**NWLC Quarterly Legal Update**

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# CASES

## Governance

## Upper Tribunals considers whether provision of sports and leisure facilities by a local authority is a business activity (HMRC v Chelmsford City Council)

***HMRC v Chelmsford City Council***[**[2022] UKUT 149 (TCC)**](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65RW-F7B3-GXF6-81XS-00000-00/linkHandler.faces?psldocinfo=UT_considers_whether_provision_of_sports_and_leisure_facilities_by_a_local_authority_is_a_business_activity_for_VAT_purposes__HMRC_v_Chelmsford_City_Council_&linkInfo=F%23GB%23UKUTTCC%23sel1%252022%25year%252022%25page%25149%25&A=0.40385812343813243&bct=A&ps=null&risb=&service=citation&langcountry=GB)

In *HMRC v Chelmsford City Council*, the Upper Tribunal (UT) decided that, when providing sports and leisure facilities, Chelmsford City Council (Chelmsford) was acting as a local authority, rather than supplying the facilities as a business activity.

See News Analysis: [Upper Tribunals considers whether provision of sports and leisure facilities by a local authority is a business activity (HMRC v Chelmsford City Council)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65S2-M1T3-CGX8-04C3-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_23_June_2022&ps=null&bct=A&homeCsi=0&A=0.29271966058160503&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4354514&service=DOC-ID&origdpsi=0S4D).

## Children’s Social Care

**Necessity, proportionality and the role of the appellate court (Re H-W (children); Re H-W (children) (No 2))**

***Re H-W (children); Re H-W (children) (No 2)***[**[2022] UKSC 17**](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65VV-4BW3-CGX8-03DS-00000-00/linkHandler.faces?psldocinfo=Necessity__proportionality_and_the_role_of_the_appellate_court__Re_H_W__children___Re_H_W__children___No_2__&linkInfo=F%23GB%23UKSC%23sel1%252022%25year%252022%25page%2517%25&A=0.9487592858040398&bct=A&ps=null&risb=&service=citation&langcountry=GB)**,**[**[2022] All ER (D) 41 (Jun)**](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65VV-4BW3-CGX8-03DS-00000-00/linkHandler.faces?psldocinfo=Necessity__proportionality_and_the_role_of_the_appellate_court__Re_H_W__children___Re_H_W__children___No_2__&linkInfo=F%23GB%23ALLERD%23sel1%252022%25vol%2506%25year%252022%25page%2541%25sel2%2506%25&A=0.8086300132036137&bct=A&ps=null&risb=&service=citation&langcountry=GB)

In H-W (Children), Dame Siobhan Keegan, delivering the lead judgment, which was unanimously agreed by the panel, established new guidance in relation to three fundamental elements of public law children cases, i.e. the necessary steps for every first instance judge who is considering whether or not to make a care order, the vital role of necessity and proportionality in every care case not just those with care plans for adoption and the role of appellate courts in reviewing such cases. Kate Grieve, barrister at 36 Family and counsel for the first appellant in H-W (Children), examines the implications.

See News Analysis: [Necessity, proportionality and the role of the appellate court (Re H-W (children); Re H-W (children) (No 2))](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65W2-6V73-GXF6-83BK-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_7_July_2022&ps=null&bct=A&homeCsi=0&A=0.604548625136598&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4360004&service=DOC-ID&origdpsi=0S4D).

## Education

## Judicial Review of school exclusion reconsideration decision (R v Governing Board of XYZ School)

## *R (on the application of A Parent) v Governing Body of XYZ School*[[2022] EWHC 1146 (Admin)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65HF-Y453-GXF6-80H3-00000-00/linkHandler.faces?psldocinfo=Judicial_Review_of_school_exclusion_reconsideration_decision__R_v_Governing_Board_of_XYZ_School_&linkInfo=F%23GB%23EWHCADMIN%23sel1%252022%25year%252022%25page%251146%25&A=0.9495947102032807&bct=A&ps=null&risb=&service=citation&langcountry=GB)

## This case provides useful guidance for governing boards on the process to follow in the event that an Independent Review Panel (IRP) recommends they reconsider whether or not to reinstate a permanently excluded pupil. The judge dismissed all four grounds of the application for Judicial Review, concluding that the claimant’s submissions were essentially a challenge to the merits of the decision. The judgment gives useful guidance on the reconsideration process under the Department for Education’s Statutory Guidance on School Exclusions 2017 including the constitution of such panels and the approach they are expected to take. The case also provides commentary on bias, the importance of risk assessments when looking at the second limb of the exclusions test and emphasises that having good reasons for not following particular aspects of statutory guidance will not automatically render a decision unlawful or irrational. Written by Hayley O’Sullivan, senior associate at Browne Jacobson LLP.

## See News Analysis: [Judicial Review of school exclusion reconsideration decision (R v Governing Board of XYZ School)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65J3-B373-GXF6-849W-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_26_May_2022&ps=null&bct=A&homeCsi=0&A=0.4682445946255068&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4343260&service=DOC-ID&origdpsi=0S4D).

**Children and Families Act 2014 and the Equality Act 2010 (RB v Calderdale MBC (SEN))**

***RB v Calderdale Metropolitan Borough Council (SEN)* [2022] UKUT 136 (AAC)**

On 11 May 2022 the Upper-Tier Tribunal (UTT) for Special Educational Needs and Disability (SEND) confirmed in RB v Calderdale Metropolitan Borough Council (SEN) that there is a distinction between matters brought under the [Children and Families Act 2014](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65S2-M1T3-CGX8-04C3-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_23_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252014_6a_Title%25&A=0.8468456604502113&bct=A&risb=&service=citation&langcountry=GB) ([CFA 2014](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65S2-M1T3-CGX8-04C3-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_23_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252014_6a_Title%25&A=0.21131649127760765&bct=A&risb=&service=citation&langcountry=GB)) and those brought under the [Equality Act 2010](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65S2-M1T3-CGX8-04C3-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_23_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252010_15a_Title%25&A=0.6337885545132342&bct=A&risb=&service=citation&langcountry=GB) ([EqA 2010](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65S2-M1T3-CGX8-04C3-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_23_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252010_15a_Title%25&A=0.24424572332588879&bct=A&risb=&service=citation&langcountry=GB" \t "_parent)). Kimberley Hircock of Birkett Long Solicitors considers [CFA 2014](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65S2-M1T3-CGX8-04C3-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_23_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252014_6a_Title%25&A=0.3005247464575642&bct=A&risb=&service=citation&langcountry=GB) and [EqA 2010](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65S2-M1T3-CGX8-04C3-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_23_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252010_15a_Title%25&A=0.07167842241466693&bct=A&risb=&service=citation&langcountry=GB" \t "_parent) and the appeal in RB v Calderdale MBC (SEN).

See News Analysis: [Children and Families Act 2014 and the Equality Act 2010 (RB v Calderdale MBC (SEN))](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65S2-M1T3-CGX8-04C3-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_23_June_2022&ps=null&bct=A&homeCsi=0&A=0.29271966058160503&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4353139&service=DOC-ID&origdpsi=0S4D).

## Social Housing

**Assessments and personalised plans under the homeless prevention duty (R(ZK) v Havering)**

***R (on the application of ZK) v Havering London Borough Council***[**[2022] EWHC 1854 (Admin)**](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/668R-Y2V3-CGX8-04T3-00000-00/linkHandler.faces?psldocinfo=Assessments_and_personalised_plans_under_the_homeless_prevention_duty__R_ZK__v_Havering_&linkInfo=F%23GB%23EWHCADMIN%23sel1%252022%25year%252022%25page%251854%25&A=0.3518414409704811&bct=A&ps=null&risb=&service=citation&langcountry=GB)

This was a successful Judicial Review against the legality of the steps undertaken by the defendant authority under [section 189A](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6690-K0K3-GXF6-80CP-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_1_September_2022&linkInfo=F%23GB%23UK_LEG%23num%251996_52a_SECT_189A%25&A=0.23728159062508503&bct=A&ps=null&risb=&service=citation&langcountry=GB) of the Housing Act 1996 ([HA 1996](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6690-K0K3-GXF6-80CP-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_1_September_2022&linkInfo=F%23GB%23UK_LEG%23num%251996_52a_Title%25&A=0.4549972402881035&bct=A&ps=null&risb=&service=citation&langcountry=GB)) in respect of a housing needs assessment and Personalised Housing Plan (PHP). The [Homelessness Reduction Act 2017](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6690-K0K3-GXF6-80CP-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_1_September_2022&linkInfo=F%23GB%23UK_LEG%23num%252017_13a_Title%25&A=0.2114423888128366&bct=A&ps=null&risb=&service=citation&langcountry=GB) had created a new set of homelessness prevention duties for a housing authority to undertake under [HA 1996, s 195](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6690-K0K3-GXF6-80CP-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_1_September_2022&linkInfo=F%23GB%23UK_LEG%23num%251996_52a_SECT_195%25&A=0.1697623012427084&bct=A&ps=null&risb=&service=citation&langcountry=GB) when taking reasonable steps to help the applicant secure that accommodation does not cease to be available. These obligations included the requirement to assess an applicant’s housing needs and formulate and keep under review a PHP. This case examines the interplay of those duties and addresses how a council should approach the assessment and what is expected of a PHP. Written by Kevin Long, solicitor at Hackney Community Law Centre.

See News Analysis: [Assessments and personalised plans under the homeless prevention duty (R(ZK) v Havering)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6690-K0K3-GXF6-80CP-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_1_September_2022&ps=null&bct=A&homeCsi=412012&A=0.8455495433797433&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4384184&service=DOC-ID&origdpsi=0S4D).

**Suitability of homelessness accommodation and mandatory orders (R (on the application of Bell) v Lambeth London Borough Council)**

***R (on the application of Bell) v Lambeth London Borough Council***[**[2022] EWHC 2008 (Admin)**](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6643-NBW3-GXF6-84JF-00000-00/linkHandler.faces?psldocinfo=Suitability_of_homelessness_accommodation_and_mandatory_orders__R__on_the_application_of_Bell__v_Lambeth_London_Borough_Council_&linkInfo=F%23GB%23EWHCADMIN%23sel1%252022%25year%252022%25page%252008%25&A=0.17137775828639135&bct=A&ps=null&risb=&service=citation&langcountry=GB)

Ms Bell, a single parent of children with profound disabilities, applied as homeless to Lambeth Council (the Council). The Council placed the family in interim accommodation which was badly affected by damp, mould, mice and defective heating. The Council accepted that the accommodation was unsuitable but argued that it had serious resource problems which prevented an immediate move to more suitable accommodation. The High Court made a mandatory order requiring the Council to secure suitable accommodation for Ms Bell and her children. The High Court applied the Court of Appeal decision in R (Elkundi) v Birmingham and held that the condition of the property, its impact on the family and the length of time they had been there all meant that a mandatory order should be needed. The court did not accept the Council’s argument that it had already taken all reasonable steps to secure alternative accommodation. Written by Alexander Campbell, barrister at Field Court Chambers.

See News Analysis: [Suitability of homelessness accommodation and mandatory orders (R (on the application of Bell) v Lambeth London Borough Council)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/664H-3B43-CGX8-00YW-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_11_August_2022&ps=null&bct=A&homeCsi=0&A=0.2941583765105197&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4372872&service=DOC-ID&origdpsi=0S4D).

**Property**

**Contractual costs and forfeiture clauses (Mayor and Burgesses of the Tower Hamlets London Borough Council v Khan)**

**Mayor and Burgesses of the Tower Hamlets London Borough Council v Khan** [**[2022] All ER (D) 74 (Jun)**](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&linkInfo=F%23GB%23ALLERD%23sel1%252022%25vol%2506%25year%252022%25page%2574%25sel2%2506%25&A=0.17280607501234324&bct=A&risb=&service=citation&langcountry=GB)

This case looks at the application of a common lease clause, entitling a landlord to recover legal costs that are ‘incidental to the preparation and service’ of forfeiture notices. The landlord council brought County Court proceedings for arrears of service charge which were transferred to the First-tier Tribunal (Property Chamber) (the FTT). The FTT determined that the service charges were reasonable and recoverable and the proceedings were then transferred back to the County Court. The Court of Appeal held that (i) the FTT proceedings were too remote to be ‘incidental’ to the ‘preparation and service’ of forfeiture notices; and (ii) the County Court had no power to award costs in the FTT including pursuant to [section 51](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&linkInfo=F%23GB%23UK_LEG%23num%251981_54a_SECT_51%25&A=0.7216715963319076&bct=A&risb=&service=citation&langcountry=GB) of the Senior Courts Act 1981 ([SCA 1981](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&linkInfo=F%23GB%23UK_LEG%23num%251981_54a_Title%25&A=0.6902285870584555&bct=A&risb=&service=citation&langcountry=GB)). Written by Robyn Cunningham, barrister at Tanfield Chambers.

See News Analysis: [Contractual costs and forfeiture clauses (Mayor and Burgesses of the Tower Hamlets London Borough Council v Khan)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&ps=null&bct=A&homeCsi=0&A=0.026421816654330077&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4356380&service=DOC-ID&origdpsi=0S4D).

## Public Procurement

## NHS procurement duties towards non-framework communications supplier breached (Consultant Connect v NHS Bath)

***Consultant Connect Ltd v NHS Bath and North East Somerset, Swindon and Wiltshire Integrated Care Board and others* [[2022] EWHC 2037 (TCC)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/667P-GTT3-GXF6-8510-00000-00/linkHandler.faces?psldocinfo=NHS_procurement_duties_towards_non_framework_communications_supplier_breached__Consultant_Connect_v_NHS_Bath_and_others_&linkInfo=F%23GB%23EWHCTCC%23sel1%252022%25year%252022%25page%252037%25&A=0.19637198999354089&bct=A&ps=null&risb=&service=citation&langcountry=GB" \t "_parent)**

## The court held that the defendant NHS clinical commissioning groups breached their duties to the claimant, Consultant Connect Ltd, a provider of communications services, despite the communications services supplier not being part of a previously tendered NHS-wide framework agreement of communication suppliers. Mr Justice Kerr found the claimant was owed duties under the Public Contract Regulations 2015 (the PCR). It had the ‘standing’ to bring a claim, the defendants’ use of the framework was unlawful and the defendants had breached their duties of transparency and equal treatment. Moreover, the Commissioning Groups did not provide adequate reasons for their decision and there were conflicts of interest and bias in favour of a separate communications supplier, Cinapsis, who was awarded the tender after being the only supplier invited to apply. The court has ordered a contract shortening order, fines against the defendants, and damages for the claimant after it successfully established it suffered or risked suffering loss or damage. The contract value is disputed but is in the region of £3m. Written by David Mundy, partner and Ally Temple, trainee at BDB Pitmans LLP.

## See News Analysis: [NHS procurement duties towards non-framework communications supplier breached (Consultant Connect v NHS Bath and others)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6690-K0K3-GXF6-80CP-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_1_September_2022&ps=null&bct=A&homeCsi=412012&A=0.8455495433797433&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4382338&service=DOC-ID&origdpsi=0S4D).

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## Planning

**Practical and procedural difficulties of mass traveller injunctions (Thurrock Council v Stokes)**

***Thurrock Council v Stokes***[**[2022] EWHC 1998 (QB)**](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/663W-2WV3-GXF6-83ND-00000-00/linkHandler.faces?psldocinfo=Practical_and_procedural_difficulties_of_mass_traveller_injunctions__Thurrock_Council_v_Stokes_&linkInfo=F%23GB%23EWHCQB%23sel1%252022%25year%252022%25page%251998%25&A=0.005460929282478877&bct=A&ps=null&risb=&service=citation&langcountry=GB)

In the case of *Thurrock Council v Stokes*, Mr Justice Nicklin refused to grant Thurrock Council (‘Thurrock’) final injunctions imposing a borough-wide prohibition on forming encampments and/or fly tipping against 51 named defendants. The injunctions were sought under [section 187B](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/664H-3B43-CGX8-00YW-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_11_August_2022&linkInfo=F%23GB%23UK_LEG%23num%251990_8a_SECT_187B%25&A=0.9235176201838388&bct=A&risb=&service=citation&langcountry=GB) of the Town and Country Planning Act 1990 to restrain breaches of planning control. The case is the third by Nicklin J dealing with so-called ‘traveller injunctions’ sought by local authorities. The decision will be of particular interest to any party seeking an injunction against a large number of defendants and reaffirms the necessity of providing solid evidence demonstrating the injunction sought is both necessary and proportionate. Further, the case is of broader relevance in showing the court’s reticence to the use of Part 8 proceedings against multiple defendants as well as showing courts will have little sympathy for procedural and evidential deficiencies caused by claimants under-resourcing claims. Written by Christopher Moss, pupil barrister at 39 Essex Chambers, and reviewed by Daniel Kozelko, barrister at 39 Essex Chambers.

See News Analysis: [Practical and procedural difficulties of mass traveller injunctions (Thurrock Council v Stokes)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/664H-3B43-CGX8-00YW-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_11_August_2022&ps=null&bct=A&homeCsi=0&A=0.2941583765105197&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4372577&service=DOC-ID&origdpsi=0S4D).

## Social Care

## Closure of residential care facilities not unlawful (R (AB) v Slough Borough Council)

***R (on the application of AB (by his litigation friend)) v Slough Borough Council***[**[2022] EWHC 1772 (Admin)**](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/662T-FRY3-CGX8-00VK-00000-00/linkHandler.faces?psldocinfo=Closure_of_residential_care_facilities_not_unlawful__R__AB__v_Slough_Borough_Council_&linkInfo=F%23GB%23EWHCADMIN%23sel1%252022%25year%252022%25page%251772%25&A=0.09484565757155328&bct=A&ps=null&risb=&service=citation&langcountry=GB)

## In this case the court held that: (a) the consultation that preceded the closure of certain care facilities in Slough was not unlawful, and (b) that the decision did not fail to take into account relevant considerations. This decision provides an example of how local authorities can approach the restructuring of their services without breaching public law principles. In this case, the consultation was conducted at a formative stage even though the local authority may have had a preferred option and sufficient reasons were provided that allowed intelligent consideration and response. Furthermore, while the local authority did not consider the needs of service users as part of its decision making process, there was no requirement that before a local authority changes the way it delivers services provided to many people it has to assess the needs of each service user and match those needs to available alternative service providers. Written by Justin Leslie, associate barrister at Bevan Brittan LLP.

## See News Analysis: [Closure of residential care facilities not unlawful (R (AB) v Slough Borough Council)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6631-9MB3-CGX8-01PN-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_4_August_2022&ps=null&bct=A&homeCsi=0&A=0.8257916632473953&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4371236&service=DOC-ID&origdpsi=0S4D).

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**Licensing**

**Taxi licensing—Does a driver ply for hire when using a ride hailing app? (UTAG v TFL & Transopco UK Ltd t/a Free Now)**

***R (on the application of United Trade Action Group Ltd) v Transport for London and Transopco UK Ltd t/a Free Now***[**[2022] EWCA Civ 1026**](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6613-DWP3-CGX8-03X4-00000-00/linkHandler.faces?psldocinfo=Taxi_licensing_Does_a_driver_ply_for_hire_when_using_a_ride_hailing_app___UTAG_v_TFL___Transopco_UK_Ltd_t_a_Free_Now_&linkInfo=F%23GB%23EWCACIV%23sel1%252022%25year%252022%25page%251026%25&A=0.2826820030567885&bct=A&ps=null&risb=&service=citation&langcountry=GB)

In dismissing the appeal by the United Trade Action Group (UTAG), the Court of Appeal upheld the decision of the court below and the allegedly wrongly decided decisions of the Divisional Court in Reading Borough Council v Ali and Cogley v Sherwood. UTAG had challenged by judicial review the decision of Transport for London (TFL) to renew the private hire operator’s licence of Transopco UK Ltd t/a Free Now (Free Now) inter alia on the basis the Free Now platform enables and encourages its drivers to ply for hire, as their vehicles are shown on an app, and that, as a result, Free Now was not a fit and proper person to hold an operator’s licence. Written by David Wilson, licensing consultant at A2Z Licensing.

See News Analysis: [Taxi licensing—Does a driver ply for hire when using a ride hailing app? (UTAG v TFL & Transopco UK Ltd t/a Free Now)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/661H-H8J3-GXF6-80BC-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_28_July_2022&ps=null&bct=A&homeCsi=0&A=0.043689566678202896&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4367416&service=DOC-ID&origdpsi=0S4D).



# POLICY PAPERS AND GUIDANCE

**Governance**

**Home Office publishes guidance on anti-social behaviour principles**

The Home Office has published guidance on five anti-social behaviour (ASB) principles developed by the Anti-social Behaviour Strategic Board that aim to describe a consistent approach to understanding and addressing ASB in local communities and delivering the ‘best possible’ outcomes for ASB victims. The principles include that victims should be encouraged to report ASB and expect to be taken seriously, agencies will have ‘clear and transparent’ processes to ensure that victims can do this and agencies and practitioners will ‘work cross-boundaries’ to identify, assess and tackle ASB and its underlying causes.

See: [LNB News 19/07/2022 104](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6601-S223-CGX8-04XR-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_21_July_2022&linkInfo=F%23GB%23LNBNEWS%23sel1%252022%25month%2507%25year%252022%25page%25104%25day%2519%25&A=0.6819210443667874&bct=A&risb=&service=citation&langcountry=GB).

**Courts and Tribunals Judiciary publishes remote observation of hearings guidance**

The Courts and Tribunals Judiciary has provided Practice Guidance on the new powers under [section 85A](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252003_39a_SECT_85A%25&A=0.7592036462833069&bct=A&risb=&service=citation&langcountry=GB) of the Courts Act 2003 which allows courts and tribunals to permit the remote observation of hearings by reporters and members of the public. These powers came into effect from 28 June 2022 with the introduction of the [Police, Crime, Sentencing and Courts Act 2022](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252022_32a_Title%25&A=0.8310495239222988&bct=A&risb=&service=citation&langcountry=GB) (Commencement No. 2) Regulations 2022, [SI 2022/704](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252022_704s_Title%25&A=0.3533083021680653&bct=A&risb=&service=citation&langcountry=GB), which brings into force [section 201(2)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252022_32a_SECT_201%25&A=0.5889902543407525&bct=A&risb=&service=citation&langcountry=GB) of the Police, Crime, Sentencing and Courts Act 2022. The guidance states that under the legislation, any court, tribunal or body exercising the judicial power of the state can direct that proceedings be transmitted electronically to enable those not taking part in the proceedings to watch and listen. The Remote Observation and Recording (Courts and Tribunals) Regulations 2022, [SI 2022/705](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&linkInfo=F%23GB%23UK_LEG%23num%252022_705s_Title%25&A=0.9160124702102396&bct=A&risb=&service=citation&langcountry=GB), provide further detail on when and how the court will permit remote observation of hearings.

See: [LNB News 28/06/2022 49](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65TJ-B7G3-CGX8-04RG-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_30_June_2022&linkInfo=F%23GB%23LNBNEWS%23sel1%252022%25month%2506%25year%252022%25page%2549%25day%2528%25&A=0.362042559454675&bct=A&risb=&service=citation&langcountry=GB).

**Welsh Government publishes statutory guidance on LG(W)A 2021**

The Welsh Government has published statutory guidance on the [Local Government and Elections (Wales) Act 2021](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65PJ-VHW3-GXF6-83H4-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_16_June_2022&linkInfo=F%23GB%23UK_LEG%23num%25w2021_1a_Title%25&A=0.28245443900022127&bct=A&risb=&service=citation&langcountry=GB)) for community and town councils following a consultation. The guidance covers general powers of competence and eligible community councils, multi-location meetings, participating at meetings, annual reports, training plans, and other provisions impacting community and town councils.

See: [LNB News 10/06/2022 71](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65PJ-VHW3-GXF6-83H4-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_16_June_2022&linkInfo=F%23GB%23LNBNEWS%23sel1%252022%25month%2506%25year%252022%25page%2571%25day%2510%25&A=0.7282495901498284&bct=A&risb=&service=citation&langcountry=GB).

**Education**

**New statutory guidance on school suspensions and exclusions now published**

New statutory guidance on school exclusions has now been published, along with new Behaviour in Schools Guidance. The new guidance incorporates changes recommended in Edward Timpson’s May 2019 report on school exclusions. The new guidance will apply to any exclusion or suspension decisions taken from 1 September 2022. Thankfully, some of the more controversial proposals in the draft guidance put out for consultation earlier this year have been watered down or removed entirely. In this analysis, Philip Wood of Browne Jacobson LLP examines key changes to the 2017 guidance changes Schools should be aware of, which are summarised below.

See News Analysis: [New statutory guidance on school suspensions and exclusions now published](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6631-9MB3-CGX8-01PN-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_4_August_2022&ps=null&bct=A&homeCsi=0&A=0.8257916632473953&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4368849&service=DOC-ID&origdpsi=0S4D).

**DfE publishes updated draft school admission appeals code**

The Department for Education (DfE) has published an updated draft of its school admission appeals code. The code remains provisional until it receives Parliamentary approval but is intended to replace the 2012 code and to come into force in October 2022. The code covers constitution of appeal panels, appeal hearings, reaching decisions on appeals, infant class size appeals, further appeals and complaints about appeals and appeals by governing bodies against local authority decisions to admit twice excluded children.

See: [LNB News 17/06/2022 5](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65S2-M1T3-CGX8-04C3-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_23_June_2022&linkInfo=F%23GB%23LNBNEWS%23sel1%252022%25month%2506%25year%252022%25page%255%25day%2517%25&A=0.08786946189487632&bct=A&risb=&service=citation&langcountry=GB).

## Public Procurement

**Cabinet Office publishes policy paper on procurement transparency**

The Cabinet Office has published a policy paper on transparency of UK public contracts and spending. In the ‘Transforming Public Procurement’ Green Paper, Consultation Response and Procurement Bill, the government proposed to embed transparency throughout UK public procurement. The document, ‘Transforming Public Procurement—our transparency ambition’, details the transparency reforms, covering the envisaged state of play, the underlying reasons, the resulting advantages and the upcoming steps.

See: [LNB News 30/06/2022 72](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/65W2-6V73-GXF6-83BK-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_7_July_2022&linkInfo=F%23GB%23LNBNEWS%23sel1%252022%25month%2506%25year%252022%25page%2572%25day%2530%25&A=0.6027275898113381&bct=A&risb=&service=citation&langcountry=GB).

**Cabinet Office updates PPN and FAQ on Russia and Belarus supplier contracts**

The Cabinet Office has updated the Procurement Policy Note (PPN) 01/22 on contracts with suppliers from Russia and Belarus and the PPN 01/22 frequently asked questions (FAQs) to reflect modifications relating to the [Local Government Act 1988](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/664H-3B43-CGX8-00YW-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_11_August_2022&linkInfo=F%23GB%23UK_LEG%23num%251988_9a_Title%25&A=0.2957117399945227&bct=A&risb=&service=citation&langcountry=GB).

See: [LNB News 10/08/2022 52](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/664H-3B43-CGX8-00YW-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_11_August_2022&linkInfo=F%23GB%23LNBNEWS%23sel1%252022%25month%2508%25year%252022%25page%2552%25day%2510%25&A=0.8401359288901074&bct=A&risb=&service=citation&langcountry=GB).

**Social Care**

**LGSCO publishes guidance on care finance decisions**

The Local Government and Social Care Ombudsman (LGSCO) has published guidance on the issue of Deprivation of Capital decisions for councils, particularly financial assessment practitioners in local authorities. The guidance sets out the approach to investigations of complaints from people whose local authority has decided they have deprived themselves of capital intentionally when assessing the amount that should be contributed to their care fees.

See: [LNB News 25/08/2022 18](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6690-K0K3-GXF6-80CP-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_1_September_2022&linkInfo=F%23GB%23LNBNEWS%23sel1%252022%25month%2508%25year%252022%25page%2518%25day%2525%25&A=0.1766706540081322&bct=A&ps=null&risb=&service=citation&langcountry=GB).

**Social Housing**

**Government Property Strategy for 2022–2030 published**

The Cabinet Office has published the new Government Property Strategy for 2022–2030. This includes a commitment to sell £1.5bn of property assets in three years as government staff are moved into fewer buildings, saving an estimated £500m. The strategy will also encourage the relocation of civil service staff via the Places for Growth programme, which has committed to moving 22,000 civil service jobs out of London by 2030. Investment in regeneration of derelict public land, and in grant funding of £3m to use smaller, brownfield sites across England for housing will also be promoted under the scheme. The scheme will also progress current work on the 25 Year Environment Plan and the Greening Government Commitments.

See: [LNB News 31/08/2022 45](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6690-K0K3-GXF6-80CP-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_1_September_2022&linkInfo=F%23GB%23LNBNEWS%23sel1%252022%25month%2508%25year%252022%25page%2545%25day%2531%25&A=0.8502502137322754&bct=A&ps=null&risb=&service=citation&langcountry=GB).

**Welsh Government publishes Rapid Rehousing guidance**

The Welsh Government has published guidance on ‘Rapid Rehousing’, the approach that enables those experiencing homelessness to be moved out of temporary accommodation, and into a settled home quickly. The guidance defines the main elements of Rapid Rehousing, who can benefit, why the approach is being adopted, evidence to support the approach, the roles of various stakeholders such as local authorities, the private rented sector and homelessness and housing support providers and what is needed to make Rapid Rehousing a reality in Wales. Local authorities in Wales are expected to publish their Rapid Rehousing Transition Plans in September 2022, which will begin the anticipated five-year timescale of Rapid Rehousing implementation.

See: [LNB News 25/08/2022 12](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6690-K0K3-GXF6-80CP-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_1_September_2022&linkInfo=F%23GB%23LNBNEWS%23sel1%252022%25month%2508%25year%252022%25page%2512%25day%2525%25&A=0.0837522249238456&bct=A&ps=null&risb=&service=citation&langcountry=GB).



## Local Authority Insight Series Events

In partnership with Local Government Lawyer, the LexisNexis Local Authority Insight Series hosts a string of events which take a deep dive into topical issues and key legal movements which affect the public sector, particularly those working in local government.

**Regime change - the Liberty Protection Safeguards**

How will the new Liberty Protection Safeguards work in practice when they replace the Deprivations of Liberty Safeguards (DOLS)?

Alex Ruck Keene KC (Hon), Barrister at 39 Essex Chambers and author of the Mental Capacity Law and Policy blog, and Emma Harrison, Senior Solicitor at Devon County Council and LLG National Lead for Adult Social Care and Health, evaluate how the Liberty Protection Safeguards might work in reality in the light of the publication of the draft Code of Practice.

They will outline and examine:

* How key aspects of the LPS regime differ from the DOLS and in which regards it will remain the same.
* Consider the operation of the ‘acid test’ established in the *Cheshire West* decision of the Supreme Court when the LPS are in force.
* Whether the new regime will act to streamline the process or create more work for lawyers and health and social care professionals.
* Where litigation may arise in future to clarify the operation of the Liberty Protection Safeguards.

**[Watch the webinar →](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)**

**Neighbourhood Planning- 10 years on**

Since the introduction of the neighbourhood planning system by the Localism Act 2011, this webinar takes a look at how successful (or otherwise) it has been and what it might look like in future.

Planning specialists Sue Chadwick and Stephen Morgan explore:

* How the courts have interpreted the role of neighbourhood plans against other frameworks and priorities, such as the Housing Delivery Test, local plans and other aspects of the NPPF when challenged.
* What effect the expansion of permitted development rights had on the effectiveness of neighbourhood plans.
* How the approach and effectiveness of neighbourhood forums towards neighbourhood planning has differed between parish and town councils.
* How the approach of examiners has changed over time.
* Where neighbourhood planning fits in the future of planning law. In what ways might it need to change if it is to stay relevant?

**[Watch the webinar →](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)**

**Making highways fit for future**

Following the agreement at COP26 in Glasgow, councils look set to play an important role in the UK’s efforts to move to net zero.

For local authorities, the biggest single issue within their purview is how to minimise the carbon (and other pollution) created by road traffic and how to encourage less carbon intensive forms of transport.

The panel explores:

* Local Traffic Networks
* Cycle lanes and cycle or pedestrian infrastructure
* Lower speed limits
* Charging infrastructure for EVs
* Clean air zones (CAZs)

**[Watch the webinar →](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)**

**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 →**](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)

**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 at 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 →](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)**

**Intercountry adoption**

A bird’s 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 →](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)**

**Climate change**

According to Friends of the Earth, there are more than thirty actions that local authorities could and should be taking to help the fight against climate change. But, in practice, what legal powers can local authorities use to put these plans into action and what legal obstacles do they face?

The panel explores:

* How local authorities can use their own assets to combat climate change.
* The levers available to the local authorities and the potential impact of the Environment Bill
* The obligations that declaring a climate emergency place on a local authority.
* Using the planning system to combat (and deal with the consequences of) climate change.

**[Watch the webinar →](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)**

**Elections**

Electoral law experts Mark Heath and Emyr Thomas look at the challenges faced by returning officers when running elections and look forward to how the new Elections Bill might change the landscape in future.

They address:

* What are most common – and tricky – issues encountered by local authorities when running an election?
* How changes to electoral law and guidance might affect this year’s elections, especially in Wales.
* Dealing with a crisis: what should returning officers do if things fall apart and who can they turn to?
* The progress of The Elections Bill 2022 and how might this effect the running of future elections.

**[Watch the webinar →](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)**

**A balancing act- Public Sector Employment post-Covid**

The public sector has been an enthusiastic adopter of remote and hybrid working patterns, but the transition to more permanent hybrid working patterns comes with a number of legal risks.

Employment experts Felicia Epstein and Allison Cook explore:

* In what circumstances can employees request or demand remote or otherwise flexible working?
* In what circumstances can employees be required to return to the office?
* How can employers provide (or refuse) remote/hybrid working while remaining compliant with the Equality Act? Where do the potential pitfalls lie?
* Can the medically vulnerable be required to work at the office?
* Should employment contracts be amended to facilitate remote/hybrid working? How straightforward would it be to change the balance of remote/office-based working if the needs of the employer change in future?
* How much control do public sector employers have over hybrid working and staff employed by contractors?

**[Watch the webinar →](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)**

**The Procurement Bill explained**

The procurement bill promises some radical – and not-so-radical – changes to the public procurement regime following the UK’s withdrawal from the European Union. Experienced procurement experts Kieran McGaughey and Andrew Millross outline the changes in the Procurement Bill and how they might work in practice for contracting authorities.

They cover:

* What are the major changes from the EU-derived status quo? What doesn’t change?
* What has changed from the Green Paper published last year?
* What are likely to be the key elements for local authorities (and housing associations)?
* What remains to be revealed in the subordinate legislation or is generally unclear at present?
* Is the Bill likely in practice to provide the greater flexibility the government promises it will?
* What practical steps can authorities take now to get ready for the reforms?

**[Watch the webinar →](https://www.lexisnexis.co.uk/video/overview.html?segment=public-sector&product=all)**

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