

legal advice

Leading specialist commercial law firm, Blackbourn & Bond, has teamed up with *Border Business* to offer businesses in the region expert legal advice. And in this, our fourth feature of the series, founding partner Nick Blackbourn focuses on basic contract law, gives details on the latest legislation updates and examines how the internet has revolutionised the workplace



Nick and Dwight are keen to point out the importance of personalised relationships

Nick Blackbourn

Nick is the firm's founding partner and set up the practice back in 2003. He has more than 25 years' industry-based experience, working with some of the UK's largest PLCs. He specialises in the corporate finance and company commercial sectors, focusing on working alongside clients involved in company acquisitions and disposals, business development, management buy outs/ins, private equity, commercial contracts, intellectual property and corporate structures.

Dwight Bond

Dwight specialises in commercial property, including residential site acquisitions and developments, construction, planning, environment, landlord and tenant and licensed trade properties. With a background in leisure and retail, he is also able to offer a comprehensive range of legal advice in numerous commercial sectors.

If you have any questions you'd like to ask Nick or Dwight, then email us here at info@borderpublishing.com

Contract minefield

It's been more than 25 years since the internet took its first steps towards becoming the mass medium it is today in the UK, and it is almost impossible to overstate the extent to which it has revolutionised our working lives in that time.

Together with email, the internet has changed not only the way companies do business but also our expectations, with everyone expecting answers and results instantly, 24/7.

It has also played a major role in where we now work: we no longer need to be located in expensive city centre offices, or deal with the headache of rush hour traffic jams.

The legal profession is no different, and over the last decade we have witnessed many experienced business lawyers moving out of the traditional city centre bases to set up practices in their home towns.

This way they can offer the same level of skills and experience to businesses, but at a significantly lower cost than a city-based law firm – and arguably with a more personalised approach to client relationships.

The biggest hurdle in this transition is changing business perceptions about working with a non-city centre legal practice. On the positive side, the trend for businesses moving out of city locations applies across all business sectors – you only have to look at Telford as a case in point – so the focus for employing 'local' specialised skills is changing.

Using our own example, we have chosen Shrewsbury as the base for our head office and have successfully grown from being a regional law practice to a leading boutique law firm, dedicated to

serving the business and commerce law interests of property and business entrepreneurs, SMEs and multi-national corporations, both locally and further afield – from the West Midlands to London and overseas.

Technology has also played a key role in how we operate more effectively as lawyers on an international scale. Only recently we worked with one of our longest standing clients, Applied Seismology Consultants (ASC), to put this to the test by facilitating the trans-Atlantic acquisition of the company by US-based Itasca International Inc.

Four law firms based in the USA, Canada and the UK were involved in the negotiations, and our primary role was to co-ordinate all communications and consult with ASC's Canadian law team in reviewing the terms of the acquisition and providing specialist commercial legal advice.

What was interesting about this deal is the way in which electronic communications and negotiations could be progressed between four law firms and two clients in three different countries simultaneously.

The internet has provided us with the tools to operate at a level that a decade ago would have been seen as only possible for city centre firms. It has truly changed and influenced the way we work, and as technology moves on, what will come next?

But it is important to recognise that technology is only a business tool – it can never replace working in close direct partnership with clients to assist businesses through advice and personal engagement, something we value above all else.

BLACKBOURN & BOND

LAWYERS FOR BUSINESS

The long run

Q. In your experience, what most commonly trips up business owners and causes them unnecessary problems?

A. It is easy to overlook the fact that people 'don't know what they don't know', and businesses can run into trouble because they lack a basic knowledge of contract law.

I was recently invited by Investors In Excellence and Business Link East Midlands to present a seminar on this very subject at the East Midlands Airport offices of finance experts PricewaterhouseCooper, and here are some of the key points I raised about contracts.

In business, nearly every agreement made is going to be a legally enforceable contract, whether people realise it or not.

Often people don't realise this simply because the word 'contract' generally conjures up the idea of a written document – it is thought that what was agreed verbally, or even through correspondence, is just discussion and can't be enforced through the courts.

However, in one extreme example, I had to advise the board of a FTSE 100 company that an exchange of letters had unwittingly formed a binding contract for the sale of one of its subsidiary companies! A simple, costly error made by highly experienced businessmen.

The contents of a contract are properly referred to as 'terms' and are divided into 'warranties' and 'conditions' – the difference being the seriousness of the possible remedies in case of a breach. The expression 'terms and conditions'

is frequently used but is possibly misleading and certainly inaccurate.

'Representations' are what are stated before a contract is entered into, but even if one party has relied on these representations, they do not form terms of the contract. However, if they are wrong in some way, even if they've been made in all innocence, they can still form the basis of court action.

Clearly, the lesson is that businesses need to be very careful what promises are made about their products or services if they don't want to leave themselves exposed.

At its very basic level, a contract is an agreement, and very frequently the cause of difficulties between businesses are simple misunderstandings.

People generally get excited when new arrangements are being made, but tend not to stop and ask difficult or awkward questions in case they are seen as too negative. Ensuring clarification at the front-end is the best way to stop the seed of a destructive dispute being planted.

In summary, my four top tips are:

- Use the phrase 'subject contract' until you've reached the point where you are happy to be legally bound.
- In order to ensure there is no misunderstanding, don't be afraid of asking what seem to be difficult questions or those that may appear ignorant.
- Get a clear written document settled and signed before any work is undertaken. This doesn't need to be an

unnecessarily complex item.

- Get a commercial lawyer involved at an early stage. It may seem at first like an unnecessary cost, but a few hundred pounds worth of investment can avoid several thousand in costs at a later stage.

LEGAL SOUND BYTES

CLAUSE AND EFFECT

Penalty clauses are frequently referred to as something that businesses wish to impose on their suppliers or customers should they fail to perform. However, what is less commonly known is that under English law, such a clause could well be unenforceable. The basic rule is that parties can recover the genuine losses but cannot penalise. In a recent case, this principle was reinforced because there were no reasonable and genuine attempts made to estimate the real losses the business could suffer. Such clauses need carefully drafting to avoid disappointment.

MAKE IT CLEAR

For the last 10 years it has been established that in a consumer contract, if a clause is 'unfair' then it may be unenforceable against the customer. It has recently been established that simply putting a further clause in that states the customer has 'read and understood' may not protect businesses either. The key is to ensure that your terms are clear in the first place, and give the customer the opportunity to question anything they don't understand.

SET YOUR LIMITS

Recently, the courts revisited the question of how far a business can limit its liability in contracts. Previously, the legal system seemed willing to investigate elements of the business relationship and interpret the fair extent to which that liability could be limited. However, the Court of Appeal has moved towards allowing parties to agree these issues between them. It will not interfere provided it does not go too far (for example, seeking to exclude liability for death or personal injury due to negligence). The lesson here is that you can limit your liability quite significantly, but make sure you get proper advice on the clause otherwise you may find there is no effective limitation at all, with potential serious consequences.