

Training Brief



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DELIVERING INDUSTRY-DEFINING TRAINING TO LOCAL AUTHORITIES

ISSUE 4 • AUTUMN 2006

WELCOME



With 300 English local councils facing elections in just eight months and the anticipated Government White Paper on local authority reform expected shortly, there is an even busier than usual time ahead for those of us working within the legal framework of the public sector.

Among the topics likely to be addressed in the Paper are proposals for elected mayors, both partnership arrangements and 'double devolution', empowerment and neighbourhood governance arrangements, local public service delivery and the role of local authority as 'convener'. All of this will add even more to the workload of the local authority solicitor and will mean that access to expert counsel, informed advice and targeted, relevant training will be vital.

Here at LGG, the autumn represents our busiest time of the year with a packed diary and some of our flagship events falling in the pre-Christmas run-up – most notably November's Education Law Conference, Housing Conference a month earlier and Planning Conference in December.

Over the first three issues of Training Brief I am delighted that we have been able to attract key figures from the worlds of law and local government as contributors - and this issue builds on that success.

Clive Sheldon QC looks at academies as a precursor to his Education Law address; Arden Chambers' Christopher Baker reviews the latest developments relating to human rights and housing, and Caroline Spelman MP - Shadow Secretary of State for Communities and Local Government – provides us with her views on the on-going debate surrounding local government restructuring.

We are particularly grateful to all our contributors and I hope to see as many of you as possible at our events this autumn as we aim to address some of the key issues for local government lawyers in an ever-changing regulatory landscape.

Dudley Lewis
Director, LGG Training

EDUCATION LAW CONFERENCE TO FOCUS ON ACADEMIES

Presented in association with 11 King's Bench Walk, LGG's annual Education Law Conference brings together some of the most important legal minds and experts to address the key issues facing local authority solicitors and other professionals where legislation impacts on their roles. We asked Clive Sheldon QC to preview his contributions to the day.

An Academic Issue

Academies are in the vanguard of government thinking surrounding schools. As independent, but publicly funded schools, concerns have been expressed about the way in which pupils' rights will be protected (in terms of admissions as well as exclusions), and legal challenges have already commenced. At this year's LGG Conference I will speak about those challenges and the legal ideas behind them.

In addition, the enhanced entitlement to express a preference for maintained schools, within paragraph 3 of Schedule 27 to the 1996 Act, does not apply to academies. Parents will have to rely on section 9 only. Moreover, even if an academy is named at Part IV of a child's statement, the governing body of the academy cannot, as a matter of statutory obligation, be required to admit the child: c.f. section 324(5)(b) of the 1996 Act. On its face, therefore, I will argue academies have limited statutory responsibilities with respect to children with SEN.

However, the key issue facing academies is the funding agreement with the Secretary of State. I will explore various funding agreements and explain how these have established a parallel legal scheme with rights for children, including those with SEN. I will argue that the real issue



Of particular concern for some parents are the approaches of academies to children with special educational needs (SEN). I shall discuss the legal framework within which academies operate, and explore the 'reality' of the approach of academies to SEN.

In particular, I will discuss the fact that the presumption children with SEN but without statements, 'must be educated in a mainstream school', applies as much to academies as other maintained schools. I will point out, however, that the governing body of an academy does not owe statutory duties in relation to children in their school who have SEN. And nor do they have to inform parents of a child for whom special educational provision is made: c.f. section 317A of the Education Act 1996.

for pupils and their protection will be the extent to which the Secretary of State will enforce the terms of the funding agreements. Ultimately, that may be a question of political will.

Annual Education Law Conference

- Date:** Wednesday November 22
Time: 10.00 am to 4.00 pm
Venue: National Union of Teachers, Hamilton House, Mabledon Place, London WC1H 9BD
Cost: £195 plus VAT
CPD: This course carries 4.5 CPD hours

THE FUTURE OF LOCAL GOVERNMENT



Caroline Spelman - Shadow Secretary of State for Communities and Local Government and MP for Meriden - provides Training Brief with her views on the ongoing debate surrounding local government restructuring.

Like many MPs, I spend a lot of time talking to people on doorsteps up and down the country. People raise a number of issues such as crime, anti-social behaviour and controversial development on back garden sites, but I can honestly say not one member of the public has brought up the structure of local

government. So the question in my mind is why on earth is the government devoting time, resources and a great deal of people's money to meddling with local government structures?

I want to see local government given more power, more freedom to set its own priorities and more scope to innovate. There are a multitude of ways we can deliver that, starting with the abolition of unelected regional assemblies and a bonfire of the inspection regime which has councils up and down the country hamstrung with red tape. But forcing unitary status on people simply means the abolition of county or district councils. Far from delivering decentralisation it will draw power up and away from local people and break the geographical connection people have with their local councils.

Restructuring is also going to come with a very high price tag. It is estimated that revamping local government will lead to a £358 increase in the average council tax bill. At a time when thousands of jobs are being lost in the NHS due to deficits I think people will be furious if their money is spent on changing the layout of local government.

Proponents of restructuring will say these costs can be recouped through greater efficiencies and back office savings delivered via a unitary structure, but the back office functions and services can be shared between tiers of government without the need to abolish one or the other - in some parts of the country this is already working very successfully.

If local government restructuring is forced on people it will betray the spirit of localism. It would take decision-making further away from local communities and diminish local accountability. It would be a regressive measure for local government at a time when we need to devolve power right down to a local level.

It simply shouldn't be the role of central government to force new structures designed in Whitehall onto local councils. It should be for councils themselves to look at where they can form strategic partnerships and work together, and it should be for them and their electors to decide how that works.

The reality is that a rush to abolish either district councils or county councils will not be a good deal for local people or local government. For elected councillors and officials it is a huge gamble as the abolition of one or the other tier of government will put a question mark across the status of jobs and elected positions, whilst for local people they will end up being financially and democratically short-changed.

This is the first of an occasional series looking at the debates surrounding the future of local government.

LGG LAUNCHES NEW WEBSITE

LGG enters the autumn with a new website ready for launch.

Our presence on the internet will be upgraded to incorporate a more user-friendly environment, a delegate member area where bookings can be confirmed and CPD hours logged; events and conferences will now be featured in greater detail, and we'll be adding extras such as venue maps, advance information on key dates and the latest news in between issues of Training Brief.

The new site is currently being tested and should be up and running by September. Keep visiting – and do let us have your feedback and suggestions.

HOUSING LAW - WHEN ARE HUMAN RIGHTS A DEFENCE TO A POSSESSION CLAIM?

As part of LGG's Housing Law Conference this autumn, Arden Chambers' Christopher Baker will review the latest developments relating to human rights and housing.

When are human rights a defence to a possession claim? After *Kay v Lambeth LBC*; *Price v Leeds City Council* [2006] 2 WLR 570, HL, only highly exceptional circumstances are capable of defeating an unqualified right to possession.

English property law has therefore relegated European Convention law to a truly remote role. But property, though dominant, is not supreme. In special cases, an occupier's human rights may yet have real bite. Identifying and resolving those cases will pose problems in years to come.



A QUESTION OF TRAINING

Earlier this year, Simon Goacher took the Local Government Young Solicitor of the Year award. We asked Simon - who works for the Metropolitan Borough of Wirral - to give us his views on the importance of training in career development.

How important has vocational training been in your career to date?

Extremely. We now have greatly increased resources available to keep up to date on changes in the law through the internet. However, LGG courses provide comprehensive information



on relevant subject areas delivered by experts in the field. Regular training on the areas I work in has been essential to my career development, not to mention ensuring that I don't make myself look stupid in court too often!

What do you feel are the biggest issues facing local government lawyers as they pursue their continuing professional development?

Like everyone, I think it is time (or lack of it) and the increased expectations of lawyers and all other public sector workers. When I started in local government there was not really any such thing as anti-social behaviour legislation. Twelve years later keeping up to date on the law on anti-social behaviour is a significant job in itself. Like most lawyers in local government I have to be fully briefed in many areas of law. All of which has to be fitted in with the demands of the job.

How does training need to change as long term plans for local government progress?

I think that increasingly local authorities in the regions will work together on training provision provided locally. In the previous local council I worked for a number of the authorities in the area to set up a training consortium to share knowledge and resources. I think that this will become increasingly common. The SLG SIGs are also a good example of best practice being shared in a localised way and provide an excellent and cheap way of obtaining CPD points. I also think local authorities will have to forward plan and focus on its training, and that training will require tailoring to specific needs and priorities.

How would you like to see the training industry address the needs of the public sector lawyer?

I think it is done pretty well as it is. Like most people who live outside London I still think more courses could be held away from the capital. I know that the thought of being on the 6.00 am train puts a lot of people in the north west off attending courses.

What was the last training course you attended?

It was a one-day course on equality impact assessments held in-house.

What makes a good course and a good speaker?

A course needs to be well structured. It needs to meet the needs of its target audience and it should be as varied and interactive as possible. A good speaker needs to be knowledgeable (you might think this goes without saying but I have seen some who aren't), patient and preferably have a good sense of humour.



Greater clarity about art8(2)

After a confusing period in the courts, a number of points can now be made confidently:

- In almost all cases, domestic law will automatically provide the justification needed for making a possession order, required under art8(2) (respect for the home etc).
- It is to be assumed that domestic law strikes a fair balance between any competing interests and is compatible with an occupier's Convention rights.
- It is not necessary in every case for a public landowner to plead and prove the justification under art8(2).

Exceptional cases

There is now a recognised but undefined category of "special and unusual" cases, where the interference with the occupier's art8 right will need to be justified by a decision-making process ensuring that some special consideration is given.

This followed from *Connors v U.K.* (2005) 40 EHRR 185, ECtHR, where the eviction of a family from a council-run travellers' site was held to have violated art8, even though effected under a court order lawfully obtained under domestic law. Exceptional circumstances arose because of:

1. The special position of gypsies as recognised under Convention law, and
2. The legal discrepancy that an occupier of a mobile home on a council-run site was not in a position to test the grounds for seeking possession when an occupier on a privately-run site would have been.

No such special or unusual situation arose in *Kay* or *Price* where the occupiers were seeking to rely purely on their own individual circumstances. In *Kay*, the occupiers had been long-standing sub-tenants but became trespassers when the head lease was terminated by the council as freehold owner. In *Price*, the occupiers were gypsies, who had recently moved caravans unlawfully onto a council recreation ground.

Effect in the county court

The Law Lords were divided 4-3 on how strict the test for identifying exceptional cases should be. The majority view, however, was that county court judges should strike out any defence under art8 based merely on the personal circumstances of the occupier. The only defences open under Convention law are therefore "seriously arguable" points that either:

1. Domestic law is itself incompatible, so that the proceedings should be adjourned to the High Court for a declaration of incompatibility unless the judge can avoid the incompatibility by statutory interpretation under s3 Human Rights Act 1998; or
2. The public authority's exercise of power to seek possession was improper because no reasonable person would consider it justifiable under art8(2).

Housing Law Conference

Date: Tuesday October 17

Time: 10.00 am to 4.30 pm

Venue: National Union of Teachers, Hamilton House, Mabledon Place, London WC1H 9BD

Cost: £195 plus VAT

CPD: This course carries 5 CPD hours

LGG NEWS



LGG Appoints New Course Developer

Sarah Glanville joined the LGG team in April as a course developer.

A graduate of the University of Exeter with a degree in history, Sarah then joined a structural engineering firm in Central London, where she worked for a few years as a PA. Escaping city life and moving to Guildford in 2003, Sarah worked for a horticultural charity based at RHS Wisley Gardens in Surrey where she was

responsible for the administration of a conservation scheme to protect cultivated plants.

As one of two course developers at LGG, Sarah's role is to research and arrange relevant and up to date training. The categories she is responsible for include all licensing, advocacy, housing, environmental, litigation, highways and planning related courses.



LGG's Bridget Walks Great Wall

Bridget Glynne-Jones – who will be familiar to many of our delegates through her welcoming presence, hard work and attention to detail on our event registration desks – is to walk the Great Wall of China.

Bridget will be heading east in October as part of a group and aims to raise a minimum of £2700 for Macmillian Cancer Relief. The training is almost complete for

a trek that takes in an often challenging route spread across seven days, with nights spent camping on route.

Anyone who would like to sponsor Bridget can do so online at www.justgiving.com/bridgetg-j

WHY I CHOOSE LGG?



In the first of a new Training Brief item in which we ask local authority legal professionals why they choose LGG for their training needs, Lorraine Browne, legal services manager at Basildon District Council, gives us her views:

I was recently asked to write a short article about my experience of LGG courses. Without hesitation I agreed to do so. With so much competition why should we all remain loyal to LGG? The answer is simple. Not only do the courses have fabulous speakers who really know what they

are talking about and are great value for money but LGG is the only course provider who focuses upon the needs of local authority lawyers. Courses are tailored to our needs.

The last LGG course I attended was the annual conference in April which is such a great all round updater and an absolute must for me.

DIARY DATES

The autumn is traditionally the busiest time of the year for LGG events and here are details of just a few 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

ADOPTION WORKSHOP – A PRACTICAL GUIDE TO NEW LEGISLATION

Date: Friday September 22

Time: 10.00 am – 4.30 pm

Venue: Manchester Metropolitan University, Loxford Tower, Manchester

Cost: £189 plus VAT

CPD: 5 hours

LISTED BUILDINGS PROSECUTIONS

Date: Friday September 29

Time: 10.00 am – 5.00 pm

Venue: 42 The Calls, Leeds

Cost: £189 plus VAT

CPD: 5.5 hours

CONSERVATION AREAS

Date: Monday October 2

Time: 10.00 am – 1.30 pm

Venue: ETC Venues, Avonmouth House, London SE1

Cost: £109 plus VAT

CPD: 3.25 hours

HIGHWAYS AND RIGHTS OF WAY CONFERENCE

Date: Thursday November 16

Time: 10.00 am – 4.30 pm

Venue: National Union of Teachers, Hamilton House, Mabledon Place, London WC1

Cost: £195 plus VAT

CPD: 5 hours

PLANNING LAW CONFERENCE

Date: Monday December 4

Time: 10.00 am – 4.30 pm

Venue: Royal College of Surgeons, 35-43 Lincoln's Inn Fields, London WC1

Cost: £225 plus VAT

CPD: 5 hours

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**



Book online at **www.lgg.org.uk**



Call **01483 275577**