



# For Business

## The sun shines on the righteous!

We'd like to think that this now includes Birkett Long! Like many of our clients, we now benefit from our own generated solar power. The Colchester office move into newly built accommodation at Amphora Place gave us the opportunity not only to review our 'green credentials' and working practices but also, working with Colchester Borough Council as our new landlords, to install solar panels. We are doing our bit for the environment and we now benefit from cheaper electricity. The Council benefits too, because they take the financial incentives of the Feed-in Tariffs from Government and have a more sustainable building to provide them with better returns in the medium and long term.

Birkett Long's Environment and Energy group - working with our Real Estate and Construction colleagues - has helped many clients with renewable energy projects and working practices, and has built up an enviable reputation in this field. For any business thinking about the sustainability of their premises, or other business practices, we work with other consultants to help achieve your goals.

Our Managing Partner, Adrian Livesley, said: 'as part of our Corporate Social Responsibility (CSR) programme we have endeavoured to improve our carbon impact for some time. All offices now have a more sophisticated recycling capability, we use motion-activated lighting and many other procedures which are sensible and good practice. But it isn't just about CSR. The fact is that taking sustainable steps in your business can go straight to the bottom line and save costs. We are delighted with our new offices and the statement that they make about where Birkett Long is and where it sees itself going in the future. Part of that is embracing the sustainability agenda'.

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## Why register your brand?

Trademark registration may seem a low priority but, as Stephen Avila points out, it could save a lot of money in court.

## Welcome back Marc!

Marc Thurlow, who trained with the firm, returns as a partner, six years later.

## Website T&Cs

Thomas Emmett explains why the terms and conditions on your website should be more than an afterthought.

## Beware of your repairs

Essential advice from Daniel Sturman for anyone about to sign a commercial lease.

# Why register your brand

Essential advice for all businesses

Your brand and reputation are significant business assets that are key to keeping ahead of your competitors and developing your market perspective. When it comes to preventing another business from using or copying your brand, whether or not you have registered the brand as a trade mark has a significant impact on how straightforward it is to take action.

The law in England provides for two systems of brand protection. If you have a brand that is unique and benefits from a reputation, then under the law of passing off, you secure automatic protection. Why then should you incur the costs of formally registering that brand as a trade mark?

Without registration you will have to prove actual confusion between your brand and a competitor

If you do not register your trade mark and you seek to rely on the law of passing off then you will firstly need to demonstrate that your brand has a reputation within the industry that you operate. This is a matter of evidence and you will need to pull together material to show that you have actively traded with that brand. In addition, and often substantially more difficult, you will have to prove actual confusion, or a

strong likelihood of confusion, within the market for your goods and/or services. In many instances, this can be very difficult and costly to demonstrate. Short of you having received an email enquiry for a competitor's product that uses your brand, you are going to have to obtain survey evidence, which will put you to significant costs. On top of this, you will also have to persuade the court that the competitor's use of your brand runs a real risk of causing damage to your business.

By registering a trade mark, you do not need to prove any of these points. If a trade mark is registered, all that you need to demonstrate is that the competitor is using the brand or a similar version of it. In light of the benefits that accrue to registering a trade mark, I consider that the minimal costs of registration (£200) are certainly justified. I would encourage all of our clients who have brands within their business to consider trade mark registration.

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Websites offer a fantastic tool that no businesses can afford to ignore. Set up correctly and maintained well, a website can reach a wide – even global – marketplace and give customers quick and easy access to the products and services they want to buy.

## More than just small print?

Why it's vital to get your website terms and conditions right

Just as when a customer buys a product from a shop, a contract is formed when a purchase is made online. As a business owner you will want your terms and conditions to form the contract between you and your customer. A well drafted set of terms and conditions in the context of online sales will cover:

- The legal requirement to provide certain pre-contract information to a consumer

- A web page to which customers can refer should they have questions, such as how much interest is payable on late payment, or how much time they will have in which to make payment after an invoice is issued if the price of goods or services is not payable at the time of purchase

- The limitation or exclusion of liability as far as legally permissible, including liability for

# Welcome back Marc!

Trainee returns as partner

**Commercial litigation expert Marc Thurlow has returned to his roots; re-joining our firm as a partner after having completed his training as a solicitor with us back in 2011.**

Marc was one of the team which established our Basildon office six years ago and, after broadening his commercial experience with a city law firm, he has returned to our expanding office in the town.

Marc has expertise in business disputes including ownership and financial disputes, professional negligence and intellectual property. He was involved in a significant High Court case which established a new point of law relating to the terms of LLP agreements. Another High Court case enabled a law firm to receive more than £400,000 from compensation recovered under a contingency fee agreement.

A former pupil at King Edward VI Grammar School in Chelmsford, Marc grew up

in Billericay. After completing his legal studies at Leicester and Sheffield universities, he returned to Essex to complete his training contract with Birkett Long.

David Wisbey, Chairman at Birkett Long, said: "We are delighted to welcome Marc Thurlow back to Birkett Long, and I'm sure that his experience will provide a significant boost to our presence in South Essex."



## Marc says:

"I qualified with Birkett Long in Chelmsford, then four of us set up the Basildon office. It's grown a lot since then. It's good to come back as a partner and, hopefully, it's good for the firm as I have gained a lot of experience in high-value commercial cases in the city. It feels familiar and I've settled quickly, but it's also new and exciting because the firm is growing, with a new office in Chelmsford and a brand new building in Colchester. I'm excited at taking on the challenge of helping to grow and develop our Basildon office."

Marc has joined our dispute resolution team and can advise on all business litigation issues, including how to mitigate the possibility of claims. For an initial free telephone conversation contact Marc by email, [marc.thurlow@birkettlong.co.uk](mailto:marc.thurlow@birkettlong.co.uk) or on the number below.

**Marc Thurlow**  
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failures caused by circumstances which are genuinely outside the business's control

- Compliance with e-commerce regulations by the inclusion of legally required information such as company name, and registration and VAT numbers

Terms and conditions are often underestimated and seen as little more than a regrettable necessity, or added to websites as standard form documents. However, as every business model is different, ill-suited T&Cs may prove a false economy in the long run.

Terms and Conditions drafted by a legal professional will ensure that you comply with various online and consumer protection laws. A solicitor can also make sure that a set of T&Cs limit or exclude the business's liability in certain circumstances, whilst, at the same time, ensure the terms are not so one-sided as to put customers off a purchase.

If you need assistance with terms and conditions for your business's website, or you know that you haven't reviewed your website T&Cs for many years, please contact Thomas.



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# commercial property

## Beware of your repairs!

When a commercial property lease is granted, a landlord will want the tenant to take on the responsibility of repairs – a task that can be done in various ways.

If an entire building is being let then the lease will usually specify that the tenant must keep the whole property in good repair and condition. If the property is a small office or forms part of a larger building then the repairing covenant is usually limited to the interior only, with the landlord being responsible for structural and external repairs, and decoration. In this case the landlord would charge the tenant a proportion of the costs of carrying out those repairs through a service charge.

It is extremely important that the tenant understands the practical and legal consequences of their repairing covenant. Before the lease is signed, the tenant should inspect the property to check the condition and should seek the advice of a surveyor. Proceeding regardless, without legal advice and paying little attention to the wording of the repairing covenant in the lease, may well end up with the tenant in a rather onerous position further down the line.

As you might expect with any legal document, the wording of the repairing covenant is important. Case law has set precedent here, so it is important to note that when the repairing covenant says “to keep in good repair” this also means “to put” into good repair. In other words, if the property to be let is in a poor state of repair when the lease is granted, then the tenant must put it into a proper state of repair; an obligation that could be very costly.

So the best advice to a tenant is to inspect and survey the property, take the advice of a surveyor in respect not only of its conditions but also of the consequences and costs of

any repairs that may be needed to bring the property - or the building if there's a service charge - up to a standard required by the lease.

In addition, the tenant should seek legal advice in respect of the wording of the repairing covenant itself and perhaps consider seeking to limit its affect by referring to a schedule of condition. Such a schedule can usefully record the condition of the property and be annexed to the lease as evidence of its condition. The repairing covenant can then be amended to limit a tenant's repairing covenant, so that the tenant still has to keep the property in good repair but in no better condition than is evidenced by the schedule of condition. This will make the repairing covenant less onerous and ultimately mean that the tenant does his best to avoid being left with a large dilapidations claim when the lease ends. Limitations in the service charge clauses may also be needed.

If you are about to sign a commercial property lease or need advice on aspects such as repairing covenants, please contact Daniel.

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Reference: NEWS/FORBUSINESS25/2107



## Is your business ready for GDPR?

The most important change in data privacy regulations for over 20 years will soon be here. To find out more go to [www.birkettlong.co.uk/events](http://www.birkettlong.co.uk/events)

