



# Long

THE BROADSHEET  
FROM BIRKETT LONG  
FEBRUARY 2010

**Difficult to believe perhaps but the World Wide Web is now 20 years old. Has any invention, other than the wheel, had such a profound and lasting impact on just about every aspect of our lives? Probably not.**

## HAPPY BIRTHDAY TO THE WEB

20 YEARS OLD!

The origins of the web go back to the 1980's when defence and academic organisations used a primitive form of the Internet to send and receive (entirely text-based) communications. In March 1989, Tim Berners-Lee, a scientist at CERN, the European Organisation for Nuclear Research, explained how the physics research community could easily share and search electronic documents.

Fast forward twenty years and the results and changes are simply staggering and, crucially, show no signs of slowing down. If anything, web pundits are predicting a second revolution based upon the web becoming "intelligent"!

*And here's a thought. Sir Tim Berners-Lee believes the web is still in its early stages and that in future, the internet will put "all the data in the world" within the reach of every user.*

So how has the web changed our lives? Let's start with shopping. When the web first

started to develop as a commercial channel, many companies only used it to host their sales brochures, but not any more. Today it is almost unthinkable not to begin a shopping exercise on the web. Often this is because the web is truly transparent and consumers can easily compare the prices and features of just about every product and service instantly.

Similarly, travel and tourism have been revolutionised by the web. Package holidays still exist but the big difference is that they are now often packaged not by travel firms but by the travellers themselves.

One view of the web is that it has 'empowered' the world - it has allowed everyone to have a voice. And nowhere is this more evident than in the millions of blogs (online logs or diaries). The blogging phenomenon has been accompanied by the incredible rise of social networking sites such as Facebook and Bebo, and even business networking sites such as LinkedIn.

This is much the same with the

myriad of online communities. For every interest, association or hobby, there will be an internet forum somewhere where like-minded souls can 'meet', argue and indulge. Take for example, the world of travel and tourism referred to above. No longer do we need to rely on the opinions of the travel companies as to how good a hotel or resort is. We now have User Generated Content (UGC) where holidaymakers themselves give their feedback and opinions. UGC is not confined to travel sites and blogs, far from it. There are now no businesses or organisations sheltered from online comment. News, both good and bad, can now spread globally in seconds at the touch of a button.

*At Birkett Long the web is certainly changing the way we do business.*

Perhaps the biggest changes for Birkett Long are in the ways people find us and how we communicate our services to the outside world.

Although not open for business 24/7, we are certainly open for information 24/7. Search engines, particularly Google, are completely replacing all other information channels. It is vital that we maintain a sufficiently high online profile to ensure that we can be found. Having done so, our site visitors now expect to find what they are looking for and to be able to do so very easily.

Our outgoing communications have changed and will continue to change. Our newsletters and emails are not delivered randomly. They are now based much more on individual preferences so that recipients only receive relevant pieces of content. Birkett Long currently produces six different newsletters each aimed at different audiences.

These moves to more personalised communications are not, however, likely to slow down. New technologies will inevitably produce new information channels

which all firms, Birkett Long included, will need to use appropriately.

*It may be a cliché, but it's certainly true that nothing changes faster than change itself. These changes cannot be avoided or ignored and they may, indeed, be positive.*

In the words of Sir Tim Berners-Lee: "My hope is that these changes will produce new ways of working together effectively and fairly which we can use globally to manage ourselves as a planet."

To find out more about the legal services for individuals, businesses and organisations, provided by Birkett Long, please contact us on 01206 217300 or [advice@birkettlong.co.uk](mailto:advice@birkettlong.co.uk).

Alternatively visit [www.birkettlong.co.uk](http://www.birkettlong.co.uk) and click on the "Live Chat" button to connect to one of our operators. You will also find many of us on LinkedIn.com.



**Top Image:** Should Care Cost You Your Home?  
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**Middle image:** Our Charity of the Year - Essex Air Ambulance  
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**Bottom Image:** The Credit Crunch - The Banks' Views  
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# Lasting Powers of Attorney

## THE NEW FORM

On 1 October 2009, the Office of the Public Guardian introduced the new Lasting Power of Attorney (LPA) forms. These are much shorter and simpler than the old style LPAs.

Originally, the LPA forms were introduced to replace the more commonly known Enduring Power of Attorney (EPA). LPAs enable a person (the donor) to plan ahead and protect their future in case they become unable to make decisions for themselves later in life. There

are two types of LPA. The first is a Personal Welfare LPA which allows a person of your choosing (called the attorney) to make decisions about health and welfare issues such as life sustaining treatment or where you are to receive treatment. The second type is a Property and Financial Affairs LPA. This allows your attorney to deal with your finances, for example your bank accounts or house. Both are in a specified format and are legal documents which cannot be

used by your attorneys until they are registered with the Office of the Public Guardian.

We feel that it is important for everyone to consider making a LPA if they have someone they trust to be able to deal with their affairs. By making a LPA you are in control and decide who is the best person to deal with matters. If you do not make a LPA and you cannot deal with your own affairs due to lack of mental capacity, then a special court decides who should deal

with your affairs. The costs of such an application will be in the thousands and it normally takes between 6 to 12 months to complete. In contrast, the new forms can be completed immediately, are more user friendly and are significantly cheaper than an application to the court.

*To find out more please contact Claire Read on 01245 453835 and discuss how you can ensure your future is hassle free.*

# Should Care Cost You Your Home?

## PRESERVING ASSETS

The cost of long term care is increasing and becoming a significant worry in what many people now describe as an ageing population. In 2007, statistics reported for the first time in history that Britain had more people over the age of 65 than it did children under the age of 16. Life expectancy is also rising; on average a man can now expect to live for 77.2 years and a woman for 81.5 years.

With statistics like these, it may be surprising to learn that as many as 9 out of 10 adults fail to consider how they would meet the cost of long term care should it become necessary in their future. The costs of residential and nursing care are also on the rise and are expected to double over the next 20 years. In a report prepared by Saga, the 'Cost of Care Report 2008/2009', it was stated that the average annual cost of a single room in a residential home was £24,700. The figure is even higher for nursing homes, costing on average £35,100 a year.

To put these figures in some perspective, a couple living in a 2 or 3 bedroom house worth around £180,000 would be able to afford less than four years' long term residential care each.

With people living longer, more consideration is being given to paying for long-term care fees. In a perfect world each of us would plan for the possibility that we might one day need to be looked after. If you do need to go into permanent residential care, and have capital of over £23,000, you will be expected to pay for your care, unless the care provided is primarily for health reasons; for example specialist care from a registered nurse is required and the accommodation provided is merely ancillary to this.

Capital includes your assets, investments and property (but excluding personal chattels, such as jewellery and other personal belongings), which you own either solely or jointly. The value of your house is included as

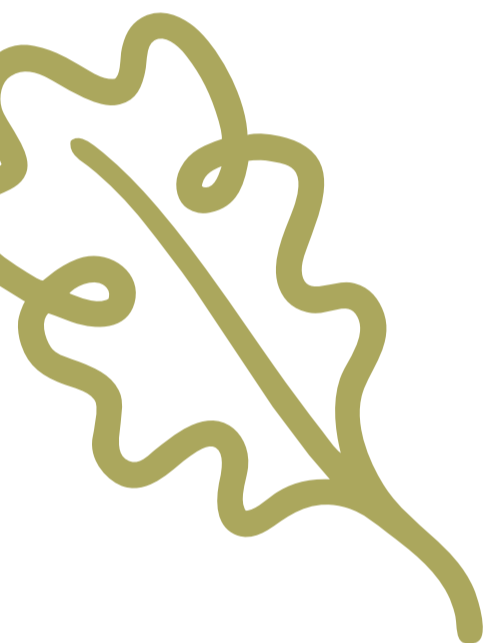
"capital" unless your partner/ spouse or a relative aged 60 or over or a person aged 16 or under resides in the house with you.

Your assets can be protected and there are various ways of doing this; the first, by way of straightforward gift to, for example, your children; second, by utilising a trust and finally, by utilising your wills.

With the first and second options, if you make a gift for the purpose of avoiding future care home fees or obtaining some other benefit, then the Local Authority will not pay for your care fees even though you do not have the asset anymore. There is no time limit to this, but the longer the time frame the more difficult it is to prove the intention was to avoid future care home fees. Finally, rather than give assets away during your life time you could consider revising your will so that on your death, assets pass directly to family members rather than your spouse or

partner. If the spouse or partner requires use of the assets then a trust could be looked at. This means that you retain control whilst you are alive.

*This is a complicated area and the above article has only touched on the issues involved. If you are concerned about the issues raised in this article then please contact Claire Read on 01245 453835 or [claire.read@birkettlong.co.uk](mailto:claire.read@birkettlong.co.uk).*



### SUSAN MASTERS 1950 - 2009

Susan, a partner of the firm since 1984, sadly died of cancer on 27 November 2009. She made a huge contribution joining us in December 1982, working as a partner for twenty-five years, spending time in all three offices and leading the Chelmsford Property Team. Susan developed a formidable reputation as a property lawyer, widely respected throughout the community. She gave distinguished service as a practising solicitor for thirty-four years, as Education Officer for SNELS and as a Governor of St Mary's School and Chairman of Colchester Quaker Housing Association for many years. But our memories will be of Susan as a person. Always charming, warm, friendly and supportive of her colleagues, she gave complete commitment to everything she did. Her determination in overcoming three rounds of cancer over twenty years and the dignity with which she bore her final illness were so typical. We will miss her contribution, technical skills and reputation but, above all, as a warm and compassionate colleague and friend.

Our thoughts and prayers go out to her husband David and her family. May Susan rest in peace.



## Home news

### NEW FACES

Birkett Long has welcomed several new members of staff recently. Kevin Sullivan joined our Commercial Litigation team. A highly experienced insolvency lawyer, his presence is a significant boost to our already busy and expanding team. Richard Curl joined us as Legal Counsel in September. Richard has a very strong portfolio of clients and contacts in the healthcare sector, and his knowledge and experience will help us to grow and enhance our strong reputation in that area.

We also welcomed two new trainee solicitors. Michael Harman and Amira Richards will spend 2 years training with us, spending six months at a time in different teams across the firm. They join our second year trainees Ben Parmenter, Laura Bunting and Lisa Collins.

Marc Thurlow and Emily Brown qualified with Birkett Long on 1 September, and we are pleased that they are remaining with us, Marc in the Litigation team and Emily in the Commercial & Corporate Finance and Employment & Immigration teams.

### EXAM SUCCESS

Lorraine Hardy has passed the Legal Practice Course with a Commendation, and was therefore admitted as a solicitor in September.

Tracy Norris and Yolande Millar both passed the ILEX Year 2 Level 3 law and practice papers. As a result, both Tracy and Yolande are enrolled as Associates of the Institute of Legal Executives.

It really is a big deal to combine working and studying and they've all done a tremendous job of it.

### RUN4FUN 2009

We are pleased to report that Run4Fun 2009 raised over £7,500 for the Mayor of Colchester's charities, well over the total raised in 2008. Thanks to all who helped make the event such a success. Plans are already in place for the 2010 event - to sign up for more information as it becomes available contact [run4fun@birkettlong.co.uk](mailto:run4fun@birkettlong.co.uk) or 01206 217605. Or you could become a fan of Run4Fun on Facebook - follow the link from our website [www.birkettlong.co.uk/run4fun](http://www.birkettlong.co.uk/run4fun).



## Diary dates

### Coming Soon!

#### Street Legal

We're unleashing our lawyers on the streets of Chelmsford in 2010 – look out for them, and stop for a chat if you see them – they won't bite!

### 24 June

#### Colchester Lecture

Birkett Long LLP has confirmed its support for the 30th anniversary of the Colchester Lecture. This year's speaker will be Simon Weston OBE. Tickets are available from the Mercury Theatre - [mercurytheatre.co.uk](http://mercurytheatre.co.uk)

### 9 September

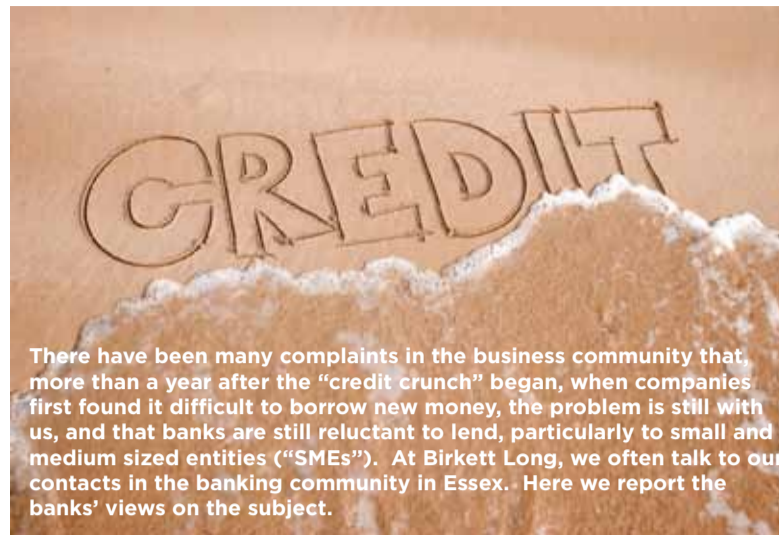
#### Run4Fun

2.5-mile fun run round Castle Park, Colchester. Email [run4fun@birkettlong.co.uk](mailto:run4fun@birkettlong.co.uk) to sign up for information as it becomes available. [www.birkettlong.co.uk/run4fun](http://www.birkettlong.co.uk/run4fun)

For more information contact Jennie Skingsley on 01206 217605, email [events@birkettlong.co.uk](mailto:events@birkettlong.co.uk) or visit [www.birkettlong.co.uk](http://www.birkettlong.co.uk).

# The business article

## CREDIT - STILL CRUNCHED?



There have been many complaints in the business community that, more than a year after the "credit crunch" began, when companies first found it difficult to borrow new money, the problem is still with us, and that banks are still reluctant to lend, particularly to small and medium sized entities ("SMEs"). At Birkett Long, we often talk to our contacts in the banking community in Essex. Here we report the banks' views on the subject.

The true position is not easy to establish. Some statistics appear to show that it is the appetite for companies to borrow money that has diminished, and it is not just a question of the availability of funds. Lord Sugar, the Government's entrepreneurs' "Tsar", claimed controversially last autumn that the fault lay with the businesses, not the banks, and that the great majority of SMEs that wanted more cash deserved to "go bust" rather than be backed.

On the other hand, it is impossible to deny that new lending to SMEs has declined and that business's perception is that credit remains hard to get. A British Chambers of Commerce survey in the autumn of 2009 reported that 33% of companies thought that accessing finance had been more difficult over the previous three months. This compared with the same question asked in June 2009, when 20% of businesses believed access

to finance had worsened.

What are the views of the banks in Essex? The overwhelming view is that, for the right proposal, properly researched and presented, funding is available.

There is no doubt, however, that attitudes have changed, and that the amount of detailed information required to obtain credit approval has increased. One of our banking contacts gave us the example of a customer in the motor trade, who had borrowed £100,000 two years ago and had successfully repaid the money. He had identified a good business opportunity and now wanted to borrow the same sum again, over the same period. The bank's view was that it had the money available to lend to him, but the lessons of the "credit crunch" meant that the tests that would now be applied to the ability of the customer to repay the money had changed. He

needed to be more explicit as to how the project would progress and how the money would be repaid. A good repayment track record from a prior loan was simply not enough on its own.

Another local banker pointed out that too many businesses are still unable to supply detailed management information to their bank. It is no longer sufficient to know the turnover of a business, it is necessary to understand and to be able to illustrate the key performance indicators, such as stock levels, work in progress and debtors. Better still, a forward looking business plan, with projections of earnings and cash flow, will make life easier for the credit approval process. There are plenty of accountants locally who are able to provide help in preparing this kind of information, and there is really no excuse for it to be lacking nowadays.

Even a temporary drop in performance is not a bar to new borrowing for a business. A contact told us that a well established business, with a good track record and good prospects, will be considered favourably for funding, where recent trading problems can be explained and the right steps have been taken to address performance issues.

**We are always happy to talk to clients and contacts to pass on our knowledge about local banks. If you would like to hear more, please contact David Wisbey on 01245 453817 or [david.wisbey@birkettlong.co.uk](mailto:david.wisbey@birkettlong.co.uk)**

## BIRKETT LONG ACTS IN DEAL TO SECURE JOBS

Birkett Long was the lead legal advisor to the East of England Co-operative Society in the recent sale of its non-food retail business, which safeguarded the jobs of 350 staff across the region.

Tracey Dickens, Head of our Commercial & Corporate Finance Team said: "Our client was determined to secure the continued employment of the workforce affected by the proposed sale, which called for a great deal of detailed negotiation with the buyer. We were very pleased to have contributed to this successful and speedy transaction."

Richard Samson, Chief Executive, East of England Co-operative Society said: "Our decision to transfer this business to another retailer whilst retaining full ownership of the freehold properties was not taken lightly, but we were able to achieve two key objectives, which were to secure the jobs of the 350 employees involved and to enable trading to continue in these important locations."

The non-food retail and jewellery business, operating from 14 stores around East Anglia with 8 in Essex, was acquired in July by the Vergo Group for an undisclosed sum. The properties from which the stores operate remain part of the Society's property portfolio.

Tracey Dickens  
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# There.

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## Bizarre Cases

### SUING YOURSELF!

A local council in Wales was recently in the rather unusual position of having to sue itself. In an attempt to improve facilities at a local school, Carmarthenshire Council built a new playing field for its pupils but omitted to obtain planning permission beforehand. Planning permission was sought retrospectively but subsequently rejected by Carmarthenshire Council; the same body that applied for the planning permission.

The playing field itself is situated on the debris of a demolished school building and is located approximately 1.4 metres above the bordering ground. After becoming aware of the Council's plan to build the playing field, disgruntled residents of neighbouring properties complained to the Council that their homes would be overlooked if the Council proceeded with their plan. It is

reported that 19 objections by angry residents were submitted to the Council but not one was considered in accordance with the law.

When faced with a situation like this, the Council has an obligation to take legal proceedings against the party who has unlawfully built something. Carmarthenshire Council has therefore had to sue itself and has allegedly split its in-house legal team in two in an attempt to resolve this predicament.

It is not, however, all bad news for the Council, and their glass is by no means half empty; it may be of some comfort and reassurance to the Council that whatever the outcome, at least half the lawyers working on the case will be successful!

Lisa Collins  
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**Richard Harvey, tax partner at Baker Tilly's Essex office in Chelmsford, looks at what's in store for businesses in 2010. Baker Tilly is one of several business partners Birkett Long works with on a regular basis.**

This year promises to be every bit as challenging for local businesses as 2009. It is important, therefore, that they manage their tax affairs to minimise the impact on their cash flows. Areas that should be considered include:

- Looking at group structures and eliminating unnecessary companies. This can reduce compliance costs and avoid loss of the lower rate of taxation available on profits up to £300,000. It may also prevent companies falling unnecessarily into the quarterly instalment regime.
- Business owners should be looking at ways of mitigating the impact of the 50% tax rate which will come into force from 6 April 2010 on incomes over £150,000. Possibilities to consider include:

- Bringing income forward to 2009/10.
- Passing shares to a spouse or children to utilise their lower rates of tax on dividend income.
- For unincorporated businesses either to incorporate or introduce a corporate partner to shelter profits at the lower corporate rate.

- Careful management of the compliance responsibilities. HM Revenue & Customs appear to be applying the new penalty regime vigorously and compliance failures could lead to significant penalties. Businesses should consider reviewing their procedures to ensure that all tax matters are being correctly reported.

As ever with tax the devil is in the detail so ensure you take advice before taking any tax mitigation steps.

For further details of the above issues as well as broader taxation advice, Richard Harvey can be contacted at the Chelmsford office of Baker Tilly on 01245 454057 or emailed at [richard.harvey@bakertilly.co.uk](mailto:richard.harvey@bakertilly.co.uk)