

NOTE *Rup*

The Journal for Solicitors In Local Government

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*Celebrating 60 Years Representing
Local Government Solicitors*

Features

- Coaching for Performance •*
- Roundtable Conference •*
- Foundation Trust Schools •*
- Procurement Directive •*
- Sharing Legal Resources •*

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NEC IN ACTION



I hope you all had a very enjoyable summer and were not distressed

by the flooding. In this edition of *Noter Up* there are three things I want to mention.

At the time of this edition I am now half way through my year of office and I am mesmerised by the speed at which time passes.

I have had the opportunity to visit a couple of Branches and the diary now shows commitments to visit more in the next few months. These visits are very useful in that they give the opportunity to see how Branches arrange their activities in differing ways and now they each seek to make contact and engage with their local membership.

SLG Young Solicitor of the Year Award

So at the halfway stage it's time to begin to look towards the Weekend School when we hold the annual dinner on the 4 April 2008 at which we make the presentation for the SLG Young Solicitor of the Year award.

This will be the fourth presentation of this prestigious award. It is therefore important that I take this opportunity to remind you of it and invite you to consider if you know someone who should be the subject of a nomination.

The purpose of the award is to celebrate excellence and the outstanding achievements of local government young solicitors with up to 10 years admitted experience. We are looking for those individuals who have been innovative and made a material impact on the performance of their department and authority. It is a significant award as it offers the potential for the individual, their department and authority to show in their local community and

local government generally just how good they are. It also establishes to the rest of the legal world the level of excellence of practice that exists in local government.

Sometimes we are too reticent about the high quality of our work and the abilities of our colleagues. Now is the time to simply show how good we are. Nominations can be made in a variety of ways. The details and the criteria for the award are available on the SLG website at www.slgov.org.uk on the home page. You will also find the nomination form and other requirements. It's a very straight forward process so please consider who you can nominate.

The closing date for nominations is the 29 February 2008 so you have plenty of time.

We have received extensive support from Trowers & Hamlins for this award. They have again received the National Law Firm of the Year Award and were nominated for the Pro Bono Award. We are exceedingly pleased for their continued support for our Young Solicitor of the Year Award.

In addition to the receipt of the award and acclamation the winner can select a Red Letter Day for two people and they have the opportunity to spend a week working in Trowers & Hamlin to experience a different environment.

Please take part and nominate someone.

Honorary Members

I also want to solicit your nominations in respect of another aspect of SLG. Our constitutional arrangements set out the criteria for membership. One category however has, to a degree, not had the benefit of a lot of publicity; that relates to Honorary Members. Once someone has stopped working in Local Government their eligibility for membership ends. But those people who have given distinguished

service to SLG or to the solicitors' profession in local government are eligible to made Honorary Members.

We think it quite right to acknowledge and mark the contribution of such individuals. The process however of identifying them is a bit hit and miss and relies on Branch Representatives on the National Executive Committee bringing these people to our attention.

We want to improve the system and I therefore ask that you let us know if you consider that someone should be honoured in this way.

The commitment of these people has often been reflected by extensive engagement with colleagues in both local government and SLG. To reflect their commitment and this engagement it is our intention to invite newly created Honorary Members to attend a Weekend School Annual Dinner in any one of the three years after achieving honorary status. We feel that this will give them a significant opportunity to meet with former colleagues and relive past 'joint adventures'.

If you wish to recommend anyone for honorary membership please email me at george.curran@lawyer.com

National Treasurer

Though the next issue comes at the end of this article it's of no

less importance. At the National Executive Committee on the 23 September our national Treasurer Peter Rhodes announced that he does not wish to seek reappointment at the AGM next April.

Peter has contributed extensively to SLG (and before that to LGG). His engagement will be seriously missed. More about that however at the AGM.

This is a significant role within SLG and consequently we wish to ensure that we give everyone the opportunity to apply for the position. Although the actual appointment is a matter for the AGM we also wish to give the best opportunity for an efficient handover. Consequently I am inviting anyone who is interested in the role to let me now through the email contact above. SLG has achieved Level 2 in its Equality and Diversity strategy so, consequently, there will be a proper application process. I am simply letting you all know of the circumstances and of this significant opportunity for engagement in SLG.

I want to report back to the next meeting of the NEC on the 30 November, so please make contact before 20 November to enable me to write the report. Thanks in anticipation.

George Curran
Chairman



Maria Memoli and George Curran at the opening of the Legal Year



NOTERup

The Journal for Solicitors In Local Government

Noter up is published four times a calendar year and is delivered free of charge to all Local Authority Solicitors and Trainee Solicitors who have opted-in. It can be received by post or subscription. Back copies may be supplied by contacting noter.up@slgov.org.uk

Photographs are kindly reproduced by permission of Ruth Knight.

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The articles published in Noter up represent the views of the contributor and are not necessarily the official views of the SLG, or of the Editorial Board. The magazine or members of the Editorial Board are in no way liable for such opinions. Whilst every care has been taken to ensure that the contents of this issue are accurate, we cannot be held responsible for any inaccuracies or late changes. No article, advertisement or graphic, in whole or in print, may be reproduced without written permission of the publishers.

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EDITORS LETTER

The October edition is as usual packed with a variety of interesting articles and a new feature detailing a report from the last NEC meeting. We hope you find it useful to know what your NEC is up to.

I recently completed a judicial work shadow placement at the Brentford County Court. What an incredible experience! I would advocate it to everyone and page 19 tells you how.

Congratulations to all those studious individuals who passed the Local Government Diploma in Law this year. It was by no means an easy course but thoroughly interesting and ultimately rewarding. If you want to broaden your horizons- give it a look.

See you at the Ball!

**TICKETS
ON SALE NOW**



www.slgov.org.uk

17th November 2007
The Chancery Court Hotel,
Holborn London

The 2007 SLG Charity Ball
The Chancery Court Hotel
252 High Holborn, London
WC1V 7EN

- Reception from 6.30pm
- Dinner Served at 7.30pm

- Dress: Black Tie
- Carraiges: Late

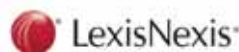
- Live Entertainment & Disco

For tickets contact Stephanie
Nunn at the Law Society

The Solicitors in Local Government
Annual Ball
17th November 2007

Sponsorship Packages

The SLG would like to thank the sponsors of the 2007 charity Ball



60 years representing local government solicitors!

East Midlands Branch

On 4th July our branch meeting was held in Grantham (Lincolnshire) with Jonathon and Martin Goolden, being the guest speakers. They gave members an informative talk on the latest developments in Standards including the new Code of Conduct.

The new style SIG Day covering education, social services and child care was held on 11th July at Leicestershire County Council. Most Counties/Unitaries were represented and it was an enjoyable event. The next SIG day will be on Wednesday 14th November at Lincolnshire County Council at 2pm. More details are available from the Joint Convenors - Robin Constable (robin.constable@derby.gov.uk) or Kamal Adatia (kamal.adiatia@leicester.gov.uk).

The AGM was held on Wednesday 19th September at Rushcliffe Borough Council (Nottingham) with George Curran (National Chair) and Jonathan Chamberlain, local government partner at Wragge & Co on Employment Law.

Our last Branch meeting for 2007 is on Friday 7th December at 11am at Leicester City Council (possible joint meeting with ACSes) with a Local Government Law Update.

Check out our separate website - www.etribes.com/emsigs - for details of our activities.

Guy Goodman
Branch Secretary

South and Mid Wales Branch

On 5th July 2007 14 members attended our Branch Meeting which was held at the offices of Torfaen County Borough Council. Guest speaker Tessa Shellens gave members an interesting and informative talk on Freedom of Information.

Our next meeting is due to take place at the end of November at the offices of Cardiff City Council. Details are yet to be confirmed but will be finalised shortly. The

AGM will also take place at this meeting. Nominations are now invited for the positions of Vice-Chair and Treasurer. If you are interested please email me. Nominations are now invited for the positions of Chair, Vice-Chair

Laura Mumford -
Branch Secretary
Newport City Council
Laura.Mumford@newport.gov.uk

North Branch

Our next Branch event will take place at the Newcastle Offices of Watson Burton on 18th October 2007, when they will kindly host a seminar covering employment issues relating to restructuring! Our National Chair will be joining us!!

Much interest has been expressed in recent employment law issues ... equal pay ... single status. Steve Newton (Redcar and Cleveland Council) chaired our new Employment Law Special Interest Group, which Sedgefield Borough hosted on 6th September 2007. The next meeting is 5 December again at Sedgefield Councils offices

Regular contact is still being maintained with Law Society, Regional Manager, Judith Mason, and a meeting took place last month to discuss current topics. Sadly, the Law Society has decided to close the Regional Office premises at Groat Market, Newcastle, which had previously been the venue of a number of meetings, including the North East Lexcel Focus Group. It is understood that, with new personnel arriving at Chancery Lane, the regional aspects of implementing Lexcel will be picked up once again in a different manner.

A talk from Ward Hadaway's PFI team has been organised for 22 November in Newcastle.

A training session is also planned at Dickinson Dees Stockton offices...details TBA

Our new/current Branch Officers are:-
Branch Chair: Julie Grant
(Stockton-on-Tees Borough Council)

Vice-Chair: Pat Holding
(Durham County Council)
Secretary: Dennis Hall
(Sedgefield Borough Council)
Treasurer: Stephen Rickitt
(Northumberland County Council)
NEC Representative: Pat Holding
(Durham County Council)
County Representatives:
Carmel Murray (Northumberland)
Geoffrey Wilkinson (Cumbria)
Vacancy (Tyne and Wear)
Pat Holding (Durham)
Richard Frankland (Tees Valley)

Our co-opted member is Andrea Barker, Wear Valley Council; there is now one vacancy as colleagues will recall that Colin Stockwell (Gateshead MBC) who has served on the NEC, has now retired; our trainee representative is Zingra Roberts, Durham County Council; and, finally, our Newcastle Law Society representative is Anna Flood of One North East.

Dennis Hall
Branch Secretary

London and Home Counties

L&HC had a frantic month in September with 4 of our SIGs meeting. As a result of the new Public Law Outline being trialled in London we are pleased to announce the Child Care SIG has been resurrected after a number of years and will be taking an active role in ensuring the voice of Local Government is heard throughout this pilot. We are pleased to announce that the Corporate & Governance SIG will be meeting shortly so those of you who are interested please contact Amrina the Branch Secretary. We couldn't go without reminding you all that the Ball takes place on the 17th November so we would love to see as many of you there as possible for what will be an even more spectacular event than last time. As this is the last edition of the year if we don't see you at the Ball or SIGs have a wonderful new year and remember any interesting articles for the January edition should be sent to the editor by the 14th December.

Amrina Fakhir
Branch Secretary

North-Western and North Wales Branch

It was standing room only at the Branch meeting on 28th September at County Hall, Preston. 52 members and friends filled the Main Conference Room in the Christ Church Precinct to hear two topical and informative presentations by counsel from 8 King Street Chambers, Manchester.

Karim Sabry explained the Corporate Manslaughter and Corporate Homicide Act 2007, which comes into force next April and which should facilitate the prosecution of organisations (including local authorities) whose activities lead to loss of life. Then Andrew Clark examined the relationship between the Freedom of Information Act 2000 and the law of confidence.

Lancashire CC kindly provided a complimentary buffet lunch beforehand, with Branch Chair and Deputy County Secretary, Ian Young, as the host. After the speakers, the remaining business of the meeting consisted mainly of a discussion on how to encourage participation in the Branch.

The next meeting is scheduled for Friday, 7th December at 10.30am (provisionally at Macclesfield BC) and will be a joint meeting with the North-West Branch of ACSes. Speakers will include Denis Cooper (Eversheds) and Graeme Creer (Weightmans), both with extensive service in local government, on governance issues.

For further details of the Branch and its Special Interest Groups, contact richard.lester@salford.gov.uk

Richard Lester
Branch Secretary

West Midlands Branch

Highways Special Interest Group
The next meeting has been arranged for 11th October at the offices of DLA Piper in Birmingham. There will be a number of items on the agenda and there will be a small item on village greens.
Convenor: Ian.Ross@telford.gov.uk

Planning Special Interest Group
The last meeting was on Friday 21st September at the offices of Wright Hassall Solicitors in Leamington Spa. It was entitled "Planning Enforcement – An Overview" and covered CLU's Enforcement notices, breach of condition notices, stop notices and s215 notices amongst other things. It was a very enjoyable and well-attended session.
For more information contact:
peterendall@warwickshire.gov.uk

New Employment Special Interest Group
The last meeting was on Friday 21st September at Telford and was an all day seminar presented by various Barristers from No 5 Chambers. This covered the much topical issues of equal pay and single status, conducting disciplinaries, compromise agreements and dismissals.
Convenor: yvette.berkeley@telford.gov.uk

Court User Group
The next meeting has not yet been finalised but is likely to be a seminar about Anti Social Behaviour at St Ives Chambers.
Convenor: sgill@solihull.gov.uk

Childcare SIG
I have been trying to find a new convenor for this without success so far. Any volunteers?!!!

New Commercial Law SIG
The last meeting was held on 4th July at the offices of Walsall MBC. There were presentations on terms and conditions used in tendering processes and a general information sharing session about the tender processes used by different authorities. This was a very useful session and the next will be on 4th October at Birmingham City Council's offices. The topics to be discussed include a general procurement update, sustainable procurement and outsourcing legal services work, with particular reference to the Legal Services Panel.
Convenor: DeanH@walsall.gov.uk

Branch Meeting/AGM
The last branch meeting was held on 14th September at the offices of Mills & Reeve in Birmingham.

The AGM also took place at this meeting. Mills & Reeve kindly gave a 2 hour seminar on employment law update, procurement and the planning white paper.

At the AGM a new chair was elected – Peter Endall (our Planning SIG convenor) and Deborah Wilson was elected vice-chair. Thanks to Deborah for all of her hard work as chair and good luck to Peter!

I am in the process of organising the next meeting which will be a seminar on Judicial Review which seemed, from comments made at the AGM, to be a subject that people would like to learn more about. I will circulate details soon but in the meantime if you have any queries please contact me.

Emma Harvey
Branch Secretary

Yorkshire and the Humber Branch

Our last branch meeting was in Scarborough on 18 July 2007 at the impressive Spa complex.

Our next branch meeting is on 16 November at Sheffield when we have a bumper bill. The main speaker will be Jim Button who will be speaking on the Gambling Act 2007 which will be timely as it is to be fully implemented from 1 September. George Curran the national chair and Dudley Lewis have accepted invitations to attend and we are also to be joined by Isobel Rowley of the Solicitors Regulation Authority. Sheffield City Council has kindly offered to provide a buffet lunch and this is somewhat of an experiment for the branch in that this is the first branch meeting we have had on a Friday afternoon.

Our special interest groups continue to flourish. The Commercial SIG was successfully re-launched on 24 September in Leeds and we also have special interest groups covering employment, housing, trainee and newly qualified solicitors, licensing, community care, planning law, childcare and education law.

Ian Spafford
Branch Secretary

ADVERT

THE FOURTH YOUNG SOLICITOR AWARD

The fourth Local Government Young Solicitor Award provides the only opportunity to recognise and celebrate the excellent and outstanding achievements of local government young solicitors.

Nominations are now sought from individuals working in Local Government with up to 10 years post qualification experience who have been innovative in making a material impact on their Local Authority's performance, been an exemplar of best practise or who have helped promote the best interests of local government lawyers.

Nominations can be made by yourself, by your manager, by a client officer or Member or anyone who recognises the important and extraordinary contribution you have made in the last year. Please nominate anyone who is eligible you think

has done great work in your local authority- whether large or small!

Criteria

The criteria on which the judges base their decisions are that the nominee should fulfil one or more of the following:

- Be innovative
- Be making or have made a material impact on their Local Authority's performance
- Be an exemplar of Best Practise
- Promote the best interests, and help raise the profile of, Local Government Lawyers

NOMINATION PROCESS

Please complete the attached nomination form for each entrant. Attached to the nomination form needs to be the following:

- Details about the nominee (maximum 150 words)
Please submit a general resume of when and where the nominee qualified and the posts held since qualification or coming to the profession.
- Details of the nominee's contribution (maximum 500 words)
Please submit a summary of why the nominee should receive the award with regard to the criteria outlined above. Examples of work done by previous winners have included responsibility for advising clients on the implementation of the Houses in Multiple Occupation licensing, advising on School PFI projects, drafting private acts of parliament, tackling anti-social behaviour, transfer of housing stock, innovative ways of saving the local authority money, or generally being a robust and meticulous lawyer who has provided a superb service to clients.

- One letter of support
Please supply a letter of support from another individual, supervising solicitor or client who have knowledge of the nominee's work during the relevant period.

- Photograph - Please supply a recent photograph in digital format (jpeg high resolution), for publicity purposes.

Closing Date and Awards Ceremony

The closing date for nominations is Friday 29 February 2008. The presentation ceremony will be held at the Black tie Dinner of the Solicitors in Local Government Weekend School to be held in Exeter in 2008 (date to be confirmed).

For more information including a nomination form, please go to www.slgov.org.uk an click on the link on the left hand side.

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COACHING FOR PERFORMANCE



Stephen Hopkins, Senior Northern Managing Partner, Eversheds, Stephen Cirell, Head of Local Government, Eversheds, David Hemery CBE, Deputy Chairman, Performance Consultants International, Helen Liddar, Oxford City Council, and Dudley Lewis, LGC

At this year's Weekend School conference in Cambridge, one session drew a large number of delegates. David Hemery CBE discussed how useful questions make a significant difference to individuals' performance at work and to their lives in general. He highlighted that, in the same way most sportsmen and women have coaches who help them to get to where they want to be and improve performance, coaching skills are being learnt and used to great effect by people in a local government context, from trainee solicitors to the Chief Executive.

David Hemery began his presentation with a video of his 48.12 second hurdles race which won him a gold medal at the 1968 Olympics. David began his career as a coach when on the medal podium he wondered "why me?" So he asked 83 top athletes what they believed to be the secret of their success. They were mentally well focused, capable of visualising their success and planning for it. They were physically well disciplined, worked hard, learned from their mistakes and came out stronger for them. Although their aim to reach the top caused a degree of chosen imbalance in their lives, they took a holistic approach.

Socially and emotionally the athletes developed high quality relationships with coaches and their team mates. Spiritually they also demonstrated high levels of personally integrity, and some a higher level of purpose. Above all they displayed high levels of self awareness and responsibility for their own success

and failures rather than blaming a setback on something or someone else, successful athletes look for what they can learn, or do differently, to be better prepared in the future.

David revealed what he had been thinking as he started that race. He knew that he had as much chance of winning as the other competitors however he decided his primary objective would be to run to his potential. His intention was to break the world record and hoped that would be enough to get the Gold. He recognised the power of using his mind in a positive way, visualising every possible scenario and imagining himself doing his best in those particular circumstances.

Members of the audience commended David for his inspirational presentation which included a demonstration as he lead the audience through a series of open questions he uses to produce the tangible first steps towards achieving goals. Although time was limited and the dialogue each participant had was an internal one, from the energy generated in the room there was no doubt about the magic and effectiveness of the questions.

Stephen Hopkins, Senior Partner for Eversheds in Leeds, is himself a coach and works to develop strategy for coaching within Eversheds. Eversheds has recognised the strong business case for the application of coaching principles and practice in their work

with clients and in staff development. Coaching competencies have been incorporated within their staff performance objectives and coaching is seen as having a direct and positive effect upon the bottom line of business.

Stephen said, "Eversheds recognises the impact a highly motivated workforce has on its business. Our research shows that investment in, and a genuine interest in their development, are key motivators for our colleagues. Coaching delivers this. Coaching differs from other approaches as it firmly leaves the responsibility for individuals own development with that individual. Whilst the coach will support and challenge the individual, the success of the programme is largely down to the commitment and drive of the individual

Stephen Cirell, partner and Head of Local Government at Eversheds is a strong advocate for the use of coaching within a local government legal setting. Stephen spoke about the benefits to local authority lawyers of applying coaching skills towards more efficiency, productivity and a harmonious teamwork. He also commented on the uses of coaching to improve and enhance career prospects in local government.

Stephen said, "Coaching can have many uses in the local authority setting. In particular, it can help those in a local authority legal department work to work better together and to increase productivity from within. But from the chief legal officer's perspective, it can be a useful tool with the Chief Executive and also the political management of the authority."

Questions from the floor asked about the distinction between the importance of the "tell" approach to management and the "coach" approach. People who are asked open questions are more likely to have the capacity to increase their awareness of and responsibility for their own behaviour, and improve it.

Stephen recommended the book Coaching for Performance written by David's colleague Sir John Whitmore. Together with David Whitaker they set up Performance Consultants and have pioneered coaching in the workplace in both private and public sector organisations for the last 16 years. In a legal context David explained that coaching questions can be used in a very positive way when giving feedback instead of the more conventional

'red-line' or 'tell' response. Asking "What was your intention in producing this document?" and then "How far does the document achieve this?" encourages the person to stay focused on their goal as well as take responsibility for their drafting. It is also open to the person giving feedback to add their advice about how the document could be drafted. Equally a lawyer who gets 'red-lined' feedback from a supervisor can use open questions "How can I best improve this?" to get more constructive feedback from that supervisor.

Oxford City Council has trained 12 staff from different disciplines across the Council to operate as internal coaches. The qualification they hold is the Institute of Leadership and Management level 5. Coachees apply for coaching as they do for any other training and they have 6 one and a half hour coaching sessions toward their stated objectives. Helen Liddar is a solicitor and coach with Oxford City Council and has also qualified as a GOLD coach with the personal development organisation Powerchange. She notes "Our job is to provide a psychologically safe environment in which coachees develop their perceptions of themselves and others whilst at the same time improving their performance."

Coach training includes how to ask useful questions, the structure of behaviour and how to maximise an individual's skill at connecting with others. If you want to find out more about coaching there are many good books and information on several good websites a few of which are listed below.

David Hemery is the Vice Chairman of the British Olympic Association and is passionate about the use of coaching to further the opportunities for British athletes at the 2012 Olympic games, "The benefits to the performers, of coaches asking effective questioning and listening attentively and empathically, are huge. Any one of these is worth having. The performers' feel involved, valued and heard. Their self-belief and self-confidence are increased as they recognise their own learning and development."

Many local government lawyers are now asking themselves the question "What do I stand to gain from coaching?" David Hemery has shown it works for Olympic athletes' performance. What about yours?

Resources

- <http://www.performanceconsultants.com/coaching/thelondonolympic2012.html>
- <http://www.powerchange.com>
- Coaching for Performance by Sir John Whitmore
- Sporting Excellence by David Hemery
- The Coaching Manual: The Definitive Guide to the Process and Skills of Personal Coaching by Julie Starr

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FOUNDATION/TRUST SCHOOLS AND NON-TEACHING STAFF - POTENTIAL ISSUES WITH THE TRANSFER

The Department for Children, Schools and Families (DCSF) is currently promoting the change of schools to Foundation or Trust status as the way forward, allegedly giving schools control over their own destiny. Many larger schools are now choosing to change.

The timescales are extremely short. While other externalisations often take many months of careful planning, a school Governing body can consult parents, take the decision to go for Foundation status in the summer term, and adopt a start date of 1st September. What however can easily be overlooked is the effect on staff, particularly the non-teaching staff. From 1st September they have a new employer. What legal processes are taking place, and what advice is needed?

At first the position appears reassuring. Under The School Organisation Prescribed Alterations to Maintained Schools (England) Regulations 2007 (no.1289), which came into force on 25th May 2007, all liabilities of the local education authority transfer to the Governing body which is the new employer. Schedule 1 Part 1 para 29 states that:

Transfer of staff for foundation change of category
29. Where a voluntary controlled or community school changes category to a foundation school, or from a community special school to a foundation special school-

(a) the contract of employment between a person to whom this paragraph applies and the local education authority has effect from the implementation date as if originally made between him and the governing body;

(b) all the authority's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the governing body on the implementation date; and

(c) anything done before that date by, or in relation to, the authority in respect of that contract or the employee, is deemed from that date to have been done by or in relation to the governing body.

The intention appears to be to give the employees, in most respects, even better rights than the Transfer of Undertakings (TUPE) regulations, made under the Acquired Rights Directive. The DCSF view, while giving the usual disclaimer that they cannot give a "definitive interpretation", is that these regulations replace TUPE, as regards staff transferring from a Local Authority to a Foundation School. In other words, the transfer of staff takes place under Education Legislation and not under the provisions of TUPE.

However, in one respect, the 2007 regulations do not give the employee the same rights as TUPE. TUPE gives the employee the right to object to the transfer and terminate his contract yet not be treated as having been dismissed by the transferor (i.e. the Local Authority). Regulation 32 of the Schools Organisation Regulations however, prevents the employee from terminating his contract on the grounds that he objects to the transfer. It is possible that regulation 32 is not lawful as it does not properly put the Acquired Rights Directive into effect. This could potentially be an issue if you have an employee who objects to the transfer.

This issue may not affect many employees as most will be happy to transfer to the new employer. However, another complication arises which will be of great importance to non-teaching staff, but may be easily overlooked in the enthusiasm of school governors to embrace Foundation status as soon as possible. This is the issue of pensions.

Teachers will not be affected, as they will be, and remain, in the Teachers Pension Scheme. However, non teaching staff will normally be in the Local Government Pension Scheme (LGPS). The 2007 regulations transfer to the new school Governing Body all the rights and liabilities of the authority in relation to staff. These will include the pension liabilities. However, the regulations apparently do not retain staff in the scheme. Instead the effect is to give the Governing body the duty to provide and pay for an equivalent pension for staff.

This could be very expensive for the Governing body, particularly where as is often the case the age and gender profile of the non-teaching staff are more expensive to fund than the average LGPS membership.

In order for employees to remain in the LGPS, the Governing body has to request the authority to pass a resolution under The Local Government Pension Scheme Regulations 1997 (as amended in 1999). Paragraphs 127 and 128 include a provision whereby the local authority can, in effect, take back the pension liability for the non-teaching employees who have transferred to the Governing body by passing the appropriate statutory resolution. Such an arrangement would secure membership of

the LGPS for the non-teaching employees who transfer to the new employer. Councillors may require an undertaking that the Governing body does not make decisions which increase the pension liability unreasonably.

In some cases it appears that schools have gone ahead with Foundation status without having resolved this issue. They have later asked their authority to pass a resolution under the 1997 regulations. As a result the employees were, for the intervening period, not members of the LGPS. What would happen if the authority refused to pass the resolution is unclear, but this could be a worrying position for the employees and Governing body alike.

It is also not clear from the regulations whether such a resolution can be retrospective. It may be that a challenge by the pension fund is unlikely. However pensions are too important to risk making mistakes.

Accordingly, if your authority has schools which are considering Foundation status, you need to liaise closely with your finance and personnel people to ensure correct advice is given to the schools, depending on your particular circumstances. They should be advised to apply to the authority for a '1997' resolution at an early stage, and certainly before the transfer to Foundation status takes place. This will ensure both proper protection of employees' pensions, and that the Governing body does not risk finding itself saddled with unexpectedly expensive liabilities.

Malcolm Nicholson
Solicitor to the Council
North Somerset

LEEDS CLARIFIES LAW ON EXTENDING ASBOs

High court holds that you can apply to vary an asbo by extending it's duration

On 9 July, the High Court handed down judgement in the case of Leeds City Council v RG, a case which begged the question 'can an ASBO be varied so as to extend the length of it?'

Local Authorities apply for ASBOs under Section 1 of the Crime and Disorder Act 1998, where a person aged over 10 has acted in an anti-social manner and an Order is necessary to protect relevant persons from further anti-social acts. Section 1(8) provides that the applicant or the defendant may apply for an ASBO to be varied or discharged by a further Order.

The original ASBO had been made in September 2004 in Leeds. RG was then aged 13, and an Order was made for two years. The ASBO was due to expire on 30 November 2006, and on 24 October Leeds City Council applied for a variation of the Order, inviting the Magistrates to extend the Order for three years to 30 November 2009.

Leeds Magistrates Court heard argument on whether they had the power to extend an Order. RG contended that variation meant a change to the terms of the Order, but did not allow for its extension. The Court decided that variation did not have the same meaning as extension, and so refused the Council's application. The Council challenged that decision by way of the case stated and the question posed for the High Court was "did the Court have power pursuant to Section 1(8) to vary by extending the duration of an Anti-Social Behaviour Order made

pursuant to Section 1(1) of the Crime and Disorder Act 1998?".

Before the High Court, Leeds City Council argued that the wording of Section 1(8) should be given its ordinary meaning. The Order in question was an Order in particular terms, and Leeds argued that the duration of the Order was as much a term as any of the prohibitions. The Council relied on the decision of the High Court in DPP v Hall [2005] EWHC 2621, where the Court considered Section 5(4) of the Protection from Harassment Act 1997. The same question arose there, namely did the wording variation permit an extension of the Order? In that case, the High Court held that it did permit an extension, as the duration of the Order was a term just like any other term.

Before the High Court, RG argued that an application to vary an ASBO by extending it was essentially an application for a new ASBO, and the Sub-Section should not be read in a way that permitted the Council to act without the normal safeguards, such as consultation and the rights of appeal that RG would have if a fresh application had been made.

The Court were persuaded that the word varied in the ASBO context should be viewed in exactly the same way as in the Protection from Harassment context in DPP v Hall. The High Court was not persuaded by RG's argument, though it was concerned that there was no right of appeal from a variation. However, they felt that the Defendant was protected because an application to vary can only succeed if the applying Authority puts before the Magistrates

material which justifies the extension as necessary. The High Court also stated that in the case of an application to vary the length of the Order, the Authority would need to persuade the Magistrates that it was appropriate to vary the length of an existing ASBO, rather than making an application for a new one.

Practice is varied around the country, with some Authorities applying for a variation, and others applying for a variation or a new ASBO in the alternative. It can sometimes be important to be able to apply for a variation as opposed to a new ASBO, as for example where the Defendant has continued to behave anti-socially, and subsequently has served time in prison as a result of his or her behaviour. If during the last six months of the Order, the Defendant is in custody, then he or she will not have behaved in an anti-social manner and an application for a fresh ASBO will not succeed. In those cases, the Council should look to vary the existing Order and argue before the Magistrates that this is necessary to continue the protection for the public. The alternative is to wait for the Defendant to be released from custody and begin acting anti-socially again before a fresh ASBO can be applied for. Where a Defendant has a long history of custodial sentences and breaches of the ASBO, this cannot have been what was intended when the legislation was passed to bring protection and relief to communities.

Gill Marshall
Section Head Regulatory
and Enforcement
Leeds City Council

"...the Council should look to vary the existing Order and argue before the Magistrates that this is necessary to continue the protection for the public..."



NEARLY THERE WITH PROCUREMENT DIR

The summer has seen some interesting developments in public procurement law most notably the agreement by the European Parliament of the text for a new “remedies” Directive. The existing public procurement regime, which the new Directive will supplement, applies to all purchases of goods, works or services made by Local Authorities above specified financial thresholds (£144,371 for goods and services and £3,611,319 for works exclusive of VAT) subject to certain limited exemptions. (It is worth noting that the Treaty principles of equal treatment, non-discrimination and transparency may apply to procurement decisions made below the thresholds as well, however). The Public Contracts Regulations 2006 (the Regulations) implements the relevant EC law and stipulate certain procedures, which must be followed before awarding any contract caught by the Regulations. The Regulations also provide a mechanism through which aggrieved tenderers can apply to the High Court if they feel that a public body has misapplied the law. The new remedies Directive, which is awaiting approval by the Council of Ministers, the final hurdle of EC legislative process, would substantially increase the rights of tenderers and provide them with new rights and remedies. Given the history of discussion behind the text, it is unlikely that Ministers from the Member States will choose not to adopt the Directive.

This means the text available on the website of the European Parliament (see [http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-](http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0278&language=EN#BKMD-2)

2007-0278&language=EN#BKMD-2) is almost certainly the final form of the Directive and therefore worthy of detailed consideration. Through extensive amendment, the text of the new Directive substantially replaces the existing remedies Directive 89/665/EEC which requires that there is a legal review mechanism for breach of EC procurement law. It is implemented through the Regulations. The new text follows the direction of travel the European Court of Justice began with the Alcatel judgement and introduces a new deterrent in the form of “ineffectiveness” for contracts let in breach of the procurement legislation.

Standstill

The Regulations contains provisions reflecting discussions between the Commission and the UK, to deal with the effects of the Alcatel decision. That decision sought to avoid the situation where a bidder was unable to challenge an unlawful contract award decision to try to secure the contract for itself, because when it discovered the decision the contract had been closed and a concluded contract could not be set aside.

In Alcatel, the ECJ ruled that for procurements caught by the EC public procurement Directive, a contract award decision must be open to review before contract conclusion. The possibility of the bidder still being able to bring a damages claim did not remove the need for the decision to be reviewable. In the later case of Commission v Austria, the Court confirmed that a compulsory standstill period was needed.

The Regulations require, in most cases, a 10 day standstill period between the contract

award decision and closing the contract. Important exceptions are for Part B service contracts (which are only partially subject to the Regulations) and call-offs from framework agreements.

New coverage

Subject to the possibility of the relevant Member State derogating, the draft Directive requires the compulsory standstill period to apply to all procurements within the scope of the Regulations. Under the Regulations, subject to the possible derogation, the standstill requirement will now also cover:

- Part B services contracts;
- call-offs from framework agreements, where a mini-competition must be held to choose the provider;
- public works concession contracts; and
- contracts awarded using the negotiated procedure without a call for competition.

So far as future implementation of the “remedies” Directive is concerned, Member States are allowed to derogate from the standstill requirements in two main circumstances. First, for call-offs made under framework agreements and, secondly, for contracts for which prior publication of an OJEU notice is not needed. Given the pro-framework stance of HM Treasury and the Office of Government Commerce it seems likely that there will be derogation in England, Wales and Northern Ireland. It would also make good sense to derogate in the very unusual circumstances where there are grounds for using the negotiated procedure without a call for competition.

“Clearly from a local authority perspective some of the new requirements will be burdensome not least because existing procurement processes will need to be looked at...”

H A NEW PUBLIC EFFECTIVE ON "REMEDIES"

As explained below, taking up the derogations does not remove the prospect of the relevant contract being "ineffective" if no standstill period has been observed.

Ineffectiveness

Basically, "ineffectiveness" bites in two circumstances. First, contract conclusion in breach of a requirement for a standstill period. Second, direct award (i.e. not following the required competition) in breach of the rules.

So, even though there might be derogation from the basic duty to have a standstill period for a call-off from a framework agreement following mini-tender, if the

mini-competition has not followed the Regulations, the remedy of "ineffectiveness" can apply. The only way around this for the particular contracting authority is to apply a voluntary standstill period.

A likely motivation for introducing "ineffectiveness" is that the law as it currently stands does not make any distinction between the contracting authority which simply breaches a technical requirement of the law, perhaps inadvertently, and the contracting authority which brazenly ignores the rules and simply makes a direct award without advertising anything. Although relatively rare in English and Wales "ineffectiveness" is likely to have

certain parallels with void contracts in the competition law regime.

A welcome change?

Clearly from a local authority perspective some of the new requirements will be burdensome not least because existing procurement processes will need to be looked at. It is likely that large and complex projects where there is funding from a third-party (such as in PFI and BSF schemes) will see banks particularly concerned at the prospect of lending on the basis of a contract that could subsequently be found to be ineffective.

The date for implementing the proposed directive is still

somewhat off. The deadline for transposition into UK law would be two years from the adoption by the Council of Ministers. Nevertheless, local authorities will note the clear intention of the European Commission is for there to be increased rights for tenderers at the expense of contractual certainty; whether tenderers want these rights or not.

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ADVERT

ROUNDTABLE EVENT NATIONAL KNOWLEDGE



On 26th September 2007 SLG hosted the Lead Professional and Special Interest Group (SIG) Convenors Roundtable Conference at Camden Council's Town Hall.

The event, ran by Guy Goodman (Deputy Vice Chair) and Stephen Turner (Branch Representative- Yorkshire & The Humber and lead professional) was well attended by SIG convenors and lead professionals from across the Country who came together to build upon the existing foundation of SIG's into a national knowledge network.

There are currently 51 Special Interest Groups (SIG's) throughout the 9 branches of SLG covering a range of subjects from Contacts, Planning, Housing and Environment to Childcare, Prosecutions and Education. The amount of SIG's

available and their location throughout England and Wales is a considerable asset to SLG and demonstrates exiting localised network sharing and real commitment from members at grass roots. When you examine the spread of topics covered by existing SIG's, they account for the majority of work a local authority lawyer is likely to undertake.

The theme of the conference involved expanding existing good

practices already exhibited by local government lawyers by information sharing and developing this into a more systemised approach. Guy Goodman explained, " We want to use the specialist knowledge we all hold for the good of our local community and the wider community. We know we meet regularly and we know we have great expertise". Stephen Turner echoed this and emphasised it was important for local government lawyers to get involved in law

"The collective knowledge of our membership is our most valued asset"

SIG Convenors Toolkit!

Look out for the new SIG convenors toolkit, which will shortly be available on the SLG website. It contains everything you need to know about setting up your own SIG and provides helpful guidance and forms to get you up and running. SIG's averagely run 3 times a year and many authorities are willing to provide a room without cost. Why not chat to your colleagues and see whether your area could benefit from knowledge sharing?

LAYS FOUNDATION FOR DGE NETWORK



reform adding: "the collective knowledge of our membership is our most valued asset".

The Conference was also attended by John Woolf from the Law Society who has been consulting with employed solicitors over the past year regarding how the Law Society could best provide a service. Mr Woolf advised that the Law Society were keen to publish practice notes to assist in-house solicitors and appeared most taken with the feedback the conference was able to provide at the time on the areas of most concern to local government lawyers.

The conference was called to a close by the Chairman of SLG, George Curran who reiterated that knowledge was a fundamental part of the groups activities, "if we can draw together the strands of knowledge from SIG members and convenors and link that with the Law Society committees we will have a reservoir of information when asked to respond to consultation papers. We have a great advantage, we are not in competition with each other, we are willing to share information and therefore this initiative can only grow".



Are you claiming your CPD points from SIG meetings?

Under the current CPD accreditation scheme at least 25% of the requirement must be met by participating in courses that are offered by providers authorised by the Law Society and which require attendance for one hour or more. However, the remaining 75% of the CPD requirement may be met by undertaking a wide range of activities that are non-accredited including preparing, delivering and/or attending courses. So the next time you attend a SIG which is not authorised or which does not have a speaker who will authorise you under their scheme, remember you can still claim CPD points for up to 75% of the total points required. For more information on the scheme and specific time and points allowed please go to www.lawsociety.org.uk.



SHARING LEGAL RESOURCES WITHIN LOCAL AUTHORITIES-CAMDEN COUNCIL'S SHARED LEGAL SERVICE

The ongoing planning reforms, in particular the Government White Paper "Planning for a Sustainable Future" encourage Councils to innovate and achieve efficiency in response to local needs by challenging traditional methods of service delivery and minimising waste. However it is clear that authorities will be expected to deliver against rising expectations within, at most, slow growing resources.

One of the innovatory ways for local planning authorities to meet this challenge is to develop systems for providing legal services in partnership with other public bodies as well as the private sector. Provision of legal services is potentially one of the pressure points in the planning system. In order to cope with the ever increasing workloads, coupled with limited staffing resources, authorities are often forced to outsource their legal work to high cost external law firms. The pressure has been exacerbated in recent times by the need to improve turnaround times for legal Agreements under S106 of the Town & Country Planning Act 1990 ("TCPA") with developers.

A partnership between local authorities which has provided huge benefits is the shared planning legal service with the London Boroughs of Hackney and Hounslow, pioneered by the London Borough of Camden's Legal Services Planning and Licensing team ("PLT"). Camden is now looking to expand the shared service by making it available to other planning authorities.

PLT's main external client has been the London Borough of Hackney. From 2002, PLT has

delivered significant elements of the planning legal service to the planning department of the London Borough of Hackney, including (until recently) undertaking all "Major" legal agreements under section 106 of the TCPA (and meeting the 13 week deadlines) together with Planning Inquiries. PLT also dealt with overspills of Hackney's planning enforcement cases and prosecutions.

Since 2006, PLT has also had an arrangement with the London Borough of Hounslow to do their overspill planning legal work.

While these arrangements have produced a financial benefit for Camden in terms of income generation which can be used to subsidise other in-house services, the arrangements also provide huge benefits to the other boroughs.

Where a planning authority does experience an overspill in legal work, PLT offers a "better and cheaper" alternative to private solicitors. Camden is one of the top ten performing Councils in England. As a local authority PLT charges a fraction of what most private sector firms for dealing with the other boroughs' work. Furthermore, as PLT recovers fees for Section 106 agreements, most of the cost to the external client is offset by fees recovered from private developers. For example, in 2005/2006 PLT reimbursed Hackney with section 106 fees equivalent to four-fifths of the money paid to PLT for the service. In 2006/2007, the fees recovered for Hackney covered three quarters of the total amount of the service.

However the rewards have had far broader reaching benefits than purely monetary

ones. These include:

- "Added value" over private solicitors because unlike private sector lawyers PLT has day to day experience of how Councils work and all the subtleties that arise from being accountable to elected members and local communities.
- Sharing knowledge information and experience to facilitate benchmarking and standard approaches, both with planning clients and in house legal staff. For example, approaches to drafting used in Camden's Kings Cross section 106 Agreement have been replicated in agreements drafted for Hackney on the Dalston Junction Interchange site. Another example is the development of a joint database of preferred Counsel for Planning Inquiries using increased bargaining power to negotiate better deals for Counsel's fees.
- The fostering of closer working relationships - whilst Hackney's approach has been influenced by Camden, for example in affordable housing policies, experience in Hackney, on high buildings, heritage issues and live/work arrangements has benefited Camden.

As a result of the benefits of this arrangement, the PLT has also been able to build a strong team with a pool of skills, knowledge and resources which has put it in excellent stead to handle complex redevelopments and has ensured that staff possess the skills necessary to draft and negotiate major and complex developments.

For example, in March 2006 Camden approved (subject to a section 106 Agreement) development proposals for the main Kings Cross site including commercial, housing, retail and education. PLT were involved in writing the

lengthy Committee report and, with some private sector support, in settling a very complex section 106 Agreement. In 2007 the Kings Cross permissions were the subject of a Judicial Review by the Kings Cross Railway Lands Group. PLT were involved in successfully managing the proceedings with the High Court finding in the Council's favour and the Council being awarded costs.

Further examples include some of the flagship projects undertaken in conjunction with Hackney, including:

- PLT representing Hackney in a succession of legal challenges which culminated in the Court of Appeal in 2003 and 2004 in respect of the East London Line Extension;
- A £104,000 fine in a Hackney prosecution handled by Camden in 2006 for a breach of planning control relating to unauthorised residential lettings.
- PLT's work on the Dalston Lane proposals which involved approximately 350,000 square feet above the East London Line station incorporating a transport interchange and 550 additional dwellings (many of them affordable) and commercial accommodation.

PLT's shared legal service has been great success and was shortlisted for the MJ Legal Achievement of the Year Award in 2007 and it is hoped that the lessons learnt are of value to other authorities in seeking to change the traditional ways of working to meet the challenges set by central government. PLT would now like to expand the service to work with other planning authorities both inside and outside London -if any authorities are interested, they should contact Aidan.Brookes@Camden.gov.uk or Breellen.Warry@camden.gov.uk.

STUDENT WORK EXPERIENCE - A DIFFERENT APPROACH

Back in 2005 Legal Services at Leicester City Council decided to establish a Student Placement Scheme (SPS) in partnership with the Department of Law at De Montfort University (DMU).

The Rationale

Like all other local authorities we were having difficulty recruiting quality solicitors into our service. We already contributed to student recruitment events held at DMU as a means of publicising career opportunities within local government as a positive alternative to private practice, but it was felt that the SPS, if successful, would result in those students who have had a positive experience with us becoming advocates for local government.

A further reason for the Scheme was that rather than dealing with ad hoc requests for work experience we could offer a quality placement experience for both students and ourselves, under a formal, structured procedure emphasising the seriousness of our intention requiring equal commitment from the students.

The Scheme

We entered into a Memorandum of Understanding with DMU for them to select 2 GDL or LPC students who would be employed (at a nominal SCP 6) by us for July and August of each year with the first year being the Summer of 2005.

Each March presentation is made to students about working in local government and the Scheme inviting applications to be submitted to the Careers Tutor. Students submit a CV together with a statement as to why they want to participate and a list of 5 Objectives that they wish to achieve during the placement. The Tutor chooses 2 students based on the applications and her choices are approved by a senior academic.

In the three years will have now run the Scheme we have had 5 LPC students: Nikki Adams and Emma Cathrall (2005), Helen Atkinson (2006) and Adele Collyer and Kit Rakkar (2007).

The students have had experience across the range of services

that we provide and our Team Leaders and fee earners have been very supportive in providing opportunities for the students to have some practical experience and undertake work that has been of value to us (indeed some of it being rechargeable to our clients). It has been a mutually beneficial experience and a great success. Nikki and Emma are now trainees in local authorities and the others enthusiastic about a career in local government.

The Student Voice

But don't take my word for it here are Nikki's thoughts:



"The Scheme gave me an opportunity to gain insight into the huge range of legal work undertaken by Local Authorities

and the wider issues affecting lawyers within the public sector.

It enabled me to gain first hand experience of exactly what it means to work in Local Government and a large legal team such as that at Leicester City Council. I gained exposure to high profile cases and was given the opportunity to take part in large projects.

It opened my eyes to new areas of Law that I never dreamt would be of interest to me prior to my placement. Not only did I make some valuable contacts and learn many valuable lessons, I also found my niche within the wide world of law. "

Now if every major local authority legal department had a similar scheme...

Guy Goodman
Head of Community
Services Law
Leicester City Council

Ever Thought of Becoming a Judge?

A key objective of the Lord Chancellor's ongoing initiative to widen diversity within the judiciary is to encourage more solicitors to seek judicial appointments. The Ministry of Justice is working to dispel the notion that only people from a narrow social, educational and professional background can become judges.

Whilst this is not something that can be achieved overnight, there are a number of initiatives underway to support greater diversity in the judiciary and encourage more solicitors to apply for judicial service.

The Judicial Work Shadowing Scheme is open to any lawyer. It provides an opportunity to experience first hand the working life of a judge – both in and out of court. The scheme allows solicitors or barristers to spend up to 3 days shadowing a Circuit Judge, a District Judge (Civil), a District Judge (Family), a District Judge (Magistrates' Courts) or a Tribunal member, to help them decide whether to apply for an appointment as a Recorder, Deputy District Judge or part time Tribunal member.

A shadower observes a judge's main duties including, where appropriate, preparing for a trial, presiding over court proceedings, or sentencing. Reasonable adjustments will be made to enable disabled people who wish to participate in the scheme. It is hoped that the scheme will help to encourage more applications from women, minority ethnic and disabled lawyers, and others, who might not otherwise have considered that judicial service was for them.

The scheme is run centrally by staff in the Directorate of Judicial Offices for England and Wales. Placements are arranged in co-operation with HMCS or the Tribunals Service, and participating judges and their clerks. The scheme is free of charge, but a shadower must cover their own travel and subsistence costs, except where the payment of these would constitute a reasonable adjustment for those with disability. (See article by Helen Bennett).

In addition to supporting solicitors who want to get a better sense of what judicial office entails, we are working to support more flexible working arrangements

for judges to help support and bolster diversity. Flexible working is designed to meet the needs of a broad range of people and their circumstances. These might include, wherever possible, different types of working patterns, part-time working or reasonable adjustments to accommodate disabilities. Part-time salaried appointments are available for permanent judicial posts below High Court level which enable appointees to work reduced hours.

Enabling more flexible working patterns where possible is all part of ensuring that the culture and working environment for judicial office holders encourages and supports a diverse judiciary. This was one of the key planks of the Judicial Diversity Strategy, which was published jointly by the judiciary, the then Department for Constitutional affairs (now MOJ) and the Judicial Appointments Commission in 17th May 2006

Another key element of the strategy is to widen the range of people eligible to apply for judicial service. From 1st April 2008, Fellows of the Institute of Legal Executives and a range of other legal professionals will join solicitors and barristers with five or seven years post-qualification legal experience in becoming eligible to apply for judicial office. Availability of positions will cross a wide spectrum of occupations – civil, criminal and tribunal.

So the message is clear – if you are a solicitor, and you've never considered judicial service as part of your career prospects – why not? More generally, if you would like to find out more, information about careers in the judiciary go to www.justice.gov.uk, about the application process go to www.judicialappointments.gov.uk or how to shadow an existing judge go to http://www.judiciary.gov.uk/publications_media/general/work_shadowing.htm.

Suzanne Clack
Policy Advisor
Judicial Diversity Branch



Representation

The Law Society continues its renewed focus on representing the needs of in-house solicitors, including local government. The new Legal Policy Team focuses on law review and reform. In relation to solicitors in local government the Legal Policy Team will be looking at:

- engaging with the debate around the local government White Paper and Local Government Association prospectus for local government as a means to promote the role of solicitors within local government, particularly considering pressing with SLG for Ministerial guidance on the qualifications required to be a monitoring officer.

- identifying in order of priority those specific issues and areas of practice on which local government solicitors would welcome Practice Notes assisting them to meet regulatory standards or legal obligations

The Legal Policy Team would like to thank those solicitors who contributed to the project and SLG for their contribution.

Practice notes

The Law Society's recently published Practice notes include Anti-money laundering and Lasting Powers of Attorney. These can be viewed at www.lawsociety.org.uk. Following SLG's Lead Professionals and Special Interest Groups Roundtable conference on 26th September at Camden Town Hall the following policy issues and potential practice notes were raised:

Legal Privilege The recent European Court decision on Privilege has implications for local government solicitors as they are in house lawyers. There is also a privilege issue where legal advice is disclosed to local authority complaints investigators.

Conflict of Interest Local government solicitors are increasingly asked to advise third parties. Guidance is needed which interprets the Employed Solicitors Code.

Local Authority Prosecutors They are doing an increasing amount of prosecution work but local authorities are not included in the group of government departments involved in prosecution; they need to be as there is a joint agreement for prosecutors which local government lawyers are excluded from Child Care because of the decrease in legal aid in child care cases there will be an increase in the number of unrepresented parents. Local government solicitors may benefit from a Practice Note setting out how they should behave in this situation.

Your views

If you have any ideas on policy issues and practice notes that the Law Society may consider on your behalf please contact me.

Legal Professional Privilege "AKZO" case The Law Society has condemned vigorously a judgment which dismissed Akzo Nobel's complaint against the European Commission over seized documents, which the firm says were covered by lawyer-client confidentiality.

The EU's Court of First Instance delivered its judgment in Case T-253/03/T-125/03 Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v Commission. The Law Society is deeply concerned that the result will harm the interests of improving business practice.

The Law Society has lobbied extensively within the European Commission to draw attention to the important role played by in-house counsel in good corporate governance. The Society highlighted the fact that there are many solicitors in these roles who are regulated and have a core duty of independence.

Des Hudson, Law Society chief executive, says: 'It appears to be a foolish move by the court not to refresh its case law to reflect the realities of the 21st century. The role of in-house counsel has evolved greatly since 1982.'

'It is an outrageous suggestion that the advice given by solicitors, who are bound by the Law Society's high professional standards, should not be afforded the same level of protection merely because of their employed status. This inequality between members of the same profession is unsustainable and it is disappointing that Court did not set this straight.'

'In addition, this situation would appear to run counter to the European Commission's ambition to increase the culture of compliance within European companies. Unrestricted access to in-house counsel provides informed and cost effective legal assistance in ensuring such anti-trust compliance.'

'The Court may have ruled, but we will continue to work hard with the Commission and the other EU institutions to ensure the advice of in-house solicitors is given the protection it merits.'

Supporting Pro Bono Work

The Law Society is active in raising the profile of the extensive pro bono work undertaken by solicitors in firms of all sizes, as well as in-house legal departments in both the domestic and international arena. Such work benefits a range of clients from charities and community groups, to individuals whose cases fall outside the scope of legal aid.

Throughout the year and particularly during National Pro Bono Week, we host events across the country recognising and celebrating the range and impact of pro bono contributions made by solicitors.

By partnering with other organisations, such as LawWorks, we support specific projects such as the special helpline to refer victims of the 7 July London bombings to a panel of law firms offering pro bono assistance.

In all our activity, we stress that pro bono work is never a replacement for, and only an adjunct to, a properly funded legal aid system.

For further information, please contact our pro bono co-ordinator, Kate Walmsley on 020 7316 5792 or e-mail kate.walmsley@lawsociety.org.uk.

National Pro Bono week – 2007

National Pro Bono Week, now in its sixth year, is a campaign to celebrate the range and impact of pro bono activity undertaken by lawyers, often in conjunction with other professionals, giving their services for free. It runs from Monday 12 November to Saturday 17 November.

National Pro Bono Week is organised by the Law Society, Bar Council, Institute of Legal Executives, LawWorks, Bar Pro Bono Unit and ProHelp. Solicitors, barristers, legal executives, law students and other professionals will volunteer to help people and charities at events across England and Wales during National Pro Bono Week.

Further information

For more information about pro bono and further details of events taking place during National Pro Bono Week 2007 please visit: www.probonouk.net

Chancel Repair Liability

There has been huge support for the Law Society's campaign to seek abolition of chancel repair liability. With that support, the Society has put the issue back on the political agenda. Depending on where you live, you may be liable to contribute to the repair costs for their local church's chancel. This type of liability has existed unchanged since the Reformation. The Law Society is calling for the abolition of chancel repair liability and its replacement with a more sensible system for funding the maintenance of historic buildings. The chancel repair liability system is unsatisfactory for a number of reasons:

- It is uncertain and capricious because it's often very difficult to ascertain the existence or extent of the liability.
- It is increasing the cost of conveyancing.
- It is discriminatory, benefiting only churches of one denomination.

The liability was highlighted quite recently by the case of *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank*. The House of Lords, reversing the Court of Appeal's decision, held that enforcing the liability did not contravene the Human Rights Act.

This case has drawn attention to the potential liability in a disproportionate way and this in turn has distorted the market for searches and insurance products.

In 1982 the General Synod of the Church of England resolved that chancel repair liability be phased out over 20 years, and in 1985 the Law Commission recommended that it be abolished. The Law Society made a powerful submission to the government, calling for abolition accompanied by appropriate financial contributions to historic churches.

Further information

For more information please visit our website www.lawsociety.org.uk

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LAW SOCIETY FAMILY LAW COMMITTEE AND CHILDREN LAW SUB COMMITTEE

Report by Graham Cole, SLG representative on the Committee and Sub-Committee

In May 2006, I was notified that I had been appointed by the SLG as its representative on the Law Society Family Law Committee and Children Law Sub Committee.

Since then, I have attended meetings of both the Committee and the Sub Committee on a regular basis.

The past year has been dominated by consideration of the Carter reforms to legal aid. These involve changing the system of legal aid remuneration from hourly rates to fixed fees. This has met with widespread opposition from private practice and the Law Society has been lobbying hard against these proposals. These changes are also of concern to local authority child care lawyers as there is a fear that private practitioners will withdraw from legal aid work leaving more unrepresented litigants in care proceedings. This is likely to increase delays and the length of court sittings, causing greater expense to local authorities. It will also raise practical problems such as the provision of court statements and bundles in situations where litigants are leading transitory lifestyles. More importantly, vulnerable individuals will be denied effective representation and the interests of children could be prejudiced. Consequently, local authority representatives on the Committee / Sub Committee have shared the concerns of their colleagues in private practice and supported their representations to government. The Local Authority Child Care Lawyers Group (LACCLG) also made a submission expressing its concern at the proposals.

Carter aside, the Committee and Sub Committee have been

subjected to the upheavals brought about by the restructuring of the Law Society and the separation of its representational and regulatory functions. Both have had to make submissions for administrative and policy support for the coming year. Some of the support was denied as the subjects identified by the Committee / Sub Committee were not seen as priorities by those having to take a broader view of the Society's priorities. The subjects that did obtain support were :-

Unification of the family courts
Delays in the London Family Courts
Care Proceedings Review – revised statutory guidance has been published by the Department for Children, Schools and Families and this will support the introduction of the Public Law Outline (PLO) in April 2008 when it replaces the Judicial Case Management Protocol (JCMP). This will set a new framework for lawyers involved in care proceedings with particular emphasis on the work of the local authority at the pre-proceedings stage.
Accreditation

The system for accreditation for the Law Society Children Panel was due to be changed, but has been put on hold pending a review of accreditation schemes by the Solicitors Regulatory Authority (SRA). The Committee / Sub Committee are keen to see the Children Panel remain in operation as an effective means of ensuring high standards for child care legal practitioners. At present, applicants will be able to continue to apply for membership on the basis of the current accreditation system and existing members whose membership was extended for over 2 years can now re-apply. I have recently heard that my application for re-accreditation has been successful !

The other key issues that have dominated discussion have been :-

Family Procedure Rules – a new set of court rules to cover all three levels of the family courts is being prepared (although the timetable for their introduction has been slipping and it is unlikely to be until 2009)
Guidance to solicitors acting for children.

The Chief Medical Officer's report on arrangements for instruction of expert witnesses
Reform of child maintenance
Development of mediation and dispute resolution schemes
Cohabitation – the Law Commission has proposed changes to the law which are undergoing consultation

It is pleasing to note the increasing representation of local authorities on the Sub Committee, and in particular, the recent appointment of Uma Mehta (formerly of Essex, now of Islington Council) as Chair of the Sub Committee. It has been possible for local authority representatives to influence debate and ensure that the local authority perspective is taken into account in responding to consultation exercises and requests for the views of the solicitors profession. I have found the experience of sitting on these bodies very rewarding, both personally and professionally. Over the next year, the introduction of the PLO will be of particular interest to local authorities and I hope that I can contribute in raising awareness of the issues involved through my membership of the Committee / Sub Committee and being able to alert other local authority lawyers at an early stage of future developments.

Graham Cole
Solicitor
Luton Borough Council

SLG representative on the
Law Society Family Law
Committee and Children
Law Sub Committee

“It is pleasing to note the increasing representation of local authorities on the Sub Committee”

REPORT OF NATIONAL EXECUTIVE COMMITTEE MEETING ON 21st SEPTEMBER 2007

A Visit by "the Law Society's Gazette"

1. Committee business halted for a visit from the Acting Editor of "the Law Society's Gazette" who told those present that anything which they purported to say off the record would be memorised and printed in a future edition, whereas a quote for the next issue might be checked for accuracy with a telephone call just before the presses rolled. That accorded with the experience of Dafydd Jones (Gwynedd C.C.) The Editor said that his team of 6 journalists was too thinly spread (0.5 f.t.e for local government) to seek out local government lawyers for news, but he hoped that they (with time to spare) would send in some items which would be edited and published, if juicy enough. He thought that local government was at its most newsworthy when compulsory competitive tendering was required of local authorities (1996!). News items are finalized each Tuesday, and other items earlier.

Special Interest Groups
– National Recognition of Excellence

2. On 26th September, 2007, Guy Goodman (Leicester C.C.) convened a Roundtable Event of S.I.G. Convenors and the Lead Professionals appointed to respond to consultations for S.L.G. on issues within their expertise. About 30 out of a possible 80 booked to attend to witness the launch of the S.I.G. Convenor's Toolkit – less heavy and more effective than the toolkit which came with my car. It is in Special Interest Groups that S.L.G. excels.

3. There are local government solicitors on several of the Law Society's specialist committees. Uma Mehta of Islington L.B.C. is Chair of the Children Law Subcommittee of the Family Law Committee. S.L.G. has 5 Lead Professionals. They are Anjeli Bajaj – Freedom of information and Corporate Manslaughter (on sick leave after a near fatal accident): Anjeli.bajaj@coventry.gov.uk;

Stephen Turner – Procurement and Regulatory Enforcement : Stephen.turner@hullcc.gov.uk; Sheri Holland – Child Care: sholland@leics.gov.uk; Nick Graham – Education: nick.graham@oxfordshire.gov.uk; Winston Brown – Employment: Winston.brown@hackney.gov.uk.

The End of an Era

5. Peter Rhodes has distinguished himself not only with Liverpool C.C. and in the field of rugby, but as a past president of Liverpool Law Society, a past chairman of S.L.G's predecessor, the Local Government Group of the Law Society, and as treasurer of that Group and S.L.G. Good with figures as he is, he cannot remember for how many years he has served as treasurer; he would need more fingers! Treasurer of an organization is not an attractive post to fill (except to the wrong sort of people – as some community groups discover!). The Group owes Peter a huge non-pecuniary debt of gratitude for his tireless work because... well yes, he is getting tired of it, and he will not seek re-election at the A.G.M. in 2008. Peter is one of those who started with double entry book-keeping in real ledger books when quill pens were out of date. (He uses a computer now!). We all owe it to him to look for his 21st century successor.

The Law Society's Hall

6. The hall is conveniently situated for provincial solicitors attending a judicial review in the High Court. It is being refurbished, and the September S.L.G. meeting took place round the corner in the President's house. He really has a flat upstairs. The last time that I was in there was not to face a disciplinary hearing, but, when, after London Young Solicitors had persuaded the Law Society to include young solicitors on the panels who used to interview prospective trainees to satisfy themselves that they were of good character before being allowed to enroll with the Law Society, I sat on such panels. There was ample room for a panel

of 2 or 3 to intimidate a candidate. But for a committee of 30!

Electoral Registration Officers Challenge the Audit Commission

7. There is conflicting legal advice on the alleged right of the Audit Commission to obtain unedited electoral rolls to fish for fraudsters. The Association of Electoral Administrators say "No, the electors have not been warned." The contrary view relies on section 6 of the Audit Commission Act 1998 and Regulation 94(3) of the Representation of the People (England and Wales) Regulations 2001.

International Officer Submerged

8. Nigel Roberts, the International Officer for whom overseas trips are the norm, has the misfortune to work for Gloucestershire C.C. Although his office is no longer afloat, his duties are now being undertaken by Deborah Wilson (Worcestershire C.C.) and Suzanne Bond (Tower Hamlets L.B.C.).

Honorary Members

9. The N.E.C. can make someone an honorary member. A list of 54 known living members was presented. A nostalgic trip for some readers. Not too much time was devoted to "who was articulated to whom". The amazingly efficient John Chirnside, who steered the Local Government Legal Society into the last third of the 20th century and the creation of the Local Government Legal Society Trust and the Local Government Group of the Law Society, while running a council at Abingdon on the side, has drawn attention to a written history of the first glorious 25 years of L.G.L.S., and declined to re-write them. Honorary membership is a mere token of thanks to people who have given extraordinary service to S.L.G. and its predecessors. It costs S.L.G. one place at dinner and b&b at the week-end school, but that is not why these heroes did it!

Graham Cooper
Trafford M.B.C.

"Peter Rhodes has distinguished himself not only with Liverpool C.C. and in the field of rugby, but as a past president of Liverpool Law Society, a past chairman of S.L.G's predecessor, the Local Government Group of the Law Society, and as treasurer of that Group and S.L.G"

LGG events feature quality speakers including QCs and offer exceptional value for money. As the leading legal training provider for local authorities LGG has once again assembled a wide range of courses to cover the needs of everyone. These are set out in the 2007 programme below

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	NOV			<p style="text-align: center;">A SELECTION OF COURSES FOR 2008</p> <p>January Management and Skills Module 3 15/01/2008 London</p> <p>Town and Country Planning: Section 106 31/01/2008 London</p> <p>February ASB Advocacy 07/02/2008 London</p> <p>Monitoring Officer Conference 26/02/2008 London</p> <p>March Committees - Basic Survival Guide 14/03/2008 London</p> <p>Dealing with Persistent Complainants 19/03/2008 London</p> <p>A - Z of Injunctions 20/03/2008 London</p> <p>April Adoption: Workshop 24/04/2008 Manchester</p>
<p>Hearing Preparations 01/11/2007 Leeds</p> <p>Essential Guide to Overview & Scrutiny Committees 01/11/2007 London</p> <p>Management and Skills Module 3 - London 02/11/2007 London</p> <p>ASBOs Made Easy 02/11/2007 Manchester</p> <p>Planning Law Basic Survival Guide 05/11/2007 London</p> <p>Evidence Preparation Workshop 06/11/2007 Leeds</p> <p>Management and Skills Module 1 06/11/2007 London</p> <p>Education - Truancy Issues 06/11/2007 London</p> <p>Highly Effective Skills for Working Teams 07/11/2007 London</p> <p>The Gambling Act 2005 07/11/2007 London</p> <p>Traffic Regulation Orders 08/11/2007 London</p>				

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