# Local Authority Matters

## How significant is **modern slavery** in local authority construction projects?

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# Welcome

**Brexit has been at the forefront of local authority considerations since the UK first voted to leave the EU, and as we have now officially left, the question everyone is asking is – what happens next, Boris?**

The answer in the short term is, not much. The UK will stay in the EU's customs union and single market, freedom of movement for people will stay the same and the EU's top court still has jurisdiction until at least 2021.

However, while the impact to public services is yet to be seen, our readers will no doubt be forward-thinking about a number of skills gaps, migration and resident demographics to changing regulations and the future funding of public services.

With the next government budget announcement expected shortly, funding is (as always!) firmly in the spotlight. Council finances have been closely aligned with economic activity through the retention of business rates and so it is alarming to hear that almost £1bn a year is being lost as a result of tax avoidance schemes. In this edition of Local Authority Matters we explain how the schemes work, the action you can take to safeguard your council's position and the impact on delivery of public services.

The next budget announcement is expected to focus on infrastructure and 'levelling up the regions'. With continued investment in regeneration and an increasing number of construction projects in the pipeline, we look at whether modern day slavery is widespread in the sector and the role of local authorities in tackling it.

In this issue we also shine a spotlight on the role of Pension Trustees, look at the importance of website accessibility for residents, explore carbon reduction incentives and the impact of borough-wide injunctions. With the Government pledging to be carbon neutral by 2050 and many councils announcing more ambitious 2030 targets, the next decade will see a major shift in how we deliver services, retrofit and build council-developed properties and manage vehicle fleets – all against a backdrop of financial uncertainty and advancing technology changes.

Planning and flexibility are key. Delivering both a sustainable and safety-compliant property portfolio, with the ability to flex requirements alongside developing technology, will be front of mind for successful authorities. In this edition we share our thoughts on the major challenges facing local authorities in developing schemes, and take a look at the retrofit of existing facilities – in light of the Grenfell Inquiry – and what action you can take now to address them.

As always, if you have any queries about anything you read here or anything you may hear about in the market, we would like to hear from you.

*Penny Rinta-Suksi*


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# Landlords who avoid business rates costs local authorities

# £1bn a year

**Pressure is mounting for the Treasury to reform the current business rates system. Some councils are losing out on millions of pounds from empty properties and landlords successfully avoiding the payment of business rates.**

by Roisin Gallop
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Worryingly, there has been a recent pattern of court of appeal cases siding against local authorities on business rate avoidance schemes. Landlords have used a specific corporate structure to lease a property, and then enter liquidation to benefit from reliefs against those business rates.

Cases are extremely expensive to fund up to the High Court or Court of Appeal – a further strain on local authority and government spending at a time when budgets are already stretched.

Business rates form a significant proportion of a local authority's income – estimated at £25bn in 2019/20 throughout the UK after taking out all reliefs given. They also estimate that over £1.1bn will be lost due to appeals by businesses.

Taking into account how many similar decisions are going against local authorities, and the significant cost involved to challenge, it is essential to review and consider your position when coming against similar schemes.

## How did this recent scheme work?

Recently, a key example has put further focus on this. The scheme, which enabled landlords to avoid paying premium business rates on empty property, used a special purpose vehicle (SPV) company to lease the property, usually for a fixed term of three years. The SPV took the place of the landlord and became liable for the property's business rates. At the end of the term, the SPV was placed into members voluntary liquidation (MVL). Companies being wound up benefit from certain reliefs; in this case, the automatic exemption of being liable to pay those original business rates.

The lease continued until the end of the three-year period, or until an interested tenant came along who was to occupy the premises.

## The result

The Secretary of State for Business, Energy and Industrial Strategy (SOS) argued that this amounted to insolvency misuse and the companies should be wound up.

In the landlords' defence, they took a transparent approach at trial, acknowledging that the scheme was designed purely as a tax mitigation method and that it was an artificial scheme, but that this did not amount to insolvency misuse.

The scheme was in fact the third revised version after the SOS succeeded in their petition to wind up the company in question. Ultimately, they succeeded in revising the scheme substantially enough that, despite the artificial nature of the scheme or its motive to avoid business rates, the judge determined that the liquidation was a genuine process – the purpose of which was to collect, realise and distribute assets.

## What should local authorities do?

When presented with a similar scheme, it's important to consider your position as a local authority very carefully. At Blake Morgan, we have dedicated experts in the recovery of council tax and national non-domestic rates who would be happy to discuss specific situations.

# It's hotting up – leisure centre contracts in the the era of the climate crisis

Only time will tell whether 2019 was a tipping point for action on the climate crisis, but it was certainly the year the environment became a mainstream issue for households across the UK, as picked up by the party political manifestos.

by Penny Rinta-Suksi
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While Extinction Rebellion sits at the more extreme end of the climate debate, the 'environment' was regularly cited as one of the top five things voters cared about when considering who to vote for in December. This is the first time the environment has been considered a top five issue in an election, and marked a notable shift.

Local authorities also played a critical role in the movement. Since 2015, more than 65 per cent of district, county and unitary authorities have declared a climate emergency in their area, some going above and beyond the government's 2050 net-zero carbon target and declaring a 2030 target instead.

It's too easy to assume the lowest price is right, but tackling the climate crisis means choosing the right design, materials, equipment, services and utility providers.

National legislation will need to shape how the UK responds to the overarching 2050 target, but local initiatives driven by local authorities are critical. Typically, a local authority's carbon impact and emissions base can be enormously varied – from housing to waste, transport and air quality management. However, energy use and emissions arising from owned assets often account for a significant proportion of total impact and cost. Among these assets, leisure centres are likely to be some of the very greatest energy consumers. In the UK, the leisure sector spends upwards of £700m a year on energy bills and emits around 10 million tonnes of carbon. As a result, energy bills are second only to staffing when it comes to total running costs.

**Green incentive**

Naturally, the case for improving the efficiency of local authority leisure facilities is clear – better energy performance equals less cost. But that's an oversimplification and it requires careful planning on the part of a local authority, operating partners and contractors to improve the performance of leisure assets on an ongoing basis, and link these to overarching climate targets.

For example, many leisure facilities are procured, built and operated under 'design, build, operate and maintain' (DBOM) contacts, many of which can last for over 25 years. To put that into context; 25-year contracts coming to an end now pre-date most mobile phones, let alone high-end insulation or solar panels. That means contracts must be developed in such a way that constant renewal is 'priced in' to a contract and an operator – assuming a local authority decides to outsource – is correctly incentivised to prioritise both operational improvement and lower emissions.

Incentivisation is critical in this respect. It's too easy to assume the lowest price is right, but tackling the climate crisis means choosing the right design, materials, equipment, services and utility providers. For example, encouraging an operator to seek out the cheapest energy tariff may run counter to the need to seek out the cleanest energy provider. While there's little doubt that renewable tariffs are increasingly competitive, the reality is that non-renewable sources of energy may well be cheaper still.

Naturally, this introduces risk in the form of more expensive tariffs for an operator. To mitigate this – and incentivise operators – authorities should consider taking on the tariff risk while operators take on the consumption risk. This means operators can be directed to choose the right tariff while remaining focused on keeping consumption costs down.

Similarly, in the case of DBOM contracts, the design and build phases should focus on developing the most efficient buildings possible for the future – prioritising long-term gain over reducing capital expenditure in the short term. Increasingly, we're seeing authorities specifying the upper levels of BREEAM across their portfolios – a tough, but futureproofed target that will ultimately help meet carbon emissions targets and result in cost efficiencies long into the future. The real benefit of that investment for authorities should be captured in both contractual provisions and their own internal contract accounting.

The maintenance aspect of a DBOM contract must also be carefully scrutinised to ensure a constant review of how well a building is performing. Some of this is about careful maintenance of equipment, heating, lighting and staff training, but it is about encouraging new ideas. To do this, some authorities ask their operators to present new ideas to them on a regular basis to encourage innovation and trial new technologies. An authority can then decide whether to invest, but the key advantage is that it avoids freezing out future

The maintenance aspect of a DBOM contract must also be carefully scrutinised to ensure a constant review of how well a building is performing.

technologies and encourages a collaborative approach to meeting climate targets. While one would hope a good relationship will always encourage new ideas, regular reviews can be specified in a contract to invite this open exchange of ideas.

What's perhaps most important though is that long-term contracts – whether DBOM or operations and maintenance – recognise the pressures of a changing climate. A lot can change over the course of more than two decades, and an authority needs to be mindful that a contract provides enough space to allow and incentivise change. Some of this can be achieved through a focus on ongoing cost reduction – usually related to energy consumption – but that alone won't meet tough climate targets. Instead, contracts need to recognise that emissions and material consumption are as important as cost, and build that in.

# How significant is **modern slavery** in local authority construction projects?

Modern Slavery is often a hidden, out-of-sight crime, but one that can affect any aspect of our day-to-day lives – from the clothes we wear, to the buildings we work and live in.

## It is a sad fact that, despite the Act, the trend continues and in particular, within the construction sector.

Understanding the scale of the issue in the UK is very difficult. It's estimated that there were between 10,000 and 13,000 victims in 2013, the last, most thoroughly investigated year.

The government is taking steps to make it more difficult for organised crime to operate. The Modern Slavery Act 2015 has been the biggest step to address this. It consolidates offences related to trafficking and slavery, providing statutory powers and guidance to address the growing number of victims of modern slavery in the UK.

It is a sad fact that, despite the Act, the trend continues and in particular, within the construction sector. Thames Valley Police states, "Criminals quickly realise that they can make substantial income over long periods by exploiting construction workers". This has a significant cost to the UK taxpayer too. The average unit cost of a modern slavery crime is £328,720. This is higher than any other crime apart from homicide.

### So how do criminals get away with this?

Criminals use the lure of well-paid work, cheap transport and high quality accommodation and food to recruit workers, often from deprived parts of the country or abroad, believing they will be able to quickly pay back any costs incurred once working.

Once committed, workers find their accommodation is more expensive, often very low quality with inadequate food and the work pays far less than expected. Workers find themselves spiralling into more and more debt, never being able to clear their connection to those criminals.

The criminals might hold workers' passports and take control of their bank accounts, or force them to agree to their wages being paid into the criminal's account. Criminals have even been known to claim benefits on behalf of the workers, further increasing their income.

One recent example saw a criminal running seven workers, making over £40,000 per month.

### What steps are being taken?

In 2019, a wide-ranging independent review of the Modern Slavery Act was published. It focused on the importance of strengthening transparency in supply chain laws, and provided guidance to over 17,000 UK organisations which fall into the scope of the Act.

One of the largest modern slavery cases was also brought to trial. The criminal gang involved were responsible for trafficking over 400 potential victims from Poland to the UK for forced labour. Led by the West Midlands Police, the gang were brought to justice and victims safeguarded.

### What should you do?

Under the Act, all public authorities have a duty to co-operate with the Commissioner in any way that they consider necessary. A public authority which discloses information to the Commissioner in accordance with the Act does not breach any obligation of confidence owed by the public authority in relation to that information (except in respect of patient information).

A commercial organisation, with turnover above £36m, must prepare a slavery and human trafficking statement for each financial year. The statement should set out the steps the organisation has taken to ensure that slavery and human trafficking is not taking place in any part of its own business or, most importantly, in any of its supply chains.

### Construction contract due diligence

Most contracts include modern slavery provisions. However, making pertinent enquiries at tender stage may uncover organisations that are not complying and highlight potential breaches.

Questions worth including at PQQ stage:

- Do suppliers or contractors have a slavery and human trafficking statement?
- Do they check workers' documents are genuine before taking them on?
- Are their workers aware of their rights in respect of their employment and benefits?
- Do they enquire whether any of their workers live in houses of multiple occupation with other workers and/or travel to work together on buses?
- Do they check whether any of their workers have their wages paid into the same bank account?
- Do they look out for their workers' personal health and welfare in relation to modern slavery? For example, noting workers that: have odd behaviour, don't take leave they are entitled to, have untreated injuries, appear malnourished and/or dehydrated, always have another person speaking on their behalf (perhaps due to language difficulties).

### Maintain awareness

Run training and refresher sessions regularly for your employees and include obligations in your construction contracts for contractors, consultants and sub-contractors/suppliers to do the same.

Our construction experts would be happy to provide support and guidance around modern slavery.

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# ACCESS ALL AREAS?

## Ensuring public sector websites and mobile apps are accessible

by Eve Piffaretti
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**You may be breaking the law if your public sector website or app does not meet accessibility requirements.**

For example, a recent study by Soctim found that four in 10 local council homepages failed basic tests for accessibility.

The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018, implemented the EU Directive on the accessibility of the websites and mobile applications of public sector bodies. The aim is to allow citizens, particularly those with a disability, to gain better access to public services by making their websites and mobile apps more accessible. They look to do this through harmonising varying accessibility standards within the EU, reducing barriers for developers of accessibility-related products and services. The Regulations build on existing obligations under the Equality Act 2010 which imposes duties on service-providers to make reasonable adjustments for people with disabilities. These Regulations establish that a failure to comply with the accessibility requirement in the Regulations is to be treated as a failure to make a reasonable adjustment.

'Accessibility' refers to principles and techniques to follow when designing, building, maintaining and updating websites and mobile applications, in order to make them easy for people to use, especially people with disabilities.

The Regulations require public sector bodies to improve website and mobile app accessibility by:

- meeting the accessibility requirement – this means making the website 'perceivable, operable, understandable and robust' for all users
- publishing and regularly reviewing an accessibility statement for their website and/or mobile apps

### Who is affected?

All public sector bodies have to meet the requirements set out in the Regulations, unless they are exempt. This means that the Regulations cover a broad range of public sector organisations including central and local government, NHS organisations and universities.

Exemptions include:

- non-government organisations and charities – unless they provide services essential to the public, or services that specifically address the needs of, or are meant for, persons with disabilities
- schools or nurseries – except where content relates to essential online administrative functions
- public sector broadcasters and their subsidiaries.

Some types of content are also exempt. This includes:

- live time-based media
- third-party content not funded by, nor under the control of the public sector body concerned
- archives and heritage collections
- contents of intranets and extranets published before 23 September 2019 (until such websites undergo a substantial revision on or after that date)

Even if exempt from the Regulations, or if meeting them would be a disproportionate burden, under the Equality Act 2010, public sector bodies are still required to make reasonable adjustments for people with disabilities when they're needed.

Although not exempt from the Regulations, public sector bodies may also not have to fully meet their requirements if doing so would be a 'disproportionate burden'.

A public sector body will be responsible for ensuring their website and/or mobile apps meet accessibility requirements, even if they've outsourced their website or application to a supplier. The Government Digital Service (GDS) recommends that an ITT should include:

"Requirements about meeting WCAG 2.1 AA and publishing Accessibility Statements for websites and mobile apps. Suppliers could be asked to provide evidence of meeting the standard in previous projects, their approach to accessibility testing, and integration of accessibility testing in the software release process."

**When?**

- **Websites created on or after 23 Sept 2018, needed to be accessible by 23 Sept 2019**
- **Websites published before 23 Sept 2018 have until 23 Sept 2020 to comply**
- **Mobile applications must be accessible by 23 June 2021**

The Regulations do not deal with circumstances whereby a website is substantially revised or updated after its original publication date. However, government guidance indicates:

"If you have made substantial changes to the code, for example to create new features, or if you create a subdomain with its own distinct codebase, it's likely that these will need to be fully accessible from 23 September 2019."

### The accessibility requirement:

This means the requirement to make a website or mobile app accessible by making it perceivable, operable, understandable and robust. Public sector bodies must comply with the accessibility requirement unless doing so would be a disproportionate burden.

A website and/or mobile app is presumed to meet accessibility requirements where the public sector body has met the international web content accessibility standard, Web Content Accessibility Guidelines, WCAG 2.1 AA standard or its European equivalent, EN301 549.

**Although not exempt from the Regulations, public sector bodies may also not have to fully meet their requirements if doing so would be a 'disproportionate burden'.**

An assessment must be performed of the extent to which compliance with the accessibility requirement imposes a disproportionate burden.
This assessment must take account of relevant circumstances, including:

(a) the size, resources and nature of the public sector body

(b) the estimated costs and benefits for the public sector body in relation to the estimated benefits for persons with disabilities, taking into account the frequency and duration of use of the specific website or mobile app

If, following the assessment, a public sector body determines that compliance with the accessibility requirement would impose a disproportionate burden, it must:

- explain in its accessibility statement the parts of the accessibility requirement that could not be complied with
- where appropriate, provide accessible alternatives to documents held by that public sector body that are not available on their website or mobile app

### Accessibility statement:

The statement must be in an accessible format and published on the public body's website. For an application, it should be available either on the website or alongside other information available when downloading the app. The statement must also include:

- An explanation of any content which is not accessible and the reasons why
- Where appropriate, a description of accessible alternatives
- A description of, and a link to, a contact form that enables a person to notify the public sector body of a failure to meet the accessibility requirement and request details for information which is excluded under the Regulations
- A link to the enforcement procedure if they are not content with response received from the public sector body

### Enforcement and monitoring:

The Equality and Human Rights Commission (EHRC) is responsible for enforcing the Regulations using its powers of enforcement in respect of compliance with the reasonable adjustment duty imposed on service providers.

There is also a need to ensure compliance with the requirement for public sector bodies to provide an accessibility statement and keep it under regular review. The Minister for the cabinet office can issue you a 28-day notice asking for evidence to demonstrate compliance. Failure to respond or failing to demonstrate compliance will result in a determination that you've failed to comply. There is opportunity for you to request a review, however where the determination is upheld, the Minister will publish the name of the public sector body you represent.

### Actions for public sector bodies to take:

- Assess whether the Regulations apply to you
- Check your website or mobile app for accessibility problems by:
  - Doing a detailed check yourself
  - Instructing a third party to do a detailed check for you
  - Doing a basic check if a detailed WCAG 2.1 check is a disproportionate burden
- Make a plan to fix any accessibility problems you find
  - Assess whether you have any content types which are exempt
- Prepare and publish an accessibility statement that explains how accessible your website or mobile app is
- Make sure new features are accessible.

# The importance of pension trustee responsibilities



by Gillian McCue
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Anyone can become a victim of a pension scam, and often the impact of those hit can be life-changing. On average, victims lose £91,000 each to fraudsters, with some having lost over £1m. Once the money is gone, it's unlikely to be recovered.

## ...the Pensions Ombudsman can come down hard on those in a position of responsibility.

Pension fund trustees and administrators play an important role to educate and protect investors. Understanding what the warning signs are and how to avoid getting caught up in a scam is essential.

But often, trustees can be targeted and mistakenly invest members' savings into a scam scheme, and the Pensions Ombudsman can come down hard on those in a position of responsibility. This makes it imperative that trustees carry out detailed due diligence when reinvesting in new schemes.

Even when individuals making transfers believe they have carried out all necessary steps, informed the individual in question and have signed authority from them, the responsibility is still firmly in their court. This is what Hampshire County Council discovered recently.

### What happened to Hampshire County Council?

An individual who we will refer to as Mrs H, successfully won a Pensions Ombudsman ruling against Hampshire Country Council for failing to carry out proper due diligence before transferring her benefits to The Focusplay Retirement Benefits Scheme, which turned out to be a scam scheme.

This is despite doing so on Mrs H's request and having a signed declaration stating: "I have read the leaflet from the Pensions Advisory Service entitled 'Predators stalk your pension'... I understand that it is my responsibility to ensure the benefits the transfer value buys in the new scheme are suitable for me and my family and that no responsibility for this rests with the [Hampshire Pension Fund],... I will have no further benefits from the [Hampshire Pension Fund] in respect of the rights to which the transfer value relates."

The Pensions Ombudsman decided that there was maladministration on the part of the Council because they:

- were not aware of the discretion to refuse the transfer request (because it was not a "statutory" request on the part of Mrs H – on the basis she did not have any "earnings" within the meaning of the transfer legislation)
- did not carry out due diligence on the scam arrangement
- did not engage directly with Mrs H regarding the concerns it should have had with her transfer request, had the Council properly assessed it.

The Ombudsman accepted evidence that Mrs H was not financially aware.

### Was it clear?

No, not necessarily. It was clear the Ombudsman expected the Council to take a strong approach on due diligence and advise Mrs H on the risks and activity, and stop her, even if this was against her requests.

Reasoning behind Ombudsman's decision:

- Mrs H did not have an absolute right to transfer her benefits.
- Mrs H had been transferring from one occupational pension scheme to another. Under the relevant legislation, she could only take a cash equivalent transfer value from an occupational pension scheme to acquire transfer credits in the new arrangement. Transfer credits were defined in the legislation as rights allowed to an "earner". The earnings did not need to come from the scheme's principal employer, but there had to be some earnings from employment.
- Mrs H had had no employment earnings. She had not been an "earner" and was unable to obtain transfer credits in the Scheme. Instead, the Council had a discretion whether to allow a transfer.
- As Mrs H was already a deferred pensioner, having left employment, and was aged 59, it should have been clear to the Council that there might be an earnings problem. It should therefore have made enquiries of Mrs H before deciding whether to allow the transfer, but it failed to do so.

The Determination highlights the importance of detailed due diligence on the part of trustees of pension schemes. Trustees requiring more time in order to carry out due diligence can request an extension of the time limit for processing even a statutory transfer request.

Helpfully, The Pensions Regulator has published updated (11 November 2019) regulatory guidance. There is also a pensions industry voluntary code of good practice on combating pension scams, which was published on 16 March 2015 at www.combatingpensionscams.org.uk

If you need guidance or help around protecting from potential scams, our pensions team would be happy to chat more.

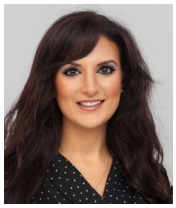
**A bit about the background:**

- **Mrs H became eligible to join the LGPS in 1989 but did not actually join it until 2002. She became a deferred member in 2007 when her local government employment ended.**
- **In 2013, by which time Mrs H was aged 59, looking after her elderly mother and living on state benefits, she received a cold call from Pension Matters Associates Ltd (PMA). Mrs H allowed PMA to review her pension arrangements.**
- **In August 2013, PMA contacted the Council seeking information about her pension benefits. PMA's letterhead did not specify that it was a regulated financial adviser.**
- **The Council gave PMA the information and sent Mrs H a copy of the Pensions Regulator's action pack on pension fraud (the Scorpion warning).**
- **In September 2013, Mrs H made a request for her benefits to be transferred from her LGPS fund to the Focusplay Retirement Benefits Scheme. Mrs H completed a signed declaration outlined above.**

In the information provided to the Council from PMA, it was stated that Focusplay Limited was incorporated in 1999, its principal activity was steel stockholding in Warrington and its pension scheme was a contracted-in defined contribution occupational pension scheme registered with HMRC for tax relief purposes. The Council noted that the Focusplay scheme was only set up in May 2013 but also, "... There is no evidence of actual illegal activity and the member has declared on the discharge form."

# Beware ‘boroughwide’ injunctions


In the case of Mayor and Burgess of the London Borough of Bromley v Persons Unknown and others [2020] EWCA Civ 12 (the Bromley Case), the Court of Appeal held that the High Court correctly decided that a final ‘boroughwide’ injunction prohibiting the gypsy and traveller community (GTC) encampments was disproportionate.



by Erina Kourtis
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**Obtaining injunctions successfully**

Following the Bromley Case, in order for a public authority to obtain an injunction from court, there are certain requirements which must be met. Therefore, if a public authority is seeking to apply for an injunction against 'persons unknown' who include persons from the GTC it should first:

- Ensure that it has engaged with the GTC
- Carry out a substantive equality impact assessment (EIA) and welfare assessment
- Seek to provide an alternative site that the GTC can move to
- Limit the injunction to particularly vulnerable sites and avoid broad 'boroughwide' injunctions
- Limit the injunction to a period of one year with a review after that one-year period
- Gather evidence of criminal conduct or likely risks to health and safety as a result of the GTC encampment
- Ensure that effective notice of the injunction to persons unknown can be given
- The terms of the injunction must be clear so that the persons unknown know what they must not do

If the above is not complied with, it is very likely that any injunction application would be refused.

**Tensions: Rights of the GTC vs public authorities' rights under the common law of trespass**

Where a public authority's site is being occupied by the GTC, a number of factors must be considered before seeking an injunction to move the GTC to another location and/or prevent them from returning to the same site. This is because the GTC is a protected minority under the Equality Act 2010, as public authorities must have due regard to the need to eliminate discrimination, harassment and victimisation. Additionally, the GTC is protected by Article 8 of the European Convention of Human Rights, as case law has found that the occupation of a caravan was an integral part of the GTC's ethnic identity and right to respect for private and family life.

Tensions therefore clearly exist between these rights of the GTC and the rights of public authorities to seek to regain occupation of their sites where such sites are being trespassed. These tensions were considered in the Bromley Case.

**The Facts**

The Bromley Case involved an application by the London Borough of Bromley for an injunction which prevented the GTC from occupying all public spaces in the borough of Bromley including parks, car parks, recreation grounds and other open spaces (excluding highways and cemeteries).

**The Decision**

The High Court refused the London Borough of Bromley's application for a final injunction because it considered the injunction to be disproportionate. The Court of Appeal agreed with this decision because:

- The geographical range of the injunction was very broad as it was 'boroughwide' and covered all public spaces in the borough
- There was no substantial evidence of any local criminality committed by the GTC
- The London Borough of Bromley had not proposed any alternative site for the GTC. (If every public authority obtained an injunction, the GTC would have nowhere to go.)

The GTC is a protected minority under the Equality Act 2010 as public authorities must have due regard to the need to eliminate discrimination, harassment and victimisation.

- The London Borough of Bromley had not conducted an EIA and failed to comply with its public authority duty to have due regard to eliminate discrimination, harassment and victimisation
- The five-year term to the injunction proposed was too long
- The London Borough of Bromley did not show that the injunction would not cut across permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 which allowed limited occupation of land by caravans

In light of the decision and the guidance provided by the court, it seems that the court is looking to find a balance between the rights of the GTC and also granting injunctions only where it considers that an injunction would be proportionate in the circumstances. It is therefore important that public authorities take the steps highlighted above before seeking an injunction, to ensure that the court would consider such an injunction as being proportionate.

# LA Spotlight

**Our team of local authority experts share some of our recent projects and successes**

## Blake Morgan team take lead on High Court cladding issues

Following the Grenfell tragedy, local authorities have received a series of Government Advisory notes on external facades and cladding – including changes to the Building Regulations and the reports of Dame Hackett and the Inquiry Phase 1. For those responsible for buildings management there are complex and involved Health and Safety issues to consider.

With recent media headlines suggesting that there are more than 80 social sector residential buildings with ACM cladding systems that are unlikely to meet today's building relations, this continues to be a very real and significant concern for local authorities.

So what action can be taken? In terms of looking at claims against other parties, there is a difference to be recognised between analysis of whether a building met Building Regulations at the time of build, and whether it meets current regulations and/or is safe to be occupied. It is important to obtain the right expert reportage and investigate the real issues with a building. Our expert construction lawyers have seen builds which are not actually in accordance with the design drawings; use different materials in whole or part to that planned/designed; feature poor construction; or omit crucial elements such as fire breaks/barriers and firestopping.

Our expert cladding specialists act for a wide range of private and public sector clients including social housing providers and local authorities. We help to identify cladding issues and put relevant, realistic solutions in place to meet their challenges. The team have a strong reputation for advising on cladding issues, having already successfully resolved two Court actions and a number of other claims through adjudication. They are also acting on six current cases in the High Court.

Our team of cladding legal specialists progress residential claims against NHBC, Premier and BLP under insurance-backed warranties, and have secured coverage for the cost of rectification of the cladding for clients under such policies. Our experts have been involved in material and cladding system tests, procuring suitable replacement schemes and putting contracts in place with a range of advisers who have been able to maintain insurance to carry out advisory work in this field.

We understand the sensitivities facing our clients and made an early decision not to act for contractors/sub-contractors or consultants in relation to this type of work, in order to ensure that the building owners and occupiers we work with are absolutely confident that we are actively avoiding conflicts, perceived or actual.

As an acknowledged leader in this work, Blake Morgan partner James Bessey was asked by the BBC to share his thoughts on their latest Grenfell podcast. You can listen here https://www.bbc.co.uk/sounds/play/p082mwfc

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So what action can be taken? In terms of looking at claims against other parties, there is a difference to be recognised between analysis of whether a building met Building Regulations at the time of build and whether it meets current regulations and/or is safe to be occupied.

# Blake Morgan supports Reading Council in appointing a new developer and operator for its leisure service

Reading councillors are driving forward plans to transform their leisure offering to residents, having appointed Greenwich Leisure Limited as the preferred bidder to design, build, operate and maintain Reading's leisure service. The contract – which will last 25 years – comes as part of the council's commitment to invest more than £40 million in new and existing facilities across Reading, including two major swimming facilities at Palmer Park and Rivermead as well as wholesale upgrades to existing services.

Blake Morgan's Local Authority team provided advice to Reading Council on the procurement of the new provider and oversaw procurement and contract development. The firm is now advising on the next steps to contract completion, to enable the mobilisation period in spring 2020.

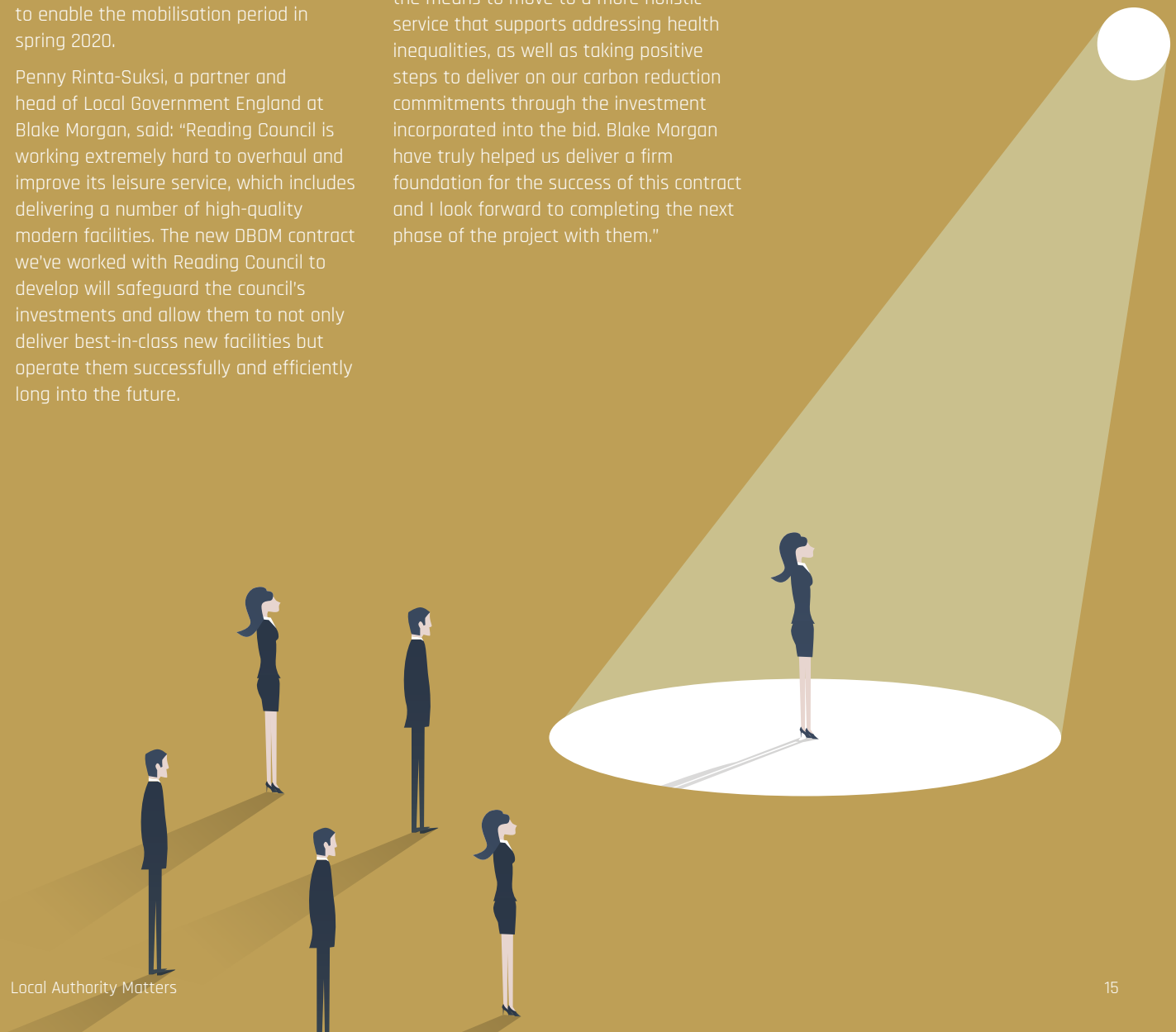
Penny Rinta-Suksi, a partner and head of Local Government England at Blake Morgan, said: "Reading Council is working extremely hard to overhaul and improve its leisure service, which includes delivering a number of high-quality modern facilities. The new DBOM contract we've worked with Reading Council to develop will safeguard the council's investments and allow them to not only deliver best-in-class new facilities but operate them successfully and efficiently long into the future.

"We're delighted to have worked with the council on the procurement process to date and pleased that this has resulted in such a positive outcome. We very much hope that Greenwich Leisure delivers on Reading Council's vision for leisure services locally."

Kate Graefe, the Assistant Director of Procurement and Contracts at Reading Council, said: "The experience and expertise of Blake Morgan in this marketplace has been a core component in enabling the Council to move to the next phase of delivering on our promise to residents to make a significant improvement in the quality of our leisure offer across the borough.

"We can now be confident we have the means to move to a more holistic service that supports addressing health inequalities, as well as taking positive steps to deliver on our carbon reduction commitments through the investment incorporated into the bid. Blake Morgan have truly helped us deliver a firm foundation for the success of this contract and I look forward to completing the next phase of the project with them."

"Blake Morgan have truly helped us deliver a firm foundation for the success of this contract and I look forward to completing the next phase of the project with them."



# Relevant, real-world legal solutions

## Local government is facing a complex set of challenges – changing legislation, spending cuts and an increased demand for services.

At Blake Morgan, our local government lawyers understand the political and financial pressures facing your organisation and provide a full range of legal services related to central, devolved and local government.

Our cross-departmental team are deeply immersed in and understand the policies and procedures of local authorities and have a solid track record in advising on policy-making and constitutional matters.

From complex procurement matters to service restructuring, and from planning to GDPR, contact us today to find out how one of our experts can help you.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