

THE QUEEN
on the application of

(1) MARGARET BAILEY

(2) NIPUNI DEZOYSA

(3) STEVE LESTER

Claimants

-v-

BRENT LONDON BOROUGH COUNCIL

Defendant

DETAILED STATEMENT OF FACTS AND GROUNDS

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INTRODUCTION AND SUMMARY OF THE CLAIM

1. This is a challenge to the decision taken on 11 April 2011 by the London Borough of Brent ('the Council') in exercise of its duty under section 7(1) Public Libraries and Museums Act 1964 ('the 1964 Act') to provide a comprehensive and efficient library service in Brent. The decision was to cut six of the twelve libraries which the Council currently maintains in its area [2/E/485-486].

2. The Claimants are residents of Brent who live near to, and regularly use, three of the libraries the Council has decided to close: Kensal Rise, Barham Park and Preston Road.
3. The factual background and legal framework within which this claim falls to be considered is complex and set out below. It may assist the Court to have an overview of the grounds of challenge at the outset.
4. Essentially, the Claimants contend that the Council adopted a fundamentally flawed approach to the objective of making savings in its budget. The Council ought to have started by assessing the needs for library services in Brent, bearing in mind all relevant considerations, including mandatory child welfare and equality considerations. It should then have proceeded to decide how best to comply with its statutory duty to deliver a comprehensive and efficient library service under section 7 of the 1964 Act, bearing in mind resource constraints.
5. Instead of that approach, the Council started from the false premise that library closures were an inevitability, thereby closing its mind to alternative means of fulfilling the section 7 service delivery duty within a constrained budget. In particular, it proceeded on the basis of an incorrect assumption, based on a misdirection of law, that it could not operate libraries collaboratively with community groups or others in fulfilment of that statutory duty. Moreover, it acted unfairly by failing properly to consult the public on the proposals generally, by withholding relevant information from consultees and by failing to undertake adequate inquiry and consultation in relation to the needs of those groups protected by equality legislation. Consequently, the decision was legally flawed and should be quashed.
6. The grounds of claim, in summary, are as follows:
 - (i) the Council misdirected itself in law as to the means by which it could fulfil its statutory duty under section 7 of the 1964 Act. In particular, it directed itself that a library could only be either provided and funded solely by the Council in fulfilment of its duty under section 7 of the 1964 Act, or could be a private or community library provided and

funded entirely separately, and in addition to, a section 7 service delivered by the Council itself. In doing so (or alternatively), the Council closed its mind to the possibility, envisaged by the 1964 Act, that some libraries could be retained, partly provided or funded by other sources;

- (ii) the decision to close 50% of the existing libraries is in breach of the Council's duty under section 7 of the 1964 Act, because the Council failed: (a) to start by assessing the need for library services in its area rationally or at all; and (b) to identify and take into account certain mandatory relevant considerations affecting the exercise of the duty, specifically the considerations referred to in the Children Act 1989 and the Children Act 2004;
- (iii) the Council failed to comply with the continuing obligation imposed by section 149 Equality Act 2010 (and the statutory predecessors to that provision) to have 'due regard' to the needs, *inter alia*, to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not; and
- (iv) the Council failed to undertake adequate consultation, and acted unfairly by:
 - (a) failing to provide sufficient information to enable consultees to make specific submissions as to which libraries should be retained if the Council ultimately decided that some closures were necessary; and
 - (b) failing to provide sufficient information to consultees who wished to advance what were referred to as 'Big Society' solutions to keeping libraries open, so as to enable them to make meaningful proposals involving community financial support and/or involvement in running libraries.

7. The Claimants submit that for these reasons, individually and when taken as a whole, the Council’s decision to close six of the twelve libraries in Brent was unreasonable and unlawful.

THE LEGISLATIVE FRAMEWORK

A. *The Public Libraries and Museums Act 1964 [1/C/1-26]*

8. The 1964 Act imposes a statutory duty on ‘*library authorities*’ to ‘*provide a comprehensive and efficient library service*’ to everyone who lives, works or attends full-time education in the library area. That duty is contained in section 7(1) of 1964 Act, which states:

‘7 General duty of library authorities

(1) It shall be the duty of every library authority to provide a comprehensive and efficient library service for all persons desiring to make use thereof, provided that although a library authority shall have power to make facilities for the borrowing of books and other materials available to any persons it shall not by virtue of this subsection be under a duty to make such facilities available to persons other than those whose residence or place of work is within the library area of the authority or who are undergoing full-time education within that area.’

[Emphasis added]

9. Subsection (2)(a) provides further statutory instructions as to the factors that a library authority must take into account in order to fulfil its duty under section 7(1):

‘(2) In fulfilling its duty under the preceding subsection, a library authority shall in particular have regard to the desirability—

(a) of securing, by the keeping of adequate stocks, by arrangements with other library authorities, and by any other appropriate means, that facilities are available for the borrowing of, or reference to, books and other printed matter, and pictures, gramophone records, films and other materials, sufficient in number, range and quality to meet the general requirements and any special requirements both of adults and children...’

[Emphasis added]

10. Section 9(1) of the 1964 Act confers a power on the library authority to contribute towards the expenses of ‘*any other person*’ providing ‘*library facilities*’ for the public:

‘(1) A library authority may make contributions towards the expenses of another library authority or of any other person providing library facilities for members of the public.’

11. There is an implied duty under section 7 of the 1964 Act to conduct an adequate assessment of local needs. That requirement is an inherent component of the duty to provide a comprehensive and efficient library service. This point was made in clear terms in the statutory public inquiry ordered by the Secretary of State into Wirral Metropolitan Borough Council’s decision to restructure its library service (‘the Wirral Report’) [1/D/75]:

‘The Inquiry has accepted the implicit and explicit interpretation of the 1964 Act that a comprehensive and efficient service is one that is based on local needs (hence why there can be no single definition which is true to all library authorities in England), and if those needs are not fully assessed and taken into account, it becomes a rational impossibility for a library authority to design a service which comprehensively and efficiently meets those needs in a demonstrable way.’

[Emphasis added]

The Wirral Report also stated (at [1/D/76]):

‘Because the Council did not demonstrate that it had made an adequate assessment of local needs, I also conclude that the Council did not act reasonably in meeting such needs through their proposals, either in meeting their statutory obligations, or in the context of available resources; as, in the absence of such assessment or demonstrable knowledge of local needs, it was incapable of identifying a reasonable option for meeting such needs both comprehensively and efficiently.’

[Emphasis added]

12. Section 20 of the 1964 Act also empowers a local authority to generate revenue by allowing library premises to be used for holding meetings, performances etc. in return for payment:

‘A local authority maintaining premises under this Act may use the premises, or allow them to be used (whether in return for payment or not), for the holding of meetings and exhibitions, the showing of films and slides,

the giving of musical performance, and the holding of other events of an educational or cultural nature, and in connection therewith may, notwithstanding anything in section 8 above, make or authorise the making of a charge for admission.’

B. The Children Acts [1/C/27-39 and 1/C/42-48]

13. Section 17(1) of the Children Act 1989 places a ‘*general duty*’ on every local authority to promote the welfare of children who are ‘*in need*’ by providing ‘*appropriate*’ services to meet those needs:

‘It shall be the duty of every local authority (in addition to the other duties imposed on them by this Part) –

- (a) to safeguard and promote the welfare of children within their area who are in need; and
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families

by providing a range and level of services appropriate to those children’s needs’

14. Section 17(10) defines the circumstances in which a child is ‘*in need*’ for the purposes of a local authority’s duty under section 17(1):

‘For the purposes of this Part a child shall be taken to be in need if –

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services, or
- (c) he is disabled,

and ‘family’ in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.’

15. Section 10(1) of the Children Act 2004 imposes a statutory duty on every local authority to ‘*make arrangements to promote co-operation*’ with the authority’s ‘*relevant partners*’ and with ‘*such other persons or bodies as the authority considers appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority’s area*’. The term ‘*relevant partners*’ is defined by subsection 10(4). It includes the governing bodies of any schools maintained by the authority, the governing bodies of any further education colleges situated in the local authority’s area and any Strategic Health Authority and Primary Care Trust covering any part of that area.
16. Subsection 10(2) sets out the purpose that such ‘*arrangements*’ must seek to achieve:
- ‘The arrangements are to be made with a view to improving the well-being of children in the authority’s area so far as relating to –
- (a) physical and mental health and emotional well-being;
 - (b) protection from harm and neglect;
 - (c) education, training and recreation;
 - (d) the contribution made by them to society; and
 - (e) social and economic well-being.’
17. Under section 10(9), ‘*arrangements*’ may include arrangements relating to people aged 18 or 19 and arrangements relating to people aged between 19 and 24 who have a ‘*learning difficulty*’ and who are receiving certain services under the Education Act 1996 or the Apprenticeships, Skills, Children and Learning Act 2009. Section 10(5) provides that the relevant partners of a local authority ‘*must co-operate with the authority in the making of arrangements under this section*’.
18. Section 10(3) explains that in making arrangements under section 10 a local authority ‘*must have regard to the importance of parents and other persons caring for children in improving the well-being of children*’.

C. Duty to have regard to all relevant considerations

19. It is well established that any public authority exercising a statutory duty or power must have regard to all relevant considerations and will be deemed to have erred in law if it fails to do so. This obligation includes a requirement to gather information so as to enable the decision-maker to take an informed decision. In *Secretary of State for Education v Tameside MBC* [1977] AC 1014, 1065 Lord Diplock stated:

‘It is not for any court of law to substitute its own opinion for [the decision maker]; but it is for a court of law to determine whether it has been established that in reaching his decision unfavourable to the council he had directed himself properly in law and had in consequence taken into consideration the matters which upon the true construction of the Act he ought to have considered and excluded from his consideration matters that were irrelevant to what he had to consider...Or, put more compendiously, the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?’

[Emphasis added]

D. Public Sector Equality Duties [1/C/49-54]

i. The legislative framework

20. Public authorities are required, in the discharge of all their statutory functions, to give ‘due regard’ to three specific, albeit overlapping, statutory equality needs.. The decision-making process under challenge in the present case spanned two separate statutory equality regimes. Prior to 6 April 2011, public authorities were subject to general equality duties to give due regard to sex, race and disability discrimination (by virtue of section 71 Race Relations Act 1976 as amended, section 76A Sex Discrimination Act 1975 and section 49A Disability Discrimination Act 1995).
21. On 6 April 2011 those three separate equality duties were replaced by section 149 Equality Act 2010, which put in place a consolidated and expanded general public sector equality duty hereafter ‘the PSED’. The PSED duty covers seven distinct equality strands. For the purposes of the present claim it is assumed to be uncontroversial that case law considering the equality duties under the former statutory framework remains relevant to the interpretation of the new duties under the Equality Act 2010.

22. Section 149 of the Equality Act 2010 imposes a duty on all public authorities in the performance of all their functions to give ‘due regard’ to three statutory equality needs. The three equality needs are identified as follows:

- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and those who do not share it.

[Emphasis added]

23. Section 149(7) provides that the seven relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

24. The Equality and Human Rights Commission has also produced statutory and non-statutory guidance giving advice on the equality duty [1/D/282-437]. Failure to follow the guidance is not itself a free-standing error of law, but if the guidance is ignored, departed from, misconstrued or misapplied, that may be a powerful factor that leads the court to conclude that there has been a breach of the PSED: see *R(Brown) v Secretary of State for Work & Pensions* [2008] EWHC 3158 (Admin) at [120].

ii. Objective of PSEDs

25. It is necessary to have regard to the purpose of the PSEDs and the reasons why they were introduced when analysing their scope and nature.¹ The purpose of PSEDs was

¹ The first (race) PSED was a specific statutory policy response to the findings of Sir William MacPherson’s Inquiry into the handling by the police of the murder of the black teenager Stephen Lawrence in 1993. The MacPherson report famously described as ‘institutional racism’ the potentially discriminatory effects of an institution’s policies and practices if they remain unexamined and unchallenged. The Report concluded that “*It is incumbent upon every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities.*”.

considered by the Court of Appeal in *R (Elias) v Secretary of State for Defence* [2006] 1 WLR 3212, where Arden LJ observed:

‘263... One of the great social challenges of the day is to ensure equality for all persons in accordance with the law. This challenge is comparatively new because it is only relatively recently that the law has expressly provided for the elimination of discrimination on the grounds of race, gender and certain other grounds...

274. It is the clear purpose of section 71 [of the Race Relations Act] to require public bodies to whom that provision applies to give advance consideration to issues of race discrimination before making any policy decision that may be affected by them. This is a salutary requirement, and this provision must be seen as an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation. It is not possible to take the view that the Secretary of State’s non-compliance with that provision was not a very important matter. In the context of the wider objectives of anti-discrimination legislation, section 71 has a significant role to play. I express the hope that those in government will note this point for the future.’

[Emphasis added]

26. The equality goals enshrined in section 149 are not mere relevant considerations to be considered among other, potentially competing, considerations. The goals are described in the statutory language as ‘needs’. Therefore whilst PSEDs do not amount to duties to achieve a particular result, they are duties to formulate policies with an intended direction of travel.
27. As the Divisional Court observed in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin), the protected characteristics have in the past played ‘*regrettably little*’ part in the thinking and decision-making of public authorities and the PSEDs are intended ‘*to achieve a climate of change*’. A public authority which fails to recognise the enhanced status of the equality goals, as compared with others, or which considers them as possibly relevant considerations but rejects them as ‘needs’ or goals would not give ‘due regard’ to them.
28. In *BAPIO Action v Secretary of State for the Home Department* [2007] EWCA Civ 1139 the Court of Appeal held at [2] that inattention to the importance of complying with the PSED ‘*not as rearguard action following a decision but as an essential preliminary to such a decision*’ was ‘*both unlawful and bad government*’.

29. Volume 1 page 6 of the EHRC Guidance explains the purpose of the equality duty in the following terms [1/D/291]:

‘The broad purpose of the equality duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities. If you do not consider how a function can affect different groups in different ways, it is unlikely to have the intended effect. This can contribute to greater inequality and poor outcomes.

The general equality duty therefore requires organisations to consider how they could positively contribute to the advancement of equality and good relations. It requires equality considerations to be reflected into the design of policies and the delivery of services, including internal policies, and for these issues to be kept under review.’

iii. The three equality needs under section 149

30. Due regard to the need to eliminate discrimination includes due regard to the need to avoid indirect discrimination – i.e. due regard to the justification and proportionality of actions which may have an indirectly discriminatory effect.
31. The duty to have due regard to the need to eliminate discrimination complements, but is not the same as, the duty to have due regard to the need to advance equality of opportunity. In *R (Baker) v Secretary of State and the London Borough of Bromley* [2008] LGR 239 Dyson LJ explained that:

‘30...promotion of equality of opportunity...will be assisted by, but is not the same thing as the elimination of racial discrimination...the promotion of equality of opportunity is concerned with issues of substantive equality and requires a more penetrating consideration than merely asking whether there has been a breach of the principle of non-discrimination...’

32. This point is also made in the EHRC’s Guidance, vol. 2 page 16 [1/D/354] :

‘Remember that equality analysis is not simply about identifying and removing negative effects or discrimination, but it is also an opportunity to identify ways to advance equality of opportunity and to foster good relations.’

33. Section 149(3) provides statutory directions as to the scope of the obligation to have due regard to the need to advance equality of opportunity. It states that the obligation involves having due regard, in particular, to the need to:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected with that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

[Emphasis added]

34. Section 149(5) gives helpful guidance, for the first time, on what is meant by ‘*having due regard to the need to foster good relations...*’ It explains that this duty means having due regard, in particular, to the need to (a) tackle prejudice; and (b) promote understanding.

35. Section 149(6) explains that compliance with the duties in section 149 ‘*may involve treating some persons more favourably than others*’ but that this does not permit conduct that would otherwise be prohibited under the Act.

iv. Meaning and implication of duty to have ‘due regard’

36. The implications of the duty to have ‘due regard’ are set out in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) (a challenge brought in relation to the PSED in s49A DDA but equally applicable to the duty under section 149 of the Equality Act 2010):

90. An examination of the cases to which we were referred suggests that the following general principles can be tentatively put forward. First, those in the public authority who have to take decisions that do or might affect disabled people must be made aware of their duty to have ‘due regard’ to the identified goals: compare, in a race relations context *R(Watkins – Singh) v Governing Body of Aberdare Girls’ High School* [2008] EWHC 1865 at paragraph 114 per Silber J. Thus, an incomplete or erroneous appreciation of the duties will

mean that ‘due regard’ has not been given to them: see, in a race relations case, the remarks of Moses LJ in R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062 (Admin) at paragraph 45.

91. Secondly, the ‘due regard’ duty must be fulfilled before and at the time that a particular policy that will or might affect disabled people is being considered by the public authority in question. It involves a conscious approach and state of mind. On this compare, in the context of race relations: R(Elias) v Secretary of State for Defence [2006] 1 WLR 3213 at para 274 per Arden LJ. Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision, are not enough to discharge the duty: compare, in the race relations context, the remarks of Buxton LJ in R(C) v Secretary of State for Justice [2008] EWCA Civ 882 at paragraph 49.

92. Thirdly, the duty must be exercised in substance, with rigour and with an open mind. The duty has to be integrated within the discharge of the public functions of the authority. It is not a question of ‘ticking boxes’. Compare, in a race relations case the remarks of Moses LJ in R(Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062 (Admin) at paragraphs 24 - 25.

93. However, the fact that the public authority has not mentioned specifically section 49A(1) in carrying out the particular function where it has to have ‘due regard’ to the needs set out in the section is not determinative of whether the duty under the statute has been performed: see the judgment of Dyson LJ in Baker at paragraph 36. But it is good practice for the policy or decision maker to make reference to the provision and any code or other non – statutory guidance in all cases where section 49A(1) is in play. ‘In that way the [policy or] decision maker is more likely to ensure that the relevant factors are taken into account and the scope for argument as to whether the duty has been performed will be reduced’: Baker at paragraph 38.

94. Fourthly, the duty imposed on public authorities that are subject to the section 49A(1) duty is a non – delegable duty. The duty will always remain on the public authority charged with it. In practice another body may actually carry out practical steps to fulfil a policy stated by a public authority that is charged with the section 49A(1) duty. In those circumstances the duty to have ‘due regard’ to the needs identified will only be fulfilled by the relevant public authority if (1) it appoints a third party that is capable of fulfilling the ‘due regard’ duty and is willing to do so; and (2) the public authority maintains a proper supervision over the third party to ensure it carries out its ‘due regard’ duty. Compare the remarks of Dobbs J in R (Eisai Limited) v National Instituted for Health and Clinical Excellence [2007] EWHC 1941 (Admin) at paragraphs 92 and 95.

95. Fifthly, (and obviously), the duty is a continuing one.

96. Sixthly, it is good practice for those exercising public functions in public authorities to keep an adequate record showing that they had actually considered their disability equality duties and pondered relevant questions. Proper record - keeping encourages transparency and will discipline those

carrying out the relevant function to undertake their disability equality duties conscientiously. If records are not kept it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty imposed by section 49A(1): see the remarks of Stanley Burnton J in *R(Bapio Action Limited) v Secretary of State for the Home Department* [2007] EWHC 199 (Admin) at paragraph 69, those of Dobbs J in *R(Eisai Ltd) v NICE* (supra) at 92 and 94, and those of Moses LJ in *Kaur and Shah* (supra) at paragraph 25.’

[Emphasis added]

37. As regards the content of the obligation to have ‘due regard’, it is clear that having ‘due’ regard is something more than having ‘regard’. In *R (Meany) v Harlow District Council* [2009] EWHC 559 (Admin) Davis J said (at [72]):

‘First, the statutes require that the public body has ‘due regard’ to the specified matters; and what is ‘due’ depends on what is proper and appropriate to the circumstances of the case. Therefore, if a challenge is made, the question of due regard requires a review by the court. It is not simply a question of determining whether no regard at all was had to the statutory criteria... It is true that, as *Baker* and *Brown* make clear, how much weight is to be given to the countervailing factors is a matter for the decision maker. But that does not abrogate the obligation on the decision maker in substance first to have regard to the statutory criteria on discrimination.’

[Emphasis added]

38. Similarly in *R (Domb) v London Borough of Hammersmith and Fulham* (2009) BLGR 843 Rix LJ explained that:

‘52...[D]ue regard does not exclude paying regard to countervailing factors but is ‘regard that is appropriate in all the circumstances’ but the test of whether a decision maker has had due regard is a test of the substance of the matter, not a mere formal box ticking and that the duty must be performed with vigour an open mind and that it is a non-delegable duty.’

[Emphasis added]

39. The level of regard which is ‘due’ will depend on the circumstances (see *R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141 at para 31). In a case where the decision may affect large numbers of vulnerable people, many of whom fall within one or more of the protected groups, the due regard necessary is ‘very high’: *R (Hajrula) v London Councils* [2011] EWHC 448 Admin at para 62.

40. The obligations imposed by PSEDs are not diminished by the fact that a public authority is operating under tight financial constraints. See per Blake J in *R (Rahman) v Birmingham City Council* [2011] EWHC 944 (Admin):

‘Even when the context of decision-making is financial resources in a tight budget, that does not excuse compliance with the PSEDs, and there is much to be said for the proposition that even in straitened times the need for clear well informed decision-making when assessing the impacts on less advantaged members of society is as great if not greater. In general terms, I consider the advice recently issued by the EHRC in non-statutory guidance ‘Using the Equality Duties to Make Fair Financial Decisions’ to be of assistance to decision makers such as this defendant in the no doubt very difficult decisions that have to be taken in this field.’

[Emphasis added]

v. Duty to gather information

41. In order to discharge their statutory obligations under section 149 of the Equality Act 2010, public authorities must undertake a sufficiently thorough information gathering exercise. In *R (Rahman) v Birmingham City Council* Blake J referred to the need to collate ‘*relevant information...in order to have evidence based decision-making*’ [35]. In *R (Lunt) v Liverpool City Council* [2009] EWHC 2356 (Admin) he observed at [44] that, when considering a proposal to maintain a policy that presented problems for wheelchair users, a ‘*lawful exercise of discretion could not have been performed unless the Committee properly understood the problem, its degree and extent.*’
42. Similarly, in *Brown Aikens* LJ explained that in order to discharge its duty,
- ‘the public authority will...have to have due regard to the need to take steps to gather relevant information in order that it can properly take into account disabled persons’ disabilities in the context of the particular function under consideration’
43. This requirement is made explicit in the EHRC Guidance, which states that a public authority should: (1) Consider what equality information it has; (2) collate and publish the information; (3) identify any information gaps; and (4) take steps to fill any information gaps including by engagement (or consultation) with stakeholders.

44. The Guidance explains the importance of gathering information at vol. 2, page 26 [1/D/364]:

‘Without good evidence, good equality analysis will be difficult to achieve. A lack of information is never an excuse for not analysing the effect on equality, as some evidence will almost always be available. Where it isn’t available, take steps to gather it.’

45. In order for a decision-maker to have due regard to the statutory equality needs, it needs sufficient information as to the likely impact of the proposals under consideration on those needs. Again, the level of information sufficient must depend on the circumstances of the case, but a higher level of information is required where a potential discriminatory impact has been identified, and it will often be necessary for the public authority to consult affected groups in order to gather sufficient information on impacts. See thus the EHRC guidance on Involvement in connection with the PSEDs:

‘The more potential impact a decision may have, the more public participation in decision-making you should try to build in. This will ensure that you get the full range of views, information and experiences that you need to make the best decisions and deliver efficient and effective services.’

46. The reasons why it is important for a public authority to gather information are discussed in the EHRC Guidance at vol 1., page 15 [1/D/300]:

‘By gathering and using equality information, you will be better able to:

- understand the effect on equality of your current and proposed policies, practices and decisions
- identify what the key priority equality issues are for your organisation
- set the most appropriate equality objectives and measure progress against them
- demonstrate compliance with the duty, and
- demonstrate to the public how you are performing and what you are achieving.’

vi. Duties when undertaking consultation

47. Whenever a public authority undertakes a consultation exercise as part of its discharge of its PSEDs, that consultation exercise must itself comply with certain established

public law precepts on effective consultation. In considering the legal criteria relevant to consultation, the Court must have regard to the principles set out in *R v Brent London Borough Council ex. p. Gunning* [1985] 84 LGR 168, at 189:

‘First, that consultation must be at a time when the proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third...that adequate time must be given for consideration and response, and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.’

48. Similarly in *R v North and East Devon Health Authority ex. p. Coughlan* [2001] QB 213 Woolf LJ stated:

‘108...To be proper, a consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken...’

49. Case law has also established a specific obligation to furnish consultees with an adequate explanation of the criteria that the decision-maker will apply when it appraises any proposals made during the consultation process. In *R (Capenhurst) v Leicester City Council* [2004] EWHC 2124 (Admin) Silber J stated:

‘46. It is important that any consultee should be aware of the basis on which a proposal put forward for the basis of consultation has been considered and will thereafter be considered by the decision-maker as otherwise the consultee would be unable to give, in Lord Woolf’s words in *Coughlan*, either ‘intelligent consideration’ to the proposals or to make an ‘intelligent response’ to it. This requirement means that the person consulted was entitled to be informed or had to be made aware of what criterion would be adopted by the decision-maker and what factors would be considered decisive or of substantial importance by the decision-maker in making his decision at the end of the consultation process.’

[Emphasis added]

CONTEXT OF THE CLAIM

50. As is well known, this claim takes place against a background of significant fiscal pressure on local authorities to cut spending as a result of the funding cuts that have been imposed by central government. In these circumstances, the Claimants recognise that the Council's need to reduce overall spending will influence the outcome of some of the difficult decisions that it is required to take.
51. However this unfortunate reality does not obviate the requirement that every decision concerning the provision of public services must be taken in a manner that is rational, lawful and takes into account all relevant considerations. On the contrary, the difficult economic climate makes it even more important for decisions to be taken transparently and through a fair and lawful process, since public resources are even more precious, and the impact on those who lose out is all the more acute.
52. Whilst it is not the role of the Court to substitute its views on what level of services should be provided or how they should be delivered, it *is* the role of the Court to ensure that important decisions about the provision of public services are taken in a manner that complies with all of the Council's legal duties: see per Lord Nicholls of Birkenhead in *Ghaidan v Godin-Mendoza* [2004] 2 AC 557 at [19]. The Claimants do not invite the Court to do any more than that in the present case.
53. The need for proper oversight by the Courts is particularly important when spending decisions impact upon public services that lie at the very heart of community life. In an area as heterogeneous as Brent, a public library is far more than a mere repository of books and newspapers. Public libraries offer a range of important services and provide benefits to the local community that extend far beyond the provision of free reading material. In addition to the important role that libraries play in providing the local population with free access to information and educational resources, the public library is also a valuable community focal point. As a neutral, shared, community space the public library is a uniquely effective forum for fostering social cohesion and for integrating minority groups into local life. This is achieved in numerous different ways, for example by providing educational classes targeted at particular groups (the Citizenship Test practice classes held at Neasden Library and Ealing Road Library are

a good example of this); by providing specialist collections that cater for the needs of a particular group (for example, the library service's gay and lesbian collections and those in other languages serving particular minorities); by hosting civic and community events (lectures, film screenings, meetings of community interest groups etc); and by enabling individuals from different ethnic, religious and social backgrounds to meet one another in a safe and welcoming community environment.

54. Public libraries can also perform an important function in alleviating economic disadvantage and improving the life chances of young people in the locality. By way of illustration, a significant minority of people in Brent do not have a home personal computer or access to the internet. For these individuals, the public library is often the only affordable means of accessing the internet and basic IT services such as word processing or printing. If people are unable to access online resources and IT facilities they are likely to experience difficulties in applying for jobs, managing their personal affairs and engaging with online social media (e.g. social networking sites) in order to maintain relationships with friends and family both within and outside the locality. Libraries are a means by which younger children with limited or no access to books at home may nevertheless be introduced to them by those, like the first Claimant, who are responsible for their care. Older children with no or limited internet access at home (of whom the second Claimant's children are two examples) are nevertheless expected to use the internet for homework assignments and research. The sole affordable means of doing so for many is at local libraries. In addition, many young people come from homes (often social housing) where there is no space for quiet study. Without the public library, those individuals would experience great difficulty in finding an environment that is conducive to study and which has the resources necessary to support learning. This would undoubtedly harm their educational progress, with obvious knock on effects on their future employment prospects and life chances.

55. In short, it is clear that the benefits of an effective and comprehensive library service inure to the community as a whole as well as to the individual users of the service. Decisions to reduce such services should be approached with considerable circumspection, and can provoke powerful responses in Brent and elsewhere in the country. In other areas, local authorities that have previously described library

closures as unavoidable have sought other means of making savings in the face of public pressure and alternative proposals. For example, in Oxford, proposals to close 20 of 43 public libraries have been withdrawn for reconsideration.²

56. That local authority decisions to impose significant cuts on library services can be irrational is well-illustrated by the Wirral Inquiry [1/D/1-96]. In that case, Wirral Metropolitan Borough Council had decided to replace the existing library service of 24 libraries with a new network of 13 Neighbourhood Centres, each of which would also include a library. The Secretary of State exercised his power under section 10 of the 1964 Act to order a Public Inquiry to investigate whether the council had failed to comply with its statutory duties under the 1964 Act. The Inquiry undertook a detailed and probing analysis of the Council's decision-making process and identified numerous shortcomings. In these circumstances, the Inquiry concluded that the Council's decision was unlawful. The Inquiry found, in particular, that:

- a. The Council had *'failed to make an adequate assessment of local needs (or alternatively to evidence knowledge of verifiable local needs)'*. Consequently, it could not have acted reasonably in meeting such needs in the context of its statutory duties [1/D/5].
- b. The Council was unable to show that it had had due regard to the general requirements of children. This was a further breach of its statutory duties [1/D/5].
- c. The decision *'was made without a clear understanding of the extent and range of services currently being provided in the libraries'* [1/D/5].
- d. Without an assessment of needs and a strategic library review, the Council had *'displayed a lack of logic around why some facilities were recommended for closure and not others'* [1/D/6].

² See the Oxford Times, 24 March 2011
http://www.oxfordtimes.co.uk/news/8927997.County_tears_up_library_closure_plan/

e. *‘The Council assumed it knew what people wanted...but it did not base this on any evidence of what local people who live, work and study in the area want and need; i.e. ‘the general...and...special requirements of adults and children’ [1/D/52].*

f. The Council had failed to consider *‘the particular circumstances of specific residential communities and their need for library facilities’.*

It was unable to demonstrate that it had made an adequate assessment of needs, since *‘[i]t has not been evidenced whether a physical presence is demonstrably ‘surplus to requirements’ in deprived communities and/or whether needs can be met comprehensively and efficiently by other means’ [1/D/53]*

57. This claim also takes place against the backdrop of a concerted Government initiative to encourage community empowerment through the provision of civic amenities by local volunteers (what has become known as the ‘Big Society’ concept). The voluntary sector is increasingly being encouraged, and relied upon, to work in partnership with the public sector to deliver high quality services to the community. The potential benefits of such partnerships are obvious: lower running costs, increased civic engagement and the forging of closer links between providers of services and the communities that they serve. The provision of library facilities by community groups and local charities acting in conjunction with a local council would appear to be a classic example of this collaborative model in action. On 24 February 2011, the Secretary of State issued guidance to local authorities considering how best to square their section 7 duty with restrictions on their resources which highlighted the desirability of such options [1/D/438-441].

THE PARTIES

The Claimants

58. The Claimants are regular users of their local libraries (Kensal Rise, Barham Park and Preston Road), all of which are threatened with closure. They describe their circumstances in a series of witness statements at [1/B]. The first Claimant, Ms Bailey, is also the coordinator of a nursery in Kensal Rise for low income families and takes children from there to the library each week, something which will be

impossible if the library is closed. The second Claimant, Ms Dezoysa, is a single parent on means tested benefits who uses Barham Park library for study to improve herself, as a place where her 6 and 7 year old daughters can also study (including by accessing computers for mandatory homework projects) and to access books for pleasure. The third Claimant, Mr Lester is unemployed. He uses his local library to seek work (through newspapers and internet access), to read extensively and to maintain social contact with others in the same position.

59. All three Claimants have personally responded to the Council's consultation. They have also been active in the campaigns to oppose the closure proposals and to propose alternative means by which the Council can achieve the savings necessary to balance its budget. They are all deeply concerned about the effect that closing the libraries will have upon them personally and the local community, and the disparate impact that the closures will have upon certain vulnerable or disadvantaged groups.

The Defendant

60. The Council is a '*library authority*' for the purposes of the Public Libraries and Museums Act 1964. As such, it is under a statutory duty to '*provide a comprehensive and efficient library service for all persons desiring to make use thereof*' who live, work or attend full-time education in the Brent local authority area. The Council currently fulfils that duty by financing and running 12 public libraries across the borough.
61. More than a quarter of a million people live in the London Borough of Brent, which is one of the most ethnically and religiously diverse boroughs in the United Kingdom.³ At the time of the last census Brent was the most ethnically mixed local authority area in England and Wales and was one of only two boroughs in the United Kingdom with a larger Black and Asian population than White.⁴ The borough is also one of the most economically deprived in the United Kingdom. The Government's 2010 Index of

³ The 2001 census gave Brent an official population of 263,464. Based on local and national trends, it is very likely that this figure has increased during the past decade. In 2009, for example, the Greater London Authority estimated the borough's population to be 274,400.

⁴ Office for National Statistics press release dated 5 October 2006. It has the second highest number of people born outside the United Kingdom of any local government region, and the lowest proportion of people identifying themselves as White British.⁴

Multiple Deprivation placed Brent well within the 15% most deprived local authority areas in the country.⁵ Over a quarter of children in the borough are entitled to free school meals and educational performance is significantly below the national average.⁶

62. In these circumstances there is a heavy reliance upon the public services including the library. The Brent library service is a very well used civic amenity and acts as an important gateway to other public services. In 2009/10 the twelve public libraries had over 50,000 active users and received over 1.68m visits (an average of over 4,600 visitors per day).

THE DECISION UNDER CHALLENGE

63. The Claimants challenge the decision to close six of the twelve libraries in the borough. This decision was the culmination of a project entitled the '*Libraries Transformation Project*', which was launched in November 2010. As explained in further detail below, the decision to close the libraries was preceded by the approval of a budget on 28 February 2011 which was premised on the closure of six libraries. Despite serious misgivings about the way that budgetary decision was taken, in the light of certain assurances given in pre-action correspondence, the Claimants do not seek to challenge the Council's budget in these proceedings.⁷ Instead, the focus of their claim is the decision taken by the Council's Executive on 11 April 2011 formally to approve the library closures.

STATEMENT OF FACTS

64. In October 2010 the Council commissioned Red Quadrant, a firm of local government consultants, to examine library usage in Brent with a view to improving the borough's library services. Red Quadrant duly held a series of focus group meetings and

⁵ In the IMD ranking Brent has moved from the top 14.7% most deprived areas in 2007 to the top 10.7% in 2010.

⁶ Learning and Skills Council, Borough Profile of Brent (available at: <http://readingroom.lsc.gov.uk/pre2005/research/commissioned/london-west-brent-profile.pdf>)

⁷ The Council has given repeated written assurances that the February 2011 budget was only a 'provisional' budget and did not involve the Council making any binding spending commitments in respect of the library service.

produced a report setting out their findings and making detailed recommendations for improving facilities and service delivery in the future [2/E/27-194]. The report did not recommend the closure of any libraries or a reduction in funding to the library service, but its authors were briefed that the Council's 'strategy' was to close seven of the twelve libraries and focus on a 'core offering' of five. However, this strategic context was not made public at the time and nor were those specific members of the public Red Quadrant interviewed told about it. The Red Quadrant report was not published and only provided to the Claimants in a response to pre action correspondence.

65. On 15 November 2010 the Council launched the '*Libraries Transformation Project*' ('LTP') publicly. The LTP consisted of a number of significant proposed changes to the provision of library services in the borough. The Officers' Report that accompanied the launch of the LTP described it as '*a One Council project to improve the quality of library provision in Brent, while contributing to the Council's need to meet efficiency targets in response to reductions in funding.*' [2/E/212] The opening paragraph of the report also stated that: '*The number of library buildings in the borough **will** be reduced*' (emphasis added). The report explained that the new strategy would address '*Rationalisation of resources by closing six library buildings that are poorly located and have low usage*' [2/E/215]. It named the six libraries as earmarked for closure: Kensal Rise, Barham Park, Preston, Cricklewood, Neasden, and Tokyngton libraries.
66. At a meeting on 15 November 2010 the Council approved the opening of a public consultation on the proposals contained in the LTP [2/E/199].

The consultation process

67. Over the following three months the Council undertook a public consultation exercise. There were several aspects to that consultation process:
- a. The Council published a consultation report, plan and additional note containing some information about the proposed closures;

- b. The Council set up an online questionnaire about the LTP that the public could complete;
- c. Questionnaires about class visits to libraries were sent to local schools by email;
- d. The Council held a series of internal and public meetings at which the closure proposals were communicated to attendees. At those public meetings members of the Council repeatedly emphasised that there was no prospect of the existing facilities being maintained at their current levels; and
- e. Council officers engaged in correspondence with concerned members of the public.

68. The consultation questionnaire can be found at **[2/E/10-16]**. It is notable that:

- a. Consultees were told only that the basis on which the six earmarked libraries had been selected was that they *'either have low usage and/or are sited in a poor location'*. Consultees were not asked to express any view on the number of libraries, nor the particular libraries selected.
- b. Consultees were not provided with detailed information about the running costs of individual libraries.
- c. The questionnaire did not attempt to elicit consultees' priorities by asking them to rank various alternatives in order of preference. For example, the questionnaire did not ask whether a library's opening hours or extent of stock were more or less important than a library's proximity to the user's home.
- d. The questionnaire did not ask consultees what adverse consequences they would suffer if their nearest library was closed.
- e. The questionnaire did not ask consultees what steps the Council could take to mitigate any adverse consequences caused by library closures.

69. The deadline for submitting responses to the consultation was 4 March 2011: i.e. six days *after* a budget decision was reached in which savings were predicated on six libraries being closed.

70. During the course of the consultation process, a number of organisations, individuals and community groups submitted alternative proposals for the provision of private or community libraries. The Council indicated that it was willing to entertain such proposals. However, throughout the process it was at pains to emphasise that any proposals that involved the Council making a financial contribution to the cost of the operation would be rejected. Thus, the November 2010 report stated that the Council would undertake [2/E/215]:

‘The development of a clear approach to voluntary organisations who wish to present a robust business case for running library services in vacant buildings (subject to agreement of building owners and at no cost to the Council).’

[Emphasis added]

71. From the beginning of the consultation process the Council stated that it would not consider any proposals that involved any financial expenditure on the Council’s part [2/E/677]:

‘Officers have...made clear the expectation that proposals should be at zero cost and zero risk to the Council and have provided extensive information about the costs of the current services.’

[Emphasis added]

72. The Council’s executive report dated 15 April 2011 further explained that [2/E/526]:

‘Members were clear, in public consultation meetings and through correspondence, that they would consider proposals from the community, but that they needed to meet the Council’s concerns around enabling a balanced budget, and not represent either ongoing costs or risks to the Council.’

[Emphasis added]

73. Whilst the Council states [2/H/42] that the proposals were on the agenda for interdepartmental meetings and a single meeting with a teachers group three days

before the consultation closed [2/H/24], it does not appear that the Council undertook specific internal consultation with other departments or service providers at the Council during the consultation process, or any other statutory agencies. In particular, there is no indication that the Council's Director of Children and Families or the education or highways departments were asked for input.

The February 2011 budget

74. On 28 February 2011 the Council met to set a budget for the forthcoming financial year. The budget report prepared for the meeting explained that Council members were required to agree the service area budgets for 2011/12, as set out in an Appendix to the budget report. The budget also report stated that [2/E/246]:

‘In 2011/12, there is a total projected saving from One Council Programme projects of a further £23m. This includes the following...

- Review of libraries – a part-year saving of £0.4m in 2011/12.’

75. The budget was passed by a majority of the members who voted at the meeting [2/E/-473]. At this stage the LTP consultation process was still ongoing and a significant number of responses to the closure proposals were still being received by the Council. In addition, the Council had not yet completed an Equality Impact Assessment (‘EIA’) nor had it conducted a full investigation of the specific library needs of the population of Brent.
76. No alternative means of making the anticipated savings were raised or considered at any point during the meeting. There was no discussion of the public sector equality duties contained in section 71 of the Race Relations Act 1976, section 49A of the Disability Discrimination Act 1995 or section 76A of the Sex Discrimination Act 1975 or of the new equality duties that would bind the Council once the Equality Act 2010 came into force on 6 April 2011.
77. There was no discussion of the DCMS Guidance which had been sent to all local authorities on 24 February 2011 suggesting alternative means of keeping libraries open at lesser cost.

The Equality Impact Assessment

78. On 28 March 2011 the Council completed an Equality Impact Assessment [2/E/606-670]. The EIA concluded that the LTP *would* have a differential impact on the following protected characteristics:
- a. Race and ethnicity
 - b. Gender (although at one point the EIA also states that the LTP would *not* have a differential impact on gender (see [2/E/607])
 - c. Disability
 - d. Age
79. At the same time, the EIA concluded that the LTP *would not* have a differential impact on the following protected characteristics [2/E/632]:
- a. Sexual orientation
 - b. Religion or belief
 - c. Maternity
 - d. Pregnancy
80. In relation to the differential impact on race, gender, disability and age the EIA identified the following ‘*key potential issues/adverse impacts*’ [2/E/636-645]:
- a. **Accessibility and Affordability** – Increases in walking times and increased public use of public transport to access a library facility would mean that ‘*certain sections of the community in particular, older people, young children, young mothers with children and people with disabilities will have increased barriers to its use*’. In addition, this issue ‘*may have more impact on young people from BME backgrounds in particular Black African and Asian as research indicates that they are more likely to be involved in road traffic accidents*’ [2/E/636]. The EIA concluded its analysis on this issue by stating that, ‘*there may be adverse impacts on a small proportion of residents who cannot walk to public transport or a nearby library, or who cannot use public transport, or for whom transport is unaffordable, and who live in an area where public transport connections are poor*’ [2/E/649].

- b. **Negative impact on educational attainment and standards** – The EIA cited *‘fears that the reduction in local library facilities will have a negative impact on educational attainment due to the lack of study space and local homework clubs’*. Young people in the borough placed a strong emphasis on the need for study space (particularly during exam time) and computer access. The EIA added that the national and local trend for girls to outperform boys meant that boys (particularly boys from BME backgrounds) might be further disadvantaged [2/E/643].

- c. **Negative impact on social cohesion** – Local residents were concerned about the loss of a shared neutral space and loss of a source of involvement and integration with the local community [2/E/644]. However the EIA concluded that: *‘Overall impact is likely to be neutral in terms of community cohesion once customers who are able to use another library start to do so.’* [2/E/644]

- d. **Negative impact on lifelong learning and interlinked unemployment rates** – The EIA identified a public fear that the proposed closures will impact on life-long learning and associated unemployment figures. In addition, empirical data shows that a comparatively high percentage of young adults and active male borrowers aged over 50 use the library as a resource for researching employment opportunities and creating/developing their CV [2/E/644-645].

81. The EIA concluded that measures could be taken to mitigate these adverse impacts [2/E/648-655]. The proposed mitigation included:

- a. **Accessibility and Affordability** –
 - i. Promote agreed changes with wide range of stakeholders
 - ii. Extend the home visit service across the borough
 - iii. Establish monthly outreach deposits to children’s centres and community groups
 - iv. Provide *‘virtual homework help’* for young people unable to access a library easily

- v. Enable library members *‘to access a virtual library from the comfort of their own homes’*

b. Impact on educational standards –

- i. Provide safe and neutral spaces at six remaining libraries
- ii. Provide improved and increased number of study places
- iii. Enhanced youth outreach offer
- iv. Provide *‘virtual homework help’* for young people unable to access a library easily
- v. Longer opening hours during exam periods
- vi. User friendly website
- vii. Provide *‘improved cutting edge teen facilities designed by young people’*

c. Impact on social cohesion –

- i. *‘The core offer information provided under the previous strands also applies to this issue.’*

d. Impact on life-long learning and interlinked unemployment –

- i. Partnership working with voluntary groups and Brent Adult Community Education Service to support learning
- ii. E-learning packages
- iii. Improved wi-fi facilities
- iv. Open learning zones and learn direct centres in some libraries
- v. IT workshops and classes and informal English language classes
- vi. Attractive study spaces offering laptop provision and locker hire

82. Before the consultation process closed, members/officers of the Council made a number of statements regarding the focus of the process. For example:

- a. The following comments were attributed to Councillor Powney at the meeting of the Council on 15 November 2010 [2/E/199]:

‘Members regretted that closures had to be considered but in the face of public sector funding cuts, the current costs were not sustainable.’

- b. Similarly, on his blog Councillor Powney posted the following comments on Friday, 3 December 2010:

‘There were also some misconceptions that need to be cleared up:

i) The Council does not have an enormous pot of money to be made available after agitation. Central government have cut Brent's grant to a greater extent than at any time in the past.’

- c. At the public meeting held on 1 December 2010 the following exchange took place between a member of the public and the Chairman [2/E/27]:

‘MEMBER OF THE PUBLIC: ...Have you considered moving to smaller but newer premises in similar locations to continue providing a local service for local people?

...

THE CHAIRMAN: In terms of moving smaller, not so expensive premises that is something we did in Kingsbury quite effectively, but if we were to save a proportion of those premises and staffing costs it still wouldn't be enough. If there are opportunities for community use then we would be very happy to consider them, with various caveats depending which building it is. But I am required to make savings in excess of a million pounds as part of this project. If I were to keep open smaller libraries I wouldn't make those savings and that is the very harsh reality of the situation.’

- d. On 1 March 2011, a meeting also took place between the Libraries Transformation Team and English Subject Leaders (i.e. representing those responsible for the teaching of English in local schools). The notes of that meeting record the following exchange between the Subject Leaders and the Council representative [2/F/113]:

‘Q Many concerns about the closing of Preston library by 2 schools and the difficulties of being able to get to another library. Simply not possible.

The schools' needs cannot be met if the library is closed.

The LTP and library closures have already been decided.

A It's important for you to complete the questionnaires and tell us what you would like. We want to try and meet you half way. We will look at

our outreach service as it is one of the services we intend to improve and expand.’

- e. At a meeting of the Brent Central Labour Party General Committee on 17 March 2011 the issue of libraries was raised and Councillor John (who chairs the Council Executive) said that the six libraries that were the subject of the proposals were the least used of the libraries and therefore the Labour Group had determined that they should close to allow much wider opening of the remaining ones (see the witness statement of Graham Durham [1/B/3-4]).

The Council’s response to the consultation process

83. The consultation process formally closed on 4 March 2011. The Council’s officers subsequently produced an Executive Report, which was circulated in advance of the meeting of the Council’s Cabinet on 11 April 2011 [2/E/505-529]. The report recommended that Council members approve the closure of the six libraries identified at the outset of the LTP [2/E/506]. In relation to the consultation process, the paper said that the consultation had *‘benefited from extensive media coverage’* and *‘intense media interest’* which meant that it was *‘unlikely that any resident with the slightest interest in libraries or local affairs will be unaware of the discussion around aspects of the Libraries Transformation Process’* [2/E/520].
84. The report said that over 1,500 responses to the questionnaire had been received. This response rate *‘exceeded expectations’* and was *‘well in excess of the target sample size of 630 responses’*. It said that of the responses received, 372 were submitted close to the end of the consultation period *‘and therefore could not be included in the analysis which has informed this report (due to the time needed for inputting)’*. These responses would be analyzed separately and an update would be circulated at the Executive meeting.
85. However the report then commented that there were *‘serious challenges within the consultation feedback as to how representative it is of library users, of non-users, or the borough’s population as a whole’*. It noted that a disproportionate number of respondents were White and a far greater proportion of respondents had used a Brent

library in the last year (87%) than had the general population (23%). In view of these factors, the report therefore cautioned that *'Members should be aware of these shortcomings as they consider the weight they give to the outcomes of the three-month consultation'* [2/E/521].

86. In addition to the unrepresentative ethnic profile of the responses, one of the other *'shortcomings'* that the report expressly identified was that, *'the respondents focussed almost exclusively on the proposals to close six libraries...However all six libraries taken together represent less than 25% of total library visits in 2009/10'* [2/E/521].

Alternative proposals for provision of library facilities in Brent

87. The consultation process also received a number of alternative proposals for ongoing provision of library facilities at a number of the libraries that the Council proposed to close. This issue was raised several times during public meetings and in correspondence between members of the public and Council officers.
88. In total nine separate sets of alternative proposals were submitted to the Council. The proposals included the following:
- a. Barham Library Friends Group – Proposed the establishment of a charitable trust to run Barham Library on a volunteer basis [2/F/118-122].
 - b. Cricklewood Homeless Concern – Proposed the establishment of a Community Interest Company that would run Cricklewood Library as an independent library funded by a combination of memberships, donations, fundraising and income from training courses and general fundraising [2/F/123-140].
 - c. Kensal Rise Friends Group – Proposed that the existing Kensal Rise Friends Group would become a charitable trust and would then proceed to enter into a joint venture with the Council to run the Kensal Rise Library on a volunteer basis [2/F/141-151]

- d. Library Systems and Services UK Ltd (LSSI) – LSSI describes itself as “*the global premier libraries operator and the only public library management specialist in the UK market*”. LSSI’s parent company is a US company with contracts with 16 library authorities in five US states, making it “*the 5th largest library system in the USA*”. LSSI was confident that it could “*deliver significant budgetary savings against the cost of your current operation*”. The company proposed three possible options: (1) LSSI would run the library service as it currently is, with no closures or reductions in opening hours, whilst reducing the running costs by a guaranteed £400k per annum; (2) LSSI would run 12 libraries, supervising voluntary staff at six of the libraries, and saving the Council £1.4m per annum; (3) LSSI would run a reduced numbers of libraries and save the Council £1.4m per annum [2/F/152-158]
- e. Mark Twain Literary Centre – This was a proposal from an individual who wanted to establish a Community Interest Company to operate Kensal Rise Library as a visitor experience and literary centre.⁸ The proposal assumed receipt of £150k per annum from visitors and initial financial assistance of £10k from the Council to assist with capital and start up costs [2/F/159-172].

89. Some of these proposals were accompanied by questions about the mechanics and practicalities of the proposed closures, which were put to the Council officers.

90. In considering the alternative proposals, the Council applied a set of seven criteria against which the proposals would be appraised. Those appraisal factors were set out in an internal document (described in the Council’s Executive Report as ‘*a detailed guidance note for appraising proposals*’ [2/E/526]). That was circulated within the Council but was *not* disclosed to any of the parties making the proposals [2/F/677]. The factors were [2/F/678]:

- i. The viability of the group making the proposal
- ii. The viability of the proposal itself
- iii. The quality of the proposal
- iv. Supporting diversity and inclusion

⁸ The Kensal Rise Library was opened by the American author Mark Twain in 1900.

- v. Delivering the Council's savings targets
- vi. Acceptable contract terms
- vii. Risks to the Council around procurement

91. After assessing them against those appraisal factors, the Council rejected all the alternative proposals. The principal reason for rejecting the proposals was that *'[a]ll of them rely on ongoing subsidy from the Council' and 'none of them relieve the Council from all risk relating to buildings and assets'* [2/F/526]. An analysis of nine of the proposals is contained in Annex 6.2 to the Executive Report [2/F/681-706]. A further analysis of proposals for Preston Road followed in a supplementary paper [2/F/ 500-501].

Decision to close libraries

92. The proposed closures were formally approved at a meeting of the Council's Executive on 11 April 2011 [2/E/485-486].

93. On 27 April 2011 a number of councillors called-in the LTP before the Overview and Scrutiny Committee. The minutes of the meeting provide the following reasons for calling-in the LTP: *'to fully consider the alternative proposals put forward by residents and campaign groups which to date have not been properly examined and to allow them more time to refine their plans'*, *'to discuss fully the impact of the closures on age and race equality issues'*, and *'to consider flaws in the consultation'* [2/F/709].

STATEMENT OF GROUNDS

Ground 1 – Misdirection in relation to the duty under section 7 of the 1964 Act

94. The Council wrongly directed itself that libraries could only be either provided and funded solely by the Council in fulfilment of its duty under section 7 of the 1964 Act, or could be a private or community library provided and funded separately, *and in addition to*, the Council's own library provision. The Council therefore misdirected itself as to the means by which it could fulfil its statutory duty under section 7 of the

1964 Act and closed its mind to the possibility, expressly envisaged by the 1964 Act, that libraries could be maintained by the Council but partly provided or funded by other sources.

95. The Officers' Report for the meeting of the Executive on 11 April 2011 stated, at §12.0, *Alternative Proposals*, that [2/E/525-526]:

'...the Libraries Transformation Project will deliver a service that is comprehensive and efficient, and fulfils the Council's duties. This judgement is based on a detailed assessment of need and analysis of the impact of the changes proposed, including closing 6 library buildings. Any organisations, groups or individuals who delivered a private or community library, whether or not they used buildings currently or previously used by the Council as libraries, would be doing so in addition to the Council's provision and not as a contribution to the Council's fulfilment of its statutory duties.'

[Emphasis added]

96. The sentence underlined above does not accurately reflect the law. In relation to a library authority's duty under section 7(1) of the 1964 Act, section 7(2) provides that the authority is obliged, in particular, to have regard to the desirability of securing the availability of library facilities *'by the keeping of adequate stocks, by arrangements with other library authorities, and by any other appropriate means'*.
97. Specifically, section 9(1) of the 1964 Act confers a power on library authorities to *'contribute towards the expenses of any other person providing library facilities for members the public'* and section 9(2) permits the Secretary of State to make grants *'to any body which maintains book catalogues or indexes to which all library authorities are permitted to refer, or otherwise makes available to all library authorities facilities likely to assist them in the discharge of their duty under section 7(1)...'*
98. It is apparent from those provisions that a library authority such as the Council is not obliged to provide all library facilities itself in discharge of its section 7 duty. Indeed, an authority is *required* by the statute to have regard to the desirability of securing the provision of library facilities by *'any other appropriate means'*.

99. In fulfilling its duty under section 7(1), the Council was therefore under a duty to consider the desirability of securing a comprehensive and efficient library service either by itself, by arrangements with other library authorities, or ‘by any other appropriate means’. Particularly in the light of section 9 of the 1964 Act, ‘other appropriate means’ includes library facilities provided by private parties, voluntary groups or charities, in collaboration with, or on behalf of, the library authority.
100. The position is confirmed by the guidance letter sent to all local authorities by the Minister for Culture, Communications and Creative Industries within the Department for Culture Media and Sport (‘DCMS’) on 24 February 2011, headed *‘Ideas for local authorities to consider before closing frontline public library services’*. The letter notes, in particular, that [2/D/439]:
- ‘Some local authorities, including several of those involved in the Future Libraries Programme, are looking at new ways of working with their local communities to deliver the library service. Others are looking at how community-managed libraries can be established, enabled and operated alongside a local authority-run library service’
101. The accompanying annex to the letter [2/D/440-441] includes a number of different solutions that local authorities might consider for delivering more efficient library services, including working with other local authorities and *‘trust options and partnerships with, or take over by, the community itself’*.
102. In its pre-action response the Council accepts that *‘a library authority could pay another body to provide library services for members of the public; and that the service so provided would be capable of discharging that library authority’s duty under section 7 of the 1964 Act’* [2/H/32]. However, it maintains that the assertion in paragraph 12.1 of the Report for the Meeting on 11 April 2011 was simply a statement of fact, i.e. that the Council considered that it would already be complying with its statutory duty under section 7 of the 1964 Act by providing the proposed six modernised libraries and associated services, so that any other library services that *might* be provided by others would be in addition to, and would not be required so as to contribute to, the Council’s fulfilment of its section 7 duty.
103. That explanation is circular. A local authority might decide, *following* a lawful consultation, that the appropriate means to discharge its section 7 duty would be to

provide all services directly and therefore additional services in partnership with others would not be needed. But it could not conduct an open-minded consultation on how to perform its section 7 duties if it had *already* decided that any partnership services would be provided other than in such performance.

104. It is apparent from the documents that throughout the process the Council assumed that library closures were an inevitable fact: no consideration was ever given to the possibility that additional or existing libraries could be maintained by the Council in pursuit of section 7 of the 1964 Act, partly provided or funded by other sources. Thus, the Report for the meeting on 11 April 2011 said, at paras. 12.2-12.3, that the Council had made it clear from the outset that it would not be engaging in any collaborative proposals in performance of its section 7 duty, and that *any* proposals for alternative library provision must be *at no cost or risk* to the Council [2/E/526]:

‘The November 2010 report specifically stated that the Council was not closing its doors to proposals from the community to deliver libraries on alternative models. That report said that during the consultation process, the Council would undertake:

The development of a clear approach to voluntary organisations who wish to present a robust business case for running library services in vacant buildings (subject to agreement of building owners and at no cost to the Council)

Members were clear, in public consultation meetings and through correspondence, that they would consider proposals from the community, but that they needed to meet the Council’s concerns around enabling a balanced budget, and not represent either ongoing costs or risks to the Council.

Cllr Powney, as Lead Member, and officers met with a number of groups and organisations, and provided a significant amount of detailed information about local libraries, including analyses of central costs (e.g. for ICT, insurance etc)...’

105. It is therefore apparent that the Council’s understanding throughout the process, expressed as such in the Report for the meeting on 11 April 2011, was that the provision of community library facilities by voluntary groups or private individuals must necessarily be *in addition to* any provision made by the Council itself, could not be funded or subsidised by the Council, and could not make a contribution to discharging the Councils’ statutory duty. That was wrong as a matter of law.

106. Moreover, that misunderstanding plainly had an impact on the Council's overall approach and the ultimate decision it took. Members of the Council consistently demonstrated that there was no possibility of the Council making a contribution to the cost of alternative provision of library facilities to the local community. For example:
- a. at a public meeting on 1 December 2010 the chair of the public consultation meeting stated: *'I am required to make savings in excess of a million pounds as part of this project. If I were to keep open the smaller libraries, I wouldn't make those savings and that is the very harsh reality of the situation.'* [2/F/27];
 - b. at a meeting of the Pensioners Service User Forum on 6 December 2010 a representative of the Council stated that: *'We would be open to working w/ a local group who would like to run the library but this has to be externally funded.'* [2/F/88]; and
 - c. at the public meeting on 6 January 2011, Cllr Powney referred to a group interested in working in partnership with the Council to run Kensal Rise Library. He then stated that: *'I have repeatedly offered to meet them but it would be dishonest to pretend that somehow we will give a dollop of money to people. We will not...I don't want anyone under any impression that there is a magic pot of money if you shout and scream enough, it will appear'* [2/F/44]
 - d. at a meeting of the Brent Central Labour Party General Committee on 17 March 2011 Councillor John said that the six libraries that were the subject of the proposals were the least used of the libraries and therefore the Labour Group had determined that they should close to allow wider opening of the remaining ones (see witness statement of Graham Durham [1/B/3-4]); and
 - e. at least one Councillor involved in the decision had informed a constituent, prior to the outcome of the consultation, that the Council 'had no option' but to close the libraries, that there had been longstanding plans to close them and that they would be demolishing and rebuilding Willesden Green Library

Centre 'at no cost to the Council' (see witness statement of Samantha Warrington [1/B/1-2]).

107. No consideration was ever given to the possibility of funding or part-funding the provision of library services by a community group to provide library facilities as a means of allowing more libraries to remain open at a lower cost per library. By failing to identify, or failing to consider, the possibility of providing funding to private community library schemes, the Council therefore proceeded on a wrong assumption that it would necessarily have to close libraries if it was to achieve the desired budgetary savings.
108. In addition, the Council apparently failed to give any consideration as to whether to establish a joint library board with one or more other authorities under section 5 of the 1964 Act, and/or to increase charges for the use of library premises for the holding of meetings or educational or cultural events, as envisaged by section 20 of the Act. The various alternative solutions and ideas outlined in the 24 February 2011 letter to local authorities from the DCMS Minister were also not explored, and that letter and its contents were not mentioned in the report for the 11 April 2011 meeting.
109. However, even if the Council was aware, as it now contends, that it was possible for it to fulfil its section 7 duty by means including the provision of services by a third party subsidised by the Council, the failure to give any, or any proper, consideration to that option was in breach of the Council's duty under section 7(2) of the 1964 Act to have regard to the desirability of fulfilling the section 7(1) duty by 'any...appropriate means', which includes those envisaged by section 9 of the Act. That fact is essentially confirmed by the DCMS letter, which reminded local authorities to be [1/D/438]:

'mindful of your statutory duty under the Public Libraries and Museums Act 1964 to provide a comprehensive and efficient library service, set in the context of local need'.

and indicated that while *'Library closures may not necessarily lead to an automatic breach of this duty...there are a number of important considerations to make before taking such a decision'*.

110. It is clear that, whether through misdirection of law or otherwise, the Council had decided in advance that in no circumstances would it contribute to community-supported library projects in fulfilment of its section 7 duty. Committing itself in that way amounted to an unlawful fetter of the Council's discretion under section 7 of the 1964 Act, evidencing a closed mind and effectively pre-determination of the outcome of the process, namely closure of some of the earmarked libraries.

Ground 2 – failure to discharge the section 7(1) duty

111. As well as misdirecting itself as to the means by which it might discharge the duty under section 7 of the 1964 Act, the Council also failed to discharge the duty lawfully. This was because it failed (a) to start by assessing the needs for library services in its area, either rationally or at all; and (b) to identify and take into account certain relevant considerations affecting the exercise of the duty, specifically its statutory obligations in relation to the welfare of children.

(a) failure to assess needs

112. There is an implied duty under section 7 of the 1964 Act to conduct an adequate assessment of local need. That requirement is an inherent component of the duty to provide a comprehensive and efficient library service contained in section 7 of the 1964 Act. This point was made in clear terms in the Wirral report (at [1/D/75]):

'The Inquiry has accepted the implicit and explicit interpretation of the 1964 Act that a comprehensive and efficient service is one that is based on local needs (hence why there can be no single definition which is true to all library authorities in England), and if those needs are not fully assessed and taken into account, it becomes a rational impossibility for a library authority to design a service which comprehensively and efficiently meets those needs in a demonstrable way.'

[Emphasis added]

The Wirral Report also stated (at [1/D/76]):

'Because the Council did not demonstrate that it had made an adequate assessment of local needs, I also conclude that the Council did not act

reasonably in meeting such needs through their proposals, either in meeting their statutory obligations, or in the context of available resources; as, in the absence of such assessment or demonstrable knowledge of local needs, it was incapable of identifying a reasonable option for meeting such needs both comprehensively and efficiently.'

[Emphasis added]

113. The point is emphasised again in the DCMS letter to local authorities of 24 February 2011 [**1/D/438-439**]:

'I would like to set out to all local authorities that I understand that local government has some challenging decisions to make as part of reducing this country's public spending. However in considering the future of your library service, it is important that you are mindful of your statutory duty under the Public Libraries and Museums Act 1964 to provide a comprehensive and efficient library service, set in the context of local need.

The Secretary of State for Culture, Olympics, Media and Sport has a duty under this Act to superintend and promote the improvement of the public library service, and to secure the proper discharge by local authorities of their statutory duties in relation to libraries. Local authorities should start out by gaining a proper understanding of the local need for library services in their area. Library closures may not necessarily lead to an automatic breach of this duty, however, there are a number of important considerations to make before taking such a decision.'

[Emphasis added]

114. The Council was under a public law duty in any event to gather all relevant information necessary to perform its statutory functions and to take into account all relevant considerations when doing so (*Secretary of State for Education v Tameside MBC* [1977] AC 1014, at 1065). Although the Council purported to gather sufficient information, and to use it to assess local needs for the library service (and the impact of the proposals in equality terms) the information-gathering and assessment processes were fundamentally flawed and could not provide the basis for a sound decision.

115. In pre-action correspondence the Council seeks to contend that it did properly assess needs by pointing to section 3 of Appendix 1 to the 11 April 2011 Report (headed 'User Needs Assessment'). That document [**2/E/538-543**] draws on a number of sources, including a December 2010 report by Museums Libraries and Archives entitled '*What People want from Libraries*' [**1/D/197-280**], the Red Quadrant Report,

the Wirral Report, consultation responses, and the Council's own equality impact assessment.

116. Whilst that document identifies and purports to follow the criteria for proper local needs assessment identified in the Wirral report, it contains very little specific information or analysis relating to local need. For the most part it simply cross-refers to the equalities impact assessment and public consultation exercise (which are addressed, respectively, in grounds 3 and 4 below), and a number of generalised statements derived from the Red Quadrant Report.
117. As an assessment of local need used as the basis for discharging the section 7 duty in the 1964 Act, the User Needs Assessment Report is inadequate. In particular:
 - (i) the Red Quadrant report is not a reliable basis for an assessment of need, because it was a data-gathering exercise which focused on making *additions* to the existing and future library services, not the proposed closure of certain libraries. The highly general (and partially contradictory) conclusions derived from it cannot be said to provide the Council with meaningful information on the specific needs of adults and children who live, work and study in the area;
 - (ii) the Council officers' response to the consultation exercise, while capable of informing an assessment of need, is also not a substitute for a specific assessment of need, particularly in circumstances where the Council had acknowledged that the consultation responses were not representative of library users as a whole and that there were therefore significant gaps in the information;
 - (iii) as explained in ground 3 below, the equalities impact assessment was flawed because there was no proper assessment of the needs of library users by reference to the need to avoid unlawful discrimination against different protected groups of users, advance equality of opportunity to use library services or to promote community cohesion, and the consultation;
 - (iv) as explained in ground 4 below, the public consultation exercise was itself also flawed because, as in the Wirral, *'users did not feel that they had a chance to*

fully debate or air their views in a way that could reasonably inform the Council's decision making, not least because the appropriate questions were not being asked of them' (cf. *Wirral Report*, para. 6.10 [1/D/52]). In particular, consultees had been given no real opportunity to comment on which libraries should close, if closures were indeed necessary at all;

- (v) as officers appeared to accept [2/E/520], information about the consultation was directed at *residents*, yet the section 7 duty is not exclusively owed to them; those who work and study in the area are also beneficiaries; and
- (vi) some of the library usage data was highly questionable (and questioned by campaigners). For example computer usage was not analysed and turnstiles were used to measure library visits comparatively across the borough taking no account of groups entering *en masse* or turnstiles in some premises being situated at the entrance to a range of facilities of which the library was only one.

118. What is clear, therefore, is that the Council never carried out a 'separate or specific review of the Library Service and the needs of...communities in relation to it' (cf. *Wirral Report*, para. 6.4 [1/D51/]). As a result, many of the criticisms made in paras. 6.3 to 6.11 [1/D/51-53] of the *Wirral Report* concerning the failure to assess need also apply in the present case. In particular:

- (i) there is no evidence that the Council has drawn on up to date demographic data about local needs. The *Wirral Report* makes it clear that relying on such matters as the local knowledge of officers and Members and previous survey data is insufficient, and what is required is a specific study of needs by reference to accurate, up to date demographic information;
- (ii) '*while the Council did take into account factors around accessibility by public and private transport; the need to have a reasonable spread of facilities across the borough; the nature, state of repair, location of existing facilities; and the potential to provide services with partners, they appeared to have a general view of their local communities, rather than considering the different*

needs that might exist among different people and groups (cf. *Wirral Report*, para. 6.6).

119. To give two specific examples of the inadequacy of the Council's needs assessment:
- (i) although the proposals are premised on an assumption that many existing users of the libraries threatened with closure will travel to the remaining libraries, there is no meaningful analysis to be found in the Officers' Report or appendices of what proportion of those people are actually *likely* to migrate, what barriers may prevent them from doing so, and the consequences for them, or the consequences for those who do not migrate;
 - (ii) the Officers' Report asserts that home computer use can mitigate the impact of the closures, in particular through access to 'virtual services'. Yet no assessment was carried out by reference to the number or proportion of library users who do not have access to a home computer or broadband internet and for whom such mitigation would not be an option. (Identifying areas with low levels of computer ownership and broadband access was one of several specific matters highlighted in the Wirral Report as needing to be the subject of needs assessment (para. 6.17) [1/D/55]). Yet the Council had been on notice this was a problem because Red Quadrant had observed that the reason for high computer use in libraries was restricted or no access to computers in certain homes [2/E/126].
120. Before the Council could be certain that its proposed provision would 'provide a comprehensive and efficient library service for all persons desiring to make use thereof', it needed to gather up to date, accurate and comprehensive information about the needs and wishes of such people. Without that information the Council could not answer the questions fundamental to the discharge of the section 7(1) 1964 Act duty, namely 'would local needs be met if the closure proposals were implemented and, if so, how?'

121. As in the Wirral, in this case the Council did not properly assess the needs of library users, particularly those most likely to be affected by the proposed closures. It was therefore a 'rational impossibility' for it to design a service which comprehensively and efficiently meets those needs in a demonstrable way.

(b) failure to take into account mandatory relevant considerations

122. The Council also failed to identify and have regard to certain mandatory relevant considerations affecting the exercise of the duty in section 7 of the 1964 Act relating to child welfare.

123. As set out above, section 17 of the Children Act 1989 places a 'general duty' on every local authority: (a) to safeguard and promote the welfare of children within their area who are in need; and (b) so far as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs.

124. Section 10(1) of the Children Act 2004 imposes a separate statutory duty on every local authority to 'promote co-operation' between each of the authority's 'relevant partners' and any other bodies that the authority considers appropriate which 'exercise functions or are engaged in activities in relation to children in the authority's area'. In particular, the legislation requires that arrangements are to be made with a view to improving the well-being of children in the authority's area so far as relating to physical and mental health and emotional well-being; protection from harm and neglect; education, training and recreation; the contribution made by them to society; and social and economic well being.

125. The Council's duties in relation to the welfare of children were obviously engaged by the proposal to close six of the 12 libraries that serve the local community. A decision substantially to cut or restructure library provision in the borough self-evidently engages matters such as 'education, training and recreation', elevating 'social and economic well being' and enhancing the 'contribution made by [children] to society'.

126. However, the Council failed to address the welfare of children ‘in need’ – of whom there are a great many in Brent, given its demographics - in the borough before reaching its decision. In particular, the April 2011 Officers’ Report made no reference to the Council’s obligations to safeguard and promote the welfare and well-being of children under the Children Act 1989 and the Children Act 2004, nor does there appear to have been any consultation or active cooperation with relevant partners or external agencies with a view to ensuring, at least, that the needs and interests of children in the borough, particularly disadvantaged children, would be protected.
127. While the Report refers to a number of features and services that will be available for children and young people in the six remaining libraries in Brent, no explanation is given as to how the Council is planning to safeguard and promote the welfare and well-being of those children who currently make use (or would make use when old enough) of the six libraries earmarked for closure, in particular those children who do not have internet access at home and/or are too young to travel independently to one of the remaining libraries. There is also no evidence of the Council having addressed the possible impact of closing the Barham Park Library in circumstances where it is currently the only one of the twelve libraries in Brent that is attached to a children’s centre.
128. While the Equalities Impact Assessment identified groups of children living in deprived areas close to three of the affected libraries (Tokyngton, Cricklewood and Preston), and who are likely to face ‘societal challenges’ [2/E/624], the Council failed adequately to assess precisely what the impact of the closures would be on those groups, and what proportion of those disadvantaged children could realistically be expected to make use of libraries at a greater distance (see ground 3 below).
129. Moreover, although the Children Act 2004 imposes a duty on every local authority to make arrangements to promote co-operation with ‘relevant partners’ (including maintained schools) in relation to children, that duty was not referred to at all in the Officers’ Report. That failure is particularly troubling given that, at the meeting

between English Subject Leaders and the LTP Team on 1 March 2011, representatives of schools made the following points [2/F/113]:

‘Q Many concerns about the closing of Preston library by 2 schools and the difficulties of being able to get to another library. Simply not possible. The schools’ needs cannot be met if the library is closed. The LTP and library closures have already been decided.’

To which the LTP team is recorded as having responded:

‘A It’s important for you to complete the questionnaires and tell us what you would like. We want to try and meet you half way. We will look at our outreach service as it is one of the services we intend to improve and expand.’

130. The appropriate response, having regard to the Council’s obligations in respect of children, was not to encourage completion of a questionnaire in the three days that remained to do so, but rather to explore the schools’ concerns fully, so as to ensure that those concerns, and any suggested mitigation, could be summarised and put in front of the decision-makers. However, that did not happen.
131. Although a questionnaire was sent out to local schools in relation to class visits, only 8 schools responded, of whom 5 indicated that they would not be prepared to make class visits to an alternative library further away [2/E/51]. That small response ought to have troubled officers who ought – in their duty of co-operation under the Children Act 2004 – to have sought to elicit more information. However the lack of information went unremarked in the main report and the Council does not appear to have taken any further steps to elicit views or information from head-teachers or school boards about the impact the planned closures might have on local children.
132. Such a limited – and largely unsuccessful – information-gathering exercise cannot be a basis for the discharge of the statutory and common law obligations on the Council to make sufficient inquiry to enable it properly to assess the needs of children in the area and ensure that those needs are safeguarded and promoted, both as part of the Children Act duties and in the context of section 7 of the 1964 Act.
133. In its response to the pre-action letter, the Council referred to the fact that the proposals were ‘considered and discussed at the Council’s Corporate Management

Team meetings, on 16 September 2010 and 17 March 2011, which were attended, *inter alia*, by the Director of Children and Families. It maintains that [2/H/31]:

‘The Council’s education department was fully aware of the proposals through ordinary channels of communication within the Council. Indeed, the Director of Children and Families considered the proposals at the CMT level.’

134. By an email dated 20 May 2011 the Claimants’ solicitors asked the Council to disclose the documents relating to consideration of the proposals by the Council’s Director of Children and Families, pointing out that the results of such consideration, and the Director’s views, were not reflected anywhere in the Officers’ Report.

135. In response, the Council has argued that [2/H/41]:

‘it is neither necessary, nor common practice, for each service director to endorse Executive committee reports. The Director of Children and Families was present at corporate management team discussions in relation to the libraries proposal and accordingly was aware of the issues...In so far as detailed information from her department was relevant, direct enquiry and or consultation took place (most particularly with the schools in Brent) and such information is set out in the report’.

136. Therefore neither the Claimants, nor the public, nor – it would appear – the Council Executive, know what the Director’s view is on the proposed closures. Unless the Director has made no comments on the proposals (which seems unlikely), her view of in relation to the impact on the Council’s Children and Family services was plainly material to the decision, particularly bearing in mind the obligations under the Children Acts. It is information that should have been placed before the Executive Committee in order to enable it to be taken into account (cf. *R (Georgiou) v LB Enfield* [2004] EWHC 779 at [60]-[69]).

137. In the circumstances, it was not possible for the Council lawfully to discharge the duty under section 7 of the 1964 Act as it applied to children and young people in full-time education, because the Council failed to have any regard at all to its duties and obligations concerning children and arising out of the Children Acts 1989 and 2004.

Ground 3 – Public sector equality duty

138. The nature of the obligations imposed by section 149 of the Equality Act 2010 are set out and explained above by reference to the relevant case law.
139. This is not a case where the Defendant paid no regard to equality in reaching the impugned decision (such a case will now be very rare). It is, however, a case where the Defendant has failed to give the degree of analysis which is required to all the statutory equality needs, in a context in which their importance is obviously very high (*R (Hajrula) v London Councils* [2011] EWHC 448 (Admin) at [62]).
140. Just before the committee meeting on 11 April 2011, officers of the Defendant produced for the members a very long document called an ‘Equality Impact Assessment’ appended to the Committee Report for the meeting on 11 April 2011, and some analysis in that document of the content of section 149 Equality Act 2010.
141. However, there is no evidence that the Defendant genuinely asked itself or grappled with the questions which the PSED asks to be addressed: namely, what would be the effect of particular decisions on unlawful discrimination, equality of opportunity as between members of protected groups and others, and fostering of good relations between members of protected groups and others.
142. Consideration of the content of the EIA shows that the analysis required by the PSED, and as summarised in the *Brown* case at paras 90-96 (see paragraph 36 above):
- (i) was not carried out at a formative stage, when options other than library closures were genuinely on the table;
 - (ii) was not performed ‘in substance, with rigour and with an open mind’; and
 - (iii) was not genuinely a core part of the decision-making process (cf. EHRC Guidance Vol 2 para 11).
143. There is no evidence of any genuine consideration of the equality implications of the decision to close six of the twelve libraries in Brent at a formative stage, when it might genuinely have affected the outcome of the decision-making process. The Equality Impact Assessment which accompanied the Committee Report of 11 April

2011 was a collection of data as to the protected characteristics of various library users. But it reflected only the characteristics of those who used libraries which the Defendant intended to close, and the impact of that decision upon them, together with a collection of mitigation measures. It was not an analysis of the *comparative* equality effects of the proposal to cut these six earmarked libraries and other alternative proposals. There is no evidence of any regard to the equality implications of closing libraries at the stage when other options were open to the Defendant as to how it might discharge its duties under section 7 of the 1964 Act whilst making requisite savings.

144. Had there been any such analysis, the Defendant would have asked itself, *before* deciding to make such a proposal:

- (i) Who uses libraries? For what? Are there differential participation rates from members of different groups at different libraries, and do we know why? (to gather information on potential indirect discrimination and equality of opportunity).
- (ii) If those figures do show differential usage/access rates, to ask what impact closure of libraries may have on the three statutory equality needs.
- (iii) Does the decision to close libraries have a differential impact on different equality groups such as may unlawfully indirectly discriminate, or have a differential impact on equality groups such as may aggravate or increase the disadvantages suffered by people who share particular protected characteristics in comparison with those who do not?
- (iv) In determining how to fulfil our duty under section 7 of the 1964 Act, what steps could we take to meet the needs of particular equality groups which are

different from those of others? (E.g. the needs of disabled people, or older people, or children, for safe or short journeys to libraries; the needs of particular groups for particular library facilities).

(v) In determining how to fulfil our duty under section 7 of the 1964 Act, what steps could we take to encourage people who share particular protected characteristics and who are under-represented among library users to participate in use of library facilities?

(vi) What effect do libraries have on social cohesion, and what effect would library closures have on this?

(vii) What alternatives are there to library closures, and would these enable us to make savings whilst promoting equality of opportunity and good race relations, or having a lesser adverse effect on them?

145. There was no such analysis.

146. Nor is there any evidence of any regard (let alone ‘due regard’) being given to the issue of *which* libraries ought to be closed, if closures were indeed necessary. It appears that an assumption was made that the libraries to be closed would necessarily be those with the fewest users. A library authority giving due regard to the statutory equality needs in addressing the options for library closures would have asked itself at least these questions:

(i) If we consider library closures are inevitable, which closures would avoid indirect discrimination against particular groups of library users, and which

closures would have the least bad effects, in terms of continuing to promote equality of opportunity and social cohesion?

- (ii) Do we know enough to answer these questions? What is the breakdown of users of particular libraries in terms of protected characteristics? Are there any particular libraries which play a particular role in promoting good relations between people with particular protected characteristics and others?

- (iii) If closures will have adverse effects on equality or community cohesion, what steps can we take to mitigate the effects? In particular:
 - (a) will selecting particular libraries in contrast to others have *differential* effects on different equality groups? (For example, closing a less-used library in a deprived area with a high proportion of BME school students may have a significantly greater adverse effect on equality of opportunity than closing a better-used library in a less deprived area, but encouraging greater use of the library located in a more convenient location for more BME families).

 - (b) Will selecting particular libraries in contrast to others have *differential* effects on community cohesion and good relations between members of different protected groups? (Eg if the best used libraries are in the richer areas of the borough, and these are also significantly more white than others, closing libraries on basis of current usage figures only may have a significantly more adverse effect on good race relations than ensuring a fairer *spread* of libraries and encouraging users of the better-used libraries to migrate to the (formerly) worse used ones, rather than vice-versa).

- (iv) As to measures intended to mitigate effects of library closure, have we sufficient information and have we thought through the implications of those? For example, if it is proposed to mitigate the effects of library closures on children who need library resources to learn by providing e-learning platforms, this will be of no use to the 10% of households in Brent which do not have a computer at home and where children cannot therefore do internet-based homework at home. Do we have data on the ethnic breakdown of such households? Do we know about the age profile of those who do not have a computer at home? Are they significantly older/younger than average?

- (v) Will mitigation measures proposed have an adverse effect on promotion of good relations between members of protected groups and others, or the participation of under-represented groups in public life? For example, do we have information on the effects of library closures on the possibilities of community participation by disabled people?

147. Having failed properly to assess needs of library users (as explained above), the Defendant failed to give due regard to the need to avoid unlawful discrimination, promote equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not in the performance of its functions under section 7 of the 1964 Act.

148. The document at Appendix 4 of the Committee Report for the meeting of 11 April 2011 contains a plethora of data on the adverse effects of library closures on members of particular protected groups. However, in many respects, there is no real analysis of the extent to which these disadvantages fall on members of particular groups. (For example, there is no consideration of the effect of closing small local libraries on pregnant women, for whom no adverse effects are identified).

149. But even where disparate adverse effects of library closures on particular groups are identified (e.g. particular effects of longer journeys to libraries for older or disabled people), there is no consideration of possible *alternative* measures which might have a lesser disparate adverse effect. Instead, there follows a list of mitigating measures to lessen the general undesirable effects of closing some libraries. That is not what the *Brown* criteria for the performance of the PSED require.
150. The EIA shows that the Defendant knew it had to address certain statutory questions in relation to equality. However, it contains no evidence that the Defendant:
- (i) knew of the *scale* of the *differential* adverse impacts of library closures on different equality groups;
 - (ii) had taken any steps to gather or analyse evidence of the effects of adverse impacts of library closures on community cohesion; or
 - (iii) had genuinely considered any alternatives to the proposals on the table when it was drafted (i.e. closure of six identified libraries).
151. The inadequacy of the EIA is a further, explicit instance of the *Thameside* failure identified in ground 2 above, in the context of the equality aspects of the decision-making process. The requirement to gather information is also reflected in the case law on public sector equality duties. In *R (Rahman) v Birmingham City Council* [2011] EWHC 944 (Admin), Blake J referred to the need to collate ‘*relevant information...in order to have evidence based decision-making*’. The Claimants contend that the Council conducted a flawed information gathering exercise. As a result of the defective consultation process, the Council was not furnished with the information necessary to enable it to pay due regard to the relevant equality considerations. This requirement is made explicit in the EHRC Guidance, which states that public authorities should: (1) Consider what equality information it has; (2) collate and publish the information; (3) *identify any information gaps*; and (4) take steps to *fill any information gaps* including by engagement (or consultation) with stakeholders.

152. The Defendant's specific failures in relation to making an adequately informed decision to enable it to give due regard to the statutory equality needs include the following:

- (i) The EIA identified regular BME library users as being particularly under-represented amongst responding consultees. However the only additional step taken by the Council to elicit their views was a meeting at which the proposals were explained. The Council thereby failed to engage with an important constituency of individuals who would be likely to be significantly affected by the library closures.
- (ii) The ability and likelihood of library users migrating to the remaining libraries is obviously of the utmost significance when seeking to accurately gauge the likely long-term impact of the library closures upon the relevant protected characteristics. However in the present case the Council failed to consider potential equality impacts of differential abilities to 'migrate'.
- (iii) The EIA made no effort to identify projected demographic changes. All of the population data gathered was static and no effort was made to identify dynamic trends.

153. Some of the Defendant's analysis of lack of impact on some specific protected characteristics was also irrational.

154. Moreover, the Defendant failed to ask itself other, specific questions which any rational decision maker giving due regard to the impact of the closure proposals on the statutory equality needs would have asked. Three particularly marked examples are as follows:

- (i) The EIA contained no consideration of demographic trends. All the population data used was static: no attempt has been made to plot trends / projected population change. It is difficult to see how the Defendant could rationally give *due* regard to the differential impact of closure decisions on the needs of library users, or to effects of such long-term decisions on the statutory equality

needs without addressing such questions. To give due regard to them, the Defendant would have had to have formed a view on questions such as: whether the population of the borough was projected to grow over the next 20 years; whether particular protected groups (older/younger people, particular minority groups) were projected to grow particularly quickly or slowly; whether the number of non-English speakers in affected wards was increasing or decreasing.

- (ii) The impact of *location* of libraries earmarked for closure would obviously and foreseeably have a differential impact on different BME groups, which are not uniformly distributed across the borough. Yet the EIA contains no analysis of whether closure of particular libraries will create particularly marked problems in terms of transport/access/community cohesion in areas with particularly large BME groups. This is a significant omission. It is particularly odd that the EIA picks up on the increased risk of BME individuals being involved in road traffic accidents when travelling to the new libraries, but provides no consideration of whether the libraries that are designated for closure are in areas that have a disproportionately high representation of any ethnic group(s).
- (iii) The EIA gives no analysis to the particular equality impacts of closing libraries with specialist collections (e.g. foreign language collections, Jewish collection, gay and lesbian collection). Certain libraries earmarked for closure had such specialist collections, and it was therefore irrational to conclude that the closures had no equality impacts on groups defined by faith or sexual orientation.
- (iv) The EIA irrationally contends that the closure of libraries can have no particular adverse effects on grounds of pregnancy or maternity. It is self-evident that pregnant women or mothers of small children have particular mobility impairments greater than those which affect the general population.

155. For all these reasons, the Defendant failed to give the genuine, rigorous regard to the statutory equality needs which was due to them given the obvious, and important, significance of access to library collections to equality of opportunity to participate in

knowledge, education, civil society, employment and public life; and the central role libraries play in community cohesion and fostering good relations between members of different groups in society.

Ground 4 - consultation

156. The Claimants contend that the Council failed to undertake adequate consultation, and acted unfairly by:

- (i) failing to provide sufficient information to enable consultees to make specific submissions as to which libraries should be retained if the Council ultimately decided that some closures were necessary; and
- (ii) failing to provide sufficient information to consultees who wished to advance what were referred to as 'Big Society' solutions to keeping libraries open, so as to enable them to make meaningful proposals involving community financial support and/or involvement in running libraries.

(a) *consultation on selection of libraries for closure*

157. The Council was under an obligation to ensure that consultation on the proposals was effective. As set out above, it is well established that fair consultation must take place at a time when proposals are still at a formative stage; that sufficient reasons must be given for particular proposals to enable consultees to give those proposals intelligent consideration and to provide an intelligent response; that adequate time and opportunity should be given for a response; and that the product of the consultation must be conscientiously taken into account by the authority when reaching its decision (*R v Brent LBC ex p Gunning* (1985) 84 LGR 168, approved in *R v North and East Devon Health Authority ex p Coughlan* [2001] 1 QB 213).

158. In reality there were a number of alternatives open to the Council falling short of complete closure of six libraries. Several such options were set out in the DCMS letter to local authorities of 24 February 2011. They include part-funding of library

services provided by third parties, which the Council closed its mind to, but which might have meant that no closures, or fewer closures, were necessary.

159. The failure to consult the public on those other options, by making the public aware of them and/or the reasons why they were not being considered, was unlawful.
160. Moreover, insofar as the Council had pre-determined that closures were necessary, a key issue for consultees, and part of the information the Council needed to fulfil its duty under section 7 of the 1964 Act, was information on *which* libraries to retain, and which to close.
161. Yet the consultation questionnaire did not invite the public to comment on that issue. The questionnaire simply stated which six libraries were earmarked for closure, observing that the six named libraries ‘are poorly located and have low usage’.
162. To form a proper, informed view, and to enable the public meaningfully to be involved in the development of the proposals, the Council should have explained, in particular, why those libraries were considered to be poorly located compared to others, what reasons there might be for lower usage figures, and details of the evidence base and criteria underpinning the selection of those libraries rather than the other six libraries in Brent. It should also have explained why the alternatives such as those set out in the DCMS letter were not regarded as suitable ways to make budgetary savings while avoiding closure.
163. Such information would have enabled the public to engage meaningfully with the proposal to close the libraries, and to comment on whether the selection criteria and process was appropriate, or whether there were other criteria or considerations that should be taken into account before settling on which libraries, if any, to close. The failure to provide that information meant that the Claimants and other consultees were unable to give intelligent consideration or an informed response to the ‘choices’ facing the Council.

Criteria for alternative proposals

164. Insufficient information was provided to consultees to enable proposals as to alternative models of provision to be advanced on a sufficiently informed basis and to stand a chance of being approved.
165. In particular, it is clear from the 11 April 2011 Report that a series of criteria against which proposals were to be judged had been formulated internally by Council officers. Those factors were:
- a. Viability of the group making the proposal
 - b. Viability of the proposals
 - c. Quality of the proposals
 - d. Supporting diversity and inclusion
 - e. Delivering the Council's savings targets
 - f. Acceptable contract terms
 - g. Risks to the Council around procurement
166. Each of those factors was set out in an internal document and accompanied by a series of detailed questions designed to structure and guide the Council's assessment of the alternative proposals for the future of the libraries threatened with closure. Yet the criteria were not published as part of the consultation process, indeed the public were not informed even as to the existence of the criteria. As the Appraisal of Alternative Proposals for Library Provision states: '*No guidance has been given on how proposals should be presented or on what they should contain.*' [2/E/677].
167. Proposers of alternative solutions therefore had no real idea of the case to be met. They therefore could not: (a) make any representations to the Council concerning the appropriateness of those criteria; (b) challenge the appropriateness of the criteria before any adverse decision was taken against their proposals; (c) modify the substance of their proposals so as to satisfy the Council's assessment criteria; (d) tailor the presentation of their proposals so as to best demonstrate compliance with the criteria; or (e) make an informed comparison between their proposals and the alternative proposals being mooted by other parties.

168. In the circumstances, it was hardly surprising that all the proposals were rejected by the Council on the basis of those unpublished criteria. In this respect, the consultation exercise was unfair and ineffective (cf. *R (Capenhurst) v. Leicester City Council* [2004] EWHC 2124 (Admin)).
169. Moreover, the failure to publicise the criteria beforehand was contrary to an express promise, recorded in the original consultation proposals, to ‘*develop a clear approach to voluntary organisations who wish to present a robust business case for running library services in vacant buildings*’ [2/F/3].
170. That initial failure was compounded when proposers made legitimate, focussed inquiries about information required to formulate their plans, but their requests were not fully addressed and they were subsequently criticised for the (inevitable) gaps in their proposals (the Council having failed to give the proposers any opportunity to address their concerns before a decision was taken to reject the proposals outright).
171. By failing to publish the relevant criteria and by failing to give the parties submitting the alternative proposals any opportunity to engage with or respond to the Council’s concerns about the viability and quality of the proposals, the Council acted unlawfully. That failure rendered the consultation on this point ineffective, and also prevented the Council from considering properly-formulated alternative proposals that stood a chance of being accepted, as required by section 7 of the 1964 Act.

RELIEF SOUGHT

172. In the light of the above, the Claimants seek:
- (i) an order quashing the decision of 11 April 2011 to proceed with closure of the six libraries; and
 - (ii) such further or other relief as may seem appropriate to the Court.

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27 May 2011