

NWLC Quarterly Legal Update

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CASES

Children's social care

Whether the High Court may authorise unregulated placements for children under 16 from 9 September 2021 (Tameside MBC v AM)

Tameside Metropolitan Borough Council v AM and another (Secretary of State for Education and another intervening) and other cases [2021] EWHC 2472 (Fam)

The issue in the conjoined appeals in *Tameside Metropolitan Borough Council v AM* was whether it remained open to the High Court to authorise, under its inherent jurisdiction, the deprivation of liberty of a child under the age of 16 where the placement is prohibited by the terms of the amended statutory scheme in place from 9 September 2021, in the context of the coming into force of amendments to the Care Planning, Placement and Case Review (England) Regulations 2010. Tahmina Rahman, barrister at 1GC Family Law, considers the issues.

See News Analysis: [Whether the High Court may authorise unregulated placements for children under 16 from 9 September 2021 \(Tameside MBC v AM and others\)](#).

Education

Powers of local authorities and schools to remove pupils accused of sexual assault (R (on the application of CHF) v Headteacher and Governors of Newick CE Primary School)

R (on the application of CHF and another) v Headteacher and Governors of Newick CE Primary School and another [2021] EWHC 2513 (Admin)

The court held that local authorities and schools can provide education to a student at an alternative provision in circumstances when that pupil needs to be removed due to safeguarding concerns arising from allegations of sexual assault, and that it would be lawful to remove such a pupil in such circumstances. The powers of the local authority arise under [section 19](#) of the Education Act 1996 and [section 175](#) of the Education Act 2002 ([EA 2002](#)). Schools can also exercise their powers to educate a pupil off-site under [EA 2002, s 175](#). This decision is important, not least because allegations of pupil to pupil sexual assault are not uncommon, and this decision clarifies the powers of schools and local authorities and steps they ought to consider in such cases. The decision also provides a useful example of when a court is minded to decline to decide upon issues that have become academic, particularly when events have changed since post permission stage, and in circumstances where any findings of the court may impinge upon future appeals outside of the judicial review process- in this instant-the judge was mindful of the fact an appeal around permanent exclusion could be made as the school decided to permanently exclude the pupil at post permission stage. Written by Shazia Akhtar, barrister at Gatehouse Chambers.

See News Analysis: [Powers of local authorities and schools to remove pupils accused of sexual assault \(R \(on the application of CHF\) v Headteacher and Governors of Newick CE Primary School\)](#).

Governance

Judicial review, local authority indemnities (R (Anderson) v Liverpool City Council)

R(Anderson) v Liverpool City Council [2021] EWHC 2205 (Admin)

Local Authority refused to provide an indemnity to Joseph Anderson (the former elected Mayor of Liverpool) in respect of criminal defence costs he had/might incur, arising from an investigation into his alleged conduct. That refusal was challenged in a judicial review. Mrs Justice Yip held that the general power of competence in [section 1](#) of the Localism Act 2011 gave power to local authorities to provide an indemnity to its employees/members (or former employees/members). The Council having

adopted a policy setting out the circumstances in which an indemnity would be granted the Council was required to follow it unless there were good reasons for not doing so. This case is important and will likely be of interest to any practitioners specialising in public law/judicial review. Written by Louis Browne QC, barrister, of Exchange Chambers, Manchester, Liverpool & Leeds, and leading counsel for the defendant.

See News Analysis: [Judicial review, local authority indemnities \(R \(Anderson\) v Liverpool City Council\)](#).

Court grants local authority a final anti-harassment injunction against large scale residential landlord—Ashford BC v Wilson

In the case of *Ashford Borough Council (for and on behalf of itself, its current and former officers, employees, councillors and agents) v Wilson*, the Queen's Bench Division granted the claimant local authority and its Chief's Executive a final anti-harassment injunction against the defendant, a large-scale residential landlord in the relevant borough. The court held that, on the totality of the evidence, the defendant had engaged in a campaign of repetitive, frequent, oppressive and offensive correspondence with the claimants and that his conduct amounted to harassment in breach of s 1 of the Protection from Harassment Act 1997.

See: [\[2021\] All ER \(D\) 24 \(Oct\)](#).

Highways

Court of Appeal finds lawful London's pandemic traffic policies promoting dedicated pedestrian and cyclist road space (Re UTAG v TfL)

R (on the application of United Trade Action Group Ltd and another) v Transport for London and another [\[2021\] EWCA Civ 1197](#)

In the early months of the pandemic the Mayor of London announced a Streetspace Plan (Plan) with the aim of promoting dedicated road space for pedestrians and cyclists to improve social distancing during the pandemic. Streetspace Guidance (Guidance) was then published indicating that this was to be achieved by a policy of restricting the road use by motorised vehicles. One of the schemes introduced following the Plan and Guidance was a temporary traffic management order restricting the use of the A10 at Bishopsgate to buses and cycles only (A10 Order). This was an important route for hackney carriage drivers, and therefore two trade bodies challenged the lawfulness of the Plan, Guidance and A10 Order. In the first instance the High Court found that the Plan, Guidance and A10 Order were unlawful on the grounds of irrationality, a failure to give due regard to public sector equality duty, and a breach of legitimate expectation. Giving important guidance on the proper approach to the review of emergency decisions the Court of Appeal overturned the earlier judgment on all grounds finding the decisions lawful. Written by Brendon Lee, associate at HCR Hewitsons LLP.

See News Analysis: [Court of Appeal finds lawful London's pandemic traffic policies promoting dedicated pedestrian and cyclist road space \(Re UTAG v TfL\)](#)

Housing

The assured tenancy—death, succession and equity (Clarion v Carter)

Clarion Housing Association Ltd v Carter (as personal representative of Agnes Monica Carter (deceased) and personally) [\[2021\] EWHC 2890 \(QB\)](#)

A complicated but fascinating case that tackles what had been an apparently straightforward but long-overlooked question in housing law: what happens to an assured tenancy when an assured tenant dies? The daughter of the tenant claimed to have taken the assured tenancy upon the death of her mother, relying on third party contractual rights within the tenancy. The landlord's claim for possession had been dismissed at first instance on multiple grounds including on the basis that the daughter of the late tenant had taken a tenancy in equity on death, and so become an assured tenant. This appeal upheld the dismissal though not without disagreement with a number of aspects of the original decision. The judgment addresses the operation of contractual succession for assured tenants, the operation of Ground 7 (of Schedule 2 to the Housing Act 1988 (HA 1988)), and the status of a beneficiary left in occupation of the late tenant's home. Written by Kevin Long, solicitor at Hackney Community Law Centre.

See News Analysis: [The assured tenancy—death, succession and equity \(Clarion v Carter\)](#)

Flexible Tenancies—review request time limits are strict (R (on the application of Kalonga) v Croydon LBC)

R (on the application of Kalonga) v Croydon London Borough Council [\[2021\] EWHC 2174 \(Admin\)](#)

The Administrative Court has held that a local authority has no power to accept a request for a review of a decision not to grant another tenancy, on the expiry of a fixed-term secure flexible tenancy, if it is not requested within the 21-day statutory time limit—[section 107E\(1\)](#) of the Housing Act 1985 ([HA 1985](#)). Written by Anneli Robins, barrister at 4-5 Gray's Inn Square.

See News Analysis: [Flexible Tenancies—review request time limits are strict \(R \(on the application of Kalonga\) v Croydon LBC\)](#)

Public Procurement

Issuing and serving the claim form – pitfalls and potential relief in procurement challenges and beyond (CitySprint UK v Barts Health NHS Trust)

CitySprint UK Ltd v Barts Health NHS Trust [\[2021\] EWHC 2618 \(TCC\)](#), [\[2021\] All ER \(D\) 22 \(Oct\)](#)

This case revolved around the procedure and timing for issue and service of the claim form in a challenge made under the Public Contracts Regulations 2015 (PCR 2015). Though particularly relevant for the commencement of procurement disputes, the case will have far reaching implications for litigators in all areas. The judgment provides guidance on the mechanics of using CE-File and issues around sealing and payment of fees when you are right up against a limitation deadline. The case also examines the rules on service by email, the requirements for doing so, and the availability of relief particularly in procurement cases where limitation is extremely short. The judgment looks at recent cases involving similar issues including Good Law Project v SoS for Health of Social Care (2021) and Tiger Falkirk v Paragon (2021) and manages to distinguish them. A key point which feeds into considerations on relief is the prejudice suffered by the defendant, which they submitted was the imposition of the automatic suspension, but here the judge found little or no prejudice and this was especially compelling. This case follows a practical approach to the errors that were made on issue and service of the claim form and departs from the strict letter of the CPR. Although the judge commented that this case was unusual and does not mean the court is 'indulgent towards widespread failures', there is no doubt that this case will be relied upon by many a claimant to come. Written by Rebecca Lawrence, senior associate and PSL at Trowers & Hamblins LLP.

See News Analysis: [Issuing and serving the claim form—pitfalls and potential relief in procurement challenges and beyond \(CitySprint UK v Barts Health NHS Trust\)](#)

Public sector contracts

Income-sharing provisions in PFI contract include income generated by affiliate companies (Buckinghamshire Council v FCC Buckinghamshire Ltd)

Buckinghamshire Council v FCC Buckinghamshire Ltd; FCC Buckinghamshire Ltd v Buckinghamshire Council [\[2021\] EWHC 2867 \(TCC\)](#)

This judgment concerns the provisions of a Private Finance Initiative (PFI) project agreement between a local authority and a special purpose company for waste treatment services. The local authority obtained a declaration that the income sharing provisions in the agreement captured fees that had been paid to affiliate entities of the contracting party, however the court further decided that the thresholds for activation of the income-sharing provisions were index-linked rather than being subject to fixed yearly uplifts. Although not establishing any new principle of law, this judgment will be of interest to clients that are engaged in management contracts with income sharing provisions. Written by Ryan Turner, barrister at Atkin Chambers.

See News Analysis: [Income-sharing provisions in PFI contract include income generated by affiliate companies \(Buckinghamshire Council v FCC Buckinghamshire Ltd\)](#)

Planning

Clarification of the proper approach to social housing relief from the Community Infrastructure Levy (Stonewater v Wealden District Council)

Stonewater (2) Ltd v Wealden District Council [\[2021\] EWHC 2750 \(Admin\)](#)

The claimant, a leading provider of social housing, sought to challenge District Council's (the Council) refusal of its application for social housing relief under the Community Infrastructure Levy Regulations 2010 (CIL Regulations) in respect of a development of 169 units. The claimant argued that the levy, which totaled over £3m, rendered the scheme unviable. Mrs Justice Thornton held that on a proper construction of the claimant's obligations, precisely 35% of the units in the development were required to be affordable. On this basis, the Council was entitled to refuse the application for relief; to grant it would have 'prejudged' the exercise of its separate discretion to agree to vary the proportion of the units which were to be affordable. Written by Siân McGibbon, barrister at 4-5 Gray's Inn Square Chambers.

See News Analysis: [Clarification of the proper approach to social housing relief from the Community Infrastructure Levy \(Stonewater v Wealden District Council\)](#).



Social care

Court of appeal reverses first instance decision regarding care workers making arrangements for patient to visit a sex worker (Secretary of State for Justice v A Local Authority (Institute of Registered Case Managers intervening))

Secretary of State for Justice v A Local Authority & others [2021] EWCA Civ 1527

In the *Secretary of State for Justice v A Local Authority* [2021] EWCA Civ 1527, the Court of Appeal has overturned the decision of Mr Justice Hayden that care workers would not commit a criminal offence under [section 39](#) of the Sexual Offences Act 2003 (SOA 2003) were they to make the practical arrangements for a 27 year old man (C) to visit a sex worker in circumstances where he has capacity (within the meaning of the [Mental Capacity Act 2005](#)) to consent to sexual relations and decide to have contact with a sex worker but not to make the arrangements himself. SOA 2003, s 39 provides (in essence) that it is a criminal offence for a care worker to cause or incite sexual activity by a person with a mental disorder.

See News Analysis: [Court of appeal reverses first instance decision regarding care workers making arrangements for patient to visit a sex worker \(Secretary of State for Justice v A Local Authority and others \(Institute of Registered Case Managers and another intervening\)\)](#).



POLICY PAPERS AND GUIDANCE

Governance

DLUHC publishes guidance on safe accommodation for domestic abuse victims

The Department for Levelling Up, Housing and Communities (DLUHC) has published guidance on the new regulations for the level of support councils are required to provide for safe accommodation for domestic abuse victims and their children under a duty which came into force on 1 October 2021. The guidance on the new regulations brings the changes in the [Domestic Abuse Act 2021 \(DAA 2021\)](#) into force. This follows the £125m funding given to councils to support victims from abuse for services including counselling, advocacy, rehousing support and advice on staying safe.

DLUHC has also published the outcome of a consultation which ran from 15 June 2021 to 27 July 2021 on two draft statutory instruments accompanying [DAA 2021](#). The Domestic Abuse Support (Local Authority Strategies and Annual Reports) Regulations 2021 and The Domestic Abuse Support (Relevant Accommodation and Housing Benefit and Universal Credit Sanctuary Schemes) (Amendment) Regulations 2021 before Parliament. They came into force on 1 October 2021.

See: [LNB News 01/10/2021 55](#) and [LNB News 04/10/2021 40](#).

Housing

The Building Back Britain Commission (BBBC) has published its first report on the government's plans to level up the country. The report highlights how the plans would lead to a significant increase in demand for housing outside of London and the South East. BBBC argues for a radical rethink of the housing demand model, shifting away from being based on historical growth to a model based on future need.

See: [LNB News 05/11/2021 29](#).

Public procurement

Updated Procurement Policy Note—payment approaches in procurement of major government contracts

The Cabinet Office has issued Procurement Policy Note 08/21 - Taking account of a bidder's approach to payment in the procurement of major government contracts (PPN 08/21). PPN 08/21 updates and replaces Procurement Policy Note 07/20—Taking account of a bidder's approach to payment in the procurement of major government contracts (PPN 07/20), setting out guidance and actions for taking payment approaches into account in the procurement of major government contracts. The revised guidance applies for in-scope public procurements advertised on or after 1 April 2022. Until then, PPN 07/20 continues to apply.

See: [LNB News 21/10/2021 88](#).

LEGISLATION COMING INTO FORCE

Public procurement

Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021, SI 2021/1221

These Regulations are made in exercise of legislative powers under the [Trade Act 2021](#), PCR 2015, [SI 2015/102](#), Concession Contracts Regulations 2016, [SI 2016/273](#), Utilities Contracts Regulations 2016, [SI 2016/274](#) in connection with Brexit. They amend three pieces of UK secondary legislation in relation to public procurement. They come into force on 1 January 2022.

See: [LNB News 02/11/2021 7](#)

Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No 2) Regulations 2021, SI 2021/Draft

These draft Regulations are laid to amend the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, [SI 2014/2936](#) to provide that the registered individual in respect of the regulated activity of providing accommodation for persons who require nursing or personal care in a care home must secure that—subject to certain exceptions—an individual only enters the care home premises if they provide evidence that they have been vaccinated with a complete course of an authorised vaccine against coronavirus (COVID-19) or, if otherwise vaccinated against coronavirus is also, within a specified time period, vaccinated with a single dose of an authorised vaccine, subject to certain exceptions. They come into force partly on the day after the day on which these Regulations are made, and fully at the end of the period of 12 weeks beginning with the day after the day on which these Regulations are made.

See: [LNB News 10/11/2021 5](#)



LexisNexis Local Authority Insight Series

In partnership with Local Government Lawyer, LexisNexis hosts a series of free events which provide a deep dive into topical issues and key legal developments which affect the public sector, particularly those working in local government.

Intercountry Adoption

A birds eye view of legal landscape focusing on Local Authority duties in these complex cases.

Ruth Cabeza, barrister and author of the text, International Adoption, from Harcourt chambers and Joy Hopkinson Principal Social Care Lawyer from London Borough of Lambeth host an interactive conversation considering:

- The legal framework for local authorities dealing with overseas placements both in a private and public law context
- Practical steps for legal teams and social workers to consider when an overseas placement is in play
- How to go about ensuring that the process runs smoothly by anticipating and avoiding pitfalls
- How to determine the most effective approach to achieve the desired depending on the options available in that jurisdiction

[Watch the webinar →](#)

Deprivation of Liberty Safeguards (DoLS)

Alex Ruck-Keen, barrister at 39 Essex Chambers and author of the Mental Capacity Law and Policy blog and TBA, and Emma Harrison Senior Solicitor from Devon County Council look how the new Liberty Protection Safeguards will work in practice when they replace the Deprivations of Liberty Safeguards (DOLS) next year.

The panel explores:

- The key respects will the LPS regime differ from the DOLS and in which regards will it remain the same?
- The operation of the 'acid test' established in the Cheshire West decision of the Supreme Court following the introduction of the LPS.
- Whether the LPS will streamline the process or create more work for lawyers and health and social care professionals?
- What litigation is likely to arise to clarify the operation of the LPS?

[Watch the webinar →](#)

Effectively tackling Anti-social behaviour (ASB)

Lockdown has led to a new surge in anti-social behaviour with data from the Housing Ombudsman, Resolve ASB and National Police Chiefs' Council (NPCC) showing an increase in complaints during the pandemic.

Expert Housing barrister, Kuljit Bhogal – author of Cornerstone on Anti-Social Behaviour (Bloomsbury) - and Susan Taylor, Senior Solicitor at Capsticks outline the latest thinking on effectively tackling ASB.

Together, the panel explore:

- Which ASB tools are most effective for local authorities and landlords?
- In what circumstances can these be used and how can these be deployed most effectively?
- When is possession appropriate and how is this changing as lockdown ends?
- Are the courts being stricter about agreeing to injunctions? How should practitioners approach applications?

[Watch the webinar →](#)