

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 Page 2

Middle image: A personal story about our charity of the year - Leukaemia and Lymphoma Research Page 3

Bottom Image: Zombie companies businesses that keep hanging on Page 4

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.



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 In Chelmsford,

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 Challenge continues! future, Gemma Kersey (bottom right). Gemma is a 1500m runner and, having made the final of the

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

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

celebrating ten years 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.

Have your cake and eat it



Gifts that mitigate tax

As you may have seen on page 1, leaving money to charities 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 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

David Temperton david.temperton@birkettlong.co.uk

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

cross border disputes. He has particular expertise in intellectual property. Hayley Bruce is a estate team



trusts and probate team) and Emma Wraight (solicitor in the commercial 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

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 ioined 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.

organisation since 1999. Soroptimists International is a world-wide organisation, working through

Claire Read, Wendy Kelly and Helen Pettican 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.'

Left to right: Emma Waters, Emma Wraight

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.

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

> 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.



Taking the stage

LEUKAEMIA & LYMPHOMA RESEARCH



Birkett Long staff with Philip George, centre, and his son, Rob, centre right.

We are hoping to raise thousands for a charity which provided "stunning" treatment for the son of one of our consultant solicitors.

Staff at Birkett Long have chosen Leukaemia and Lymphoma Research to be its Charity of the Year. The charity is close to staff members' hearts following Rob George's diagnosis of leukaemia last year. Rob is the son of former Managing Partner, Philip George.

Rob, now 20, spent over five months last year undergoing chemotherapy at Addenbrooke's Hospital in Cambridge and is thankfully now in remission. Philip, now a consultant with the firm, said: "When you are told that a member of your family has leukaemia, there is no notice period. There is no time to sort yourself out or make any kind of plan. You are thrown into a world of fear and exhaustion.

"But my family, like thousands of others, is so grateful that the angels of the NHS and Leukaemia and Lymphoma Research were there to support us. They provided the most stunning treatment when we needed them most."

He added: "I am touched and thrilled that Birkett Long should have chosen as their Charity of the Year an organisation which is so close to my heart. I cannot think of a more worthy cause for the firm to be supporting."



Beating Blood Cancers

Leukaemia & Lymphoma Research's vision is to beat blood cancer.

One person is diagnosed with a blood cancer in the UK every year. We work with leading scientists and doctors in the UK to develop

new treatments, understand the causes and save more lives from leukaemia, lymphoma, myeloma and related blood cancers.

Despite the advances in treatments, one person sadly dies from a blood cancer every hour. We need to raise £30 million this year to continue our life-saving research.

In London we are running 60 vital research projects and clinical trials to develop and test new drugs and treatments that are urgently needed by blood cancer patients.

Through this research we aim to understand the causes of blood cancer; improve survival and quality of life; implement early and more accurate diagnosis; develop more effective treatments and prevent patients from developing blood cancer.

In 2011 we launched a new initiative called the Trials Acceleration Programme (TAP) to ensure that the breakthroughs discovered in the laboratories reach patients. TAP links 13 leading treatment centres, three of which are in London, to deliver more clinical trials to make new treatments available to more blood cancer patients.

We won't stop until we've beaten blood cancer.

Staff at Birkett Long will support the charity until next June through in-house activities such as cake sales and dress-down days. Last year, just under £3,550 was raised for the firm's chosen good cause, the Christopher John Holmes Charitable Fund, which was set up by Birkett Long's former Senior Partner Christopher Holmes.

Behind every good law firm... IS A GREAT ACCOUNTS TEAM!



The Accounts team at Birkett

Long looks after the financial

complex and fast moving

environment

management of the firm - a very

The cashiers deal with all move-

transactions each month, which

pound commercial transactions to

completion of a house purchase

responsibility is to ensure that we

govern clients' money held by our

firm, which can amount to millions

The team has seen some changes

in the last year; two long-serving

cashiers, Sheila Broyd and Teresa

adhere strictly to the Solicitors'

Regulation Authority (SRA)

Accounts' rules. These rules

of pounds at any one time.

for a client or paying the firm's

gas bill. An important

firm, processing thousands of

can range from multi-million

ments of money in and out of the





Carvalho, retired. Sue Newman, who joined us following a merger, became full-time and we have a new recruit, Jo Evison. Wendy Kelly, who heads up the cashiering side of the team, became an Associate on 1 June. An even newer recruit to our team is Vicky Fakira, who joined us in June this year to take over the management accounting role.

Always seeking to be innovative and adding strategic value, Louise Pisano, our Finance Director who leads the team, has recently launched the Finance Directors' Forum, where a group of our clients' financial directors meet over breakfast to discuss topics of interest. These have been deemed a success by those who attended and we look forward to continuing the forum in the future.

For information on the FD Forum contact Louise Pisano Iouise.pisano@birkettlong.co.uk



In a slow property market, many choose to extend rather than move, but homeowners seldom know what should be in a contract and usually get a simple quote from their builder – a process that often leads to disputes.

These two standard form contracts also contain a process for resolving disputes, called

adjudication, which although used within the construction industry is seldom used for residential contracts. There are advantages. It is usually quick and there is no risk that you will have to pay the other party's costs if you are unsuccessful. However, there are problems! The quick process often means 'rough justice' and doesn't always resolve the dispute. Parties often do not give oral evidence of what happened and the licences that must normally be in place.

It has been a real concern that schools must be licensed under the Licensing Act 2003 to provide certain entertainment for members of the public or a section of the public, or to put on a private function where the entertainment or facilities are for the purpose of making a profit. This includes school plays, live music or dance, or events where recorded music might be played. It has been recognised, however, that this was bringing costly and bureaucratic processes to schools and PTAs which were organising low risk, or indeed no risk, events, such as school productions or children's films for toddler



These subjects have created huge headlines recently. They centre on the fixing of the LIBOR interest rate at an artificial level. They also focus on products sold to protect businesses from increases in interest rate rises (when in fact the rates went down) and the way such products were sold. In effect, if you borrowed monies with an interest rate that was linked to the LIBOR rate, you may have been paying the wrong rate, and you may have a claim against your bank.



Twitter has generated a lot of legal news recently, notably the vile abuse that Tom Daley received after his failure to win an Olympic 10m synchronised diving medal. Twitter is often the centre of attention and the legal world is having to run to keep up. The **Crown Prosecution Service spent** two years pursuing Paul Chambers after what was clearly a joke (not a great one, but a joke nonetheless), showing them as fairly out of touch with the social networking site. Whereas the speed at which the 17 year old boy was arrested for his abuse of Tom Daley demonstrates what a strong public reaction can do and provides hope that the vast amounts of cyberbullying, which others face on a daily basis, is beginning to be dealt with. The fact that the Met Police has a presence on Twitter is testament to this.

It is not essential to use a standard form of building contract but two issued by the Joint Contracts Tribunal (JCT) are useful. The Minor Works Contract is for contracts up to about £500,000, but more appropriate for most is the Home Owner/ Occupier Contract covering smaller extensions up to a value of about £100,000. These cover important items such as the works to be carried out by the builder and items not included; they set out who is responsible for dealing with regulations and planning; start date and time period for completion; reasons why the builder may be given longer to complete the works, and a process to deal with variations. Finally, they set out price and when payment is due.

builders familiar with the process can leave homeowners on the back foot.

If you agree to adjudication in a contract, be aware of these risks.

Peter Allen





Changes expected on 1 October under the Live Music Act 2012 will mean schools and PTAs may find it easier to put on events involving live music without always needing Follow @Emi

The change brought by the Live Music Act 2012 is just a start and does not remove the need for schools to have suitable licences when providing various other types of entertainment. A review following a Government consultation may result in further deregulation, but until that has been concluded advice should be sought when schools or parents organise events.

emily Brown emily.brown@birkettlong.co.uk Follow @EmilyBrownBL As for the interest rate swaps, you may have ended up with large losses as a result. This is because you would have had to pay at the higher rate that was supposed to protect you, rather than the rate that actually occurred. Again, you may have a claim against your bank, although a Financial Services Authority Compensation Scheme has been set up to deal with this.

Services Authority Compensation Scheme has been set up to deal with this. Keith Songhurst keith.songhurst@birkettlong.co.uk

We must hope that the law need not always take a reactive role but that may just be #wishfulthinking.

Calum Irvine calum.irvine@birkettlong.co.uk

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 commerical department, partner and construction law specialist, looks back over the decade and aives 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, positive note, the first time buver 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

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 vour 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 especially in London, but on a less 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



England and Wales were released 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.

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

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 The Bank of England believes that 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.

Contact David Cammack on 01206 217311 or email such businesses fail. Traditionally, david.cammack@birkettlong.co.uk

Social care reforms

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The Q2 insolvency statistics in on 3 August and show a slight decrease in the number of





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• A lifetime cap on care costs for

- An increase in the means-

suggestion is that a person can defer payment until after their death. This means that those

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