

# NOTE *Rup*

*The Journal for Solicitors in Local Government*

## Features

- *Completion Notices and Enforcement Proceedings*
- *Housing Comes Home*
- *A Level Playing Field for Local Government Solicitors*
- *Protecting Vulnerable Adults*

# The Solicitors in Local Government Ball 2006

ADVERT



# NEC IN ACTION

It has been another busy period for SLG and for me as Chairman since we published the last edition of *Noter Up*. I have continued to represent the Group at a number of events and functions over this period (I know what you are thinking... it's a hard life but someone has to do it!).

For me, it started rather fittingly at the beginning of October with the service in Westminster Abbey to mark the opening of the legal year. This annual event is something rather splendid and probably the highlight, so far, of my year as Chairman. After breakfast at Chancery Lane it is off to Westminster Abbey where you mingle with the Judiciary before processing into the Abbey. Everyone is in full robes and it is quite a sight. Afterwards there is another procession across the road to the House of Lords for a buffet lunch with the Lord Chancellor – and I can report that our Law Society Council member, Maria Memoli, had little difficulty persuading 'Charlie' to pose for a photo with her! It was a fun day but it also reminded me of the role that local government solicitors have within the wider legal community.

I have continued my visits around the branches with a trip to the East Midlands Branch (Broxtove – 4th October) where we had an informative session on RIPA and Freedom of Information. It was a well attended meeting and a pleasure to see a number of old friends from that part of the Country. I also visited the Northern Branch (Durham – 2nd November). This was another good turnout for a talk on some of the recent developments concerning registration of commons and village greens. Durham is always a delightful City to visit and I am grateful to Dennis and his colleagues for their hospitality.

November turned out to be a busy month indeed. I attended the annual dinner of the Scottish In-House Lawyers Group in Edinburgh. Unlike in England and Wales, the Law Society of Scotland is not being forced to separate out its regulatory and representational roles. It may be that its relative

size (there are less than 10,000 practicing solicitors in Scotland) would make such a move impractical.

Having just about recovered from the hospitality in Edinburgh, the following week it was of course our own SLG Ball in London. I hope those of you who attended had a very enjoyable evening. Early indications are that the event will have made a small profit this year as well as raising money for Macmillan Cancer Support.

November was still not over when David Swallow (Chairman, North West & North Wales Branch) and I were the guests of the Irish Local Authority Solicitors Bar Association for their seminar and annual dinner in Dublin. It was my first visit to that fine City but I hope it will not be my last. The warmth of the welcome was first class.

David and I did however manage to find the only pub in Temple Bar that does not sell Guinness – but they had their own brew version instead which was every bit as enjoyable! Now you might wonder what we would get out of a seminar for Irish lawyers but the main sessions were about public procurement (where the same EU Directives apply) and construction contracts (where again the same general principles apply as in the UK). It made me realise how much the two jurisdictions have in common and how much we can learn from each other. There are approximately 4,000 local government solicitors and trainees in England & Wales; in Eire there are just 55 in-house local authority solicitors (plus another 200 private practice solicitors who regularly undertake work for some of the smaller authorities)! The relative size and capacity of SLG compared to its counterparts in Eire and Scotland is, for me, another reason why we should look to strengthen our ties with those jurisdictions and try to work together wherever possible.

So much for my travels as Chairman.

The SLG National Executive met at the beginning of December and we continue to make good progress with all of the on-going initiatives that I highlighted

in the last edition of this magazine.

## Opt-in Membership

One such project which is now coming to fruition is the development of our on-line membership database. The Law Society now requires that instead of all solicitors and trainees in local government automatically being treated as members of SLG, you must expressly 'opt-in'. So far, some 2,100 of you have already done so and we are very grateful. SLG is almost entirely dependant upon the funding it gets from the Law Society each year in order to continue its activities on your behalf. The number of opted-in members we have will undoubtedly have an influence on future funding and upon the degree of influence SLG has within the Law Society to represent your views and protect your interests.

In order to make the membership process easier, both for you and for us to administer, you can now opt-in on-line at [www.slgomembers.org.uk](http://www.slgomembers.org.uk). If you have not already joined SLG please do so now and please persuade as many other solicitors in your office (yes, even the Chief Exec!) to do so too. If you have already opted-in we would still like you to log on to the website and fill in the remainder of your details, including the practice areas you are interested in and the SIGs you attend (you will find the link on the page with your personal details). This will also better enable us to keep in touch with you by e-mail and thereby keep costs down.

And finally... a reminder to all you young solicitors out there that it is time to get your nominations in for the Local Government Young Solicitor of the year award (or perhaps you are a manager and have a young solicitor in your team who you would like to nominate). Full details are on the website at [www.slgov.org.uk](http://www.slgov.org.uk).

I wish you all a prosperous 2007 and look forward to seeing many of you at the Weekend School in Cambridge (29th March – 1st April).

Nigel Snape  
Chairman, SLG

*you can now  
opt-in online  
at [www.slgomembers.org.uk](http://www.slgomembers.org.uk)*



# NOTERup

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#### EDITOR

Helen Bennett  
[noter.up@slgov.org.uk](mailto:noter.up@slgov.org.uk)

#### DEPUTY EDITOR

Matthew Ginn

#### EDITORIAL TEAM

Stephanie Nunn  
Suzanne Bond

#### PUBLISHED BY

P W Media & Publishing  
2nd Floor  
2 - 4 St. Nicholas Street  
Worcester  
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#### DESIGN

Paul Blyth

#### ADVERTISING SALES

Suzie Mitchell  
Alison Whitehead

#### PRINTED BY

Stephens and George

[www.slgov.org.uk](http://www.slgov.org.uk)

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## EDITORS LETTER

I hope the New Year finds you rested and ready to face the challenges 2007 may bring. Personally speaking, I have only just recovered from all those fabulous Christmas parties, not least of which was the Group for Solicitors with Disabilities bash in Chancery Lane. I was fortunate enough to meet Sir John Wall CBE who also happens to be the GSD editor. By coincidence, we both featured in the recent 'Choices' brochure produced by the Law Society to encourage diversity in the legal profession. A significant proportion of GSD members

are employed in local government so it was nice to be able to mix and share views- a big thank you to GSD for their superb hospitality.

This edition sees the appointment of Matthew Ginn as deputy editor who follows in the foot steps of Joscelin Davidson. Matthew has kindly stepped into the breach at short notice and given his experience on the NEC and past contributions to Noter-Up will be a real asset.

Finally, turn to pages 12 & 13 for those pictures you have all been waiting for!...

# BALANCING THE RIGHTS OF CARE WORKERS

The recent decision of the High Court in *R (on the application of (1) June Wright (2) Khemraj Jummun (3) Mary Quinn (4) Barbara Gambier) v (1) Secretary of State for Health (2) Secretary of State for Education & Skills* [2006] EWHC 2886 (Admin) declaring the provisional listing procedure under Part VII of the Care Standards Act 2000, the Protection of Vulnerable Adults List ("POVA List"), as being incompatible with Articles 6 and 8 of the European Convention on Human Rights has led to the inevitable question: does the ruling leave vulnerable adults even more vulnerable?

Section 81 of the Act compels the Secretary of State to keep a list of individuals who are considered unsuitable to work with vulnerable adults although she can remove an individual from the POVA List at any time if satisfied the individual should not have been included. Section 82 provides that a person who provides care for vulnerable adults shall refer a care worker to the Secretary of State if the provider has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult; or that the worker has left the provider's employment in circumstances such that the provider would have dismissed him, or would have considered dismissing him, if he had not left that employment; or that the provider has transferred the worker to a position which is not a care position; or that the provider has suspended the worker or provisionally transferred him to a position which is not a care position but has not yet decided whether to dismiss him or to confirm the transfer; or after a worker has left the provider's employment information comes to light which if it had done so before the worker left would, in the opinion of the provider, have been likely to lead to the provider dismissing, or considering dismissing, the worker.

Once the Secretary of State has received a referral she must determine it in accordance with section 81(5) to (7) and pending that determination may provisionally list the worker.

The POVA List has been in operation since July 2004.

The challenge brought by the claimant nurses supported by the Royal College of Nursing was to that provisional listing procedure and is of importance to all care workers whatever their professional background (if any) and for local authorities as employers of care home and domiciliary care staff.

For this article, the relevant grounds of challenge by the nurses were under Articles 6 and 8 of the Convention (although the Court also considered the extent to which Part VII has retrospective effect). Whilst a listing may be only provisional it has immediate effect. Section 89 provides that a listed person cannot be offered employment in a care position by a provider and where they are employed by a provider at the time of listing their employment in a care position must be brought to an end by the provider unless they suspend or transfer the worker into a non-care position. There is no obligation on the provider to suspend or transfer so a provisionally listed worker could face dismissal and be prevented from taking alternative employment in a care position (without determination of whether they were guilty of the misconduct alleged).

Faced with this scenario the worker could make representations to the Secretary of State to delist them, appeal to the Care Standards Tribunal but only after the expiry of 9 months and with permission or challenge the provisional listing by way of judicial review.

Stanley Burnton J was clear in his judgment that Article 6 was engaged – the rights

and obligations of a contract of employment are civil rights and obligations. Furthermore, making representations to the Secretary of State did not meet the requirements of Article 6 for access to an independent and impartial hearing; judicial review did not provide an adequate remedy as the Administrative Court could not determine the key question of whether misconduct had occurred; and the delay of 9 months in every case for asking permission to appeal to the Tribunal was an unjustified interference with the worker's right of access to the courts. He held that the provisions of the Act as to provisional listing were unfair and a disproportionate means of addressing the problem of provisional action.

Turning to Article 8 the judge held that whilst termination of employment, suspension from work or disqualification from specified employments or areas of work, did not engage Article 8, the basis of provisional listing is suspicion of misconduct serious enough to indicate that a person constituted a risk to vulnerable people and that was calculated to interfere with his personal relationships with colleagues and the vulnerable people with whom he had worked and others. This impact on reputation was sufficient to engage Article 8 (*Turek v Slovakia*, no. 57986/00, ECHR 2006) and the unfair provisional listing procedure infringed workers' rights under that article by failing to ensure due respect for those rights.

Therefore, the judge concluded that the provisional listing procedure contained in the Act was incompatible with both Articles 6 and 8.

So does this ruling potentially place vulnerable people at greater risk? In reality the answer is probably "no" if firstly, employers have in place appropriate employment practices. This should pose no difficulties for local authorities

with comprehensive HR practices including the availability of competent investigators, the ability to suspend on full pay or more to other posts with protected salary, although there may be a problem for smaller organisations in the voluntary or private sectors who have insufficient capacity or less developed practices. Secondly, the Act will need to be amended to allow workers to be heard on the issue of provisional listing for example by an immediate right of challenge to the Tribunal. This may not result in less provisional listing given what evidence is likely to be available in the early stages of an investigation but as the judge pointed out this did not justify a worker being denied the right to make such a challenge.

Whilst the protection of vulnerable adults must be of primary importance to what extent should it be at the expense of the livelihoods of care workers who ultimately may be innocent of any wrongdoing? The balance to be struck is not easy – of the provisional listings between July 2004 and 30th September 2006 40% were removed by the Secretary of State on the basis that the relevant evidence was not provided or the criteria for provisional listing had not been met. Effective protection or gross injustice? The Court was told of the case of Penelope Smith who was suspended from her job as a psychiatric nurse in a care home on 23rd May 2005; provisionally listed on 23rd February 2006; in June 2006 won a claim for unfair dismissal; and in July 2006 was delisted. She had been on the list for 5 months during which time she could not work as a nurse in her specialist field; she was unable to maintain her mortgage payments and lost her home. A price worth paying by society?

Guy Goodman  
Head of Community  
Services Law  
Leicester City Council

## East Midlands Branch



The AGM took place on 4th October at Broxtowe (Nottinghamshire) with Nigel Snape in attendance. Alex Ruck Keene from 39 Essex Street was the guest speaker taking about developments with FOI, RIPA and the Reuse of Public Information Regulations. Officers elected for 2006/07 were Benita Meehan (Chair & NEC rep), Di Matthews (Vice Chair) and Guy Goodman (Secretary).

Our first meeting in 2007 is the re-scheduled December meeting on 17 January with Richard Barlow (Browne Jacobson) on environmental law and the launch of an Environmental SIG on the topic "Environment Agency - Friend or Foe to Local Authorities". The next meeting after that will be on 7th March with Jim Button talking on gambling and prosecutions with other meetings pencilled in for June, September and December.

We have decided that our two SIGs - Children's Services and Adult Social Services & Education - will in future meet on the same date at the same venue so we use our time more efficiently. The dates agreed for 2007 are:

21st March - Leicester City Council (working lunch provided)  
11am: Education  
1pm : Children's Services  
3pm: Adult Social Services  
18th July - Leicestershire County Council  
11am: Adult Social Services  
1pm: Education  
3pm: Children's Services  
14th November - Lincolnshire County Council  
11am: Education

1pm: Children's Services  
3pm: Adult Social Services

Check out our separate website - [www.etribes.com/emsigs](http://www.etribes.com/emsigs) - for details of our activities.

Guy Goodman  
Branch Secretary

## South and Mid Wales Branch

On 25th October our Branch meeting was held in Cardiff with Adam Peat, The Public Services Ombudsman for Wales, being the guest speaker. Adam spoke to the branch about his role investigating service failure by public bodies in Wales.

Our Annual General Meeting took place. Jonathan Evans from Newport City Council was elected Chair. Matthew Dunstan from Cardiff City Council remains Vice Chair and I remain Secretary. The position of Treasurer is currently vacant and I would urge any volunteers for this position to come forward.

Our next meeting is scheduled for Wednesday 31st January 2007 at the National Assembly for Wales in Cardiff Bay. The meeting will include a short tour of the Sennedd. The speaker is to be confirmed. Details will be circulated to all members nearer to the date. If anyone is interested and thinks they are not on the circulation list please contact me by email at [Laura.Mumford@newport.gov.uk](mailto:Laura.Mumford@newport.gov.uk).

Laura Mumford  
Branch Secretary

## North Branch

Our last branch event took place on Thursday, 2nd November 2006, when over 22 colleagues from authorities from across the north attended at County Hall, Durham, to receive an interesting talk from Planning Lawyers from Ward Hadaway, Solicitors, Newcastle.



The talk included a synopsis of the latest developments on the law of village greens, the New Commons Act 2006 and recent developments concerning planning agreements.

The event was attended by our National Chair, Nigel Snape (Malvern Hills District Council) who spoke on changes at Chancery Lane, Group representation and the importance of "opt-out" provisions for members.

We then retired for refreshments.

Our next event is due to take place on Thursday, 14th December, again at County Hall, when colleagues from Eversheds, Leeds, will speak on regeneration and the risk of judicial review.

On Monday, 27th November, I had the pleasure of a meeting with Des Hudson, the new Chief Executive of the Law Society, on his tour of the north. We met at the Newcastle Regional Office of the Law Society. I have to say that the meeting was most encouraging. We exchanged views on the new and emerging role of the Law Society in the light of forthcoming changes to its role in regulating and representing solicitors nationally.

The future role of the specialist groups comprised in the Law Society is clearly valued. I believe that we can look forward to the development of strong ties between the Society nationally and its local, regional and specialist groups. Mr. Hudson did recognise the important role that specialist and local groups have to play and was looking forward

to developing groups further.

Our officers are as follows:-  
(a) Vice-Chairman - Julie Grant, Stockton-on-Tees Borough Council  
(b) Secretary - Dennis Hall, Sedgefield Borough Council  
(c) Treasurer - Stephen Rickitt, Northumberland County Council  
(d) NEC Representative - Pat Holding, Durham County Council

Our County representatives are:-  
(a) Northumberland - Andrea Barker, Tynedale Council  
(b) Cumbria - Geoffrey Wilkinson, Cumbria County Council  
(c) Tyne and Wear - Vivienne Gearsy, North Tyneside Council  
(d) Durham - Pat Holding, Durham County Council  
(e) Tees Valley - Richard Frankland, Redcar and Cleveland Council

Our co-opted members are Colin Stockwell (Gateshead Council) and Carmel Murray (Northumberland County Council). Our trainee representative is Zingra Roberts (Durham County Council).

Dennis Hall  
Branch Secretary

## Yorkshire and Humber Branch



A Branch Meeting was held on 1 November kindly hosted by Barnsley MBC. Some 38 Members, representing 12 Local Authorities, attended and heard an excellent presentation by Brian McGuire and Sian Davis of Field Court Chambers. The subject was asylum and immigration issues as they affect Local Authorities

and their lawyers. The session, although technical at times, was excellent and very informative prompting many questions and much discussion and debate in the networking session afterwards.

Following the Meeting the Branch was honoured to be Received by the Mayor of the Borough and her consort who hosted a very generous buffet. The Mayor addressed the Branch and thanked Members for their continuing and significant contributions to the smooth workings of Local Government. Feedback from Members attending rated this meeting as one of the best ever.

The Annual Essay Competition for all Trainees in the Branch has just been launched. The subject this year is "Anti Social Behaviour and Local Government. Too many powers or not enough? Discuss." The prize for the winning entry which will be judged by the Branch Executive is a contribution to the cost of a place at the Weekend School in Cambridge 2007. The closing date is 12 January 2007 and entries should be submitted by e mail to the Branch Secretary. Previous competitions have attracted a high quality of entry.

The next Branch Meeting will be the AGM and it will be held in Leeds on a date yet to be fixed in late February or early March. Full details including the speaker and topic will be published shortly.

Ian Spafford  
Branch Secretary

## London and Home Counties

Happy new year to you all and here's to a packed first quarter of 2007. If you check the website you will see we have 4 SIG meetings in January and February to dust away those festive cobwebs. 2006 was our best year ever with 35 SIG meetings, 5 courses, the AGM, Branch Meeting and the Away day. The Branch Executive thank all of



you who organised events. those who attended and not forgetting all you managers who allowed people to come and support the events. They represent huge value for money and are a fantastic way of making contacts, finding out the answer to those tricky points we all face and not only that they all attract CPD points! 2006 closed with the SLG ball and it was great to see so many faces, both old and new, from the branch.

We hope that this enthusiasm for SLG and the branch will continue into the year when there will be our Branch AGM, the Weekend School, SIG meetings and maybe a few socials for you to get involved in. The monthly news email will continue to update you on what is happening in the branch so please make sure you keep us up to date with your contact details and we welcome others to come and join in if your branch hasn't got a meeting organised. If you would like anything organised or have any ideas on how we can continue to grow and support you please contact us on [lhc@slgov.org.uk](mailto:lhc@slgov.org.uk)

Suzanne Bond  
Branch Secretary

## South West Branch

Unfortunately, the branch meeting in November did not take place. The branch executives instead held a meeting on 28 November, where it was decided that the AGM would take place on 9 February 2007 to be held at Taunton Deane Borough Council in conjunction with ACSes who will be giving a talk on the White Paper.

Details of the other speakers, topics and the CPD points for attendance will be sent out in January. The Executive also made provisional dates for future meetings which are 29 June 2007, 9 November 2007 with the next AGM on 1 February 2008.

The executives are also arranging a trainee's career development talk on 19 January 2007, which is being held at Kennet District Council in Devizes.

The Community SIG and Education SIG took place on 17 November at Bath and North East Somerset Council and there was a good attendance from the SW. Stephen Knafler Barrister at Garden Court Chambers, gave the talk at the Community SIG on children from abroad, children with asylum seeking families and unaccompanied asylum seeking children which was well received by the audience.

The trainees had a social in Bath, which was a very successful night. The SIG are getting to know each other and hopefully building contacts for the future.

I hope everyone enjoyed the festivities of Christmas and New Year.

Kevin Hill  
Branch Secretary

## North-Western and North Wales Branch

The Branch urgently needs a Chair and a Treasurer (to replace long-serving David Swallow and Graham Cooper respectively) and a Vice-Chair (vacant). There are other unfilled positions on the Branch Executive, such as Area Representatives.

If any members are interested in taking part in the organisation of the Branch, they are invited to contact the Secretary [Richard.lester@salford.gov.uk](mailto:Richard.lester@salford.gov.uk) as soon as possible.

Without new blood to take the Branch forward, the danger is that its activities will have to be cut back.

Richard W. Lester  
Branch Secretary

## West Midlands Branch

The Planning Special Interest Group held a meeting on 18th October 2006 at the offices of Martineau Johnson in Birmingham. This was in the form of a seminar covering Village Greens and Listed Buildings. No future meetings are planned at the moment but for information on future meetings please contact Peter Endall at Warwickshire by email ([peterendall@warwickshire.gov.uk](mailto:peterendall@warwickshire.gov.uk)).

The Highways Special Interest Group is holding its next meeting on 26th January 2007. The venue is likely to be the offices of Worcestershire County Council but has yet to be confirmed. For more information please contact Ian Ross by email at [ian.ross@telford.gov.uk](mailto:ian.ross@telford.gov.uk).

The new Information Law SIG held their first meeting at Wychavon District Council on 19th October at 1.45pm. Items on the agenda included Charging for Access to Environmental Information and "naming and shaming." For information on future meetings please contact Paula Williamson at [pwilliamson@worcestershire.gov.uk](mailto:pwilliamson@worcestershire.gov.uk).

There will be a seminar entitled "Commons Act 2006" which will be held on 19th February 2007 at Staffordshire County Council's offices. This will be presented by a number of Counsel from 2 Harcourt Buildings, London. For more information please contact David Brammer at [david.brammer@staffordshire.gov.uk](mailto:david.brammer@staffordshire.gov.uk).

Emma Fownes  
Branch Secretary

# COMPLETION NOTICES AND EN



**In Brief:**  
Completion Notices – proper construction of Section 95 of the Town and Country Planning Act 1990 - specifically whether on expiry of a completion notice the planning permission becomes invalid for the whole of the development rendering works carried out prior to the expiry of the completion notice liable to enforcement action or do those works remain development authorised by the planning permission

What can the local planning authority (“LPA”) do about a development commenced within the correct time period but remaining incomplete for an extended period of time? Such developments can cause an adverse impact on the amenity of neighbouring properties and can generally be an eyesore within the local community. Residents in the neighbourhood can put pressure on the LPA to remedy the situation.

On the face of it current legislation provides a remedy in the form of a completion notice. Sections 94 and 95 of the Town and Country Planning Act 1990 authorises a local planning authority to serve a notice on the developer stating that the permission authorising the development will terminate by a specified date. The notice (subject to confirmation by the Secretary of State or the National Assembly for Wales) allows the developer to complete the development by a set date. After that set date had expired any further operations carried out are unauthorised and liable to enforcement proceedings. At first glance this would seem to provide an effective and satisfactory remedy allowing the LPA to force completion of a development.

Difficulties arise for the LPA if the developer does not co-operate with the completion notice and instead chooses to do nothing in relation to the completion of the development. At the end of the notice period

the permission authorising the development terminates, the developer cannot after that date complete the development but the LPA and more importantly the local community are still left with the eyesore in their neighbourhood.

The key question for the LPA in this situation is; what is the status of the existing development? Can an interpretation be given to Sections 94 and 95 of the Act to mean that because planning permission was granted for a development as a whole and that planning permission has now terminated that the remaining structure is development without planning permission and therefore liable to enforcement action.

The recent case of Cardiff County Council –v- (1) National Assembly for Wales (2) Mr. M. Malik provides judicial authority on this point.

The facts giving rise to the case are relatively straightforward. In 1993 an application for the erection of a detached garage was made and full permission (subject to conditions) in accordance with the application and the plans submitted was granted. Construction of the garage commenced shortly after the planning permission was issued but then ceased in 1994 and no further works have been carried out since that date. A “breeze block” structure of about waist height remains on the site together with various building materials.

In December 2001 the Council served a completion notice on the owner pursuant to its powers under Section 94 of the Act allowing the owner twelve months in which to complete the development. The National Assembly confirmed the completion notice in December 2002 this gave the owner until December 2003 to complete the garage. The garage was not completed during the time period and in fact no further work was carried out at all on it.

On expiry of the completion notice period the Council issued an enforcement notice under s172 of the Act on the grounds that the partially built structure was a breach of planning control because it was development without the required planning permission. The notice required demolition and removal within a period of three months. The owner appealed against the notice. At the enforcement appeal hearing the Inspector agreed with the Council’s submissions and recommended that “the effect of the completion notice was to withdraw permission for the garage development and that the part built structure did not now have permission and thus that its erection and retention was a breach of planning control liable to enforcement action”. The National Assembly (having called in the appeal) rejected the Inspector’s recommendation reasoning that the wording of section 95(5) meant that the partially built structure had the benefit of planning permission and was not therefore in breach of planning control or liable to enforcement action.

The interpretation of Section 95 (5) was the crux of the appeal by the Council.

Section 95 (4) of the Act states: “If a completion notice takes effect the planning permission referred to in it shall become invalid at the expiration of the period specified in the notice...”

Section 95 (5) of the Act states: “Subsection (4) shall not effect any permission so far as development carried out under it before the end of the period mentioned in the subsection is concerned”

The Council put forward the following “purposive” argument for the interpretation of the Section: (1) it is undesirable on the part of local planning authorities for there to be an accumulation of planning

# ENFORCEMENT PROCEEDINGS

permission and developments remaining uncompleted for long periods of time;

(2) the operations for which planning permission are granted are to be treated as one single entity the "holistic approach" Sage v Secretary of State for the Environment [2003] JPL 1299 failure to comply with the completion notice should not give retrospective planning permission to any "part" development which to date has been carried out the development should be viewed in its entirety; and

(3) taking account of the first and second matter Section 95 (5) should be read as "not affecting any permission" only where the entire development for which the permission had originally been granted has been carried out before the end of a specified period otherwise any partially completion of the development should be viewed as development

undertaken without permission and liable to enforcement.

To quote Victor Moore in "A Practical approach to Planning Law" p285 "since planning permission is granted for development and not for a series of stages in the development process, Section 95(5) [could] appear to mean that once a completion notice has taken effect any act of development which has taken place in the process of partially implementing the permission will be development undertaken without planning permission and thus be liable to enforcement notice procedure".

Unfortunately, the Court disagreed with the approach taken by the Council favouring instead the interpretation of the section to mean that although at the end of the completion notice period the planning permission itself is "lost",

any development carried out prior to that date retains its status as a structure built with planning permission and therefore is not liable to enforcement proceedings. This leaves the situation in which the developer on the expiry of the completion notice cannot complete the development (without a further grant of planning permission) and the LPA would not after following the completion notice procedure be able to take enforcement action to remove any development carried out prior to the expiry of the completion notice. The LPA will have to consider carefully whether it can make use of the completion notice procedure in future or whether the provisions of Section 95 of the Act are now redundant.

If the Council's approach had been adopted and approved by the court as the correct interpretation of Section 95 of the Act the completion

notice procedure would have been made more straightforward and would have been given some "teeth", a developer would always have been under the threat that if he failed to comply with the completion notice enforcement action could be taken to remove his partially built development.

A further point for LPA's to consider is that the court stated that the alternative to the completion notice procedure for the LPA is the local planning authorities power of removal under s.102 of the Act. This power carries with it a right for the developer to claim compensation from the LPA. The LPA may have to pay for incomplete developments of this sort to be removed if they choose to remedy the situation.

Polly Ellis  
Cardiff County Council

## Dennis Hall Meets Chief Executive

Sedgefield Borough Solicitor, Dennis Hall, recently met the new Chief Executive of the Law Society, Des Hudson, on his flying visit to the North East Regional Office in Newcastle. Mr Hudson met with a number of local Law Society representatives.

Views were exchanged on the new and emerging role of the Law Society in the light of forthcoming changes to its role in regulating and representing solicitors nationally.

The future role of the specialist groups comprised in the Law Society was also considered.

Mr. Hall represents the Local Government Group

of Solicitors, having been previously a National Chair, and currently serves the Group on its National Executive Committee in London, and is also local Branch Secretary.

It was agreed that the Law Society and the legal profession face a number of significant challenges following recent reviews and both look forward to the development of strong ties between the Society nationally, and its local regional and specialist groups.

Mr. Hudson recognised the important role that specialist and local groups have to play and was looking forward to developing groups further.



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# SLG ANNUAL BALL



The third annual Solicitors in Local Government Ball was once again held in the prestigious surroundings of the Chancery Court Hotel in Holborn, London. Members of our professional were greeted with a champagne reception followed by a three course meal which utterly surpassed itself this year, culminating in delicate petit fours (which kept disappearing from my table!). Dancing went on till the late hours with a band who encapsulated the very essence of eclectic (we even had the Killers!)

and our resident DJ who has spun the discs at every ball to date. The big event was kindly sponsored by LGG whose director, Dudley Lewis attended on good form and aided in the raffle. Sponsorship was also received from Mills and Reeve and 4-5 Grays Inn Square whose presence was felt in the form of Nathan Holden and Timothy Straker QC and Michael Kaplan respectively. The charity raffle was generously provided with an array of gifts and special thanks must go to Michael Grace of UK Evidence Ltd, TM Lewin

and the Covent Garden Whiskey Shop. All proceeds from the raffle went to McMillan Cancer Support and if you were unable to attend the ball but would like to donate you can do so by logging on to the ball page of our website or going to [www.macmillan.org.uk/donate](http://www.macmillan.org.uk/donate).

Thank you to everyone who attended the Ball and helped to make it such an enjoyable and successful event!

Helen Bennett





## ASSESSING THE IMPACT OF BARKER ENVIRONMENTAL IMPACT ASSESSMENT



Assessing the Impact of Barker Environmental Impact Assessment ('EIA') procedures will have to change following the European Court of Justice judgment in the cases of Ex parte Barker and Crystal Palace/White City and latterly, the House of Lords' judgment of 6 November 2006 in Ex parte Barker. Developers are now countenancing the possibility of an EIA at reserved matters stage, and planning authorities too are grappling with the uncertainties raised by the decision. What will be the true impact of the judgments?

#### The judgments

The 'two-stage' process which historically has closed the door on consideration of environmental matters after the initial outline planning permission (OPP) stage has been upstaged by the ECJ decision, throwing established UK law into disarray. The case of Barker concerned an OPP to develop a leisure complex in Crystal Palace Park granted by the London Borough of Bromley ('Bromley'). At the time of the grant of OPP, Bromley determined that an EIA was not required. Subsequently an application was made to Bromley for approval of reserved matters. At the meeting where a decision was to be taken on approval of the reserved matters, some Bromley councillors expressed the wish that an EIA should be carried out. After legal advice had been sought, however, they were informed that as a matter of domestic law an EIA could be required only at the initial OPP stage, and so approval of reserved matters was granted. Ms Barker brought judicial review proceedings challenging that approval and the legal advice on which it was based. These proceedings were dismissed in the first instance by the Court of Appeal.

The House of Lords expressed doubts regarding the compatibility of domestic law with European law when it considered the issue of whether an EIA could be required at the reserved matters stage. It accordingly sought a preliminary ruling from the ECJ and stayed its decision in Barker.

Cases C-290/03 (R v London Borough

of Bromley, ex parte Barker) and C-508/03 (Commission v UK) were heard by the ECJ which rejected arguments that it is to be interpreted according to domestic law and 'development consent' is given when OPP is granted, not when reserved matters are subsequently approved. It held that the UK had failed to correctly transpose Council Directive 85/337. For the purposes of the Directive, a 'development consent' is defined as the decision that entitles the developer to proceed with the development. Thus, under the Town and Country Planning Act 1990, a developer cannot implement an OPP until reserved matters approval has been gained. Thus, an EIA may be required after the grant of OPP even though it was not needed at that stage, if it becomes apparent on the submission of reserved matters, that the development is likely to have significant environmental effects. The ECJ ultimately ruled that the two decisions to grant OPP and approve reserved matters constitute multi-stage development consent within the meaning of Article 1(2) of the EIA Directive 1997.

On 6 December 2006, the House of Lords followed the ECJ's ruling and decided that the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 had overlooked the possibility that an EIA might become necessary at reserved matters stage. As such the Regulations failed to properly implement Council Directive 85/337.

#### Far-reaching implications

The Regulations and Circular 02/99 will have to be amended and case law reassessed now the full effect of the Barker judgment is known. There may be other unforeseen matters for planning authorities to deal with. Because the Directive has direct effect, developers and planning authorities will face challenges if they do not implement it. There is now a very real possibility that a 'second-stage' EIA may be required at the reserved matters stage, and that screening of reserved matters will be necessary. Planning authorities can take steps to limit the risks of

challenge by ensuring that screening at OPP stage is properly carried out and there is proper scrutiny and care, which may entail increasing the amount of detail set at that stage. Authorities should also use conditions and planning obligations where they can. This should help to ensure that the development remains within the parameters screened or assessed at the OPP stage. The uncertainties and delays faced by planning authorities and developers have also been increased exponentially by the Barker decision. Those intending to challenge planning decisions will have more time in which to do so and may take advantage of the forum that is the reserved matters stage to re-launch the debate regarding a defective EIA, or a lack of an EIA, at the OPP stage.

Planning authorities may find it difficult to strike a balance between a vigilant but not an overly cautious approach. In light of the significant impact of this case, the DCLG has produced an interim guidance note dated 30 June 2006 (available from its website), which is helpful. However, it does not comment on scoping a second-stage EIA, and this may prove to be a sticky issue. It is not clear whether it should include all aspects of the development, particularly if changes have been made to the development since OPP or if certain aspects have not been assessed at OPP stage. Approval of details under conditions, and planning obligations, could potentially be caught if they are likely to have a significant effect and thus require an EIA. The House of Lords has, in its most recent judgment, indicated that all aspects of a project likely to have significant effects on the environment, not yet been assessed or initially identified as requiring an assessment, will need to be taken into account. However beyond this observation, no further glimmer of light has been shed, so this particular issue has been left for Parliament to deal with. One thing is acutely clear - Barker's effects are a bombshell that the planning system certainly did not need right now.

Johann Wyllie  
Mills & Reeve

*Planning authorities may find it difficult to strike a balance between a vigilant but not an overly cautious approach*

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# A LEVEL PLAYING FIELD FOR LOCAL GOVERNMENT SOLICITORS

The days when local government solicitors were seen by some as an inferior branch of the legal profession are at an end. There are now not only exciting career paths, top quality work, not to mention the best final salary pension scheme in the country, but the stock of local government solicitors within the legal profession has never been higher. With the introduction next spring of the new Code of Conduct, local government lawyers are set for an even greater resurgence. The Law Society is set to lift the inequitable, out-dated and irrational treatment of them with regard to their ability to work for clients other than their employers.

In recent years, a number of local authority legal departments have developed a thriving external market. Kent County Council Legal Services, for example, has built a well-established and flourishing legal practice, delivering services to over 150 external public sector clients, which last year generated income of over £700k.

This is primarily delivered under the powers contained in section 1 of the Local Authorities (Goods and Services) Act 1970. This empowers a local authority to make agreements with other public bodies for the supply of goods and services. There is nothing in the section to confine it to non profit-making operations, nor to capacity which is surplus to requirements. Indeed, the Department of the Environment, in a letter dated 7 December 1995, stated that authorities may properly use the section 1 power to trade for profit.

Not content with this, local authorities are placing increasing pressure on their lawyers to deliver even greater external income by charging or trading with the wider market, for example council employees, members of the public as well as private and voluntary sector organisations.

Whilst the statutory powers for local government to charge and trade are already well established under sections 93 and 95 of the Local Government Act 2003, and in theory could easily apply to legal services, in reality there are several restrictions imposed on their ability to do so, primarily by the various professional bodies involved.

Section 93 confers a power to charge a person for a discretionary service, i.e. one which the Council has power to provide under primary or secondary legislation, but is not obliged to provide to that person, e.g. legal services.

Charging under section 93 is primarily for services provided under the well-being powers contained in section 2 of the Local Government Act 2000, thus potentially opening up a wide range of new customers, including the private and voluntary sectors and individuals.

Section 95 confers a power to trade through a company in activities related to an authority's functions. The power is to do for a commercial purpose anything which the authority is authorised to do - including, in theory at least, the provision of legal services.

However, in respect of solicitors, Rule 4 of the Solicitors' Practice Rules 1990 provides that a solicitor who is an employee of a non-solicitor shall not work as solicitor for anyone other than their employer, except as permitted by an Employed Solicitors Code.

Rule 4 was introduced in 1987. Before this it was assumed that a combination of Rule 1 (the anti-touting rule) and Rule 3 (a rule preventing the sharing of fees which may arise from solicitors working for customers of the employer) of the 1936-1972 Practice Rules, and a general understanding of the conflict principles would, in practice, achieve largely the same effect.

There were, however, general waivers allowing employed solicitors to act for third parties in certain circumstances, subject to conditions. When the 1998 Practice Rules were drafted, the Master of the Rolls took the view that the general waivers were ultra vires because they circumvented the statutory rule making process, which requires the MR's consent. Therefore, they had to be incorporated into the Rules as 'exceptions.'

There are two types of services that a solicitor offers:

- Unreserved Services – those which can be provided by anyone (e.g. the giving of legal advice and will-writing)
- Reserved Services – those reserved by statute to solicitors and other authorised providers of legal services (e.g. conveyancing, advocacy, litigation and probate).

Despite the rules in force, solicitors employed by non-lawyers can still do unreserved legal work for customers of their employers as long as they are not practising as a solicitor. This is because the practice rules only apply to solicitors who are practising (i.e. using the title of solicitor and/or providing reserved services in reliance on their qualification as a solicitor). A solicitor who is not practising as a

solicitor still remains subject to general jurisdiction of the Law Society and may be struck off for conduct unbecoming a member of the profession.

The Law Society has for some time been considering lifting the ban on in-house solicitors providing a service to the commercial sector, on the grounds that Rule 4 is a potential contravention of competition legislation. This is a view that is shared by the OFT whose Director General stated that he expected to see steps taken towards the removal of the restriction within 12 months of their report (March 2001).

Indeed, the Council of the Law Society itself confirmed on 21 March 2002 that its ultimate goal was to enable employed solicitors to provide legal services direct to the public, so long as consumers are guaranteed the same level of protection as is offered to the clients of solicitors in private practice. The Council voted to open immediate talks with Government on the necessary legislation to bring this major development about.

This has opened the way for many large corporations and financial institutions such as banks, building societies, insurance companies and claims management companies to offer legal services directly to the public through their employed lawyers. But can local government solicitors benefit from the same relaxation of the rules?

Under the provisions of the Employed Solicitors' Code 1990, solicitors employed in local government are effectively prohibited from acting for persons other than their employers except in specific cases - ruling out the use of section 93 in the vast majority of cases. Specifically, Rule 6(a) provides as follows:

6. Local government
  - A solicitor employed in local government may act:
    - (a) for another public body or statutory officer to which the employer is statutorily empowered to provide legal services; Under the current Code a solicitor employed in local government may act for (and charge):
      - another public body to which the employer is statutorily empowered to provide legal services (e.g. under the 1970 Act)
      - companies in which the authority is a shareholder (e.g. a trading company set up under section 95)
      - a trade association of which the employer is a member
      - lenders on certain re-mortgages
      - a club, association, pension fund

or other scheme operated for the benefit of employees of the employer.

Local government solicitors cannot, however, act for council employees unless it is connection with their work and provided they don't charge for it.

Similarly, in non-contentious matters they can provide services to a charity or voluntary organisation whose objects relate wholly or mainly to the employer's area, provided there is no charge.

In light of the Code's application, there are very few situations or client groups that local authority lawyers cannot theoretically target in order to expand their client base. However, the ability thereby to generate additional external income is extremely limited. It would either require the establishment of a local authority company under section 95 in order to deliver legal services using the well-being powers, or the creation of teams of non-solicitor lawyers to handle private client work. However, even the first of these options is not available at present.

Under the law as it stands a solicitors' firm can be a limited company, but according to the Law Society this must be a body recognised under section 9 of the Administration of Justice Act 1985. The Practice Rules require all members and directors of such a company to be lawyers. So at present law a local authority could not own (or part own) such a company.

Under the Legal Services Bill currently going through Parliament, it will be possible for non-lawyers to have interests in corporate legal firms. Indeed, in April 2006, the Department for Constitutional Affairs confirmed that no restrictions are envisaged under the new regime as set out in the Bill, restricting local authority solicitors from tendering for work in the private sector. However:

- any 'material interest' (i.e. 10% or such lower amount as specified in the rules) of a non-lawyer must be approved in writing by the Licensing Authority
- a non-lawyer cannot have an interest in another such body unless approved
- there may be a requirement for particular restrictions on non-lawyers having higher levels of interest (not yet specified)
- the body must at all times have a Head of Legal Practice who is in their own right an authorised person (i.e. a solicitor) and a Head of Finance and Administration, both of whom must be approved by the Licensing

# LOCAL GOVERNMENT SOLICITORS

## Authority

• a licensed body may carry on a licensed activity "only through a person who is entitled to carry on the activity".

The devil will be in the detail of what rules the licensing bodies will be playing by. Whether non-lawyers - in particular, local authorities - can own legal firms will depend on the levels of interest specified. Certainly we are expecting lawyers to be entitled to take in non-lawyers as shareholders up to a certain point.

Under section 157 the main parts of the Act will come into force at a date to be specified in an order. Assuming that the Bill is passed into law by spring 2007, the Law Society as licensing body will then have to get consent of the Legal Services Board before it issues its rules for licensed bodies. One would assume that some time mid-2008 is the earliest any licensed body could sensibly operate.

However, a simpler and more pragmatic solution may be available much sooner than that. The Law Society's Code of Conduct and Recognised Bodies Regulations 2004

are due to go before the Law Society Council in December, after which they will require approval by the Master of the Rolls and the Lord Chancellor, before coming into force by May 2007. Assuming they are approved as currently drafted, they will have the effect of revising the 1990 Code, so that the new position will be as follows:

### Rule 13 – In-house practice

#### 13.08 Local government

If you are employed in local government you may act:

- (a) for another organisation or person to which or to whom the employer is statutorily empowered to provide legal services;
- (b) for a member or former member of the local authority, provided that:
  - (i) the matter relates to or arises out of the work of the member in that capacity;
  - (ii) the matter does not relate to a claim arising as a result of a personal injury to the member;
  - (iii) you are satisfied that the member does not wish to instruct some other lawyer; and
  - (iv) no charge is made for your work unless those costs are recoverable from some other source;
- (c) for a company limited by shares or

guarantee of which:

- (i) the employer or nominee of the employer is a shareholder or guarantor; or
  - (ii) you are, or an officer of the employer is, appointed by the employer as an officer of the company;
- provided the employer is acting in pursuance of its statutory powers;
- (d) for lenders in connection with new mortgages arising from the redemption of mortgages to the local authority, provided:
    - (i) neither you nor any other employee acts on behalf of the borrowers; and
    - (ii) the borrowers are given the opportunity to be independently advised by a qualified conveyancer of their choice;
  - (e) for a charity or voluntary organisation whose objects relate wholly or mainly to the employer's area, provided that there is no charge to the charity or voluntary organisation in non-contentious matters, and in contentious matters the employer indemnifies the charity or voluntary organisation in relation to your costs insofar as they are not recoverable from any other source;
  - (f) for a patient who is the subject of a Court of Protection Order where

you are acting for a fellow employee (under 13.02) who is appointed as receiver for the patient; or (g) for a child or young person subject to a Care Order in favour of the employer on an application to the Criminal Injuries Compensation Authority.

The simple replacement of the words "another public body" in Rule 6(a) of the 1990 Code, with "another organisation or person" in Rule 13.08(a) will, therefore, immediately open up the possibility of local authority solicitors providing (and charging for) legal services to anyone permitted under section 93 of the 2003 Act, and not restricting them to providing services only to public bodies recognised under the 1970 Act.

At last, there will be a definite sense of parity and recognition for local government solicitors, and the opportunity for them to practise on a larger – and more level - playing field.

Geoff Wild  
Director of Law & Governance  
Kent County Council

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# HOUSING CO



2006. The year the courts finally lost patience with the Tolerated Trespasser. The year the relevance of Article 8 to possession claims was definitively explained by a 7 Judge court in the House of Lords. The year we all became Euro lawyers. Like 1970s rock music, the housing law decade burst into life six years in.

For housing departments 2006 was the Year of the Form. The Form was the standard suspended possession Form N28. The problem was what paragraph 1 of that order unleashed on unsuspecting litigants.

In the decade since *Brent v. Burrows* the case names had changed but the song remained the same. Despite sustained assaults at appeal court level and despite academic and judicial distaste, Tolerated Trespasser status remained a central concept in the enforcement of possession orders, and to disrepair claims, the statutory right to buy, mutual exchange and to assignment.

The wind of change was signalled in *Harlow DC v Hall*. More of a side wind, as the case was primarily concerned with bankruptcy. The Court of Appeal found that whilst the 1993 version of Form N28 could reasonably be interpreted as postponing possession after the date mentioned so long as the tenant complied with the condition set out in the order, the stark language of the 2001 revision permitted no such interpretation. Possession was postponed until the (usually 28 day) date fixed in paragraph 1 of the standard form and the tenancy would then come to an end through the operation of section 82(2) of the Housing Act 1985. Paragraph 1 had created Frankenstein's monster. The Tolerated Trespasser was that monster. If not a monster, then

certainly an embarrassing uncle who arrives early at a party and well before the time one thought one had written on his invitation. Pandemonium ensued. Had every suspended possession order since 2001 been ordered or agreed based on a misunderstanding of its legal effect? Many otherwise straightforward claims were adjourned. Some courts prepared home made orders, some of which made matters worse not better. The Bristol cases of *Hassan* and *Glastonbury* were rushed to the Court of Appeal to sort out the mess.

Whilst putting forward a new form of order the Court of Appeal stated that they found the fact that tens of thousands of people were in the "twilight zone" of TT status unsatisfactory. Their solution was as elegant as it was simple. TT status would only arise once the date for giving up possession had passed. The suggested form of order need not and did not contain such a date: an application could be made for one in writing following breach. Thus the status of TT departs centre stage and enters its own twilight zone. Whether the beleaguered TT has any zone at all in the assured tenancy regime will be decided in March 2007 in the Court of Appeal in *Knowsley v White*.

The year's landmark case was *Kay v Lambeth* and *Price v Leeds*. Was the negative answer given by the Lords in *Harrow v Qazi* to the question whether Article 8 afforded a defence to someone who otherwise had no defence to a possession claim still sustainable in the light of subsequent Strasbourg jurisprudence? This was thus *The Final Countdown II. Second Eye Of The Tiger*. The answer was that once the court accepted that the property in question was the occupier's

home for the purposes of Article 8, it should proceed on the assumption that the requirements of the domestic law regarding possession struck a fair balance and would provide the justification for interference required by Art 8(2). Further consideration of the interests protected by Article 8 would be unnecessary. There would, however, be some cases of a special and unusual kind, where the interference with the occupier's Article 8 interests would have to be justified. It remains to be seen whether this test will work in practice, or whether there will need to be a Third Encounter of a Special and Unusual Kind.

Eligibility issues lie at the heart of Part 7 of the Housing Act 1996 and of Schedule 3 to the Nationality Immigration and Asylum Act 2002.

For example an EEA national (or his dependant) is an "ineligible person" under paragraph 5 of Schedule 3. Further, important statutory services including the provision of interim Part 7 housing accommodation are prohibited by paragraph 1 of schedule 3. The applicant may seek to rely on the paragraph 3 caveat in Schedule 3 on the basis that EC rights are being exercised. Surprising, therefore, that community rights had been explored so little in this context by comparison with human rights. In the past year or so this changed dramatically, and at breakneck speed. Two cases warrant particular consideration. First, *R (Maryam Mohamed) v LB Harrow*, concerned a Dutch national who had worked when she first entered the UK but had then been joined by her children and had not worked since. She was in receipt of income support.

*Harrow* assessed that she was not eligible. She sought a review and requested accommodation

# COMES HOME

pending review. Harrow decided that it could not accommodate her because s.188(3) accommodation is listed in paragraph 1(1) (j) of Schedule 3 and that she was an ineligible person under paragraph 5 of Schedule 3 to the NIAA 2002.

Further, as she was not a worker or work-seeker she was not exercising any ECRights. Jackson J. gave full and careful guidance on when and how to approach the issue of retained worker status, what amounted to a sufficiently close connection with the United Kingdom labour market, and what was required to be a "qualified person" within the meaning of the Immigration (EEA) Regulations 2000, and to have a right to reside in the UK under articles 17 and 18 EC. The claim failed.

Secondly, Putans v LB of Tower Hamlets concerned a Latvian national who came to the UK as a worker after Latvia acceded to the EU. After working for less than 12 months became ill, lost his accommodation and applied to Tower Hamlets as homeless. The issue of his eligibility under Schedule 3 to the Nationality Immigration and Asylum Act 2002 for interim accommodation pending appeal under s.204 Housing Act 1996 came before Mr Michael Briggs QC on appeal from the County Court. It was held that a person was ineligible for housing assistance under the 1996 Act if he was subject to immigration control and did not fall within the Homelessness (England) Regulations 2000 reg.4.

A national of the EU was subject to immigration control unless he was a "qualified person" within the Immigration (European Economic Area) Regulations 2000 reg.5, which was confined (in the case of an A8 national) to a person working for a "qualified employer". The loss

of the right to remain in the UK while genuinely seeking another job was a derogation from EC Treaty rights, and was discrimination on the grounds of nationality.

That derogation, however, was authorised by the Latvian Act of Accession - its justification, suitability and proportionality could not be decided on an appeal from an interim application.

In 2007 Bulgaria and Romania will join the EU, with yet another regime defining nationals' entitlement to housing and welfare assistance, and there will no doubt be legal challenges testing decisions concerning those regimes. Housing lawyers need to pay close attention to the Eurovision contest as well as the domestic scene.

It has been a busy year for social services departments dealing with accommodation issues concerning asylum seekers, overstayers and illegal entrants. The Hackney and Croydon cases explained the interrelationship between paragraphs 6 and 7 of schedule 3 to the Nationality Immigration and Asylum Act 2002: if the applicant applied for asylum in country and their claim is rejected, he becomes unlawfully present and is caught by paragraph 7. Finding out the applicant's asylum history is essential. The scope to consider or act on the asylum seeker's prospects of success on a fresh application however appears more limited than ever following *Binomugisha v Southwark LBC*, in which Andrew Nicol QC found that the authority could only act on its view when the fresh application was manifestly unfounded. The courts remain anxious to ensure that Article 8 rights are adequately taken into account, particularly where there is a risk of separation of parent and child. Thus in *PB v Haringey Council* the authority ought to have considered more fully whether a mother should be accommodated pending a hearing

some months away to regain her children. In the same case useful guidance was given as to how to assess potentially minor conditions such as reactive depression.

More generally, social services provision has been subject to four major trends. First, local authorities continue to carry a heavy burden in providing support for asylum seekers: the dismissal of Slough's appeal in *M v Slough* has left business as usual. Asking NASS to provide for destitute plus failed asylum seekers by way of Hard Cases Support is now inappropriate in the light of the Croydon and Hackney decisions. All are subject to appeal in 2007.

Secondly, Croydon and Hackney and *Binomugisha* have clarified what inquiries LAs should make, and what matters should be left to the Home Office. Thirdly, the developing case law in the homelessness sphere on community rights has informed decision making in regard to paragraph 5 to schedule 3 to the 2002 Act. All the while paragraph 7A, which has been subject to trials in London and the North West, and threatens to place authorities in the unenviable and perhaps unlawful position of accommodating only the children of failed asylum seekers, thereby separating them from competent parents, has hovered over local authorities like *Banquo's Ghost*. At the time of writing the government response is thought to be imminent. Individual cases have caught the eye. *White v Riverside HA Limited*, due to be heard in the Lords in March 2007, concerned claiming rent increases following defective notification. Fundamental issues of waiver and estoppel arise.

*Mei Ling Lin v Barnet* provides a template for challenges to choice based allocation schemes. In *RLB Kensington & Chelsea v Danesh*,

violence was found to mean only physical contact. This does not happily with the decision in *Bond*. *Conville v Richmond Upon Thames* provided guidance on what was meant by a reasonable reasonable opportunity under section 190 (2) (a). It means reasonable for the applicant. *Tower Hamlets v Deugi* confirmed that authorities cannot always avoid adverse section 204 decision by withdrawing the review decision, whilst *Robinson v Hammersmith & Fulham* illustrates that an answer delayed is not a problem solved.

*Crossley v Westminster* was a timely reminder that not all priority need appeals are entirely hopeless.

Housing lawyers have played a leading role in the development of human rights law, and there had been a regular diet of set piece hearings. However the triple whammy of consigning homelessness appeals to the county court, introducing a second appeals hurdle and introducing an eligibility criterion (which sent many of the most deserving cases and interesting issues from housing to social services) all served to lower the profile of housing law and to slow down its development. 2006 saw a return to prominence. Perhaps the true comparison is not with rock but pop, and not with 1976 but 1996. *Housing's Coming Home*.

Bryan McGuire and Sian Davies  
Barristers Field Court  
Chambers Gray's Inn

*The authors are barristers at Field Court Chambers whose practices focus on local authority housing and community care matters. Field Court Chambers, 5 Field Court Gray's Inn, London WC1R 5EF. Tel: 020 7405 6114 www.fieldcourt.co.uk*



Further to our interview with the Des Hudson, the new Chief Executive of the Law Society, in the last edition of *Noter Up* he has announced the new plans designed to deliver better representation and a strong suite of services to members.

He says: "With the establishment of the independent regulation and consumer complaints boards, the Law Society is free to focus unambiguously on supporting solicitors" Changes follow the split of regulation and representational activities and are a response to feedback from the profession on what they need from their representative body. He continues "The changes will begin to put the Society into a better position to meet our members' expectations. These proposals focus the tremendous potential of the Society's talented staff. I am absolutely determined to secure our position as a first-class membership body and I believe these changes will give us the solid base we need by ensuring that our resources are used to the full to support solicitors."

Please find a summary of some of the representation work carried out by the Society in 2006. It is envisaged that in 2007, the Society will be able to deliver even more to its members. The Society actively encourages feedback from the profession; either directly or via your recognised group, SLG.

This round up is available on the Society's website, providing links to detailed information: <http://www.lawsociety.org.uk/newsandevents/news/view=newsarticle.law?NEWSID=314089>

Register to receive professional updates by e-mail <http://www.emailhosts.com/secutran/emailmanager/subscribe.php?shreference=sh209371>

During 2006, I believe the Law Society has demonstrated a greater commitment to supporting solicitors and to being an effective voice on the issues affecting your practice lives.

I joined as Chief Executive in September to head up the purely representative body for solicitors. Regulation

and representation of solicitors are now separate, allowing the Society to focus very clearly on supporting solicitors and representing their interests to regulators and government.

I hope that you have already begun to see evidence of our new focus through reading *Professional Update*, our weekly update on the work we do on your behalf. This week's issue is a summary of our key achievements during 2006.

Through a series of consultations this year, you have told us what you want from the Law Society, and actively engaged with our campaigns on policy issues. To find out more about our work, you can subscribe to a number of specialist newsletters at [www.newsletters.lawsociety.org.uk](http://www.newsletters.lawsociety.org.uk). These newsletters will tell you about future consultations, giving you opportunities to feedback to us and to help shape the future Law Society.

We look forward to being even more effective in 2007.

Des Hudson

#### International

**Practice rights in Korea** - UK lawyers set to be allowed to work after extensive lobbying by the Law Society

**Global practice rights** - Society lobbied World Trade Organisation on rights in Asia, the UK and South America.

**Practice rights in New York** - Admission of lawyers who qualified without law degrees.

**Opportunities in Libya** - Society worked to open markets.

**Removal of EU practice barriers** - Society is working with DTI to influence proposed EU Directive on services.

#### Legal aid

**What Price Justice?**

Our campaign to persuade government to guarantee an adequately funded legal aid system.

Un-recouped payments

Society made proposals to LSC to resolve UPOA problems.

**Preferred Supplier Scheme** - Society responded to LSC consultation.

**Reminder of dedication of legal aid lawyers** - Society paid tribute to legal aid lawyers.

**LSC unfairly targeting legal aid immigration solicitors** - Society wrote to the LSC.

#### Criminal

**Juries in fraud trials** - The Law Society opposes the abolition of juries in complex fraud trails.

**Solicitor's safety at police stations**

- Society and Home Office agreed HO Circular to address safety concerns.

**Defendants must be able to choose their own solicitor** - Society demanded government drop contentious plans.

#### Property

**Stamp Duty Land Tax** - HMRC agreed

to simplify laws following a Law Society campaign, supported by 4,500 solicitors.

**Chancel repair liability** - Society called for abolition of an uncertain, costly, discriminatory liability.

**Home Information Packs** - Dry run of Law Society HIP has begun, following our campaign over implementation.

Family and children

**Faster family justice in London** - Society campaign to reduce delays in the family courts of central London.

**Protecting children's right to legal representation** - Society's work on the Child Care Proceedings Review.

**Family Law Protocol 2nd Edition** - Made available for free to download from our website.

Dispute resolution

**Dispute Resolution Section launched** - Society launched first dedicated body for solicitors in this area.

**Fast and fair** - Our proposals for lower value personal injury claims without raising the small claims limit.

**Protecting client privacy** - DCA dropped plans to open up court files with retrospective effect after Society legal action.

**Conditional fee agreements** - Law Society liaised with practitioners over Garret and Myatt.

Employment

**Employment dispute regulations**

- blessing or curse? - Law Society survey, and representations to DTI.

**Employment tribunal forms** - Society successfully lobbied to allow in-house software when submitting forms.

Private client and taxation

**Trustee exemption clauses** - Society

consulted practitioners on current practice to inform our guidance.

**Regulation of will writers** - Society survey revealed overwhelming public support for regulation.

**Taxation of trusts** - High profile Law Society campaign led to significant changes to the Finance Bill.

**Limited Liability Partnerships and probate** - Law Society went to court in key case.

Mental health

**Mental Health Bill** - Government got mental health reforms wrong again, said the Law Society.

**Mental Capacity Act: Draft Code of Practice** - Society responded to government's consultation.

Anti-money laundering

Lobbying for sensible, reasonable laws

Government agrees not to erode legal professional privilege.

Online discussion forum

Law Society launched a forum to facilitate communication and support between MLROs.

**Online reference area** - Society created a reference area for money laundering information.

**Gatekeeper e-newsletter** - Regular newsletter launched, to critical acclaim.

**Money laundering burdens** - Society lobbies against the placing of unreasonable burdens on solicitors' firms.

Listening to solicitors

Changing the Law Society - 19,000 solicitors told us to focus on representing them to government and the regulator.

**Supporting solicitors** - Solicitors ranked the top regulation issues to take up with

the regulator and the government.

**Legal aid** - Solicitors' views informed the Law Society's legal aid campaign in light of the Carter Review.

Promoting professional values  
**Legal Services Bill** - Government plans for reform must not damage the independence of the legal profession. SLG provided a response to this important consultation paper and have been working closely with the Society on the detail and ramifications of these changes to the governance and future supply of legal services

**Race Equality Awards** - Law Society and Commission for Racial Equality recognised the achievements of the profession.

**Defending sole practitioners** - Law Society took legal action to ensure CPS continued to give work to sole practitioners.

**Unregulated advisors** - Society backed information campaign helping consumers choose the right legal adviser.

London Bombings Legal Helpline - Line connecting victims with pro bono advice received over 200 calls.

Some services for members

Regulation News

Please be aware that New Conduct Rules will come into force in the first half of 2007. Rule 4 is to be replaced by Rules 12 & 13. These will be available on SLG's website [www.slgov.org.uk](http://www.slgov.org.uk) in the near future.

Stephanie Nunn  
Policy Executive - employed solicitors and sole practitioners  
The Law Society

# YOUNG SOLICITOR OF THE YEAR AWARD 2006

It is that time of year again when all "young" solicitors in local authorities across England and Wales are asked to stop hiding their glowing lights under a bushel and to apply or be nominated for the Local Government Young Solicitor of the Year Award 2007. The private sector are very good at patting themselves on their backs for the work they do and it is time the public sector showed them and perhaps our own officers that the work we do in local government is just as exciting, rewarding, professional and outstanding.

Thanks to the continued support of Trowers and Hamblins Solicitors (Public Sector Group) the award is now approaching its third year.

The winner of the 2006 Award, Simon Goacher of the Metropolitan Borough of Wirral said that, "It really has been a great honour winning the award". He has received a great deal of recognition as a result of the award and has been asked to contribute to magazine articles and a television programme. The Mayor of Wirral also held a reception following the award for Simon along with other employees in recognition for their work.

A person may either be nominated or apply for the Award. Nominations and applications are invited from all solicitors working in local government who have less than 10 years post qualification experience (hence you may very well be simply young at heart). For these purposes local government includes councils and bodies such as fire and police services, probation boards, national park authorities and passenger transport authorities.

The judges will base their decision on set criteria and the subject of the application must fulfil one or more of the following:

- Be innovative
- Be making or have made a material impact on their Local

Authority's performance

- Be an exemplar of Best Practice
- Promote the best interests, and help raise the profile of local government lawyers

The nomination or application must provide examples of how the nominee or applicant has fulfilled one or more of the above criteria and state in no more than 1,000 words why they should win the coveted Award.

The criteria can be fulfilled in any of the practice fields undertaken by solicitors in local government.

The Judges will be Nigel Snape the Chairman of SLG, Malcolm Iley, Partner in the Public Sector Commercial Department, Trowers and Hamblins Solicitors and Dudley Lewis of LGG Training

The Award will be conferred again at the SLG annual dinner on Friday

30th March 2007, at the Weekend School to be held next year in Cambridge. The lucky winner will be invited to receive the beautiful cut glass Award, a cash prize and the opportunity to spend a week at Trowers and Hamblins, as well as the accolade of Local Government Young Solicitor of the Year 2007.

Nominations and applications must be submitted so as to reach Stephanie Nunn at The Law Society, 113 Chancery Lane, London. WC2A 1PL as soon as possible and no later than Friday 2nd March 2007. Full details will be posted on the website.

ADVERT

# Trainee News

Aha -January, the time for left over turkey, freezing fog and a of course, a review of the past year. Though you won't see such a tired cliché here- oh no! We've been so busy over the last year that we can only fit in details of the last few moments of the year... So, what exactly have the NEC Reps been up to?

First, as part of our role on the NEC, the reps were charged with creating a package which would help make new trainees in local government aware of the SLG and the numerous benefits it offer to trainee solicitors.

Kemi was the lead rep on this project and created an induction pack. The induction pack details the role played by the SLG in a trainee solicitor's life, together with

the composition of the branches around the country. Also contained is information about the relevant SIGs and the events hosted by the SLG, including the Local Government Professional Skills Course, which is provided by the College of Law.

The induction pack is powered by PowerPoint, so is not only highly useful and informative, but is also an ecologically friendly method of distributing information to trainees without creating paper waste - the plan is to email the document to all new trainees. The distribution of the induction pack is linked to the Law Society, and will therefore not be received by trainees until after their training contract has been registered with the Law Society.

A modified version for use at Law Fairs was also created. These Law Fairs are being increasingly attended by the Reps, who are helping to promote the advantages of training and working as a local authority solicitor as well as life in local government. Again this version is powered by PowerPoint and will be used as a presentation at the fairs by the Reps when they are giving their talk to law students.

The Reps hope that the induction pack will give trainees as much information that they need to know in their first few weeks of working in local government so that they know that they have support and guidance if ever it is needed as well as a foundation for expanding contacts who may prove helpful in the future.

## Law Fairs

As mentioned above, the Reps have attended several Law Fairs promoting SLG. Kemi attended the alternative careers fair held at Bristol University on 1 November, with one of the trainees from the SW branch, John Webster of Kennet District Council. We were unable to get a place at the Law Fair itself but we did get the SLG advert in the Law Fair brochure that went out to all law students at both Bristol University and the University of West of England.

The Bristol alternative careers fair was highly successful. We had numerous enquiries from law students who were unaware that local authorities were authorised by the Law Society to take on trainee solicitors. They were also unaware of the advantages of life in local government, such as flexible working hours, a high level of responsibility and a wider variety of practice areas than might be experienced in private practice.

Carol co-ordinated attendance at the Manchester, Newcastle and Northumbria University Law fairs, all three were well attended and the volunteers who staffed the stands reported that there was a significant amount of interest in the work of Solicitors in Local Government. Thanks to the

volunteers we just mentioned who are: the other Trainees at MCC - Rebecca Newland and Caroline Milson, Zeynab Patel at St Helens, Anna Flood and her posse (Nicola Barnett, Ben Bunndock and Victoria Appleby) from One North East, Andrea Barker from Tynedale, Zingra Roberts from Durham and Joanna Turhham from Gateshead.

There is a further Law Fair taking place on 19 January at BPP Law School in Manchester, if there are any trainees out there who fancy staffing the SLG stand, please get in touch with the Trainee Reps, contact details are at the end of the page.

Carol also formed part the panel at a Careers Talk at Manchester University, which involved talking to the students about life as a Trainee in local government. The rest of the panel was made up of other solicitors from various practices, the CPS, the Environment Agency etc.

**Trainee Solicitors Group**  
The SLG is very keen to not only maintain but also strengthen its links with the Trainee Solicitors Group ("the TSG") so we sent Ian along to their AGM. The AGM was keenly attended by a number of trainees and newly qualified's. A number of candidates stood

for a variety of positions on the Executive Committee, and full details can be found on the TSG website at [www.tsg.org](http://www.tsg.org). Keep an eye out for initiatives from the new President, Melissa Worth.

The Law Society Consultation on the minimum salary for trainees  
The Law Society have recently consulted as to whether it would be better to retain the minimum salary or to abolish it completely. The consultation closed on 19th January 2006.

As trainees we would like to see the Law Society keep the minimum salary for trainees in place because it provides regulation for the law firms and guidance for the trainees as to what they should be paid. We understand the argument that the majority of trainees are paid well above the minimum but there is a minority of trainees who are paid the Law Society minimum wage, particularly those in High Street firms.

The costs of studying law at university, not to mention the LPC, are spiralling and it is surely only right that trainee solicitors are afforded some protection by the continuance of a minimum salary guideline by the Law Society. Of course, as the number of students searching for a training contract

increases, it will also prevent exploitation of trainees by those firms, which appreciate how competitive the market has become and are thus aware that many applicants would accept a training contract with a salary far below the present minimum in an effort to get that first step on the ladder.

If there were no minimum in place, those firms that are looking to save on costs and maximise profits may use the change if implemented to make those savings by cutting trainees salaries. This would be wholly unfair. The Law Society already has in place mechanisms and criteria for those firms, which would like to provide training contracts but cannot afford to pay the minimum salary. This system has worked well to date, and will continue to do so for as long as the minimum salary remains in place. Indeed, the success of the present system can be seen in the ever-increasing number of students choosing law at university - becoming a solicitor has never been a more popular career option, and the increasing diversity of the profession may well be threatened by the removal of the safety net of the minimum salary.

Trainee Representatives

The leading legal training provider for local authorities

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

<b>18/01/2007</b> <b>Community Care</b>	<b>JAN</b>	<b>02/03/2007</b> <b>Introduction to Civil Litigation</b>	<b>18/04/2007</b> <b>Appeals and Reviews under the Licensing Act 2003</b>	<b>APRIL</b>	<b>17/05/2007</b> <b>ASB Advocacy</b>
<b>25/01/2007</b> <b>Data Protection and Freedom of Information</b>		<b>08/03/2007</b> <b>Monitoring Officer Conference</b>	<b>18/04/2007</b> <b>Annual Legal Update Conference</b>		<b>21/05/2007</b> <b>Introductory and Detailed Taxation</b>
<b>30/01/2007</b> <b>Environmental Issues</b>		<b>08/03/2007</b> <b>New Roads and Street Works Act</b>	<b>19/04/2007</b> <b>Highways &amp; Development</b>		<b>22/05/2007</b> <b>Education Exclusions</b>
<b>30/01/2007 &amp; 01/02/2007</b> <b>Standards Committee and Code of Conduct Training for Members</b>		<b>07/03/2007</b> <b>Witness Training for Enforcement Officers</b>	<b>19/04/2007</b> <b>A-Z of Inspectors</b>		<b>23/05/2007</b> <b>The Licensing Act 2003 - An Update</b>
<b>01/02/2007</b> <b>Overview and Scrutiny Committees</b>	<b>FEB</b>	<b>07/03/2007</b> <b>Dealing with Members</b>	<b>20/04/2007</b> <b>Possession Proceedings: Pre Court, Presenting Your Case and Avoiding the Pitfalls</b>		<b>24/05/2007</b> <b>Double Bottom</b>
<b>05/02/2007</b> <b>Monitoring Officer Conference</b>		<b>08/03/2007</b> <b>Advanced Advocacy</b>	<b>23/04/2007</b> <b>Management Stage 1</b>		<b>05/08/2007</b> <b>Education School Transport</b>
<b>05/02/2007</b> <b>Marital Home Bill</b>		<b>12/03/2007</b> <b>Dealing with Persistent Offenders</b>	<b>24/04/2007</b> <b>Licensing Committees</b>		<b>08/08/2007</b> <b>Appeals and Reviews under the Licensing Act 2003</b>
<b>08/02/2007</b> <b>Planning Enforcement</b>		<b>14/03/2007</b> <b>Local Authority Prosecutions</b>	<b>28/04/2007</b> <b>Licensing Basic Survival Guide</b>		<b>08/08/2007</b> <b>Homeless Prevention</b>
<b>08/02/2007</b> <b>Committees Basic Survival Guide</b>		<b>15/03/2007</b> <b>Dealing &amp; Issuing Enforcement Notices</b>	<b>27/04/2007</b> <b>Housing Law Basic Survival Guide</b>		<b>12/08/2007</b> <b>Domestic - Basic Survival Guide</b>
<b>08/02/2007</b> <b>Possession Proceedings: Pre Court, Presenting Your Case and Avoiding the Pitfalls</b>		<b>18/03/2007</b> <b>Homeless Prevention</b>	<b>02/05/2007</b> <b>Advocacy Basic Survival Guide</b>	<b>MAY</b>	<b>13/08/2007</b> <b>Rights of Access to Information</b>
<b>18/02/2007</b> <b>Directions in Child Care Proceedings</b>		<b>18/03/2007</b> <b>Green Land and Village Green</b>	<b>03/05/2007</b> <b>PADE Interviews - A Basic Survival Guide</b>		<b>14/08/2007</b> <b>ASBOs Made Easy</b>
<b>20/02/2007</b> <b>Advanced Interviewing Techniques</b>		<b>20/03/2007</b> <b>The Gambling Act 2005</b>	<b>08/05/2007</b> <b>The Gambling Act 2005</b>		<b>21/08/2007</b> <b>Substance Abuse</b>
<b>21/02/2007</b> <b>Special Education Needs and Disability Tribunal</b>		<b>21/03/2007</b> <b>Education School Transport</b>	<b>08/05/2007</b> <b>Planning Committees</b>		<b>28/08/2007</b> <b>Pty Tipping, Dog Pooping and Graffiti</b>
<b>23/02/2007</b> <b>Building Control Prosecutions</b>		<b>21/03/2007</b> <b>Governance / DPA</b>	<b>10/05/2007</b> <b>Committees - Stage 2</b>		<b>27/08/2007</b> <b>Conflict Communication Skills</b>
<b>28/02/2007</b> <b>Evidence Preparation Workshop</b>		<b>22/03/2007</b> <b>PADE Interviews - A Basic Survival Guide</b>	<b>11/05/2007</b> <b>RIPA in 2006</b>		
<b>27/02/2007</b> <b>Education Law Basic Survival Guide</b>		<b>22/03/2007</b> <b>Practical Introduction to Local Authority Procurement</b>	<b>15/05/2007</b> <b>Education Admissions</b>		
<b>01/03/2007</b> <b>Evidence Preparation Workshop</b>	<b>MARCH</b>	<b>23/03/2007</b> <b>Possession and Debt</b>	<b>15/05/2007</b> <b>Witness Training for Enforcement Officers</b>		
<b>01/03/2007</b> <b>Anti Social Behaviour and Marital Home</b>		<b>27/03/2007</b> <b>Essential Guide to Overview and Scrutiny</b>			
		<b>27/03/2007</b> <b>Trees Preservation Orders</b>			
		<b>28/03/2007</b> <b>Local Land Charges</b>			

For further LGG Courses and Conferences from July 2007 onwards, please visit our website [www.lgg.org.uk](http://www.lgg.org.uk)

## HOW TO BOOK AN LGG EVENT

- FAX a booking to LGG on 01483 277888
- POST a booking to LGG, 64 Smithbrook Kilns, Cranleigh, Surrey, GU6 8JJ
- EMAIL a booking to [bookings@lgg.org.uk](mailto:bookings@lgg.org.uk)
- Book online at [www.lgg.org.uk](http://www.lgg.org.uk)
- Call 01483 275 577

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