



# For Life Plus

LONG TERM CARE PLANNING  
NEWS AND ADVICE FROM BIRKETT LONG



## Does your will...

We all want to make sure our estate goes to our chosen beneficiaries when we die, but we can sometimes encounter competing interests for our money.

Consider Alan. Married to Joanne for 40 years, the couple has a son, James, who works abroad. Joanne suffers from multiple sclerosis and, since he retired, Alan has become her main carer.

One evening whilst playing squash, Alan suffers a heart attack and sadly he dies. Left alone, Joanne struggles to cope at home, and is advised that long term care is her best option. Although she is the sole beneficiary of Alan's will, Joanne receives no financial assistance with her fees and her inheritance starts to diminish. Joanne's life expectancy could be another 20 years, during which time her bill for care fees could wipe out any inheritance for James. If Alan had left his estate in a trust for Joanne, his trustees could have sold the

## ...do the job?

family home and invested the sale proceeds, together with any other cash assets Alan owned. Any income produced would have been paid to Joanne to supplement her own capital. Although such income would be included in the local authority's financial assessment, the invested capital would not, as it does not belong to Joanne. When Joanne passes away, the remaining assets, protected by the trust, would go to James.

There is another scenario to this story. If Alan had survived his heart attack but been left incapacitated, a lasting power of attorney would have allowed James to step in and act on his father's behalf. James would have had access to Alan's will and, if necessary, he could have applied to the court asking for a new will to be made, making better provision for Joanne.

Emma Harper  
01206 217387  
emma.harper@birkettlong.co.uk

## inside+



**Read this**  
before you make gifts  
of money



**LPAs**  
What are they and why are  
they so important?



**Team line up**  
Meet the court of protection  
and inheritance disputes team



**Don't put off...**  
...organising your financial  
affairs



**Essex Search and  
Rescue**  
Responding day and night



**Meet the partners**  
Keith Songhurst



**Long term care  
seminar**  
Sign up today

# Read this before you give your money away!



For many people, giving away assets seems the obvious solution to prevent their savings being used to fund care in later life. But what most people do not realise is that giving away your assets purely to avoid paying for care fees is prohibited and known as 'deliberate deprivation'.

When a person is assessed as needing care, the local authority will look at that person's assets to determine how much he or she can contribute towards their own care fees and the amount, if any, of local authority assistance to which they are entitled. If that assessment shows 'deliberate deprivation', the local authority will treat the person as if they still owned those assets and this will be classed as 'notional income'.

If the notional income added to the actual income totals more than the local authority's 'upper limit' (currently £23,250) the person may be treated as being able to meet the full cost of their care.

There are no specific time limits to guarantee that gifts will not result in an assessment of 'deliberate deprivation', however, the local authority will look at what they call 'foreseeability and motive' when they make their decision. Therefore, if you are in full health and your motive for giving your assets away is for a reason other than the avoidance of paying care fees, it is less likely, although not impossible, that the local authority will include the gifted asset when assessing you for means tested care.

As well as deliberate deprivation, there are many other implications to take into account if you are considering giving assets away and you should, therefore, always take professional advice before you act.



Amanda Brown  
01206 217388  
amanda.brown@birkettlong.co.uk

The area of long term care planning is littered with difficult terminology. We are aware of how confusing this can be and we have therefore provided an explanation of some of the common words we use:

## ASSESSMENT OF NEEDS

Local authorities are responsible for assessing individuals' care needs and providing services to meet them. These services can range from care in the home or moving to a residential home.

## CAPACITY

The ability to make a decision. An individual is deemed to have capacity unless, having been given all appropriate help, it is clear that they cannot understand, retain or use the information needed to make decisions.

## CAPITAL LIMITS\*

These determine what individuals could be charged for care and support in relation to their savings and assets. Where an individual's assets are above the upper capital limit (currently £23,250) they will not receive funding assistance from the local authority. An individual with assets below the lower capital limit (currently £14,250) will not need to contribute to the cost of their care and support from their capital.

*\*NB - These figures are based on the current law.*

## LONG TERM CARE

Medical and support services provided to individuals who are expected to need such services over a prolonged period of time.

## PERSONAL BUDGET

This is an agreed amount of council money that you can use to arrange and pay for your care and support.

For detailed advice on this topic, please contact Amanda Brown.

# LPAs

## There are good reasons why everyone should make a lasting power of attorney



Ben Parmenter  
01245 453834  
ben.parmenter@birkettlong.co.uk

Sally had been widowed at a young age, but she adapted to living alone quickly; she was in good health for her 78 years and had become extremely independent. She caught the bus to town twice a week to see friends and always spent Sundays with her only son, Joe, who lived just around the corner. With no other immediate family, Joe and Sally's relationship was extremely precious.

One Tuesday morning, Joe awoke to a devastating phone call from the hospital. The doctor explained that his mother had been found collapsed on the path outside her home; they believed she had suffered a stroke.

Joe arrived at the hospital to see his mother curled up, confused and in pain. Her condition was worse than he had anticipated and he found his mother unable to speak or swallow properly, as well as partially paralysed. Sally would spend the next six months in hospital, before being discharged to a care home, in order to free up bed space.

Joe was shocked at the amount of money the care home charged and quickly realised he would not be able to cover the cost of the care fees himself. He visited the bank and explained he needed to access his mother's savings account to help pay for the care, but they would not release the funds unless they saw sight of something called a power of attorney. Joe visited a local solicitor, who explained they could not put a power of attorney in place as his mother was now unable to communicate her instructions. His only option would be to apply to the Court of Protection to be appointed as a deputy, but the solicitor advised him this may take between four and six months and cost him a considerable amount of money.

To make matters worse, Joe realised he may also have to sell his mother's home to fund her long term care, but he was unable to find a prospective buyer who was prepared to wait out the delays whilst he was being appointed as her deputy. Joe felt he had no option but to take out loans to cover the cost of the initial care and, as a result, he quickly spiralled into debt.

## LPAs in a nutshell...

As life expectancy increases, handling financial and personal affairs later in life can become difficult, particularly for those suffering from physical or mental incapacity. Many people provide for this by making a lasting power of attorney (LPA).

A LPA is made using a special document; it is a very powerful financial document and therefore we will not complete a lasting power of attorney without seeing you first.

If you would like to find out more about making a lasting power of attorney or need assistance in relation to any areas relating to wills, trusts or the law affecting care in later life, please contact us and we will be happy to help.

Sadly, his mother's condition deteriorated and Sally spent the last two months before her death bedridden and unable to swallow. Several times Joe was called in to say goodbye, but each time the nurses managed to resuscitate her. Joe could not cope seeing his mother in so much pain and told the staff he knew his mother would not want to be resuscitated again; she always said it was her wish to die peacefully. The nurses explained gently that Joe had no legal authority, without a lasting power of attorney, to make any decisions about his mother's health, and accordingly the doctors would decide what was best for her.

It took Sally several days to die, it was slow, undignified and - as Joe knew - against her wishes. Each time she was resuscitated she became weaker and her quality of life diminished. Now alone and in grief, Joe's biggest regret is that he was not able to help, support and care for his mother in the way she would have wanted.

This story is fictitious but based on real life cases that we see all too often.

## the court of protection and inheritance disputes team

This specialist team is led by Amanda Smallcombe, a member of a select group, the 'Association of Contentious Trust and Probate Specialists'. The team advises on Court of Protection services and will, inheritance and trust disputes. With more than 100 years' combined experience in this area, clients receive timely and sympathetic advice on the legal implications of making or defending claims. Although the team has the expertise to fight a case in the courts, every team member is committed to the constructive resolution of disputes by mediation or negotiation wherever possible.



### Amanda Smallcombe

Partner and Head of Court of Protection and Inheritance Disputes Team.

01206 217395

amanda.smallcombe@birkettlong.co.uk

I am a full member of the Association of Contentious Trust and Probate Specialists, having completed the ACTAPS diploma. Adrian Livesley and I are two of only a handful of lawyers in the region who are members of this association. As a specialist in contested probate and will disputes, I have also appeared on the BBC's 'Inside Out' programme.



### Jenny Bruce

Solicitor

01206 217377

jenny.bruce@birkettlong.co.uk

In June 2011 I decided to broaden my experience in the contentious side of private client work and am now a member of the Court of Protection Team. Due to my background in private client work, my area of expertise is dealing with will, trust and inheritance disputes, as well as disputes concerning matters in the Court of Protection.



### Amanda Brown

Solicitor

01206 217388

amanda.brown@birkettlong.co.uk

I specialise in Court of Protection work including deputyship applications, lifetime gifts and statutory wills - agreed and disputed. I also advise on care fees and funding, both local authority and NHS Continuing Healthcare funding.



### Adrian Livesley

Managing Partner

01206 217352

adrian.livesley@birkettlong.co.uk

I joined Birkett Long in 1979, becoming a partner in 1984. I am now Managing Partner of the firm. I am a member of the Association of Contentious Trusts and Probate Specialists with a wide ranging practice in all aspects of property, trust, tax, wills and probate litigation.

# financial advice



## don't put off organising your financial affairs

The future can seem a long way off; however, the reality, of course, is that it's not! This is why planning ahead and making the right decisions today will give you peace of mind, knowing that your personal and financial affairs are organised in the ways you want them to be.

As independent financial advisers, we specialise in elderly care matters and are qualified to advise elderly people and their families on matters such as long term care planning, tax planning and equity release. We can help guide you through these complex areas, explaining the process in clear and straightforward language.

Our independent financial advisers have been helping families for over 25 years and our team is growing in numbers. The unique structure of Birkett Long allows us to provide you with integrated legal and financial advice under one roof. Our team of lawyers, who specialise in long term care, are members of an organisation called Solicitors for the Elderly, which is committed to best practice.

Together we will ensure that:

- Your affairs will be handled properly by someone you trust, in the event that you are unable to do so personally.
- We help you put in place suitable planning to cover the cost of care fees.
- Inheritance tax issues are dealt with in accordance with your best interests to minimise any liabilities.
- Issues such as residential care, if required, are handled sympathetically and in such a way as to minimise the impact upon your assets.

Please contact us with your questions or to ask for advice.

Nicola Ward  
01206 217309  
nicola.ward@birkettlong.co.uk

## Introducing Mike Greely

Birkett Long welcomes Mike Greely to our team of independent financial advisers. Mike joins us as an adviser with 13 years' experience in assisting clients with their needs.

After graduating with an honours degree in psychology, Mike entered the financial services industry in 2001 working at AIG. Within a few months, he had joined a London based advisory firm providing specialist retirement advice and, even now, continues to enjoy helping those nearing or in retirement, especially in a climate of complexity and changing pension legislation.

In October 2007 Mike took a year out to go travelling round the world, saying "the opportunity at the time was too great to resist"! On returning to the UK he spent several years working at a national IFA firm, picking up his career where he had left off, although this time working collaboratively with lawyers and accountants. His role remained independent, but Mike became focused on certain aspects of financial planning, such as trustee investment advice, inheritance tax mitigation and pension in divorce matters.

Before joining Birkett Long, Mike worked at a firm that specialised in employee benefits and this role saw him provide corporate financial planning advice to small-medium sized businesses. Today, he continues to operate as an all-round, general practitioner. As well as being diploma qualified, Mike also holds the Investment Management Certificate and, together with various other qualifications, has aspirations of achieving Chartered status within the next 12 to 18 months. He says: "I am looking forward to working with the wider team here at Birkett Long and providing clients with specialist, joined-up advice. There is a fantastic opportunity to help clients concurrently with their legal and financial needs, which only adds value to the Birkett Long experience."

Mike lives in Chelmsford and is married with one son. Outside of work, he is a keen footballer and runner, although when injury strikes, takes up cooking as a more sedentary pastime.



Mike Greely  
01206 217324  
mike.greely@birkettlong.co.uk

## in conversation with Essex Search and Rescue



At Birkett Long, we are always looking to help the community that has supported us for many years. When we heard about Essex Search and Rescue we were keen to help. More than 40 trained volunteers work with Essex Search and Rescue. One of its volunteer teams is called out every ten days to search for missing people. We've been able to help with this vital work by providing high-vis jackets and medical bags.

Jennie Skingsley, Marketing Manager at Birkett Long, is in conversation with Stephen Nicholas, Essex Search and Rescue Chairman.

# the BL interview

### Can you describe the sort of work you do?

Most of what we do involves working with the police looking for vulnerable missing persons, including children. Very often the person we are looking for has dementia, or is facing a life crisis, but sometimes the reason the person has gone missing is unclear. We can be called out to search for people from as far afield as Harlow to Harwich, or Saffron Walden to Shoebury - at all times of the day and night and in any weather!

### Are missing persons a big problem in Essex?

There's a tendency to think that people are more likely to go missing in coastal or mountainous areas but that's not the case. In this county - as in the rest of the UK - hundreds of people are reported missing every year. Our work gives a boost to the police presence and allows a larger area to be covered in a faster time, which can be absolutely vital.

### What would be a typical search for your organisation?

There's not really such a thing as a 'typical' search, because we cover urban and rural areas. A great deal of Essex is dedicated to agricultural land, so we might be searching in the countryside or woodland, near lakes or in more built up areas. We are one of many lowland search groups

in the UK and are affiliated to the Association of Lowland Search and Rescue which is responsible for coordinating groups and setting standards to which we adhere. On occasion, we call on nearby groups to support us or we assist them if required.

### How is your organisation funded?

As a registered charity we're dependent upon donations. It costs £7,500 to run Essex Search and Rescue for one year. No one gets paid - all the people who work for us are volunteers. Donations cover the cost of training our searchers and buying essential equipment, such as GPS, communications and first aid provisions. The help we've received from Birkett Long has paid for jackets and medical kits and it's donations like this that keep our organisation up and running.

### How do you find your volunteers and what qualifications do they need?

We are always looking for volunteers! They need no specific qualifications, as they will receive training, but they need to be reasonably fit. For example, we would expect a volunteer to be able to walk five miles in two hours. Our current volunteers' ages range from 25 to 70 and they include people from all walks of life, such as tax inspectors, teachers, or those in retirement, but all turn out when they can. Some even have arrangements with their employer that allows them time off to come and help. All new volunteers are put through a training process twice a month for six months to learn about first aid, safety around water,

navigational skills, stretcher carrying, and rope training in case someone is found in a river. On average, the volunteers' expertise is called upon about 40 times a year.

### If anyone is interested in volunteering, what should they do?

We would be delighted to hear from potential volunteers aged 18 or over. You can find more details about us on [www.essexsar.org.uk](http://www.essexsar.org.uk) or email the membership secretary at [membership@essexsar.org.uk](mailto:membership@essexsar.org.uk).



Over the past ten years Birkett Long has raised or donated over £350,000 to various charities and organisations and we look forward to seeing the number rise!



To find out more about the work of Essex Search and Rescue visit [www.essexsar.org.uk](http://www.essexsar.org.uk)

# 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.

## THURROCK'S NEXT TOP BOSS

We took part in Thurrock's 'Next Top Boss', a competition run by Thurrock Council for young people aged 13 – 25. We were partnered with Palmer's College and worked with a class of business students. We set them a challenge in which they had to create and develop an idea for diversifying Birkett Long's business. We worked with the class, mentoring them, interviewing them, and giving them feedback in order that one of them could be put forward for wider judging by an independent panel. We were able to continue our involvement by offering the team business advice and work experience.

## HOSPICE SUPPORT

We continue to support Colchester's St Helena Hospice and Farleigh Hospice in Chelmsford. As well as sponsoring both St Helena's and Farleigh's £50 challenges throughout the year, we are extending our support to St Luke's Hospice in Basildon by sponsoring their £50 challenge in late 2015. This year the St Helena and Farleigh challenges raised £75,205. We are also sponsoring the St Luke's Hospice 5km Summer Fun Run at Lake Meadows for the third year running.

## THE BIRKETT LONG CONCERT

For the fifth year in a row, we are supporting the Chelmsford Cathedral Choral Foundation. Following last year's performance of Claudio Monteverdi's Vespers we are lucky to have The Sixteen back as this year's performers, following their highly successful appearance in 2013. The Sixteen, known as "the voices of Classic FM", have been performing and recording worldwide for 35 years.

## OUR CHARITY OF THE YEAR

Birkett Long is pleased to be supporting The Rob George Foundation in 2014/15. Staff are asked to put forward various charities for nomination for the firm's Charity for the Year and these suggestions go through two rounds of voting. The charity chosen is usually one close to those at Birkett Long.

The Rob George Foundation was set up in loving memory of Rob, son of Philip George, consultant solicitor at Birkett Long. Rob died on 9 December 2013, following a long and brave battle with leukaemia.



The Rob George Foundation has two clear objectives:

1. To provide practical and/or financial support to young people with life threatening or terminal illnesses.
2. To provide financial support to young people who demonstrate exceptional commitment and/or ability in the worlds of sport or the performing arts but may be held back by their financial situation from pursuing their goals.

At Birkett Long, we take seriously the communities around which our firm is based. We actively support various charitable causes, including our staff-nominated charity of the year, and since 2004 the firm has helped raise in excess of £350,000.

More on our work in the community can be found on Twitter: @birkettlong, on our website: [www.birkettlong.co.uk/blinthecommunity](http://www.birkettlong.co.uk/blinthecommunity) or on our blog: [www.birkettlong.co.uk/blog](http://www.birkettlong.co.uk/blog).

## home news

### GOLD ESSEX DIGITAL AWARD

You may remember that we won the gold award for use of social media in business last year at the Essex Digital Awards. This year we entered the 'use of video for business' category. Against some really strong competition, and impressive nominees getting bronze and silver, we were shocked and delighted to hear Birkett Long announced as the gold winner! Take a look at our award winning video on our website homepage.

### GOLD IIP AWARD

We have successfully achieved the Gold Investors in People Award and accreditation in every independent assessment review since, enabling the firm to display the Investors in People mark.

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.

### GROWTH

Throughout the year we have seen the firm grow from over 140 staff to over 180!

Two years ago Caroline Dowding was promoted to an associate and has now superseded that as partner. She said: "Birkett Long gave me an opportunity to follow my dream of becoming a solicitor".

We have also recruited partner, Justin Stock (pictured right), to our Chelmsford commercial real estate team. His work includes helping clients to buy or sell commercial property, acting for landlords and tenants on commercial leases for industrial, retail and office premises, and acting for clients and banks on secured lending transactions.

Three solicitors who trained with us have had their years of hard work rewarded by receiving promotion to Associate. Ben Parmenter, Emily Brown and Lisa Collins all joined the firm within a year of each other in 2007/08 and qualified around 2010 before being offered jobs with the firm.

A record 11 paralegals have joined Birkett Long in the past year and we have plans to recruit a further three to start work with them in August.

Paralegals provide a vital service to the firm's solicitors by performing key roles in the legal process, offering support to them and their clients.

Lastly we have promoted five members of staff to executive level. The five employees include executive secretary Sue Catterwell and executive receptionist Suzanne Revett, both from the Chelmsford office, financial services executive Gillian Dulieu, marketing executive Sarah Watson, and IT and business operations manager Trudy Hooper, all from the Colchester office.



# Events

## Long term care seminar

To be held in November - dates and venues to be confirmed. Please register your interest and we will send you more details when they are available.

For details or to register your interest for any of these events visit [www.birkettlong.co.uk/events](http://www.birkettlong.co.uk/events) or call 01206 217334.

## BIRKETT LONG LLP

### BASILDON OFFICE:

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

### CHELMSFORD OFFICE:

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

### COLCHESTER OFFICE:

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

[WWW.BIRKETTLLONG.CO.UK](http://WWW.BIRKETTLLONG.CO.UK)



# Meet the partners: Keith Songhurst

## What type of work do you and your team do?

I lead the South Essex dispute resolution team and we assist clients in recovering debts and resolving disputes. I personally specialise in disputes relating to property, but other team members have their own specialisms and there are very few occasions where we do not have the necessary experience within the team to assist in any particular matter.

## Is it right that you only deal with businesses?

No, not at all. Whilst we have many business clients, a large proportion of our work involves assisting individuals. We also act for other organisations such as local authorities, schools, universities and charities.

## Will you only look after large property investors?

In my property work I do act for investors, developers and other businesses with large property portfolios. However, I regularly assist individuals with disputes relating to their own properties, or perhaps those that have bought one or two properties as 'buy to let' investments and are having difficulties with their tenants.

## What was the most interesting dispute you've had to deal with?

I don't think that I could pick one in particular, but some of those that stick longest in the memory include actions to evict squatters or trespassers. I also took great personal satisfaction from assisting a local parish council successfully oppose attempts by a property developer to force it to give up an area of land that had been used as a local playing field by the public for many years. And then there was the one where I assisted a client in getting a civil restraint order from the High Court preventing a particularly persistent individual from issuing any more claims against them...

## How do you approach property disputes?

I will always start by trying to work out with my client exactly what their objectives are and how best to achieve them. I believe that

it is important to be very clear about this from the start. I will discuss the options with my client and the costs and risks associated with those options. The approach can then be tailored to match. This can range from quietly assisting a client in the background to achieve an amicable resolution without lawyers getting too involved, to trying to resolve matters in correspondence or via mediation, to taking proceedings in court.

## How do you and your team cooperate to provide the best service for clients?

Our strength and depth means that we have a wide range of specialisms and levels of experience, and can ensure that each particular matter is dealt with by the best person for the job. However, we also work very closely together as a team, drawing on each other's expertise as and when we need it, so as provide the best possible service to our clients.

## What should we expect to see from you and your team in the future?

We are launching a fixed-fee possession claim service to assist landlords with recovering possession of their properties from residential tenants in the most efficient and cost-effective manner possible.



Keith Songhurst  
01245 453821  
[keith.songhurst@birkettlong.co.uk](mailto:keith.songhurst@birkettlong.co.uk)

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