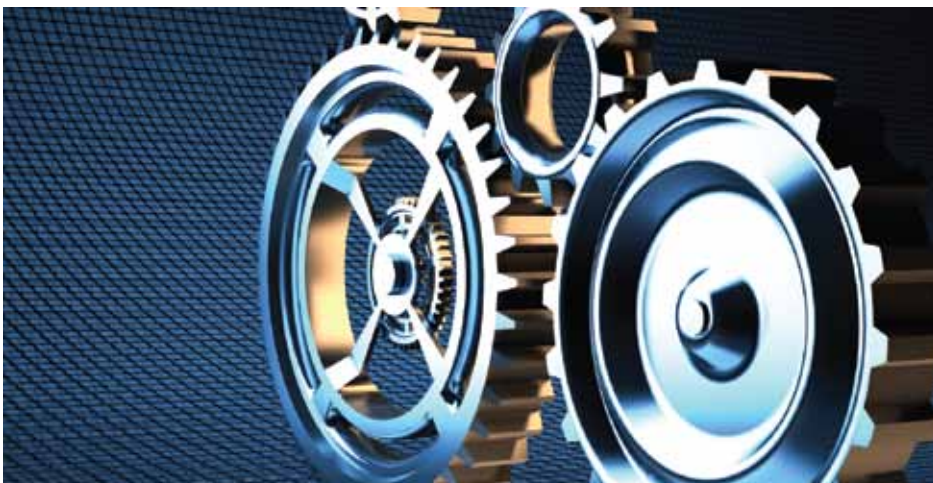




For Business Plus

NEWS AND ADVICE FROM BIRKETT LONG

The manufacturing sector



Manufacturing accounts for about one tenth of the UK's GDP. In terms of growth it is currently the star performer. It is an important part of growing the economy and balancing exports against imports.

We recognise the importance of manufacturing and last autumn we launched our manufacturing team of experts on the law which affects manufacturers. We act for lots of manufacturers, many of whom are world leaders in their fields (please see www.birkettlong.co.uk/site/sectors/manufacturing.html for full details).

This edition of For Business celebrates our manufacturers and highlights some of the legal issues which they face, including an interview with Aden Hynes Sculpture Studios, manufacturers of TV and film sets.

Keith Songhurst, Manufacturing Team Head
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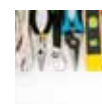
inside+



Terms and conditions
do they really matter?



Making compliance
a business issue



Team line-up
the new Birkett Long manufacturing team



The hidden cost
of sales agents



In the spotlight
Aden Hynes
Sculpture Studios



In the community
Birkett Long and home news



Meet the partners
an interview with
Claire Read

Do terms and conditions matter?

In all the excitement of clinching a sale, the terms and conditions of the contract are often forgotten. This can be disastrous for manufacturers.



Terms and conditions apply not only to sales but also when a manufacturer is purchasing parts or materials from a supplier to use in their manufacturing process.

Terms and conditions are important as they set out:

- The parties to a contract (this is especially important when there are group companies or you do not know if you are contracting with a company or an individual)
- What the manufacturer is to supply and to what standard (disputes often arise over what the purchaser was expecting to receive)
- Payment terms (when you are to be paid or to pay and what you are entitled to if payment is late)
- When title to the goods passes (when does somebody become responsible for the goods, when can you recover them if they have not been paid for?)
- Limitation of liability and insurance (are you liable for all possible consequential losses or are they limited to, say, just the value of the goods?)
- Law of the contract and where disputes are to be dealt with (in international contracts it might be argued that the law which applies is the law of the country where the goods are going, or where they came from; the place where the disputes are to be dealt with might also be abroad - would you be happy with that?)

Manufacturers need terms and conditions for both sales and purchases. When a manufacturer purchases parts or materials it also needs to consider the risk should those parts or materials be faulty. Will the manufacturer be able to sue and enforce against a company supplying a product from China, for example? If you feel you will not be able to seek redress you may wish to consider an alternative supplier or you may be able to take out some insurance to offer protection.

in a nutshell...

At Birkett Long we can help you to get the most from the terms and conditions you use within your business:

- We can draft your terms and conditions
- We can teach you how to ensure your terms and conditions apply to your contracts
- We can advise on disputes, both here and abroad
- We can recover your debts

If you wish to discuss any of these issues please contact Peter Allen.



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compliance

making it a business priority

All manufacturers will come across environmental compliance at some point in their manufacturing process. It may be the sourcing of sustainable materials, needing a permit to run their processes or to dispose of waste or discharge to waters, or compliance with the Carbon Reduction Energy Efficiency Scheme. Manufacturing is such that any business involved in it is likely to have to deal with both the traditional 'dirty' environmental issues, such as land contamination, water pollution and permitting, and the more modern sustainability issues.

The scope of environmental regulation is ever increasing and will now catch many SME's as well as more traditional polluters.

Most control is done under regulation, rather than primary legislation – which shows the influence that Europe has in this area. There are both civil and criminal offences and it is not only the company that is potentially at risk, but in some cases individual directors and other officers may find themselves liable. The bad news is that many environmental offences are ones of 'strict liability', meaning that businesses or individuals may be subject to imprisonment or unlimited fines despite a lack of knowledge, intent or recklessness. The good news is that because of this, judges seem to be reluctant to imprison or impose significant fines. About 60% of prosecutions are for waste offences, 26% are water offences and 14% for air, fishing and other environmental offences.

Your business may well need a permit for part(s) of its process under the Environmental Permitting Regulations 2010, which cover factories and many other industrial and commercial facilities. Water discharges, emissions and waste are obvious areas, but it is all about pollution



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Meet the manufacturing team

Keith Songhurst
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Keith leads our South Essex dispute resolution team. With many years' experience of assisting manufacturers in recovering debts and resolving disputes, Keith always attempts to adopt a practical, effective and cost-efficient manner, taking account of the client's specific needs.

David Wisbey
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David is chairman of Birkett Long and a member of the commercial and corporate finance team. He advises businesses on corporate finance, mergers and acquisitions, private equity and commercial law, locally, nationally and internationally. He has advised an international car component and sub-system manufacturer on its UK corporate activity, including business purchases and sales, and contracts and contractual disputes, for many years.

prevention and control (PPC) and waste management licensing to prevent or minimise polluting discharges - including to the air. Emission limit values are set centrally, but will take account of the technical nature of the installation, its geographic location and local environmental conditions. As part of your process you are likely to have to monitor, keep records and report.

But, be aware of everything that goes on at your sites. One case that we dealt with involved a well run business that was prosecuted because dead fish were found in the stream at the rear of their site. No one could work out how any polluting matter had got into the stream, until one evening, the contracted cleaners were seen to be tipping their buckets down the surface water drains in the car park!

Many of you will be aware of the statutory duty of care for producers of waste, meaning that you must accurately identify it, store it securely, label it accurately, complete transfer notes (or consignment notes if hazardous), hand it to a registered carrier and take reasonable steps to ensure that no one dealing with the waste commits any offence. There are other regulations that deal with packaging waste, waste from electrical and electronic equipment, and end of life vehicles.

In an increasingly regulated world, the well advised manufacturer will be able to ensure compliance and avoid potentially damaging prosecutions, civil actions, clean-up obligations or fines.

For further advice please contact David Rayner.

in a nutshell...



Birkett Long is able to assist your business with:

- Regulatory compliance
- Having an expert with you if the Environment Agency, or any other enforcement authority, calls or asks you to interview
- Reviewing your terms and conditions to ensure that potential liabilities are covered
- Helping you achieve energy efficiency changes to assist with cost savings
- Assisting with and reviewing applications for any permits needed for the proper running of your business
- The acquisition and disposal - or letting - of premises to ensure that as little liability for contamination or pollution falls on the company as possible
- Helping directors and other officers if civil or criminal actions are taken against them
- Advising on neighbour disputes arising from your business operations, such as noise, smell or emissions
- Compliance with your 'waste duty of care' and reviewing contracts to ensure proper disposal

Reggie Lloyd

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Reggie is a qualified barrister and solicitor with over 20 years' contentious and non-contentious employment law experience. He deals with all aspects of employment law from recruitment to termination. He has particular expertise in advising on TUPE transfers.

Emma Wraight

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Emma is an associate solicitor and a member of the real estate team. She advises on all aspects of commercial property law including landlord and tenant, freehold and leasehold acquisitions and disposals, wayleaves and easements, security and development work.

Peter Allen

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Peter heads the commercial department, advising manufacturers on contract negotiation, terms and conditions, and bonds or guarantees. He deals with disputes and mediations, arbitrations and court proceedings, helping clients to address breaches of contract or non payment, and recovery of tooling and insurance claims, including product liability.

the hidden cost of sales agents

We live in a global market place and manufacturers need to export to help them grow. One way to do this is by appointing a sales agent overseas, so that the manufacturer does not have to have its own people on the ground. The agent finds customers and gets a commission for the sales. There are clear benefits but there can be unforeseen costs too.



One major problem can be the impact of the European Union's Commercial Agents Directive. We recently advised a manufacturer that wanted to terminate an agency contract for the sale of its products. It was not aware of the impact of the Directive and after taking our advice, realised that failing to address it, back in 2007 when the agent was appointed, could now potentially cost it millions of pounds.

The problem is that the Directive (implemented in the UK by the Commercial Agents (Council Directive) Regulations) gives any commercial agent located in the EU a right to an indemnity or to compensation if the agency is terminated, in addition to any period of notice required under the agency contract. If the agency agreement does not specifically provide for an indemnity, the agent would be entitled to a figure in compensation.

In the UK, that figure is calculated by reference to the price that a buyer would pay for the agency business - hence the potential for a multi-million pound sum. In another case, where we advised an agent, his claim was calculated to be worth more than £1 million. In other European countries, the method of calculating the compensation can differ so that, for example, some countries require the sum to be equal to a couple of years' worth of commissions.

Even if the agent is being appointed outside the EU, it may be necessary to consider the impact of the local laws on the relationship. We have helped UK manufacturer clients get overseas advice on non-EU agencies and there can be some surprising terms imposed.

If you are considering appointing a sales agent, whether in the UK or overseas, we recommend that you seek our advice first. We can tell you if the Directive will apply and advise on how to try to mitigate the costs that could result. We can also advise on how to proceed in other territories. If you already have commercial agents, we can advise you about the potential claims you may be exposed to from them. If you are an agent, we can advise on what you may be able to claim for termination. If you wish to find out more please contact David Wisbey.



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in conversation with Birkett Long client, Aden Hynes Sculpture Studios



Sculpture Studios offers a complete sculptural service that specialises in polystyrene carving, mould making, productions in glass fibre, set building, one-off sculptures, props and theming. The company has produced items for TV, film, theatre, exhibitions, video, museums and all aspects of the advertising and promotional world.

It makes patterns and prototypes, sees work from initiation through to completion and has the ability to work with any desired finish. Sculpture Studios also carries out building projects such as the creation of master carvings, moulding, artworking, metalworking, transportation and installation. It prides itself on meeting deadlines and liaising with the client throughout the process.

the business interview

Aden Hynes Sculpture Studios
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www.sculpturestudios.co.uk



When and how did your business begin?

I started the business in 1988 from scratch, after seven years of being a freelance sculptor. I bought a studio, close to home in Laindon (as I was starting a family and wanted to be close to home), and began advertising for commercial sculpture work.

What is the core business of Aden Hynes Sculpture Studios?

3D commercial sculpture for film, television, theatre, promotional and exhibition. We specialise in polystyrene carving, mould making, productions in glass fibre, set building, one-off sculptures, props and theming. We have over thirty years' experience in the business and see the work through to completion from concept drawings, pattern making, prototypes and all types of moulds and productions in fibreglass and plaster, with any desired finish.

What makes your business stand out from your competitors?

It's a unique form of work, not regularly found, and with a personal touch, as nobody will be able to exactly replicate the work we create. We're a rare company that takes a project completely from concept to completion. Not many

other companies handle the entire aspects of jobs like this.

How do you see your business developing in the future?

We can only hope to increase our client base, create good working relationships, and maintain a regular flow of sculptural work. The main thing I wish to achieve personally is to retain the ideals and the working environment I have always had, and continue enjoying what I do.

If you had to sum up Aden Hynes Sculpture Studio's ethos in one sentence, what would you say?

Creative, reliable, and ambitious, the only limit is your imagination.

How has Birkett Long helped your business?

Emma Wraight from Birkett Long helped us greatly in acquiring our new unit in Basildon and being able to upsize our business.

Would you recommend Birkett Long to others and if so, why?

Very professional, communicative, and on the ball with their expertise, Birkett Long helped us move into our new unit with a smooth transition. I would definitely recommend the firm.

Birkett Long was in conversation
with Aden Hynes

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.

INVESTORS IN PEOPLE - GOLD

This year Birkett Long successfully achieved gold accreditation following a review by Investors in People. It is a prestigious national benchmark of good practice and firms are independently assessed against proven frameworks to transform business performance through the training and development of people. For every 100 firms in the UK only one achieves this accolade.

CHARITY OF THE YEAR

This year saw the firm vote for the Rob George Foundation. All offices are holding events including cake sales, dress down days, quiz nights and raffles. Last year we raised £11,00 for our Charity of the Year and we hope to give a similar donation to the RGF. Learn more about the charity by visiting <http://www.birkettlong.co.uk/rgf.html>.

Home news

FINANCIAL SERVICES - 25 YEARS

November marked the 25 year anniversary of Financial Services at Birkett Long. Nicola Ward, Associate and Head of Financial Services said "I can hardly believe it was 25 years ago that I joined the firm and although our means of communication has changed - there were no computers, electronic diaries and certainly no mobile phones then - the value of service to the client is the same. They know that the advice we give is truly independent.". Here's to the next 25 years!

DIGITAL BUSINESS AWARD

Our marketing team won gold in the use of social media category at the Essex Digital Awards this year. The team has acted a little differently to other law firms by using a more quirky approach. Using Twitter and LinkedIn they focus on engagement, striking up conversations and retweeting in order to create a personality. Get in touch @birkettlong.

Do you contract with consumers?

Have you updated your terms and conditions in line with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ('CCR')? If not, you need to do so.

The CCR applies to contracts made on or after 13 June 2014 and requires certain information to be provided to the consumer before the contract is entered into (called pre-contract information). It also contains additional requirements for online contracts and extends the cancellation period available to consumers.

The CCR is in place to protect consumers and there are consequences for non-compliance. For example, the CCR makes it a contractual term for you to provide the consumer with the pre-contract information, but if you have not, the consumer does not have to pay charges or costs you have not advised them about. In addition, if you have not provided the consumer with the information about their right to cancel, the cancellation period is further extended, and if the contract is an 'off-premises' contract, the trader can be fined and is liable on summary conviction for failing to provide this information.

For assistance with updating your terms of business contact Claire Hunt on 01206 217623 or claire.hunt@birkettlong.co.uk.

“ I've heard that HMRC is cracking down on tax avoidance

and tax mitigation schemes. I'm a company director who might be in trouble! ”

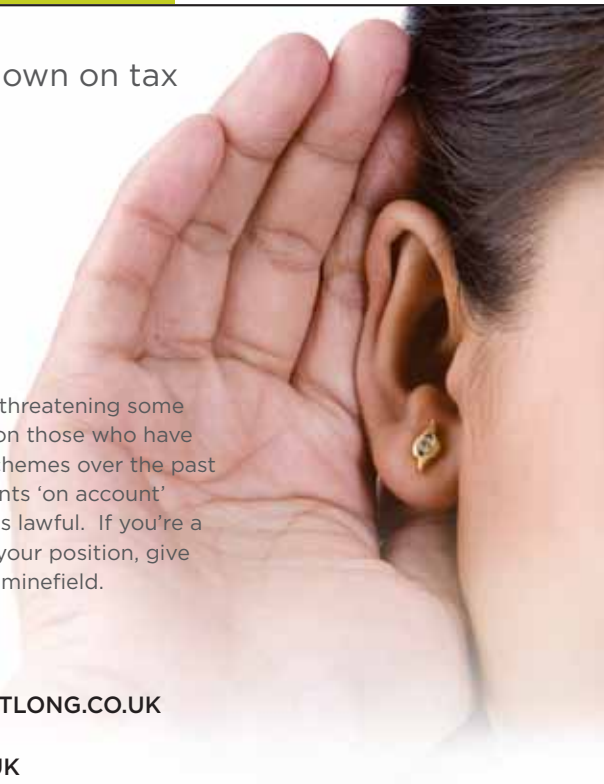
The Finance Act 2014, which became law in July, is threatening some companies with insolvency. The Act clamps down on those who have taken advantage of tax avoidance/tax mitigation schemes over the past 10 years. HMRC can now issue demands for payments 'on account' pending determination of whether the tax scheme is lawful. If you're a director of such a company and are worried about your position, give Kevin Sullivan a call for guidance through this legal minefield.



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Events

Employment breakfasts

Across all offices during January.
For more details or to register
your free place email
seminars@birkettlong.co.uk

Succession planning for farming families

24 February 2015
Everything you need to be thinking
about NOW!
For more details email
seminars@birkettlong.co.uk

Investment seminar

3 February 2015, Colchester venue
5 February 2015, Billericay venue
A free seminar, with a panel of
experts, explaining how recent
changes affect investors.
For more information email
seminars@birkettlong.co.uk

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

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Meet the partners: Claire Read

What type of work do you and your team do?

With the largest team in Essex and one of the largest teams regionally (26 individuals), we deal with all aspects of wills and trusts, inheritance tax planning, probate, powers of attorney and court of protection issues. We are recognised as the leading Essex firm in advising private clients and one of only a handful of firms outside London that deals with the specialised area of will disputes and contested probates. Our team is proactive in providing practical solutions, whether you are concerned about asset preservation in case of a divorce or bankruptcy of a beneficiary, or improving your inheritance tax position. For example, in your will it may be possible to save up to £100,000 Inheritance Tax.

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

I am a partner and in 2008 was asked to head up our Chelmsford Wills, Trusts and Probate Team. I now lead the South Essex Wills, Trusts, Probate Teams and I really enjoy the challenge of looking for and creating new business opportunities.

How can your team benefit a business?

We can give you peace of mind that your affairs are in order and your business will not be exposed to unnecessary risks or dangers that could potentially affect its value. Working closely with our business and independent financial advice teams we can provide tailor-made solutions to protect private and business wealth. Clients are often quite interested in giving away business assets in their lifetime, but are sometimes concerned about loss of control. We can provide practical advice on the best ways to achieve those types of goals now and in the future.

Do you have any advice for business owners?

1. Ensure that you have a tailored comprehensive shareholders' agreement (even if it is a family company), which deals with aspects such as what is to happen upon the death of a shareholder, what value should be attributed to the shareholding and who can take the shares upon death.
2. Ensure that you have sufficient life or key person insurance.

3. Make a will and consider making separate lasting powers of attorney for your business and personal affairs.

Are there any horror stories you can share?!

Here are two different stories from different perspectives:

1. A father, who originally set up the business, brought in his daughters from his first marriage to take over the day to day running of the business. Although this happened many years ago, there was no shareholders agreement in place. When the father died his shares passed in accordance with his will and went to his wife from his second marriage. His daughters had always thought that the shares would be theirs, but now they are in the position of having to deal with their step mother.
2. Two entrepreneurs set up a property investment company over 60 years ago and had an equal share holding. They never discussed what should happen to the shareholding when one of them died, the value that should be given or whether the other shareholder should have the option and means to purchase the shares. On the death of one of the shareholders, his 50% share was divided between 5 children. The remaining shareholder did not have control of the company and could not make strategic decisions. Furthermore, the valuation of the deceased's 50% share was disputed. It took time to reach an agreement and the surviving shareholder had to find funds to buy out the deceased's shareholding.

These situations are all too common but can be avoided with planning and advice.



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