set out some of our thoughts on the vote and how it may affect you. We hope you find it useful.

## A whirlwind of resulting changes

We have been on tenterhooks since the Referendum was promised in the Conservative's manifesto and the election date drew ever nearer. But the votes are in and it was inevitable that whichever way the scales tipped, changes would have to be made.

Birkett Long has always guided businesses with all their needs and, following arguably one of the most significant elections of the 21st century thus far, we are here to clarify how this decision affects your business.

Inevitable, the economy will suffer negative effects from the UK's exit because this is an unprecedented event and businesses can hardly plan knowingly for the future.

The EU was also the UK's main trading partner, which of course will impact how things now proceed. Small and medium enterprises (SMEs) may find it more challenging than other member state competitors due to more costly and laborious trades, which may affect exports, imports and competitiveness. However, we are now no longer subject to a £4.7 billion membership fee and this could be used to offset such disadvantages. The UK now has the opportunity to deal with international bodies directly, focus on and promote its own interests. In fact, the UK may have more freedom to become an entrepreneurial global hub.

The UK is likely to seek to maintain as many of its previous membership advantages as possible and there are various models to look to; including Iceland's decision to be a member of the European Economic Area and still trade and benefit from the EU without being part of it. In so doing, this may see a reduction in the 'red tape' the EU is often said to impose, easing corporate and commercial life, particularly for SMEs with smaller budgets. If we still wish to trade with Europe however, businesses will still need to comply with EU regulatory requirements, so will we really see any difference?

Proceedings will change, such as those affecting businesses wishing to expand overseas, and will be subject to the negotiations the UK now needs to make with the EU within the next two years.

No country has ever triggered Article 50 of the Treaty on European Union (to lawfully allow an exit from the EU), so it is not possible to predict how long these changes will take to settle. However, our team will be keeping up to speed with issues likely to impact businesses from a legal standpoint and will keep you informed.

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# The likely impact of Brexit on the commercial property sector

In the immediate aftermath of the vote to leave, we have seen shares in Barratt Homes and Taylor Wimpey (to name but two) fall by over 20%, and the pound down 9.4% against the Euro and 9.8% against the dollar. The markets have seen the gains of 2016 erased almost overnight and the turbulence on the markets led to momentary suspension of trading to protect Barclays, RBS and no doubt other banking shares.

Capital intensive businesses and real estate investors do not react well to uncertainty. We are in a period now of political fallout and economic and financial volatility, but as with all economic models, there will be both winners and losers over the short term, medium term and long term.

In the short term the East Anglian tourism sector could see a boost, with EU visitors making up a small proportion of the overall visitors to the £7bn tourism industry in East Anglia. There could be an increase in EU citizens visiting Essex, Suffolk and Norfolk given our close proximity to the capital and numerous airports, including London Southend, on our doorstep. In turn, the youth of today - who bore the brunt of the 2008 recession - may see

tourism as a sector where they can gain jobs and qualifications.

Given the market volatility to date, the development and construction sectors are likely to see a slow down of activity. However, the falling price of sterling, and possibly borrowing costs, will create enormous potential for overseas investors, even if the residential sector slows or stalls initially. Opportunistic investors will no doubt take advantage of the uncertain conditions, and as a result of prudent decision making and liquidity in investors and businesses, the number of those investors may be far greater than those that existed during the 2008 crisis.

Whilst 36% of the Institute of Directors' members said they would cut investment in their business, just under 50% said Brexit would not change their investment plans.

Ultimately, decision making may slow as buyers, sellers, investors and businesses adjust their strategies, but in the longer term, the UK was and remains attractive for real estate due to its regulated, robust and resilient market. The



## Bare essentials

Will victory for 'leave' prove a defeat for freedom of choice?

I often speak to people who wish to claim on a legal expenses insurance policy to assist with the cost of instructing a solicitor, but who are being told by their insurer that they must use the insurer's preferred 'panel' solicitor.

As things stand, this is not the case when it comes to litigation as a result of the European Legal Expenses Insurance Directive which states that the insured person has the right to choose their own lawyer in those situations.

Legal expenses insurers have repeatedly challenged this directive and tried to restrict the insured's freedom of choice so

as to save themselves costs. However, the European Court of Justice (ECJ) has stood firm, and did so again in two further recent cases brought in the Netherlands.

Now that the country has voted to leave and the insurers are no longer held in check by the ECJ, it is possible that this important right to choose your own lawyer could be lost. Hopefully this will not prove to be the case but, as with so many other things that remain uncertain following the leave vote, only time will tell.

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decision to leave does not detract from the fact that people still need somewhere to live, there will still be consumers and manufacturers, and businesses will be looking to move forward and develop.

Let's be positive as we work together to grasp those opportunities.



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## Meet the team

### Kevin Sullivan

Kevin is a solicitor and partner who specialises in litigation.

He advises insolvency practitioners on contentious recovery actions, and companies and directors - as well as debtors and their spouses/partners - in relation to a wide variety of corporate and personal insolvency related issues. He has a particular interest in proceedings brought under the Company Directors Disqualification Act. Kevin also handles substantial contract and company disputes.

Kevin gained commercial experience with law firms in Ipswich and Norwich

before joining Birkett Long in 2009. He became a partner in 2011 and is a member of the Association of Business Recovery Professionals (R3).

“ I was lucky enough to instruct Birkett Long on a very involved case in which Kevin Sullivan dealt on my behalf. I have to say he did an absolutely amazing job and was probably the most helpful solicitor I have ever dealt with. ”  
*Company director client*



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# intellectual property

## Brexit - what does it mean for intellectual property owners?

Britain leaving the European Union will not have any effect on domestic national intellectual property rights, such as trade marks, registered designs, patents and copyright, but many UK businesses that previously considered registering intellectual property rights opted to apply for a European wide right instead of just a UK right.

The reason was generally one of costs. It was far more cost effective to apply for a pan European registration than to apply for a UK registration and subsequent registrations in European countries.

The result of Brexit for UK businesses owning registered European intellectual property rights is that the intellectual property right will no longer apply to the UK. In many instances, the business owner will have been applying the right primarily, or many times exclusively, in the UK. The result will be that all of these business owners will need to apply for registration of the intellectual property right in the UK. This could put some businesses holding large intellectual property portfolios to considerable expense.

Going forwards, the registration of new intellectual property rights will also be made more complicated. A business operating in the UK and one or more European countries will now need to apply for two separate registrations. It will be necessary to register a UK right and then separately register a European right. This will result in two sets of fees being payable and potentially, the need to engage advice in relation to the UK rights and separately for the European rights.

Existing intellectual property rights owners will need to look very carefully at their IP portfolios where rights have previously been licensed. Where European registrations have been obtained and then licenses granted in relation to the UK, these license

agreements will need to be renegotiated, as the rights to which they apply will cease to exist.

It is anticipated that transitional methods will be put in place to avoid businesses finding themselves in the position where their intellectual property is not protected at all. That could occur as a result of their European wide rights ceasing to apply in the UK, but not yet having secured separate UK registration. This is a point that we will be monitoring closely and we will be advising clients that manage intellectual property within their business accordingly.

Should you have any concerns over the impact of Brexit on your business registered intellectual property rights, please contact Stephen Avila.



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