

AUTUMN 2018



# health

## AND SOCIAL CARE

NEWS AND ADVICE FOR HEALTHCARE PROFESSIONALS  
FROM BIRKETT LONG

### **10 years on**

Funding in the health and care sector.

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### **The National Minimum Wage**

Do employers have to pay back  
arrears of wages?

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Negotiating the terms of the practice lease.

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### **Looking after your staff so you can get on with business**

Managing your people is time consuming and  
sometimes costly, but there is help.

[www.birkettlong.co.uk](http://www.birkettlong.co.uk)

# Funding in the health and care sector - ten years on

**Recent anniversaries of events such as the closure of the US bank Lehman Brothers and the near collapse of Royal Bank of Scotland ten years ago bring back unpleasant memories for some of us of the global financial crisis.**

In the aftermath, businesses of all kinds were affected by the 'credit crunch', the large reduction in funds available from the mainstream banks.

There were some high profile failures in the health and care sector as a result but, ten years on, what is the outlook for finance in the sector? If Birkett Long's experience is anything to go by, the availability of funding is much improved. Over the last eighteen months, we have advised care home providers on increased facilities provided from high street banks and new opportunities funded by a real estate investment trust (REIT); and we have advised other health care businesses on new funding facilities.

Banks are clearly back in the market for the right opportunities. Historically low interest rates mean that debt costs as little as it ever has. Alternatives to traditional banks have also grown over the last few years, whether in the form of REITs, or the 'challenger' banks that have successfully entered the market for commercial lending. Private equity investors also remain interested in growth opportunities in specialist services in the health and care sector. For smaller amounts, 'crowd funding' via the internet is a possibility.

If you are considering the possibility of raising new funds for your business, whether to help with expansion, improve your estate, or take some cash out to benefit from success, there are some

things that you can do in advance to make sure you are in a position to make the fundraising exercise as smooth as possible. First, dust off the business plan and ensure that it is up to date and as accurate as you can make it. Affordability is a key measure for funders and having a plan that shows you will have the income to afford interest payments, and the cash to make repayments with, is going to be crucial.

Secondly, review the paperwork relating to your premises, as property still remains the most important means of granting security for debt. If you lease your sites, are there restrictions on charging the property as security? If you want to spend new money on extensions or refurbishment, are there lease provisions that have to be followed, and what is the position on planning permission? At Birkett Long, we can help review your property documents, to ensure there will be no last minute problems with giving security or fulfilling your plans.

**Following on from my previous article in the Spring edition, the National Minimum Wage (NMW) issue has been in the news again.**

## The National Minimum Wage

In July, the gov.uk website stated that a record 22,400 workers would receive millions in back pay.

Employers who pay workers less than NMW must pay back arrears of wages to the worker at current minimum wage rates and face financial penalties of up to 200% of arrears, capped at £20,000 per worker.

Some 239 employers underpaid 22,400 workers by £1.44 million and received fines of a record £1.97 million. The main reasons for underpayment included deductions for uniforms, not paying travel time, miscalculation of time periods worked, abusing the accommodation offset and underpaying apprentices.

## Should your GP surgery lease contain a break clause?

When negotiating a new lease, there are lots of terms to consider.

Whilst GP surgery leases are fairly similar to standard commercial leases, there are specific points that should be considered when negotiating the terms of the practice lease. Consideration should in particular be paid to whether the partners would like a break clause to be included in the lease.

A break clause is a provision that would allow either you or the landlord to terminate the lease prior to the contractual end date, subject to certain requirements (as agreed between you and the landlord) being met. The usefulness of such a clause in GP surgery leases relates to the reimbursement of rent as you will not be able to claim reimbursement of the rent if you lose your core contract.

Therefore, you may want to consider whether you would like the ability to break your lease in the event that you were to lose your core contract. Otherwise the party named as the tenant under the lease (which is generally either the partners individually or the partnership) would still be personally responsible for paying the rent and complying with the terms of the lease.

Whilst the landlord would also need to agree to the inclusion of a break clause in the lease, the earlier in negotiations that the point is raised the more likely they may be to agreeing such a clause.

### **Sian Taylor**

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If you are not sure how to go about raising funds, contact your Birkett Long adviser. We have relationships with the health and care specialists at the banks and with private equity investors and we may be able to steer you in the right direction.

### **David Wisbey**

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After five years, the NMW enforcement scheme has identified that about 90,000 workers were not paid the NMW and were owed over £10 million in back pay, and imposed fines of about £8.5 million on almost 2,000 employers. Funding for NMW enforcement has doubled since 2015 and the government says it will spend over £26 million in 2018/19.

This illustrates that employers must make sure they pay the NMW.

Over the years there has been much debate over whether a person who is "on call" but allowed to sleep is entitled to be paid the NMW for the whole shift or for just the time they are awake and performing work.

A clear decision was made by the Court of Appeal in the case of Mencap and Tomlinson-Blake. Workers "sleeping in" will only be entitled to the NMW when they are required to be awake and are awake for the purpose of performing their duties.

A number of cases were considered and it concluded that where the worker is contractually obliged to spend the night at or near their workplace, on the basis that they are expected to sleep for all/most of the period but may be woken to undertake some specific task, they will only be entitled to the NMW when awake. This decision will be welcomed by employers.



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# Looking after your staff so you can get on with business

Managing your people, and making sure they operate as efficiently as possible, is time consuming and sometimes costly, but there is help out there to give you back control of running your business, profitably.

## Getting back to business

When I was training I worked in a call centre, manning legal advice lines, where I experienced the frustrations of employment law advice given in this way. Advice was given by advisers who were often inexperienced and sometimes unqualified; companies spoke to different people every time they called; the advisers had little understanding of the business or its employees.

Although many clients had legal protection insurance as part of their cover, they only benefitted if they followed the advice given to them. Consequently, the advisers weren't always able to provide commercial, pragmatic solutions. If a law firm could offer the same type of product, but with these shortcomings addressed, it would be a fantastic offering to any employer.

BLHR is that offering; we provide you with certainty - a fixed fee for all your employment and health and safety needs. You have unlimited access to a dedicated employment lawyer, giving you practical and commercial advice without having to be defensive.

## When the going gets tough...

We are proud of our reputation and record of success at Employment Tribunal hearings. We give an honest assessment of the merits of the case and present your defence in the strongest possible terms.

We work hard to minimise stress and wasted resource, and do all we can to guard against reputational damage.

## Tailored to your business and budget

Birkett Long Human Resources will design a package which meets the needs and budget of your business, so you get a service that offers great value, without paying for elements that you don't want or need.

We understand commercial priorities and look beyond the obvious when seeking solutions. Our aim is to maximise our contribution to the financial success of your business!

If you would like a free chat about what we can do for you, please call my colleague, **James Anaxagorou**, on 01245 658358 or email [blhr@birkettlong.co.uk](mailto:blhr@birkettlong.co.uk). Alternatively visit [www.birkettlong.co.uk/hr](http://www.birkettlong.co.uk/hr).

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Reference should be made to the appropriate adviser on any specific matters.

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## Important

It has been brought to our attention that Birkett Long has an impersonator - Joseph Ramdath. Joseph has been contacting various people via email claiming that he is a sole legal attorney of a family member (usually 'Ken D Your surname) who has recently passed away. He is asking for you to get in touch regarding the deceased's abandoned investment.

If you receive an email from a Joseph Ramdath it is not legitimate. You can safely ignore and delete any emails that come from either Joseph Ramdath or an email address including [birkettlongllpsolicitors](mailto:birkettlongllpsolicitors), [boydfrank98](mailto:boydfrank98), [josephramdath.esq](mailto:josephramdath.esq) or similar.

We are currently talking to the relevant organisations about his impersonation of Birkett Long, but if you are concerned about an email you have received, please do contact us on 01206 217605.