

NOTE *Rup*

The Journal for Solicitors in Local Government

Features

- *Lead Professionals*
- *School Exclusions*
- *Age Discrimination*
- *ASBO Appeals*
- *Empty Homes*

Interview with Des Hudson,
the new Chief Executive of
the Law Society

ADVERT



NEC IN ACTION



National Executive Committee

Summer may be a time for holidays, taking it easy and relaxing but the work of SLG goes on and you will be pleased to know that the NEC has been keeping busy on your behalf. We have continued to progress a number of key issues:

- Following a period of consultation, SLG has now formally adopted an equalities and Diversity policy and the Equalities Working Group, under the leadership of Linda Walker (Durham County Council) have produced an strategy and action plan working towards implementing the Equalities Standard for Local Government.
- Preparations for the third SLG Charity Ball being held at the Chancery Court Hotel, London on 18th November are well underway. Early ticket sales have gone well but there are still some left, so contact Stephanie Nunn to book your place (Stephanie.Nunn@lawsociety.org.uk).
- The SLG website (www.slgov.org.uk) has served the Group well over the last couple of years but we are keen to develop this further and provide greater functionality, including an improved Forum and better access to documents and information. We have therefore agreed to embark on a major revamp. If there is anything in particular you would

like to see on the new website then please let us know.

- Earlier in the year you may have seen a Local Government Legal Workforce Study carried out by the Employers Organisation with the support of SLG. This drew attention to the growing recruitment problem amongst local authority legal departments. In response to this, SLG is renewing its careers brochure and will be taking other steps to help publicise local government as a career choice for lawyers.
- On a similar theme, the Trainee Solicitor representatives on the NEC have developed a work programme for the year ahead and we will be seeking to have a presence at a number of university careers fairs around the Country. If you would be interested in helping out at a careers fair in your area or if you are a trainee and would be interested in getting together with trainees then please contact your local branch secretary.
- Finally on this theme, we hope to have talks with the College of Law about the possibility of introducing a local government element to the LPC and we will shortly be meeting with ACSes to discuss ways in which we can develop a range of learning opportunities for those lawyers and administrators who aspire to more senior positions.

As Chairman, I am continuing to visit the different branches around the Country and I am particularly pleased that the South West Branch is active once again. My thanks to Kevin Hill (Bristol City Council) who has now taken over as secretary to that branch and who joins us on the National Executive. Another new face on the NEC is Emma Fownes (Telford & Wrekin) newly appointed secretary of the West Midlands branch. At the same time, Carol Evans (Staffordshire) and Deborah Upton (Medway) have now stood down from the NEC but my thanks to both of them for their past contributions.

Finally, a reminder about the Local Government Young Solicitor Awards which is kindly being sponsored by Trowers and Hamblins and will be presented at the annual Weekend School next year in Cambridge. This is the third year the award has been in existence and SLG hope to see even more nominations, reflecting the diverse and innovative contribution of the young solicitors in government. Please start considering whom you would like to nominate. Further details will be available shortly on the website and in the January edition of *Noter-Up*.

Nigel Snape
Chairman, SLG

I am particularly pleased that the South West Branch is active again



NOTERup

The Journal for Solicitors In Local Government

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EDITORS LETTER

Autumn is finally upon us and reflecting over the last few months, what a busy summer SLG has had! The lead professionals are firmly in place and pages 16 & 17 introduce the new appointments and detail all the work which has already been undertaken with plans for the future. Equality and Diversity is also firmly underway and we are actively seeking consultation with our members.

The Editorial team were lucky enough this edition to obtain an interview with the new Chief Executive of the Law Society, Des Hudson who gave an engaging and detailed response to specific questions asked

in relation to government solicitors. A truly must read!

The next edition will carry a write up from the Ball (which I urge you all to attend) and obligatory photographs to evidence the revelries. It really is a fabulous occasion and I promise to exercise discretion in my choice of publications!

Finally, please keep those articles coming. The journal is going from strength to strength on account of your contributions.

See you in January....

Helen Bennett
Editor

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ON SALE NOW**



To reserve a table please email ball@slgov.org.uk or visit:

www.slgov.org.uk

18th November 2006
The Chancery Court Hotel,
Holborn London

The 2006 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
- Carriages: Late

- Live Entertainment & Disco

For further information contact
ball@slgov.org.uk

The Solicitors in Local Government
AnnualBall

18th November 2006

Sponsorship Packages

The SLG would like to thank the sponsors of the 2005 charity Ball



Sponsorship packages are now available for the 2006 SLG Charity Ball, For further information please email: ball@slgov.org.uk

East Midlands Branch



The Branch continues to grow in strength with good attendance at Branch Meetings and our 2 SIGs.

On 5th July our Branch meeting was held in Grantham (Lincolnshire) with the Local Government Ombudsman for the Region, Jerry White, being the guest speaker. 20 attended for what was a lively and interesting session with Jerry being open to suggestions and genuinely interested in what we had to say.

The AGM will be held on 4th October at Broxtowe (Nottinghamshire) with Nigel Snape in attendance. Alex Ruck Keene from 39 Essex Street will be guest speaker taking about developments with FOI, RIPA and the Reuse of Public Information Regulations.

Our first meeting in 2007 will be on 7th March with old friend Jim Button talking on gambling and prosecutions.

Our two SIGs - Children's Services and Adult Social Services & Education have met and continue to be popular. The Adults SIG last met on 12 September at Leicester with 15 attending. The discussions were wide ranging including press restrictions for education prosecutions, photographs at school, clerking admission appeals, the Rivendell judgment, Bournemouth and charging. The Children's SIG meets on 18th October at Leicestershire with presentations on Child Protection and the Internet and Domestic Violence; the Care Proceeding Review; an update on vetting and barring; parenting contracts/orders; and costs of residential assessments.

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

Guy Goodman
Branch Secretary

South and Mid Wales Branch

In August 2006 Nick Gower from Dolmans Solicitors in Cardiff gave members an informative talk on the recent contempt of court case brought by Caerphilly County Borough Council against a fraudulent claimant for personal injuries (CCBC -v-Hughes & Others 06 December 2005). Nigel Snape, Chairman of the National Executive Committee of Solicitors in Local Government also attended our meeting and informed members of some of the issues that SLG would be looking at this year.

Our next meeting is scheduled for Wednesday 25th October 2006 at Cardiff City Council's offices at County Hall, Atlantic Wharf. Mr Adam Peat, The Public Services Ombudsman for Wales will be speaking to the group. We will also be having our Annual General Meeting.

Laura Mumford
Branch Secretary

North Branch



September 28th will see our next event, on this occasion hosted by Watson, Burton, Solicitors, of Newcastle, in their new conference facilities, when experts from their Employment Law Team will speak on the new age discrimination legislation. Details of this event have been circulated to Northern

Branch Members and posted to the website in due course.

A date has now been fixed for Nigel Snape, our Chair, to visit the Northern Branch. Nigel has kindly agreed to visit us on the 2 November, the venue is to be County Hall Durham, and we will be joined by members of the planning law team of Ward Hadaway solicitors who will talk on recent developments in planning law. Regular contact is still being maintained with the new Law Society Regional Office at Newcastle. Meetings of its Lexcel Focus Group are regularly attended by colleagues. Colleagues attend regularly meetings of the North East Lexcel Focus Group.

We currently have Special Interest Group Co-ordinators for Education, Social Services, Environment, Procurement, Human Rights and Housing Law, the latter being exceedingly active at this time. Our current Branch Officers are:-

Branch Chair: Andrea Barker, Tynedale Council
Vice-Chair: Julie Grant, Stockton-on-Tees Borough Council
Secretary: Dennis Hall, Sedgefield Borough Council
Treasurer: Stephen Rickitt, Northumberland County Council
NEC Representative: Pat Holding, Durham County Council
County Representatives: Andrea Barker, Northumberland; Geoffery Wilkinson, Cumbria; Vivienne Geary, Tyne and Wear; Pat Holding, Durham and Richard Frankland, Tees Valley
Our co-opted members are Colin Stockwell, Gateshead Council and Carmel Murray Northumberland County Council:
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

Yorkshire and Humber Branch



Our next Branch meeting will be held on 1 November and will be at Barnsley MBC commencing at 3.00 pm. The speakers will be Brian McGuire and Sian Davis of Field Court Chambers who will be giving a presentation on asylum and immigration issues as they affect Local Authorities and their lawyers. This is a massive and growing field of work and should prove a very interesting session. The talk will be followed by a Reception to be hosted by the Mayor of the Borough who wishes to mark the significant contribution that SLG Members make to the running of local government. There will also be plenty of opportunities for networking.

The Branch Secretary has continued his interaction with the Leeds and Yorkshire Lawyer magazine and significantly has had an article published and achieved a mention for the work of local government lawyers in the last two editions. There is perhaps a realisation in the profession at large that we do exist and have a contribution to make to the legal world.

Two new Trainee Reps are welcomed onto the Branch Executive, Isabel Esteves of Leeds and Nikki Deol of York who will also jointly be convening the Trainee and Newly Qualified SIG. All SIGs continue to be active and full details of the Convenors and meetings can be found on the SLG website.

It is intended to run again this year an Essay Competition for

all Trainees in the Branch with the prize being a contribution to a place at the Weekend School in Cambridge 2007. Full details will be published shortly.

The Branch AGM will be held in Leeds on a date to be fixed in February or early March 2007.

Ian Spafford
Branch Secretary

London and Home Counties



Suzanne Bond
Branch Secretary

After a busy September you have a chance to catch your breaths before November is upon us. This month we have Trainee Solicitor & Newly Qualified SIG meeting on the 4th October - full details on the Website www.slgov.org.uk

Thurrock Council will be holding an Employment Update Seminar on the 4th October - again full details on www.slgov.org.uk

There is a Branch Meeting on the 13th October where Cheryl Coppell Chief Executive of Slough Borough Council who will talk to the group about her ongoing discussions with central government with regard to the town's 'invisible population' - full details on the website www.slgov.org.uk

NEWS ALERT

For those of you doing child care the new Protocol for the Preparation of Bundles comes into effect on Monday. There would appear to be no transition period/rules for ongoing cases which are currently in court. LB Hackney have written to the President of the Family Division concerning this as to

prepare new bundles for every ongoing case could create an unnecessary burden on resources they will share the response with you and then dependant on the answer we can see what further representations can be made.

SLG Annual Charity Ball - 18.11.06
Yes that again, tickets are selling at a rate of knots so don't miss out complete the application form attached so you are not disappointed.

That's all for the moment but don't forget to register on the website for the Q&A Forum and if there is any news you need passing on let me know

South West Branch

Well... The branch has been working hard in building the foundations for it's revival.

The branch secretary is arranging a branch meeting for the end of November, the date to be confirmed. The content of the meeting and date will be decided by branch members once they receive their welcome pack.

The resurrection of the South West Housing SIG is in progress and meetings should be up and running in the next few weeks. The South West Planning and Information SIG have been operating self sufficiently but in due course, the branch will be looking to combine some of their meetings with the main branch meetings.

The Trainee SIG has grown and we would like to welcome Philip Brown and John Webster from Kennet District Council and Robert Parkin from Bristol City Council. The SIG had an enjoyable social evening in Bristol at the end of August. Unfortunately the social evening arranged for September in Bath had to be postponed however, this is due to take place in October. The SIG are looking forward to future social events and meetings.

Members of the South West branch have been invited to the South and Mid Wales branch meeting which is due to take place on 25 October 2006 at Cardiff City Council, County Hall. I hope there is a good turn out by branch members.

Kevin Hill
Branch Secretary

North-Western and North Wales Branch

22 members met on 29th September at the Law Society's North-West Regional Office in Manchester. A buffet lunch was provided beforehand. We were most grateful to Regional Officer Joanne McLeod and her staff for their organisation and generous hospitality.

Jeanette McLoughlin (Liverpool CC) mentioned proposals for Administrative Court sittings in the north-west. The meeting welcomed these and approved the distribution of a questionnaire to assess the local government demand for this facility, as part of a co-ordinated response by the whole profession.

There is a pressing need for volunteers to assist in running the Branch. A Vice-Chair (to succeed the Chair) and a further successor are sought, as is a replacement Treasurer.

6 of the Branch's 13 Special Interest Groups met in September, including the launch of a Trainee Solicitors SIG immediately after the Branch Meeting. The efforts of all Convenors are gratefully acknowledged. For further details about the SIGs and the Branch generally, please contact the Secretary richard.lester@salford.gov.uk

Guest speaker Richard Clayton, Q.C., of 39 Essex Street Chambers travelled specially to present a comprehensive update on local government caselaw, supported by a meticulously researched handout.

Next Branch Meeting: Friday,
19th January 2007

Richard W. Lester
Branch Secretary

West Midlands Branch

At the SLG West Midlands Branch AGM on 15th September 2006, held at Mills and Reeve's Offices in Birmingham, I was elected as Branch Secretary for the West Midlands Branch. I have taken over from Deborah Wilson who, I think you'll agree, has done a fantastic job over the last couple of years. Deborah has now taken over as the new Chairman of the Group and Peter Endall from Warwickshire County Council is your new Vice-Chair. Prior to the AGM Mills and Reeve kindly gave a Local Government Update seminar which was followed by the AGM and drinks. The seminar was very useful and gave us all plenty of food for thought! The Court User Group held a meeting on 29th September 2006 at the offices of Wright Hassall Solicitors who provided a seminar and update on the Licensing Act 2003.

Next on the West Midlands Agenda is the Planning Special Interest Group meeting on 18th October 2006 at 2.30pm. This is in the form of a seminar which will be provided by Martineau Johnson at their offices in Birmingham. This will cover Village Greens and Listed Buildings and if anyone would like any further information about this or future meetings please contact Peter Endall at Warwickshire by email (peterendall@warwickshire.gov.uk).

The new Information Law SIG will hold their first meeting at Wychavon District Council on 19th October at 1.45pm. Items on the agenda include Charging for Access to Environmental Information and "naming and shaming." For further information please contact Paula Williamson at pwilliamson@worcestershires.gov.uk. I am sure you will help to ensure that these events are well-attended and give ideas on future topics and issues."

Emma Fownes
Branch Secretary

Noter from Editor
Many congratulations to Deborah Wilson who got married this summer and is currently on her honeymoon!

EXCLUDED OR SIMPLY



The many and various clashes of interests arise as soon as the initial decision by the head teacher to exclude is made. The Governing Body of the school enters into the fray when they scrutinise the Head's decision and sparks really begin to fly if the decision is reversed.

Very quickly the parents of the excluded child will be putting their case to the Head and the Governors and then there is a myriad of queries from the parents of the victim (in cases involving physical violence) and of the other school children who may have witnessed the incident that gave rise to the exclusion.

If a child is permanently excluded an appeal is made to an Independent Appeal Panel by the parents – involving, in many cases, formal representation, agreed bundles, witnesses etc. The Panel has the power to reverse the decision of the Head and reinstate a pupil at the school with all the subsequent difficulties and problems that such a decision brings with it.

At that point, just when you thought it could not get any more difficult, the teaching unions may ballot their members and indicate that they will refuse to teach the reinstated child.

Guidance
Treading carefully through this unhappy set of relationships the in-house lawyer finds some help in the Education Act 2002 which outlines the statutory powers available to a school, although the detailed guidance is found in "Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units" (which the DfES have revised from time to time). That guidance document sets out the general test that schools have to meet in order to justify an exclusion and the process that the Governing Body and the Independent Appeal Panel must go through. It helpfully addresses

questions of evidence and procedure - and is well thumbed by lawyers.

Until recently it was generally thought that you could not remove a child from a school without going through the process outlined in the guidance and to deviate from it meant that a school ran the risk of having the child reinstated following a decision of the Independent Appeal Panel or, failing that, having the decision of the Panel overturned in the High Court.

There was also the concern that an unlawful exclusion could amount to a breach of a child's Convention rights which, amongst other things, could involve the payment of compensation as a consequence of any breach.

The House of Lords
That was certainly the prevailing view until the House of Lords recently considered the DfES guidance in the decisions of *Ali -v- Lord Grey's School* [2006] UKHL 14 and *R (Begum) -v- Denbigh High School* [2006] UKHL 15.

In *Ali* the principal allegation was that the school had breached *Ali's* Article 2 rights between June 2001 and January 2002 in that it had failed to provide education during that period. The facts were straightforward: there had been a fire at the school and *Ali* had been charged by the police. The Head, rather than excluding, indicated that he was not to come on to the school site and provided him with some work to do at home. That arrangement existed until May 2001 but by June 2001 the maximum 45-day period for fixed term exclusion came to an end and his claim in the Court was that after that his exclusion was unlawful. After June 2001 the criminal proceedings were discontinued and there were various arguments about provision of education at a PRU and meetings arranged with the family who did not attend.

As indicated, the primary issue was whether the school and the local authority had failed to provide suitable education for *Ali* and whether that amounted to a breach of his Article 2 rights. The Court confirmed that any failure did not amount to a breach of Article 2 – there being no specific Convention right to education at a particular school. Of more interest, as far as exclusions are concerned, were the comments of the Lords in relation to the usefulness of the DfES Guidance on exclusions. Lord Bingham reviewed the original High Court decision of Stanley Burnton J who had found that the exclusion of *Ali* from the School was unlawful but sensible. He went on to say that whilst the pupil was excluded in breach of the domestic law (because the guidance was not followed) he registered "some unease at this conclusion". Lord Bingham concludes that the DfES guidance was "singularly inapt to regulate the problem which confronted the school in this case and which must confront other schools in comparable cases".

Lord Bingham identified the specific problem with this pupil was that he had been accused and subsequently charged with a criminal offence. The Head, upon the advice of the police and for good reasons, decided it would be inappropriate for the child to attend school pending the conclusion of the criminal investigation.

Their Lordships by a majority felt that his precautionary-type approach to exclusion, whilst it did not follow the guidance, was sensible. Indeed Lord Scott went on to say that it was not an exclusion on disciplinary grounds which is the only type of exclusion to which DfES guidance applied. An exclusion on other grounds did not require the Head to follow the DfES guidance and procedures.

the Secretary of State for Education will need to give urgent consideration to amending the Guidance on exclusions.

ASKED TO LEAVE?

Lord Hoffman indicated that the Ali case proceeded on the basis of the DfES guidance which had subsequently been amended and the Secretary of State's view now was that this type of scenario was unlikely to happen again. In the future the procedure should be that if a child had been excluded for a reason unconnected with a disciplinary matter then it would be for the Head to agree with the parents a period of leave of absence. If that were not possible then the Head could educate off-site under powers conferred in s. 29 Education Act 2002. Alternatively, according to Lord Hoffman, the exclusion should be seen as a reasonable exercise of the Head's management powers.

Baroness Hale, whilst indicating that there could be some debate about what amounted to an

exclusion on "disciplinary grounds" and which therefore engaged the DfES guidance, conceded that it needed urgent reconsideration.

The case of Begum which was widely reported concerned a school's power to regulate its own uniform. In that case the pupil had been asked to return home and change when she attended school in what it considered to be a breach of the school's uniform policy. Again for the reason set out in Ali, the House of Lords felt that it was not an exclusion and that simply asking a child to comply with school rules would not amount to an unlawful exclusion. (As per Ali, the School's actions did not amount to a breach of her Convention rights.)

The Future
In the light of those comments

it would therefore seem open to schools to exclude pupils from school in what would amount to a "precautionary" exclusion, that is an exclusion for a reason that was unconnected with a disciplinary issue but simply because it was in the school or the child's best interest pending, say, a criminal investigation. As per Hoffman, it is possible that it could either be seen as the Governors' decision to educate off-site or alternatively a reasonable exercise of the Head's management powers.

What is clear from the decisions is that the Secretary of State for Education will need to give urgent consideration to amending the Guidance on exclusions. That opportunity is now afforded by the Education and Inspection Bill which sets out a number of

provisions in relation to school discipline, including a provision that Independent Appeal Panels will have to accept the judgment of Head teachers and Governors if it is clear that the pupil has committed the offence for which they have been excluded. Furthermore, the Bill seeks to curtail the Panel's right to order reinstatement following an exclusion.

Whether the comments of the Lords, the proposed new legislation and any possibly amended DfES guidance will alleviate some of the tensions that exclusions bring into the school arena remains to be seen.

Nick Graham
Lead Professional for Education
Oxfordshire County Council

ADVERT

AGE DISCRIMINATION



One would need to have been an alien recently arrived on planet earth not to be aware in some sense that age discrimination has now been rendered unlawful. To be precise the Employment Equality (Age) Regulations 2006 came into force on 1st December 2006 and apply to employment and vocational training (although pension related provisions have been delayed in implementation). The Regulations prohibit unjustified direct and indirect age discrimination, and all harassment and victimisation on grounds of age, of people of any age, young or old.

In essence this means that it is now unlawful to treat someone less favourably for example in deciding who should get a job, on the basis of their age (actual or perceived) unless this can be objectively justified. Similarly any provision or policy of the employer which disproportionately impacts on older or younger workers will need to be justifiable to be lawful. One thinks here of typical requirements such as 2, 3, 4 years experience required. An employer must now be able to show why such an age discriminatory criterion is necessary to perform the role. For the legal fraternity of course our trainee solicitor recruitment (typically aimed at young entrants to the profession) will come under scrutiny as an example.

Similarly harassment based on age is now unlawful. Harassment is defined broadly as any unwanted conduct which has the purpose or effect of violating a person's dignity or creating an intimidating or hostile environment for the victim. Gone perhaps are the sarcastic comments based on age (I won't give examples!) or more likely 'innocent' comments which a younger or older person may find offensive.

In addition the Regulations:

- remove the upper age limit for unfair dismissal and redundancy rights, giving older workers the same rights to claim unfair dismissal or receive a redundancy payment as younger workers, unless there is a genuine retirement;
- allow employers to provide for pay and non-pay benefits in the contract of employment which depend on length of service requirements of 5 years or less or which recognise and reward loyalty and experience and motivate staff;
- removes the age limits for Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay, so that the legislation for all four statutory payments applies in exactly the same way to all;
- removes the lower and upper age limits in the statutory redundancy scheme (but levels of entitlement will still be calculated on age based criteria as an exception)
- provide exemptions for many age-based rules in occupational pension schemes (they are contained in Schedule 2 to the Regulations).

The Regulations also set a new national default retirement age of 65. Employers can set a lower age for retirement if objectively justifiable. Workers have a right to such workers to request to work beyond that age. The employer is under a duty to notify the employee of intended retirement date, of the right to request to work past that age and a right of appeal against that decision. If the employer fails to follow any of these procedural steps the dismissal is automatically unfair. The point of controversy here is that a fair retirement dismissal is essentially procedural: there is

no requirement to give reasons (although that may well be inevitable in practice). The result is that once the employer has complied with the notification and hearing requirements the dismissal is a fair retirement dismissal. A final thought to bear in mind: dismiss a post 65 worker for any other reason (or in specific circumstances the Regulations deem were not for retirement e.g no notification given) and they fall to be considered under ordinary unfair dismissal law - was there a fair reason and did we act fairly in dismissing for that reason (s. 98 Employment Rights Act 1996). But here's a challenge: give reasons for refusal of post retirement working which disclose possible discrimination e.g poor health record giving rise to disability discrimination issues and you can still be faced with a discrimination claim even in the face of a fair retirement dismissal. Lesson then is to take care in crafting the criteria you use in deciding who stays on and who goes with a farewell part at retirement! All the best!

Winston Brown
London Borough of Hackney

It is now unlawful to treat someone less favourably on the basis of their age

EQUALITY AND DIVERSITY IN THE LEGAL PROFESSION

The Law Society has recently prepared a report entitled 'Career experiences of gay and lesbian solicitors' which some of you may have read about in a front-page article in the Metro.

The report is some 73 pages long. Having had an initial perusal of it, I felt it was disappointing that only a handful of solicitors had been interviewed and there is no reference in the document specifically to the experiences of public sector solicitors. Reference is only made to the 'employed sector', which could cover a multitude of sins! It seems that no attempt was made to contact either bodies representing lawyers in local government namely AcSes of SLG. I will therefore be writing the Strategic Research Unit who prepared the report pointing this out to them.

The main conclusions were that the participants welcomed the idea of sexual monitoring questions, which we have at the moment for ethnicity data. Significant factors in determining whether to be 'out' at work included:

- Age
- Geographical location
- Self-confidence
- Level of career progression
- Issues of conformity at work
- The desire/ability to maintain a double life

Few interviewees chose to be 'out' at work (although of course this may not be representative since only 15 individuals were interviewed in total).

The most interesting finding, was that those who have spent time at City firms spoke of a heightened sense of heterosexual machismo and overt displays of masculinity deployed by male staff at these firms. There was a work hard, play hard ethos at such firms with constant trips to strip clubs, rugby matches and drinking sessions reported, which, it was felt, had overtones of homophobia. I have spoken to other solicitors who have worked in such firms and whilst this may hold some foundation, it is something of a sweeping generalisation and makes certain stereotypical assumptions about the gay and lesbian community implying that they never drink or are interested in sports. It was felt, not surprisingly, that gay support groups were less evident in private practice firms than the employed sector. However, in the paper no detail was given as to the support offered by the employed sector, nor was a definition given of what constituted the employed sector.

There was cynicism as to the effectiveness of the Employment Equality [Sexual Orientation] Regs with many saying they would rather change jobs than bring a claim since if they did their 'cards would be marked'.

Those interviewed welcomed the idea of a Law Society group for LGBT solicitors such as exists for Women, disabled etc.

The authors recommended that:

- The Law Society provide more support eg through a helpline, a LGBT group and by promoting diversity
- That there be changes within firms such as monitoring and establishing and implementing equal opportunity policies. Legislation should be understood and implemented.
- Discrimination should not be tolerated.
- Employers should be encouraged to recognise same sex partnerships and extend the same rights as they would to traditional spouses (without reference to the Civil Partnership).
- During the education / training period courses should address sexual orientation issues and also at the admission stage.

All in all, it is my personal opinion that this was a golden opportunity to address equalities issues in the profession which was lost by lack of consultation with interested parties who could have provided valuable contributions.

For a copy of the full report see: <http://www.lawsociety.org.uk/secure/file/156889/e:/teamsite-deployed/documents//templatedata/Publications/Research%20Publications/Documents/careergaystudy53v1.pdf>

Matthew Ginn
London Borough of Richmond



those interviewed welcomed the idea of a law society group for LGBT solicitors

Response

In response to the above, the Strategic Research Unit advised that "As a qualitative and exploratory study, it was never intended to be representative in terms of being able to say X% of men react to Y situation in Z manner. Attempting to validate complex qualitative and individual experiences in terms of numbers it not particularly insightful.

This was an exploratory first stage research project (the TLS had no current research with this sector

to draw on - which in itself raised various dilemmas around recruitment). It is intended that there will be a second stage follow up, where others can further unpack the issues raised and where we can draw on the large database of people interested, who have since read the report and reiterated their desire to be involved in further research. We are looking forward to working with these individuals to build a more reflective picture of all the various factors.



Following the split of Representation and Regulation at the Law Society three new Chief Executives have been appointed.

Antony Townsend is the new Chief Executive Regulation and joins the Law Society from the General Dental Council, where he was chief executive since 2001. Prior to that, he held a number of senior roles at the General Medical Council, including Director of Standards and Education, and Head of Conduct. His earlier career was with the Home Office, where he worked primarily on criminal justice issues.

The new Consumer Complaints Board (CCB) has appointed Deborah Evans as the new Chief Executive of the Consumer Complaints Service (CCS) of the Law Society. Deborah Evans joins the Law Society from Birmingham-based Anthony Collins Solicitors, where she was Practice Director. She has investigated consumer complaints for the past 7 years and has an excellent insight into the problems that consumers have in dealing with solicitors.

Des Hudson is the new Chief Executive of the Law Society. He qualified as a solicitor in 1980 and worked in private practice until 1987. During that time he became a salaried partner in a major provincial law firm in the North West of England specialising in Crime and Child Protection Work. In 1987 Des joined the Yorkshire Building Society in Bradford as Assistant Solicitor. He held a number of positions during his five years with the Yorkshire and in 1991 became General Manager of Lending and Savings. In 1992 Des moved to the Britannia Building Society in Staffordshire to take up the post of Head of Lending. In 1995 he became Operations Director of Britannia Life, based in Glasgow and, in the following year, was made Managing Director. In 1998 Des joined SMG (Scottish Media Group) to become Chief Executive of their Publishing Division and was appointed a Director of SMG plc in 1999. Des joins The Law Society from ICAS (Institute of Chartered Accountants of Scotland) where he took up the post of Chief Executive designate in September 2004 and took over as Chief Executive in January 2005.

In this update we have decided to feature Des Hudson, the new Chief Executive of the Law Society and ask him what representation means in the future.

Interview with Des Hudson the new Chief Executive



Welcome, can you tell us a bit about yourself?

I qualified as a solicitor a long time ago and worked in private practice before moving into business. I focused on the FSA in building societies and then onto fund management and insurance. I join The Law Society from ICAS, the Scottish professional body of accountants.

I live in Scotland and have 3 boys currently immersed in the education system so I am commuting to Chancery Lane. I leave Glasgow at 4.45am on a Monday morning and return on Friday evening. So far, week 5, commuting is not as problem!

What are the main challenges you faced in your previous job?

Firstly, the accountancy profession went through 4 years ago, the same tumultuous change that the legal profession is facing. There was the same sense of coming to terms with the changes and determining what was the role of a representative body.

All accountancy control has effectively gone to Brussels and there was a change to the council and governance structure. It was a challenging and rewarding time where it was necessary to focus on strategic decisions and on what was beneficial for the organisation. Secondly, I successfully defeated the proposed merger of 3 different bodies.

How does your previous experience assist you in your new role?

I learnt a lot about membership bodies and will continue to learn more. I come from an organisation going through a significant regulatory change into another one.

Following the Clementi Review and the Legal Services Bill there has been a split at the Law Society between Representation and Regulation and the separation of the complaints body. Do you think this is a good idea?

It is irrelevant whether I think this is a good idea, it is a reality. Lawyers, if nothing else, are pragmatic. Even if you regret self regulation, looking at actuaries and accountants, public oversight is it. I applaud the Law Society Council's decision, it is insightful and visionary and ahead of the legislation.

The challenge for the Law Society as an entity is the need to make the structure work, so it is in the public interest and the interest of ALL members.

What are the main challenges over the next year?

The main challenge is to create the new representation body. In the past the Law Society has been about regulation with representation a side issue. With



Des Hudson, Executive of the Law Society

the separation of both roles we are left with the big challenge of making representation effective and relevant. I am particularly keen that the new body is for ALL members. Employed solicitors and those working in private practice have different interests and requirements from their professional body. For example, ABs (Alternative Business Structures), the new representation body does not have a role in prohibiting this model as it means different things for different members. My approach is a catholic one, with no sector of the profession more important than another.

In creating a new representation body are you working to a timetable? I would say it is an evolving timetable with immovable mileposts. I am not on a revolutionary 100 day sprint. I need to produce a business plan and budget that works for our elected Council by the end of the year. The staff is currently living with uncertainty and I have an obligation to get things sorted out. But, I will not roughshod over consultation.

Is the Law Society committed to raising the profile and providing increased support to solicitors working in local government and the employed sector as a whole? I think that there are 3 main issues here. Firstly, generally, we have a job to do to rebuild the reputation and status of

ALL solicitors. Secondly, it is the job of The Law Society, if it's not us who is it? Thirdly, I want to create a professional body that works for ALL members.

We need to rebalance the body in favour of employed solicitors and city firms. There has been a prevailing sense that we focus too much on high street firms. We need to level the playing field.

The Law Society groups, of which SLG is one, are grassroots organisations that work directly with solicitors. The Law Society funds and supports these groups. Will this continue? Groups are very important, if our members have chosen to organise groups then we are required to work with them. We need to forge new relationships and methods of working with these groups. We need to look afresh as scenarios are changing. If we can do the work of these groups more effectively we should do that; but most important is a genuine sense of collaboration and partnership. Groups are functioning more successfully than local law societies where we may need to do a bit more. We need to turn a new page with our relationships with groups, sectors, practitioner associations and local law societies.

The Law Society will continue to support SLG. We need to build a representation body focused on members. There will be new services, new activities and new

teams supporting that. It is not a question of more cost and more people, rather sticking to the existing budget and re-cutting and re-allocating it.

The Law Society currently funds the groups by way of a grant; I do not know whether the groups will get 100% of what they are currently receiving. However, I can guarantee existing support.

SLG gave significant input into the Clementi Review consultation; do solicitors still have the opportunity to feedback their ideas to the Law Society? This new way of working is our bread and butter, how can local government solicitors specifically assist? Local government solicitors could be a great help. There are useful parallels and shared experience that are crucially important.

The Law Society is going to continue to communicate with the profession about what the Legal Services Bill is suggesting, imposing and how this is evolving. At this stage we remain concerned about the independence of the legal profession and the statutory powers that the newly constituted Legal Services Board may have to intervene. We need to make the importance and fragility of the rule of law clearly understood.

We need to organise events on the changes and specific seminars of some of them, for example ABs.

We do not have a monopoly on wisdom. It is vitally important that we continue to have your input.

Speak to your SLG Council members, your contact at The Law Society, Stephanie Nunn or members of SLG's committee. You may also contact me or the President, Fiona Woolf directly.

I hope the hallmark of my time here at the Law Society is to make sure we have a significant representational role both nationally and internationally; that we "Listen with Leadership"; that there is "Action with Thought".

Thank you Des for your time and we wish you every success in your new role.

Suzanne Bond &
Stephanie Nunn

ADVERT

ADVERT

LEAD PROFESSIONAL PILOT UPDATE



In the last edition of Noter Up I gave an update on the Pilot and focussed on the work of Stephen Turner the LP for Procurement and Regulatory Enforcement. Since then 2 new LPs have been appointed. Here's the latest news from the LPs.



Nick Graham newly appointed LP for Education says:
 "I am excited about this new pilot. Advising on education law brings its own challenges and there seems more to come in the next 12 months what with the Child Care Act 2006 and the Education and Inspections Bill. If I can help education lawyers keep smiling whilst dealing with irate parents/headteachers/officers/members/defence lawyers/Judges/DFES officials [delete as appropriate] then I will have achieved something."

Nick has written an article which is featured elsewhere in Noter Up, is keeping an eye on the Education Forum page to answer questions and will be co-ordinating responses to any consultation papers.

Winston Brown newly appointed LP for employment says:

"I will be scoping through articles the headline issues affecting local government lawyers such as age discrimination, TUPE, agency staff etc. A Council's employment law practice is not just operating in isolation but is critical to service delivery of the Council as large. A well trained and motivated workforce is integral to that and I believe that an engaged and pro active employment team working in tandem with HR can help realise that.. I am sure this will be an exciting year on the SIG pages as we exchange ideas and experiences."

Winston has developed an ambitious work plan including in February 2007 a seminar at the London Borough of Hackney for employment lawyers and HR professionals in local government entitled 'How do we learn the lessons from our tribunal decisions?' This will bring together the experiences of local government lawyers and HR managers, share ways of tracking and analysis E.T. outcomes and suggesting future ways of working. He also intends to contribute regular articles to Noter Up on employment law issues.



Sheri Holland is undertaking the LP role for Child Care working with members of the ACSeS/SLG Child Care Joint Liaison Group of which she is chair. Sheri is already planning to co-ordinating responses to 2 consultation papers:

1. The Family Procedure Rules (a new procedural code for family proceedings).
2. 'Transparency in Family Courts'

and responding to the Care Proceedings Review being conducted by the DCA by attending stakeholder group meetings and liaising with ADSS who are members of the ministerial steering group and project board. Sheri is also looking to forge effective

relationships with Central Government and other key stakeholders and wants to have effective liaison and communication with the Law Society committees which deal with children's matters and with the local government representatives who sit on them.

Sheri also wants to work with SIG convenors across the country to share best practice and ideas.

Anjeli Bajaj is the LP for Corporate Manslaughter and Information Law covering Freedom of Information, Data protection, Environmental Information Regulations and Re-Use of Public sector Information. She says:
 "Both the subject areas of law are extremely interesting and constantly



evolving. New guidance is expected from the Government on sharing information in the public sector in Spring 2007 and the DCA has issued a new consultation paper on increasing the penalties for breaches of data protection legislation. New legislation is expected to come into force in relation to Corporate

Manslaughter in April 2007. The changes will have a direct and significant impact on Local Authorities and their legal advisors."

Anjeli is planning to develop effective relationships with key stakeholders, contribute to the Forum and to Noter Up and co-ordinate response to consultation papers. She is already liaising with SIG convener for Information Law on the DCA'S consultation paper on Data protection penalties.

Stephen Turner continues to be busy: *"All relevant SIG convenors in my Branch area are in contact and I will roll out to other Branch Sig convenors in early course (if they have not already picked up my details from the website). I did an article on the Gambling Act for the current edition of Noter up.*

I have fielded a number of telephone requests for 'a view' ranging from

the procurement of a marina on the south coast to a couple on the current 'date of birth' argument about proceedings in the Mags Court. I have also continued to answer Forum questions and posted some requests for experiences or problems."

If you want to contact an LP please do so using the contact details below – e mail is best to start with.

*LP contact details
Anjeli Bajaj(Coventry City Council)
– FOI and Corporate Manslaughter
anjeli.bajaj@coventry.gov.uk
02476 833085*

*Stephen Turner (Hull City Council) - Procurement and Regulatory Enforcement.
stephen.turner@hullcc.gov.uk
01482 615025*

Sheri Holland (Leicestershire County Council) - Child Care

*sholland@leics.gov.uk
0116 2656013*

*Winston Brown (Hackney LBC) – Employment
winston.brown@hackney.gov.uk
020 8356 6164*

*Nick Graham (Oxfordshire County Council) - Education
nick.graham@oxfordshire.gov.uk
01865 815969*

*Guy Goodman
NEC Lead Officer*

Equality and Diversity Action Plan Consultation



'The Equality and Diversity Group has prepared a draft Equality Action Plan and is required

under the terms of the Equality Standard to consult all Members of SLG on this plan and also on the equality impact needs/ requirements. I have therefore put a copy of the draft Plan, a Summary of Actions and the Impact Assessment Programme on the SLG website. Any comments should be emailed to me at Linda.M.Walker@durham.gov.uk and should reach me by 17th November 2006.

*Linda Walker
Equality & Diversity Officer*

ADVERT

PROTECTION FROM EVICTION AND HOMELESS PERSON: DO PUBLIC DUTIES



Introduction

The purpose of this note is to examine and consider the position of intentionally homeless persons for whom temporary accommodation has been secured by local housing authorities in either of the following circumstances:

(a) where, under section 188(1) Housing Act 1996 (HA 1996), a local housing authority has secured temporary accommodation for a person believed to be homeless, eligible for assistance and with priority need, pending the authority's decision as to its duty; or

(b) where, under section 190(1) and (2)(a) HA 1996, the authority is satisfied that a person is homeless and eligible for assistance, and has a priority need, but that he became intentionally homeless, and the authority, in consequence, has secured that temporary accommodation is available for such period as will provide a reasonable opportunity for that person to secure accommodation for his occupation. Neither of these situations amounts to re-housing of the homeless applicant. The accommodation is provided on a temporary basis only. Such accommodation might be from the housing stock of the authority or might be provided, by arrangement with a third party, either in the form of self-contained accommodation or bed and breakfast accommodation in a hostel or hotel. The question which will be addressed is whether or not the applicant is protected from eviction without court order, in the event of permission to occupy such accommodation on a temporary basis having been withdrawn. Put more colloquially, where public

duties and powers apply, are they likely to trump private rights?

Protection from eviction in a public law context? Section 3(2B) Protection from Eviction Act 1977 (PEA 1977) (as inserted by section 30(2) Housing Act 1988) affords protection "in relation to any premises occupied as a dwelling under a licence" (as to premises let as a dwelling under a tenancy similar protection is afforded by section 3(1) PEA 1977). The question of whether an intentionally homeless person is entitled to protection against eviction without court order from his temporary accommodation was considered by the Court of Appeal in *Mohamed v Manek* and another (1995) Times, 28 April where an applicant claiming to be homeless and in priority need had applied for accommodation under provisions contained in the Housing Act 1985 similar to those in HA 1996. Kensington and Chelsea London Borough Council had arranged for the applicant to have temporary hotel accommodation, having stressed its temporary nature. The Council subsequently concluded its investigations, decided that the applicant, although homeless, was not a priority case, and wrote to the applicant saying that his temporary accommodation was terminated as from a specified date. The applicant applied for an injunction preventing eviction, but it was held that the PEA 1977 was not applicable to temporary housing, by councils, of the homeless where any licence to occupy was tailored to fulfilment of the Council's statutory duty. Furthermore, temporary hotel accommodation could not be described in terms of a dwelling occupied under a licence. In *Desnousse v Newham London*

It is arguable, therefore, that there is still some uncertainty as to the court's likely reaction in any given case.

THE INTENTIONALLY DUTIES TRUMP PRIVATE RIGHTS?

Borough Council [2006] EWCA CIV 547; [2006] All ER (D) 256 (May); Times[(2006) June 28, an arrangement had been made in December 2003, under section 188(1) HA 1996, for the claimant to be housed in a self-contained flat pending a decision as to what further duty was owed to her under that Act. In May 2004, it was found that she had become intentionally homeless, and she was informed on 18 May that her housing would be cancelled in 28 days. Her accommodation was thereafter provided under section 190(2)(a) HA 1996 in order to allow her a reasonable opportunity to secure her own accommodation. Her application for an injunction restraining eviction without court order was refused. *Mohamed v Manek* was followed. The occupation allowed under the above provisions should not, in the absence of a special arrangement, be protected under the PEA 1977. The claimant's contention that *Mohammed v Manek* was only binding in respect of hostel accommodation was rejected, and it was unanimously accepted held that the decision in that case was of general application to all accommodation made available under section 188(1) and the closely related section 190(2)(a) HA 1996.

Human rights

The claimant had, however, further argued that a finding that the PEA 1977 did not apply to her case was inconsistent with her right to respect for her home under Article 8 European Convention on Human Rights. Lloyd LJ (dissenting) accepted the claimant's argument that the accommodation had become her home and, therefore, that it would be in breach of her Convention rights to deny her the protection afforded by section 3

PEA 1977. This view was rejected by a majority of the Court of Appeal. Tuckey LJ, with whom Pill LJ concurred, said that although he was prepared to accept that by May 2004, the accommodation had become the claimant's home, it had not been so when the accommodation was originally secured. In cases of this kind, there will be uncertainty as to whether or not the accommodation had become a home. He conceded that if eviction from a person's home took place, that would constitute interference with the claimant's right to respect for that home, but he indicated that if a person's licence to occupy the home had been properly terminated, the interference would be in accordance with the law. He then added the following qualification in regard to eviction without court order:

"The question then becomes one of proportionality: whether the possibility of eviction without the procedural safeguards contained in the 1977 Act can be justified."

The question did not have an easy answer, but the following points were made:

- where the eviction process was in the hands of a local authority, the authority "must be trusted to act honestly and reasonably";
- the local authority had to ensure, when section 190(2)(a) applied, that it had given the claimant a reasonable opportunity to secure alternative accommodation;
- the practice of giving 28 days notice was accepted, and that would afford time for the claimant to exercise any private law rights (e.g. by injunction);
- safeguards had been built in to the HA 1996, including review by the authority of any decision (sections 202 & 203)

and appeal on a point of law to a county court (section 204);

- it is possible to permit occupation to be continued pending resolution of the processes of review or appeal; and
- there are statutory duties to advise and assist in respect of homelessness (e.g. sections 179 and 192 HA 1996)..

Conclusion: why the PEA 1977 was deemed inapplicable
It may be argued that the decision of the Court of Appeal in *Desnousse v Newham London Borough Council* and others is difficult to justify on a literal interpretation of the wording of section 3(2B) PEA 1977. In reality, the temporary accommodation could be said to be occupied by the claimant as a dwelling under a licence (i.e. permission). The Court of Appeal, however, by a majority, clearly felt that the case transcended private law. To apply the procedural requirements of the 1977 Act would, in the words of Tuckey LJ "seriously hamper the ability of local authorities to discharge their duties under the 1996 Act." This is a clear policy consideration, for which the way was paved by social and economic considerations which Tuckey LJ outlined in terms of delay caused by court proceedings being necessary, further delay if an unmeritorious defence is filed and, in the meantime, accommodation being rendered unavailable to other applicants to whom the local authority owes duties.

On this occasion, therefore, it does seem that public policy, as opposed to literal interpretation of a statute, prevailed. It must, however, be stressed that the court's decision must strike, in the words of Pill LJ, "*an acceptable balance between the competing*

needs and rights at stake".

It is arguable, therefore, that there is still some uncertainty as to the court's likely reaction in any given case. This is something with which local authority legal advisers must live. Councils must seek to fulfil their statutory duty in a fair and just manner, but this must not involve an inflexible attitude. The dissenting judgment of Lloyd LJ illustrates the difficulty involved for judges and legal advisers alike in reaching an acceptable solution to each case. Each case will turn on its own facts, and the solution may owe as much to pragmatism as to legal principles.

John Helliwell

TRAINEE NEWS



It's that time of year again. Nope, I'm not talking about the depressing weather, long and cold nights or shopping centres struggling under the weight of Christmas decorations – I'm talking about the SLG Annual Charity Ball.

It's one of the major events in the SLG calendar, and is an ideal opportunity for trainees in local government to meet their peers, partake in that all-important networking and, even better, enjoy a night of drunken debauch... erm... perhaps I'd better stop there!!

The Ball is now in its third year and takes place at the Chancery Court Hotel in Holborn. I'd like to emphasise, though, that this Ball is open to everyone – not just solicitors and trainees in London and the South East, but those from all over the country. It's really a fantastic excuse to let your hair down and, judging by the photos from last year's event (insert link here), might even provide valuable "leverage" when it comes to salary reviews! Yep, I'll be the one wandering around with a camera and a notepad . . .

Oh, and if you need another reason to persuade you to buy a ticket, you'll be able to meet your trainee representatives. Oh the joy. Who could imagine anything more exciting?! We'll be the three figures slumped by the bar throughout the evening before drunkenly slaloming our way across the dance floor . . . erm . . . what I mean to say is that we'll be the three beacons of shining light and sobriety on hand to dole out advice and support to all those who need it.

Tickets are only £45 each for trainees, and this entitles you to a Champagne Reception, 3 course meal, wine, Charity Raffle and wine

(I'm noticing something of a theme here). For more information and to buy tickets, tables and more, please click onto the SLG website.

It must be something about the long winter months and solicitors arranging get-togethers, because not only is the SLG Ball looming, but the Trainee Solicitor Group Conference 2006 is coming to Northampton.

This event should prove as popular as ever – each year hundreds of delegates come along for the courses on networking and marketing skills, which incidentally are exclusive to this event. There are also high profile speakers, a lively election and hustlings. Oh, and there's a ball. Which almost certainly won't be as good as the SLG's extravaganza (but then what would?), but will be another excuse to drink and dance the night away!

Seriously, though, the networking courses are always extremely popular, and it's a good opportunity to meet and greet trainees who work in private practice. Which means it's a good opportunity to gloat about flexi-time training contracts and the wide variety of work and responsibility we get in Local Government before settling back with smug grins and happy hearts

The tickets are at a subsidised cost of £35 for day conference, £45 for the evening gala dinner and £67.50 for both (saving you £12.50). Accommodation packages are available, and if you can book with someone else then so much the better – it works out cheaper for two people to book than just one. As the TSG point out, it might even be possible to convince your employer to pay for the event because of the training element.

MS

So what are you waiting for?!

In the last edition of *Noter Up*, Kemi Okunnu and I were introduced as the new trainee reps at the SLG. Together with Carol Isherwood, we're here to make sure trainees are represented on the SLG. So if you have any ideas for future events, any issues which you needs help with or even if you just want to make sure we're doing something, please feel free to contact any one (or even all of) us. Handily, we're spread out all over the country (Kemi is based in Bristol, Carol in Manchester and I'm in Guildford) so one of us is bound to be fairly local to you. Any of us can be contacted by email, just click on the SLG website and follow the links.

As Forrest Gump didn't quite say, life working in the legal department of a local authority is like a box of chocolates. So that's bad for your health, a little bit sickly and becoming gooey when it gets too hot? Pah! What did he know anyway? What is certain, though, is that a training contract in local government is amongst the most varied out there. In the first part of an occasional series looking at life in various types of authorities, I'll be dealing with life at a borough council.

The first point to realise about borough councils is that there is a huge scope for variation from council to council simply due to the differing sizes of authorities. As a rule, though, there are absolutely no social services or childcare work. There is also very little work involving highways and roads. However, if the borough is big enough, then there should be plenty of licensing, planning and conveyancing. At Guildford Borough Council, trainees spend their training contracts in two

seats: the first year is spent in planning, licensing and litigation and the second year is spent working in conveyancing.

Local government is often at the sharp end of legislative change. Solicitors need to think about more than mere technicalities; the challenge of transferring new legislation into a workable and practical policy is one faced on a regular basis. For example, the Licensing Act 2003 brought with it a huge amount of potential work for all licensing departments in borough councils. It also brought with it a heavy dose of scepticism from local residents who thought that longer hours would inevitably lead to more disturbances and more incidents of drunkenness. It's easy to say that one of the great aspects of local government legal work is day to day contact with the public, and trying to reassure members of the public that the powers of review granted to local residents by the Licensing Act 2003 gave them more power than ever before has become easier over time.

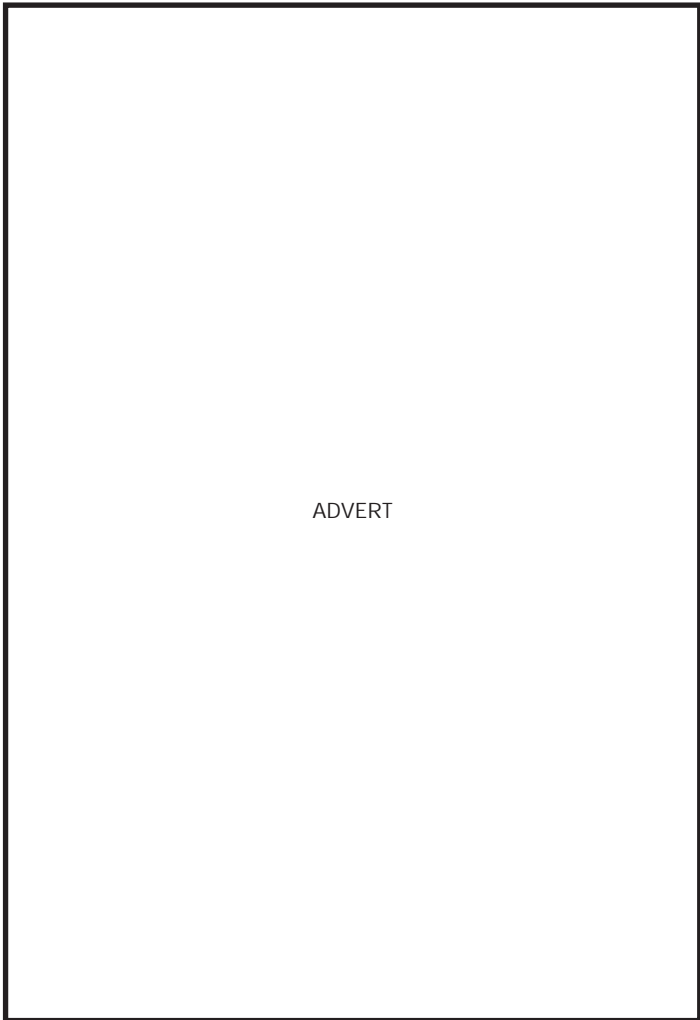
A borough council is also usually the first port of call for a resident with a complaint. Which inevitably means that a trainee solicitor at a borough council is usually the first port of call when an obscure point of law needs to be researched; if anyone needs to know whether it's possible to train birds of prey in the parks of Guildford, and then look no further. Equally, though, it's usually these obscure points of law which prove most useful (although my pet Golden Eagle seems to miss its diet of babies and small terriers).

It may be a cliché, but no two days are ever the same at a borough council. Equally, it's a game of two halves, it's not over until the fat

lady sings, it was eleven against twelve out there Gary, etc etc.

Why not get involved with your local branch of the SLG? Any amount of participation is welcomed with open arms, from just popping along to a meeting or two to helping out at law fairs and other events. For more information, please have a look at the SLG website.

Ian Hatcher
Trainee Representative



ADVERT

KEEPING CHILDREN AND VULNERABLE SAFE - THE NEW VETTING AND BARRING



Background

The importance of ensuring that children remain safe whilst in the care of professionals was underlined by Sir Michael Richard in his report on the inquiry into the Soham Murders of 22nd June 2004 . Recommendation 19 states:

"New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. This register – perhaps supported by a card or licence – would confirm that there is no known reason why an individual should not work with these client groups.

The new register would be administered by a central body, which would take the decision, subject to published criteria, to approve or refuse registration on the basis of all the information made available to them by the police and other agencies. The responsibility for judging the relevance of police intelligence in deciding a person's suitability would lie with the central body. The police, as now, would be able to identify intelligence which on no account should be disclosed to the applicant.

Employers should still decide, based on good selection procedures, whether or not the job required the postholder to be registered and should retain the ultimate decision as to whether or not to employ.

The central body would have the discretion to ignore any conviction information judged not to be relevant to the position in question.

Individuals should have a right to appeal against any refusal to place them on the register and that right should be exercised before any information is made available to a third party.

The register should be continuously

updated and available to prospective employers for checking online or by telephone.

The register should be introduced in a phased way, over a period of years, to avoid the problems associated with the introduction of the Criminal Records Bureau (CRB).

The DfES, in consultation with other government departments, should decide whether the registration scheme should be evidenced by a licence or card (page 154).

Responsibility: The DfES, the Department of Health and the Home Office"

In his follow up report published on 22nd December 2004 Sir Michael noted:

"5.5 The most radical recommendation (Recommendation 19) suggests a register covering all those who work with children and vulnerable adults (including, for example, in social care, health care, education, sports coaching, private tuition, domiciliary care, etc). Initial concerns were that the sheer scale and complexity of keeping track of such a large workforce (3.5 million in the children's workforce alone) would make this recommendation prohibitively costly and impractical to implement. We believe that we have now found a way forward on registration, building on and extending the scope of the existing barring schemes, that is both practicable and affordable. An initial feasibility review has confirmed that the outline model is feasible. Initial costing work suggests total set-up costs of around £10 million and annual revenue costs of £8-10 million to operate the scheme in England and Wales. We are now about to embark on a full feasibility study which will refine cost estimates, test underpinning assumptions and result in a fully worked-up business case and implementation plan for

consideration in March 2005.

5.6 While recognising that primary legislation is required for any new registration scheme, we are confident that significant improvements in safeguarding children and vulnerable adults can be delivered in other areas on shorter timescales."

In his Written Answer to Parliament in response to the Report of 11th January 2005 the then Home Secretary said in respect of this matter:

"The development of a registration scheme covering persons considered unsuitable to work with children and vulnerable adults. This is underway and will build on the existing barring lists in providing a comprehensive, centralised, integrated system to prevent unsuitable people from gaining access to vulnerable groups through paid or voluntary work.

Final decisions on the detail of the scheme will follow a feasibility study which will report early in 2005"

DfES issued a consultation paper entitled Making Safeguarding Everybody's Business: A Post-Richard Vetting Scheme on 5th April 2005 . After the closing date of 5th July 2005 DfES produced an analysis of the responses with the vast majority of respondents welcoming the proposal for the new scheme.

That new scheme is set out on the Every Child Matters web site and the DfES has produced an excellent Policy Briefing which was last updated in June 2006 .

The New Vetting and Barring Scheme

The key features of the scheme as set out in the Policy Briefing are as follows:

- A Single list of people barred from working with children and a separate,

ABLE ADULTS BARRING SCHEME

but aligned, list of people barred from working with vulnerable adults (replacing List 99, POCA and POVA)

- Barring decisions on application to work with children or vulnerable adults
- An expert Independent Barring Board to take all discretionary barring decisions
- Barring decisions will be updated where relevant new information becomes available
- Employers will be able to do a check of status in the scheme of those whose work involves contact with children/ vulnerable adults, via an online check, including for the first time:
 - those employed in the context of private family arrangements such as nannies, music teachers, care workers
 - those who have frequent access to education and health records about children or vulnerable adults
- All those employing individuals to work closely with children will be required to check status in the scheme except in the context of private family arrangements
- Information from a wide range of agencies will be assessed centrally by the new Independent Barring Board.

Vetting and barring are two different processes. The following categories of people (paid and volunteers) will be able to apply for central monitoring (a new concept and process) and an Enhanced CRB Disclosure (both forms of vetting):

- Those who have frequent contact with children and/or vulnerable adults by virtue of the service in which they work (for example schools; nurseries; children's homes)
- Those who work with specified close contact with children and/or vulnerable adults in other settings
- Those in key positions of authority in relation to children and vulnerable adults
- Those who give guidance and advice to children and/or vulnerable adults over the telephone and



internet and those with access to education and health records about children and vulnerable adults

However, barring will only apply

- in relation to jobs that involve working closely with children and/or vulnerable adults, defined by type of contact; type of setting; or the status and authority conferred
- but will not cover administrative and support work in health, housing and other settings, and administrative jobs which give access to personal and sensitive information about children or vulnerable adults.

Where the bar does not apply, employers will have the discretion to employ individuals on the barred list with safeguards in place.

It may be possible for some barred people to be employed safely in these posts, as they do not involve close contact with children or vulnerable adults.

There will also be new duties on employers:

- There will be a requirement to check whether an individual is barred for all employers of individuals:
 - who work closely with children, regardless of the sector, except private family employers
 - who work in the NHS, regulated social care, or removal centres
- The scheme will be voluntary for all other employers employees working with children and/or vulnerable adults
- It will be an offence to knowingly employ a barred individual (where the bar applies)
- It will be an offence for employers not to check, where they are required.

Finally, there will be a duty on employers as under the current list arrangements to make referrals to the Independent Barring Board where an employer ceases or would have considered ceasing to use an individual because they endanger a child or vulnerable adult.

The Bill
As Richard identified primary legislation is required to implement the scheme and the Safeguarding

Vulnerable Groups Bill was introduced into the House of Lords on 28th February 2006 and is currently being considered the House of Commons. The Bill is rather technical in nature and requires some reading.

However, a qualitative difference that the Bill once enacted will make is that barring will now be possible on the basis of risk of harm to a child or vulnerable adult. This will provide employers with an opportunity for the first time to invite a decision to be made on barring in the absence of a specific disciplinary offence but where there are legitimate concerns about the suitability of an individual to work with children or vulnerable adults. At the moment we have the unsatisfactory situation of such individuals floating around the system with question marks about their suitability unresolved which is unfair to the individuals concerned, employers and those in need of protection.

Guy Goodman
Head of Community Services Law
Leicester City Council

REGULATION OF INVESTIGATION PURPOSE AND PERCEPTION - PL



Introduction

These thoughts follow a recent inspection by the Office of Surveillance Commissioners of my Council's approach to the Regulation of Investigatory Powers Act 2000 (RIPA). As with many things in life, one is reminded that 'understanding' is always the key to advising effectively!

Not unlike many district authorities the use of these powers in our case has generally been sparing. The opportunity to identify instances where the Act can assist enforcement functions may well be lost as a result of the 'perception' that RIPA, and its subordinate legislation, is a complex minefield of elaborate (perhaps unnecessarily elaborate) rules and regulations.

In this brief article (critics, please note), an attempt will be made to clarify the key issues in the collection and gathering of evidence to deal with breaches of statutory functions.

Some comment will also be offered on the kinds of matters that are likely to be raised at your next inspection. (1)

RIPA and the collection of evidence

Sometimes the most basic points are missed, or, without adequate explanation, not understood. Not least in this field, the basics are essential to developing an understanding of the purpose of the Act.

Local authorities, as public authorities, have their statutory functions and duties to perform. Enforcement requires evidence wherever it is considered that a breach has occurred. Not surprisingly 'covert surveillance' (2) has always played

its part in 'evidence gathering'.

One can be forgiven for thinking, however, that the direction of travel of legislation from Europe, combined with what is sometimes perceived as the "soft" approach of the courts, tends to favour the rights of individuals against public authorities. This is not necessarily the case.

The draughtsmen of the European Convention on Human Rights recognised that enforcement operations might well interfere with the basic and fundamental rights established by the European Convention.

The right to privacy under Article 8 is not absolute but, rather, has to be considered as a 'qualified right'.

The Courts have increasingly identified circumstances where the privacy right is not paramount: RIPA essentially introduces into UK law, the qualification that acts to override this basic right.

Part II of RIPA is merely one example, albeit in statutory form, where the right to privacy may be interfered with:

- if it is both necessary and proportionate to do so, and
- appropriate grounds exist which, in the case of local authorities, relate to the single ground, namely of prevention and detection of crime, and prevention of disorder (see section 81(5) of RIPA) and SI 2003/3171: note in this context disorder includes anti-social behaviour).

Advising Officers: Securing Immunity: a question of belief and judgement

So how can this Act assist officers?

(3) Authorising officers, together with investigators, can protect themselves (and their authority) from legal challenge by their method of approach to explaining and recording their reasons and justifications for seeking to collect evidence in order to embrace the protection of the Act:-

- provided that clear records exist that the officers reasonably believe that the means of investigation proposed are necessary and proportionate, then it is unlikely that the courts would interfere with the reasons given for that 'belief'.

- next comes the judgement on choice: the test of necessity(4): could the information required reasonably be obtained by other, possibly overt means (see section 32(4) of the Act).

- proportionality: the test again is based on choice of methods: is the proposed surveillance excessive by relation to the mischief to be investigated? Is there any less invasive method of obtaining the desired information?

- will there be collateral intrusion: in other words, matters affecting the privacy of others who are not the targets of the investigation? How is it to be dealt with?

Provided that officers go through these questions reasonably and support their conclusions in a justified manner, it is unlikely that the courts would interfere with the judgements and choices made.

Covert Human Intelligence Sources

Evidence suggests that it is very probable that Councils will not have to use these methods of discovering information

POWERS - EASE SIMPLIFY

for enforcement purposes very often.(5) However, there are situations where it may prove to be useful, eg when an officer may enter residential premises with some form of recording device: this would be inappropriate intrusive surveillance but for section 48(3) of the Act, and which can be authorised as a CHIS.

Conclusions: some points to review
What can be learned from inspections that have been carried out within local authorities so far by the OSC?

Evidence suggests that the OSC are currently looking at a number of aspects of local authority practice in this field:-

- they expect authorities to review their policy and procedures regularly, to consolidate policy and procedure in a single document and keep it updated. 'Bureaucracy' and 'wordy' documents are to be avoided.(1)
- local authorities should maintain an awareness of the importance of the Act in the context of all methods of collection of evidence across the whole range of functions of local authorities.
- emphasis has been placed upon the use of CCTV in evidence gathering.
- a collaborative approach to the organisation of training is encouraged between enforcement agencies.(1)

- they expect to see evidence that appropriate opportunities have been identified to deploy the Act across the whole range of enforcement activities of

Councils which, in the final analysis, should improve the outcomes in cases that local authorities take before the courts.

And, of course, that's what we're all about!(6)

Dennis A. Hall, LL.B., LL.M.
Solicitor to the Council
and Monitoring Officer
Sedgfield Borough Council

Notes:

(1) For a detailed analysis of *Inspections of Local Authorities*, see the *Annual Report of the Chief Surveillance Commissioners for 2005/2006*, paras. 10.1-10.10: www.surveillancemissioners.gov.uk.

(2) 'Directed Surveillance' – see s.26, s.26(2).

'Intrusive Surveillance' – see s.26(3).
'Covert Surveillance' – see s.26(9).

(3) S.27(1) authorisation under the Act is 'lawful for all purposes'.

(4) For detailed guidance see the *Code of Practice for CHIS*, paras. 2.4 et seq.

(5) But note the Report findings for 2005/06: their use is on the increase by local authorities.

Local Authority Prosecutes Perjury!

Raymond Smith swore an affidavit in support of an application to set aside a bankruptcy order stating that he had a solvent business at the Saddle Inn. The order was annulled, however, further investigations noted that Mr. Smith claimed and received Housing Benefit and Council Tax Benefit in addition to his Income Support.

Mr. Smith declined an invitation to be interviewed under caution in respect of his benefit claim.

The Authority therefore charged Mr. Smith with 7 counts under the Theft Acts in respect of Housing Benefit and Council Tax Benefit Fraud and 1 count under S1(3) Perjury Act 1911.

The defence challenged the Authority's locus and relied upon the Prosecution of Offences Act 1985. This Act gave birth to the Crown Prosecution Service.

S6 covers prosecutions instituted and conducted otherwise than by the Service and provides

(1) Subject to subsection (2) below, nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.

The prosecution of perjury does not require the Director to take over the proceedings.

The Authority relied upon S222 of the Local Government Act 1972:

(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area –

(a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and (b) they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment.

And S2 of the Local Government Act 2000 Promotion of well-being 2(1) Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects-

(a) the promotion or improvement of the economic well-being of their area
(b) the promotion or improvement of the social well-being of their area, and
(c) the promotion or improvement of the environmental well-being of their area.

Following substantial debate the defence finally conceded that the Authority had locus to prosecute perjury.

Mr. Smith subsequently entered a not guilty plea to the perjury charge but guilty pleas to £7,000 benefit fraud.

Eleanor King
Liverpool City Council

COMMUNITY INTEREST COMPANIES AND LOCAL AUTHORITIES



The community interest company ("CIC") form is aimed at organisations which want to make it clear that they are established for the benefit of the community, but which are unable or unwilling to become charities.

The CIC form has applications in many areas related to local government, including city centre management, education, and the provision of social care and environmental services. Local authorities may find themselves dealing with CICs when they invite tenders for outsourced services. Alternatively, they may themselves be involved in setting up a CIC.

Community interest test
In order to become a CIC, a company must convince the Regulator of Community Interest Companies ("the Regulator") that it satisfies the "community interest test". This means that a reasonable person might consider that its activities will be carried on for the benefit of the community or a section of the community.

With most CICs, a distinction can be drawn between how it

benefits its members and how it benefits the community. A company will not pass the community interest test if it appears only to be benefiting its own members, rather than the wider community. Where a CIC is formed by a local authority, this distinction is less likely to arise, since in principle, if the company benefits the local authority, it will also be benefiting the community.

Asset lock

All CICs must include in their memorandum or articles a prohibition on transferring any of their assets for less than full consideration. This "asset lock" is subject to certain exceptions, including transfers to charities or other CICs, other transfers for the benefit of the community (which may include transfers to a local authority), and the payment of capped dividends to investors.

The asset lock guarantees that assets will be safeguarded for community purposes, but also limits the return shareholders can make on their investment.

The asset lock provisions are likely to be relevant when considering the appropriate level of remuneration for directors and employees and the terms of commercial relationships which the CIC enters into.

Reporting and regulatory supervision

All CICs must submit an annual report to the Regulator describing how the company's activities have benefited the community;

what steps it has taken to consult stakeholders; and financial information relevant to compliance with the asset lock.

The regulatory regime for CICs is "light touch": the Regulator will not engage in much proactive scrutiny of CICs. However, he is obliged to protect the CIC "brand" and is likely to investigate any complaint against a CIC which appears to be substantiated.

The Regulator has powers to intervene and take effective remedial action if he considers that there has been misconduct or mismanagement in the administration of a CIC; that a CIC is not satisfying the community interest test or pursuing its community interest objects; or that the assets of a CIC are in danger of being dissipated.

The Regulator's powers of intervention include appointing a manager; appointing or removing directors; transferring the company's property or shares in it; and taking action in the name of the company.

A useful vehicle for local government projects?
The CIC form may be useful when a local authority wants to "ring-fence" particular activities in a separate corporate vehicle: to collaborate with outside business partners or stakeholders; or to operate on a "commercial" footing, but with an externally validated assurance of "community benefit".

For more information about all aspects of CICs, including further specific discussion of CICs in the local government context, see the Regulator's website (<http://www.cicregulator.gov.uk>).

Phillip Horrell

If the company benefits the local authority, it will also be benefiting the community

EMPTY HOMES IN LONDON + HOME COUNTIES

A number of boroughs in London + Home Counties have received Freedom of Information requests for disclosure of lists of empty properties. Such requests have, on the whole, been refused by boroughs. This has led to appeals to the Information Commissioner's Office in at least two cases in London + Home Counties.

The ICO issued Decision Notices in relation to release of lists of empty properties by Dartford and Bexley requesting that the information be released. After considering the matter Dartford released the information. However, Bexley are currently appealing to the Information Tribunal.

Lawyers and Information officers in the various local boroughs have spent many hours mulling over the issue

The general consensus is that the public interest in withholding the information overwhelmingly outweighs the public interest in disclosing it.

For example pursuant to Section 31 Law Enforcement, if such information were disclosed it could prejudice the prevention or detection of crime.

It is felt that there is a significant risk that releasing details of empty properties might lead to burglary, arson or squatting.

Enquiries have been made by one borough of the police which indicate that release would increase the:

potential for the properties to be targeted by squatters, especially in view of the astronomic cost of housing in the South East potential for the properties to be targeted by criminals

or terrorists intent on hiding or depositing proceeds of crime or terrorist materials potential for premises to be identified as short-term hiding places by criminals or terrorists

In another authority burglaries have decreased by 42 % since it commenced an operation 'lock out' and it is probable if someone had a list of empty properties burglaries would increase.

There are also groups that seem to advocate squatting such as: www.urban75.com/Action/squat.html

The problem is that all such arguments are hypothetical in any particular borough if the information has not yet been released – something of a catch 22 situation!

In discussions, it also been suggested that Section 44 Prohibitions on disclosure by law might apply. Section 85 of the Housing Act 2004 inserts a new paragraph 18A into Schedule 2 to the Local Government Finance Act 1992 to allow a billing authority to use information it has obtained for the purpose of carrying out its council tax functions for the purpose of identifying vacant dwellings or taking steps to bring vacant dwellings back into use.

However, the Local Government Finance Act 1992 does not allow information collected pursuant to council tax powers under the Act to be used for other purposes.

The Information Commissioner's Office has itself issued guidance advising authorities that they cannot use council tax data for other purposes!

Allowing the use for other purposes of personal data collected for council tax purposes may in some circumstances constitute an interference with an individuals right to privacy protected by article 8 of the European Convention on Human rights. The data will only be used by the billing authority, which collected it, and it will be used only for public functions in the public interest. Section 85 does not permit disclosure to third parties such as commercial organisations.

Another argument put forward by one borough is that section 41 is invoked in such circumstances. If a householder notifies the Council for Council Tax purposes that their property is vacant, then that individual has a legitimate expectation that that information will not be disclosed to third parties who have no legitimate right to the information, there being no overriding public interest in overriding that implied duty of confidentiality.

We in London + Home Counties await the findings of the Information Tribunal with baited breath.

Matthew Ginn
London Borough of Richmond



There are also groups that seem to advocate squatting such as: www.urban75.com/Action/squat.html

TRAINING TREE



*Dudley Lewis,
Director of
Training, LGG*

Training is integral to the lifeblood of most careers. Challenging accepted practices, learning from the experience of others and keeping abreast of industry trends and developments all combine to help shape us as professionals and provide an edge in the staff meeting, board room or with clients and colleagues.

But in those sectors where training is not something just dependent on available time and budgets, the pressures on individuals and line managers continue to increase. This can be seen to no greater extent than in the legal sector, where continuing professional development (CPD) is a key ingredient in education and a benchmark by which standards are maintained and challenges addressed.

And a look at some of the legislation stacking up simply reinforces the importance of training. Double devolution, the mayoral debate, planning and the much delayed but (apparently) now imminent White Paper on local authority reform – just a selection of the myriad legislation certain to impact on the public sector solicitor in the year ahead.

LGG Training works with leading chambers such as Landmark, 11 Kings Bench Walk, 39 Essex Street and Arden, as well as bringing in other speakers and contributors to provide an informed perspective on a wide range of topics. Four of its flagship events – planning, education, housing, highways and rights of way – fall within the pre-Christmas run-up, but the company also scores successes with topics including ASBOs, election training, Freedom of Information and childcare.

Well placed to comment on the way in which vocational education can fit into a rapidly moving world, Dudley Lewis is director of training at LGG (the training company of SLG Limited) – an organisation that last year welcomed around 5000 public sector legal professionals to over 150 courses, conferences and workshops.

“Helping lawyers achieve excellence is a major aspect of what we do. These professionals have to ensure their ‘clients’ receive positive, proactive, accurate and timely advice. To do this they must, in addition, always be aware of the corporate and political dimension in the ever-changing face of local government as well as the needs of their communities,” says Lewis, a former director of legal services and city clerk at Bristol City Council.

“Sadly, though, it is a fact of life that the number of lawyers holding the very top positions in local government has been on the decrease and we now see individuals from other disciplines such as planning, HR and finance occupying chief executive or director-level jobs. Helping lawyers re-establish themselves in local authority management is also key to what we are aiming to achieve.”

But how are external training providers viewed by those at the coal face? Metropolitan Borough of Wirral's Simon Goacher – this year's recipient of the Local Government Young Solicitor of the Year award – is clear:

“It's true that we now have greatly increased resources available to keep up to date on changes in the law via channels such as the internet. However, training courses have their own important role to play through the provision

of comprehensive information delivered by leading experts in the field. For me, they are an essential part of career development.”

And Simon Goacher is also quick to extol the merits of face-to-face training as something that is not just complementary to desk and internet research, but is a method of professional development where the benefits are self-evident.

“Time – or lack of it – and the increased expectations of lawyers and all other public sector workers provides us with on-going issues. When I started working in local government there wasn't really such a thing as anti-social behaviour. Now – and it's just one example – keeping up to date with the law is a significant job in itself.”

The changing face of local government will inevitably impact on training provision, both in terms of budgets and the constant re-evaluation of how we all spend our time.

LGG sees this as an opportunity to both broaden its training programme and to be creative in what it delivers to delegates and where.

“We want to work more closely with local authorities at a corporate and individual level to help them achieve their objectives in tandem with the highest professional standards,” says Dudley Lewis. *“By doing this we can help lawyers re-establish their position at the heart of their organisations and develop the vitally important role they should play at the highest levels of local government.”*

A look at the LGG calendar, however, shows a distinct (and perhaps not unexpected)

ENDS

bias towards the capital, something Simon Goacher is quick to pick up on.

"Like most people who live outside London I don't relish the prospect of a 6.00 am train journey followed by a 12 hour day. I think training providers need to look at more courses held away from the capital and I can see councils in the regions will start working together on training initiatives locally. I have some experience of this in the past and think it will become increasingly common.

"In addition, the SLG SIGs are also a good example of best practice being shared in a localised way and provides an excellent and cost-effective method of obtaining CPD points. But I also think local authorities will have to forward plan and focus on training, and that training will require tailoring to specific needs and priorities rather than falling within generic modules."

Dudley Lewis is keen to respond to the London-centric charge and to demonstrate LGG's flexibility going forward.

"We are aware the vast majority of our events take place in the capital. However, our course developers have been working with chambers, partners and councils in the regions to address this. We are already running events in Leeds and Manchester and are actively talking to local authorities about staging bespoke training and looking at ways in which this can be achieved in an efficient manner."

Again flexibility is key, as can be demonstrated through a recent requirement from Torbay Council that LGG was able to both deliver and expand to make the exercise more cost-effective for the unitary

authority. Lisa Ellis, one of the LGG course developers, explains.

"Torbay came to us with a particular requirement on contract law. We were able to provide a one-day course led by an independent solicitor and contract law specialist. But we also knew we could reduce the cost to the council by opening up the course to solicitors and others from neighbouring authorities.

"We worked closely with Torbay's legal services office manager Philip Taylor to create a programme that while carefully matched to the authority's needs and the needs of its staff also afforded us the potential to approach delegates from other councils in the south west.

"The result was a very successful day that delivered targeted training, convenience and value for money. We believe this type of training solution will increasingly sit with the demands on local authorities and would like to see it become both integral and complementary to what our programme does on a national landscape in London and other cities."

Bill Norman, director of law and support at Torbay Council, says: *"The event was a great success that enabled my team and others in the south west to benefit from first class training locally. It was great value for money, a good use of colleagues' time and represents an important way forward."*

On a more basic level, Simon Goacher believes some course providers would also be well served going back to the basics.

"LGG do things extremely well but, in my experience, that isn't always the

case with others. A course needs to be well structured, it must address the needs of its target audience and it should be both varied and interactive. And a good speaker must finely balance knowledge and informed comment with an engaging style and a sense of humour. All of this might be stating the obvious, but I'm sure I'm not alone in having attended training events that fail at the first hurdles."

The role of local government is changing rapidly and in some ways radically. Lawyers in the sector will not only need to master that unabated spate of primary legislation, statutory instruments and guidance, they must also ensure they are involved from an increasingly early stage in matters relating to proposals and transactions.

James Goudie QC, head of chambers at 11 King's Bench Walk and a regular LGG speaker, says:

"Specialisation in a subject matter is a menace if it is divorced from broad general knowledge and lateral thinking. Balances will often have to be struck between, for example, the requirements of open government and freedom of information on the one hand, and data protection, privacy and confidentiality on the other."

A point that leads neatly back to issues of education and the on-going need for effective communication and targeted training delivery.

"I would like to see our role as a training provider expand to include areas such as general management skills, finance, corporate governance and political awareness – areas that will help the local authority lawyer be truly informed and

effective at the centre of their organisations and assist their career development," says Dudley Lewis.

"This isn't just about expanding our remit, it is about training that really engages and assists the legal professional to develop both as part of their local authority and in terms of their own career knowledge and expertise.

"It would be foolish to think the challenges and pressures on the public sector are going to lessen: they're simply not. But what we can do is work together to create targeted, relevant and cost effective solutions to complex legal frameworks and help to drive the career development of lawyers in local government."

David Leck

ASBO APPEAL?

On 1st April 1999 section 1 of the Crime and Disorder Act 1998 was brought into force and so the nation was first introduced to the Anti-Social Behaviour Order (ASBO). At first local authorities and indeed the police were (with a few exceptions) relatively slow to wield this new statutory weapon but ever increasing levels of persistent 'low level' crime on housing estates particularly perpetrated by groups of youths and the political will of the government to champion the ASBO as a legislative triumph has led to increased numbers of ASBO applications - so much so that the term ASBO has been added to the Oxford English Dictionary.

In the significant House of Lords decision in *R(on the application of McCann) v. Manchester Crown Court* [2003] 1 AC 787 it was confirmed that applications for ASBO's are civil proceedings, notwithstanding that such applications are much more frequently brought in Magistrates' Courts and that the appropriate burden of proof to be applied by the courts is the criminal standard, requiring proof beyond reasonable doubt.

For local authorities though, many aspects of ASBO applications still present significant uncertainty due to the hybrid nature of this developing jurisdiction. By way of an example, section 65 of the Police Reform Act 2002 amended the 1998 Act so as to insert section 1D, providing for interim ASBO's. Whilst, in principle, this seems straightforward enough, section 1D gives no guidance nor sets down any criteria for the granting of an interim ASBO other than stipulating that the court may make such an order where it is considered 'just' to do so. To date there have been no reported higher court authorities providing judicial comment on the interpretation of 'just' in the context of section 1D, which inevitably

leads to judicial inconsistency between courts and even between judges at the same court.

Perhaps most concerning of all the provisions in Part 1 of the Crime and Disorder Act 1998 are those contained in section 4, which stipulates that an appeal against an ASBO made in the Magistrates' Court shall lie to the Crown Court and that on such an appeal the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal and any incidental or consequential orders as appear to be just - that word again!. In real terms section 4 entitles a defendant against whom an ASBO has been made to have the application against him re-heard in full on an appeal to the Crown Court, without any need for him to obtain permission or leave from either the court of first instance or the appellate court.

Last year I was instructed by a local authority on an ASBO application against a defendant who had pursued a relentless campaign of harassment and intimidation towards members of council staff including some senior officers. At the hearing the defendant proudly admitted to the District Judge that he had made at least 5,000 phone calls to the local authority as well as numerous threatening e-mails and letters. Unsurprisingly the application succeeded and an ASBO was made prohibiting the defendant from contacting the local authority other than via one designated officer and only then in writing. Somewhat predictably the defendant stormed out of court verbally abusing the District Judge as he went. Later that same day the defendant completed a generic Notice of Appeal at the court office, in which he stated rather oddly that "racism" was his sole ground of appeal. Adding insult to injury, the defendant

then successfully obtained public funding and legal representation and almost a year later the matter finally reached a substantive appeal hearing, following two preliminary hearings at which the defendant had verbally threatened the local authority's solicitor.

It was argued for the defendant that on the appeal the Crown Court could only consider the evidence that had been before the District Judge in the Magistrates' Court. However, it was successfully argued on behalf of the local authority that the appeal was a full re-hearing and that the local authority was procedurally entitled to make submissions and adduce evidence of further anti-social behaviour: *R(on the application of Oldham MBC) v. Manchester Crown Court* [2005] EWHC 930 (Admin) was considered.

The Circuit Judge and two lay magistrates hearing the appeal showed a frustrating degree of leniency and patience towards the defendant, but after two days of evidence and submission the defendant's appeal was dismissed. A further legal argument then arose as to whether or not the Crown Court had jurisdiction to vary the terms and/or duration of the original ASBO. It was successfully argued on behalf of the local authority that section 4(2) of the 1998 Act gave a wide discretion to the appellate court to make such consequential orders including an extension to the duration of the original ASBO.

Even though justice (and common sense) did prevail, this case highlights the obvious problem that has been created by the current appeal procedure. Whereas the Civil Procedure Rules and the Criminal Procedure Rules require an unsatisfied party to obtain permission from the court before launching into a time-consuming

and costly appeal, there is no such safeguard in respect of ASBO's. It is worthy to note that an absolute right of appeal was originally available in respect of service charge disputes before the Leasehold Valuation Tribunal. It quickly became common practice for unscrupulous landlords to appeal LVT decisions in order to financially pressure tenants into submission. As a result, section 175(2) of the Commonhold and Leasehold Reform Act 2002 introduced a requirement on the appellant to obtain permission.

While local authorities may not be prone to the same financial pressures as an individual tenant, it is a legitimate concern that on appeal the difficulty in convincing witnesses to give evidence for a second time where they were understandably reticent to do so at the original hearing, may unfairly prejudice the local authority's prospects of successfully resisting the appeal. Why is it then that local authorities will, for the time being at least, have to resist spurious ASBO appeals at great public expense? Clearly there is a pressing need for further amendment to the Crime and Disorder Act 1998. Let's hope the Law Commissioners are reading!

Ben Maltz
Barrister

Ben Maltz is a barrister in the Property and Housing Team at 5 Paper Buildings, Temple, London EC4Y 7HB. He can be contacted via e-mail at benmaltz@5paper.com



The leading legal training provider for local authorities

LGG events feature quality speakers including Q&As 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 2008/7 programme below

30/10/2008 Highways and Development	20/11/2008 Rights of Way Inquiries	05/02/2007 Rented Homes Bill	19/04/2007 Highways & Development
31/10/2008 Local Authority - Prosecutions	21/11/2008 LA Commercial Ventures	06/02/2007 Planning Enforcement	24/04/2007 Licensing Ordinances
01/11/2008 The Essential Guide to Overview and Scrutiny Arrangements	22/11/2008 Annual Education Law Conference	19/02/2007 Adult Protection	26/04/2007 Licensing Basic Survival Guide
02/11/2008 MIE Advocacy	24/11/2008 Child Care Advocacy Workshop	20/02/2007 Advanced Interviewing Techniques	02/05/2007 Advocacy Basic Survival Guide
02/11/2008 Corporate Risk and Public Safety: The Regulatory Reform (Fire Safety) Order 2006	27/11/2008 Planning Ordinances	21/02/2007 Special Education Needs and Disability Tribunal	06/05/2007 The Gambling Act 2006
02/11/2008 Education Trustee Issues	27/11/2008 Homes in Multiple Occupation and Licensing: Where are we now?	22/02/2007 Building Control Prosecutions	09/05/2007 Planning Ordinances
03/11/2008 Possession Proceedings: Pursuit, Presenting your case and Avoiding the Pitfalls	28/11/2008 LA Support for People from Abroad	27/02/2007 Education Law Basic Survival Guide	10/05/2007 Donations - Stage 2
03/11/2008 LA Prosecutions	30/11/2008 MIE Advocacy	01/03/2007 Evidence Preparation Workshop	15/05/2007 Education Admissions
03/11/2008 The Gambling Act - 2006	01/12/2008 Shared Services Conference	08/03/2007 New Roads and Street Works Act	22/05/2007 Education Exclusions
08/11/2008 Management Stage 1	04/12/2008 Highways Law Basic Survival Guide	08/03/2007 Advanced Advocacy	23/05/2007 The Licensing Act 2003 - An Update
07/11/2008 Adult Protection	04/12/2008 Annual Planning Law Conference	14/03/2007 Local Authority Prosecutions	05/06/2007 Education School Transport
08/11/2008 Nuisance Substans	05/12/2008 Licensing Basic Survival Guide	15/03/2007 Drafting & Issuing Enforcement Notices	06/06/2007 Appeals and Reviews under the Licensing Act 2003
10/11/2008 Evidence Preparation Workshop	08/12/2008 Ordinances Stage 2	20/03/2007 The Gambling Act 2006	26/06/2007 Fly Tipping, Dog Pooping and Drafts
13/11/2008 Advocacy Basic Survival Guide	08/12/2008 Education Exclusions Update	21/03/2007 Education School Transport	03/07/2007 Prosecuting Council Tax and Benefit Fraud
12/11/2008 Conducting Planning Appeals	07/12/2008 Prosecuting Council Tax and Benefit Fraud	27/03/2007 Tree Preservation Orders	09/07/2007 Planning Investigations Basic Survival Guide
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15/11/2008 Dealing with persistent Complaints	25/01/2007 Data Protection and Freedom of Information		
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