**NWLC Quarterly Legal Update**

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# CASES

## Children’s Social Care

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# Duties of local authorities to children from NRPF families

# R (on the application of BCD by his litigation friend EFG) v Birmingham Children's Trust [[2023] EWHC 137 (Admin)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67G2-HBB3-RVCT-V32X-00000-00/linkHandler.faces?psldocinfo=Duties_of_local_authorities_to_children_from_NRPF_families__R_BCD__v_Birmingham_Children_s_Trust_&linkInfo=F%23GB%23EWHCADMIN%23sel1%252023%25year%252023%25page%25137%25&A=0.22310177003291687&bct=A&risb=&service=citation&langcountry=GB)

Birmingham Children’s Trust (BCT) performs certain statutory functions relating to children on behalf of Birmingham City Council. At the relevant time it had a policy (now updated) as regards the services under section 17 of the Children Act 1989 it would provide to children and families who had no recourse to public funds (NRPF). This policy did not draw any distinction between families who were in the UK in breach of the Immigration Rules, and other families who were NRPF (e.g. Zambrano carers, and people with pre-settled status). This policy was challenged both as to the lawfulness of its rates and on the ground that the lack of distinction between the different cohorts of NRPF families amounted to Thlimmenos discrimination. Written by Joshua Swirsky, barrister at Field Court Chambers.

# See News Analysis: [Duties of local authorities to children from NRPF families (R(BCD) v Birmingham Children’s Trust)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67G2-HBB3-RVCT-V32X-00000-00/Duties_of_local_authorities_to_children_from_NRPF_families__R_BCD__v_Birmingham_Children_s_Trust_)

# Balancing disclosure and privacy in care proceedings

# Re P, H-L (children) (mobile phone extraction) [[2023] EWCA Civ 206](https://www.lexisnexis.com/uk/lexispsl/family/document/412012/67V2-F973-RT27-51HP-00000-00/linkHandler.faces?psldocinfo=Balancing_disclosure_and_privacy_in_care_proceedings__P_H_L__children___mobile_phone_extraction__&linkInfo=F%23GB%23EWCACIV%23sel1%252023%25year%252023%25page%25206%25&A=0.19199766044056843&bct=A&risb=&service=citation&langcountry=GB), [[2023] All ER (D) 35 (Mar)](https://www.lexisnexis.com/uk/lexispsl/family/document/412012/67V2-F973-RT27-51HP-00000-00/linkHandler.faces?psldocinfo=Balancing_disclosure_and_privacy_in_care_proceedings__P_H_L__children___mobile_phone_extraction__&linkInfo=F%23GB%23ALLERD%23sel1%252023%25vol%2503%25year%252023%25page%2535%25sel2%2503%25&A=0.007574357795286812&bct=A&risb=&service=citation&langcountry=GB)

The Court of Appeal considered the correct approach to be taken by the court when case managing care proceedings where disclosure of social media and messages passing between the subject child making serious allegations and her minor, non-subject friends was sought within a fact-finding hearing. Guidance was given as to who should filter the messages and what would be an appropriate period for the disclosure to cover. After consideration of privacy rights in particular, the Court of Appeal rejected the argument that the consent of the non-subject children should be obtained before undertaking the disclosure. Deborah Bryan, a barrister at 33 Bedford Row Chambers, considers the issues.

See News Analysis: [Balancing disclosure and privacy in care proceedings (P,H-L (children) (mobile phone extraction))](https://www.lexisnexis.com/uk/lexispsl/family/document/412012/67V2-F973-RT27-51HP-00000-00/Balancing_disclosure_and_privacy_in_care_proceedings__P_H_L__children___mobile_phone_extraction__)

**Dispute Resolution**

# Notice Properly Served by being left at Tenant’s Address

# Birmingham City Council v Bravington [[2023] EWCA Civ 308](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67XV-XPY3-S33M-D398-00000-00/linkHandler.faces?psldocinfo=Notice_Properly_Served_by_being_left_at_Tenant_s_Address__Birmingham_City_Council_v_Bravington_&linkInfo=F%23GB%23EWCACIV%23sel1%252023%25year%252023%25page%25308%25&A=0.6785601228073826&bct=A&risb=&service=citation&langcountry=GB" \t "_parent)

The tenant had a secure tenancy of a flat owned by a local authority. He was convicted of anti-social behaviour offences and the authority sought possession of the flat on those grounds. It served a possession notice on the tenant by leaving it with his girlfriend at his address. For this purpose, it relied on section 233 of the Local Government Act 1972 (LGA 1972). The tenant argued that the notice was not properly served on him because the terms as to service of such notices in section 83ZA of the Housing Act 1985 were not complied with. The tenant succeeded in the County Court but on further appeal, the Court of Appeal concluded that the terms of LGA 1972, s 233 applied to the notice and, having complied with those terms, the notice was properly served. Written by Denis Edwards, barrister, Normanton Chambers.

# See News Analysis: [Notice Properly Served by being left at Tenant’s Address (Birmingham City Council v Bravington)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67XV-XPY3-S33M-D398-00000-00/Notice_Properly_Served_by_being_left_at_Tenant_s_Address__Birmingham_City_Council_v_Bravington_)

## Education

# Violation by a local authority of children’s right to education

# R (on the application of ZB and another) v Croydon London Borough Council [[2023] EWHC 489 (Admin)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67TN-12R3-S08D-425D-00000-00/linkHandler.faces?psldocinfo=Violation_by_a_local_authority_of_children_s_right_to_education__R__on_the_application_of_ZB_and_another__v_Croydon_London_Borough_&linkInfo=F%23GB%23EWHCADMIN%23sel1%252023%25year%252023%25page%25489%25&A=0.2569787648480788&bct=A&risb=&service=citation&langcountry=GB" \t "_parent)

Ms Bell, the parent of two profoundly disabled children, applied to Lambeth Council as homeless. Lambeth Council provided her with homelessness accommodation situated in Croydon. That accommodation was unsuitable for the family and the children’s disabilities and resulted in the children being unable to leave the property most of the time. As a result, the children could not attend school. Ms Bell and Croydon disagreed about what school the children should attend. There were substantial delays in Croydon putting in place suitable transport for the children to attend the school which Croydon had decided that they should attend. As a result, Ms Bell argued that the children’s human rights had been breached, in particular their right to an education (Article 2 Protocol 1 ECHR) and their Article 8 rights. The High Court found that the children’s right to an education had been violated and awarded each child £10,000 damages. Written by Alexander Campbell, barrister at Cornerstone Barristers.

# See News Analysis: [Violation by a local authority of children’s right to education (R (on the application of ZB and another) v Croydon London Borough)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67TN-12R3-S08D-425D-00000-00/Violation_by_a_local_authority_of_children_s_right_to_education__R__on_the_application_of_ZB_and_another__v_Croydon_London_Borough_)

## Governance

# High Court quashes Council’s unlimited sex club policy

R (on the Application of CDE) v Bournemouth, Poole and Christchurch Council [[2023] EWHC 194 (Admin)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67KW-MGG3-RRMH-F005-00000-00/linkHandler.faces?psldocinfo=High_Court_quashes_Council_s_unlimited_sex_club_policy__R__CDE__v_BCP_Council__&linkInfo=F%23GB%23EWHCADMIN%23sel1%252023%25year%252023%25page%25194%25&A=0.6974494676666091&bct=A&risb=&service=citation&langcountry=GB)

The High Court has upheld a judicial review claim against a local authority’s decision to adopt a policy imposing no limit on the number of licensed sexual entertainment venues (SEVs) within its area. The claimant argued that Bournemouth, Christchurch and Poole Council (BCP) had failed properly to consult on the policy because it had, in effect, disregarded objections that the presence of SEVs contributes to a culture and environment which undermines the equality of women and girls. Although such objections formed a significant proportion of responses (the vast majority of which opposed the policy) BCP deemed these ‘sex equality based concerns’ to be mere ‘moral concerns’, which it was impermissible to take into account. The court held that BCP thereby failed in its consultation duties. The court further concluded that, in failing properly to consider sex equality based concerns, BCP breached its Public Sector Equality Duty (PSED) under section149 of the Equality Act 2010. Written by Janet Kentridge, barrister at Matrix Chambers.

See News Analysis[: High Court quashes Council’s unlimited sex club policy (R (CDE) v BCP Council)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67KW-MGG3-RRMH-F005-00000-00/High_Court_quashes_Council_s_unlimited_sex_club_policy__R__CDE__v_BCP_Council__)

**Healthcare**

# Court dismisses judicial review about waiting times for gender identity health services

R (on the application of AA (a child, acting by her father and litigation friend) and others) v National Health Service Commissioning Board (operating under the name of NHS England) [[2023] EWHC 43 (Admin)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67SK-SH53-RRJ2-G038-00000-00/linkHandler.faces?psldocinfo=Court_dismisses_judicial_review_about_waiting_times_for_gender_identity_health_services__R__AA__v_NHS_England_&linkInfo=F%23GB%23EWHCADMIN%23sel1%252023%25year%252023%25page%2543%25&A=0.534273271035669&bct=A&risb=&service=citation&langcountry=GB)

The High Court has found that the waiting times for gender identity health services faced by the claimants did not breach various public law duties on the National Health Service (NHS). Those duties were ‘target duties’ and it could not be said that the NHS had acted irrationally in respect of any of the steps it had taken to try to satisfy those duties. While the court gave a wide interpretation to the protected characteristic of ‘gender reassignment’, it found that the waiting times did not directly or indirectly discriminate against the claimants. The NHS was also not in breach of the public sector equality duty. Written by Charles Bishop, barrister at Landmark Chambers.

# See News Analysis: [Court dismisses judicial review about waiting times for gender identity health services (R (AA) v NHS England)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67SK-SH53-RRJ2-G038-00000-00/Court_dismisses_judicial_review_about_waiting_times_for_gender_identity_health_services__R__AA__v_NHS_England_)

**Highways**

# Highway adopted under section 38 agreement to ownership boundary so as to avoid a ransom strip

KBC Developments LLP v Wavin Ltd and another [[2023] EWHC 153 (Ch)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67HB-8XM3-RRKW-300J-00000-00/linkHandler.faces?psldocinfo=Highway_adopted_under_section_38_agreement_to_ownership_boundary_so_as_to_avoid_a_ransom_strip__KBC_Developments_v_Wavin_&linkInfo=F%23GB%23EWHCCH%23sel1%252023%25year%252023%25page%25153%25&A=0.21483290960855606&bct=A&risb=&service=citation&langcountry=GB)

The issue for the High Court was whether the extent of a highway dedicated and adopted by way of an agreement made under section 38 of the Highways Act 1980 (HiA 1980) was sufficient to enable a connection by a future road to be constructed via a bridge over a railway to serve a proposed residential development on land in separate ownership, or whether a ransom strip had been created. The court made declarations that on the correct interpretation of the HiA1980 s38 agreement, the highway had been adopted to the ownership boundary, and that sufficient land had thereby been vested in the local highway authority by virtue of HiA 1980, s 263 in both the horizontal and vertical planes to enable the construction of a substantial bridge to connect the two sites. There was therefore no ransom strip. The case emphasises the importance of the terms of HiA 1980 s 38 agreements, together with the plans, being clear and unambiguous, and demonstrates that such agreements are not limited in their effect by a related planning permission. It is also useful in indicating that extensive areas of airspace above and depth beneath a highway surface may thereby be vested in the highway authority to the extent required to enable the construction of a substantial bridge structure, applying the law set out in Southwark London Borough Council v Transport for London. Written by Ruth Stockley, barrister at Kings Chambers, Manchester.

See News Analysis: [Highway adopted under section 38 agreement to ownership boundary so as to avoid a ransom strip (KBC Developments v Wavin)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67HB-8XM3-RRKW-300J-00000-00/Highway_adopted_under_section_38_agreement_to_ownership_boundary_so_as_to_avoid_a_ransom_strip__KBC_Developments_v_Wavin_)

**Judicial review**

## Court of Appeal declares notice seeking to evict Travellers from temporary site was unlawful

## R (on the application of SO) v Thanet District Council [[2023] EWCA Civ 398](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/683B-BT43-S002-K3MY-00000-00/linkHandler.faces?psldocinfo=Court_of_Appeal_declares_notice_seeking_to_evict_Travellers_from_temporary_site_was_unlawful__R_SO__v_TDC_and_others_&linkInfo=F%23GB%23EWCACIV%23sel1%252023%25year%252023%25page%25398%25&A=0.8402614231623712&bct=A&ps=null&risb=&service=citation&langcountry=GB" \t "_parent)

This was an appeal against the refusal of the High Court to grant permission for judicial review challenging the service of a [section 77](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/683R-N3Y3-RRMH-Y00M-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_27_April_2023&linkInfo=F%23GB%23UK_LEG%23num%251994_33a_SECT_77%25&A=0.4497873851649068&bct=A&risb=&service=citation&langcountry=GB) of the Criminal Justice and Public Order Act 1994 notice on a group of Irish Travellers to evict them from Land at Ramsgate Harbour when they had been invited onto the Land by Thanet District Council. The issue for the court to determine was whether the notice was lawful without Thanet giving reasonable notification of the prior decision withdrawing consent before serving the section 77 notice. The Court of Appeal had allowed the appeal and given permission for judicial review and determined that the giving of the notice was unlawful and quashed the notice due to the failure to give prior notice of the withdrawal of consent Written by Tim Baldwin, Counsel for the appellant at Garden Court Chambers.

See News Analysis: [Court of Appeal declares notice seeking to evict Travellers from temporary site was unlawful [R(SO) v TDC and others]](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/683R-N3Y3-RRMH-Y00M-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_27_April_2023&ps=null&bct=A&homeCsi=0&A=0.05456687457536724&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4461317&service=DOC-ID&origdpsi=0S4D).

## Public Procurement

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# Un-boxxed—Ministry of Justice gets the green light to award contract following successful application to lift an automatic suspension

# Boxxe Ltd v Secretary of State for Justice [[2023] EWHC 533 (TCC)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/683J-6123-RS0X-W29V-00000-00/linkHandler.faces?psldocinfo=Un_boxxed_Ministry_of_Justice_gets_the_green_light_to_award_contract_following_successful_application_to_lift_an_automatic_suspension__Boxxe_Ltd_v_UK_Secretary_of_State_for_Justice_&linkInfo=F%23GB%23EWHCTCC%23sel1%252023%25year%252023%25page%25533%25&A=0.10381543973691842&bct=A&risb=&service=citation&langcountry=GB)

The Secretary of State for Justice (SoSJ) made an application to the court pursuant to regulation 96(1)(a) of the Public Contracts Regulations 2015 (PCR 2015), SI 2015/102, to a lift an automatic suspension of the award of a call-off contract, following a challenge by an unsuccessful tenderer, Boxxe Ltd. Mr Justice Constable in the High Court granted the application to lift the automatic suspension. The case provides useful guidance on the application of PCR 2015, reg 96(1)(a), following a number of decisions dealing with the issue. The case also highlights the current lack of clarity in the interpretation of the proper calculation of the 30-day limitation period for bringing a procurement challenge under PCR 2015, reg 92. Written by Andrew Dean, director of Public Law, and Alex Hough, associate, at Clifford Chance LLP.

See News Analysis: [Un-boxxed—Ministry of Justice gets the green light to award contract following successful application to lift an automatic suspension (Boxxe Ltd v UK Secretary of State for Justice)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/683J-6123-RS0X-W29V-00000-00/Un_boxxed_Ministry_of_Justice_gets_the_green_light_to_award_contract_following_successful_application_to_lift_an_automatic_suspension__Boxxe_Ltd_v_UK_Secretary_of_State_for_Justice_)

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## Planning

## Supreme Court finds public rights to land subject to statutory trust not extinguished where statutory requirements not complied with

Day v Shropshire Council [[2023] UKSC 8](https://www.lexisnexis.com/uk/lexispsl/planning/document/412012/67NT-CTG3-RRH9-B00B-00000-00/linkHandler.faces?psldocinfo=Planning_weekly_highlights_2_March_2023&linkInfo=F%23GB%23UKSC%23sel1%252023%25year%252023%25page%258%25&A=0.4803165702934409&bct=A&risb=&service=citation&langcountry=GB)

In Day v Shropshire Council the Supreme Court quashed a planning permission granted on land subject to a statutory trust, which had been sold by a local planning authority without complying with the consultation requirements under the [Local Government Act 1972](https://www.lexisnexis.com/uk/lexispsl/planning/document/412012/67NT-CTG3-RRH9-B00B-00000-00/linkHandler.faces?psldocinfo=Planning_weekly_highlights_2_March_2023&linkInfo=F%23GB%23UK_LEG%23num%251972_70a_Title%25&A=0.07436772916682854&bct=A&risb=&service=citation&langcountry=GB) ([LGA 1972](https://www.lexisnexis.com/uk/lexispsl/planning/document/412012/67NT-CTG3-RRH9-B00B-00000-00/linkHandler.faces?psldocinfo=Planning_weekly_highlights_2_March_2023&linkInfo=F%23GB%23UK_LEG%23num%251972_70a_Title%25&A=0.288634480091742&bct=A&risb=&service=citation&langcountry=GB)). The decision confirms that public rights to use land subject to a statutory trust are only extinguished if the local authority has complied with the legislative procedural requirements.

The Supreme Court went against the decisions of the High Court and the Court of Appeal, finding that when a local authority disposes of land which is subject to a statutory trust, where it has failed to comply with the consultation requirements in [LGA 1972,](https://www.lexisnexis.com/uk/lexispsl/planning/document/412012/67NT-CTG3-RRH9-B00B-00000-00/linkHandler.faces?psldocinfo=Planning_weekly_highlights_2_March_2023&linkInfo=F%23GB%23UK_LEG%23num%251972_70a_Title%25&A=0.29937656439758575&bct=A&risb=&service=citation&langcountry=GB)the public’s rights to use that land are ‘not’ extinguished under the statutory trust. Those public rights are only extinguished if the local authority has complied with the bespoke consultation requirements set out in [LGA 1972, s 123](https://www.lexisnexis.com/uk/lexispsl/planning/document/412012/67NT-CTG3-RRH9-B00B-00000-00/linkHandler.faces?psldocinfo=Planning_weekly_highlights_2_March_2023&linkInfo=F%23GB%23UK_LEG%23num%251972_70a_SECT_123%25&A=0.9291001176607662&bct=A&risb=&service=citation&langcountry=GB).

## See News Analysis: [Supreme Court finds public rights to land subject to statutory trust not extinguished where statutory requirements not complied with (Day v Shropshire Council)](https://www.lexisnexis.com/uk/lexispsl/planning/document/412012/67NK-YKW3-RRWP-B053-00000-00/Supreme-Court-finds-public-rights-to-land-subject-to-statutory-trust-not-extinguished-where-statutory-requirements-not-complied-with-%28Day-v-Shropshire-Council%29)

## CIL liability notices—about time

## R (on the application of Brathwaite and another) v East Suffolk Council [[2022] EWCA Civ 1716](https://www.lexisnexis.com/uk/lexispsl/planning/document/412012/67DB-CMD3-RRJW-701N-00000-00/linkHandler.faces?psldocinfo=Planning_weekly_highlights_26_January_2023&linkInfo=F%23GB%23EWCACIV%23sel1%252022%25year%252022%25page%251716%25&A=0.3645783172397319&bct=A&risb=&service=citation&langcountry=GB)

The Court of Appeal shed light on the implications for the recovery of community infrastructure levy (CIL) where the collecting authority serves the liability notice late in breach of regulation 65 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). The court held that, since the CIL Regulations prescribe no consequences for breach of the requirement that a liability notice is served ‘as soon as practicable’ after planning permission first permits the development, a late liability notice remains valid unless or until it is quashed by a court of competent jurisdiction, and that can only be achieved by an application for judicial review (which should be brought promptly and within three months of the date grounds for review first arose).

See News Analysis written by Harriet Townsend, barrister, at Cornerstone Barristers: [CIL liability notices—about time (Braithwaite v East Suffolk Council)](https://www.lexisnexis.com/uk/lexispsl/planning/document/412012/67DB-CMD3-RRJW-701N-00000-00/linkHandler.faces?psldocinfo=Planning_weekly_highlights_26_January_2023&ps=null&bct=A&homeCsi=0&A=0.01812601253597146&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4428813&service=DOC-ID&origdpsi=0S4D).

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## Social Housing

## Homelessness and out-of-borough offers of accommodation

## Zaman v Waltham Forest London Borough Council; Uduezue v Bexley London Borough Council [[2023] EWCA Civ 322](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/680B-JF83-RSX5-61NG-00000-00/linkHandler.faces?psldocinfo=Homelessness_and_out_of_borough_offers_of_accommodation__Zaman_v_LB_Waltham_Forest_and_Uduezue_v_Bexley_&linkInfo=F%23GB%23EWCACIV%23sel1%252023%25year%252023%25page%25322%25&A=0.21724860916947786&bct=A&ps=null&risb=&service=citation&langcountry=GB" \t "_parent)

The court examined the circumstances surrounding two offers of private rented sector accommodation were made in purported discharge of the main housing duty under [section 193(2)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/680R-Y9M3-RVYR-X4PM-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_13_April_2023&linkInfo=F%23GB%23UK_LEG%23num%251996_52a_SECT_193%25&A=0.6142270048995477&bct=A&risb=&service=citation&langcountry=GB) of the Housing Act 1996 ([HA 1996](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/680R-Y9M3-RVYR-X4PM-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_13_April_2023&linkInfo=F%23GB%23UK_LEG%23num%251996_52a_Title%25&A=0.752707085898124&bct=A&risb=&service=citation&langcountry=GB)) outside of the respective London boroughs. In Ms Zaman’s case, the court considered the relevant statutory guidance and orders and concluded that even where a local authority has a lawful policy for the allocation of accommodation, this cannot suffice, on its own, to satisfy the obligation to secure accommodation as close as possible to where the applicant was previously living in each case. This needs to be adequately evidenced. Ms Uduezu’s appeal was only allowed on the basis that, when making the offer, Bexley had not informed her of the implications of [HA 1996, s 195A(2)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/680R-Y9M3-RVYR-X4PM-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_13_April_2023&linkInfo=F%23GB%23UK_LEG%23num%251996_52a_SECT_195A%25&A=0.3384919454992954&bct=A&risb=&service=citation&langcountry=GB) contrary to [HA 1996, s 193(7AB)(c)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/680R-Y9M3-RVYR-X4PM-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_13_April_2023&linkInfo=F%23GB%23UK_LEG%23num%251996_52a_SECT_193%25&A=0.9780737543382558&bct=A&risb=&service=citation&langcountry=GB) insofar as it relates to her re-application for homelessness assistance within two years of the offer following the recent case of Norton v Haringey LBC. Written by Sophie Caseley, barrister at Garden Court Chambers.

See News Analysis: [Homelessness and out-of-borough offers of accommodation (Zaman v LB Waltham Forest and Uduezue v Bexley)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/680R-Y9M3-RVYR-X4PM-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_13_April_2023&ps=null&bct=A&homeCsi=0&A=0.24361923753325965&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4453206&service=DOC-ID&origdpsi=0S4D).

# Social housing; allocation policies; reasonable preference

Khayyat and another v Westminster City Council [[2023] EWHC 30 (Admin)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67FD-B1P3-RRK6-H00V-00000-00/linkHandler.faces?psldocinfo=Social_housing__allocation_policies__reasonable_preference__Khayyat_Ibrahim_v_Westminster_City_Council_&linkInfo=F%23GB%23EWHCADMIN%23sel1%252023%25year%252023%25page%2530%25&A=0.48725035827271757&bct=A&risb=&service=citation&langcountry=GB)

The defendant’s allocations scheme unlawfully excluded from the Housing Register those homeless persons who were not owed the Main Housing Duty under Part 7 of the Housing Act 1996 (HA 1996). This failed to give them the reasonable preference they were entitled to under HA 1996, s 166A(3)(a)–(b). Written by Zia Nabi, barrister at Doughty Street Chambers.

# See News Analysis[: Social housing; allocation policies; reasonable preference (Khayyat/Ibrahim v Westminster City Council)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67FD-B1P3-RRK6-H00V-00000-00/Social_housing__allocation_policies__reasonable_preference__Khayyat_Ibrahim_v_Westminster_City_Council_)

**Landlord’s high threshold for ‘Reasonable Excuse’ in financial penalty appeals**

Gateshead Borough Council v City Estate Holdings Ltd [[2023] UKUT 35 (LC)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67K2-CD83-RRMB-5002-00000-00/linkHandler.faces?psldocinfo=Landlord_s_high_threshold_for__Reasonable_Excuse__in_financial_penalty_appeals__City_Estate_Holdings_Ltd_V_Gateshead_Council_&linkInfo=F%23GB%23UKUTLC%23sel1%252023%25year%252023%25page%2535%25&A=0.41288280826053636&bct=A&risb=&service=citation&langcountry=GB)

In this appeal, the Upper Tribunal reiterated the very high standard to which landlord’s must establish, on evidence, that they have a defence of ‘reasonable excuse’ to successfully appeal against a financial penalty for offences under section 95 of the Housing Act 2004 (HA 2004), imposed by a local authority pursuant to HA 2004, s 249A. The burden on a landlord as a professional person is a personal one which will not be discharged by simply saying they, however reasonably, expected another professional person to tell them of the existence of a selective licensing regime. The Upper Tribunal further reiterated that, as a matter of statute, an appeal to the tribunal is dealt with as a reconsideration of the local authority’s decision to impose a financial penalty. There is no scope, therefore, for the tribunal to ‘review’ the decision of the local authority to impose a penalty in the first place and arguments from appellant landlords that the local authority has acted inappropriately and/or fettered its discretion are irrelevant. Written by Thomas Parsons Munns, barrister at Dere Street Barristers Chambers.

See News Analysis: [Landlord’s high threshold for ‘Reasonable Excuse’ in financial penalty appeals (City Estate Holdings Ltd V Gateshead Council)](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67K2-CD83-RRMB-5002-00000-00/Landlord_s_high_threshold_for__Reasonable_Excuse__in_financial_penalty_appeals__City_Estate_Holdings_Ltd_V_Gateshead_Council_)



# POLICY PAPERS AND GUIDANCE

**Brexit**

## Government backs down on sunset deadline as REUL dashboard total rises

The Department for Business & Trade has published the third iteration of the government’s retained EU law (REUL) dashboard. The latest update has identified an additional 1,080 pieces of REUL, bringing the current total to 4,829 (a 29% increase on the previous count). As well as identifying additional legislation, the updated dashboard reflects recent machinery of government changes, with legislation reallocated among the new departments. The background information to the updated dashboard reiterates that it is ‘not intended to provide a comprehensive account of REUL’, but that it ‘documents the government’s progress’ against its aim to identify REUL which can be amended, repealed or replaced. Central to the government’s plans for REUL reform is the Retained EU Law (Revocation and Reform) Bill (REULRR Bill), which is due to begin Report Stage in the House of Lords on 15 May 2023. Acknowledging problems with the tight timescales provided in the REULRR Bill, particularly in light of the growing amount of REUL being identified, the government confirmed long-rumoured plans to table amendments to the REULRR Bill, replacing the sunset provision (revoking REUL by default at the end of 2023 unless expressly excluded or extended), with a specific list of REUL to be revoked by the end of the year (approx 600 pieces of REUL). Alongside this, the government noted that the Financial Services and Markets Bill and the Procurement Bill would revoke around 500 further pieces of REUL. Further reforms are outlined in the government’s policy paper ‘Smarter regulation to grow the economy’, which was published to coincide with the updated dashboard. The policy paper highlights plans for a new approach to regulation, better use of Common Frameworks and working with regulators to drive growth, including consultations on the Strategy and Policy Statement for Energy and a strategic steer for the Competition and Markets Authority. The policy paper also includes plans for a series of reform packages, each focusing on specific areas of regulation, starting with employment law.

See: [LNB News 10/05/2023 71](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/686R-50S3-S6HW-12PS-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_11_May_2023&linkInfo=F%23GB%23LNBNEWS%23sel1%252023%25month%2505%25year%252023%25page%2571%25day%2510%25&A=0.8203562967255087&bct=A&ps=null&risb=&service=citation&langcountry=GB).

**Employment**

## DBS and Home Office releases independent review of disclosure and barring regime

The Disclosure and Barring Service (DBS) and Home Office has released its [independent review](http://bit.ly/3AgSSa6) of the effectiveness of the disclosure and barring regime in safeguarding children and vulnerable adults. The review has been carried out by Simon Bailey CBE, QPM, who concludes that the disclosure and barring regime is delivering its mission of routinely helping employers and organisations that use volunteers to make safer employment decisions. However, he identified areas where the regime can be improved and made nine recommendations which the government will consider.

See: [LNB News 20/04/2023 73](https://www.lexisnexis.com/uk/lexispsl/employment/document/412012/683R-N3Y3-RRMH-Y00X-00000-00/linkHandler.faces?psldocinfo=Employment_weekly_highlights_27_April_2023&linkInfo=F%23GB%23LNBNEWS%23sel1%252023%25month%2504%25year%252023%25page%2573%25day%2520%25&A=0.19996370799862895&bct=A&risb=&service=citation&langcountry=GB).

**Licensing**

## A first look at the gambling act review white paper

The UK Government published the long awaited Gambling Act Review White Paper on 27 April 2023 which contains the most comprehensive plans to reform the gambling sector since the Gambling Act was introduced back in 2005. It is the culmination of the government’s call for evidence on existing gambling legislation in December 2020, and its official release was stalled four times due to government turmoil, the coronavirus (COVID-19) pandemic and political lobbying. Written by Hayley Brady, partner, Claire Wiseman, professional support lawyer, and Rebecca Heptonstall, associate, all at Herbert Smith Freehills LLP.

See News Analysis: [A first look at the gambling act review white paper](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/686R-50S3-S6HW-12PS-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_11_May_2023&ps=null&bct=A&homeCsi=412012&A=0.5592501876540461&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4465381&service=DOC-ID&origdpsi=0S4D).

**Planning**

**Government confirms plans to cap compensation for certain CPO schemes in public interest**

Following [consultation](https://www.gov.uk/government/consultations/compulsory-purchase-compensation-reforms-consultation/compulsory-purchase-compensation-reforms-consultation), the government has confirmed proposals to cap the amount of compensation due in connection with certain compulsory purchase schemes, by limiting hope value compensation payments, which enable landowners to claim the value attributed to prospective planning permission. The capping of hope value compensation will be considered on a case-by-case basis and only where it can be justified in the public interest, eg for schemes involving affordable and/or social housing, education provision, and health and medical facilities.

**DLUHC launches anti-social behaviour action plan to aid communities**

The Department for Levelling Up, Housing and Communities (DLUHC) has [launched](http://www.gov.uk/government/news/anti-social-behaviour-action-plan-to-help-communities-take-back-control-of-high-streets) an anti social behaviour action plan to help local businesses take control of empty shops in high streets. Councils will be given new powers through High Street Rental Auctions under DLUHC's plans to occupy vacant buildings in order to give local businesses the opportunity to rent vacant spaces. The Anti-Social Behaviour Action Plan will also make £2m available to cover the costs and fess associated with the auction and refurbishment.

See: [LNB News 28/03/2023 83](https://www.lexisnexis.com/uk/lexispsl/planning/document/412012/67WS-JG73-RRJY-300C-00000-00/linkHandler.faces?psldocinfo=Planning_weekly_highlights_30_March_2023&linkInfo=F%23GB%23LNBNEWS%23sel1%252023%25month%2503%25year%252023%25page%2583%25day%2528%25&A=0.4776690403915693&bct=A&risb=&service=citation&langcountry=GB).

## Public Procurement

## Procurement Policy Note provides guidance on tackling Modern Slavery

The Cabinet Office has published Procurement Policy 02/23: Tackling Modern Slavery in Government Supply Chains (PPN 02/03) providing contracting authorities with guidance on ensuring modern slavery risks are identified and managed in government supply chains. PPN 02/03 applies to Central Government Departments, their Executive Agencies and Non-Departmental Public Bodies and NHS Bodies. It is applicable to new procurement activity from 1 April 2023.

See: [LNB News 13/02/2023 33](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/67JT-W043-RRTG-H34J-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_16_February_2023&linkInfo=F%23GB%23LNBNEWS%23sel1%252023%25month%2502%25year%252023%25page%2533%25day%2513%25&A=0.6126069322330685&bct=A&ps=null&risb=&service=citation&langcountry=GB).

# New standard selection questionnaire in practice

# There is considerable change in the air in regulated public procurement in the UK. Procurement litigation continues to increase, and the Procurement Bill is currently working its way through the UK Parliament. The new rules, now scheduled for implementation some time in 2024, will be the biggest changes to procurement practice in England, Wales and Northern Ireland since 2006. On 9 March 2023, the UK government published a revised mandatory Selection Questionnaire (SQ) through Procurement Policy Note (PPN) 03/23, to be used in all relevant procurement activity from 1 April 2023. This did not give contracting authorities long to make the changes to standard template documents and to change the document for imminent procurements. In this article, David Hansom from Clyde & Co LLP considers some frequently asked and practical questions about the SQ.

# See News Analysis: [New standard selection questionnaire in practice](https://www.lexisnexis.com/uk/lexispsl/publiclaw/document/412012/67T1-2X33-RWVB-1427-00000-00/New_standard_selection_questionnaire_in_practice)

**Social Care**

**Top of Form**

**Bottom of Form**

# Liberty Protection Safeguards—delayed or doomed?

# On 5 April 2023, the Department of Health and Social Care announced the implementation of the Liberty Protection Safeguards (LPS), part of the Mental Capacity (Amendment) Act 2019 (MC(A)A 2019), will be delayed ‘beyond the life of this Parliament’ (therefore likely beyond Autumn 2024). In this analysis, Laura Hibberd, barrister at Deka Chambers, provides insight into the LPS and considers what the delay could mean.

See News Analysis: [Liberty Protection Safeguards—delayed or doomed?](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6810-35Y3-RS5F-C230-00000-00/Liberty_Protection_Safeguards_delayed_or_doomed___)

**Social Housing**

## Government consults on creation of use class for short term lets and associated permitted development rights in England

On 12 April 2023, the Department for Levelling Up, Housing and Communities published a consultation on proposals to introduce a use class for short term lets and associated permitted development rights in England. It hopes these changes will help certain areas have greater control over any future increases in the number of short term lets in their areas.

See News Analysis: [Government consults on creation of use class for short term lets and associated permitted development rights in England](https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/6827-SB83-RW06-04TV-00000-00/linkHandler.faces?psldocinfo=Local_Government_weekly_highlights_20_April_2023&ps=null&bct=A&homeCsi=0&A=0.016447639892057664&urlEnc=ISO-8859-1&&dpsi=0S4D&remotekey1=DOC-ID&remotekey2=0S4D_4454074&service=DOC-ID&origdpsi=0S4D).



## 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.

**Local Authority Companies and how to make them work**

Three highlight experienced public commercial layers explore the background and future of local authority-owned companies.

They examine:

* The pressures and complications involved in local authority-owned companies
* Factors behind creation
* How to best manage external companies to avoid pitfalls.

[Watch the webinar](https://youtu.be/zeetfNU_wg8)

**Monitoring Officers**

Everything you wanted to know about being a monitoring officer but were afraid to ask. Numerous recent examples of governance failures at local authorities have underlined the fact that the job of the monitoring officer is getting harder and with further budget cuts on the horizon is likely to be come more challenging still

[Watch the webinar](https://youtu.be/8xHdxuwSegI)

**Regeneration and the local authority estate**

Austerity, local government reorganisation, climate change and Covid have all radically changed local authorities’ requirements for the property they own. At the same time, the need for more housing and the regeneration of town centres is more pressing than ever. How can local authorities utilise their property and land estates to achieve these ends and what are the legal issues and barriers that they may encounter?

They will outline and examine:

* Where are the regeneration opportunities arising from councils’ changing use of their own property?
* What are barriers to this use?
* What opportunities (or barriers) may be presented by the Levelling Up and Regeneration Bill?
* How will Sustainability/environmental/carbon neutral issues (e.g. renew or refurbish) need to be considered?
* What is the scope to use investment properties for regeneration?
* What effect might the proposed changes to the CPO regime have on regeneration projects?
* What changes to planning laws (e.g. converting council offices to residential) need to be considered?
* What effect might forthcoming changes to procurement have?
* How might changes to social housing regulation affect those councils that still own their own housing stock?

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

**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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