

Scala

Summer 2005

news

Construction & architecture news for the public sector



in this issue: Loddon High School Norfolk, Temporary staff in the public sector, Gershon strikes back, How great places boost public value, Harbourmaster's Office New Quay, Fire safety and value for money, No hiding place for directors, Corporate responsibility: manslaughter and killing, Tsunami Sri Lanka



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Editorial comments



'Watch out, there's an ASBO about!'

The construction industry regularly tops the complaints list for poor quality of work and the Federation of Master Builders have proposed extending Anti-Social Behaviour Orders to cover rogue traders. Andrew Large, Director of External Affairs for the FMB, has said "There is no reason why other professions should not be covered. It seems to me that if you want to do something to protect the public the Asbos are an effective way of doing it."

ASBO's may not be a universal cure, but the frustrations of those seeking quality in construction are similar to those on the receiving end of the problems caused by anti-social behaviour and they want something done about it. SCALA regularly promotes good practice through our joint workshops with the CIPFA CPS Forum and our other partners, such as the Local Government Task Force whose newsletter is enclosed with **Scalanews**. SCALA believes that initiatives such as these, which explain techniques such as procurement and the value of the supply chain, are the best way to improve quality in public sector construction and architecture.

An even more alarming statistic than the annual 100,000 complaints about shoddy work are the 620 people killed and the 60,177 who suffered major injury at the workplace between April 2002 and March 2004. With the average fine just a few thousand pounds in the few cases where convictions were achieved there is growing pressure to reduce the pain and suffering caused. This edition examines the issues and comments on the draft Corporate Manslaughter Bill out for consultation until 12 June.

Our Association for Project Safety colleagues, have contributed an article on the proposed corporate manslaughter legislation. Many readers will be aware of the issues following the Barrow case, involving Legionnaires Disease, as well as ferry and rail safety prosecutions. The issues are summarised in our regular Legal Beagle article, which includes a paper

on corporate manslaughter by Malcolm Williams, Head of Property Services at Worcestershire County Council.

Fire safety is closely related to this topic and we are fortunate in having an article by Ken Simmons, an independent fire safety consultant, while Mike Terry, Fire Safety and Access Manager at Calderdale MBC, has submitted guidance on 'Fire evacuation for all' available on our website. Our President, Mukund Patel, is responsible for fire safety guidance in his role at the DfES and he looks at a risk based solution to the problem in his President's message.

We are grateful to our partners from Hays Architecture, CABE and CIPFA for their contributions helping to improve quality and the complex range of services provided by our readers. Our events are part of this process, such as the recent Study Day on 'Designing for Children and Young People' held at the inspirational National College for School Leadership in Nottingham. Attended by 140 delegates it provided invaluable guidance on the effective use of the increased resources available in education, health and family support services.

Details of SCALA 2005 in Liverpool on 3 and 4 November will be in the Autumn edition which has PFI as the magazine theme.

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Local Government Task Force



Innovation Best Practice Productivity



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Cover picture: Loddon High School, Norfolk

4 Fire safety - a risk based approach



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Sadly, fires in schools, in particular arson fires, continue to be a problem. ODPM reports that 'the number of arson attacks on schools has increased steadily over the years. Arson is now the largest single cause of fires in schools in England, with over 60% of fires being classified as deliberate'.

Recent research by the Association of British Insurers and the London Fire and Emergency Planning Authority indicates that as many as one in eight schools nationally suffer some form of arson attack each year. Between 1997 and 2001 there were on average 2,119 serious fires in educational establishments in United Kingdom of which 1,564 per year occurred in schools with total loss of nearly £70 million.

We urgently need to greatly reduce the risk of fires occurring in schools and, when a fire starts, reduce the risk of it spreading. Whilst our primary concern must be for the safety of the users of schools buildings, a fire in a school can have very serious impact on children's education through the disruption that any remedial work causes and, more importantly, through loss of coursework. Arson can be very upsetting for the pupils and the local community. The way to reduce the risk of fire and reduce the loss, if it does start, is through good design, increased security and better management.

Since April 2001, following withdrawal of **Building Bulletin 7**, all new building work in schools has been subject to approval under the Building Regulations. These regulations used to be prescriptive, but are now performance based or functional. If a building is designed in accordance with Approved Document B (Fire Safety) a satisfactory standard of life safety will be achieved with a minimum of property protection.

The *Workplace (Health, Safety and Welfare) Regulations 1992* put the onus of occupant safety on the employer. Within schools that are maintained by the LEAs responsibility for fire safety is usually shared between the authority, the governing body and the head teacher.

All three parties must ensure that schools premises comply with the Regulation 17 of the Education (School Premises) Regulations 1999. This requires that every part of the building, and of the land provided for a school, shall be such that the safe escape of occupants in case of fire is reasonably assured. Particular regard must be given to:

- The likely rate at which the flames will spread.
- Resistance of the structure to the fire.
- The means of escape in case of fire.

As we begin the programme to rebuild and refurbish the nations schools it is important that our school buildings are safe for our pupils and other users, but also that the fire safety strategy and systems limit the damage to the buildings. The best way to determine the appropriate solution is to undertake a risk assessment taking into account various threats faced by a particular school before deciding the fire safety approach. Building Regulations allow such a risk based approach to fire safety engineering, and your Building Control officer would normally accept either a passive structural approach to restrict spread of fire or one combined with a suppression system (sprinkler system). Which approach is best for a particular a school would very much depend on the risks faced by the school.

It is often suggested that all new schools should have sprinkler systems. There is no sound basis for such a recommendation to cover all new schools. The need of a sprinkler system must be clearly established using a risk assessment approach. In some parts of the country where there is high risk of arson a sprinkler system to BS 12845 may well be a good investment. Sprinklers are known to be highly effective in controlling a fire while it is still small. ▶

However, we need to recognise that there is a cost implication; a sprinkler system in a new building can cost 5-10% of the building cost. For existing buildings the cost of installing sprinklers is higher. Existing schools that are at risk might benefit more by structural improvements like installation of fire breaks in ceiling voids.

For most schools passive structural measures offer sufficient protection against the spread of fire. DfES cost guidelines allow for the buildings to be designed to Building Regulations standard. That means that the new schools can have either a fire safety based on passive structural measures, or where an LEA considers that a school does need sprinklers, usually on basis of a risk assessment, their costs may be included as an abnormal on the cost plan. It is important that the designer chooses the correct solution based on the risks that the school faces. Such a risk analysis will also identify management issues that the school will need to address.

DfES will later this year publish **Building Bulletin 100**, 'Designing and Managing against the Risk of Fire in Schools'. ■

Meeting with RIBA



SCALA President Mukund Patel (centre) with Vice President Steve George and Forum Chairman Graham Morley (to his right) had a meeting with RIBA President George Ferguson and Chief Executive Richard Hastilow. Mukund Patel said after the meeting, *"It was very useful and constructive meeting. We have agreed to work together at national and regional levels and to meet regularly on a six monthly basis."*

"It is important that the designer chooses the correct solution based on the risks that the school faces."

6 Loddon High School classroom of the future



George Roberts,
Architectural Director
of NPS Property
Consultants Ltd.,
receiving the Highly
Commended Award
at the SCALA 2004
Civic Building of the
Year Award in London
on 12 November at
SCALA 2004.

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NPS Property Consultants Ltd is a multi-discipline consultancy delivering a comprehensive range of professional services to both public and private sector clients throughout the United Kingdom. The Business is directed from the head office in Norwich and services are delivered on a local basis from a network of offices in Norfolk, Suffolk, Essex, East Sussex, Hampton Court, Luton, Wigan and Wakefield.

Norfolk is one of the largest local education authorities in the UK and has 58% of its population living in a rural setting. It supports a large number of small, rural schools with less than 100 children on roll and has relatively high transport costs.

Norfolk recognises and values the important and increasing contribution small rural schools make to the wider community. The local village school is often the focus for not only learning but also social and recreational activities.

The rural isolation and small size of village schools create a range of issues. Broadening and enhancing educational experiences and opportunities for pupils, teaching staff and the wider community are key challenges. When the then Department for Education and Employment proposed the 'Classrooms for the Future' initiative Norfolk County Council and NPS Property Consultants decided to construct a bid for funding which would address issues of learning, communication and sustainability in a rural context.


In February 2001 Norfolk County Council was informed that it had been successful in securing funding to support its bid to undertake three pilot projects, which would explore the themes of rural isolation and sustainable construction. Each project would specifically explore and develop innovative solutions to the challenge of providing and sustaining the educational needs of children attending small rural schools.

Projects were planned and have been completed at Hevingham and Thurlton Primary Schools as well as Loddon Hobart High School. The 'Classrooms of the Future' at the primary schools were elements of larger projects of extension and replacement and part of the Council's Capital Programme. The project at Loddon was planned and completed as a freestanding building.

Hobart High School was invited to take part as they had established links with schools in France and Germany and wished to enhance its existing reputation in the improvement of language skills. It was also prepared and enthusiastic to develop high-tech communication networks with the Primary Schools. The idea of sharing resources and skills

using the power of information technology to improve the quality of learning for pupils and the wider rural community was central to the aims of the project.

A range of sustainable strategies for construction and environmental control was investigated with some ideas common to all projects whilst others were utilised where the budget and local circumstances were favourable. For example: all projects were designed to significantly reduce the use of energy for space and water heating, but a heat pump space heating system utilising ground heat extraction was used only in the project at Hevingham. Similarly a demonstration wind turbine for the generation of electricity was only provided at Thurlton. In this way the client and consultant team was able to explore and test differing technologies whilst ensuring the three projects remained affordable.

The Education professionals working with the schools, NPS and the Information Technology specialists, Pro-Solv Consultancy Services, developed the use of wireless systems to provide the communication and learning benefits of IT without the usual and inflexible consequences associated with computer hardware and workstation furniture. At Hobart High School each pupil using the 'Classroom' has been provided 



View of classrooms



North elevation

with a hand held computer tablet that can be used as an information processor and as a communication aid to interact with other pupils and the teacher. Pupil work undertaken on hand held tablets can be displayed on interactive white boards or sent to a printer. The building security system monitors the location and movement of tablets.

The Hobart High School is located in the small country town of Loddon, some ten miles to the south of Norwich. The School attracts approximately 600 students and its buildings date from the 1950s. The 'Classroom of the Future' is sited close to but detached from the main school buildings and adjoins the school sports field in a location, which would enable the future development of a separate community entrance.

A central idea, which underscored the Loddon brief, was the provision of a large and flexible space in which class groups of different sizes could work effectively. The use of video conferencing to export or import teaching skills and to share learning experiences was central to the aims of the overall educational strategy. The Loddon unit was designed as the core facility and therefore has additional accommodation to reflect its importance and role.

Accommodation constructed includes:


- A main entrance with sufficient space for small exhibitions and facilities for serving coffee.
- A multi use staff office.
- A public and staff shared work area with six workstations providing an 'on line' library.
- All ancillary accommodation including cloaks and toilet facilities.
- A 'Classroom' of 130m² with capacity for up to sixty students provides opportunities for formal and informal learning and video conferencing. Dividing folding walls allow this space to be reorganised to create smaller rooms providing flexible accommodation for groups of fifteen, thirty, forty-five and sixty.

- Sliding glazed units in the external wall provide a direct access from the internal 'Classroom' to the external paved terrace. A pergola defines the space and provides shade from summer sun.

The arrangement of the building is relatively simple comprising two elements, the 'Classroom' and the support spaces. The two plan elements have been laterally displaced to provide articulation and tension. The building was sited and orientated to provide the 'Classroom' with a south facing aspect and to minimise heat loss. A 'glazed shaft' was incorporated to provide daylight and fresh air for the main circulation area behind the 'Classroom'.

A circular element was introduced into the design plan to create added visual impact and to explore the sculptural qualities of the rendered external wall finish. The form and in particular the section of the building reinforces the articulation of the two elements of accommodation and provides the benefit of enhanced daylight and cross ventilation for the 'Classroom'.

The main entrance was conceived and designed as a 'glass pavilion' and provides a welcoming but secure access to the building. At night its transparency provides a striking contrast to the more solid general mass of the building and a focus for pedestrians arriving from the school. White STO render has been used extensively as the external wall finish for the support accommodation and contrasts in colour and texture with the cedar louvre cladding selected for the 'Classroom'.

The building structure specified was timber frame as this provided opportunities to assess the benefits of off-site prefabrication. A frame, utilising Kerto timber posts and laminated timber beams as primary elements, was designed to provide a simple but elegant structure. Prefabricated timber wall and roof cassettes using Masonite beams as studs were used throughout the building. 

"A central idea, which underscored the Loddon brief, was the provision of a large and flexible space..."

8 Loddon High School classroom of the future

“The building has been well received by the School and the local community...”



Entrance pavilion

Two roofing systems were adopted to enhance contrast in form and emphasise the 'Classroom'. The 'Classroom' has a pitched mill finish aluminium standing seam roof and the support areas benefit from a Sedum planted flat roof. Rainwater is collected from the pitched roof and is used to supply flushing systems in the lavatory areas. Other water conservation devices have been installed including the installation in toilet areas of electric sensor operated air entraining taps.

All architectural detailing and selection of materials and finishes associated with the external envelope have been carefully managed to minimise environmental impact and future maintenance. This decision, whilst financially sound in the long-term, increased initial construction costs significantly.

The external envelope was 'super insulated' to minimise the requirements for space heating plant and energy consumption in use. Very low u-values were achieved:

- Floor (average) = $0.25\text{w/m}^2/\text{C}$
- External Walls (average inc. glazing) = $0.23\text{w/m}^2/\text{C}$
- Roof (average) = $0.18\text{w/m}^2/\text{C}$

The external walls are of a vapour permeable 'breathing construction' and are insulated using WarmCell 500 recycled paper waste.

Very little heat is lost through the external envelope and therefore the internal environment can be maintained at comfortable temperatures using a small domestic scale gas fired condensing boiler and an under floor pumped water heat distribution system. The boiler also provides hot water for the building.

A number of features that were originally considered for the building were either unnecessary or unaffordable and were either omitted altogether or used more appropriately on one of the other 'Classroom of the Future' projects. They include:

- Prefabricated foundations and ground slab.
- Heat pump heating and cooling.
- Solar water heating.
- Heat recovery.
- External glazed covered space downgraded to pergola.
- Photovoltaic roof panels.

The building has been well received by the School and the local community and was awarded a design commendation by South Norfolk District Council.

The project team learnt a great deal from undertaking this and the other projects, which were completed in Norfolk as part of the 'Classroom of the Future' Initiative. NPS is using the lessons learnt to inform the design process and benefit other projects in Norfolk and elsewhere.

Credits

Consultants:

Lead Designer: Mark Kenney,
NPS Property Consultants

Project Architect: Iain Watson,
NPS Property Consultants

Mechanical Services Engineer: Shaun Gregory,
Building Services

Design Electrical Services Engineer:
Andy Holmes, NPS Property Consultants

Structural Engineer: Paddy Dutton, Symonds

Quantity Surveyor: Trevor Woodcock,
Allman Woodcock

Clerk of Works: Ray Harris, NPS Property
Consultants

Services Clerk of Works: Grahame Marshall,
NPS Property Consultants

Contractors

Principal Contractor:
RG Carter Ltd., Norwich



When my bionic hips failed to set the courts metal detector alarm system off, I knew that the day would end in tears. Ever since I had my hips resurfaced with titanium the only downside has been the never-ending sounding of bells when I go through a metal detector. But not this day.

When I had what I refer to as a 'proper job', one that most of you would recognise as gainful local authority employment, almost my final act was to listen whilst the judge at Isleworth Crown Court passed sentence. There was I, the head of property services, listening to why we had failed. How invidious it was that as a direct result of funding shortages, a maintenance failing now led to the authority having its coffers still further depleted by the imposition of a fine! And all of this following on from having previously been chastened by listening to three magistrates telling me that they regarded the issue as being so serious that they felt their powers insufficient. Hence our appearance in the Crown Court.

How did we get there? Some children in a school playground playing football. A wayward kick struck a hopper head. The hopper head, a substantial piece of cast-iron ware fell, striking a pupil on the head. Through great fortune the boy survived and made a full recovery, but it was touch and go for some time.

What had we done wrong? The HSE investigation revealed that at some time in the past the backboard had been replaced using inadequate fixings - too short. No-one ever knew when this had been done. Almost certainly well before my reign, but now I was the one responsible. What was the most idiosyncratic part was that I personally was exonerated, and it was my own reports that were used by the HSE to pursue my authority. As a dutiful chief officer I had on a number of occasions reported to the appropriate committee that they were failing to properly maintain their buildings, and that as a consequence, should health and safety become imperilled then I would have no alternative but to close the building in question. Quite right said the HSE, so why didn't you close this school before the tumbling hopper head almost did irreparable damage?

Because I didn't know it was faulty was my reply.

Why not asked the inspector? Didn't you have a regular programme of inspections in place?

Yes said I, but how could they ascertain that the fixings used were inadequate without testing to destruction?

Tricky one this, surely the answer is that your quality procedures should have ensured that the correct fixings were used.

Now at this point I need to tell you that I haven't told you the whole story, because the rainwater pipe to which the hopper head discharged had, again at some indeterminate time, been replaced with UPVC. On top of that the rectangular spigot had been jammed into a circular down-pipe. Yes I know that's just asking for trouble leaving a cast iron fitting perilously perched on top of a wobbly piece of plastic. Surely our regular inspections had indicated this potential hazard?

Well no they hadn't.

Game, set and match to the HSE.

So, ultimately it wasn't the hopelessly inadequate maintenance budget that was to blame. It was two, probably unconnected duff bits of maintenance work (we never could track down when these things had been done) followed by a short-sighted inspection regime, that clearly didn't go looking for potential problems.

I was mightily relieved that the boy made a full recovery. I made a lasting resolve to work with partners in maintaining the buildings which lie at the heart of our communities, in a way which



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10 Corporate responsibility

“Best value is consistently defined in terms of whole life performance.”

squeezes every last drop out of the resources at our disposal. ‘Cheap’ repairs and less than effective inspection regimes that sought not to find problems that we knew we could afford to address, had very nearly cost one young person their life. There has to be a better way.

Efficiency Matters

The first cut of the Annual Efficiency Statements (AES) submissions, the forward look for 2005/6, revealed that 77% of the projected savings were cashable. Those of you that have heard me speak on this subject in the past few months will have heard my concerns about just focusing on the numbers, and forgetting the very real benefits that can be realised

from driving up quality through smarter procurement. Best value is consistently defined in terms of whole life performance - and absolutely not just lowest initial price. Defect and dispute free products and projects do have very real benefits - and value! And what is the value of avoiding accidents? Ignoring the potential terrible consequences to the child injured, just imagine the costs of the resulting investigations and legal fees.

Improved quality does bring very tangible benefits. Don't ignore them in your efficiency review gains, just because they are more difficult to measure. ■



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A partnership to promote best practice in temporary recruitment services



Temporary staff ¹¹ in the public sector

Not to long ago, there was a definite stigma attached to freelance recruitment. Freelance was often associated with words such as inexperienced, unfocused, or risky. However, due to the influx into the industry of many contract candidates, and new screening processes brought on by recruiters, freelance architecture has taken on an entirely different connotation in the public sector.

No longer are freelancers judged as the people who cannot get a permanent job. The new perception is that these individuals are highly skilled and efficient workers who can adapt easily to new environments and turn schemes around - there is a definite newfound sense of trust and confidence in the services that freelancers provide.

This change of perception means that both candidates and clients are now happy to look at and consider various freelance options. Within the industry, freelance has become a realistic and desirable option for many candidates - candidates who are leaving permanent positions are now considering freelance work - demonstrating a marked change in old employment models. For some, freelance has truly become a way of life - a way of achieving a work life balance, one of the key issues of recent times


Consequently, there is now a pool of talented architects and technicians on the market working on a temporary basis. These candidates are highly sought by industry professionals who understand the value and productivity a freelance can offer their company. A good contract worker is able to adjust quickly and efficiently; they make an impact on workload with a minimal amount of briefing or training. As a result, public sector organisations are becoming increasingly more concerned with positive recruitment and retention of contract workers.

However, public sector clients are feeling increased pressure for these high-quality candidates from private sector organisations. So public sector clients have created certain measures to encourage freelancers.

Firstly, it is vital to act quickly when employing temporary staff. Due to established procedures that cannot be circumnavigated, recruitment in the public sector can often be slower than in the private sector. Line managers may have a wide variety of duties to perform in a short space of time and recruitment might not be their top priority. However, in a fast-paced market the majority of high-quality candidates will be snapped up within a few days of registering with us - usually within 48 hours.

The best way of recruiting is to spend time on an initial phone call with your consultant detailing your requirements and arranging a 30-minute meeting with a potential candidate as soon as possible. Through working trials and open discussions with your recruitment consultant regarding recent candidates they have met, it is possible, for example, to have someone at a CAD machine in your office within 12 hours of getting approval to recruit.

Secondly, ensure that potential candidates are aware of the full benefits that accompany public sector work. As an employer, you should be actively trying to 'sell' your business as much as the candidates are trying to sell themselves. The public sector has many attractive aspects that candidates are rarely aware of - your responsibility is to increase their awareness and leave the candidate with a positive impression of the public sector.

For example, it is a common concern amongst our clients that they will not receive the same level of loyalty or commitment from their contract staff as from their permanent counterparts. Conversely, many of our contract workers worry about a divide between 



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12 Temporary staff in the public sector

“Statistics show that contracts in the public sector are likely to last longer...”

the treatment of permanent and contract staff. However, this is something which seems to be felt a lot less by temps in the public sector, where the employers seem to be much more aware of the link between these two issues - often making more of an effort to ensure their workers truly feel part of the team.

Furthermore, the private sector is often far less accommodating in terms of flexitime options than the public sector, who are also increasingly offering the choice to work from home to their trusted temps. This is of enormous benefit since this flexibility is one of the main driving factors influencing candidates to work on a contract basis.

The office ambience of the public sector can also be preferable to some candidates, especially those who are uncomfortable with the environment and unreasonable deadlines of certain practices.

Length of contract within the public sector is another advantage over private sector competitors. Although job security is something that contract

workers willingly sacrifice, a series of short contracts can cause a huge amount of stress and loss of earning potential. Statistics show that contracts in the public sector are likely to last longer, and indeed many temps spend as long in one public sector contract as you would expect from a permanent member of staff. This can be a tempting proposition to many freelance workers who like the flexibility provided by temporary work but also like the security afforded by longer contracts.

However, none of these factors will aid in recruiting high quality individuals unless they are pointed out to your potential candidates. A huge advantage of using an agency who knows and understands your business is that you have an ambassador for your organisation, selling your role to interviewees and ensuring that they know the specific benefits of a contract within the public sector. More often than not, candidates are persuaded by a dynamic recruiter who shows an interest in what they do and underscores the positive attributes of the organisation. ■

CPS Forum homepage

Gershon strikes back

Sorry about the title, but I suppose I've got carried away with the release of the final Star Wars film. You may remember I wrote an article 'Aversion to Gershon' a couple of editions ago, but things have moved on quite a pace so I thought it was worth an update.

No, I am not comparing Gershon to Darth Vader or anything like that, but the 'Efficiency Gains' agenda is developing so quickly, and is likely to run on for some time, that I think I may have to do a George Lucas and write six articles before I can cover the full story!

Before I go on however, I had better clarify two things:

1. I have nothing against making efficiencies. I think there are plenty of opportunities to be more efficient within local government and the Gershon initiative may just be the catalyst to achieve this. I do however have concerns about some of areas that are being focussed on for efficiencies and in particular some of the initial responses from local authorities, but more of that later.
2. Gershon is only part of a much bigger picture of provision of local government services. I am also concerned that many councils are looking too closely at 'measured' efficiency gains and taking their eye off the wider picture. Remember that Gershon is only part of the overall value for money assessment within the Comprehensive Performance Assessment.

So what's the latest on Gershon and property?

We have had the opportunity to see a large proportion of the first forward looking Annual Efficiency Statements (AES's) from local authorities with construction/property featuring prominently in many of the proposals. The key areas are procurement, asset disposal/ rationalisation, home/flexible working and income from investment property.

I suppose my words of warning are simply, 'Be careful', there are many efficiencies that can be made in all of

these areas, but there are also a number of pitfalls to be aware of. So let's look at some of them:

a. Construction Procurement -

- i) One suggestion for efficiency gains is in the 'Standardisation of Contract Documentation' and it is true that standardisation can clearly deliver savings. Production of contract documents will be easier, quicker and less expensive, documents will be more reliable and familiarity from tenderers will be increased leading to more informed, accurate and higher quality tenders. Many councils have included this area within their initial forward looking AES's for 2005 but savings in this area are unlikely to be achieved in the first year. Let's work some timescales out. I spoke to one of the Regional Centres of Excellence who are seeking to standardise procurement documentation. They estimated that it would be at least 12 months before it would be in place, so that's May 2006 at the earliest with the savings not realised until 2006 and probably much later than that.
- ii) Ok, now let's look at framework/longer term contracts, again a popular area for efficiencies. This area can achieve substantial savings in reduction of repeat procurement costs, improved quality through familiarity between contractor and council, reduced supervision as trust is gained, savings from joint training and innovation from the opportunity for the contractor to add more value. So a good area for efficiencies you say? Yes, it clearly is, but again one that may take time to materialise. Often such contracts take at least 12 months to procure, so to start from now

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For CIPFA SCALA CPS Forum workshop dates please refer to **Scaladiary**.

“My key message is plan ahead, not just for the first year but for years two and three as well.”

and get something in place for 2005 would be very difficult. It would only be where a council had already started the procurement process that efficiencies could be realised in the 2005/6 first year Gershon period.

b. Asset Rationalisation/Asset Disposal

This is another good potential area for efficiencies. Sales of assets which were previously operational and whose sale does not result in a detriment to service delivery can be measured as efficiency gains. Again, there is a long timescale from inception to achievement in this area.

Many councils suggested they were going to carry out a 'property review' or 'a study of office accommodation' to release assets and thus make gains in the first year. Experience from a straw poll of councils suggests that by the time a review has been carried out, recommendations have been approved, staff have been relocated, buildings have been advertised and sold, etc, etc, etc it all takes period of a two to three years minimum, not overnight. Unless actions are in place already there is little chance of making efficiency gains in year one when starting from scratch.

c. Hot desking/Home Working

Similar to asset rationalisation, this take time to implement and experience from central government suggests 2 to 3 years minimum to release assets as a result of the introduction from these approaches.

d. Income from investment property

A few authorities have indicated that they will increase their income from investment property and include that as an efficiency gain, without giving details of how this will be achieved. Guidance on the efficiency gains tells us that we cannot measure 'increases in charges' as efficiency gains and there is some concern that councils will be tempted to do this. What could be counted is more efficient ways of managing the investment estate, such as improved rent collection or a reduction in the time it takes to re-let a property, which would increase the overall amount of rental income.

So, a few examples where councils may be pushing the boat out a bit too far in setting out what is feasible to achieve. My key message is plan ahead, not just for the first year but for years two and three as well. Work out how long it is really going to take to deliver all these good efficiency ideas and reflect that in a simple timetable. If something is going to come on line six months into a 'Gershon' year then you can often only achieve 50% of the potential annual efficiency gains for that year! A simple message, but one that has clearly been overlooked in a number of authorities.

So Gershon is clearly here for the long run, well, at least three years anyway. Guidance is being developed and I am sure the picture will continue to change and develop. Should be good for a few more articles yet, though hopefully it won't take as long a George Lucas to finish the full story!

The latest guidance on the Efficiency agenda can be found on the Regional Centres of Excellence Website www.rcoe.gov.uk. ■

from the Commission for Architecture & the Built Environment

Physical Capital: how great places boost public value

CABE has recently published a series of three think pieces entitled *Physical Capital: how great places boost public value*. Three writers were commissioned to set out their perspectives on the concept of 'physical capital'. CABE defines this as the potential value - financial, social and cultural - of the built environment. Schools, clinics, houses, offices, factories, streets, parks, museums, public art, squares and bridges combine to form the physical capital of a particular place. These assets have value in themselves and in the way they combine within the built environment. And how they are designed, managed and maintained is a key determinant of how far their potential value is realised. The concept is not a new one. It builds on existing ways of evaluating urban design. It is also an analogue of social capital, a concept which in some ways it parallels. Our experience suggests that every neighbourhood has its unique set of assets, social and economic as well as physical, and how these combine and are used determines the identity and the quality of life in any given community.

Physical capital and public policy

The direct economic value of individual buildings is relatively well understood. For example, iconic architecture, such as Tate Modern on London's South Bank, has a value beyond its specific use - in place making, in attracting investment and spearheading urban renewal, and in enhancing cultural and civic life. But the contribution of the wider built environment - in terms of housing, streets, open spaces and public buildings - is less well appreciated. Physical capital is a massively under-realised asset that could be directly harnessed to further public policy goals, not least because of the scope and breadth of current investment.

Britain is in the midst of a massive public building programme, as part of the government's public service agenda, including 100 new major acute health facilities and the commitment to refurbish the entire schools stock over the next 15 years. At the same time, historically high sums are being invested in housing and neighbourhoods.

CABE argues that there is often limited understanding of how the value of this investment can be maximised to contribute to and underpin public service delivery and other public policy goals. In reality, a well-designed built environment can be directly linked to achieving many of our key priorities. In particular:

- Public service delivery can be greatly enhanced by well designed schools, hospitals and other facilities contributing to higher productivity and better clinical and educational outcomes.
- The public health agenda can be underpinned by public space which is well-designed, well-maintained and well managed, encouraging lifestyle activity to address obesity, limiting exposure to environmental risk such as pollutants and accidents, and reducing the incidence of mental health problems.
- Crime, and the fear of crime, can similarly be reduced through high-quality public space and improved design of buildings, such as houses and shops.
- Environmental sustainability, including greater biodiversity and CO2 reductions, can be designed into neighbourhoods, housing, offices and factories.
- Civic and community renewal can be facilitated through improved social interactions in safe and attractive spaces and settlements with an enhanced 'sense of place'.
- Economic performance can be improved both through productivity improvements in buildings and transport infrastructure, and through stimulating economic growth, particularly in urban areas.

More generally, good design can deliver in-built flexibility to meet the demands of changing patterns of use, both in public service delivery (through schools and hospitals, for example) and in social formation (of housing, streets and the public realm). Buildings come to fruition over 15-20 years and exist for 50-100 years - good design can help to ensure that they remain relevant and functional, even at a time of rapid developments in society and public service provision.



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“Ignoring the opportunity of physical capital dissipates public investment and fails to capture its full potential value.”

CABE would also argue that ignoring physical capital as a wider asset leads to additional costs. It is a massive missed opportunity. Ignoring the opportunity of physical capital dissipates public investment and fails to capture its full potential value. It inhibits the effectiveness of other policy responses, for example where poorly designed hospitals undermine health outcomes, or badly maintained public space exacerbating crime and the fear of crime; and it risks creating new problems such as the danger of building tomorrow's slums.

We are convinced that there is a strong story to tell about physical capital. In the essays in this collection three independent thinkers present their own perspectives on the idea. Geoff Mulgan suggests how we might develop a better understanding of how to measure value in the built environment, so as to help policy makers decide which developments and projects should be supported. He argues that the treatment of physical space as capital is highly sophisticated and well understood by the markets, but becomes more problematic in the relationship between private and public value. In short, there are too many variables involved. Instead he offers the idea of 'value maps' to disaggregate the variables and inform better decision making. François Matarasso takes a sceptical line, emphasising the subjectivity of physical capital and arguing that nowhere is this more apparent than in questions of design. One man's masterpiece is another man's unmade bed, and physical capital is not as easily measured as the economic version. Accepting that certain generalisations can be made about what constitutes quality in the built environment, like fitness for purpose and longevity, he argues that the point of assessing physical capital should not be about measurement *per se*, but about how to improve our neighbourhoods.

Finally, we look in detail at a specific place and an actual case study. Ali Madanipour describes the physical change that has been effected on the Castle Vale neighbourhood in Birmingham and draws some lessons for how this has improved the socio-economic circumstances of the residents. The turnaround has been dramatic: life expectancy has improved by five years, unemployment has fallen from 28% to 5% - 2% below the Birmingham average - and the scheme has

won numerous regeneration awards. Alongside major social and economic investment, there has been substantial physical change - not least the demolition of 32 tower blocks - and the 'suburbanisation' of Castle Vale is seen as a major factor in changing the area's identity, so that it is now just another 'normal' neighbourhood.



Photo: Mark Ellis and Ashley Bingham, ICD Ltd.

These three essays open the idea of physical capital up to a broader discussion. CABE hopes that the debate they provoke will further thinking about how the built environment is valued, and indeed how far that value can be measured and captured, and applied to the policy making process. That is the next step in realising physical capital's particular and fundamental role in helping us to deliver public policy objectives and create successful neighbourhoods.

The full report is available online at www.cabe.org.uk/publications/

CABE and the University of Westminster are hosting the next Urban Design Summer School (26 - 29 June 2005) in East Lancashire. Find out more at: www.udss.org.uk

Visit the **CABE Library** - an invaluable guide to England's most inspiring buildings and spaces. www.cabe.org.uk/library

The Home Buyer's Guide - CABE's first major consumer title tells you what to look and ask for when buying a new home. Visit www.thehomebuyersguide.org to order your copy. ■

Civic Snapshot ¹⁷

New Harbourmaster's Office - New Quay, Ceredigion



Mark Davies and David Billingsley

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The new harbourmaster's office building in New Quay replaces a number of temporary timber buildings and provides a panoramic view of the harbour, it's approaches and the town's north beach for the harbourmaster and his colleagues.

It has been constructed at the landward end of the town's listed quay and incorporates, in addition to the harbourmaster's office, ancillary storage, kitchen and wc provision, an electricity sub station, a town heritage room and a kiosk for booking boat trips in Cardigan Bay. The building cost £198k and was constructed with the minimum of disruption to the use of the quay and the harbour from November 2003 to September 2004.

The new building is set into the existing sloping ramp that descends to the Quay so as to be integrated with its surroundings, and is on two levels which connect back to the town and down to the quay.

The materials specified and the detailing used respond to the better older buildings found in the locality and to the need for durability in a site so close to the sea: natural pitched slate roofs, iroko timber windows, oak boarding, roughcast render, vertically coursed stonework textured reinforced concrete work and steel railings.

Credits

Designing Department

Department of Highways Property and Works
Ceredigion County Council

Key Consultants

Project Management, Architectural, Quantity Surveying, Mechanical Engineering, Electrical Engineering and Planning Supervision:
Property Management and Projects Group
Department of Highways Property and Works
Ceredigion County Council

Main Contractor

Braybrooke Construction
Cardigan
Ceredigion



A small architectural gem in a maritime setting submitted for inclusion in the SCALA 2005 Yearbook.

Send schemes with a SCALA connection to the Editor with a photograph and no more than 250 words.



18 Fire safety and value for money

Ken Simmons

An ex Senior Fire Officer in West Sussex, Fire Brigade, Kent Fire Brigade and the Fire Service College. Ken is an Associate Lecturer at the Fire Service College and the Oman Fire Engineering College, Member of the Institution of Fire Engineers, Member of the Institution of Fire Prevention Officers, Law Society Expert Witness (Fire Safety in Buildings), Certified Fire and Explosive Investigator (and Instructor) USA, and Senior Consultant of Fire Surveys International.

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Within the fire industry there has always been considerable debate between fire officers and providers of fire-fighting equipment on the number, type and location of fire-fighting equipment.

Providers of fire-fighting equipment have argued quite successfully that the provision of extra extinguishers allows occupiers of buildings to be able to tackle a fire at its earliest stages and prevent a major incident. In addition, they also argue that extinguishers can be used to mitigate fires and allow for means of escape by reducing the size of a fire.

However, fire officers have always been concerned, as many case studies have revealed, that the average person who discovers a fire will attempt to tackle a fire with all the extinguishers that are available. In doing so, that person nearly always fails to actuate the fire alarm system, evacuate the immediate area and call the fire brigade. This action puts the person at risk tackling a fire way beyond their capabilities without training or support and, because the fire alarm is not actuated, the fire brigade is not called. There have been incidences where the fire brigade have not been called for over 40 minutes whilst occupiers of a building have attempted to tackle major fires with portable fire-fighting equipment.

Fire safety training given to occupiers should be that prior to actuating an extinguisher, the fire alarm must be activated, the area immediately evacuated and the fire brigade called. The occupiers should also be further trained that if a fire cannot be extinguished by the use of one extinguisher, they must leave the building immediately.

There is also the concern that occupiers of buildings who have had no fire safety training, particularly in the use of extinguishers, will either fail to operate the extinguishers or use the wrong type of extinguisher on different types of fire. For example, the use of a water-type extinguisher on electrical appliances could be fatal for the operator.

All premises used as offices, shops or factories where more than twenty persons are employed, or more than ten persons employed elsewhere than on the ground floor, require a Fire Certificate. In addition, hotels that have more than six guests or staff sleeping or more than one staff or guest sleeping above the first floor or below the ground floor, also require a Fire Certificate.



Extent of school fire shows the need for quick evacuation

Fire certificates are issued by fire brigades using the Home Office standard certificate.

Although fire certificates vary in appearance their content is virtually identical. Whilst it is not a requirement of the Fire Precautions Act, all fire brigades use a plan which is normally sited at the back of the fire certificate. This plan shows the type, number and location of all extinguishers that are required as part of a condition of the fire certificate issued under the Fire Precautions Act 1971.

I have come across many buildings where the number of extinguishers in the premises greatly exceeds the number of extinguishers required by the fire certificate. The question must therefore be asked - are the extinguisher providers correct in the provision of fire-fighting equipment, or are the fire brigade correct in their requirements for extinguishers under the Fire Precautions Act?

One nationwide company has decided after seeking advice that provision of fire extinguishers was to follow the guidance of the fire brigade. They removed extinguishers from their sites and only allowed extinguishers required by the fire certificate. The net saving was £85,000 plus a reduction in annual maintenance costs. Not only did they make a significant saving but they have also improved the fire safety arrangements for staff and visitors.

Whilst it is easy to identify extinguishers over and above what is required for factories, offices, shops and hotels, it is not so clear for premises that do not fall under the Fire Precautions Act 1971 but under other legislation and/or the Fire Precautions (Workplace) Regulations as amended. However, the use of a consultant to review the provision of the existing fire-fighting equipment can normally make significant financial savings and improve the fire safety arrangements.

A further article on 'Fire evacuation for all' covering the DDA Act of 1995 by Mike Terry, Fire Safety and Access Manager for Calderdale MBC, is available on our website at www.scala.org.uk - Ed.





No hiding¹⁹ place for directors?

Fact: In a two year period, 620 British people were killed at their workplace. On average, 28 workers are killed each year in every region of the country and thousands more are being injured. But, Transport and General Workers Union (TGWU) and the Centre for Corporate Accountability (CCA) research reveals very few directors have been convicted for health and safety offences and *not one single director has faced a jail sentence or disqualification* following those convictions!

The TGWU and CCA examined health and safety data between April 2002 and March 2004 and found that:

- 620 people were killed and 60,177 people suffered major injuries at the workplace.
- On average during this period, 56 workers were killed at work in every UK region (28 per year), ranging from 27 deaths in one region to 104 in another.
- Only 23 directors were convicted of health and safety offences; not one of these directors received a sentence of imprisonment.
- The only penalties imposed were fines with the average fine imposed upon convicted directors just £6,463. In some instances fines for injury have been higher than fines for deaths at work.
- Not one single director was disqualified as a result of these deaths and injuries.

Draft Corporate Manslaughter Bill: Whilst the Government made it known, in November last, that it really does take the issue of corporate killing very seriously and is committed to reforming the law by introducing a Corporate Manslaughter Bill it has taken some time for HMG to move on this issue. At last however a Draft Bill has been published and there is an opportunity to contribute to the consultations on its content until 12th June of this year.

This Bill will update existing laws on corporate killing and a proposed new criminal offence of 'corporate manslaughter' will apply when someone has been killed because the senior management of a corporation has grossly failed to take reasonable care for the safety of employees or others. This tackles the key problem with the current law: the need to show

that a single individual at the very top of a company is personally guilty of manslaughter before the company can be prosecuted.

The new offence will mean that courts can look at a wider range of management conduct than at present. It focuses responsibility on the working practices of the organisation, as set by senior managers, rather than limiting investigations to questions of individual gross negligence by company bosses and the new offence will be clearly linked to the standards required under existing health and safety laws.

The criminal liability of individual directors will not be affected by the proposals. Corporate manslaughter is an offence committed by organisations rather than individuals and will therefore carry a penalty of an unlimited fine rather than a custodial sentence. The shareholders will bear the brunt of a successful prosecution - which will no doubt help concentrate the minds of those who are answerable to them, the directors!

Ministers have stressed that no new burdens will be placed on companies that already comply with health and safety legislation and that organisations taking a conscientious approach to their current obligations have nothing to fear.

The proposals will apply to Crown bodies, such as Government departments, as well as the wider public sector and industry. They create a broad level playing field between public and private sectors and will apply when both are carrying out similar activities, for example:

- ensuring safe working practices for their employees (e.g. that staff are properly trained and equipment is in a safe condition);

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“The HSE has been running ‘get-tough’ campaigns to try to reduce the industry’s mortality rate for some time...”

- maintaining the safety of their premises (e.g. ensuring that lifts are properly maintained and fire precautions taken); and
- when providing goods and services to members of the public, or when operating commercially (e.g. providing transport services, operating care homes or running hospitals).

The Home Secretary said that “This Government is committed to delivering a criminal justice system that commands the confidence of the public. A fundamental part of this is providing offences that are clear and effective. The current laws on corporate manslaughter are neither, as a number of unsuccessful prosecutions over the years stand testament. The Government is committed to reforming this area of the law and today’s draft Bill marks an important step in delivering that commitment.”

Health and Safety Commission Chairman Bill Callaghan said: “The Health and Safety Commission has long been a supporter of a new and effective corporate manslaughter offence. We are very pleased to see the Home Office proposals, and that they reflect HSC thinking, especially with regards to application to the Crown. This adds emphasis to our message that sensible health and safety is a cornerstone of a civilised society.

“Our strong support for the new proposed offence, is based on the fact that we consider it will increase the deterrent effect already offered by existing health and safety penalties.

“Companies that comply with health and safety law have nothing to fear from any new offence. As now, companies will need to manage risks, not eliminate them. This is sensible health and safety.”

The draft legislation is available on the Home Office website at <http://www.homeoffice.gov.uk>

Scots to get in on the Act as well? Of course the announced legislation only applies to England and Wales and whilst the Scottish Executive acknowledged back in November 2004 public concern about this potential gap in the law and proposed via consultation the specific offence of ‘corporate homicide’ in an analysis of the consultations, the Scottish Executive Justice Minister, Cathy Jamieson, made it clear that sanctions imposed


north of the border would not extend past those already in existence for breach of H&S Work Act 1974.

So, with the announcement of the Draft Bill for England and Wales we may yet face different legislation for either side of the border, unless the Scottish Executive revert to its original pledge to ‘closely follow proposals on English law’ and so ignore their analysis of the consultation undertaken. So, watch this space has to be the watchword! However if the processes go the distance, the UK’s construction industry, one of the biggest killers, is likely to be in the spotlight for prosecutions for corporate killing or corporate manslaughter.

What Impact on Construction? So can the construction industry help itself reduce the burden of this legislation? Will the new legislation be more effective than existing laws at bringing to book those companies that cut corners at the expense of lives?

Recent HSE analysis of sector statistics showed that the construction sector had a fatal injury rate of six per 100,000 workers, some 5.5 times the all-industry average and the highest mortality rate of any sector, accounting for about one in three workplace fatalities - with a death toll of 70 workers recorded in the last financial year to 2004.

Increasing the pressure on the industry to improve its record was the Public Accounts Committee’s report, published in December last, which urged the HSE to increase its efforts in this area. Suggestions included conducting visits and follow-up inspections without prior warning to site managers and contractors, as well as the introduction of a ‘name and shame’ process, disclosing health and safety records relating to high-profile buildings.

Of course the HSE has been running ‘get-tough’ campaigns to try to reduce the industry’s mortality rate for some time - using current laws and regulations, which include the potential for unlimited fines on wrongdoers. However the Public Account’s Committee report also criticised the way the Courts tend not to impose the maximum penalties available for health and safety offences and suggested that HSE should ask the Government to recommend new, and presumably tougher, sentencing guidelines in this area. This view is clearly reinforced by the T&GWU and CCA research results! 

For almost ten years the principal framework for reducing accident, injury, ill health and death in construction has been the CDM regulations, which created the role of planning supervisor to ensure that potential on-site project hazards were addressed as much as possible from the start and placed responsibility and accountability for health and safety risk management with those who commission, design and construct.

New corporate manslaughter or killing laws could conceivably extend this individual responsibility and accountability, even to the point of prosecutors not having to prove a direct connection between the actions of the people who caused the fatality on site and their companies, as they currently have to do for culpable homicide or manslaughter. However, pinning a charge on individual directors could be difficult, given the sometimes convoluted routes of corporate responsibility existing within organisations. But, only if these responsibilities can be pinned down will the knock-on culture change effects of manslaughter charges work their way through the industry. So a lot will depend on how well the new legislation enables prosecutors to nail to top guys.

What could also give Westminster and Holyrood pause for thought is whether contractors and consultants can cope with the extensive procedures and bureaucracy they might adopt to try to reduce a risk of prosecution which cannot easily be limited. The bureaucracy and paperwork generated by CDM might pale into insignificance compared with these! Could these issues knock back these long heralded developments?

If (and only if) the net result is that there is a step-change reduction in the number of fatalities will the deterrent of possible prosecution have been a success and the inevitable 'back watching' paperwork and procedures justified. After all it is attitudes across organisations that have to change, not just tweaks to top management systems. What is, after all, who bears the real cost of construction deaths, injury and ill-health? Those with responsibility for construction work and workers have to start taking account of the costs to others, not just themselves and their organisations. That is a critical part of the culture change that is needed. Manslaughter charges won't change attitudes *per se* - but perhaps the worry of them will add to changes in attitude at the top - and with a trickle down effect impact on the whole of construction. ■

"It is attitudes across organisations that have to change not just tweaks to top management systems."



"BEFORE YOU LEAVE THIS SITE MEETING, PLEASE SIGN THE USUAL CERTIFICATE OF MANAGEMENT INFALLIBILITY CLAUSE IN THE MINUTES"

22 The Legal Beagle

Corporate Manslaughter and Corporate Killing



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Rob Tate is an architect, a Past President of SCALA and a former Head of Property Services at the LB of Enfield. He is a construction consultant, expert witness and a member of the President's Panel of Adjudicators of both the RICS and Chartered Institute of Arbitrators.

Rob, author of the SCALA and LGTF 'Guide to Standard Forms of Construction Contracts', has offered to share his experience and expertise with you and looks forward to hearing from readers.

The following paper from Worcestershire County Council concerns 'Corporate Manslaughter', which is not to be confused with 'Corporate Killing'.

Following two unsuccessful prosecutions of large companies, referred to in the paper, Corporate Manslaughter has once more become topical with the current prosecution of the Technical and Design Services Manager at Barrow-in-Furness Borough Council for manslaughter and breaches under the Health and Safety at Work etc Act (1974). That case concerns an outbreak of Legionnaire's disease, related to the maintenance of the air-conditioning system of a Council building. The prosecution alleges the maintenance was conducted with "negligence so gross that it was criminal". Because the officer concerned was regarded as "so far up the chain of command at the Council", the Council was also prosecuted. That is a major development. When I was a deputy the Borough Architect was always meticulous in checking that such maintenance was being conducted correctly - some will recall the problems with Legionnaire's disease some twenty years ago - and I'm glad he was, but so also should our Council.

You will see from the paper that the issue of prosecuting an employing organisation has been around since the early 1990's. Successful prosecution of large companies has proved difficult due to the need to identify a guilty officer who can be shown to be the 'mind and will' of the organisation. However, a small company, where the senior employee (the sole Director) was clearly the controlling mind, was successfully prosecuted following the Lyme Bay incident in 1993. So, the current case shows that the issue has not gone away in respect of large organisations.

'Corporate Killing' refers to proposed new legislation arising from, but not to be confused with, the above issues. The idea is to remove the obligation to identify a 'controlling mind' of a company. A company would be guilty when a management failure of the company is the cause, or one of the causes, of a person's death, if that failure falls far below what can reasonably be

expected of the company in the circumstances. So, it's about management and the foreseeable consequences of management decisions. With the continuing, quite correct, concern to improve health and safety in construction, it can be seen that the industry will be fertile ground for Corporate Killing prosecutions. Consider the selection of design-and-build main and sub-contractors for main contracts and contractor designed portions. While it is not clear when, or even if, the legislation will be enacted, it illustrates the increasing pressure for everyone to sharpen up their act in pursuit of improved health and safety - not to mention self-preservation and preservation of careers! Read on...

'Corporate' Manslaughter

Until very recently it was rare for a Corporation and/or its directors or senior managers to be charged with (corporate) manslaughter. However, the situation has now been brought into the spotlight as a result of the case involving Barrow-in-Furness Borough Council. The media reports that both a council manager and the Council itself have been charged with seven counts of manslaughter and also offences under the Health and Safety at Work Act 1974 following an outbreak of Legionnaires Disease.

Given the potential ramification, Malcolm Williams, Head of Property Services at Worcestershire County Council felt the issue was one of major topicality and asked if the Council's Legal Services could arrange a briefing note on the law. The rest of the article reflects the briefing by Legal Services colleague Brenda Loughrey which Malcolm thought would be helpful to share.

Manslaughter

There is no separate crime of 'corporate manslaughter'. (An offence of 'corporate killing' has been proposed but is not yet law.) Manslaughter is a crime which can be committed by an individual or a company



(including a Council) in relation eg to a work-related death. The test of whether a company or council is guilty of manslaughter or not is intrinsically linked to whether or not a director or senior manager of the company - a 'controlling mind and will' of the company - is guilty of manslaughter. If the director/manager is found guilty, the company is guilty; if the director/manager is found innocent, the company is innocent. This is known as the 'identification principle'.

The type of manslaughter which may generally affect employees is that of involuntary manslaughter. There are two main categories of killing which come under this criterion:

1. killing by an unlawful act likely to cause bodily harm (not likely to affect an employee in the course of their employment) and;
2. killing grossly negligently.

Manslaughter by gross negligence

There is no precise definition of gross negligence. However, there has been much debate over the years and most recently Lord Mackay in the case of *Adomako* [1995] 1 AC 171 at 187 set out what he regarded as the essentials of gross negligence:

"...in my opinion the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such a breach of duty is established the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and therefore as a crime. This will depend on the seriousness of the breach of duty by the defendant in all the circumstances in which the defendant was placed when it occurred..."

...The essence of the matter which is supremely a jury question is whether, having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission."

In general a person is guilty of manslaughter if death is caused by his or her criminally negligent act or omission. The sentence, if convicted, can be up to life imprisonment for an individual. A company or Council could face an unlimited fine if convicted.

Can a council be prosecuted?

In Attorney General's Reference No. 2/1999 it was held that the identification principle remains the only basis in common law for corporate liability for gross negligence manslaughter. Thus, if there is insufficient evidence to convict the 'controlling mind and will' of the company or council then the company or council itself cannot be liable for manslaughter.

Who is the 'controlling mind and will'?

Again this area is not clearly defined. It has been said to mean those people who carry out the functions of management and speak and act as the company. Alternatively, another definition has been given as a person "who is in actual control of the operations of a company or of part of them and who is not responsible to another person in the company for the manner in which he discharges his duties in the sense of being under his orders."

To be convicted of manslaughter it would need to be proved that the employee's acts were grossly negligent. In order to fulfil the 'identification principle' to commit a Council, it would then need to be shown that the same employee was the 'controlling mind' of the company.

Prior to the *Barrow* case, there have only ever been two large companies which have been prosecuted for manslaughter - and both have failed. The P&O (*Zeebrugge*) case failed because there was insufficient evidence to show that any director or senior manager was grossly negligent in carrying out their duties. The *Great Western Railways* case failed because the CPS tried to prosecute the company without prosecuting any individual. There have been a limited number of small companies which have been convicted.

On the basis of the above one needs to show clearly that the director, or a senior manager, was grossly negligent in the carrying out of their duties in order for the Council to be equally criminally liable.

"To be convicted of manslaughter it would need to be proved that the employee's acts were grossly negligent."



“The proposed new offence of ‘Corporate Killing’ will also prove to be an interesting new area which is likely to have an impact on local authorities.”

One needs to look again to the test set out in *Adomako* - did the director or senior manager breach the duty of care towards the victim? If the answer is yes then, was that breach so serious as to be considered grossly negligent?

If less senior managers, who are not seen as the ‘controlling mind’, breach a duty of care towards a victim through their grossly negligent actions then they may be personally prosecuted for manslaughter, but in those circumstances the company or council will not be pursued.

Health and Safety at Work Act 1974


Under this Act an employer has a duty to ensure as far as reasonably practicable the health and safety of employees and non-employees. It is an offence under this Act to fail to discharge this duty.

Where an offence is committed by a body corporate which is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, that person as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly. If convicted in the Magistrates Court the maximum penalty is £20,000. However, if convicted in the Crown Court the fine has no maximum limit.

Conclusion

Before any charge of manslaughter could be brought against a Council, one would need to identify either a director or a senior manager who had acted in a way which was clearly grossly negligent. The case would need to be proven beyond all reasonable doubt. More junior managers, if they have acted in a grossly negligent manner, could be prosecuted for manslaughter even though they are not the controlling mind of the company or council.

It has been difficult to prove the gross negligence test in previous cases and therefore the outcome of the *Barrow* case may be of great significance to local authorities throughout England and Wales and, if successful, may lead to a greater risk of prosecution of public bodies.

The proposed new offence of ‘Corporate Killing’ will also prove to be an interesting new area which is likely to have an impact on local authorities. Partly prompted by previous difficulties in securing ‘corporate’ convictions for manslaughter, it is intended that this new offence will make companies accountable in criminal law where they fall far below what can be expected in the circumstances. The suggested penalty is an unlimited fine and an order to correct the original cause of the accident. The proposals are intended to link the negligence of an organisation not to a single individual, but to a management failure by the corporation as a whole. In relation to local authorities it would mean that no longer will it be necessary to identify an individual who is the controlling mind of the company and has acted grossly negligently. If the Council’s conduct falls far below what is reasonably expected of the corporation in the circumstances then they can be prosecuted. Watch this space! 

The value of registration ²⁵



Overwhelmingly, the architectural profession treasures its hard-won registration of title. Many architects see this as a protection afforded to them, although that is not what prompted Parliament in 1997 to protect the title 'Architect'.

What Parliament did was to agree that like other major professions, for example medicine and the law, registration provided valuable consumer protection. The real impact behind registration of title is the protection it affords the public.

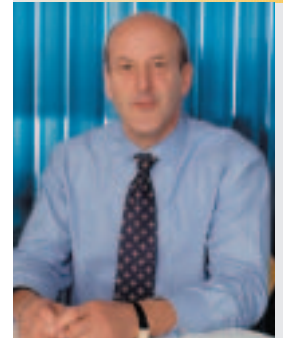
Registration can be valued at three levels. First of all, ARB has a duty to prescribe those qualifications that lead to admission to the Register of Architects. The Board has set out threshold standards that must be met by those who aspire to be registered. These standards are set by a body patently free of the interest of the profession (which is not to say ARB is not interested in the profession). Those who use the Register of Architects know that they are accessing a Register of persons whose competence in their chosen field is recognised by a statutory body set up by Parliament for that purpose. There can be no criticism that the standards do not meet the public interest test whilst at the same time providing what a professional person needs to be a member of the profession they have chosen.

In many professions, this surety of standards and competence is so relied on for the future standing of the profession that revalidation of registrants' competence now takes place. The ARB register is not exempt from such pressures. The Board is currently looking at whether it needs to establish a system which ensures that registered persons are as competent now as they were when they initially crossed the threshold hurdle for first registration. Whether this is necessary is a matter on which it would be interesting to hear the views of SCALA members.

The second protection afforded by registration lies in the Register itself. The Register exists because Parliament says that only those persons who cross the threshold for entry to it can practise using the title 'Architect'. No other persons may do so. Indeed,

to attempt to do so is a criminal offence, and ARB polices this as fiercely as its resources will allow. In the view of many in the profession, their importance to society would have been better signalled had Government protected the function of architecture, rather than the title. This is entirely a matter for Government to decide; it is not something that ARB is responsible for. However, bodies as various as the National Consumer Council and the Office of Fair Trading recognise that the existence of a Register, composed of people who possess particular skills with public interest guarantees behind them, is a valuable tool in the marketplace for consumers and clients of architects. They can, with some degree of certainty, know that when they use a registered person, they will have a relationship with an individual who is more likely than others, perhaps, to deliver the professionalism that they expect. That many others seek, but fail, to pass themselves off as architects is, I think, an indication of how advantageous the registered title 'architect' is to the profession.

The third value of registration is the Code of Conduct. The Code of Conduct for architects is a document put together after full consultation with both the public and the profession, and sets the standards expected of architects as they conduct their business. ARB, as an independent registration body, lays down a set of standards through its Code of Conduct which safeguard the reputation of architects and afford protection to the consumer in those cases where something goes wrong. While the majority of architect-client transactions are conducted without complaint, the Professional Conduct Committee is able to decide whether action should be taken if something does go wrong. Persons who are likely to bring the profession into disrepute because of their improper conduct can thus be disciplined or removed from the Register so that their activities do not harm the good reputation and the high standards held by architects. ▶



Robin Vaughan

Chief Executive and Registrar of the ARB since 2000. Robin previously worked in the accountancy and legal professions.

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With the increase in corporate and personal responsibilities in the construction industry Robin Vaughan puts the case for the registration of architects.

26 The value of registration

“In conclusion, the value of registration is that it provides an independent entity for a dialogue between the profession and its users...”

As was remarked above, only those who are on the Register may call themselves ‘Architects’. ARB has always taken strong action against persons who describe themselves as such without being on the Register. It occurs to me that members of SCALA might be in a position to let ARB know, should it be proper to do so, of any breaches in the use of title. I gather from talking to architects in planning departments and elsewhere, that it is not unknown for persons who are not architects to call themselves such in the hope that it will add impact to their proposals under review by planning committees. Should any of you become aware of such incidents, you have only to let the ARB know. It can then take the necessary action, which in turn will protect your reputation, and that of the rest of the profession, from those who wish to call themselves what you

are entitled to call yourself, but without having crossed the educational and professional hurdles that you have done.

In conclusion, the value of registration is that it provides an independent entity for a dialogue between the profession and its users, and ensures that a body, independent of either, can address the concerns of both. This creates the situation in which the public interest, so essential to our democratic society, is maintained. An independent regulator provides a set of standards which safeguard the reputation of architects and afford protection to the consumer in those cases where something goes wrong. Through registration, the title ‘Architect’ carries with it an assurance of quality for consumers that architects can use to their advantage. 

Tsunami Sri Lanka ²⁷

It was one of those events that you will look back on and remember where you were when it happened. I will certainly remember where I was on the day of the Boxing Day Tsunami - I was on the beach in Sri Lanka!

As a group of family and friends, all architects and their children, we had travelled to Sri Lanka for a three week break over Christmas to relive the childhood of our oldest friend who had lived in Sri Lanka as a boy. We had been all over the island visiting the many wonderful historical sites within the cultural triangle, staying in the serenity of the tea plantations, the heat of the steamy tropical jungle and experiencing the hectic capital of Colombo. (There is a certain hierarchy to the traffic in Colombo; decorated lorries all 'fully insured' at least that is what is painted on the side, tuk-tuk's, converted rotavators, dogs and then pedestrians! Luckily we had a driver!)

We stayed in a range of hotels of amazing architectural merit, many by the renowned local architect Geoffrey Bawa. One built into the rocks completely hidden by the jungle, one converted from an old tea factory (complete with RICS award!), the original colonial governor's house and, finally, a luxury beach destination far down south of the island.

We decided the day after we arrived at our final destination to move further north, a decision that was to save our lives. The evening we moved we dined in the restaurant on the beach, exchanged Christmas presents and paddled in the calm sea by moonlight - perfect heaven.

The next morning we all went on the beach, nothing really untoward until a local commented on the sea being a bit rough - my friend said they ought to experience the sea at Scarborough - at which point a wall of water came hurtling towards us - I've only got short legs but they certainly covered some ground pretty rapidly. Afterwards, the beachside restaurant had gone, the locals' houses all along the coast had gone, the railway line had gone and most of the original beach hotel we were in the day before had gone.

Despite the staff having lost homes, friends and relatives, they were working double and triple shifts non-stop with guests from other devastated hotels sleeping in corridors. Yet, they laid on banquets for the guests, refused initial offers of help and SMILED all the way through the devastation. The local beach vendor found us the day we were leaving to give my friend and I two necklaces he had made to thank us. We asked him about his home - 'I will rebuild that later 'was his response' but first I must make these gifts for my friends'. This simple act of generosity sums up the spirit of the Sri Lankan people.

Nobody wanted us to leave, the pilot spoke to every person individually on the plane home and begged us not to forget the plight of his people - he was literally in tears.



First house nearing completion

We were determined to help when we returned and looked for a targeted way to help. Amazingly, I established a contact with a local neighbour whose daughter now lives in Sri Lanka and is part of a network of local business people, including architects, who have set up the Thalpe Rehabilitation Trust to resettle needy families. Through donations from the Chief Building Surveyors Society we have now been able to fund the rebuilding of 2 houses. You can [▶](#)



Michelle Price-Horne

E: pricehorne@btinternet.com

Michelle at a tea plantation in Sri Lanka.

“We hope to build a continuing relationship with the families and ultimately support a school for them in some way.”



First family to be rehoused

see the first of these houses in the photos - the families having been selected by the local Buddhist monks. We hope to build a continuing relationship with the families and ultimately support a school for them in some way.

Should you wish to contribute to this programme of redevelopment then you can send a cheque via myself made payable to;

Thalpe Rehabilitation and Development Trust Fund
c/o Michelle Price-Horne, Hillcrest Cottage,
Southwell Road, Thurgarton,
Nottinghamshire, NG14 7GP

I will then ensure that the cheques are forwarded to my local contact for the trustees.

Many thanks from the people of Sri Lanka

Further information on the Trust along with a donor register, can be viewed on the web site

www.eopensys.com/tsunami



Second family to be rehoused

Scaladiary and ²⁹ Study Day feedback



Study Day audience



View of NCSL from Jubilee Campus



Study Day feedback

The annual Study Day took place on 19 & 20 May at the National Centre for School Leadership on the Jubilee Campus at Nottingham University attended by 140 delegates. The topic was 'Designing for Children and Young People' with details and copies of the presentations on our website at www.scala.org.uk/events.htm. SCALA 2005 is on 3 & 4 November in Liverpool.

June

- 10 10 Eastern Region meeting in Cambridge (contact Gerald Browning Tel: 01223 717419)
- 16 NW Region meeting in the Wirral (contact David Mycock Tel: 0161 911 4130)
- 27 Northern Region meeting in Durham (contact Dennis Findley Tel: 0191 383 3207)
- 24 Gateshead Riverside Conference (for information see SCALA website)
- 24 South West Regional Meeting (contact Tim Parker Tel: 01452 425825)
- 29 Y&H Region meeting (contact Steve George Tel: 01482 612481)

July

- 5 London Region meeting (contact Mukund Patel Tel: 020 7273 6151)
- 6 ACA Council Meeting in London (contact Fiona Griffiths Tel: 020 8325 1402)
- 8 SCALA Policy Committee at DfES, Conf. Room 1, Caxton House, 6-11 Tothill St., London
SCALA Forum & Council all at IPF Ltd.
27 Queen Anne's Gate, London

September

- 9 SCALA Policy Committee at DfES, Conf. Room 1, Caxton House, 6-11 Tothill St., London
SCALA Forum & Council all at IPF Ltd.
27 Queen Anne's Gate, London
- 15 NW Region meeting in Oldham (contact David Mycock Tel: 0161 911 4130)

- 23 Eastern Region meeting in Cambridge (contact Gerald Browning Tel: 01223 717419)

- 30 S&SE Region meeting in Southampton (contact John Bean Tel: 0238083 2404)

October

- 5 Y&H Region meeting (contact Steve George Tel: 01482 612481)

November

- 3 & 4 SCALA 2005 and AGM in Liverpool (contact Steve Dodsworth Tel: 01446 771209)

AMP network regional workshop dates:

15 September Scotland, 3 October London, 5 Warwick, 6 Wales, 7 Exeter, 10 Nottingham, 11 Bury, 12 Durham, 17 London, 18 Bury St. Edmunds and 21 London.

CIPFA/SCALA 38th. Series of Construction & Property Services Fora comes to you on -

7 June Peterborough, 8 Durham, 9 Burton/Derby, 14 Blackburn, 15 Builth Wells, 16 Taunton and 22 London (for further information contact David Bentley on 07710 368711)

CIPFA/SCALA Scottish Construction & Property Services Fora: 1 September and 31

October (for further information contact Andrew Leck on 01383 626131)

CIPFA Highway Fora- 'Valuing Highway Assets'

comes to you on July 11 London, 15 Weston Super Mare, 18 Bury, 19 Durham and 21 Nottingham (for further information contact David Bentley on 07710 368711)





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