

APPENDIX B

**Hertfordshire Building Control Limited**

**"Proper Officer" functions analysis – to be read in conjunction with Trowers & Hamlins October 2022 advice note**

In this table "Proper Officer" means an officer discharging the non-delegable functions under the Building Act 1984 (the **1984 Act**) which must either be made by each local authority or discharged by an officer of each local authority

Option	Legal position	Issues
Each Local Authority employing its own "Proper Officer".	Clear legal position	Cost.  Inefficient  Difficult interface between work undertaken by HBC and eight individual officers.
Single "Proper Officer" jointly employed by each Local Authority (and HBC?)	Clear legal position except for potential complications of joint employment	Not attractive for an employee to have eight or nine employers.  Risk of aggrieved employee taking advantage of joint contract of employment (e.g. cherry picking T&Cs).  Real practical difficulty in day to day management.
"LA1" Model	Clear legal position  Track record of delivery in Hertfordshire until recently	Need for a single Local Authority to "volunteer" to be LA1.  Interface between HBC and LA1 potentially difficult (reliance by HBC and LA1 officers)
Secondment model-formal "secondment" of named HBC employees to each local authority through secondment agreements. The secondment arrangements would be limited to the discharge of the non-delegable functions which they would do in the name of	Legal position established - In 2010, the High Court considered whether an "officer" must be an employee of the local authority in the case of <i>Pinfold North Ltd v Humberside Fire Authority [2010 EWHC 2944 (QB)] (Pinfold)</i> . The court decided that a local authority could appoint a person as an officer even if that individual	Need to revise legal agreements between the shareholders to record the basis of secondment – in particular There would need to be a secondment agreement to cover each local authority separately (so each employee acting as a "proper officer" would need to enter into 8 separate agreements with HBC and each relevant local authority).

each relevant local authority	was not an employee of that authority.	
Hybrid model of LA1 and secondment- ie authorities delegate to LA1 and LA1 function then discharged by a secondee	Legal position more vulnerable to challenge (because both the delegation and secondment arrangements offer scope for argument)	No material advantage to either secondment or LA1 model