



Long

THE BROADSHEET
FROM BIRKETT LONG
OCTOBER 2010

It's all too easy to keep putting off those annoying, but very important, matters affecting your future. We all do it because the future can seem a long way off. The reality, of course, is that it's not!

LAW AND FINANCIAL 50+

PEACE OF MIND

Planning ahead and making the right decisions today will give you peace of mind knowing your personal and financial affairs are organised in the ways you want them to be.

With a lifetime discretionary trust, known as a 'pilot trust', an individual can establish any number of trusts, each with a nominal amount, during their lifetime. Assets can then be added either during the individual's lifetime, or on their death under their will. The result is that monies do not pass directly to the survivor which, if the survivor had to go into a care home, would significantly decrease the available assets that could be passed on to future generations. Instead, the assets would be protected within a trust in which the survivor, children or any other named persons could benefit.

With the recent Panorama programme highlighting the importance of seeking professional independent advice in relation to making a will, and the increasing cost of care, there is now an ever greater need to consider the impact that these issues may have upon

your estate for the survivor and future generations.

To ensure you receive the best quality advice on this complex area you need to know where to look. At Birkett Long we can explain all these issues and work out the most appropriate course of action to suit your individual situation. We also pride ourselves on having eight solicitors who are members of the Society of Trust and Estate Practitioners, a professional body whose members provide expert advice on trusts, estates and inheritance.

Equity Release

Equity release has become more popular and relevant in today's financial world and is one of the areas of advice we give to individuals aged over 50.

This growing popularity is due to individuals generally living longer, advances in medical care and healthier lifestyles. However, longevity can bring financial problems as money invested in savings or pensions which originally may have been sufficient for retirement, now has to last longer. This creates further

problems for the Government which has to provide more state benefits and a situation is arising where there are more individuals drawing money from the state than there are paying in to it.

This is where an equity release scheme can help. With many individuals owning their own homes outright by the time they reach retirement and with house values being relatively high, this has meant many are "asset rich" but "cash poor". For individuals with a shortfall in retirement income, those who wanted to treat themselves to their dream holiday or carry out home improvements, equity release schemes have become very popular.

Equity release lifetime mortgages allow an individual to release equity from their properties through a form of loan/mortgage. They are designed to be open ended and no capital repayments are made to the lender during the term of the loan. The outstanding loan/mortgage is usually repaid from the estate on death/second death. This allows an individual

to have enough money for a comfortable and enjoyable retirement without the burden of monthly loan repayments.

Equity release has historically received a lot of bad press but in recent years an effort has been made to restore confidence in the sector.

There are, of course, many factors an individual would need to consider before entering in to an equity release scheme. For example, if a potential borrower wishes to leave a legacy to their family they should discuss matters with their nominated beneficiaries to make them aware of the implications. This is a complicated area of financial planning and financial advice is essential. At Birkett Long we have a team of independent financial advisers who are able to advise in most aspects of financial advice, including equity release.

Birkett Long has a range of legal and financial services designed especially for the over 50s. For more information contact paul.chilver@birkettlong.co.uk or emma.waters@birkettlong.co.uk.



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FREE SEMINARS

Long term care costs are rising - are you prepared?

To hear more from our experts, come along to one of our informal seminars on 25 and 26 November, taking place at The George Hotel, High Street, Colchester.

Our experts will guide you through:

- the rules surrounding care fees and how they might apply to you
- how you can preserve the value of your home and other assets
- how to plan for care fees
- whether equity release is appropriate for you
- the importance of wills and Lasting Powers of Attorney

To book a free place contact Jennie Skingsley on 01206 217605, email events@birkettlong.co.uk or visit www.birkettlong.co.uk.

Love Second Time Around

INSOLVENCY

Setting up home with a new partner after the breakdown of a long relationship or the loss of a spouse can be a daunting prospect. When you do find someone that you want to share the rest of your life with, bringing together both of your families and your finances can be difficult.

Our clients at Birkett Long tell us it can be more complicated later in life, when you may already own property, have paid into pensions for many years, have investments and can be thinking about retirement. Your partner is likely to be in a similar position. Added pressures can arise – do you sell your home and purchase together so you start your life together in fresh territory? What if that relationship fails – have you then lost your home? You might have already experienced a bitter breakup with an ex partner and feel they received too much as a result of the settlement – will the same happen again? Adult children can be apprehensive that, lets face it, you are setting up life with someone who will never replace their other parent and, worse still, might only be after their inheritance. Such tensions do not help a young relationship move forward. Can the law help ease these tensions?

Any new relationship should be an exciting next step in life. However, loyalties can be torn between your family and your new partner, leading to friction. You are also likely to be concerned about sharing your finances with another person. Your partner is probably facing the same difficulties. Whether you are contemplating living with your new partner, or marrying them, a well prepared and thought out agreement can help.

Living together

There is a common myth that if you live with someone for a certain number of years they become your common law spouse

and have a claim against your assets. This is not true: although the Law Commission has considered bringing in such an arrangement, those plans are currently on hold. However, your partner can bring a claim against your assets in certain situations, even if they are not named on the title documents. For example, promises (which are relied on) that they will have a home in your property for life or they own half of the house although the title deeds are not amended, or payment of money towards a property can lead to rights in that asset.

Whether or not you are purchasing property together or are planning to combine your assets, a cohabitation agreement should offer good protection against future claims in the event your relationship breaks down. It can specify precisely how your assets are shared and what, if any, claims you each have in the event of your separation.

Marriage

If you are planning to marry, a pre-nuptial agreement should be considered. Recent celebrity divorce cases have highlighted, yet again, the seemingly thorny issue of pre-nuptial agreements and whether they have any real merit. The stakes, as we know, can be very high. Heather Mills famously received £24 million during her divorce from Sir Paul McCartney after only 4 years of marriage.

The current situation in England is that 'pre-nups' are not automatically recognised, being only one of the factors to be taken into account within divorce proceedings. The English courts are revisiting prenuptial agreements again this summer. In the meantime, the law commissioner in charge of family law, Professor Elizabeth Cooke, has confirmed that the law will be reviewed and one possibility is that pre-nuptial and post-nuptial

settlements will be recognised. Professor Cooke indicated:

"There is a certain amount of financial carnage when people get divorced. A well drawn pre-nup can give greater predictability".

The Law Commission's recommendations are expected later this year. Currently, we at Birkett Long are advising our clients that it is likely properly prepared, researched and fair pre-nuptial and post-nuptial agreements will be taken into account within subsequent divorce proceedings. It is hoped that the Law Commission's recommendations will lead to new law making such agreements binding. This will give all concerned greater certainty if they do face a divorce in the years that follow.

Whether you are considering living with someone or marriage, a cohabitation or pre-nuptial agreement can ease the tensions felt by you, your partner and your families. If they are accompanied by wills and trusts, you can be sure that inheritance has been fully considered and planned. Such arrangements can be shared with your families. This should reassure everyone affected that all interests have been considered and protected, easing the way to a happy life together.

For more information, contact Philip Hoddell on 01206 217320 philip.hoddell@birkettlong.co.uk



You have dealt with 'Failing Company Ltd' for years but recently it has been struggling and, at close of play one Friday, it owes you several thousand pounds.

The following Monday you receive a letter from IP Insolvency Practitioners, explaining that the directors of Failing Company Ltd appointed them as Administrators. It is unlikely you will see any return on the thousands of pounds which Failing Company Ltd owed you.

Your post tray also contains an order from Try Again Ltd. The directors of Try Again Ltd are the same as the directors of Failing Company Ltd and the address, registered office and contact details are all the same. It may seem that Failing Company Ltd's directors have avoided you and their other creditors and re-started the business, debt free, in the name of Try Again Ltd. Is this legal?

This may be a pre-pack administration sale (pre-pack), which allows for Failing Company Ltd to enter into administration and for the administrators to sell the business of Failing Company Ltd to Try Again Ltd. Try Again Ltd may be run by the previous directors or by a third party.

The Enterprise Act 2002 enables a company or its directors to appoint an administrator without having any recourse to the courts. Companies such as Whittard of Chelsea and MFI have been subjects of pre-packs. The process has been criticised as an unjust way to restart a business leaving creditors unpaid and without notice of the pre-pack until after completion. However, the Insolvency Service has stated that 'a pre-pack may offer the best chance for a business rescue, preserve goodwill and employment, maximise realisations and generally speed up the insolvency process'.

To combat the negative publicity of pre-packs new guidelines have introduced safeguards which aim to resolve complaints about lack of transparency and accountability; although these may mean a decline in their use, pre-packs remain valuable. We work with insolvency practitioners who are well qualified to ensure that the best option is always chosen to enable a business to be saved whilst ensuring creditors are fully informed.

Contact Hayley Songhurst on 01206 217377 or email hayley.songhurst@birkettlong.co.uk

CHRISTOPHER HOLMES OBE DL
October 1943 – March 2010

Chris was a member of Birkett Long for forty-eight years. In 1962, uncertain as to what Chris was going to do with his life, his parents sent him to meet Ronald Long, the Senior Partner of Smith Morton and Long, solicitors in Halstead. "Put on a suit and pretend to be interested" was his mother's wise advice.

Chris was admitted as a fully qualified solicitor in 1967, becoming a partner in the firm three years later. He opened the Colchester office in 1973 and spearheaded the new Chelmsford office nearly thirty years later. Chris served, in turn, as the firm's Managing Partner, as its Senior Partner and as a Consultant with the firm until his death.

Chris was an outstanding and dedicated lawyer, becoming one of the most respected family lawyers in the area. He also gave outstanding service to the North Essex community. Amongst his many roles, he was Chairman of St Helena Hospice from 1992 to 1996 and Chairman of Macmillan Cancer Support in Essex from 1996 to the date of his death. He was also a Deputy Lieutenant and was awarded the OBE for his public services in 2000.

But it was for his personal qualities that most of us will remember him. Chris was the most decent of men, always charming, always interested in people and always seeing the best side of everyone. Birkett Long was his family and he treated every member of the firm as a family member. He bore his terrible illness with great courage and always made light of his problems, remaining as engaging and interested in people as ever.

We have been blessed indeed to have known Chris and to have had him as our Senior Partner and friend.



Home news

NEW FACES

Birkett Long has welcomed many new people to the firm recently. Emma Waters, who is an experienced personal tax, trusts and probate solicitor, joined our Chelmsford office in August. She is a member of the STEP Committee and of Solicitors for the Elderly.

The firm also acquired Weight Wolny and Trusler in Chelmsford, welcoming Bob Wolny (partner), John Trusler (consultant), Maria Russo (solicitor) and Joann Kebbell (family law adviser) with Trish Pickett, Pat Smeets and Dorothy Townley (secretaries).

Congratulations go to Laura Bunting, Lisa Collins and Ben Parmenter for qualifying as solicitors with Birkett Long. We were joined by new trainees Sarah Campbell, Katy Humphreys, Calum Irvine and Kayleigh O'Donnell. Celebrations are also in order for Caroline Dowding, who has passed the academic stages of her solicitor exams and Lorraine Hardy who has been admitted to the Law Society's Children Panel.

PASSMORES (INCORPORATING RON SANDS & CO)

Birkett Long recently took over files, wills and deeds (where clients agree) for the clients of Passmores (incorporating Ron Sands & Co). Passmores' Colchester-based office closed at the end of August.

MANAGEMENT CHANGES

Earlier this year Philip George stepped down as Managing Partner. Handing over to Adrian Livesley, Philip remains with Birkett Long as a consultant solicitor. During his eight years as Managing Partner, the firm achieved the quality standard ISO 9001 and Lexcel (the Law Society's quality mark). We also appeared in the Sunday Times' Best 100 Companies to Work For and the Managing Partners' Forum 100 Best Companies to Work For. Philip said: "It has been a privilege and pleasure, even during the tough times of the recent recession, which I am glad to say we have weathered well. I know that Adrian will do a great job and I wish him all the best for the future."

Adrian Livesley (right) takes up the reins as Managing Partner after three years as the firm's Chairman. He is a Deputy District Judge and specialist in litigation. The role of Chairman has been filled by David Wisbey (far right), who was Head of the Commercial Department.



More Online Information

Birkett Long has revamped its website in the last few months, with more developments to come.

The new site, which has enhanced navigation and a more effective display of the firm's services, went live in June 2010. New and updated features include easier ways of contacting the firm, with a call back request module on each service page. The firm's conveyancing calculator is due to be reinstated shortly and more exciting developments are on the way over the coming months.

Run4Fun has particularly lent itself to the rise in social media and Web 2.0 applications, with YouTube videos, a Twitter account and Facebook page all accessed via the Birkett Long website. We will also soon be offering webinars for download, so you can keep up to date with our seminars in your own time.

Visit www.birkettlong.co.uk regularly to keep up with legal news, which is updated every day.



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Whilst every care and attention has been taken to ensure the accuracy of the contents of this magazine, this information is intended for general guidance only. Reference should be made to the appropriate adviser on any specific matters.

Your home may be repossessed if you do not keep up repayments on your mortgage

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The business interview

A RURAL BUSINESS



The business interview talks to Martin Gosling of Gosling and Partners who runs Stone Farm at Wickham St Pauls. A family partnership between Martin and his wife, he describes some of the skills required for managing today's farms and assets.

What makes your business stand out from your competitors?

Farming is slightly different to other market sectors. Farmers can adopt any number of different techniques to improve the quality of their produce (weather dependant of course!), but ultimately can only really gain a competitive advantage by attention to detail and building a reputation for reliability and quality, which obviously takes time. As we will all know, that same reputation can be damaged with one moment of inattention or even one unfortunate set of circumstances. We conduct the majority of our work on these principles using the standard agricultural techniques and a focus on mechanisation to reduce labour. George Wright assists us on a day to day basis by providing contract farming and professional advice. His experience is particularly invaluable given he acts as a contract farmer in Europe and therefore is able to draw on a wider range of techniques than are available in England.

How do you see your business developing in the future?

Expansion. Businesses generally have a critical mass, if they are unable to reach this then they do not survive. Economies of scale assist larger farmers enormously and therefore the goal is always to expand your holding to improve financial performance.

Of course, it is all about expanding in ways which are designed to maximise either income or capital gains. We aim to balance our expansion plans to ensure that capital gains are not pursued at the

expense of wise cashflow management.

How has Birkett Long helped your business?

The family has used Birkett Long for almost seventy years on a diverse range of matters, they are big enough to cover all relevant commercial and private areas of law, but not so big as to lose their personal touch.

In January 2010 I needed to resolve a dispute and contacted David Wybar, who is head of the Rural Business team (RBT) at Birkett Long. On hearing the details of my dispute he recognised the critical issue was whether the role played by a third party was that of an authorised agent or an independent broker. He brought in Mark Wrinch, a member of the team specialising in commercial litigation, to advise. The process was straightforward as the RBT clearly work together on a number of issues.

The background to the dispute is that we sell our oil seed rape to a particular company, usually dealing with a well known local agent and have never experienced any difficulties in the past. Unfortunately in this case the company purchasing failed to make payment in the proper amount. In the agricultural market, price is usually negotiated either by open market rate at the relevant time in the contract or, alternatively, at a fixed rate. Fixing guarantees income and assists cash flow management but the open market can sometimes permit greater income, depending on the vagaries

of the international market, weather conditions, etc.

On this contract the original agreement was for the price to be negotiated at open market rates on collection and a contract was sent to the company concerned by the agent. I then wanted to set a fixed price and the agent agreed to vary the contract and wrote on the original contract to that effect. Imagine my surprise when the crop is harvested and collected and payment arrives at a considerably lower amount per tonne than the fixed price. The company had paid £146 per tonne less than agreed and refused to pay the correct amount, seeking to rely on the original contract as the open market rate was particularly low. I'm sure many of us have had experience of this before, but in this case the total amount owed by the company was £10,500.

Mark understood the background to this matter immediately as his father is a farmer and regularly deals with these issues. This, coupled with his legal skills, enabled him to resolve the dispute quickly and with full recovery of the legal costs incurred in doing so. After initial meetings to clarify the full fact pattern, review of contract documentation and a letter of advice from Mark about the prospects of making a successful claim, I authorised the claim and a detailed seven day pre-action letter was sent to the relevant company. They rebutted the claim with what I can only assume was a bluff, because a final shot (letter!) across the bows giving a three day deadline before a claim would be issued in court, resulted in an offer to settle the matter by full payment of the amount outstanding and full payment of legal costs incurred.

Would you recommend Birkett Long to others and if so why?

Yes, my wife and I would. Cash flow problems were resolved within three months of Birkett Long's instruction at no long term cost to me. Work in other areas has also always been of a good standard.

Gosling and Partners can be contacted on 01787 269369.

5 MBOs in 12 days

Birkett Long turned around five separate management buy-outs in just 12 days, securing jobs and continuity of service for a national accountancy group.

Vantis plc and HLB Vantis Audit plc went into administration on June 29, putting jobs at risk and threatening contracts with existing clients.

Birkett Long was approached by five management teams from Vantis, with plans to buy-out five of the firm's 16 offices in order to establish their own limited liability partnerships (LLPs). Despite the challenging timescale, we successfully completed the deals within just 12 days. It was one of the fastest case turnarounds in the firm's history and successfully secured the creation of five new businesses.

David Wisbey, Chairman of Birkett Long, said it was one of the most unusual cases of his 24-year career: "Five separate management teams from Vantis came to us with the opportunity to acquire their businesses," he added. "Due to multiple transactions, it was one of the most complex cases the team has worked on, but we were delighted to secure the deals with a successful outcome for our clients within the fortnight.

"It's the first time I have worked on a case of this kind in more than 20 years. Not only were we dealing with five different management teams, but each deal had its own transactional, property and contractual issues. A team of eight individual specialists at Birkett Long were each apportioned a specific issue to manage, ensuring each deal was completed within the crucial timeframe."

Birkett Long provides practical and commercial legal advice to a range of businesses and institutions of all sizes and across all sectors. Find out more at www.birkettlong.co.uk or call 01206 217300.

OUR RURAL BUSINESS TEAM

This year Birkett Long's Rural Business Team (RBT) has doubled in size! The RBT consists of David Wybar – Head of RBT and partner in the firm and Annabelle Savage who joined the firm in 2008. We welcome to the team Vicky Raynes and Mark Wrinch.



Vicky is a solicitor who specialises in wills, estate planning, powers of attorney, administration of estates and trusts. Vicky acts for many of our farming families and knows the likely problems facing them, for example Inheritance and Capital Gains Tax. She frequently deals with Agricultural Property Relief and so can help you plan to try to keep any Inheritance Tax to a minimum.
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Mark is a solicitor who specialises in commercial litigation. His parents farm on the Shotley Peninsula in Suffolk. Mark is the first port of call when matters look like they might be contentious. He regularly deals with dispute matters that vary enormously and generally include boundary disputes with neighbours, breach of restrictive covenants, obstructions of easements and contractual disputes.
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David continues to head the team and advises farming families and rural businesses on business structures, succession and tax as well as rural property and farming issues. He also advises on tenancy issues such as succession rights under Agricultural Holdings Act 1986 and is a member of the committee that represents the farming industry at the European Commission. Jointly, the team has over 90 years' experience of rural business.
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01206 217312



Annabelle is a solicitor specialising in rural property. Her parents farm in the Rodings in Essex. She works alongside David on acquisitions and disposals of land, as well as dealing with registration of land, preparing farm business tenancy agreements, recording easements, re-financing work and implementing the team's strategies to help clients plan for the future.
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