



For Business Plus

NEWS AND ADVICE FROM BIRKETT LONG

Mandatory ACAS early conciliation



ACAS has the power to help parties conciliate tribunal claims using conciliation officers who act as go-betweens in an attempt to settle proceedings before the hearing.

In April 2009 ACAS pre-claim conciliation became available, whereby ACAS could try to settle a dispute before a claim form was issued to the tribunal. From April 2014 this will become a duty. The parties will be required to contact ACAS to attempt early conciliation before issuing a tribunal claim.

The claimant must contact ACAS. The conciliation officer will request the necessary information from the claimant and attempt to promote a settlement within the prescribed period. If that proves impossible or the time period expires, the ACAS officer must issue a certificate to that effect. This certificate will allow the claimant to pursue the claim at tribunal.

Claimants have three months - minus one day - to make their claim in the tribunal but should note that the early conciliation request to ACAS does not stop the "limitation clock", although there are instances where the three month period is extended. For example, if an employee is dismissed on 1 February the normal limitation would expire on 30 April. If the early conciliation certificate was issued on 19 April the clock will resume on 20 April, giving a further month until 19 May. Employees must take care to calculate the extension of the limitation period correctly or else their claim may be out of time.
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Directors disqualification - new proposals



In Vince Cable's July 2013 speech to the "Responsible Capitalism" conference hosted by the think tank, Reform, the Business Secretary announced a number of proposals being considered as part of a major consultation on the rules surrounding delinquent company directors.

Dr Cable made it clear that the Government does not wish to punish honest failure – as he said: "Some of the best entrepreneurs have failures to their name, and this is the necessary corollary of risk taking". Instead, his focus is on the "rogues" who use so-called 'phoenix companies' to deceive customers.

One of his proposals concerns disqualified directors being required to undertake some form of education before they can go on to run another business.

It has always struck me how easy it is for someone to be a company director without the need for any formal qualifications or training. Navigating the complex web of legislation and case law surrounding corporate governance is not easy, even for those whose role it is to advise on such matters. Therefore, this proposal must surely be welcomed.

Another proposal suggests the courts may be given powers to make financial awards against directors they are disqualifying to compensate creditors who have suffered as a result of their actions. As Dr Cable put it: "This would hit directors where it hurts and provide more direct accountability to those affected by misconduct". Currently, it is not uncommon for administrators and liquidators to bring civil recovery actions against directors riding off the back of a disqualification where the allegations in the two sets of proceedings are the same or similar. But arguably this proposal will make it easier – and at less cost to the creditors – for compensation to be awarded against culpable directors.

His other key proposal concerns those directors who have been disqualified in another country or convicted of a crime associated with managing a company overseas. Dr Cable argued that there is a legitimate question over whether they should be allowed to be a director in the UK. This too seems entirely sensible.

Generally speaking, disqualification proceedings must be commenced within two years of when the company became insolvent (the date the company went into administration or liquidation). The proposals include the possibility of extending this period to five years. For directors, this may not sound terribly appealing as it could mean that they have the threat of proceedings hanging over their heads for much longer than is currently so. However, no longer constrained by time pressures, cases may be more thoroughly investigated and discussed with the director pre-proceedings with the result that some matters are never issued, or the number of allegations is reduced. Conversely, this could lead to an increase in more actions – and more successful actions – as the investigators have more time to examine the director's conduct and prepare their case.

Dr Cable recognised that these robust powers should only be used in appropriate cases, so that "honest directors need not fear sanctions where they have acted in good faith". He added: "Many companies fail for genuine reasons...and failure in itself is not an indication of misconduct".

The Government is keen to promote "trust and transparency" in the business environment. So there is little doubt that these proposals, and maybe others still to be conceived, will reach the statute book in the near future. When they do, make sure you are aware of how they may impact on you and, as ever, seek advice if you are unsure.

Kevin Sullivan specialises in acting for directors, particularly those facing disqualification proceedings.

in a nutshell...

Proposals are being considered as part of a major consultation on the rules surrounding delinquent company directors, including:

- disqualified directors being required to undertake some form of education before running another business
- courts making financial awards against directors they are disqualifying to compensate creditors
- restrictions for directors disqualified in another country or convicted of a crime associated with managing a company overseas
- extending the period in which disqualification proceedings must be commenced from two years to five years after the company became insolvent



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corporate finance

cloud computing - draft EU data protection regulations create hazy horizons

Cloud Computing Service Providers (CSPs) have altered the way in which data is stored, transferred and accessed on a global scale and the number of CSPs is on the rise. Cloud computing is the delivery of information technology services through a shared pool of resources, most commonly the internet. Users can access the cloud with a web browser, regardless of their location or the device they are using, and multi tenancy enables the sharing and scalability of resources and costs across a pool of users.

CSPs themselves are often split into three broad service areas. Software as a service (SaaS) provides users with access to software through the internet, such as Gmail by Google, and is a typical and widely used model for consumer services. Infrastructure as a service (IaaS) provides users with resources over the internet, such as storage, which they are free to manage independently, and platform as a service (PaaS) allows users to upload and use their own applications on an infrastructure provided by the CSP.



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Whilst the concept of a cloud may seem intangible, CSPs are dealing with data and the limited extent to which current data protection laws apply to such businesses is being questioned. It has been argued that the European Data Protection Directive ('directive'), which is currently in force and implemented in the UK under the Data Protection Act 1998, is ill equipped to deal with modern data processing, including the development and increasing dominance of cloud technology. Changes have therefore been proposed by the draft EU Data Protection Regulation ('regulation'). This regulation aims to harmonise data protection procedures and enforcement across the European Union, and is tabled as a response to modern data protection challenges.

Behind every good law firm there's a great admin team

“ I am a float secretary at our Chelmsford office and I provide cover for reception, post and admin duties as required. ”



Helen Teale
Secretary

“ My main role is as a float secretary and I work across all three offices. I am responsible for booking our external training courses and I'm part of the internal audit team and charity committee. ”



Laura Hook
Secretary

“ My role consists of file reviewing, scheduling client review visits, keeping the firm's retainer letters updated, mail merges and secretarial training. On the quality side I carry out monthly file reviews, file closing checklists and assist when Lexcel assessors visit. ”



Lorraine Younger
Quality & Admin Executive

The administration team is made up of receptionists, administration assistants, post room assistants, a wills and deeds administrator and float secretaries, together with the quality manager and quality

Under the current directive, a distinction is drawn between the obligations placed on data controllers and obligations placed on data processors. A data controller is defined as a person or body which determines the purposes and means of processing personal data. A data processor, by contrast, is a person or body which processes personal data on behalf of the data controller. The directive places a data controller under various data protection obligations, but does not extend these to a data processor. Instead, a data processor will only have to comply with specific contractual obligations owed to the data controller.

CSPs will usually only offer their services on the basis that they are acting as a data processor, even though in practice they may be acting as a joint

data controller. This is because CSPs have little or no control over the nature of data processed on their servers, and are therefore unwilling to accept liability for obtaining consent for the processing of personal data or compliance with data quality.

If the regulation becomes law this position is likely to be fundamentally altered with CSPs becoming subject to far broader obligations than the contractual ones presently owed to data controllers. CSPs should be tracking the regulation's progress to be aware of any effect on their business in the future.

For advice and assistance in relation to data protection contact Tracey Dickens.

in a nutshell...



Cloud Computing Service providers (CSPs) have altered the way in which data is stored, transferred and accessed, and the number of CSPs is increasing.

CSPs themselves are often split into three service areas:

1. Software as a service (SaaS)
2. Infrastructure as a service (IaaS)
3. Platform as a service (PaaS)

CSPs are dealing with data and the limited extent to which current data protection laws apply to such businesses is being questioned. The Regulation aims to harmonise data protection procedures and enforcement across the European Union, and is tabled as a response to modern data protection challenges. CSPs should be tracking the Regulation's progress to be aware of any effect on their business in the future

executive. The team is responsible for ensuring that clients are looked after from first point of contact and throughout their time with the firm. They also look after wills and deeds and provide general administration assistance around the offices. The team has a number of float secretaries who travel between our three offices to provide back-up secretarial assistance where needed. The quality manager and quality executive are responsible for ensuring that the firm continues to comply with its Lexcel and ISO accreditations by way of internal audit, file review and training of new staff. **Helen Pettican, Team Leader**

“My role as a float secretary involves helping teams if they have an overload of work due to sickness or holiday. The favourite part of my job is getting a team's list down to zero - just like Pointless!”



Jan Cody
Secretary

“My main responsibility is to cover reception. I also order and maintain stationery supplies, update our databases and co-ordinate attendance at networking events.”



Margaret Fulljames
Administration Assistant

“As the Colchester office receptionist I try to make clients feel relaxed, as coming to a solicitors' office can be quite daunting for some.”



Brenda Rowles
Receptionist

construction

who is contracting with whom?

Knowing who you are contracting with should be simple. However, on many occasions the identity of contracting parties is far from clear. In recent months there have been a number of cases highlighting the importance of this issue. Although there are circumstances where uncertainty over contracting parties may be beneficial, in most situations it is better to be clear.



Clarity over who the contracting parties are can be difficult to obtain as many companies use trading names and individuals can be careless when describing who they work for. Do you know whether you are contracting with a limited liability company, a limited liability partnership, a partnership or a sole trader? If you don't, problems may arise and it will be down to luck whether these issues turn out to be of benefit or otherwise.

In some cases it is possible for a court to correct an error as a matter of construction without formal rectification. However, in the recent case of *Liberty Mercian Limited v Cuddy Civil Engineering Limited* the High Court declined to correct such an error. In this case, a limited company had a trading name; they predominantly referred to that and had registered a dormant limited liability company using that trading name. The parties entered into the contract using the dormant company's name rather than the trading company. Obviously, though, they meant to contract with the trading company and not the dormant one. This meant that when a problem arose the claimant could sue only the dormant company, which was worth nothing. The claimant's only chance was for the High Court to correct the error but it declined to do so.

In the case of *Hamid v Francis Bradshaw Partnership* the Court of Appeal upheld a High Court decision that an individual contracted in his own name. In this case, Dr Hamid was the director and sole owner of a company. That company had a trading name. Dr Hamid personally owned a piece of land upon which he wanted to build a show room for his company. Dr Hamid employed the defendants to provide engineering services. They were not informed they were contracting with a company but were told that Dr Hamid owned the business using the trading name. Dr Hamid also signed a letter setting out some of the terms, which included a physical address, email address and website relating to the trading name. In the letter, Dr Hamid referred to "we" and he signed his name above the trading name. There was no indication that there was a company involved.

In these circumstances the court decided that Dr Hamid was contracting on his own behalf. In this case, this proved useful and beneficial to Dr Hamid because had he contracted using the company's name there would have been no loss to the company and Dr Hamid could not have sued for the losses he suffered. However, on many occasions similar to this it would not have worked out to be beneficial. A director who acted in this way would find that he or she was personally liable, rather than the company. That person would lose the protection of trading through a company and would be faced with unlimited liability for that particular contract.

It is important to make sure that whenever you contract you know who exactly you are contracting with and the status of the contracting party. You should also make sure that everyone is fully aware of your status when you are contracting, making the name and number of your company clear on all appropriate documentation.



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in conversation with Birkett Long client, Kent Blaxill & Co Ltd



In March 2013, Kent Blaxill celebrated 175 years of continuous trading since John Kent opened a shop in Colchester's High Street next to Colchester Castle. The business, which started as an oil and colour merchant, grew to occupy a number of sites around the town, before relocating out of the town centre and, of course, opening up seven other branches. John Kent's daughter married a Blaxill and the Kent and Blaxill families have been actively involved in managing the business through six generations. The company is still family owned and intends to remain so. While business has changed radically, the company's success proves that opportunities remain for independent businesses to flourish.

the business interview

Kent Blaxill & Co Ltd
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When and how did your business begin?

Kent Blaxill began trading at 104 High Street Colchester in 1838 as a paint merchant. John Kent expanded the business to take on premises around the town and his son-in-law, Edwin Blaxill, became his partner. I am the sixth generation to be involved in running the business.

Where is your business based?

Kent Blaxill trades from 8 branches in East Anglia from Braintree to Norwich. Our Colchester branch is the largest and houses our head office. The 7-acre site offers building materials together with our showroom of quality products such as Duravit bathrooms and Farrow & Ball paints.

What is the core business of Kent Blaxill and who are your main customers?

The core Kent Blaxill customer is a small to medium sized tradesman who uses us on a regular basis. However, the company has a strong consumer following due to the expertise of our staff and the quality of our products.

What makes your business stand out from your competitors?

Core to our business are strong customer relationships and a belief in customer service so that those customers want to return to Kent Blaxill over many years.

How do you see your business developing?

The building market has improved as 2013 has progressed but it remains very competitive. The challenge for us is both to grow our shops and sales of products and services where we have niche strengths, such as paint and landscaping materials, whilst maintaining a tight control of costs.

Could you sum up Kent Blaxill's ethos in one sentence?

We aim to supply a complete range of building materials for customers and to be trusted as their supplier of choice through consistently competitive prices, service and product availability.

How has Birkett Long helped your business?

Birkett Long has been our chosen adviser for 15 years.

Would you recommend Birkett Long to others?

I was first attracted to Birkett Long as it seemed to be a partnership that presented itself not as a general law practice but as a commercially-minded business with real strength in its specialist areas. As business has become more complex, the advice we need today has to be of the highest standard to ensure that we can make decisions with confidence. Given our experience with Birkett Long on commercial, property and employment matters, I would be happy to recommend the firm.

Birkett Long was in conversation with Simon Blaxill (shown above), Managing Director of Kent Blaxill & Co Ltd.

Birkett Long in the community

Our role in the community remains important to us. We continue to support charities and organisations local to our three offices.

COLCHESTER INSTITUTE

We sponsored a group of photography students from Colchester Institute, which allowed them to enter a prestigious photography exhibition in London. As a result of our support, 7 third and final year BA photography students were able to showcase their work at the Free Range Art and Design Show, which took place in Brick Lane, London, in June.

2016 HOPEFULS

In Basildon, we have continued to sponsor athlete Gemma Kersey for the second year running. The financial support given to the middle distance runner Gemma goes towards training and travel costs. In May, Gemma won silver at the British University Championships 1500m. Recognising the power of sport to inspire achievement, the firm began sponsoring Colchester born 400m runner Louis Persent. Louis narrowly missed out on the 2012 Olympics due to injury but he is now training for the Commonwealth Games in Glasgow 2014, and is hoping to be selected for Team GB in 2016 for the games in Rio.

MORE HOSPICE SUPPORT

Already supporting the Colchester hospice St. Helena and the Farleigh Hospice in Chelmsford, we extended our support to St. Luke's Hospice in Basildon, having opened our office there in 2011. As well as offering the legal and financial expertise of the firm to St. Luke's, we also sponsored their 2013 5km Summer Run at Lake Meadows in Billericay, marking the beginning of our involvement in the Corporate Partnership Scheme.

THE BIRKETT LONG CONCERT

For the third year running, we are supporting the Chelmsford Cathedral Choral Foundation. Following last year's performers, the Swingle Singers, this year's performers were The Sixteen. The Sixteen, who are known as "the voices of Classic FM", have been performing and recording worldwide for 33 years and recently appeared in the BBC series, Sacred Music.

WALKING FOR OXFAM

Further afield, 4 of our solicitors took part in the 2013 Trailtrekker challenge, which this year had a tougher route, featuring steeper hills and a rockier

terrain. In just 21 hours 47 minutes they walked the route through day and night in aid of Oxfam. This is the second time Birkett Long has participated in an Oxfam challenge, last year raising over £5,000 for Oxfam and the Gurkha Welfare Trust in the Trailwalker Challenge.

CHARITY OF THE YEAR

This year saw the firm vote for Headway Essex to become its Charity of the Year. All offices will be holding fundraising events including cake sales, dress down days, quiz nights and raffles. Last year, we raised over £4,500 for our Charity of the Year, and we hope to give a similar donation to Headway. If you would like to contribute visit www.justgiving.com/birkettlong



Over the past ten years the firm has raised or donated almost £200,000 to various charities and organisations and we look forward to seeing this number rise!

More on our work in the community can be found on Twitter @birkettlong, on our website - www.birkettlong.co.uk/blinthecommunity or on our blog - www.birkettlong.co.uk/blog.

Home news

GROWTH FOR BIRKETT LONG

Whilst the UK's top 100 law firms reported a slump in growth figures, this year we increased our turnover by 3.3% and exceeded an £8m turnover for the first time – even before the recession.

Many factors contributed to the strength of our profile this year, our success stemmed from the growth of the new Basildon office, which opened in 2011, our mergers with Wickford solicitors Brian Ruff, Angus and Jewers and Billericay firm E. Edwards Son & Noice, who have played a significant role in the growth of the firm. Our Basildon office will undergo expansion for the second time this year and additional staff will be taken on to meet the growing demand for Birkett Long services.

Achieving such a strong year in the face of economic downturn, we are confident that we will continue to grow as a business. Throughout the year

we have announced promotions and taken on new members of staff over various teams, notably Caroline Dowding, Head of Wills, Trusts and Probate in the Colchester office who has been at Birkett Long for 13 years, was promoted to an Associate. Caroline worked her way up in the firm after joining as a Legal Executive in 2000. Caroline is a full member of the Society of Trust and Estate Practitioners and a Full Professional Member of Solicitors for the Elderly. We are pleased to welcome Caroline into her new, well deserved, position in the firm.



Picture above shows members of the team outside EESN's previous offices in Billericay: Jane Orchard, Martin Hopkins, Adrian Livesley, Bronda Lohan and Raj Bhatta.

Picture left shows: Caroline Dowding, Head of Wills, Trusts and Probate in the Colchester office of Birkett Long.

Events

Green breakfasts

Essential advice sessions will be presented by top speakers, who will examine the challenges and opportunities businesses face with going green.
Dates throughout 2013 and 2014

Going for growth Does your business have growing pains?

Find out how to develop a successful growth strategy at this free seminar.
23 January 2014

Growing and protecting your money

A free seminar with expert investment, tax planning and wealth management advice.
11 and 13 February 2014

Reclaiming care fees

Are you paying care home fees? If so, you may be entitled to reclaim them.
Spring 2014

Employment breakfasts

Keep up to date with employment law.
Held bi monthly at all three offices.

For details on any of these events visit www.birkettlong.co.uk/events or call 01206 217334.

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Conveyancing
Quality



Meet the partners: Philip Hoddell

Can you explain a little about your role at Birkett Long?

I am one of Birkett Long's twenty one Partners. I sit on the strategic management board and have overall responsibility for the firm's private client services. Five professional service teams report to me covering financial planning, investments, pensions, wills, trusts, tax, probate, divorce, separation, children's issues and road traffic offence work. Our three offices at Colchester, Chelmsford and Basildon all cover these types of work.

What do you mean by 'private client services'?

By 'private client services' we mean all of those legal services that an individual might need. Our lawyers work in teams that specialise in most of the legal issues that might affect people in a personal capacity, such as family problems, wealth management, tax planning or dealing with bereavement. Of course, we also act for individuals who are buying or selling property, setting up, running or selling businesses, and even those who have had the misfortune to suffer accidents or injuries.

If I use Birkett Long for my business, can I also use the firm for legal issues affecting me and my family?

For many of our clients Birkett Long acts both for them and for their companies or businesses. There is a myth that many people prefer to keep the two issues separate; in fact where we act in both capacities it makes us more effective, because we're able to provide solutions on the basis of knowledge about your entire circumstances. We also work closely with other teams in the firm, so we avoid duplication of effort and can spot legal issues early before they become problems.

In what instances would a person need legal services in a private client and business capacity?

There are numerous examples where business clients have a need for private client services. For most family owned and small to medium size businesses tax and succession planning is an issue. They also need to consider key man insurance and the management of personal or corporate pension schemes (for employer and employee alike).

Company directors and business owners may well have built up substantial assets during their lifetime. They should have proper wills in place and may need to consider pre marital agreements in the event of second marriages. Along with business exit strategies comes the need for proper retirement planning which is where our independent financial services team comes in.

All businesses and companies are owned by and run by people. We never lose sight of that and always aim to maintain our position as a leading full service legal firm.



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Your home may be repossessed if you do not keep up repayments on your mortgage.

If you would prefer your name to be removed from our mailing list please contact sarah.watson@birkettlong.co.uk or phone 01206 217334.
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