

Local Authority Newsbites

Updating you on local authority issues



With election fever becoming a distant memory - for our colleagues in local government it may be a case of getting back to business. However, more than ever, there are big changes on the horizon. In this edition we look at the new programme for government and in particular the Government's announcement regarding academies, as well as a range of interesting case law developments including cases on compulsory purchase orders, perpetual licenses and public procurement disputes. We also cover the new consumer code for house builders.

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](mailto:Benjamin.Smith@mills-reeve.com) or e-mail LAlaw@mills-reeve.com.

In this issue:

- [The coalition government's vision for academies](#)
- [R \(on the application of Sainsbury's Supermarkets Ltd\) v Wolverhampton City Council and another \(2010\)](#)
- [Perpetual licences are not forever](#)
- [Disclosure of documents in public procurement disputes](#)
- [Birmingham City Council v Clue & Others \(2010\)](#)
- [Consumer code for home building](#)
- [A new programme for government](#)

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The coalition government's vision for academies

The recent Queen's Speech introduced radical and exciting plans for academies, which are state funded schools outside of local authority control. All schools in England, including primaries, will now be able to apply to become academies. Depending upon the take-up, this could mean thousands of schools leaving council control. Specifically, schools currently judged by Ofsted to be "outstanding" will be able to be fast-tracked to become academies.

Having advised on six per cent of all academies projects in England, the Mills & Reeve academies team is ideally placed to help you through the process. For further information please contact [Stuart Pemble](mailto:Stuart.Pemble@mills-reeve.com) on 0121 456 8335 and [Christian Bull](mailto:Christian.Bull@mills-reeve.com) on 0121 456 8223 or visit www.mills-reeve.com/academies



R (on the application of Sainsbury's Supermarkets Ltd) v Wolverhampton City Council and another (2010)

This case concerned the scope of compulsory purchase powers available to a local planning authority under the Town and Country Planning Act 1990 and whether Wolverhampton City Council's decision to compulsorily purchase land owned by Sainsbury's was lawful.

In brief, Sainsbury's owns the majority of a site on Raglan Street, the remainder being owned (mostly) by Tesco's. Both companies sought outline planning permission to develop the whole site. Tesco's also own the Royal Hospital site nearby, which the City Council are keen to see regenerated.



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

The Supreme Court overturned the decisions of the lower courts and held that the Council were wrong, when considering whether to compulsorily purchase Sainsbury's share of the site to make way for the Tesco's scheme, to take account of the fact that Tesco's scheme would also offer redevelopment of the Royal Hospital site. The benefit (including financial benefits to the Council) of a site being redeveloped which is completely unconnected to the land subject to the Compulsory Purchase Order (CPO) was not a lawful consideration. Lord Collins made it clear there must be a "real" connection between any offsite benefits and the site being compulsorily acquired rather than mere "fanciful and remote" connections.

It is clear, therefore, that local authorities cannot attempt to use CPO powers as a revenue generating power in this way. Benefits accruing from a CPO must clearly be linked back to the land subject to the CPO.

Perpetual licences are not forever

Given that the word "perpetual" can be defined as "eternal; permanent; lasting for eternity" it is certainly arguable that a perpetual licence should last forever. However, in the recent case of *BMS Computer Solutions Limited v AB Agri Limited* (2010) it was held that a perpetual software licence was merely a licence "of indefinite duration" and could be terminated in accordance with other provisions of the relevant licence agreement.

Local authorities should take note as the decision is relevant to any perpetual licence to use intellectual property and highlights the need for clear and unambiguous drafting in licence agreements (and in any amendments to licence agreements).

In the *BMS* case, the parties had entered into a licence agreement in 1994 under which the licensee was granted a non-exclusive licence to use certain software for its business purposes at its premises. This agreement provided that it would terminate in the event that the related software technical support agreement was terminated.

In 2000, the parties agreed to vary the licence agreement extending the licence granted to "a UK-wide perpetual licence."

In 2008, the licensee terminated the software technical support agreement and then asserted that its licence to use the software continued to be effective as it was now a perpetual licence. The licensor argued that termination of the software technical support agreement also terminated the licence. The Court agreed with the licensor's interpretation of the contract, holding if the parties had intended that to delete the termination provisions of the licence agreement, it was natural to suppose that they would have expressly referred to them in the 2000 variation.

Consequently, if you want your perpetual licence (or even your "irrevocable perpetual licence") to last forever, make sure that it is clearly stated in the licence agreement that the licence will survive any termination of the agreement.



To read this judgement, click [here](#).

Disclosure of documents in public procurement disputes

The issue of what types of document should be made available by public sector bodies to the claimant in public procurement disputes arose in the Technology and Construction Court in April 2010. In court proceedings the parties are typically obliged to make available all documents that are relevant to the case. In cases concerning public procurement, such documents can be especially sensitive, particularly where tenders may need to be re-run as a result of the Claimant's challenge. Whilst the decision is linked to the specific facts of the case, some clarity on what the courts (and therefore the parties) may expect is welcome in this fast-developing area of law.



For further information contact [Paul Slinger](#).

Here the local authority argued that certain types of document were sensitive and if disclosed would compromise their legitimate commercial and public interests and create potential difficulties for them in re-running the tender process, with other documents being confidential to the other tendering parties. The court held that these were not valid grounds to allow the authority to prevent the Claimants from inspecting the documents. Certain safeguards were however put in place such that those documents:

- could be redacted to preserve some confidentiality;
- could only be read in the solicitors' office;
- could not be copied;
- and notes could not even be taken during the inspection.

The court is likely to have to provide such specific direction in future cases, but it is worth bearing in mind that as a last resort, if sensitive documents ultimately do have to be disclosed, conditions to their release can be obtained which provide greater protection to the public body than might otherwise be thought to be the case.

Birmingham City Council v Clue & Others (2010)

The Court of Appeal has ruled on the approach that a Local Authority should adopt when an individual who is unlawfully in the UK seeks social services support from it, and instead of providing such support the local authority is minded to pay for the individual to return to his home country.

Ms Clue was a Jamaican national and her oldest daughter was born in Jamaica. Her other three children, born in the UK to a British father, were British. Ms Clue and her eldest daughter were granted leave to enter as visitors for six months. They, illegally, remained in the UK after their visa expired. Several years passed. Ms Clue then applied to the UK Border Agency (UKBA), for indefinite leave to remain on the basis that her eldest child had been living in the UK for more than seven years. The UKBA then had a policy of, generally, not removing families where a child had been in the UK for seven years.

At the time Ms Clue applied to the UKBA she also sought accommodation and financial support from the Council. The Council concluded support was not necessary to avoid a breach of Ms Clue's rights under the European Convention on Human Rights because she and her children could return to live, safely, in Jamaica.

The Court of Appeal did not support the Council's approach. The Court stated that where an individual has an outstanding application for leave to remain (and that application is totally not without merit), the Local Authority should not refuse to provide support if the consequence of not providing support would be that the individual would have to leave the UK, and so forfeit his application for leave to remain.

Health and social care duties towards people subject to immigration control can be complex, with eligibility to some services being heavily restricted. This decision potentially widens the scope of local authorities' duties. This decision will directly affect local authority social services, but NHS bodies will also need to be aware of how this decision will change the scope of social care support which is available to people who are often supported by packages of care from both health and social care bodies.



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

Consumer code for home building

1 April 2010 saw the introduction of the Consumer Code for Home Builders.

It is mandatory for all members of NHBC, Premier Guarantee and LABC New



Home Warranty to comply with the Code, which concerns marketing and after-sales practice in sales of new or newly converted residential premises. Intended to benefit consumers, the Code sets out the information that buyers ought to receive from reservation until occupation. It does not apply to sales of part-exchange properties, self-build homes, or premises bought by corporate bodies as an investment or by registered social landlords. On reserving a flat or plot, homebuyers can now expect to receive details including:

- management costs, such as service charges;
- relevant warranty cover;
- the standard to which the home will be constructed;
- layout, appearance and position;
- any contents included.

Reservation fees will be linked to a set period and buyers advised of the timeframe during which the offer price remains valid. Fees will be repaid if a reservation is cancelled. Following exchange of contracts, builders will be unable to "significantly and substantially" change the design or materials to be used in a new home without consultation because buyers will be able to end the contract if changes are unacceptable to them. Rights to withdraw due to unreasonable delay have also been introduced. Contracts must set out an anticipated date for completion. If the new home is committed to at an early stage of construction, the contract can be ended if the property is not ready within a year of the anticipated date for an apartment, or within six months for a house.

For further information contact [Andrea Newman](#).

A new programme for government

The Government has announced its programme for government in a new document, which sets out an action plan for the next five years in key areas. Of particular interest to local authorities will be:

- proposals to promote the devolution of power and greater financial autonomy to local government and community groups. This will include a review of local government finance;
- cutting local government inspection and abolishing the Comprehensive Area Assessment;
- introducing the option for local authorities to return to committee system;
- abolishing Regional Spatial Strategies and return decision-making powers on housing and planning to local councils;
- abolishing the Infrastructure Planning Commission and replacing it with a new system;
- abolishing the Government Office for London and consider the case for abolishing the remaining Government Offices;
- creating directly elected mayors in the 12 largest English cities, subject to confirmatory referendums and scrutiny by elected councillors; and
- abolishing the Standards Board.

We will continue to monitor and report on these developments in the coming editions of *Newsbites* and our hard copy publication *Public Eye*.



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