



environmental law

Help with environmental regulation and energy costs

Environmental regulation – and particularly where it affects sustainability and energy efficiency – is becoming of increasing importance to most businesses and many individuals. The Birkett Long environment and energy team – which is led by partner, David Rayner – can assist with guiding you through the complex statutory and regulatory provisions and potentially help with reducing business costs.

Environmental regulation continues to increase and affect more and more businesses; while at the same time, energy costs continue to rise. Well advised businesses will be able to manage the sustainability agenda and, over the long term, reduce energy costs.

Historically, environmental law practices concentrated on dealing with the 'heavy' or 'dirty' environmental topics of contamination, pollution, waste and the environmental permitting regime; whereas today, although those aspects remain important, the sector has expanded to embrace the climate change/sustainability/carbon reduction topics which will include CRC Energy Efficiency Scheme and the corporate mandatory reporting of carbon emissions.

Members of the Birkett Long team have been involved across the whole spectrum of work involved in this sector, ranging from dealing with significant contamination and pollution issues to advising both landlords and tenants on how best to improve the sustainability and energy efficiency of their premises. That has included advice on

renewable energy systems and how to fund them – to both building owners and occupiers and also to system suppliers – advising on nuisance and clean-up aspects following pollution incidents and even advising a bank looking to lend to a major nuclear fuels re-processing business.

Businesses that manage the sustainability agenda will not only be complying with the appropriate regulations but also will put themselves in the best position to reduce energy costs which, at a time of economic squeeze, can only be beneficial.

The Birkett Long environment and energy team is a cross-department and cross-discipline team, capable of advising not only on traditional environmental matters but also on the sustainability and compliance challenges facing businesses. We can, however, also assist with merger and acquisition work, terms and conditions of business, construction issues, employment topics and dispute resolution. For full details of the make-up of the team and its expertise, please visit the Birkett Long website at www.birkettlong.co.uk



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17 July - Mandatory carbon reporting and other issues affecting SMEs

For more details on any of these seminars or to register your free place email seminars@birkettlong.co.uk or visit www.birkettlong.co.uk/events

Forthcoming events

Green Breakfasts 2013:

17 April - Energy waste: find it and stop it!

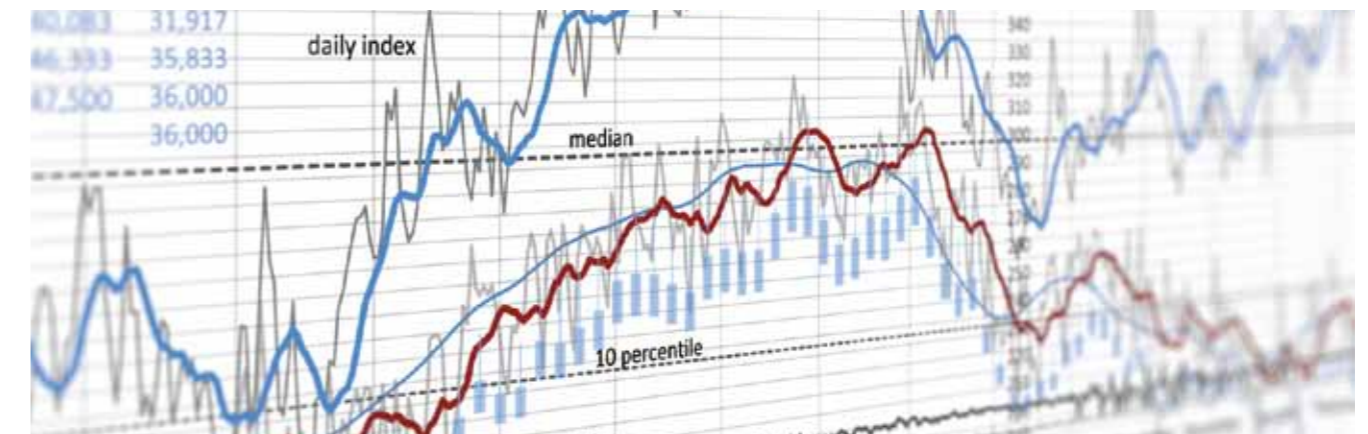
29 May - Energy: an opportunity for property owners and occupiers



For Business

NEWS AND ADVICE FROM BIRKETT LONG

Does LIBOR affect your interest rate?



In recent weeks, there have been further developments in the LIBOR scandal. RBS has become the latest bank to be fined for involvement in fixing the LIBOR rate – in addition to Barclays and UBS. It seems likely that other banks may also be fined in months to come.

Furthermore, in a recent development in one of the claims against Barclays relating to LIBOR, 106 employees had sought an order to stop their identity being disclosed. These employees were allegedly involved in LIBOR fixing. The court refused to make such an order.

The claims are about whether or not a loan agreement relating to the LIBOR rate is enforceable. It would appear that there is evidence of the LIBOR interest rate being manipulated between January 2005 and June 2009.

It may be held that it is not enforceable because of the fraudulent manipulation of the LIBOR rate. If that occurred the agreement could be held to be void.

It does not matter that the rate was often manipulated down so that loans were actually cheaper. The whole agreement would still be void. Therefore the ultimate consequence could be that all interest paid under such loan arrangements could be recoverable from the banks. This

could mean businesses could recover all the interest which they have paid on such loans. The banks have made huge provisions for such claims. If you have a loan which is linked to LIBOR and was in place between January 2005 and June 2009 then you may have a claim. If you would like to discuss this further please contact us.



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When is a subsidiary not a separate legal entity?

A parent company can become liable for its subsidiary and the "corporate veil", which would usually separate them, can be pierced in a number of circumstances.

Circumstances where the third parties will seek to lift the corporate veil and pursue the parent company for the liabilities of its subsidiary include situations where the subsidiary party does not have any assets to enforce a debt against or the subsidiary has become insolvent. In these circumstances third party creditors will seek the assistance of the courts to go after the parent company and the courts have been willing to do so, particularly where there is evidence of fraud, wilful breach of trust, or some obvious sham to avoid or limit the liabilities of the subsidiary company.

The recent case of *Chandler v Cape plc* has established that a parent company may be liable for breaches of health and safety laws by a subsidiary without the need to consider lifting the corporate veil.

The case involved a claim for negligence in connection with an asbestos production business. The claimant could no longer sue the company he had worked for as it had

been dissolved some years before, but its parent company was still active.

The court had to decide if the parent company had taken on a direct duty of care to the employees of its subsidiary and was therefore responsible for their health and safety. In this case the parent company's knowledge of the dangers of activities operated by its subsidiary resulted in the finding of liability. Such knowledge can be acquired from the parent company's direct interaction with the subsidiary's operations on site, or by its control of the subsidiary itself. The court created a test to assist future cases. A parent company could be found liable for the acts of its subsidiary if:

- 1 The parent and subsidiary share the same business;
- 2 The parent knew or ought to have had 'superior' knowledge of the dangers of certain practices;
- 3 The parent knew or ought to have known the subsidiary's practices were unsafe;
- 4 The parent knew or ought to have foreseen that the subsidiary or its employees would rely on that 'superior' knowledge to protect the employees.

Separate legal entities may not therefore be as separate as envisaged and parent companies should be aware of the extent to which they interact or control their subsidiaries.



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Bare essentials

Green deal idea for care homes

Care home owners are being encouraged to recognise the benefits of the Government's recently launched "Green Deal" scheme to improve the energy efficiency of their buildings and achieve long-term savings on energy costs without any upfront cost.

Finance plans relating to the scheme became available on 28 January 2013 and it is expected care home owners will be keen to embrace the scheme to combat the rising day to day costs of running care accommodation.

Property owners will be able to take energy saving measures and use

pre-agreed charges on energy generated, along with savings on energy consumption, to pay off the costs of such measures over a set period of time.

The sort of energy efficient measures that will be included within the Green Deal include condensing boilers, heat recovery systems, cavity wall insulation, loft insulation, lighting fittings and control, water efficient taps and showers, solar thermal, solar photovoltaics and biomass boilers.

If you would like to discuss this further, please contact Tracey Dickens by email tracey.dickens@birkettlong.co.uk or phone 01206 217326.

Meet the team

Annabelle Savage

Annabelle specialises in agricultural property dealing with sales, purchases, refinancing and management of farms and estates. She advises on tenancy issues such as succession and retirement, preparing farm business tenancies, land registration at the Land Registry, overage agreements, easements, farm cottages and diversification projects.

Annabelle studied Pharmacology at Newcastle University and then took a Law Conversion course at Northumbria University (2004-2005). Following that she completed the

LPC at College of Law in York (2005-2006), before joining Birkett Long in September 2008 after qualification.

Annabelle is a farmer's daughter and a fellow of the Agricultural Law Association. She sits on the Essex Agricultural Society Council and on the Game and Wildlife Conservation Trust committee for Essex. She is a member of Suffolk Agricultural Association, Country Land and Business Association and Tendring Hundred Farmers' Club.



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