

LGG TO LAUNCH MANAGEMENT SKILLS PROGRAMME TO KEEP LOCAL AUTHORITY LAWYERS ON TOP

Local government is becoming ever more complex and the pressures on heads of legal services ever more demanding. With a new Local Government Bill recently published there is no reason to expect life will get any easier for lawyers at the top, or those aspiring to succeed them.

One of the key objectives for LGG in the year ahead is providing new opportunities for lawyers and others in the democratic services and governance fields to develop their management skills, broaden their roles and find new career paths.

"In today's highly pressurised working environment, lawyers need an edge" says LGG's director of training, Dudley Lewis.

"I am delighted to announce that help is at hand in the shape of a new management skills programme which will be tailored to their needs at whatever level they have reached in their authority.

"Delivered by people who understand what the demands are on individuals and the changes facing councils, our aim is to bring to the market an exciting programme with a new look and a fresh feel", adds Lewis.

"We're going for something uniquely packaged for delegates, based on an up to the minute understanding of the needs and ambitions of lawyers in the local government of today".

Presented in three modules, the shape and content of the programme is currently being finalised but is expected to adopt the following approach:

1. Managing Yourself

Personal effectiveness: inter-personal skills, communication skills, lifestyle/work-life balance and stress management.

2. Managing People and Teams

People management: leadership and team development, motivation and performance management including appraisals and feedback, HR and budget management.

3. Managing in a Political Environment

Working with members; political management skills, corporate and ethical governance and the monitoring officer role.



The target audience is lawyers and others in local government who need additional skills to develop in their existing role, to make their next move or pursue a wider career.

It is also hoped to attract heads of service and those aspiring to these positions as well as appealing to people working in the areas of democratic services and governance.



The style of delivery will be interactive with speakers leading discussion on topics and offering practical tips. The intention is to provide training in a range of management skills that can be further expanded by specific day-long seminars already being developed by LGG. These will be complementary to the individual modules and become part of the overall programme.

Delegates will therefore have an opportunity to share experiences and develop learning together. LGG plans to assemble a strong team of speakers and trainers capable of engaging audiences in what promises to become the centre-piece of its annual calendar of courses.

Starting with a pilot in the late spring/early summer, the new programme will be rolled out across the country later in the year to fulfil LGG's declared intention to offer more of its products in the regions.

The programme is being developed in association with Rockpools – the executive recruitment and career development specialists – and their expertise will bring another welcome dimension to the modules through the delivery of personalised and innovative career development workshops.

Tell us what you think

We welcome input from Training Brief readers on how you would like to see this programme of management skills training develop. If you have any suggestions, please contact Lisa Ellis or Sarah Glanville on 01483 275577 or by email: lisa@lgg.org.uk or sarah@lgg.org.uk

WELCOME



At the start of another year there certainly appears to be no letting-up on the pace of change, ever shifting legislation and – ultimately – the workload facing those in local authority legal services.

That's why the whole LGG team is excited at the introduction of a new programme of management skills training that we'll be piloting in the coming months and rolling-out in full by year end. You can read more about this development in this issue of Training Brief but, in summary, it's a vitally important step to ensure the long-term position of lawyers at the heart of the local authority framework.

I am also delighted that this expanded issue - contains contributions from leading representatives of chambers and others in our profession providing insight and concise analysis of key issues such as planning, housing and education. And there is a particularly relevant contribution from Landmark Chambers' James Maurici on the High Court's overturning of the Mayor of London's suspension from office.

I'd like to thank all our contributors and to say that – while 2007 will undoubtedly be challenging – I also hope it presents new and refreshing opportunities for your own career development and that LGG can continue to play an important part in that process.

Dudley Lewis
Director, LGG Training

TRANSPORT, ACADEMIES AND EXCLUSIONS – NO SLOW DOWN IN EDUCATION LAW

Harini Iyengar, barrister at 11 King's Bench Walk, reviews the highlights of LGG's annual education law conference, held in London in November.

This year's annual education law conference – presented by LGG in association with 11 King's Bench Walk chambers - offered a comprehensive update for practitioners in this fast-moving field.

The speakers reviewed and commented upon a wide range of case law. The focus of recent exclusion cases has shifted away from issues of fair procedure and treatment of evidence as human rights issues come to the fore. The landmark human rights and exclusion cases of *Ali* and *Begum* received a detailed analysis.

Coverage of statutory developments included the amendments and new guidance on the exclusions regulations, including the introduction of mandatory training for members of and clerks to exclusion appeal panels.

Delegates were briefed on the mammoth 191-section Education and Inspections Act 2006 which, among other things, calls for a major shake up on school transport. "Travel" will replace "transport" but, more significantly, LEAs are required to conduct assessments of school travel needs and draw up a written "sustainable modes of travel strategy" for their schools. LEAs must ensure they meet their obligation to provide school travel and improve

the physical well-being of users and the environmental well-being of the area. A new and more complicated regime will govern the duty to make school travel arrangements. Delegated legislation will supplement the EIA 2006.



There was a survey of developments in special educational needs and disability discrimination. Of particular note was *R (K) v Governing Body of Slough Grammar School*, examining the line between education and personal care and what constitutes an auxiliary aid or service. The substantive and procedural law on disability discrimination in education continues to evolve.

Delegates were invited to consider whether academies are meeting the needs of children with special needs, both with and without statements of those needs. Government

statistics show that academies are admitting similar numbers of children with special needs to their predecessor schools. Nevertheless, the governing body of an academy does not owe statutory duties in relation to children with special needs in the school.

Nor is there any requirement for the LEA to be consulted before an academy is named on a statement. An academy's obligations towards children with special needs are derived from the funding agreement, and the conference shared experiences of ease and difficulty in accessing funding agreements; sometimes a request under the Freedom of Information Act is required.

There has been a flurry of activity at a local level as schools offer extended services, often with scant regard for the legislative provisions. Disputes are now emerging concerning issues of funding and charging, consultation, staffing and workload, and partnership working.

A variety of staffing issues were explored. Child protection obligations which arise at the time of recruitment and reporting duties were explained and evaluated in the light of the existing law and the Safeguarding Vulnerable Groups Act 2006. And information sharing and human rights questions need to be considered carefully when facing child protection issues.

The conference received an update on pay and conditions, including the appraisal of teacher performance. A thoughtful legal perspective was given on the beliefs of school staff, ranging from wearing a veil through to BNP membership by a school bus driver.



AGE DISCRIMINATION – AN OVERVIEW OF A MINEFIELD

Last October's Employment Equality (Age) Regulations is a veritable minefield for employers, managers and – ultimately – lawyers. We asked Judy Stone of 11 King's Bench Walk to give Training Brief readers an overview of another important step in the expansion of discrimination law.

These regulations are likely to have a widespread and significant effect on employment practices. This is particularly so since they forbid indirect discrimination, as well as direct discrimination on the grounds of age. A number of policies which have been considered standard practice could now become subject to scrutiny. These might include:

- a requirement that an employee have five years' experience of a particular kind of work,
- only considering graduate applicants for a post,
- recruiting primarily through university visits, and
- a last in, first out redundancy policy.



Assuming that each of these practices differently affects different groups, they are now unlawful unless an employer is able to justify the policy.

The regulations are confined to age discrimination in the fields of employment, vocational training and certain types of education. They do not extend to discrimination in connection with the provision of goods and services. This means that, for example, a cinema will not have to justify a decision to sell reduced price tickets to students or the elderly.

In addition, they provide protection for the following groups of people (among others): applicants and employees, contract workers, office holders, the Police, the Serious Organised Crime Agency, partners, trade organisations, qualifications bodies, training providers for vocational training, employment agencies and institutions of higher and further education (see regulations 9 to 22).

Discrimination and justification

The most important distinction between age discrimination and most other forms of discrimination in UK law is that both direct and indirect age discrimination may be justified.

A practice is justified if an employer can show that the treatment was a proportionate means of achieving a legitimate aim. The regulations do not limit the aims which might be considered legitimate. This reflects the fact it is difficult to anticipate the types of issues that might arise.

As well as showing that there was a legitimate aim, an employer will also be required to show that the treatment was appropriate and reasonably necessary in order to achieve that aim. In particular:

- The treatment must actually contribute to the pursuit of the legitimate aim. For example, the employer must, if using an age-related condition to promote safety, be convinced that the condition actually promotes safety.
- The importance of the aim being pursued should be balanced against the discriminatory effect of the treatment;
- If the aim could have been achieved by other means, without treating those in a particular age group less favourably (or with a lesser effect), the treatment will not be justified.

Exceptions

By way of exceptions, the regulations allow the continuance of some of those employment practices which were previously considered to be standard. It must be remembered that not all such 'standard' practices are exempted. For example, the practice of requiring a degree or relevant experience for an appointment is not among the exceptions. The key exceptions are as follows:

- where "possessing a characteristic related to age is a genuine and determining occupational requirement" and it is proportionate to apply that requirement to a particular case;
- where a statutory provision allows for age discrimination;



- national security;
- different pay bands if younger workers are paid less than the adult National Minimum Wage;
- paying benefits by reference to length of service (however, if the length of service exceeds five years, it must reasonably appear to the employer that the criterion 'fulfils a business need'); and
- making enhanced redundancy payments where these are calculated according to a specific formula.

Retirement

The regulations abolish the age limit of 65 for claiming unfair dismissal. They also make it possible for employees to claim unfair dismissal after reaching the employer's normal retirement age.

However, they create a national default retirement age ("NDRA") of 65. This means the regulations do not render a dismissal by reason of retirement unfair where a person is at or over the age of 65. This provision is controversial as it is unclear whether or not it is in accordance with the European Community Law. A judicial review challenge is currently being brought to challenge the legality of the NDRA. At the time of writing, the High Court has not yet considered the challenge.

No such exception applies to employers who have a normal age of compulsory retirement below 65. This means that any such policy will constitute unlawful discrimination unless the employer can show that it is objectively justified. (It should also be noted that this exception applies only to employees and not, for example, to office-holders.)

Retirement Dismissals

The regulations contain very complicated provisions concerning retirement dismissals. These can be summarised in broad outline as follows:

- compulsory retirement below 65 will constitute unlawful discrimination if not justified.
- if the employer can prove that the reason for the dismissal was retirement, this can constitute a fair reason for dismissal. Whether or not retirement is the reason for the dismissal is determined by specific rules set out in the legislation. It is not merely a question of fact for a court or tribunal.
- if retirement is the reason for the dismissal (in accordance with the provisions), the dismissal will only be unfair if the employer has failed properly to abide by statutory duties to notify employees and consider any requests to work beyond retirement.

Conclusion

These are complicated and significant new regulations likely to have a fundamental effect on employment policies and practices. Employers would be well advised to review their existing policies thoroughly.

PROGRESS MADE ON HOUSING LAW BUT UNCERTAINTIES REMAIN

The balancing of “need” with “choice”, the points system, succession on death and an end to the “sausage machine” of rent arrears possession actions were just a few of the areas covered by Jan Luba QC in his opening address at LGG’s annual housing law conference held in London in October.

The Garden Court Chambers’ QC began by looking at the Department of Communities and Local Government (DCLG) position on “need and choice” and its imminent additional guidance of the former ODPM’s choice-based lettings scheme. Luba said that in the absence of adequate guidance, the legal profession found itself in a position of having to design lawful lettings schemes to achieve the Government’s own 2010 deadline for choice.

In the face of on-going uncertainties, Jan Luba looked at recent cases, including:

- R (Cali and others) v Waltham Forest LBC, where the council had adopted a “choice-based” scheme in which available properties were advertised to applicants who then bid based on their preference bands. The judge held that the council’s scheme was not lawful.
- R (Ghandali) v Ealing LBC, a choice-based lettings scheme in which bidders were placed into one of four bands related to their housing need. The council had accepted medical opinion that led it to reach an irrational conclusion on medical priority.

In what he described as an “illuminating case”, the conference reviewed R (Lin) v Barnet LBC, which the council lost and which Luba declared to be a starting point for those going down the points-based route. And finally, in R (Suratun Begum) v Newham LBC, the issues of reasonable preference on both medical and overcrowding grounds were addressed with an outcome that has led the council to review its scheme.

Elsewhere, in his address to some 100 delegates, Jan Luba looked at how authorities can design a lawful choice-based lettings scheme and the on-going wait for DCLG guidance. In relation to rent arrears possession actions, the end of routine applications and of the aforementioned “sausage machine” were highlighted.

Luba stressed that judges will want to know pre-action procedures have been followed. This will be especially important in relation to provision for young tenants and the vulnerable and in line with the Disability Discrimination Act, community care duties and alternative dispute resolution. The new battleground looks likely to be over warrants for eviction.

Jan Luba concluded that it had been a busy year in which much had happened. The DCLG had supplied helpful guidance in some instances but uncertainty remains in a number of areas.



CHANGE AND UNCERTAINTY CONTINUE TO DOMINATE THE PLANNING ENVIRONMENT

LGG’s annual planning law conference provided much for delegates to consider, debate and address in the coming months. Landmark Chambers’ Robert Walton provides a summary.



The LGG’s annual planning law conference is as sure a sign as the Regent Street lights that Christmas is just around the corner.

Delegates were doubtless lured by the triple attraction of attending a top-notch seminar, bagging a handful of CPD points and catching up on some Christmas shopping, with the inevitable result that the 13th annual conference was as well attended as ever. The seminar was also rather well timed given the very recent release of PPS3, the publication of the Barker Review and the announcements contained in the Queen’s Speech.

This year’s conference was impeccably chaired by Christopher Lockhart-Mummery QC of Landmark Chambers. The key-note speech was given by Paul Hudson, DCLG’s Chief Planner.

His presentation was entirely candid – highlighting for example that DPD submissions are lagging behind the Department’s forecasts with consequences for inspector allocation. It was also illuminating – referring to the changes that are on the horizon notwithstanding that the planning system has undergone substantial reform in recent years. Of these, the Government’s White Paper – due in the spring - is surely the most eagerly awaited, especially in the light of the Barker Review’s wide-ranging recommendations.

David Elvin QC, of Landmark, returned to give his annual tour-de-force planning law update. Delegates were taken on a rapid journey through the year’s major legal developments; but the real value of this paper lies in the fact that it will doubtless remain on delegates’ desks as a first point of reference over the coming year.

Rupert Warren, the third Landmark barrister to take the stage, spoke on the brand-new PPS3. This was for many delegates their first meeting with PPS3 and its supporting documentation. Rupert examined the new policy’s practical consequences, first amongst which is the need for a compliance audit (bringing with it added costs and resources). He also dealt directly with the glaring policy lacuna arising from the fact that the new policy does not fully bite until 1 April 2007 whilst much of the “old” regime has already been cancelled.

Landmark’s head of chambers, Christopher Katkowski QC gave the conference the benefit of his A-Z of planning inquiry true stories. Readers will get the gist on learning that “A” was for “alcohol”. This paper is not on the Landmark website, surely to the relief of those about whom the stories were told.

After lunch, Mark Harnett, partner at Fladgate Fielders, spoke on the complex issue of planning obligations. He started with the Audit Commission’s report of August 2006 before moving via an assessment of the way in which the system is currently working to a review of the much-heralded concept of planning gain.

Bob McGeedy, head of planning and public law at Kester Cunningham John, spoke on planning probity. His paper set out a detailed analysis of the key issues, dealing with the legal and policy framework and its practical application.

The last speaker, Stephen Morgan - also of Landmark - gave a comprehensive paper on planning enforcement. The presentation covered the existing regime and highlighted several of its problem areas. Tantalisingly, the paper finished by looking to the future in the light of the DCLG’s recently published recommendations for the overhaul of the system.

These are undoubtedly times of change for the planning system. Next year’s seminar will have much to consider.

• LGG’s annual planning law conference is presented in association with Landmark Chambers. Robert Walton, who joined Landmark in September 2006, is one of the country’s leading planning barristers. For the past two years he has been ranked first in the leading planning barrister under 35 in Planning Magazine’s law survey, and is also rated as a “leading junior” in the current edition of Legal 500

HIGH COURT DECISION ON LONDON MAYOR IMPACTS ON MEMBER CONDUCT

The High Court's overturning of the Mayor of London's suspension from office has wider implications in terms of regulation of the conduct of members, as James Maurici, the Landmark Chambers barrister who represented the Mayor, explains:

In *Livingstone v The Adjudication Panel For England* [2006] EWHC 2533 (Admin); Times, November 9, 2006 the High Court (Mr Justice Collins) allowed London Mayor Ken Livingstone's appeal against suspension from office for one month, for having likened a Jewish reporter to a concentration camp guard in February 2005.



The Mayor was door-stepped outside City Hall by an Evening Standard journalist while on his way home from a function. The suspension was imposed by a case tribunal of the Adjudication Panel for England, following a report by an ethical standards officer appointed by the Standards Board for England.

Collins J. overturned the finding of breach of the Code holding that the Mayor had not brought his office into disrepute. He made that finding on broadly three grounds:

(1) The GLA Code of Conduct (which adopted, as it was required to, the provisions of the Model Code of Conduct contained in Local Authorities Model Code of Conduct (England) Order 2001 ("the Model Code of Conduct Order 2001") only applies where a member is exercising the functions of his office (see s. 52 of the Local Government Act 2000) and at the relevant time in question in this case the Mayor was neither acting in his official capacity nor exercising the functions of his office;

(2) The Case Tribunal's finding of breach was contrary to the Mayor's rights of freedom of speech under the common law and Article 10 of the European Convention on Human Rights;

(3) The Case Tribunal wrongly considered that because of the Mayor's high profile it was not possible to separate the man and the office. In so doing the Case Tribunal watered down the test under the code which requires disrepute to office not personal disrepute.

Scope of the Code

The wider implications of the case arise principally from the first of the three grounds upon which the appeal was allowed.

S. 52 of the Local Government Act 2000 requires someone who becomes a member of a relevant authority at any time after the authority have adopted a code of conduct under s. 51 to give "the authority a written undertaking that in performing his functions he will observe the authority's code of conduct for the time being under section 51". (Note that the judge said the precise wording of any particular undertaking signed is immaterial since the code can go no further in what it regulates than the act permits).

Despite the wording in s. 52 of the Act the Model Code purports to apply certain of its provisions, namely paras. 4 (conduct bringing office into disrepute) and 5a (use of position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage), to conduct of members both in their "official capacity, or any other circumstance": see also para. 1(2) of the Model Code.

This aspect of the code has always been controversial and there is, following the tenth report of the Committee on Standards in Public Life (Cm.6407, January 2005), consideration of amending the model code by removing the phrase "in any other circumstance" from Paragraphs 4 and 5(a).

Mr Livingstone successfully argued that the words "in performing his functions" in s. 52 of the 2000 Act limited the scope of Codes of Conduct and that it was not intended that they should affect what a member of a council did in his private life.

The learned judge said that nonetheless the words of limitation in s. 52 had to be read purposively not literally such that the words do not necessarily cover the same conduct as 'in his official capacity' but may extend further.

He said: "They must cover activities which are apparently within the performance of a member's functions. Thus misuse of the position for personal advantage will appear to whoever is affected by it to have been in the performance of functions. It seems to me that the expression should be construed so as to apply to a member who is using his position in doing or saying whatever is said to amount to misconduct."

The judge went on "it follows that conduct which is outside his official capacity can be covered by the words in s.52 and so can properly be within the Code of Conduct. Accordingly, I do not think that the words 'or any other circumstance' mean that the model code is to that extent ultra vires" but that "unlawful conduct is not necessarily covered."

Thus a councillor who shoplifts or is guilty of drunk driving will not if my construction is followed be caught by the code if the offending had nothing to do with his position as a councillor".

(The Court did not consider this created any great lacuna because s. 80 of the Local Government Act 1972 provides for disqualification for election to a local authority of those who have within five years before the date of election been convicted of any offence which has resulted in a sentence of three months imprisonment (whether or not suspended) or more).

The effect of the decision is:

1. Undoubtedly to narrow the scope of the model code, and thus reduce the number of cases of misconduct that need to be investigated; and
2. As Collins J. recognised to have the effect that some cases previously determined by ethical standards officers and case tribunals and including at least two which have gone on appeal to the High Court may have been wrongly decided.

Other matters of importance in the decision

The other aspects of the case that are worthy of note include the High Court's emphasis on the high threshold involved in the test of "disrepute to office". It is a test which must not be watered down in its application. Personal disrepute alone will not suffice. The court rejected the notion that for high profile members it was impossible to divide the person from the office.

Also of some significance is the clear recognition by the court that over zealous application of the code can amount to a breach of a member's human rights, in this case freedom of speech.



IN BRIEF

The annual Local Authority Legal Update will take place at the Royal College of Surgeons in London on April 18. Held in conjunction with 11 King's Bench Walk, it will provide an important evaluation of legal issues that have arisen in the last year, as well as insights into what will be important and topical to solicitors in local government in the year ahead.

• The new LGG website (www.lgg.org.uk) is now up and running. It contains full details on all our courses, a delegate area, news section, and – most importantly – facilities for online booking and CPD points tracking.



LGG's Bridget Glynn-Jones successfully completed her Great Wall of China Hiking Challenge in October, raising an impressive £5,000 for Macmillan Cancer Relief in the process.



LGG took its usual place at the annual ACSes Conference held in Grantham in Lincolnshire, and would like to take this opportunity to congratulate Meic Sullivan Gould on his appointment as ACSes president.

DIARY DATES

Here are details of just a few LGG training opportunities over the coming months. For a full programme visit the forthcoming events section, accessed through the home page of our website – www.lgg.org.uk

DATA PROTECTION AND FREEDOM OF INFORMATION

Date: January 25, 2007
Time: 10.00 – 16.00
Venue: Barlow Lyde & Gilbert, London
Cost: £195 plus VAT
CPD: 4.5

RENTED HOMES BILL

Date: February 5, 2007
Time: 10.00 – 16.00
Venue: ETC Venues, London
Cost: £189 plus VAT
CPD: 4.5

MONITORING OFFICER CONFERENCE

Date: February 5, 2007 – London, Local Government Association
March 6, 2007 – Leeds, Ramada Parkway Hotel
Time: 10.00 – 16.00
Cost: £210 plus VAT
CPD: 4.5

EDUCATION LAW BASIC SURVIVAL GUIDE

Date: February 27, 2007
Time: 10.00 – 16.00
Venue: Leeds Town Hall
Cost: £189 plus VAT
CPD: 4.5

WITNESS TRAINING

Date: March 7, 2007
Time: 10.00 – 17.00
Venue: ETC Venues, London
Cost: £195 plus VAT
CPD: 5.5

Further details – including venue information and directions – can be found on the LGG website.

HOW TO BOOK AN LGG EVENT



Book online at www.lgg.org.uk



EMAIL a booking to bookings@lgg.org.uk



FAX a booking to LGG on 01483 277888



POST a booking to LGG, 64 Smithbrook Kilns, Cranleigh, Surrey, GU6 8JJ



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