For Business

DON'T BE AN APRIL FOOL!

Head of the commercial department, Peter Allen, comments on this newsletter's theme of how to avoid becoming an April Fool:

"As April Fools' day is upon us again, I hope you won't have fallen for any pranks!

In this edition of For Business we have a selection of articles which will help prevent you becoming a fool when dealing with your legal issues. I hope you find them useful and don't forget to enjoy the spaghetti harvest!"

How much should you help your friends?

You're a professional, a solicitor, a surveyor, an accountant, a banker, a doctor, a nurse. It's 10pm on a Saturday evening and you are at a dinner party where the wine has flowed generously. A friend turns to you to ask for your advice. Should you give it?

The recent case of Burgess and Another v Lejonvarn may well cause you to hesitate. In this case, an architect who advised some friends as a "favour" was found to owe a duty of care to them for the advice she had given. The advice was wrong and breached the duty of care, and as a result the architect was liable in negligence to her friends. As a result of this you should probably refuse to "advise".

However, it should be remembered that in this case the advice was not limited to a quick informal chat about a problem. The advice was given over a relatively long period of time and dealt with detailed aspects of a project, including preparation of design, attending site meetings, advising on selection and procurement of contractors and professionals, and dealing with payment applications. As the court said: "This was not a piece of brief ad hoc advice of the type occasionally proffered by professional people in a less informal context."

It is, though, a warning to professionals to be careful when providing advice on an informal basis. One informal chat may lead to another, which may lead to another, which may then lead to a duty of care arising which the professional did not intend at any time. Providing advice in this way may also lead to issues with your professional indemnity insurers.

If you require advice on professionals' duties of care please contact us. We have a great deal of experience in pursuing and defending such claims, as well as in dealing with professionals' insurers and claims against them.

Peter Allen
01245 453813
peter.allen@birkettlong.co.uk

Landlord and tenant relations April Fool or Valentine's romance?

Many business leaders – for perfectly obvious and valid reasons – concentrate on running their business rather than the premises out of which their business operates. The only time that property is likely to come up is when it is being acquired or disposed of. If the property is leased, then one important consideration is whether or not the lease is protected by the 1954 Landlord and Tenant Act.

The '54 Act gives tenants of business premises statutory protection when their lease ends - including the lease just continuing beyond the contractual term end date until it is brought to an end under the Act, a right to an automatic lease renewal or compensation if renewal is refused on certain grounds, and, with the 1927 Act, compensation for improvements. For those reasons, many landlords like to exclude the statutory protection.

At the start of a lease, the tenant will want to bear in mind that if the lease is excluded from the '54 Act, automatic renewal of the lease will not be possible should the tenant want to stay at the property. The tenant can negotiate with the landlord in the open market, but the landlord may claim a premium rent, knowing that the tenant will face hassle and extra costs of moving elsewhere.

If a lease protected by the '54 Act is coming to an end, the tenant should discuss tactics with its advisers. Should it sit tight and allow the statutory tenancy to continue when the contractual term ends - as may be better if rents are rising – or does it start the process for a lease renewal? The '54 Act contains provisions for interim rents to be payable, which have altered the tactics here, but it is vital to get proper advice.

If the landlord has served notice under the '54 Act, bringing the lease to an end but offering a new lease on specified terms, the tenant will want to consider how to respond – if at all. It can keep its options open down to the last day under the landlord's notice.

If the landlord has served notice to end the lease and refused a renewal, the tenant will need to see whether the landlord's ground(s) for objection are likely to be sustainable if the tenant challenges them. The most popular grounds for objection by landlords are either that the landlord wants the property back for its own occupation, or that he wants it back to demolish or

Bare essentials

Have you read what you're signing?

That may seem like a condescending question, but more and more we are finding that directors come to us for advice because they find themselves being pursued by their companies' creditors.

Often personal guarantees are buried in the small print of credit agreements and supply contracts.

Directors usually tell us that they did not realise the significance of the guarantees, or they simply signed documents presented to them by junior staff or the supplier's salesman, trusting that the document did not include any nasty surprises.

These claims can be very difficult to defend and the financial consequences can be disastrous, particularly where the directors are employed or are only minority shareholders and do not have the resources to settle the claims.

If your business is struggling to repay suppliers and you are concerned about a credit document that you have signed, give us a call. We will be pleased to help by providing a cost effective review of your position and your potential liabilities.

John Fawcett - 01206 217306
john.fawcett@birkettlong.co.uk

reconstruct the property, or that there have been substantial breaches of the tenant's obligations. What is important, is to remember that the landlord has to make out its ground of objection at the time of any court hearing – not when it served its notice. A tenant who thinks the landlord is on shaky ground may want to get him into court quickly, before he can assemble all his evidence.

Having good relations between a landlord and tenant is usually good for business – on both sides. What is vital, however, is to ensure that if any notice is received, it is acted on and proper advice taken, rather than ignored.

David Rayner
01245 453826
david.rayner@birkettlong.co.uk

New websites

Coming soon!

Our website has worked hard for us over the years, so much so that we see almost 100,000 visitors a year. However, the time has come for a refresh! Our marketing team has been busy for the last few months completely redesigning and rewriting our website, which will launch shortly. In addition to rewriting the legal content, our independent financial advisers (Birkett Long IFA LLP) will have a standalone website too.

Birkett Long is focused on people, so with that in mind, our new site will be completely organised around the people and businesses we work with, the situations they find themselves in and how Birkett Long can help. As well as being totally reorganised, the site will also work on mobile devices more effectively than our existing site. Making an enquiry, or getting to the most appropriate person quickly, will be easier and clearer.

We're also looking forward to improving our community section, where we put the spotlight on the different organisations and individuals we support across Essex.

Keep your eyes peeled, and do let us know what you think when you see it!

www.birkettlong.co.uk
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corporate and commercial

Don't make yourself an April Fool!

The war against daily nuisances continues, but today it is the customers who have proven to be right and have won a significant, game-changing battle

The lead generation firm, Prodial Limited, has been fined a record-breaking £350,000 by The Information Commissioner's Office. This came after more than 1,000 individual complaints were made regarding automated PPI calls being left repeatedly and frequently without a way to opt-out.

What may initially have been regarded as one of those everyday nuisance calls, soon became something extremely invasive, leaving many people feeling helpless in the face of bombardment at all hours of the day and night. This was particularly problematic for those whose professions included periods of being 'on-call', where they are obliged to answer telephone calls.

Even more shockingly, Prodial was aware that this was a clear breach of The Privacy and Electronic Communications (EC Directive) Regulations 2003, which sit alongside the Data Protection Act. The PECR derives from European Law and covers electronic marketing, the use of tracking technologies (such as cookies), the security of public electronic communication services and the privacy of customers using communication networks or services (regarding directory listings, itemised billing, line identification services, location data and traffic).

Overall, the PECR helps to comply with the Data Protection Act by setting out extra rules to cover electronic communications. It states plainly that the individual's consent must be acquired and even though this violation allowed Prodial to collect a turnover just shy of a cool £1 million, the ICO made a crystal clear example of them. The fine resulted in a voluntary liquidation, despite the company having been recently incorporated in November 2014.

Information Commissioner, Christopher Green, was quoted as saying: "This is one of the worst cases of cold calling we have ever come across. The volume of calls made in just a few months was staggering...this type of law-breaking will not pay. That is why we have handed out our highest ever fine... No matter what companies do to try to avoid the law, we will find a way to act."

The ICO has ordered a further three Manchester-based companies to cease unsolicited nuisance calls, with the message to all companies that if they do not stop, they will face legal action. So don't make yourself an April Fool this year - contact the business team at Birkett Long if you are unsure about your compliance with data protection law.

Cynthia Beesoon
01206 217333
cynthia.beesoon@birkettlong.co.uk

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EZ
T 01268 244144

ESSEX HOUSE, 42 CROUCH STREET
COLCHESTER CO3 3HH
T 01206 217300

NUMBER ONE, LEGG STREET
CHELMSFORD CM1 1JS
T 01245 453800

E BUSINESSNEWS@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK/LEGAL
TWITTER: @BIRKETTLONG

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