



# YOUR MONTHLY E-BULLETIN

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**Issue 97; December 2021**

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## LATEST CONSORTIUM NEWS

### And it's a goodbye from me...

This E-Bulletin is the final edition of your monthly newsletter.

After 97 editions of this monthly bulletin, from next year we will be keeping in touch through the website of course and our quarterly news magazine, Consortium Quarterly (CQ).

We have had really good feedback about the quality of the articles in the CQ and its look and feel which we think brings a more up to date approach to publishing our news and features.

If you haven't seen your Consortium Quarterly, Winter edition (CQ6) yet its available at [nwlegalconsortium.com/2021/12/10/nwlc-consortium-quarterly-winter-edition-2021-2](http://nwlegalconsortium.com/2021/12/10/nwlc-consortium-quarterly-winter-edition-2021-2)

Its all change too for the Consortium Management Board – a new Chair has been appointed. Anne Greenwood, from Cheshire West and Chester Council has been a Board member for a number of years. She is now stepping up to Chair the Board. Our thanks go to David McCullough from Sefton Council who has done sterling work as Chair over the past few years but happily David is still staying on as a Board member and as the representative of Sefton, our lead authority.

### Consortium Offers from Lexis Nexis and Thomson Reuters – Don't Miss Out!

**Lexis Nexis** and **Thomson Reuters** are both offering favourable rates on their publications and research tools to Consortium member organisations.

Details of what is on offer have gone out to Heads of Service but if you haven't yet seen the detail contact the suppliers directly or Beryl at [bh\\_nwlconsortium@btinternet.com](mailto:bh_nwlconsortium@btinternet.com)

#### For LEXIS NEXIS

For any further information on the offer available to NWLC members please contact Lewis Williams [lewis.williams@lexisnexis.co.uk](mailto:lewis.williams@lexisnexis.co.uk)

[Get your complimentary access to LexisNexis >](#)

#### FOR THOMSON REUTERS

To find out more about TR services, to arrange a demonstration or trial access or to discuss the various renewal options available, please contact your Thomson Reuters Key Account Manager, Rachel Price at [rachel.price@tr.com](mailto:rachel.price@tr.com) or on 020 7513 8173



## NWLC Annual Training Programme 2021–22

As 2021 moves to a close the next tranche of our 2021/22 Free Annual Training Programme has been added to the website, courses area and the list is also published in CQ6.

You will need to register to attend the webinar sessions using the individual link supplied for each session.

We are advertising 2 of our sessions as face to face events. These sessions are being presented (restrictions allowing) by two of our Partner firms working together at one of the firms offices.

### Coming up in January and February we have the following webinars:

12th January 10 – 11 am, **Managing Infrastructure Projects/Major Procurements** from Weightmans

19th January 12noon – 1pm **Giving consideration to contract management when drafting contracts: how easy is it to enforce contractual obligations?** From Bevan Brittan

### **NB This one is part of our new Trainee Programme, but it is open to all to attend**

10th February 10 – 11am **GDPR Update** from Geldards

## Back Copies - Access Webinar Recordings

Each live NWLC webinar from last year's programme and this year's programme so far, has been recorded. So we have quite a library of recordings on the website now. The recorded sessions are available to view **free of charge** – by accessing the recording link found in the secure area of the website.

**Find your recording by following these easy steps** – You need to log in to the website to access the secure area, click on the Publications tab – and then on Podcasts/Webinars.

## REMINDERS

### NWLC Precedent Service – Have you taken a look?

To find the precedents just log into the website secure area and use the drop down list under the Publications tab to select 'Precedent Service' to access the documents.

All the precedents have been provided by our Partner firms. They cover a variety of subjects and are tailored for the use of member organisations and their work areas.

All of the published precedents are available to download **for free** to staff from member organisations.

We are also running a **precedent service on demand** so if you require a precedent which you cannot find you can email [simon.goacher@weightmans.com](mailto:simon.goacher@weightmans.com) and he will try and obtain it for you.

We would also welcome any precedents created by member organisations which you think would be of use to colleagues.

Please email any such examples to Simon Goacher or Beryl Heath at [bh\\_nwlconsortium@btinternet.com](mailto:bh_nwlconsortium@btinternet.com)

### Your Consortium is now on LinkedIn

Find us [here](#)

We are looking to develop our profile in the future to make sure that we provide the information you want and need on this new additional platform.

If there is anything you'd like to us to add to the profile please let us know.



### Looking for a new role?

#### See Vacancies at other Member Organisations

We publish a range of vacancies on the website jobs page at [nwlegalconsortium.com/jobs](http://nwlegalconsortium.com/jobs)

Currently, there are roles available at Chorley/South Ribble and Sefton.

If your organisation wants to advertise any vacancies on the website **for free** contact Beryl Heath on [bh\\_nwlconsortium@btinternet.com](mailto:bh_nwlconsortium@btinternet.com)



## NWLC NOMINATED CHARITY OF THE YEAR



Please support the North West Air Ambulance Charity

For the Charity's latest events go to: [nwaa.net](http://nwaa.net)

Our nominated charity is sharing with us the story of an inspiring triathlon which raised vital NWAA funds

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### INSPIRING TRIATHLON RAISES VITAL NWAA FUNDS

Michelle Wilkinson was an active fundraiser and mum of five, but in July 2013 her life changed after being diagnosed with a brain aneurysm. With a 70% chance of the aneurysm bursting, which could have been fatal or lead to a life changing disability, Michelle underwent a coiling procedure later that year.

During her recovery process it was discovered that her right cerebral artery was caught by one of the wires, leading Michelle to suffer a stroke caused by the bleeding. She was told her left side was paralysed and she would not be able to walk or move her left arm ever again.

Michelle went on to spend 8 months in rehabilitation, resulting in her two youngest children being put into temporary foster care. Returning home in April 2014 and reunited with her children, they adapted to their new life.

Michelle required the use of a wheelchair when outside, but through hard work and determination, Michelle is now able to walk with a stick in her home. She's built up enough strength to attend the gym, keeping active, and most importantly staying out of hospitalisation.

This year Michelle set herself a mammoth challenge, to take on a triathlon in aid of the North West Air Ambulance Charity. Over three days Michelle was aiming to complete 30 lengths of her local swimming pool, 3,000 rows on a rowing machine (the equivalent of just under 2 miles), and walk one lap of the Clitheroe Cricket field, 1/3 of a mile.

Accompanied by her son, Anthony aged 14, they completed the triathlon on the 8th anniversary of her operation. Thanks to fantastic support from family, friends, and local businesses Michelle's total stands at a fantastic £1,000!

Spurred on by her fundraising success, Michelle is already training to support us with another triathlon event next year, aiming to double her efforts taking on 6,000 rows, 60 lengths and 2 laps.

Laura Carr, Regional Fundraiser for South Lancashire, quoted "Michelle's story is awe inspiring, we cannot thank her enough for supporting the work we do and helping us keep flying to save lives. As we receive no government or NHS funding, fundraising is at the very heart of who we are and is crucial so that we can continue to bring the hospital to the patient. From enabling us to fund our missions, to ensuring we have the most up to date equipment, support like Michelle's goes a long way."

We are constantly amazed by our supporters and cannot thank Michelle and her son enough for her incredible support.



# NWLC MONTHLY LEGAL UPDATER

POWERED BY THOMSON REUTERS AND PRACTICAL LAW

01/12/21

This is a selection of legal updates for NWLC powered by Westlaw UK and Practical Law. To read more on these topics, go to [westlaw.co.uk](https://www.westlaw.co.uk) or [uk.practicallaw.com](https://www.uk.practicallaw.com)

## CASES

### **HOUSING. *Landlord and tenant; Public procurement.***

**Housing allocation; Housing policy; Housing provision; Local housing authorities' powers and duties; Private sector tenancies; Public procurement; Second appeals; Social housing; Suitability; Unintentional homelessness.**

Hajjaj v City of Westminster. [2021] EWCA Civ 1688. Court of Appeal (Civil Division) (CA (Civ Div)). Bean LJ; Nugee LJ; Falk J. November 12, 2021

Where local authorities discharged their homelessness duty in the Housing Act 1996 Pt VII s.193(2) by making a private rented sector offer of accommodation, they had to be satisfied, on the basis of evidence rather than assumptions, that the accommodation was suitable for the purposes of s.193(7F). They could not simply wait to see if the applicant objected to the property. The court explained the criteria in the Homelessness (Suitability of Accommodation) (England) Order 2012 art.3 and explained the nature and scope of the required inspections for certain types of landlord.

Appeals allowed in part

### **PUBLIC PROCUREMENT. *Civil procedure.***

**Adequacy of damages; Balance of convenience; Cyber risks; Expedited trials; Framework agreements; Preliminary issues; Public procurement procedures; Suspension; Telecommunications networks.**

Vodafone Ltd v Secretary of State for Foreign, Commonwealth and Development Affairs. [2021] EWHC 2793 (TCC). Queen's Bench Division (Technology & Construction Court) (QBD (TCC)). Kerr J. October 20, 2021

A judge refused to lift an automatic suspension under the Public Contracts Regulations 2015 reg.95 preventing the defendants from awarding a highly prestigious contract to replace their secure electronic communications system to the successful tenderer where they were adequately protected by the claimant's undertaking in damages, an expedited hearing of the claimant's preliminary issue had been granted and listed for January 2022, and the claimant's potential loss of opportunities in bidding for and winning other contracts on the back of that contract were unquantifiable.

Claimant's application granted, defendants' application refused

### **PUBLIC PROCUREMENT. *Health; European Union.***

**EU law; Implied terms; Local Health Boards; Procurement thresholds; Public procurement procedures; Public services contracts; Retained EU legislation; Tenders.**

Adferiad Recovery Ltd v Aneurin Bevan University Health Board. [2021] EWHC 3049 (TCC). Queen's Bench Division (Technology & Construction Court) (QBD (TCC)). Judge Keyser QC. November 16, 2021

It was clear from the documentation for a procurement exercise for the provision of a pre-crisis or early intervention service to a local health board that the value of the procurement was below any of the thresholds in the Public Contracts Regulations 2015 so that a claim for breach of the Regulations had no real prospect of success. Claims



for breach of general principles of EU law also had no real prospect of success as under the European Union (Withdrawal) Act 2018 Sch.1 para.3 general principles of EU law did not ground a cause of action in domestic private or public law. The status of general principles of EU law was that they were a form of interpretative rule as regards any question concerning the validity, meaning or effect of any retained EU law.

Application granted

## LEGISLATION

### **TAX. Health; Social welfare.**

#### **Direct taxes; Health care; National insurance contributions; Social care.**

Health and Social Care Levy Act 2021. c.28

An Act to make provision imposing a tax (to be known as the health and social care levy), the proceeds of which are payable to the Secretary of State towards the cost of health care and social care, on amounts in respect of which national insurance contributions are, or would be if no restriction by reference to pensionable age were applicable, payable; and for connected purposes.

Royal Assent: 20 October 2021

### **LANDLORD AND TENANT. Arbitration; Health.**

#### **Arbitration; Business tenancies; Coronavirus; Moratoriums; Rent arrears.**

Commercial Rent (Coronavirus) Bill 2021-22 (HC Bill 189).

A Bill to make provision enabling relief from payment of certain rent debts under business tenancies adversely affected by coronavirus to be available through arbitration; and for connected purposes.

Website: [bills.parliament.uk/bills/3064](https://bills.parliament.uk/bills/3064) [Accessed at 10 November 2021]

Hansard: HC Vol 703 col 211 (1st Reading)

Commons 1st Reading: 9/11/2021 | HC Vol 703 col 211

## LOCAL GOVERNMENT.

### **Conditions; General power of competence; Wales.**

General Power of Competence (Commercial Purpose) (Conditions) (Wales) Regulations 2021. SI 2021/1166 (W.288)

The Local Government and Elections (Wales) Act 2021 s.24 confers a general power of competence on principal councils and eligible community councils. In particular, the general power of competence confers on those authorities a power to do certain things for a commercial purpose. The power to do things for a commercial purpose is subject to conditions set out in s.27 of the Act. Under s.27(2), the exercise of the general power for a commercial purpose must be done through a company. S.28(4) of the Act provides a power for the Welsh Ministers to provide, by regulations, for the exercise of the general power to be subject to additional conditions. Reg.2 prescribes additional conditions that a principal council must meet before exercising the general power of competence to do things for a commercial purpose. Reg.3 requires a principal council to publish any business case approved in accordance with reg.2(1)(b) as soon as reasonably practicable. Reg.4 requires a principal council to recover any costs incurred by it in anything it supplies to a company through which the general power is exercised for a commercial purpose, from that company.

Website: [legislation.gov.uk/wsi/2021/1166/pdfs/wsi\\_20211166\\_mi.pdf](https://legislation.gov.uk/wsi/2021/1166/pdfs/wsi_20211166_mi.pdf) [Accessed at 21 October 2021]

In Force: 1 November 2021



## **PUBLIC PROCUREMENT.**

**Concession agreements; Implementation; Public contracts; Public procurement; Treaties; Utilities; VAT; Value.**

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

These Regulations make amendments to UK public procurement regulations to update certain financial thresholds, which govern the procedures for the award of public contracts for goods, works and services, following a review of those thresholds in accordance with the Public Contracts Regulations 2015 reg.5A, Concession Contracts Regulations 2016 reg.9A and Utilities Contracts Regulations 2016 reg.16A. This review was previously undertaken by the European Commission to ensure the thresholds continue to correspond with the relevant thresholds laid down in the World Trade Organisation's Agreement on Government Procurement (GPA). Following the UK's exit from the EU, and subsequent accession to the GPA as a member in its own right, this review requirement was conferred on the Minister for the Cabinet Office by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020. These Regulations also change the calculation of the estimated value of a procurement based on the total amount payable without making a deduction for value added tax, in order to fully implement the United Kingdom's obligations under the GPA.

Website: [legislation.gov.uk/ukxi/2021/1221/pdfs/ukxi\\_20211221\\_en.pdf](https://legislation.gov.uk/ukxi/2021/1221/pdfs/ukxi_20211221_en.pdf) [Accessed at 1 November 2021]

## **GOVERNMENT AND REGULATORY DEVELOPMENTS**

### **LANDLORD AND TENANT.**

**Bankruptcy petitions; Commercial rent arrears recovery; Coronavirus; Landlords; Tenants.**

New laws and code to resolve remaining COVID-19 commercial rent debts. By Department for Business, Energy and Industrial Strategy. 9 November 2021

New laws and a code of practice will be introduced to resolve the remaining commercial rent debts accrued because of the COVID-19 pandemic. Landlords and tenants will be provided with a clear process for settling outstanding debts before the new arbitration process comes into force. The Government is also protecting commercial tenants from debt claims, including County Court Judgements, High Court Judgements, and bankruptcy petitions.

Website: [gov.uk/government/news/new-laws-and-code-to-resolve-remaining-covid-19-commercial-rent-debts](https://gov.uk/government/news/new-laws-and-code-to-resolve-remaining-covid-19-commercial-rent-debts) [Accessed at 9 November 2021]

Legislation referred: Commercial Rent (Coronavirus) Bill 2021-22 (HC Bill 189)

### **MENTAL HEALTH. *Social welfare.***

**Consent; Decisions; Learning disabled persons; Mental capacity; Relationships; Sexual behaviour; Vulnerable adults.**

Future judgments: Wednesday 24 November 2021. By Supreme Court. 18 November 2021

The Supreme Court will hand down judgment on 24 November 2021 in JB (Capacity: Sexual Relations), Re ruling on whether to have capacity to decide to have sexual relations with another person, a person needs to understand that the other person must have the capacity to consent to the sexual activity and must in fact consent before and throughout the sexual activity.

Website: [supremecourt.uk/news/future-judgments.html](https://supremecourt.uk/news/future-judgments.html) [Accessed at 18 November 2021]; [localgovernmentlawyer.co.uk/adult-social-care/391-adult-care-news/48850-supreme-court-to-hand-down-landmark-ruling-next-week-on-capacity-to-consent-to-sexual-relations](https://localgovernmentlawyer.co.uk/adult-social-care/391-adult-care-news/48850-supreme-court-to-hand-down-landmark-ruling-next-week-on-capacity-to-consent-to-sexual-relations) [Accessed 18 November 2021]

Cases referred: JB (Capacity: Sexual Relations), Re~ [2020] EWCA Civ 735; [2021] Fam. 37 (CA (Civ Div))  
Legislation referred: Mental Capacity Act 2005



## NEWS RELEASES

### LANDLORD AND TENANT. *Environment.*

**Emissions targets; Energy efficiency; Enforcement; Fines; Housing; Landlords' duties; Legislation.**

Landlords face being barred from letting out their properties unless they make them more energy-efficient. *Times*, 6 November 2021, 13. By Steven Swinford.

Landlords across Britain will be barred from letting out their properties unless they make them more energy-efficient, at an average cost of £5,000, under Government plans to hit net zero by 2050. The Government is poised to announce legislation which will require all privately rented homes to be rated EPC-C, the third-highest level of energy efficiency. Those who let out homes that do not meet the target will face fines of up to £15,000.