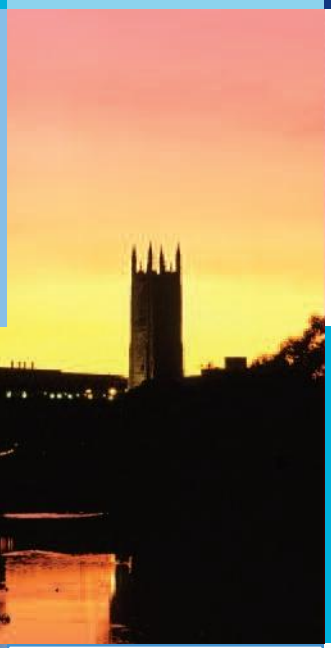
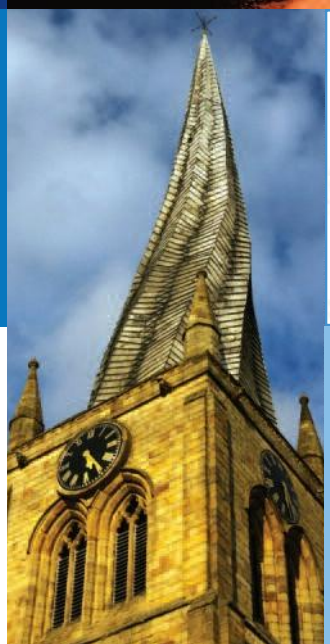
ConsortEM

The newsletter for EM LawShare
Summer 2017





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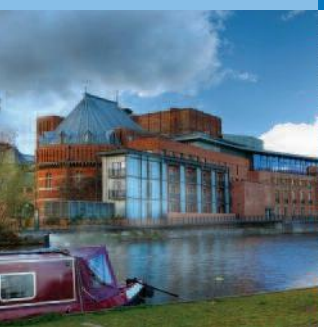

Welcome

Welcome to the summer edition of Consort EM

We recently had another milestone with our first Welsh member, Brecon Beacons National Park.

This brought our total membership up to 122, a far cry from the 13 authorities from the East Midlands who made up the original membership in 2005.

To give some idea of the current scale of EM Lawshare its, spend on the six partner firms in 2016/2017 was £5.8 million. This is more than double the spend in 2010/2011.

We therefore envisage significant of interest in the new four-year contract (2018-2022) when we advertise it in July (see the Member News for more details).

Given the attractive financial returns on offer to the new partner firms, whoever they may be, we can ask for more from them in return. One of the new added-value initiatives we will require them to participate in is the Development Network Scheme to help members to recruit and retain staff to their in-house legal teams. Read more about this scheme (page 4) and Elizabeth Warhurst, from North West Leicestershire District Council, who pioneered it (page 5).

And, of course, there is also the usual diverse and informative selection of articles from our partner firms.

Have a great summer , hopefully the beautiful weather we have had in June will continue. As always, if there is any issue of concern or any idea you have about improving EMLawShare please contact either one of us.

JAYNE FRANCIS WARD
Chair of the EM LawShare Management Panel

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Member news

New members

We have five new members since our last edition and they illustrate the wider geographical reach of the consortium and the diverse nature of member organisations. They are: Middle Level Commissioners, Royal Borough of Greenwich Council, London Borough of Bromley, Bristol City Council, Breacon Beacons National Park and Loughborough University. Our total membership is now 122.

A full list of members is on our website.

New framework agreement update

We are currently working hard at putting the final touches to the documents necessary to procure the partner firms for our next four-year contract starting on 1 April 2018. The contract will include some new provisions, including:

- making some added value services, such as the training programme, hosting the website and the biennial conference, compulsory for firms to provide free of charge;
- making clear what disbursements the firms can charge for;
- specifying the detail that must be included in invoices;
- ensuring the onus is on firms to deliver joined up advice on issues that involve different teams; and
- providing a mechanism for members to raise poor performance by firms.

We anticipate that we will advertise the new contract in late July and select firms to tender in the autumn.

Law Society Local Government Course

The partner firms have, for the third year running, agreed to sponsor two places on the Law Society's Local Government course and, following pressure from EM LawShare, the course is now open to chartered legal executives as well as solicitors.

Hopefully you will have seen the bulletins sent out to all members in May giving details and asking for applications, as the deadline for receipt was 21 June.

We will be running the scheme again next year for those who missed it.

Training programme grows

We have just completed a review of the training programme for 2016/2017 and it shows the increasing popularity of our programme with the average attendance at the forty two courses rising to an all-time high of thirty. Seventy six members, of the 118 members that year, sent someone on a EM Lawshare course and, though East Midland members were the greatest users, the numbers from outside our core area continue to grow. This growth is no doubt due in part to the increasing number of courses which were run elsewhere, up to seventeen from the previous year's ten.

Leadership and management course

The third EM LawShare Leadership and Management in Action course was held in Birmingham this year and was fully booked within a week of being advertised. Once again, the feedback from the 15 delegates who attended the three-day course was very positive. So, if you want to book onto the next course, please keep an eye out for the bulletin that will be sent out to members in the autumn.

Tackling local authority legal recruitment and retention challenges through innovative partnerships

Most local government legal departments find it difficult to recruit and retain the high calibre lawyers they need, at all levels, from trainees and newly qualified staff to highly experienced professionals.

The EM Development Network

The EM Development Network is a collaborative approach to meeting these challenges, with a proven track record of success. The network includes local authorities and law firms specialising in local government law. The approach is adaptable to your specific circumstances – at its core, this is about thinking creatively to meet the challenges you face.

Attracting the right candidates

To meet the challenges on recruitment it is necessary to think differently. Bearing in mind the role, the likely quality of candidates and the unique features of your existing team, your needs will vary each time.

Retaining talented individuals

We cannot keep hold of staff forever, but we can make their role and experience as interesting and engaging as possible and give them the best opportunity to move into a quality role in the future. Sometimes a lawyer's role changes or they want to take the next step in their career, but providing that support in-house may not be possible. The EM Development Network can help.

The benefits

For the recruiting or employing partner, you can expect to broaden your pool of candidates, reduce your recruitment costs in the medium to long term, offer enhanced development opportunities, reduce your turnover of staff and ultimately upskill your work force at a lower cost.

For your partner organisation, the EM Development Network offers development opportunities for existing staff, the chance to build strong professional networks and partnerships that will last, as well as to benefit from knowledge transfer and learn from the experience of peers.

Getting involved

To contact those involved and to see other examples of where the EM Development Network has been successfully deployed, please visit emlawshare.co.uk/em-development-network

Case Study

North West Leicestershire District Council offered Coventry City Council's new planning and highways lawyer the opportunity of work shadowing, which led to establishing a buddying relationship between the individuals involved.

Clara Thomson joined Coventry City Council as its first in-house planning and highways lawyer after a period of outsourcing. Clara trained in local government, but needed more practical experience in managing the planning committee. Clara worked with NWLDC's principal solicitor, Anthea Lowe, across the life cycle of one of NWLDC's committees, performing legal and governance checks on reports, attending committee briefings and then the planning committee itself. Their relationship has developed and Clara feels able to pick up the phone to Anthea to bounce ideas and tricky queries off her.

For Coventry, Clara has confidently stepped into advising members and officers of the planning committee, helping to manage the legal and governance risks. Clara is able to balance her busy caseload and focus appropriate resources on planning and highways agreements, which have become key sources of income to legal services.

'NWLDC were pleased to be able to support the development of a talented lawyer. We were proud to see the outcome of our work in Clara's increased confidence in dealing with planning committee. This is exactly what the EMDN is all about.' **Elizabeth Warhurst, Head of Legal and Support Services, North West Leicestershire District Council**

'The package of support and buddying in place when I joined Coventry made the challenge of moving into such a key role that much more manageable. The opportunity to share experience and practice with colleagues elsewhere was invaluable.' **Clara Thomson, Planning and Highways Lawyer, Coventry City Council**

Spotlight on ...

Elizabeth Warhurst

Head of Legal and Support Services, North West Leicestershire District Council

In each edition of ConsortEM, we shine a light on a member to show the variety of roles within the consortium. This month, Elizabeth provides an insight into working as head of legal services and as a monitoring officer in a local council.

How long have you been with North West Leicestershire District Council?

Just over 13 years, starting as a principal solicitor. I have held my current role as head of legal and support services and monitoring officer for over 11 years.

What does your role entail?

I lead a broad portfolio of services, including legal and democratic services, elections, communications, customer services, business improvement and environmental health. Sitting on the corporate leadership team, and as part of project teams on high value and high risk corporate schemes, I have increasingly found myself acting as general counsel in the role of trusted advisor and critical friend.

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

I report to the interim director of resources. I have four team managers who head up the service portfolio under my post. I am lucky to have access to fantastic resources within my teams – specialists in their professional areas who really focus on delivering for the organisation.

What have been the most pressing issues for you recently?

Managing the impact of the snap parliamentary election on 8 June. We saw a 30 per cent increase in postal vote applications for this election. We have an amazing elections team here with a national reputation for their work, but still there was pressure to deliver this election so soon after the last.

How does North West Leicestershire District Council compare with other places you have worked?

Much of the day-to-day life in local government is pretty similar in most local authorities and we all share common challenges. I have worked in a few authorities in Leicestershire over my career, starting out in Local Land Charges in a temporary post after university, moving to committee administration and then becoming a trainee before qualification in 2001. The main difference here is the culture. North West Leicestershire District Council delivers outcomes for the district with modesty – we never really shout about our achievements. We have strong values and an approach to recruitment and development which focuses on behaviour as well as technical knowledge. We are not perfect, but generally work well together as a team.

North West Leicestershire District Council also places trust in its officers to deliver, based on a solid rationale. For example, I have been enabled and empowered to grow a successful commercial legal practice from scratch which now generates around £150,000 per year – this makes a difference to the bottom line cost of the legal service to the council. I have also been able to create and grow successful partnerships with firms via the EM LawShare initiative, in particular with Browne Jacobson who worked with me on the recruitment and development of staff for my legal team.

What law would you like to see changed?

In local government – nothing really, not even awful legislation, like the Functions and Responsibilities Regulations, which are particularly challenging to deal with. I may have a moan about a new bit of rushed or badly drafted legislation (of which there has been plenty), but we just need to get on and make it work.

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

Not to get emotionally attached to someone else's poor performance.

Finally, two truths and one lie in any order.

I have run the London Marathon.

I will bake at the drop of a hat.

I insert made up words into most conversations.

Decision in *Isle of Wight Council v Platt*

In *Through the Looking-Glass*, Lewis Carroll had Humpty Dumpty say to Alice 'When I use a word, it means just what I want it to mean, neither more nor less.' Following the Supreme Court decision in the case of *Isle of Wight Council v Platt*, Justine Greening (assuming she is still in the role by the time you read this article!) is now placed in the same position in terms of her department being able to state what 'regularly' means in the context of school attendance. This at least gives clarity for those advising schools and academies on the ability to trigger a fixed penalty notice related to non-attendance of pupils.

Mr Platt's seven-year-old daughter was a registered pupil at an Isle of Wight primary school. Mr Platt sought to remove his daughter from school, during term time, for a holiday to DisneyWorld, America. This holiday would cause the daughter to be absent from school for seven days.

Mr Platt initially made a formal request for the school's permission to remove his daughter. This was refused by the head teacher. Notwithstanding this refusal, Mr Platt took his daughter on holiday. On his return, he was issued with a fixed penalty notice by the council's education welfare officer for an 'unauthorised family holiday during term time'.

Mr Platt failed to pay the penalty notice and proceedings were issued in the Isle of Wight Magistrates' Court on the basis that he was guilty of an offence under section 444(1) of the Education Act 1996 (the Act). This section provides:

> *If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.*

The magistrates, in their interpretation of the meaning of 'fails to attend regularly', took into account the daughter's attendance outside of the offence dates (ie the holiday absence) and found that overall, she had an attendance rate of 90.3 per cent. This rate fell within the bounds of satisfactory school attendance. On this basis, the holiday absence did not cause the girl to fail to attend school regularly. The magistrates found that there was accordingly no case for Mr Platt to answer.

Subsequent appeals distilled the question before the Supreme Court to what was meant by the term 'regularly' under section 444(1) of the Act. Lady Hale, giving the only judgment, found that regularly, in this context, means 'in accordance with the rules prescribed by the school'. In most cases, this will be in line with Department for Education guidance, which provides that the absence of a child from school requires permission from the school and directs that such permission will only be granted in exceptional circumstances, no matter how good the pupil's attendance is.

Determining the meaning of a particular word by reference to its context is something the courts do all the time, but in this case it is arguable that the court went too far and effectively ducked the question before it.

This judgment was undoubtedly influenced heavily by public policy considerations. It is clear that the court was worried about setting a precedent whereby children could be removed from school whenever it suited their parents. A decision in favour of Mr Platt would have been a slap in the face to those obedient parents who do keep to the rules, whatever the cost or inconvenience to themselves. Concerns about the disruptive effect of such removal on the child's learning also swayed the court. We know from some authorities that attendance is a key issue in terms of affecting school attainment levels, particularly in the case of parents who choose to take their children out of school for weeks or months in some cases.

It is also relevant to obtaining the best possible Ofsted rating.

Practical point

Local authorities and academies now have decisive legislative authority which supports their enforcement of fixed penalty notices. Given its publicity, and as we enter the holiday season, this case is likely to serve as a deterrent to parents who want to remove their child or children from school either without seeking permission or irrespective of permission being refused. This may therefore result in a dip in the number of fixed penalty notices being issued by local authorities, at least in the short term.

The Department for Education has already indicated that further guidance to local authorities on unauthorised absences is in the offing. Local authorities will need to take account of this guidance when considering whether to issue fixed penalty notices in the future. Schools will also need to consider the guidance when making decisions about whether absences can be authorised lawfully.

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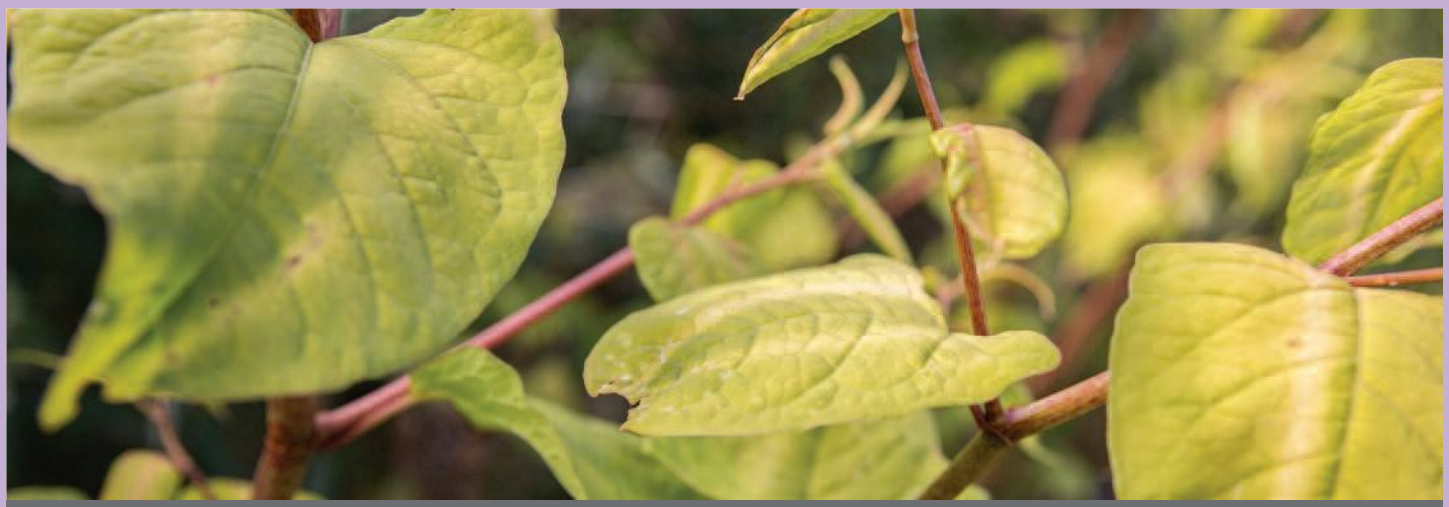
A knotty problem: civil liability for Japanese knotweed



Knotweed was first introduced into the UK from Japan in 1825 as an ornamental plant, but since then it has spread aggressively and is now recognised as the most invasive plant in the UK. Pursuant to the Wildlife and Countryside Act 1981 it is classed as an invasive non-native species (INNS). It is an offence to plant or to cause knotweed to grow in the wild.

The enforcement of the new INNS controls, provided under the Infrastructure Act 2015 through the use of species control agreements and orders, has not yet started to bite as the supporting code of practice has still to be finalised.

In the meantime, a recent court case involving Network Rail has highlighted the civil, as opposed to the regulatory, risks associated with knotweed.

The unreported case in Cardiff County Court between Network Rail, Mr Waistell and Mr Williams is believed to be the first such case to have been considered by the courts and to have been reported in the press.

It is understood that historically Network Rail has always sought to settle such cases outside court but that, due to the scale of the problem across the UK on its land holdings, it decided to contest this case to determine how the courts would assess the issue.

The case has confirmed that a landowner whose land is impacted by knotweed can be liable to a neighbour for damages that relate to the decrease in the value of the neighbour's property and also the associated cost of treating the knotweed. Mr Waistell and Mr Williams were reportedly both awarded £4,320 to treat the knotweed on their own land and £10,000 each in respect of the decrease in the value of their properties. The actual decrease in value was much larger than this, but the court said the claimants could return to court to recover the additional amounts if Network Rail did not successfully treat the knotweed on its land. Network Rail has not yet confirmed whether it will appeal the decision.

This is a very significant case for landowners as it confirms the long-held view that the spread of knotweed should be considered a legal nuisance and that those affected should be able to claim damages. Historically, knotweed was used to stabilise railway embankments. During the summer months, if you look out of a train window, you will see very dense areas of knotweed lining railway embankments. Households adjoining those railway lines will now be considering their options in relation to the treatment of that knotweed and also potential claims for the impact of the presence of the knotweed on the value of their homes.

Those in local government need to consider the risks associated with areas of knotweed on their land and whether they should be taking proactive steps to address its presence and eradicate it before they face any claims. Those owning adjoining sites should consider whether they need to engage with the landowners, on whose sites knotweed can be found, to require them to take action and to possibly seek damages for any resulting decrease in the value of their own land.

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Extension of time – differing approaches under standard form construction contracts

Standard form construction contracts always include a mechanism for assessing whether and how the time for completion of works should be extended. An extension of time must be granted where a certain type of delay occurs. Justin Mendelle and Uzma Raja explain how extensions of time are dealt with in different ways under the JCT and NEC suite of contracts.

Under JCT, the contractor must serve notice of a delay to the employer when it becomes 'reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed.' The contractor may then be able to claim an extension of time for two types of delay:

- delays caused by the employer; and
- delays that, under the contract, are not the contractor's responsibility.

These delays are referred to as relevant events.

The contractor must state in its notice to the employer what it considers to be a relevant event. This may include:

- variations;
- a delay in giving the contractor possession of the site;
- an impediment caused by the employer;
- work carried out by a statutory undertaker;
- exceptionally adverse weather conditions;
- civil commotion or terrorism;
- strikes;
- changes in statutory requirements; or
- force majeure.

Assessing a claim for an extension of time can be complicated as there may be concurrent delays, not all of which are attributable to one party's fault.

In *Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd* (1999)[1], the court held that where there are two concurrent causes of delay and only one is a relevant event, then the contractor is entitled to an extension of time for that period of delay caused by the relevant event. It does not matter that, had the relevant event not occurred, there would still have been a delay as a result of the non-relevant

event and that an extension of time would not have been granted This reasoning was followed in the case of *Adyard Abu Dhabi v SD Marine Services* (2011)[2] where the court held that the contractor is entitled to an extension of time even if there exists a concurrent cause of the same delay.

In *Walter Lilly & Company Ltd v Mackay and another* (2012)[3], the court reinforced the judgment in *Adyard Abu Dhabi v SD Marine Services by holding that City Inn v Shepherd Construction* (2010)[4] was to be confined to Scottish law. In *City Inn*, the court held that there should be an apportionment of an extension of time between the different causes where there were concurrent delays. But the court in Walter Lilly said that the fact that the employer's representative had to award a 'fair and reasonable' extension did not imply that such an apportionment was required. All that was required for an extension of time for the whole period of delay was the relevant event(s) to have delayed the works.

Thus, if the reason for the delay does constitute a relevant event and completion is likely to be delayed beyond the relevant completion date as a result, the employer must grant an extension of time. The employer must notify the contractor of its decision within 12 weeks (or sooner if the completion date is less than 12 weeks away) and state the time extension given. The aim is to allow for the grant of an extension of time that is considered to be fair and reasonable, with a decision reached as soon as is reasonably practicable.

Whereas the JCT deals with time delays and associated increased costs as separate issues (relevant events and relevant matters respectively), the NEC amalgamates the two under the heading of 'compensation events'. This means that the contractor potentially becomes entitled to a change in price, the completion date or key dates as a result of the same compensation event.

Compensation events under the NEC suite of contracts are process driven and dealt with in real time as much as possible. Whereas the JCT requires the contractor to deliver a master programme for the execution of works, the NEC demands that updated programmes are delivered on a regular basis. This effectively means that the NEC operates on an early warning system as the parties are obliged to notify each other at the earliest indication of any matter which could affect the time for completion.

To summarise, although both the JCT and NEC standard forms of contract both contain mechanisms for dealing with time and cost, the approach taken by each differs. The NEC seeks to deal with both together, contemporaneously, while the JCT is more traditional in its approach. The latter has a proven track record and is well tested in case law. The NEC approach has much to recommend it, but does require early engagement by all parties to ensure its smooth operation.

[1] *Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd (1999) 70 Con LR 32*

[2] *Adyard Abu Dhabi v SD Marine Services (2011) EWHC 848 (Comm)*

[3] *Walter Lilly & Company Ltd v Mackay and another (2012) EWHC 1773 (TCC)*

[4] *City Inn v Shepherd Construction (2010) ScotCS CSH 68*

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Review of the Modern Slavery Act 2015

In April 2017, the House of Commons Work and Pensions Committee published a report on *Victims of Modern Slavery*. The aim of this report was said to be to begin, with the government, the development of stage two of the United Kingdom's counter-slavery policy, building on the legislative framework of the Modern Slavery Act 2015 (the Act). As the government prepares to develop further policy to address modern slavery, we thought it would be timely to review the requirements of the current legislation and to remind local authorities of their obligations.

The requirements of the Act which are likely to have most impact on local authorities are:

- the duty for public authorities to notify the Home Secretary if they have reasonable grounds to believe a person may be a victim of human trafficking or slavery (section 52) ;
- the duty for commercial organisations to prepare a slavery and human trafficking statement for each financial year (section 54 and the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015); and
- the duty for public authorities to cooperate with the Independent Anti-Slavery Commissioner in any way that the commissioner considers necessary for the purposes of the commissioner's functions (section 43).

Notification of suspicion

Regulations made under section 52 of the Act[1] specify that the following information must be included in a notification to the Home Secretary of suspicions of human trafficking or slavery:

- the name of the public authority making the notification;
- the victim's gender and nationality; whether the victim was under the age of 18 at the time the authority believes the slavery or trafficking first occurred;
- whether the authority believes the person may be a victim of slavery;
- whether the authority believes the person may be a victim of human trafficking;
- the country or territory where the public authority believes the slavery or human trafficking occurred;
- whether the public authority has referred the suspected slavery or trafficking to a chief officer of police;
- the police area in which the victim has been identified;
- where the authority suspects slavery, whether it believes this occurred wholly or partly within residential premises and involved slavery, servitude and forced or compulsory labour, sexual exploitation or the commission of an offence by the victim; and
- where the authority suspects human trafficking, whether it believes this occurred wholly or partly within residential premises and involved slavery, servitude and forced or compulsory labour, sexual exploitation, removal of organs or the commission of an offence by the victim.

The following additional information should also be included in a notification which relates to a victim under the age of 18 or a victim who has given consent:

- the victim's name and date of birth;
- the names of persons the authority believes may have perpetrated the suspected slavery or human trafficking; and

[1] *Modern Slavery Act 2015 (Duty to Notify) Regulations 2015*

- the names of persons the authority believes may also have been victims of slavery or human trafficking by the same perpetrators.

Government guidance on the duty to notify[2] provides details of forms which can be used to notify the Home Office of potential victims of slavery or human trafficking. It also states that a notification should not be relied upon to safeguard victims and that existing safeguarding processes should be followed in tandem with a notification. Clearly then, authorities need to be alert at all times to their duties under the Act and to consider how they can use their actions most effectively to safeguard victims and potential victims.

Transparency in supply chains

The slavery and human trafficking statement required by section 54 of the Act must say what steps a commercial organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its own business. If an organisation has taken no steps, its statement must say this.

The duty to prepare such a statement applies to any commercial organisation which supplies goods or services and carries on a business in the UK and whose total turnover is £36 million or more. Although local authorities are not separately identified as being subject to the requirements of section 54 of the Act, it is possible that they could be within the definition of 'commercial organisation' for the purposes of this section and so be required to produce a slavery and human trafficking statement each financial year.

The definition of a commercial organisation is:

- a body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom: or
- a partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom, and for this purpose 'business' includes a trade or profession.

A local authority is a body corporate and most local authorities provide services. Guidance published by the government[3] provides that the courts will be the final arbiter as to whether or not an organisation carries on a business in the UK. It also states that the government expects that this question will be answered by applying a common-sense approach.

If an organisation is incorporated, it does not matter if it pursues primarily charitable or educational aims or purely public functions. If it engages in commercial activities and has a turnover above the relevant threshold, the duty will apply to it, irrespective of the purpose for which profits are made. It seems therefore that, while the meaning of commercial organisation for the purposes of section 54 is open to interpretation, local authorities which carry out commercial activities should produce slavery and human trafficking statements.

Convictions for offences under the Act provide grounds for mandatory exclusion from procurements. Local authorities therefore need to assess the compliance of their suppliers with the requirements of the legslation in order to themselves comply with their own obligations under public procurement regulations. If they are taking steps to identify and tackle any cause for concern about slavery or human trafficking in their supply chains, they should not find it difficult to record these in a statement. In practice, many local authorities are producing and publishing slavery and human trafficking statements.

In order to ensure that they comply with their obligations under the Act, we recommend that local authorities should:

- decide whether they consider their authority to be subject to the duty to prepare and publish a slavery and human trafficking statement. If so, they should put arrangements in place to ensure they produce a statement each financial year;
- provide training to staff to ensure they are aware of the need for their local authority to make notifications to the Home Secretary and the process for doing so;
- ensure they have a clear reporting system to be used when slavery or human trafficking is suspected;
- carry out regular reviews of their own departments to identify and address any potential risks of slavery or human trafficking; and
- ensure that their procedure rules and procurement processes provide for exclusion of tenderers who have convictions for slavery or human trafficking.

The report of the House of Commons Work and Pensions Committee, referred to earlier, commented that the number of successful prosecutions against individuals guilty of modern slavery offences is on an upwards trend but that the number of reported cases is still hugely disappointing. Effective action to address the risks of modern slavery and human trafficking will help local authorities to protect potential victims and to procure good quality service providers. Local authorities need to ensure that they commit sufficient attention and resources to achieve effective action.

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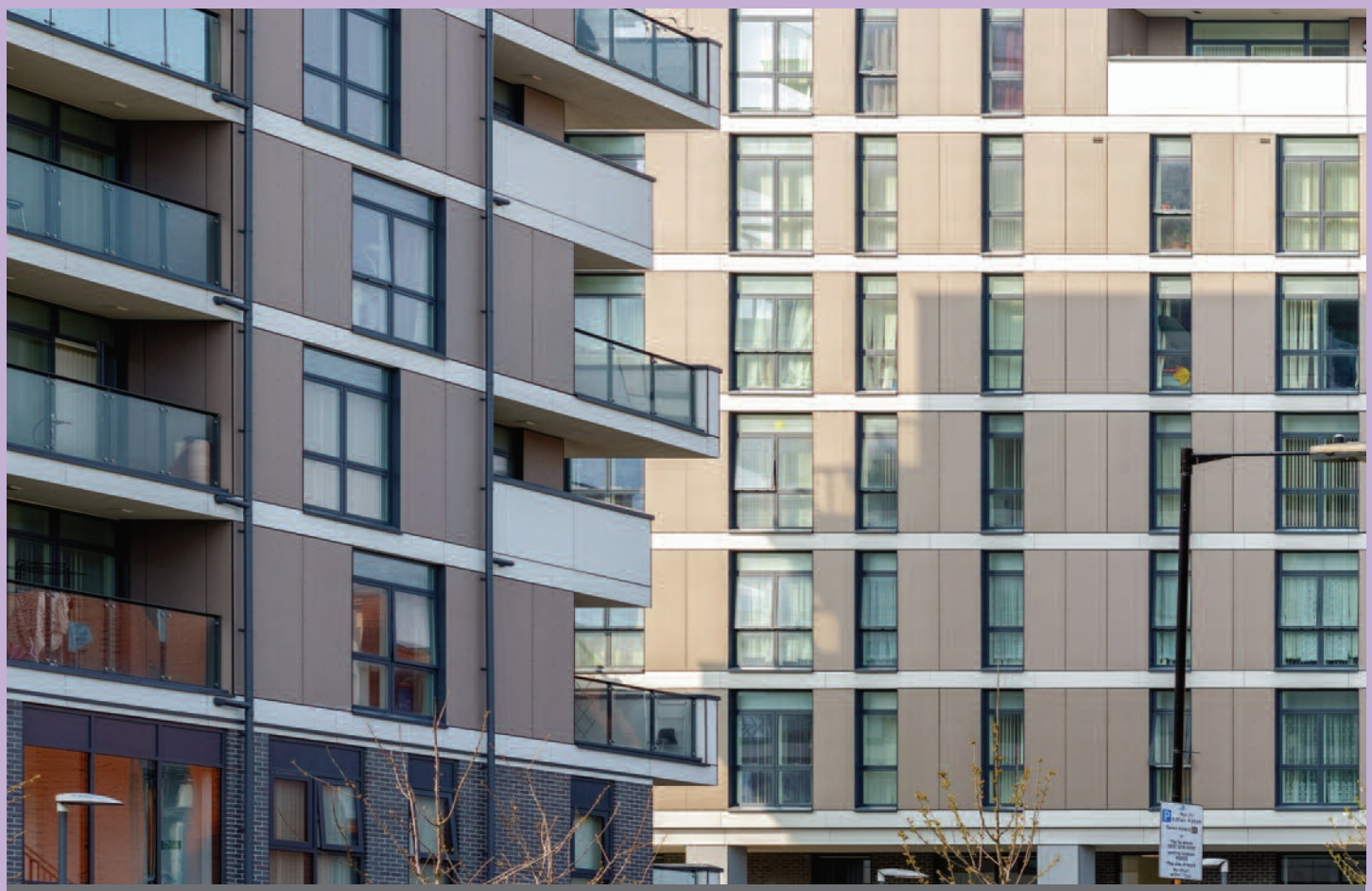
[2] *Duty to Notify the Home Office of Potential Victims of Modern Slavery, Government guidance available at https://www.gov.uk/government/publications/duty-to-notify-the-home-office-of-potential-victims-of-modern-slavery*

[3] *https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide*

Housing delivery vehicles – benefits and trends



The last two years have seen an explosion in local authorities establishing corporate vehicles as a means to further housing supply, with there now being over 100 examples across the country. In this article, we provide an overview of the models that we have seen to date and consider how housing vehicles could be used in the future.

Objectives

The term 'housing vehicle' is very general and includes a range of quite different approaches both legally and objective-wise. The precise objectives vary from authority to authority, but at a high level normally include a mixture of wanting to take proactive steps to address the housing supply challenge and wanting to build a revenue stream and asset base to benefit the general fund.

The precise type of housing supply also varies, with some interested in providing low cost homes to rent while others are focused on achieving market rent and sale to maximise return or securing accommodation to reduce the pressure on temporary bed and breakfast accommodation budgets.

The reforms to local government self-financing, now due to start in 2021, are also providing a huge catalyst to proactive local authority action. The need to have a successful economic and growth strategy is more important than ever, with it now shaping directly the authority's financial position through the retention of business rates and the end of the revenue support grant. A key part of most economic strategies is the wider infrastructure needed to make the economy work, with the right type of housing in the right places absolutely crucial. So, indirectly, an additional hard financial incentive around housing supply has been introduced.

All of these objectives will continue to be relevant, and in some cases increasingly so. As a result, we expect authorities will continue to want to engage in housing supply. In many instances this will involve a housing vehicle model which operates alongside ongoing direct provision through the Housing Revenue Account.

Traditional housing vehicle models

To date, most local authority housing vehicle models have followed a common broad structure:

- a company limited by shares;
- wholly owned by the authority;
- which borrows from the Public Works Loan Board and then lends to the vehicle; and
- the vehicle then either buys land from the authority or third party and develops out or buys developed units from the market.

While the type of housing and the objectives vary, this structure is fairly consistent. The overall outcome is that an authority is still working within its own resources and, to a degree, capabilities. The authority is also bearing the risk for the activity, albeit the risk can be mitigated in part through the structure.

Joint venture models

We are starting to see this early model beginning to evolve into more sophisticated ways of doing things, by using the principles of the housing vehicle approach but seeking to pursue and deliver the authority's objectives at greater scale, in particular through trying to source third party investment into the vehicle. While some authorities are seeking pure investment, others are implementing broader joint venture models where another party brings not only cash for investment but also other complimentary resources, such as land or development expertise.

The nature of the joint venture partner varies and we have seen joint ventures with private sector developers, pure investors and with developing housing associations. The model with housing associations is interesting as there is greater fundamental alignment between local authorities and housing associations around core social purpose.

This, coupled with the fact that some housing associations are very large commercial developers, means that there is the basis for a strong joint venture on both commercial and policy terms.

A further big plus is that housing associations are 'contracting authorities' for the purposes of the Public Contract Regulations 2015, meaning that there are options for forming joint ventures without needing to go out through an open procurement process.

We expect that these more ambitious approaches to housing vehicles will continue with more authorities looking to scale up their delivery and benefit from third party capacity and capability.

The legal models for the joint ventures are centred on the same corporate principles that shape the wholly-owned models. Limited liability partnerships are more likely to be used as they offer tax transparency but they will still work around the same two-tier governance structure of the authority and vehicle board.

Development corporations

Another area where we can see the principles and early models for housing vehicles being applied is the re-emerging development corporations. These are being considered in a number of contexts including mayoral development corporations as part of devolution deals, for example, the Cambridgeshire and Peterborough deal, new town corporations included in the recent Housing White Paper and in instances such as the proposed pan-London housing vehicle.

It is possible to see how a housing vehicle approach could work effectively in this context, offering a separate entity to bring together multiple stakeholders, land assembly and a means of capturing ongoing land value increases.

Importantly, the spread of housing vehicles has shown a revitalised appetite for authorities to retain developed housing of all types through vehicles which could be applied to development corporations. The lack of ongoing ownership was a serious undermining factor to the long-term success of previous development corporations. Existing housing vehicles could demonstrate the concept to new development corporations as well as playing a part in developing and owning housing supplied as a result of the model.

Conclusion

Local authorities have shown significant interest in engaging in housing supply over the last couple of years and, for a variety of reasons, this approach seems set to continue. A near inevitable part of this will be authorities wanting to use separate corporate vehicles to manage commercially the supply, risk and liabilities associated with the activity.

While models to date have predominantly been wholly owned and funded by the council, we have started to see this change. We envisage that over the next two to three years, authorities will increasingly be looking at more ambitious housing vehicle models including joint ventures with other parties to deliver their housing objectives at greater scale and, as some are already doing, looking at a plurality of approaches with wholly owned vehicles and joint ventures working alongside each other, some concerned with owning units and some with developing and financing.

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How lessons learned from health Success Regimes can help develop effective Sustainability and Transformation Plans

Sustainability and transformation plans (STPs) are five year plans (to March 2021) for the future of health and care services in local areas. NHS organisations have come together with local authorities and other partners to develop place-based plans in 44 'footprint' areas of the country.

Draft plans had to be produced by June 2016 and final plans were submitted in October 2016. These plans have been subject to assessment and evaluation and form the basis for bids from the Sustainability and Transformation Fund. The plans are designed to improve:

- quality;
- health and wellbeing; and
- efficiency of service provision.

The aim is to create a sustainable, transformed health service by developing new models of care which will help to close the gaps that currently exist between care and quality and finance and efficiency.

Meeting the objectives of the five-year forward view will drive the implementation of the plans. As with so many issues facing public services today, there is an imperative for collaboration across stakeholders and efficiency savings are unlikely to be capable of being achieved without fairly significant change.

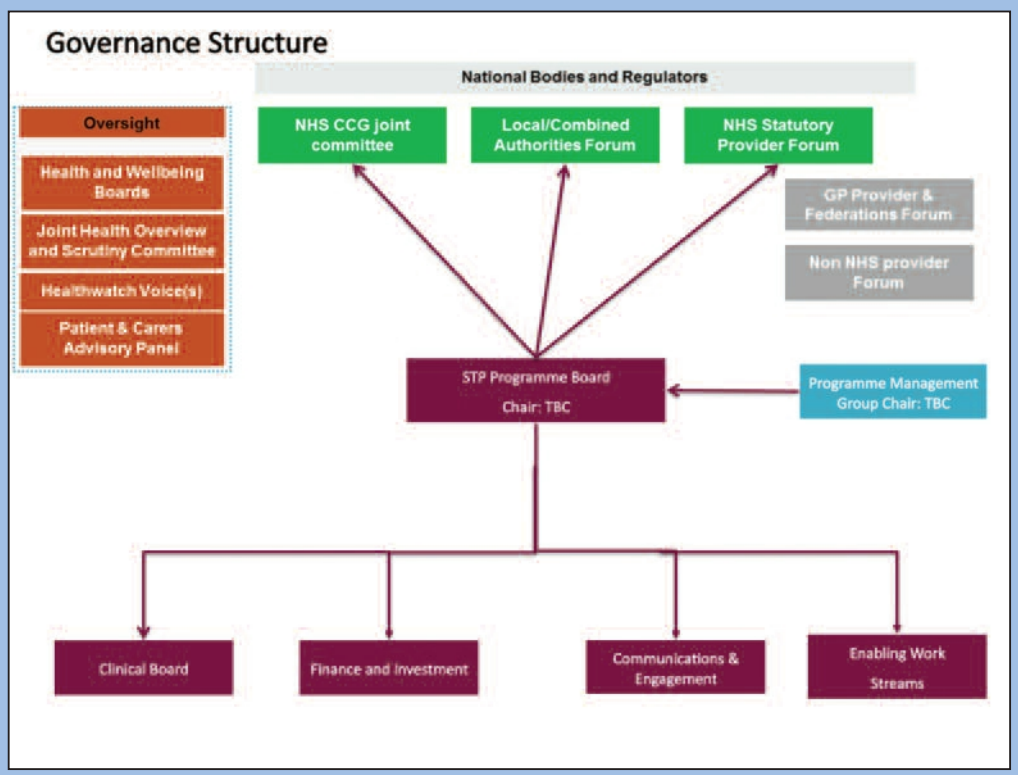
All decisions in STP proposals have to be determined by the relevant statutory body with the power to make such decisions.

Collaborative working and decision-making governance

This has to be the starting point for all STPs and was essential from a Success Regime perspective to ensure that decisions were made which could be implemented, especially against a backdrop of public and political scepticism over the NHS delivering change. It also meant that everyone bought into the case for change and promoted that publicly.

Interestingly, as neither a Success Regime nor an STP is a legal entity, it was important to look at advancing a policy based around patient benefit within the current legal framework. That meant being clear on who the decision makers were in law and then designing a governance approach which enabled whole system involvement without offending the legal framework. That had been a developing approach within many areas looking at reconfiguring services because, for such a process to be successful, commissioners, providers and other public bodies needed to be bought in so that realistic decisions were made that could and would be implemented.

As can be seen below in diagram 1, the key to this approach is to clearly set out who the decision makers are under statute and then to build an integrated governance framework underneath.



Just as it was for Success Regimes, it is important for STPs adopting this governance model to make sure that each organisation's own existing governance processes enable this approach, or are amended to allow it. This clarity of purpose is essential for STPs in moving forward to deliver the five-year forward view.

Commissioners' joint working

A key aspect of the process for Success Regimes was to understand which NHS commissioners were involved and how their decisions needed to integrate with the commissioning of social care. For example, in looking at changes to community hospitals, it was important to look at the out-of-hospital health and social care offering to ensure it delivered for patient need.

From the NHS perspective, a joint committee of clinical commissioning groups could be created and that allowed a statutory forum for decision making to be in place, following the changes to the law in October 2014 to allow joint committees to be formed. It also meant that rather than multiple decisions being made, which happened under the committees in common approach, just one decision could be made by the joint committee of clinical commissioning groups. However, use of the programme board allowed collaboration on the health and social care provision, as well as being clear on what providers could deliver against the options for change which the commissioners were considering.

A joint committee of clinical commissioning groups not only allows for more integrated health decision making within an STP footprint, but also supports collaborative working with local authority social care and also makes working with an adjoining STP area much easier to manage and govern.

Providers' joint working

Consideration had to be given to how NHS providers could collaborate without offending competition law. In looking at how committees in common had worked when commissioners could not form joint committees and overlaying that with a framework to prevent a breach of the requirements under competition law, a forum for NHS providers was created.

A number of STP areas have followed this model and achieved better integrated working within the STP process.

Sharing models of care

In working with the Success Regimes, it became apparent that those involved were looking at similar clinical services, so sharing knowledge would be beneficial. For instance, on community services, by looking at what a community hub would actually look like for the patients to address the concerns of some local communities which viewed the decisions being taken as removing services rather than improving them. That was not to try and make one size fit all, but to look at what co-production with local communities could look like in order to understand what they wanted and to help them understand what was possible. It meant that in implementing a decision which could be seen as taking something away from a community, you could then develop services which would be of much greater benefit to that community.

Helping NHS bodies to share this information enabled the development of ideas that would benefit a number of different parts of England, especially when looking at community service delivery in more rural areas.

It is clear that the new models of care programme has encouraged sharing, but the Success Regimes have shown how this can go further and not only relate to the model but also how to implement it locally. Further, it is apparent that the NHS needs to emphasise the positive benefits of change and explain the overall impact of service reconfiguration, rather than focusing on explaining what may be viewed as the negative aspects of any change and not highlighting the positive impacts.

Driving efficiencies

All the Success Regimes and all participants in STPs need to be open with the public about the difficult decisions which have to be made on what to spend money on. The media have spent many column inches explaining the financial position in which the NHS and other public services find themselves. One thing the Success Regime work has reinforced is that the public cannot be insulated from the real economic realities of the situation we find ourselves in and have to understand that it is not possible to provide all services in all locations. Having a finite budget means that difficult decisions must be taken, but being open with the public on that aspect does make them understand options are limited and the NHS are trying to make decisions which will provide the greatest overall benefit to the majority of patients.

During this period of change, it will be essential for STPs to follow that lead and be clear that change will involve trying to provide better clinical services which are financially sustainable.

New ways of working for the workforce

In order to effect change in any organisation you need your workforce to understand and enable change, even if they may think other options would work better. It is important to involve the local workforce early and positively in the process, rather than as part of any public consultation process.

Those working on the front line will have valuable information on how services currently work and how they can be improved. They will be able to help shape the future need and be part of the workforce change programme from the start. That in turn will help them to be positive advocates for change, or at least understand the reasons for it.

Public involvement and assurance to implement

The Success Regimes have shown that the public are very committed to understanding change in the way their NHS services are delivered and to defending them from actual or perceived negative consequences. This means it is essential to be clear from the beginning what the case for change is and how the public are to be involved in developing options and making a decision. Success Regimes and other service reconfiguration projects regularly face challenges from the public, be they formal or informal, and one constant is that the extent of public involvement is always raised. Having a clear plan to make sure they are properly involved at all stages and discussing that early in the process with Healthwatch, the Health and Wellbeing Board and the Health Overview and Scrutiny Committee is an important way to make sure the process is robust to such challenge.

Equally, putting in place a process once the decision on change has been made as to how to assure the public that implementation of the decision will only happen when it is safe to do so, will often help assuage fears over the change. Within the Success Regimes that has included inviting members of the public, sometimes from local campaign groups, to join the assurance group so they can be satisfied on the safety of the changes made.

Involvement of the public from the start of the STP process, so that they can understand what is being done overall and be involved in the plans for change; including any on service transformation; will help to reduce the risk of challenge. It will also, it is hoped, provide external advocates of the STP and its plans, as well as a critical friend to the process to reflect back public fears.

Comment

This is a relatively brief overview of lessons to consider or perhaps a simple reiteration of issues already known to be relevant.

Often, from a legal perspective, the constant check on change is whether you can demonstrate the patient or service user will benefit from the change proposed. That may be obvious if, for example, what you will end up with is better dedicated stroke services. However, sometimes it can be more subtle than that, for example where you are proposing to invest in mental health services for children rather than increase access to IVF or bariatric services. Not everyone will agree with each choice, but if one thing has been learned from the Success Regimes it is that you need to be able to explain the changes you are proposing, be clear on why they will benefit patients or service users and understand the different views which members of the public may have.

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2017/18 EM Lawshare Training Programme

We are delighted to offer a diverse programme of over 60 training events in 2017/18 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 and London.

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

Date	Title	Location
12 Jul	**Judicial Review – Procedure and Case Law Update** (All levels)	**Nottingham**
17 Jul	**Planning and Environmental Law Update** (Intermediate/Advanced)	**London**
19 Jul	**Anti Social Behaviour** (Intermediate)	**Nottingham**
20 Jul	**Central Governance Update** Repeated from East Midlands (All levels)	**Sheffield**
7 Sep	**Property Law Case Update** (Advanced)	**Nottingham**
13 Sep	**Judicial Review – Procedure and Case Law Update** Repeated from East Midlands (All levels)	**Birmingham**
18 Sep	**Academies Issues** (Intermediate)	**Nottingham**
20 Sep	**Handling Conflict** (All levels)	**Nottingham**
20 Sep	**Effective Mentoring Skills** (All levels)	**Nottingham**
21 Sep	**Commissioning Health and Social Care Services (including Partnership working with the NHS)** (Intermediate)	**Nottingham**
22 Sep	**Public Procurement Workshop** (Intermediate)	**Nottingham**
25 Sep	**Licensing Update** (Intermediate)	**Nottingham**

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 2017/18 training programme to be fit for purpose under the new approach.

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