

AUTUMN/WINTER 2018



CONSTRUCTION law

NEWS AND ADVICE FROM BIRKETT LONG

No deal Brexit

What could be the impact of a 'no deal' to the construction industry?

It pays to talk to the experts

An example of how the Construction Act, and the adjudication process, can help contractors and sub-contractors to be paid.

One stop shop

The team dedicated to offering essential legal services for all types of developers.

You for MEES and MEES for you

The drive to tackle climate changes continues.

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What could the impact of a 'no deal' Brexit be for the construction industry?

With less than four months to go until the UK exits from the European Union (EU), the construction industry still faces uncertainty as to what is actually going to happen after Brexit.

The industry has displayed mixed views on the prospect of Brexit. The construction industry has just about recovered from the 2008 financial crisis, profit margins remain tight, skills shortages continue, and the Carillion collapse and the Grenfell tragedy continue to make the headlines. Adding to this is the increasing concern about the prospect of a 'no deal' Brexit and the potential challenges to the labour market and import of construction materials.

Labour skills shortage

The construction industry is heavily

reliant on foreign migrant labour. The figures from the Office for National Statistics (ONS) show that one third of workers on construction sites in London were from overseas; 28% coming from the EU. This shows the construction industry is reliant on EU labour.

The Migration Advisory Committee (MAC) has advised the government to restrict access for lower-skilled workers. If immigration is restricted, the UK could witness high project costs and the labour demand would outweigh supply. Whilst it is unlikely that European workers would be sent back to the

continent, hopeful construction workers may be reluctant to stay or even refuse to come to the UK in the first place. This could have a knock-on effect for the construction industry and its ability to meet the government's £425 billion infrastructure pipeline.

Import of construction materials

The construction industry is a heavy user of goods and materials supplied from the EU. A 'no deal' could impact importing construction products and materials into the UK. The Department for Business, Skills and Innovation estimated that 64% of building materials were imported from the EU. According to Build UK, a representative organisation for the UK construction industry, £10 billion of construction products are imported from the EU each year, including £750 million of aluminium products and £1 billion of timber.

We were approached by our client, a company specialising in the fabrication and installation of steelwork, in early 2018. They had been engaged as a sub-contractor to carry out steelworks at a site in Croydon.

Talk to the experts – they really can help

The works had been completed but they were having trouble agreeing the final account with the main contractor, who was disputing our client's charges and alleging defects for which our client denied responsibility.

There was no signed contract, so we advised our client how the payment

provisions that would be implied into the contract by the Construction Act worked. A formal Application for Final Payment, in the sum of approximately £60,000 was prepared and submitted. The main contractor failed to serve a Payless Notice and continued to withhold payment. We referred the matter to adjudication. Just a month

After Brexit, importers may face duties or limits on quantities of goods. If the UK is unable to replicate the current arrangements in place, there could be an inflationary effect on costs of materials or even a shortage of construction materials. There are already talks of using a stretch of the M20 in Kent as a temporary lorry park in order to check paperwork for vehicles heading to and from Europe.

Final thoughts

It is difficult to tell exactly what the impact of a 'no deal' Brexit will have on the UK construction industry, save to say it is obvious that there will be uncertainty throughout the industry. The most pressing concerns are the reduction in skilled labour and the impact on the pricing of materials. It is therefore crucial that the government seeks to address this uncertainty. Currently this is causing developers to pause their projects as they await the outcome of the negotiations.

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Dedicated to developers

The General Permitted Development Rights (GPDR) currently allow for some commercial property, such as offices, to be converted into residential units, without the need to go through the full planning application process.

Birkett Long has a dedicated Development Team which works with a wide range of developers, many of whom are taking full advantage of the GPDR, as a simple and fast alternative to developing residential property. Often, utility connections and access are already in place.

Our developer clients are all very different which means that we have to find innovative ways to approach transactions. We work with them to find solutions that meet their specific needs, and to find ways to structure deals for maximum efficiency and financial viability.

Birkett Long's Development Team is a one-stop-shop for all developers. We offer essential legal services in all aspects of development work, from site acquisition and site set up through to individual plot sale disposals. We have experts who can help you with, amongst other things, Option Agreements, Conditional Contracts, Overage Agreements and Promotion Agreements. We also deal with infrastructure agreements and development financing.

To discuss your development needs with us or for more information please feel free to contact us.

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later we received the Adjudicator's Decision - the main contractor should pay the full amount applied for by our client together with the Adjudicator's fees.

The main contractor failed to make payment in accordance with the decision and so we applied to the Technology and Construction Court ("TCC") to enforce it. The main contractor defended the court proceedings and made various allegations of fraud relating to the creation and signing of various timesheets on which our client's application for payment had partly been based. The main contractor also applied to the court to delay the enforcement proceedings whilst its claims were considered.

The TCC was having none of it and refused to adjourn the enforcement hearing, entered judgment in our client's favour for the full amount, together with interest and costs, and dismissed the main contractor's application for a stay of execution.

This case is a good example of how the Construction Act, and the adjudication process that it provides for, can help contractors and sub-contractors extract payment from even the most resistant and obstructive opponents in a relatively short space of time. In this case, our client obtained a High Court judgment for the full amount of its final payment application just over three months after referring the dispute to adjudication. Had our client simply issued court

proceedings, rather than referring the matter to adjudication, the case could easily have taken eighteen months to get to trial and cost a great deal more in the process.



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You for MEES and MEES for you

The government's drive to tackle climate change continues, estimating that 18% of commercial properties hold the lowest Energy Performance Certificate (EPC) ratings (F and G).

Since 1 April 2018, the Minimum Energy Efficiency Standard Regulations (MEES) apply to new leases and renewal/extension leases. They will apply to all leases of domestic premises on 1 April 2020, and will apply to all leases of commercial premises on 1 April 2023.

Despite potentially being over 4 years away, there should be no room for complacency. If MEES apply, then an EPC rating of E or above is required before the property can be let, unless certain exemptions apply.

Contractors are likely to be heavily involved in improving the energy efficiency of the many buildings that do not yet meet the required standards. Before works are done, landlords will need to ensure that

the lease gives them, and their contractors, adequate rights of access to do the works. Contractors could also be involved if upgrades are needed under dilapidations schedules. There may well be complex legal arguments over whether works fall under the lease obligations.

Not only are there contradictions between MEES Regulations and the EPC provisions, but MEES are likely to be a fertile ground of litigation. Not only on the above arguments, but also on their impact at 1954 Act lease renewal, rent review and service charge recoverability.

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Important

It has been brought to our attention that Birkett Long has an impersonator - Joseph Ramdath. Joseph has been contacting various people via email claiming that he is a sole legal attorney of a family member (usually 'Ken D Your surname) who has recently passed away. He is asking for you to get in touch regarding the deceased's abandoned investment.

If you receive an email from a Joseph Ramdath it is not legitimate. You can safely ignore and delete any emails that come from either Joseph Ramdath or an email address including birkettlongllpsolicitors, boydfrank98, josephramdath.esq or similar.

We are currently talking to the relevant organisations about his impersonation of Birkett Long, but if you are concerned about an email you have received, please do contact us on 01206 217605.