



# For Business

## **Environmental change is happening**

You need plans in place for your  
business to adapt

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## **Employee social media posts**

Employers beware,  
you may be liable

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## **Cash flow**

Make sure your debtors  
are paying on time

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## **Know your rights**

Changes to residential  
landlord and tenant law

# The answer is blowing in the wind - and careful assessment and planning

Quite a lot has been happening in the environmental sphere over the past few months.

At the end of May we had the news that electricity from wind, solar, nuclear and hydro power had surpassed that generated by coal and gas by more than 1 per cent. This was the first time since the Industrial Revolution that energy generation from zero-carbon sources exceeded that from fossil fuels. Many hailed it as a 'watershed moment' in the move to hit the UK's net-zero targets by 2050. Very recently, however, we have heard that the switch mechanisms in many renewable plants and connections release greenhouse gases far more damaging to the environment than carbon dioxide. It seems another case of 'swings and roundabouts'. However, the direction of travel is the right one.

In August, we learned that a British technology start-up business may have found a solution to the curse of intermittency for wind and solar power, far more quickly than anyone had thought possible. Highview Power is pioneering a new way of storing electricity for long periods and if - and it remains a big 'if' at this stage - it can deliver on its promises this could be a revolutionary break-through.

How does this impact on us and our businesses?

In June, the first international standard for climate change was launched - ISO 14090:2019. It is intended

to provide organisations with an approach that will allow them to give appropriate consideration to climate change adaptation when designing, implementing and updating policies, strategies, plans and activities.

It is hoped that applying the approach set out in the standard will assist in demonstrating that a particular organisation's approach to climate change adaptation is credible and that, in turn, ought to provide reassurance to investors, funders or insurance companies - all of which will bring beneficial consequences to that organisation. When some of the world's biggest companies recently valued climate risks to their businesses at nearly one trillion dollars, the impact of climate change cannot be ignored - no matter what the scale of your business might be.

Increasing temperatures, rising sea levels, extreme weather and greenhouse gas emissions are all aspects of our changing climate that can impact businesses. Importantly, though, they can also create opportunities -

## Employers may be liable for employee's 'private' social media posts

Social media is prominent in today's technological world. Whether it's used personally, for business or both, social media and messaging services such as WhatsApp are rarely far from our fingertips.

The rise of social media means it's easier than ever to offend (or be offended) by posts, whether intended or not. The ability to 'share', 'like' or 'retweet' means posts can get into the hands of people that were never intended to see them. For employers, this can be a challenge and lead to allegations between employees and against them, the employer, of bullying and harassment.

In the case of *Forbes v LHR Airport Limited*, an airport employee (S) posted an image to her personal Facebook account outside of working hours, using her own equipment and visible only to people who were 'friends'. The only colleague who was a 'friend' of S (BW) showed the image to the claimant Mr Forbes. If BW hadn't shared the post, Forbes, would not have seen it; he was not 'friends' with S. Mr Forbes was

as the news about Highview Power demonstrates. The same companies that had valued the risks to their businesses said that they valued the potential gains from business opportunities arising through climate change-associated activities at more than double the downside.

Having robust plans in place to adapt to climate change is key to business success. The new standard will help businesses not only assess climate change impacts and put plans in place to deal with them by identifying and

managing risks, but it will also enable many to seize any opportunities that climate change may bring. It goes without saying that assessing and preparing your business for climate impacts will make it more resilient.



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## Keep your cash flowing

We have seen an influx of commercial clients contacting us in relation to their longstanding debtors. Whether or not this is a result of the ongoing Brexit saga, or the fact that corporate insolvencies have risen to their highest level since 2014, companies are requiring tailored advice as to how they should be pursuing debtors.

It goes without saying that a business should ensure their debtors pay invoices promptly. Cash flow problems can inevitably stem from consumers who are slow in paying their invoices once they have been raised. On occasions, those debtors may suggest a reason as to why the invoice is not payable, perhaps by purporting that a term of the contract has been breached. In these situations, we can look at the contract and the conduct of both parties to advise on the merits of pursuing the debt.

We have a dedicated debt collection team which can assist in recovering unpaid debts in a timely and cost-efficient way. If you wish to know more about our debt collection services, please do not hesitate to contact me.

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offended by the image and raised a formal grievance with their employer. The employer upheld the grievance and issued a final warning to S. Mr Forbes was not happy and claimed harassment, victimisation and discrimination against the employer.

The employer would have been 'vicariously liable' if S's post had been made 'in the course of employment'. Whether something was done in the course of employment is assessed case by case, considering factors including where the act was carried out and whether work equipment was used. These factors will not always be easy to assess, especially with the use of flexible working arrangements, employer provided devices, and increasingly blurred lines between personal social media accounts and business use.

The claimant, Mr Forbes, was unsuccessful; S had not acted in the course of employment and, once the grievance had been raised, the employer investigated, took disciplinary action, and reasonable steps to mediate the relationship between the employees.

However, had the claim been based on the sharing of the post by BW, rather than the initial post by S, the outcome may well have been different. Employers should not rest on their laurels.

In the increasingly technological world, what should employers be doing to reduce the risk of a claim?

1. Implement equality and social media policies setting out acceptable and unacceptable use of social media, including personal accounts;

2. Publicise, enforce and review the policies;
3. Provide training if necessary.

Please contact our specialist Employment Team if you need help or advice on reducing the risk of a claim.



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# Know your rights

The Government has issued a new consultation paper which could indicate the end of Assured Shorthold Tenancies (“ASTs”).

The paper asks for views on the impact of removing ASTs and whether they should be ended without tenant fault, whether the reforms should also affect the social sector, how the ‘Section 8’ (Schedule 2 Housing Act 1988) grounds should be reformed and how the court could be more efficient in considering possession under Section 8.

Some of the reforms look sensible, particularly the amendment to the mandatory unpaid rent ground of Section 8. This could be amended so that even if a tenant pays up before the hearing, if they have built up arrears and paid them back at least three times prior – the ground will still be mandatory. Also, there appears to be no mention of rent control, which means landlords should be able to adjust rent in line with market levels.

The changes will not be retrospective, so existing ASTs will still be able to use the Section 21 procedure which enables landlords to evict tenants at the end of a term.

There have been drastic changes to residential landlord and tenant law recently. If this affects you, it is important you know your rights. We advise on all aspects of any property disputes which may arise from the changes.

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## Our next Colchester for Business Networking Breakfast, to bring local businesses together, is on 11 December 2019.

Our team of intellectual property lawyers can help you create value for your business by working with you to realise your intellectual property assets. Jonathan Perlmutter, Head of our Intellectual Property department, will provide an introduction to the types of IP commonly found in different aspects of businesses and how you might look to profitably exploit them.

There will be a short, informal and interactive presentation followed by a Q&A session, during which time you will have a chance to talk about your specific queries.

If you would like to attend, suggest a topic, or be one of our future guest speakers, then please email [katie.robertson@birkettlong.co.uk](mailto:katie.robertson@birkettlong.co.uk)