

local authority newsbites

Welcome to our August edition of Newsbites, updating you on local government law. In a packed edition we look at new proposals to set up a community energy fund as well as the timetable for the coming into force of the Bribery Act 2010. We also consider some interesting cases including a case involving an accident by an inebriated individual which occurred on council owned land.

We are very interested to hear from you about other topics we could or should be covering in this update. If you have any comments or suggestions then please contact [Benjamin Smith](#) or e-mail LALaw@mills-reeve.com.

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Housing Minister to set up Community Energy Fund

Grant Shapps, the Housing Minister, has detailed proposals to give councils and developers more flexibility in deciding how they meet eco-standards. The proposals indicate an intention to establish a community energy fund as proposed by the UK Green Building Council. The plans would allow developers to make payments to local authorities in order to support local energy schemes, for example, heating schemes or community wind farms.

Mr Shapps said that the proposals would offer a simpler way for developers to meet their obligations as opposed to putting in place expensive on-site measures or setting up their own off-site schemes.

Mr Shapps said: "This is about meeting tough environmental standards, but not dictating how every venture be built. Councils and developers together are in the best position to decide how best to meet these standards, so we're giving them the flexibility and a range of options to do this."



For more information please contact [Benjamin Smith](#).

October start date for Equality Act confirmed

The Government Equalities Office has confirmed its intention to go ahead with the implementation of the Equality Act 2010 from 1 October 2010. The Act aims to harmonise and strengthen existing equality legislation. In order to assist organisations and individuals to prepare, the Government has published a number of "quick start" guides including one prepared by ACAS for employers. This focuses on the areas in which the key changes will take place and it is available on the [ACAS website](#). The associated codes of practice, currently available in draft [here](#), are expected to be finalised shortly.

Although many provisions of the Act will come into force in October there are notable exceptions, including the new single public sector duty. The Coalition Government is still considering whether to adopt Labour's timetable, which envisaged that the new duty would be introduced in April 2011.



For a link to the Equalities Act 2010 please click [here](#).

Bribery Act to go live in April 2011

The Ministry of Justice has confirmed that the Bribery Act 2010 will come into force in April 2011, rather than October 2010 as originally envisaged. The Government will launch a consultation in September 2010 on the guidance for commercial organisations on what will amount to the "adequate procedures" that they will need to put in place as a defence to the new corporate offence of bribery under the Act. The guidance is expected to be available in final form by early 2011, so that organisations have time to familiarise themselves with it, before the Act goes live.



For a link to the Bribery Act 2010 please click [here](#).

Inebriated claimant fails to sue council for accident occurring on council's land

Occupiers of property owe a duty to take reasonable steps to ensure visitors do not suffer harm or injury whilst present on the land. Visitors include people like customers of a shop, residents of a hotel, workmen whom the occupier invites onto the land. It includes members of the public if they are on the land with the owner's permission. The recent case of *Harvey v Plymouth City Council* (2010) concerned a claim against the council by a person who had suffered an accident whilst on the council's land.

The council owned some waste ground though it was unaware of this until the accident. A perimeter fence enclosed the area. On the other side of the fence was a strip of land of between one to two metres in width. Beyond that was a five metre drop to a supermarket car park. Evidence showed that for years groups of teenagers had gathered on the land to use it as a meeting place.

The accident which led to the court case occurred after dark. The claimant had been drinking and ran onto the land towards the perimeter fence. As it was dark he did not see the fence and he tripped over it at a point where it had been pushed down to a level of only fourteen inches. His momentum carried him forward so that he fell the five metres onto the car park. The court decided the council had not expressly permitted teenagers and others to use the land for recreation. However, by its inaction the council had impliedly permitted their entry onto the land. This meant the council owed a duty to see that they were reasonably safe whilst on the land. However, in this case the court held the council had only consented to the public using the land for "normal recreational activities, carrying normal risks". This did not extend to an inebriated person running across the land late at night. So the council had not breached its legal duty and the claimant's action was dismissed. Though the landowner in this instance was successful in avoiding liability, the case is a reminder of the legal duty under the Occupiers' Liability Act 1957 which landowners owe to visitors to their land.



To read this case please click [here](#).

Council unable to collect late payments of rates

North Somerset v Honda is a case where a rate payer resisted a claim by a local authority for payment of rates after the rating years in question had passed. In this instance the authority served a demand in November 2008 for payment of business rates for the period 2002 to 2007. The regulations provide an authority should serve a notice "on or as soon as practicable after 1 April in the relevant year". The authority conceded its failure to serve the notices at the correct time was owing to its administrative error. The rate payer argued the authority could not now claim payment of the rates. It did so on two grounds: first the regulations did not permit late service of a rate demand; alternatively if late service was possible, an authority could not recover the rates where the payer would suffer hardship or prejudice as a result of the delay. The court decided an authority should not automatically be barred from recovering rates if late in serving a demand. However, there might be instances of a lengthy delay which would prevent recovery ("the first bar"). A rate payer faced with a late demand could claim that it would suffer substantial prejudice as result of the late demand ("the second bar"). The authority would be unable to recover the rates if either the first or the second bar applied though in some instances both might apply.



Please click [here](#) to read this case.

End to car clamping

The law on car clamping on private land is currently governed by case law and by the Security Industry Act. This Act requires individuals who operate car clamping activities to be licensed under the Act. The Home Office has announced that it will end the practice of car clamping as part of the Government's Freedom Bill. Once this becomes law, anyone who clamps a car on private land or arranges for it to be towed away will be subject to fines and penalties. There will be some limited exceptions, for example, the DVLA will continue to have the right to clamp or tow away vehicles as part of its role in tackling non-payment of road fund tax.



For more information please contact [Christopher Thompson](#).

New discrimination provisions

The main provisions of the Equality Act 2010 are due to come into force in October of this year. The Act deals with a wide range of equality and discrimination issues. One aspect of the Act of interest to local authorities is its reversal of the House of Lord's judgment in *Lewisham London Borough Council v Malcolm* (2008). In that case a council flat tenant suffered from schizophrenia, which counts as a disability. He sub-let his flat and the council evicted him. He claimed his illness had caused him to sub-let and the council had discriminated against him by evicting him. The court held that as the council would have evicted an able-bodied tenant who had sub-let, it had not treated the disabled tenant any differently and therefore there had been no discrimination. The new Act reverses this by stating that a person who manages premises (such as a landlord) must not discriminate against a person by evicting him. Discrimination against a disabled person is defined as treating the person "unfavourably because of something arising in consequence of the person's disability". Discrimination will not arise if the landlord can show it did not know and could not reasonably have been expected to know of the disabled person's disability.



For more information please contact [Christopher Thompson](#).

Transparency becoming a clear priority

As the Coalition Government passes the 100 days in office mark, it is clear that achieving greater transparency across all aspects of government (including local government) is amongst their top priorities. In a recent letter to the Cabinet, the Prime Minister stressed the importance of "enabling the public to hold politicians and public bodies to account [in order to] reduce the deficit and deliver better value for money in public spending".

The details of how local governments are to achieve this transparency are as yet not set in stone, but guidance on public procurement transparency for local government is expected soon. However, going back to the Prime Minister's letter, he does discuss some of the types of policies which will be implemented in the near future to achieve the desired transparency. From January 2011 it is proposed that items of spending over £500, and also contract/tender document for a value of over £500, be published so the public can see exactly where and how their money is being spent.

Further to making information available to the public on how their money is being spent, there appears to be a drive to make certain types of data held by government available to the public to view. At the moment this has only been discussed in relation to central government, but local governments should brace themselves. Types of data central government is being compelled to publish include the pay structures of their most senior staff, and organograms of how they



To read the letter please click [here](#).

as an entire organisation are structured.

The Prime Minister categorically states in his letter that this is “just the beginning of the transparency process”, as he encourages a shift in policy to “a presumption in favour of transparency”. The timescale and exact details of what transparency requirements will be imposed on local authorities is as yet unclear, but expect something sooner rather than later.

Mandatory reporting of data breaches

The Information Commissioner's Office (ICO) had expressed its concern at the high level of data being lost – the number of Data Protection Act breaches reported to the ICO reached 1,000 in May of this year. This figure only represents the cases reported to the ICO. It is not currently mandatory for an organisation to disclose breaches of its data security. Damages to an organisation's reputation and the prospect of a potential fine of up to £500,000 are hardly incentives to disclose breaches.

According to a recent article, it now looks like all organisations may, within the next four years, have to notify the ICO, and all individuals affected, of serious breaches relating to personal data. Issues about the mandatory notification procedure which will need to be considered are whether there should be a limit on the fine for a serious breach of data security (many data protection commentators believe this should be limitless) and what will constitute a “serious breach” and therefore trigger the procedure.



To read the article, please click [here](#).

Beware - claims for interest and adjudication - they don't necessarily go together!

The courts (and arbitrators) have the power to decide that a party is entitled to interest on its claim.

An adjudicator does not have this power. In adjudication, a party does not have the right to claim interest unless the contract expressly allows it to do so, or unless there is a specific statutory right.

For example, the JCT forms of contract provide for interest where payment of a certified sum is late. However, there is no express right to interest in the JCT forms where a tribunal decides that a contractor is entitled to loss and expense.

A judge can award interest relating to a loss and expense claim using his or her discretion under section 35A Senior Courts Act 1981. Arbitrators can also award interest at their own discretion pursuant to section 49 of the Arbitration Act 1996. There is no equivalent statutory provision in relation to adjudication.

The recent consultation regarding the proposed changes to the Scheme for Construction Contracts asked the construction industry whether adjudicators should have the discretion to award interest in adjudications brought under the Scheme. This would seem fair. We will have to wait to see whether it is implemented.



For more information please contact [Alexandra Price](#).

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