ConsortEM

The newsletter for EM LawShare
Winter 2016

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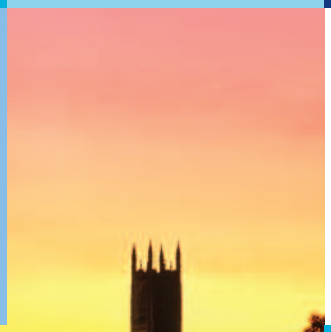

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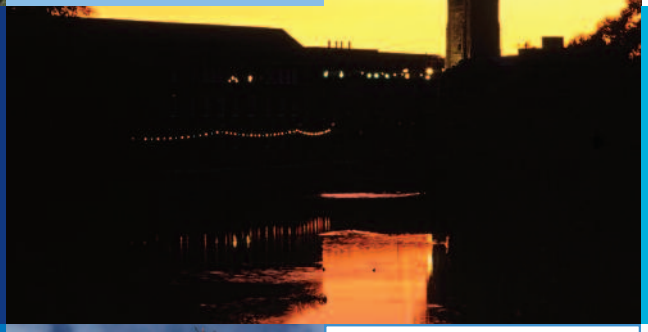

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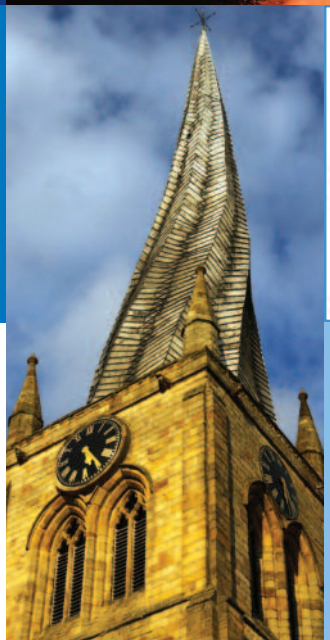

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Welcome

Donald Trump's election success has inevitably dominated the media and, at least for a few weeks, overshadowed our own cataclysmic political event; Brexit. However, the impending Supreme Court hearing on Article 50 is likely to bring Brexit back to the front pages and, to paraphrase Nicola de Bruin (see Spotlight on page 10), there can be no doubt that it is the big issue on the horizon for public bodies and their lawyers.

Brexit's impact is likely to be massive and far reaching as is illustrated by the articles in this edition. They cover diverse topics, but four out of the six mention Brexit as a major consideration in such issues as the possible repeal of the Human Rights Act (page 5), the need to increase the recovery rates for council tax revenue to offset the financial uncertainty (page 4) and whether the proposed integration of health and social care will survive the post referendum change (page 11).

Those of you who were able to attend our conference in Loughborough in October will have had the benefit of an insightful and entertaining talk by George Peretz QC, an acknowledged European specialist, who explored what the Article 50 litigation will and will not decide, the implications of the Great Repeal Bill and which areas of law affecting the public sector are likely to be most dramatically affected by Brexit.

This talk proved to be one of the conference's highlights along with a fascinating and thought provoking one from Tom Cheesewright, an applied futurist, who gave us an illuminating and at times scary glimpse into the future. For some it was too much and they went scurrying off to recapture the safety of their lost childhood on the awesome Scalextric track in the foyer. Congratulations to Kram Kasbis for recording the fastest time despite Jayne's false claims that it was her.

Well done to all those who helped make the conference such a success, particulary the Geldards marketing team who organised it all, having done the same thing for the North West Legal Consortium in the previous week. Let us hope that we are all still here to enjoy the 2018 conference and, though we are always looking for new venues, the chances are we will not be in Brussels or Strasbourg.

In light of the time of year can we also take this opportunity to wish you a very Happy Christmas and a successful New Year. These are indeed interesting times and 2017 looks set to be something of a rollercoaster. Hang on to your hats, it could be a bumpy ride.

JAYNE FRANCIS WARD
Chair of the EM LawShare Management Panel

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Member news

New members

We are delighted to welcome three new members: North East Lincolnshire District Council, Belper Town Council and Wycombe District Council. This brings our total membership to 114. A full list of members is available on our website.

EM LawShare 2017 Leadership and Management in Action Course

SOLD OUT

The third EM LawShare Leadership and Management in Action course to be held in Birmingham on 25 January, 22 February and 22 March 2017 was fully booked within a week of being advertised. We appreciate that there will be EM LawShare members who would have liked to have attended but who have been unable to secure a space. For this reason, we are keeping a reserve list. If you would like to be added to the list, please contact Fiona Pritchard at Freeths on 0845 274 6816, or email fiona.pritchard@freeths.co.uk.

This bespoke Institute of Leadership and Management (ILM) leadership skills course, provided by Marlborough Training and Consultancy, is only available to EM LawShare members. The course is jointly funded by our six partner firms: Bevan Brittan, Browne Jacobson, Freeths, Geldards, Sharpe Pritchard and Weightmans.

The course is being provided free of charge, but there is a one-off registration fee of £68 plus vat, per delegate, which includes membership of the ILM as a studying member and provides access to online resources through the ILM website.

Delegates who complete the course will receive a certificate of achievement.

New training programme – London venues

We have already started work on the training programme for 2017/18 and hope to launch it in February next year. In compiling it, we have considered your feedback and suggestions from this year's courses and the programme will contain a mixture of updates, workshops and soft skills courses.

There are a couple of new initiatives. Firstly, to help members demonstrate competency, we have grouped courses into modules within an overall theme, such as litigation, commercial and real estate regeneration, and planning. Secondly, while continuing to run courses in Nottingham, Leicester, Birmingham and Sheffield, we are going to start running them in London as well. This will hopefully provide accessible venues for our growing number of members in the south. Initially there will probably only be four courses held in London, but if the attendances are high we will run more the following year. We are also looking into the possibility of video conferencing courses held elsewhere to partner firms' offices in London.

Do not forget this alternative method for council tax collection

The financial problem

We face a future of ever more tightening budgets and increasing financial uncertainty: think Brexit, a potential early general election, regional assemblies, and so on. However, councils are still going to be required to provide a full service to their residents, albeit maybe without the usual bells and whistles. Council budgets are likely to be harder to stretch than ever in the next few years.

One area where most collecting authorities could improve income levels is in the collection of council tax. Across the country each year, about three to four per cent of due and payable council tax is not collected. This equates to approximately one per cent of collecting authorities' expenditure and represents money which then has to be found from elsewhere.

According to government figures, published in 2015, over £2.7 billion of due council tax remains unpaid.

A lot of this money will never be recovered because it is owed by people who cannot pay rather than those who simply choose not to pay. However, there is a proportion of this money that could be recovered by taking appropriate action.

The personal insolvency solution

One possible route of recovery is through the threat of personal insolvency. There are many local authorities who have found this to be a very efficient way of recovering council tax that would otherwise not have been paid.

The process starts with a 'letter before action' being sent to the debtor at the relevant property and any alternative address that is known. If no adequate response is received, the letter is followed up by a statutory demand being served which formally demands payment of the sum outstanding. If payment – or at least acceptable proposals for payment – are not received in response to the statutory demand then a bankruptcy petition is issued and served.

To proceed down the personal insolvency route the outstanding debt needs to total £5,000 or more and be the subject of liability orders that you have already obtained.

Most debt issues are resolved at the letter before action or statutory demand stage. This results in a quick resolution for the collecting authority at no net cost to itself. For those cases not resolved at this stage, resolution tends to be reached shortly after the bankruptcy petition has been issued and before a bankruptcy order has been made.

For those cases that end up before the court the outcome in most instances is the making of a bankruptcy order because most debtors have no effective defence to the claim being made against them.

Serving documents on debtors can be problematic, but there are ways to ensure that service takes place and that attempts to avoid service by the debtor are not allowed to unnecessarily delay the progress of a case. There is also a system in place which provides for this work to be funded by the instructed lawyers, and which therefore again results in a zero net cost to the collecting authorities.

If a bankruptcy order is made, recovery may be slow. However, provided the correct homework has been done before the process is commenced recovery should happen over time.

The trick is to select those debtors where the personal insolvency process is likely to be effective and appropriate. This means selecting debtors who own their own properties, who have a proportionately large amount of equity in those properties, and where there are no obvious issues that are likely to cause difficulties. An investigation into a debtor's personal circumstances can be carried out by your solicitor working in conjunction with an insolvency practitioner if necessary.

It will be for the collecting authority to ensure that recovery via this route does not take place against any particularly vulnerable individuals or, for example, those in receipt of social services assistance.

Historically there have been a few instances where the ombudsman's office has determined that a personal insolvency process was not appropriate in respect of a particular individual. However, there are thousands of cases that go smoothly through the courts each year and which were initiated by collecting authorities using the personal insolvency route. The important thing to note is that each case should be considered on an individual basis.

Provided the proper checks and balances are dealt with, and proper individual consideration is given to each case, the personal insolvency process can provide an effective solution to council tax arrears in relevant cases.

Using your solicitor to pursue your debtors in this way can take a great deal of pressure off you; it can also free up your revenue collections team to concentrate on other areas.

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Local authorities and the Human Rights Act

The future of the Human Rights Act 1998 (the Act) is uncertain. The government pledged to repeal it in their manifesto, but reports in *The Times* in August suggested that these plans would be scrapped because of the legislative burden created by Brexit. The Secretary of State for Justice, Liz Truss, has recently stated that the plans for repeal and a British Bill of Rights will go ahead.

It is difficult to know what life without the Act will look like, but we have a few clues. A radical step would be to end the jurisdiction of the European Court of Human Rights and the European Convention on Human Rights. This would be a difficult and contentious step given the fact that all members of the Council of Europe, including Turkey and Russia, recognise the convention and therefore the Court.

A more likely move would be to make the convention directly enforceable in the English courts, but to limit its effect. Chris Grayling published plans when he was Minister for Justice, in which he proposed that a triviality test would filter out some cases, and that the catch all of Article 8 - the right to respect for private and family life – would be subject to revision. The influence of Strasbourg decisions on our courts would be limited.

It seems a safe bet that it will be some time before anything happens and that the convention will remain part of domestic law and enforceable in our courts. It will continue to engage local authorities.

It seems a good time, 16 years after the commencement of the Act in October 2000, to review its main provisions.

The Act lies at the heart of public life for two reasons: Section 6 makes it unlawful for a public body to act in a way which is incompatible with a convention right. If there is a breach, then proceedings can be brought against the public authority under Section 7. Public body, of course, includes local authorities.

The practical impact for local authorities is two-fold. Firstly, policies and practices need to reflect the rights embodied in the convention and the Act. Secondly, a failure to do so can lead to legal proceedings. The range of convention rights means that most local authority services are caught.

The articles that are of most relevance are:

- Article 2, the right to life;
- Article 3, the prohibition on torture or inhuman and degrading treatment or punishment;
- Article 5, the right to liberty and security of person;
- Article 6, the right to a fair trial;
- Article 8, the right to resect for private and family life;
- Article 9, freedom of thought, conscience and religion;
- Article 10, the right to freedom of expression;
- Article 1 of the first Protocol, protection of property; and
- Article 2 of the first Protocol, the right to education.

These articles have attached to local authority functions affecting, among other things, children, housing, the planning process and environmental matters.

Article 3 of the first Protocol, the right to free elections, stands by itself.

A few simple principles assist in the observance of the articles. The rights to freedom from torture and a fair trial are, for obvious reasons, absolute. Other rights are qualified, which means that it is possible for local authorities to interfere with them if it is lawful to do so. Local authorities and communities clearly could not function without these rights. For instance, rights to property and a private life are interfered with by compulsory purchase orders, but the interference may be justified.

Articles 8, 9 and 10 all state that the interference must be in accordance with the law and necessary in a democratic society. The interference must also be proportionate, which means that it must be necessary in pursuit of the legitimate end. Interference with the right might be justified, but it still has to be done in a proportionate way.

This process provides for a three-stage test. If there are lawful grounds for the interference with the right, then the question of necessity must be assessed. This is a matter of weighing the competing rights of the public and the individual, which is a fairly common process in English law. If that is satisfied, then one looks at the means you are employing and whether they are proportionate. It will always be useful and necessary to document this process and the justification.

We will continue to review progress on the proposed repeal of the Act and report to you with any updates. If, as seems likely, the convention is retained then we will need to continue to use the tools of legality, necessity and proportionality in reaching our decisions.

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Planning aspects of the Neighbourhood Planning Bill

The Neighbourhood Planning Bill was introduced in the House of Commons on 7 September 2016. Originally, the government envisaged a Neighbourhood Planning and Infrastructure Bill, but the proposals to put the National Infrastructure Commission on a statutory footing, together with the proposal to privatise the Land Registry, do not appear to have found favour with the new Prime Minister. Instead, the National Infrastructure Commission has been established as a non-statutory agency.

The Bill has been amended significantly at committee stage by adding clauses dealing with local development documents.

This article describes the neighbourhood planning aspects of the legislation, the proposals concerning planning conditions and pre-commencement conditions, and the additions on local development documents.

Neighbourhood planning

The main aim of the Bill is to strengthen the process of establishing a neighbourhood development plan by ensuring that decision makers take account of advanced neighbourhood plans when determining planning applications and also by giving neighbourhood plans full force as soon as they have passed referendum.

To achieve this aim, the Bill extends the scope of section 70 of the Town and Country Planning Act 1990 (TCPA 1990). When determining a planning application, a local planning authority will also have to have regard to a post-examination draft neighbourhood development plan, so far as this is material to the application. A draft neighbourhood development plan will be a 'post-examination development plan' if the local authority intends to hold a referendum on the draft plan or the Secretary of State has directed that a referendum should be held.

By amending section 38 of the Planning and Compulsory Purchase Act 2004 (PCPA 2004), the Bill gives the post-examination draft plan statutory status as part of the development plan for the area if it has been approved in a referendum. There are some limited circumstances in which a local authority may decide not to make the draft plan, in which case it will cease to be part of the development plan for the area.

The government issued a consultation document on the neighbourhood planning provisions on 7 September 2016. The consultation ended on 19 October 2016 and we understand that the responses received are currently being reviewed.

Planning conditions

The Bill proposes to insert a new clause into TCPA 1990 to prevent local authorities from granting planning permission subject to pre-commencement conditions, unless they have first obtained the applicant's written agreement to the terms of those conditions or else regulations provide otherwise. This does not apply to outline planning permission.

A 'pre-commencement condition' is defined as a condition imposed when planning permission is granted and which must be either:

- in the case of a building or other operation, complied with before any building or operation comprised in the development is begun; or
- where the development consists of a material change in the use of any buildings or other land, complied with before the change of use is begun.

The Bill also allows the Secretary of State to make regulations about what kind of conditions generally may be imposed on the grant of planning permission and in what circumstances. Such regulations must only be made if the Secretary of State is satisfied that they are appropriate so as to ensure that any conditions imposed by local authorities are:

- necessary to make the development acceptable in planning terms;
- relevant to the development and planning considerations generally;
- sufficiently precise to make them capable of being complied with and enforced; and
- reasonable in all other aspects.

This is broadly in line with the policy on conditions in the National Planning Policy Framework (NPPF).

The regulations can make provision for three things:

- that conditions of a prescribed description may not be imposed in any circumstances;
- that conditions of a prescribed description may be imposed only in circumstances of a prescribed description; and
- that no conditions may be imposed in circumstances of a prescribed description.

As with the neighbourhood planning provisions, the government has already issued a consultation document on the planning conditions provisions. The consultation period ran from 7 September until 2 November 2016 and the responses received are currently being reviewed.

The consultation document was fairly detailed and delved into the circumstances in which the agreement of an applicant to the imposition of pre-commencement conditions would not be required. For instance, such agreement would not be necessary in respect of any pre-commencement conditions that a local authority deemed to be necessary. Examples given of what might amount to 'necessary' pre-conditions include where the conditions relate to archaeological investigations or wildlife surveys. Where pre-commencement conditions are to be imposed, the consultation makes clear that applicants will be given the opportunity to challenge any conditions they consider to be unnecessary, such as where they believe the conditions in question are capable in planning terms of being discharged later in the development process.

The government anticipates that local planning authorities and applicants will enter into dialogue with a view to agreeing what pre-commencement conditions are appropriate. In the absence of agreement, the local planning authority could of course refuse the application for planning permission and in turn the applicant would be entitled to appeal. This means that planning authorities will need to be confident about the reasonableness of including pre-commencement conditions which have not been agreed.

The consultation document also reminds the reader of the existing list of planning conditions which should not be used, as set out in the National Planning Practice Guidance in the section on use of planning conditions. An example given is a condition which is positively worded so as to require the payment of money. The consultation document states that this would fail two of the tests for conditions, namely necessity and reasonableness.

Whether a planning condition complies with the government's policy is a matter of policy and judgment for the planning authority, but the consultation document seems to suggest a significant departure from this. It asks respondents whether the conditions referred to in the consultation document should be expressly prohibited in legislation. It also asks whether any other types of conditions other than those listed should be prohibited.

It is curious that the government seems to be proposing to put this important part of its planning policy into a legal framework. It would appear that concerns have been raised in response to the consultation by organisations such as the Law Society and the British Property Federation and the Planning Officers Society, who have made joint submissions. The latter recommend that the NPPF and the Planning Practice Guidance should set out a clear appeal process dealing with 'proportionate and appropriate use of planning conditions.' No doubt, the government will consider these responses carefully before deciding whether to include these prohibitions in the regulations.

Local development documents

These provisions will amend the PCPA 2004 in various respects. This will enable the Secretary of State to direct two or more local planning authorities to prepare a joint development plan document. County councils will also be given default powers in relation to such documents.

Significantly, if the Secretary of State thinks that a district council is failing or omitting to take necessary steps for the preparation, revision or adoption of the document, he may invite the county council for that district to prepare or revise it.

As is usual with primary legislation, much is pushed down to regulations, in relation to both neighbourhood planning and planning conditions. So as usual, the devil will be in the detail.

If you would like an update on the progress of the Neighbourhood Planning Bill, please contact Brian Hurwitz at bhurwitz@sharpepritchard.co.uk.

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Long term planning of major projects

The successful management of major projects depends on using effective long-term planning from the outset, applying this planning, and then keeping it under review throughout the life of the project. The result of the referendum earlier this year about leaving the European Union has reminded us all how one event can have a huge impact on a range of issues. For local authorities involved in long-term contracts, the ability to respond to changes in circumstances and to secure the best position for the local authority and those it represents is crucial. When local authorities start long-term projects, they need to have a strategy which not only identifies how they will deal with a range of important issues but which also, as far as possible, builds in sufficient flexibility to accommodate change during the life of a project.

Change control

A long-term contract for the provision of services will include mechanisms for change control. These allow the parties to identify in advance how they will address the implications of changes of circumstance which will affect the contract.

In some cases, parties to a contract may be able to anticipate particular events which could affect a project. While the outcome of the referendum about the European Union was unexpected to many people, its occurrence was known in advance and could have been considered when parties were agreeing the terms of contracts which were entered into in the period leading up to the referendum. Before the start of the 21st century, there was concern about the potential impact that the millennium bug might have on computers, so many contracts for information technology services included provision which recognised the need to address problems caused by the millennium bug.

Contracts should also include more general provisions for change. Not every change in law which may affect

a long-term contract can be anticipated, yet a change in the law could have a significant impact. For example, the Local Government Association recently announced that local authorities would need to make a considerable investment in IT systems and staff to implement the government's pay-to-stay policy, being introduced through the Housing and Planning Act 2016. This could have significant implications for projects involving IT services or housing provision that were agreed before that legislation was passed. Local authorities should be considering the extent to which they can make use of the obligations of the contractor to meet those expectations, without facing unacceptable pressure on the payment required from the local authority under the contract.

Contracts need to include a process allowing the parties to address the implications of change. Having included such a process, local authorities need to ensure they are prompt and active in using it.

Exit routes

Although projects are embarked upon with the expectation that they will last for a long time and be effective, local authorities need to be able to exit the contract with as little cost, administration and long-term implications as possible should the need arise. A contract needs to contain robust provisions which allow for the flexibility to terminate the contract when necessary, without making termination so easy that this threatens the long term viability of the project. As with change control, local authorities need to be active in using exit routes when they need to and securing the most advantageous position for the local authority.

The time and resources that local authorities need to put into procuring their contracts, and the importance of good use of contracts to effective service delivery, mean that local authorities are likely to be keen to use contracts for as much of their term as possible particularly if they are working well for the local authority. However, if a contract is no longer proving effective for the local authority and it is not possible to use terms within the contract other than exit provisions to address this, a local authority will need to consider whether an exit from the arrangement will be the most appropriate action. This would be a severe step to take. As well as taking the necessary action to extricate itself from the contract, the relevant local authority would need to ensure that it has appropriate arrangements in place to ensure continuity of service delivery.

Pricing

Pricing terms should be agreed, including review arrangements for a contract, which allow the local authority to receive services from a contractor for the best value for money. Both the local authority and the contractor will need to consider their options if circumstances change to such an extent that the contract is no longer economically beneficial for the authority or profitable for the contractor. It will be important to consider whether the local authority could improve its position by varying the contract. If not, the local authority may need to consider whether termination could and should be achieved.

Government programmes

Some contracts involving local authorities are part of programmes supported by the government. They may attract government funding and may require the parties to use model contract terms and conditions published by the government. If a contract is affected by changes, the parties concerned will need to identify the implications for government funding and the terms and conditions expected by the government.

Compliance with contract terms

Local authorities need to ensure that they comply with the terms and conditions of contracts and other agreements, and that they are aware of the consequences of failing to do so. If they are in receipt of external funding, they need to be aware that non-compliance with the terms of an agreement with the funder may give rise to rights for the funder to terminate the agreement and clawback funding. The recipient of funding needs to monitor and manage this sufficiently so that it is ready for an auditor to assess its compliance at any stage.

Conclusion

If the issues discussed above have been addressed at the planning stage, then there should be sufficient flexibility within the contract to allow the local authority to respond to changes in circumstances. The importance of this to the ability of a local authority to manage its contracts effectively cannot be overestimated. It is also important that when those circumstances arise, the contract is reviewed as soon as possible to see what options are available and what action needs to be taken to make use of them.

With careful planning, a local authority can ensure that long-term contracts are effective and ready to withstand the effect of sudden and far reaching events.

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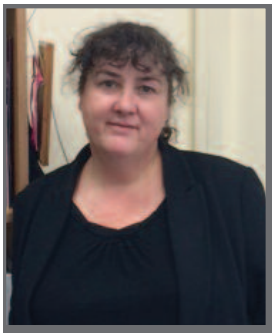
Spotlight on ...



Nicola de Bruin

Solicitor, High Peak Borough Council

In each edition of ConsortEM, we shine a light on a member to show the variety of roles within the consortium. This month, Nicola provides an insight into working as a solicitor in a local council.

How long have you been with High Peak Borough Council?

I have been with High Peak Borough Council for 16 years.

Prior to this, I worked at Bolsover District Council and at Ashfield District Council.

What does your role entail?

I deal mainly with contentious matters across planning, environmental health, housing, licensing and anything else with a regulatory element.

Since 2008, High Peak Borough Council has been in a strategic alliance with Staffordshire Moorlands District Council and so my role entails work for both authorities.

To whom do you report? What is the structure of your team?

I am part of a small team comprising just five people. There is me, the monitoring officer, the monitoring officer's deputy – who is my manager – and two legal executives who deal mainly with non-contentious land, property and contractual work.

What are the most pressing issues for you at the moment?

With such a small team, the most pressing and challenging issue continues to be trying to juggle the volume of work. Everyone in the team wants to do the best job they can, which can be difficult at times.

What regulatory issues are on the horizon?

I am guessing most people would have no choice but to say Brexit, but at the moment it is business as usual and I am trying not to think about the potential impact this is going to have on my work.

We are also moving swiftly towards the Single Justice Procedure in the Magistrates Court. If it brings an end to sitting around for hours waiting for a defendant who never arrives, then it cannot come too soon.

How does High Peak Borough Council and Staffordshire Moorlands District Council compare with other places you have worked?

It is mostly the same but with nicer scenery!

What law would you like to see changed?

I would like to see the Town and Country Planning Act and the National Planning Policy Framework changed.

In short, I do not believe in planning by numbers and I think, in years to come, we as a nation will come to regret the loss of green fields that this policy has brought about.

What is the best piece of advice you have ever received?

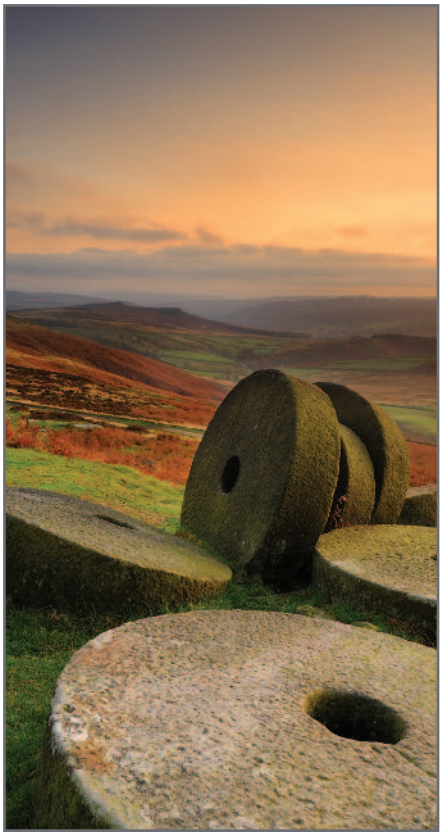
Do not worry about things you cannot change.

Finally, two truths and one lie in any order.

I once hurt my back cutting the lawn with a kitchen knife.

I hitch-hiked to Berlin.

I qualified as a nurse.



Health and social care forward to 2020

In his 2015 spending review, former Chancellor George Osborne said:

"The spending review sets out an ambitious plan so that by 2020 health and social care are integrated across the country. Every part of the country must have a plan for this in 2017, implemented by 2020."

If this element of the 2015 spending review survives the post-referendum change in ministers, it raises a number of questions, starting with: Does your area have a plan?

The drive towards health and social care integration is not new. It was re-emphasised in the Health and Social Care Act 2012 and the Care Act 2014 and has been championed by successive governments. In 2013 and 2014, the Better Care Fund was established; while this was primarily to provide for pooled funding for out-of-hospital health and social care, its focus has become increasingly tied to the prevention of hospital admissions and the speedier discharge of those ready to leave hospital.

Approaching this from the service user end may perhaps be more productive. Viewed from here, integration is more about the effective and seamless provision of services that meet the individual's needs and which do so in a way that does not create unnecessary barriers or cause unnecessary breaks in the provision of care.

There are several good examples of services which either achieve or approach this, but one of the difficulties has been moving from potentially isolated small scale examples to effective system-wide working. A number of tools can be used, but there are also some quite serious questions to be answered in planning and developing something that will suit any individual locality.

It needs to be borne in mind that health and social care do not always work well together; neither do different parts of the health system. From time to time the different organisations give the impression of almost turning their backs on each other to focus on internal issues at the expense of cooperation.

Why is it so difficult?

There are a number of issues that can arise: some of more general application and some that are specific to individual localities. First, there is the fact that, having developed separately and with separate statutory frameworks, health and social care remain two very distinct tribes, with different approaches to the organisation of work, the concept of commissioning and the role of central government. There are also material, and potentially quite divisive, issues over the ability of local government to charge for services in certain circumstances. This is something which is generally not available to the NHS. The NHS has often been criticised, most recently by Lord Porter, for ineffective financial management and, in many areas, there is mutual distrust of the potential risk created by perceived funding shortfalls on the part of the other partner.

There are also significant difficulties created by the fragmentation of the NHS in the aftermath of the Health and Social Care Act 2012 and some of the disconnects that exist between the relevant areas and between Clinical Commissioning Groups and local government. A further complication in a number of areas has been the advent of children's trusts to take over what are perceived as failing local government children's services.

Delivering integrated services for the service user

One key factor for any effective integration of services between different professionals – whether they are employed within the same organisation or not – is the ability to ensure that the professionals have access to relevant information about the client. This information needs to avoid the repetitive explanation of symptoms and history to frequently numerous different emanations of the health and social care system. This requires effective information technology and transfer to provide for the interoperability of systems and the delivery of accurate, up-to-date information about the service user to all professionals who need access to it. It also needs to be underpinned by effective information governance.

Having common information is a starting point. The next step is to ensure, as far as possible, that there is no duplication between different contacts with the service user. This has the potential to deliver efficiency savings so that fewer visits are needed and, particularly in the context of home visits, there can be a reduction in the number of people having to lose time through travel to get to the service user. This should also be extended to having consistent, coherent and as simple as possible patient pathways.

This may require some work in developing skills for the relevant professionals so that they are able to undertake a wider range of activities. It will also require an effective organisation sitting behind the services so that at least there is a unified mind or consciousness in planning the services to be provided for the individual. How this is arranged may vary depending on the local arrangements. It may work through effective joint commissioning or lead commissioning or through an accountable care organisation responsible for the whole of the care, whether or not it then goes on to deliver it. It may also work through effective alliance mechanisms which translate into effective virtual or real multi-disciplinary teams dealing with the individual.

Getting the money right

One of the perennial problems has been money and, more importantly, avoiding the problems caused where savings in one place are generated by expenditure in a different budget or in a different year. Pooling budgets can help with this, although the current limitations under section 75 of the NHS Act 2006 may mean that organisations want to look at the use of aligned budgets – as already happens in Plymouth – or other forms of integration under the Act. However, this is a big area where uncertainty about the adequacy of budgets across the economy is an inhibiting factor, as illustrated by Lord Porter's comments criticising the lack of the equivalent of local government financial controls in health. The effect of an integrated provider may be to circumvent some of these issues, although the financial management pressures may merely move if the demand risk is transferred to the provider under a capitated budget.

One aspect of this, which can have some short-term results, may be to invest in identifying individuals who are high cost or frequent users, and look at them individually to review how a more interventionist approach may be able to establish a more planned relationship with services. Another more service level approach is that adopted by NHS Right Care which asks: Where are you spending above average for below average results, and what are others doing in relation to these? Some of the answers may sit firmly one side or the other of the health and social care divide. If you start with the mindset that, however it is structured, there is one pot of money for the health and social care economy, which should be spent in a way that gets the best results most efficiently, you will be on the right track.

This more interventionist approach also underlines the need to involve preventative action, particularly through public health. In the long term, we need to see a greater proportion of the population enjoying better health and not necessarily looking to public services to help them deal with the consequences of poor health and social care needs.

What can you do?

We would emphasise that there is not one single solution, as local structures and needs may indicate different approaches; however, there are some common themes:

- talk to users and front line staff to identify where things can be improved;
- use service analysis, segmentation and service design that reflects where the greatest impact can be achieved;
- create joint commissioning units which can be structured as a lead organisation or have shared responsibilities, or can genuinely work together to achieve integration by using staff with dual responsibilities;
- contract for integrated delivery; and
- accountable care organisations or providers are becoming more prevalent where there is a single organisation as the lead contractor, responsible for population health and social care with a capitated budget and a mandate to provide or contract out services. This can be attractive as it appears to imitate some of the aspects of successful overseas organisations, but they are complex to set up and manage both internally and from the point of view of the statutory authorities.

Do not expect big changes to be implementable quickly.

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Bus Services Bill 2016

The London bus network has demonstrated that where bus services are extensive and frequent and passengers have easy access to relevant information, bus patronage can be increased.

Nationally, the number of people using buses has continued to fall year on year, but in London the number of users continues to grow. The reason for this appears to be that the provision of bus services in London is more heavily regulated than elsewhere in England. The Lord Mayor of London and Transport for London determine routes, timetables and fares, and bus operators bid to deliver the services which have been commissioned.

The experience in the London suggests that there is scope for improvement in the legislative approach to bus services in areas outside of the Capital, and it is on this basis that the Bus Services Bill 2016 has been considered.

The Bill was introduced into the House of Lords on 19 May 2016 and is currently at committee stage. The aim of the Bill is to equip local authorities and bus providers

in England with the powers and tools needed to improve local bus services and to increase use of the services on offer. It will not apply in London.

The government has said that, if adopted, the Bill would:

- give elected mayors and local transport authorities the power to improve bus services for the people who use them and thereby increase patronage;
- provide directly elected mayors with London style powers to franchise local services;
- help cities and regions unlock opportunity and grow the economy; and
- enable a thriving and innovative commercial bus sector.

The Bill makes provisions in the following areas:

Partnerships

Enhanced partnership powers will enable local authorities to set out a vision for bus services and a plan to achieve any necessary improvements working alongside bus operators. Enhanced partnership schemes will no longer be required to involve the provision of specific facilities such as infrastructure. The schemes can set standards for local bus services, including vehicle specifications, branding and ticketing. Local authorities and bus operators will develop such schemes in partnership, but a scheme will only be adopted if it has sufficient support from both parties.

Franchising

The existing quality contract scheme powers will be replaced by new franchising powers, which will allow local authorities to take control of their local bus service. These powers will be modelled around the powers of the Mayor of London and Transport for London.

Directly elected mayors will have the power to franchise their local bus services, with responsibility for determining which bus services need to be provided in their area.

Bus service operators will then bid to provide the chosen services or will apply for a permit to operate a service in addition to those decided by the authority. Any decision to move to a franchised network will be considered by the mayor in a democratic and transparent way.

Open data and ticketing

Open data and ticketing will allow passengers easy access to bus services by providing them with relevant information on things such as location, timetables, routes, and fares. Processes will be streamlined and existing ticketing legislation will be future proofed and made easier for passengers to use.

Reaction to the Bill

Reaction to the Bill has been mixed.

The Campaign for Better Transport (CBT) has welcomed the proposals set out in the Bill, stating that it would bring real benefit to the communities. They did stress the importance of funding in making the new powers work, stating that it is critical that funding follows the Bill, and that councils and mayors have the funding needed to make these new powers work. CBT also acknowledged the need for a national strategy for buses and coaches with long-term funding assured, as already happens with roads, railways, cycling and walking.

The Urban Transport Group also welcomed the Bill, declaring it a fresh start, providing a range of more effective tools with which to improve bus services. They did, however, note that this will be the third piece of legislation on buses since 2000 so it is vitally important that we get the detail right this time in giving us a legal framework with which to improve services which is fair, proportionate and straight forward.

Impact on local authorities

While there has been a positive reaction from some user groups, the effect on local authorities is unclear. Giving local authorities greater powers without the corresponding resources to implement those powers is unlikely to achieve the desired results. This is particularly true in the current environment of austerity.

It should also be noted that the Bill contains tools, rather than particular solutions. The effect of these tools will depend on specific situations. For example, the provisions in relation to partnership agreements will be dependent, in part, on the private sector bus companies. Local authorities have been working with private sector bus companies for many years with mixed results. The fundamental problem that some bus routes are desirable from a public interest perspective but are not commercially viable, particularly in a rural setting, remains an extant issue and one which is not addressed in the Bill.

The Bill may help support the devolution agenda of the current government. However, experience demonstrates that placing greater responsibilities on public bodies without providing sufficient resources may not deliver the desired improvements for the travelling public.

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2016/17 EM Lawshare Training Programme

We are delighted to offer a diverse programme of over 40 training events in 2016/17 from our partners Bevan Brittan, Browne Jacobson, Freeths, Geldards, Sharpe Pritchard and Weightmans.

Courses are presented by lawyers from these six firms, each of whom are specialists in their field, and some courses will be jointly presented by lawyers from member authorities.

Courses are held in the East Midlands, Leicester, Nottingham and Derby, with some courses repeated in Birmingham, Sheffield, Milton Keynes and Cambridge.

We also offer a number of courses via video conferencing to Birmingham, Leicester, Manchester, Milton Keynes and Sheffield.

Date	Title	Location
7 Dec	**Legal Research Refresher** (Intermediate)	**Nottingham**
8 Dec	**Planning Tips and Updates (1)** Repeated from East Midlands (Intermediate)	**Birmingham**
12 Jan	**Effective Communication**	**Nottingham**
17 Jan	**New Models including Joint Ventures and Local Authority Companies** Repeated from East Midlands (Advanced)	**Sheffield**
19 Jan	**RIPA** (Intermediate)	**Nottingham**
31 Jan	**Planning Tips and Update (2)** (Intermediate)	**Nottingham**
8 Feb	**Employment Update** Repeated from East Midlands (Intermediate)	**Milton Keynes**
14 Feb	**Information Law Update** Repeated from East Midlands (Intermediate)	**Milton Keynes**
16 Feb	**Negotiation Skills** (Intermediate)	**Derby**
22 Feb	**Judicial Review** (Advanced)	**Cambridge**
23 Feb	**Annual Local Government Update** (All Levels)	**Nottingham**
14 Mar	**Planning Tips and Update (2)** Repeated from East Midlands (Intermediate)	**Sheffield**

Detailed course outlines are available on www.emlawshare.co.uk

Cancellations and non–attendance

If you cannot attend a course you are booked on you should cancel by emailing julie.scheller@freeths.co.uk or phone 0845 272 5701. Your email should state clearly the title and date of the course and should be sent at least 48 hours before the course is due to start. We appreciate that this may not be possible in all circumstances, but if you fail to attend and fail to give the required notice on four occasions in a twelve month period we reserve the right to require a £50 deposit before accepting any future bookings from you. The deposit will be returned if you do attend.

N.B. It is your responsibility to sign in at the course and if you do not you are deemed to be absent for the purposes of this policy.

New approach to continuing competence

From November 2016, the SRA has removed the requirement for solicitors to undertake 16 hours per year of CPD and have replaced this with a requirement for individuals to make an annual declaration confirming they have reflected on their practice and addressed any identified learning and development needs.

EM Lawshare has considered the competence statement and the new requirements in detail and tailored the 2016/17 training programme to be fit for purpose under the new approach.

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