Neutral Citation Number: [2022] EWCA Civ 457

Case No: CA-2021-000701 (formerly C1/2021/1320)

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT (PLANNING COURT)
MR JUSTICE KERR
[2021] EWHC 1745 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 April 2022

Before:

SIR KEITH LINDBLOM
(SENIOR PRESIDENT OF TRIBUNALS)
LORD JUSTICE MALES
and
LADY JUSTICE ELISABETH LAING

- -

Between:

The Queen (on the application of Sofia Sheakh)	**Appellant**
– and –	
London Borough of Lambeth Council	**Respondent**

And between:

Sofia Sheakh	**Appellant**
– and –	
London Borough of Lambeth Council	**Respondent**

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Tim Buley Q.C. (instructed by **Scott-Moncrieff & Associates LLP**) for the **Appellant**
Timothy Mould Q.C. (instructed by **Lambeth Legal Services**) for the **Respondent**

Hearing date: 13 January 2022

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Approved Judgment

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii and the National Archive. The date and time for hand-down was deemed not before 4pm on 5 April 2022

The Senior President of Tribunals, Lord Justice Males and Lady Justice Elisabeth Laing:

Introduction

1. This is the judgment of the court.

2. When a local traffic authority made experimental traffic orders under section 9 of the Road Traffic Regulation Act 1984, did it discharge the "public sector equality duty" under section 149 of the Equality Act 2010? That is the central question in this appeal. Our answer to it, as we shall explain, is that the section 149 duty was lawfully discharged.

3. The appellant, Ms Sofia Sheakh, appeals against the order of Mr Justice Kerr, dated 29 June 2021, dismissing her claims for statutory review and judicial review of experimental traffic orders made by the respondent, the London Borough of Lambeth Council, as local traffic authority, for three Low Traffic Neighbourhoods in its area – the Oval Triangle Low Traffic Neighbourhood, the Streatham Hill Low Traffic Neighbourhood and the Railton and St Matthew's Low Traffic Neighbourhood. The effect of the orders, broadly, was to restrict the movement of vehicular traffic in those parts of the borough, their main purpose being to promote walking and cycling and to discourage the use of motor vehicles. The decisions which gave rise to the challenged orders were made by the council's Strategic Director: Resident Services, Mr Bayo Dosunmu, under delegated powers, on 9 October 2020.

4. Ms Sheakh is a resident of the borough. She lives in a cul de sac close to Shakespeare Road, a short distance from the Railton and St Matthew's Low Traffic Neighbourhood. She is severely physically disabled, with a diagnosis of chronic sarcoidosis, and is now still more vulnerable after contracting Covid-19 in 2020. Unable to use public transport, she depends on her car for every journey from home. She and others who rely on using a car say that their lives have been made more difficult by the introduction of the Low Traffic Neighbourhoods – because the traffic displaced has increased congestion on local streets and added to the time spent on journeys. They say that the council overlooked these consequences when making the experimental traffic orders, and that it failed to comply with the public sector equality duty.

5. Kerr J. dismissed Ms Sheakh's claims on all pleaded grounds. He granted permission to appeal only on the ground relating to the public sector equality duty. Permission to appeal on a further ground, alleging the council's failure to discharge its duty under section 122 of the 1984 Act, was later refused by Lord Justice Dingemans.

The issue in the appeal

6. The sole issue in the appeal is whether Kerr J. was wrong to hold that, when the council made the experimental traffic orders, it lawfully discharged its duty under section 149 of the 2010 Act, properly considering the equality implications of the decisions it took at that stage.

Section 149 of the 2010 Act – the public sector equality duty

7. Section 149(1) of the 2010 Act requires a public authority, "in the exercise of its functions", to have "due regard" to the equality needs which it identifies in paragraphs (a), (b) and (c), namely the needs to:

> "(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 persons who do not share it".

8. Section 149(3) provides that having "due regard" to the need identified in subsection (1)(b) "involves having due regard, in particular, to the need" to do three things:

> "(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to 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;
>
> (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".

9. Section 149(4) provides that "[the] steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities". Compliance with the duties imposed by section 149 "may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under" the 2010 Act (section 149(5)). The relevant "protected characteristics" include "disability" (section 149(7)).

Relevant jurisprudence

10. There is ample authority on the meaning and effect of section 149. Five points are especially relevant here. First, section 149 does not require a substantive result (see the judgment of Lord Justice Dyson in *R. (on the application of Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141; [2009] PTSR 809 (at paragraph 31)). Second, it does not prescribe a particular procedure. It does not, for example, mandate the production of an equality impact assessment at any particular moment in a process of decision-making, or indeed at all (see *R. (on the application of Brown) v Secretary of State for Work and Pensions* [2008] EWHC

3158; [2009] PTSR 1506, at paragraph 89). Third, like other public law duties, it implies a duty of reasonable enquiry (see *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] A.C. 1014). Fourth, it requires a decision-maker to understand the obvious equality impacts of a decision before adopting a policy (see the judgment of Lord Justice Pill, with which the other members of this court agreed, in *R. (on the application of Bailey) v Brent London Borough Council* [2011] EWCA Civ 1586; [2012] Eq. L.R. 168, at paragraphs 79, 81 and 82). And fifth, courts should not engage in an unduly legalistic investigation of the way in which a local authority has assessed the impact of a decision on the equality needs (see the judgment of Lord Justice Davis in *Bailey*, with which Lord Justice Richards agreed, at paragraph 102).

11. In *R. (on the application of Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345; [2014] Eq. L.R. 60, Lord Justice McCombe, with whom Lord Justice Kitchin and Lord Justice Elias agreed, collected from the salient authorities "eight principles" which were "not significantly in dispute" (at paragraph 26).

12. Five of those "eight principles" were mentioned in argument before us: "(3) [The] relevant duty is upon the Minister or other decision maker personally. What matters is what he or she took into account and what he or she knew. Thus the Minister or decision maker cannot be taken to know what his or her officials know or what may have been in the minds of officials in proffering their advice: *R (National Association of Health Stores) v Secretary of State for Health* [2005] EWCA Civ 154) at [26 - 27] per Sedley LJ"; "(4) [A] Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a "rearguard action", following a completed decision: per Moses LJ … in *Kaur and Shah v Ealing London Borough Council* [2008] EWHC 2062 (Admin)"; "(5) … (iv) [The] duty is non-delegable … [see *Brown*]"; "(6) "[General] regard to issues of equality is not the same as having specific regard, by way of conscious approach to the specific criteria." (per Davis J … in *R (Meany) v Harlow DC* [2009] EWHC 559 (Admin) at [84], approved in this court in *R (Bailey) v Brent LBC* [2011] EWCA Civ 1586 at [74-75])"; and "(8) … [As was submitted in *R. (on the application of Hurley and Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), and accepted by Elias L.J. at paragraph 90,] … the combination of the principles in [*Tameside*] and the duty of due regard under the statute requires public authorities to be properly informed before taking a decision", and "[if] the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required … [see the judgment of Lord Justice Aikens in *Brown*, at paragraph 85]".

13. Both sides in this appeal referred to "the *Bracking* requirements". In our view it is better to refer to these propositions as "principles" rather than "requirements" – as did the Divisional Court (Lord Justice Singh and Mr Justice Swift) in its recent decision in *R. (on the application of Good Law Project and Runnymede Trust) v The Prime Minister and Secretary of State for Health and Social Care* [2022] EWHC 298 (Admin) (at paragraph 106). It is also important to remember that these glosses are no substitute for the language of the statute.

14. In *R. (on the application of End Violence Against Women Coalition) v DPP* [2021] EWCA Civ 350, Lord Burnett of Maldon C.J. (at paragraph 85) observed that the way in which section 149 applies "will be different in each case depending on what function is being exercised", and that the relevant judgments, including that in *Bracking*, "must not be read as if they were statutes". And he pointed out that in *Powell v Dacorum Borough Council* [2019] EWCA Civ 23; [2019] HLR 21 McCombe L.J. himself had said that the previous decisions about section 149 must be taken in their contexts. A similar statement had been made by Lord Justice Briggs, as he then was, in *Haque v Hackney London Borough Council* [2017] EWCA Civ 4 (at paragraph 41). The Lord Chief Justice went on to say (in paragraph 86):

> "86. Section 149… requires a public authority to give the equality needs which are listed … the regard which is due in the particular context. It does not dictate a particular result. It does not require an elaborate structure of secondary decision-making every time a public authority makes any decision which might engage the listed equality needs, however remotely. The court is not concerned with formulaic box-ticking, but with the question whether, in substance, the public authority has complied with section 149. A public authority can comply with section 149 even if the decision maker does not refer to section 149 (see, for example, *Hotak v Southwark London Borough Council* [2015] UKSC 30; [2016] AC 811)."

15. Implicit in what was said in *End Violence Against Women* is that the statutory provisions must always be read as they are – useful as their interpretation by judges can be. The basic issue in every case should be a simple one: whether a public authority has had "due regard" to the needs identified in section 149. As Elias L.J. said in *Hurley* (at paragraph 78), "… the decision maker must be clear precisely what the equality implications are … but ultimately it is for him to decide what weight they should be given in the light of all relevant factors". That observation should be qualified by the approach of this court in *Bailey*. The decision-maker is concerned with the obvious impacts on equality, and not with the detail of every conceivable impact.

16. In the same vein, in *R. (on the application of Hollow) v Surrey County Council* [2019] EWHC 618 (Admin); [2019] PTSR 1871, where the challenge was to a decision in the county council's annual budget to reduce its spending on education and special educational needs, the Divisional Court (Lady Justice Sharp and Mrs Justice McGowan) emphasised that "what constitutes "due regard" … will depend on the circumstances, particularly, the stage that the decision-making process has reached". And "the nature of the duty to have "due regard" is shaped by the function being exercised, and not the other way round …" (paragraph 80 of the judgment). In that case the authority had proposed to produce an equality impact assessment if and when a specific cut was identified. The court held (at paragraph 81) that, "having regard to the stage that the decision-making process had reached, that was indeed sufficient compliance with the [public sector equality duty] on the facts".

17. In *Runnymede Trust* the Divisional Court made a declaration that the Secretary of State had not complied with the public sector equality duty when making appointments to positions critical to the Government's response to the Covid-19

pandemic. Although the public sector equality duty did not require a particular outcome, "there must be some evidence of what precisely the decision-maker did in the circumstances … to discharge the obligation" (paragraph 112). The evidence in that case, it said, went "no further than generalities". There was "no evidence from anyone saying exactly what was done to comply with the public sector equality duty" (paragraphs 114 and 116). The appointment decisions themselves were not amenable to judicial review, but the "process leading up to the decisions" was in breach of the public sector equality duty (paragraphs 137 and 138).

18. The argument presented for Ms Sheakh in this appeal emphasised the point in paragraph 26(3) of McCombe L.J.'s judgment in *Bracking*, for which the Court of Appeal's decision in *National Association of Health Stores* was cited as authority. That case did not concern section 149 of the 2010 Act. The claimant contended that a minister had failed to take into account a relevant consideration when making statutory orders. This court unanimously held that the minister had known everything he needed to know when he did so. Lord Justice Sedley, with whom Lord Justice Keene and Mr Justice Bennett agreed, said that the appellant's argument was not answered by the *Carltona* principle (paragraph 24 of the judgment). The "practical reality of modern government", he said, was that "ministers (or authorised civil servants) are properly briefed about the decisions they have to take; that in the briefings evidence is distinguished from advice; and that ministers take some trouble to understand the evidence before deciding whether to accept the advice" (paragraph 27). He rejected a submission that the House of Lords in *Bushell v Secretary of State for Transport* [1981] A.C. 75, had decided that the collective factual and technical knowledge of civil servants in a government department is to be attributed to the Secretary of State (paragraph 37). But he went on to refer to the decision of the High Court of Australia in *Minister for Aboriginal Affairs v Peko-Wallsend* [1986] HCA 40; (1986) 162 CLR 24, where Brennan J. had said (at paragraph 61) that "the minister's appreciation of the case depends to a great extent upon the appreciation made by his department"; that "[reliance] on the departmental appreciation is not tantamount to an impermissible delegation of the ministerial function"; and that "[a] minister may retain his power to make a decision while relying on his department to draw his attention to the salient facts". Sedley L.J. concluded that a decision-maker "must know or be told enough to ensure that nothing that is necessary, because legally relevant, for him to know is left out of account", and "[this] is not the same as a requirement that he must know everything that is relevant" (paragraph 62).

The statutory framework for traffic regulation orders and experimental traffic orders

19. Section 16(1) of the Traffic Management Act 2004 imposes a duty on a local traffic authority – otherwise referred to as a "network management authority" – to manage its road network to achieve two objectives for "the expeditious movement of traffic", including pedestrians. Section 18(1) gives "the appropriate authority" power to publish guidance to network management authorities "about the techniques of network management or any other matter relating to the performance of the duties imposed by sections 16 and 17". In performing those duties, a network management authority must have regard to any such guidance (section 18(2)). The "appropriate authority" in England is the Secretary of State (section 31).

20. By section 6(1)(b) of the 1984 Act, the traffic authority for a road in Greater London may make an order for controlling or regulating traffic and providing for any of the purposes mentioned in section 1(1)(a) to (g). These include "(c) … facilitating the passage on the road or any other road of any class of traffic (including pedestrians)" and "(d) … preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property".

21. Section 9(1)(b) empowers the traffic authority for a road in Greater London to make an "experimental traffic order" for the purposes of "carrying out an experimental scheme of traffic control", making any such provision as may be made by an order under section 6. Section 9(3) limits the duration of an experimental traffic order to 18 months. Subject to Parts I to III of Schedule 9, where an experimental traffic order has been made for a period of less than 18 months and is still in force, the traffic authority may from time to time extend it, provided it does not last more than 18 months after it first came into force (section 9(4)).

22. Section 14(1) gives a traffic authority the power to make a "temporary traffic order" if it is satisfied that traffic on the road should be restricted or prohibited. Subject to exceptions, an order under section 14 shall not last longer than 18 months (section 15(1)).

23. For those authorities on which the 1984 Act confers functions, section 122(1) of that Act imposes a duty "so far as is practicable … to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) …".

24. The Secretary of State made the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996 under the authority given to him by paragraph 21 in Part III of Schedule 9 to the 1984 Act. Regulation 6 imposes a requirement to consult various specified persons and bodies before making an order, including "[such] other organisations (if any) representing persons likely to be affected by any provision in the order as the order making authority thinks it appropriate to consult". Regulation 22(1) provides that "[the] provisions of regulations 7 (publication of proposals) and 8 (objections) shall not apply to an experimental order"; and regulation 22(2), that "[no] provision of an experimental order shall come into force before the expiration of the period of seven days …". Regulation 23 applies when an authority makes an order giving permanent effect to an experimental traffic order. Regulation 23(2) disapplies "[regulations] 6 (consultation), 7 (notice of proposals) and 8 (objections) … where the requirements specified in paragraph (3) have been complied with …". One of the requirements specified in regulation 23(3) is that notice of the making of the order must have complied with the provisions of Schedule 5, which requires objectors to be told they would have six months to object to the order being made permanent.

25. Paragraph 34 in Part VI of Schedule 9 provides for challenges to an experimental traffic order. Paragraph 35 provides that a person who wishes to question the validity of such an order, on the grounds that it is "not within the relevant powers" or that "any of the relevant requirements have not been complied with", may, within six weeks of the date when the order is made, make an application for that purpose. Paragraph 36 gives the court power, on such an application, to suspend or quash an order. Paragraph 37 states that "[except] as provided by this Part of this Schedule, an

order to which this Part applies shall not … be questioned in any legal proceedings whatever".

The three Low Traffic Neighbourhoods

26. The judge described the process leading to the creation of the three Low Traffic Neighbourhoods under challenge (in paragraphs 30 to 100 of his judgment). His narrative is not in dispute. We shall refer only to some of the salient events.

27. The council's Transport Strategy and the accompanying Transport Strategy Implementation Plan were approved by its Cabinet on 18 November 2019. Low Traffic Neighbourhoods were one of the components of the Transport Strategy Implementation Plan. Appendix B to the implementation plan acknowledged that "[it] is difficult to specify an exact timescale for projects such as these given the need to fully understand the impact of the interventions and the views of the community in each area to make sure we get it right". It said that the council "will proceed as quickly as possible, working with the community, and [expects] the first three neighbourhood areas to be complete within the next 3 years". An equality impact assessment was prepared for the Transport Strategy. It does not refer specifically to Low Traffic Neighbourhoods.

28. On 9 May 2020, in the first period of national lockdown during the pandemic, the Secretary of State for Transport issued statutory guidance, "Traffic Management Act 2004: network management in response to COVID-19", under section 18 of the 2004 Act. The guidance enjoined local authorities to introduce measures to give more road space to cyclists and pedestrians, including Low Traffic Neighbourhoods. It stated that "[measures] should be taken as swiftly as possible, and in any event within weeks, given the urgent need to change travel habits before the restart takes full effect". Updated guidance was issued on 13 November 2020, and on 25 February 2021.

29. On 15 May 2020, delegated authority was conferred on several officers of the council to implement a range of measures in its Transport Strategy as its transport programme for the pandemic. Authority to bring Low Traffic Neighbourhoods into being was given to Mr Dosunmu. Under the heading "Equalities Impact Assessment", the report for the delegated decisions said the measures proposed were "principally intended to reduce inequality" (paragraph 7.1). It confirmed that "[key] stakeholders, including representatives of disability groups, will be included in discussions around scheme development and asked to advise on and review interventions" (paragraph 7.2). It said the Transport Strategy Implementation Plan had been "subject to a full EIA". It went on to say that "[all] Traffic Orders required as part of the Response will be subject to EIA". And it acknowledged that "the Covid-19 restrictions will make meaningful engagement with disabled and elderly people more challenging" (paragraph 7.3).

30. The Oval Triangle Low Traffic Neighbourhood and the Railton and St Matthew's Low Traffic Neighbourhood were first brought into effect by temporary traffic orders under section 14 of the 1984 Act, on 22 May 2020 and 7 August 2020 respectively. On 4 August 2020, the council produced a draft equality impact assessment for the Railton and St Matthew's Low Traffic Neighbourhood. The Oval Triangle Low

Traffic Neighbourhood was given renewed effect by experimental traffic orders on 16 September 2020. These orders, however, were not authorised until after the event, on 9 October 2020. As the council has accepted, the introduction of this Low Traffic Neighbourhood was therefore ultra vires. However, no statutory application for a quashing order was issued within the statutory six weeks for challenge.

The decisions taken on 9 October 2020

31. The delegated decisions to make experimental traffic orders for Low Traffic Neighbourhoods, taken by Mr Dosunmu on 9 October 2020, were based on a report entitled "Implementation of London Streetspace Plan: First Tranche", which had been prepared by fellow officers. The "Report Summary" said that "[in] accordance with the Council's Transport Strategy Implementation Plan and the Mayor of London's London Streetspace Plan, a series of experimental measures are proposed across the borough to create low traffic neighbourhoods, assist social distancing and improve the cycling environment". The report recommended "scheme approval" for four Low Traffic Neighbourhoods, including the three under challenge in these proceedings. It also recommended that "public consultation is carried out in the six months following each scheme's implementation to consider whether the provisions of the relevant Experimental Order should be continued in force indefinitely and that any objections that are received during this period are considered by way of a written report to the Assistant Director of Infrastructure, Environment, Public Realm & Climate Change Delivery before that decision is reached".

32. In section 1 of the report those recommendations were placed in the context of the council's Transport Strategy and the Mayor's London Streetspace Plan (paragraphs 1.1 and 1.2 of the report), and the statutory guidance issued by the Secretary of State in May 2020, encouraging the urgent re-allocation of road space for walking and cycling (paragraph 1.3). It stated (in paragraphs 1.3 and 1.4):

> "1.3 … [the Secretary of State's guidance] emphasises these measures should be taken as swiftly as possible so that the change in travel habits happens before the restart takes full effect. …
>
> 1.4 To deliver the swiftest response to this emergency, the Council has made temporary traffic management orders prohibiting through traffic using a number of residential roads in roads that lie south of The Oval as well as south-east and west of Brixton town centre. Before the emergency that triggered these temporary traffic orders subsides, the Council needs to consider whether these temporary low traffic neighbourhoods should be retained. At the same time, it needs to consider whether more low traffic neighbourhoods should be created in the manner described in the Secretary of State's Guidance."

33. The report set out the essential reasons for the decisions in section 2 "Proposals and Reasons", stating (in paragraphs 2.1 to 2.4):

"2.1 Officers in the Transport Strategy and Highways teams have used elementary traffic modelling techniques to identify where and what traffic controls are most likely to achieve the objectives described in the new Statutory Guidance. However, narrow road widths and competing demands for kerbside space preclude the creation of significantly widened footways or physically segregated cycling lanes on most of Lambeth's roads. Yet annual attitudinal surveys undertaken by TfL evidence how people will only change their mode of travel to cycling if the road environment feels sufficiently safe to them. Whilst in the manner of London's Quietways, this can be achieved by restricting motor traffic in roads signposted as cycle-routes, in a dense urban area such as Lambeth, this route-based approach risks generating higher traffic levels on parallel routes. Unless these routes are designed for through traffic (which is generally only the case with classified roads), this outcome is at odds with the revised Network Management Duty. Consequently, it is recommended that rather than pursuing route-based traffic reduction, the Council pursues traffic reduction across areas bounded by roads that the Transport Strategy identifies as being suitable to carry through-traffic. Each of these areas would then become a Low Traffic Neighbourhood (LTN).

2.2 The priority for assessing which potential LTNs should be included in the first tranche of schemes is as stated in the TSIP. These schemes have been reviewed by ward councillors and emergency services to establish that any operational or social issues forecast to arise are not disproportionate to the scheme objectives described in paragraph 1.2.

2.3 The speed of delivery demanded by the Secretary of State's Guidance is incompatible with the timeframe required to collaboratively develop and agree a traffic management scheme with road users, members of the community and other stakeholders. Accordingly, officers consider that introducing such interventions by means of an experimental traffic order is the most appropriate legislative mechanism.

2.4 At the request of the emergency services, all physical restrictions to effect any road closures should, at least initially, include the ability for a fire appliance to pass through without the need to stop. Recognising that a physical gap will significantly lessen drivers' and motorcyclists' self-enforcement of the signed restrictions, automatic number plate recognition (ANPR) cameras will be used to carry out enforcement if necessary. Exemptions will be made for emergency vehicles and refuse vehicles when undertaking street collection."

A description of the measures intended in each of the four Low Traffic Neighbourhoods was then set out (in paragraphs 2.6 to 2.25). It was explained that the choice of these measures had been informed by feedback from the local community and by the aim to preserve access and reduce travel disruption for local residents.

34. In section 4, "Legal and Democracy", the relevant statutory framework under the 1984 Act and the 1996 regulations was described. The arrangements for public consultation and objections were referred to (in paragraph 4.15). And in the following passage of the report the section 149 duty was explained (in paragraphs 4.16 and 4.17):

> "4.16 Section 149 of the Equality Act 2010 sets out the public sector equality duty in relation to race, sex and disability and extending the duty to all the characteristics i.e. race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, marriage or civil partnership and gender reassignment. The public sector equality duty requires public authorities to have due regard to the need to:
>
> - Eliminate unlawful discrimination, harassment and victimisation
> - Advance equality of information and
> - Foster good relations between those who share a protected characteristic and those who do not.
>
> Part of the duty to have "due regard" where there is a disproportionate impact will be to take steps to mitigate the impact and the Council must demonstrate that this has been done, and/or justify the decision, on the basis that it is a proportionate means of achieving a legitimate aim. Accordingly, there is an expectation that a decision maker will explore other means which have less of a disproportionate impact.
>
> 4.17 The Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken."

35. Section 5, "Consultation and Co-Production", described the intended approach to consultation. Paragraphs 5.1 and 5.2 stated:

> "5.1 The history and outcome of non-statutory consultation undertaken for each scheme to date is described in section 2 of this report. The inherent uncertainty in terms of how drivers will reroute or change their mode of travel has informed the recommendation to proceed by way of an experimental traffic order whereby full public consultation on the precise design of the scheme is carried out after installation.

> 5.2 As detailed in paragraph 4.13, the recommendation of this report is that for the duration of the first six months of each LTN's operation, ongoing formal public consultation shall be undertaken to inform whether the changes should be withdrawn, modified or made permanent."

36. The risks of making the experimental traffic orders were identified in section 6, among them the possibility of unacceptable delays and disruptions to journeys. The role of public consultation in bringing unintended consequences to light was acknowledged again.

37. In section 7, "Equalities Impact Assessment", paragraphs 7.1 to 7.3 stated:

> "7.1 A separate Equalities Impact Assessment has not been completed for this decision but prior to making the recommendations detailed in this report, regard has been given to the Public Sector Equality Duty and the relevant protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).
>
> 7.2 The Assistant Director for Highways, Capital Programmes & Sustainability has approved the project team's assessment that there is a reasonable expectation that the measures will not disproportionately affect people with one or more of the above protected characteristics. The veracity of this conclusion will be explored as part of the six-month post-implementation consultation period.
>
> 7.3 Within the designs consideration has been given to the needs of all road users."

38. In section 8 of the report, "Community Safety", it was emphasised that "[the] underlying objective of a low traffic neighbourhood is to create a healthier and safer environment in which to live and travel" (paragraph 8.1).

39. However, in section 9, "Organisational Implications", under the heading "Environmental", it was acknowledged that although "the scheme's objectives" were "strongly aligned to the Lambeth Air Quality Action Plan …", a consequence of restricting access to the highway network for drivers and motorcyclists would be that "many local journeys that do need to be made using these means of travel will take longer, thereby increasing those journeys' carbon footprint and amount of pollution". Surveys undertaken during the first six months of operation would inform the council "whether the net effect is to improve or worsen these effects" (paragraph 9.1).

40. Section 10 of the report set out the timetable for implementation, which included the proposed six-month period for public consultation.

Subsequent events

41. Between 21 October and 1 December 2020, equality impact assessments were issued for each of the three Low Traffic Neighbourhoods challenged in these proceedings. On 30 December 2020 a delegated decision was made to accept the recommendations of a report on the "Railton Low Traffic Neighbourhood Experimental Scheme". This report said that the latest equality impact assessment had not identified "any significant equality impacts for the proposed changes". The equality impact assessment report, appended to it, referred to the impacts of introducing the Low Traffic Neighbourhood on people with disabilities, the effects of "creating a more inclusive street environment", the reduction of "road danger" and the fact that cycling "can improve mobility and access for disabled people, many of whom do not have access to motor vehicles". It acknowledged that "[for] those that do have access to a car, in some cases journey times may be increased for some trips". It emphasised, however, that "[all] areas will remain accessible, … and reduced traffic on the local streets is expected to result in a safer, less stressful and more convenient trip making for local journey by car for those that need to drive". The equality impact assessment reports for the other Low Traffic Neighbourhoods described the impacts on people with disabilities in a similar way.

42. On 6 January 2021 the council made three experimental traffic orders to continue in effect the Railton and St Matthew's Low Traffic Neighbourhood.

43. At the time of the hearing, all of the experimental traffic orders under challenge remained in force. The council decided on 20 December 2021 that the Low Traffic Neighbourhoods for the Oval Triangle and the Railton and St Matthew's area should be made permanent. On the same day it also authorised the "Lambeth Low Traffic Neighbourhood Exemptions Policy", under which exemptions can be granted to "blue badge" holders.

The proceedings

44. On 19 November 2020, Ms Sheakh issued claims for judicial review and statutory review under paragraph 35 of Part VI of Schedule 9 to the 1984 Act, challenging the delegated decisions of 9 October 2020 to approve the experimental traffic orders for the Oval Triangle Low Traffic Neighbourhood, and the Streatham Hill Low Traffic Neighbourhood. On 10 February 2021, she issued a claim for statutory review of the experimental traffic orders for the Railton and St Matthew's Low Traffic Neighbourhood. Ms Sheakh issued a claim for statutory review of further experimental traffic orders on 4 May 2021, which is stayed pending the outcome here.

The judgment of Kerr J.

45. Kerr J. accepted (in paragraph 157 of his judgment) that although, at the time of the impugned decisions, Mr Dosunmu was "not aware of the detailed findings recorded by officers in the draft [equality impact assessment,] … he himself had in mind the duty; … he knew it could not be performed on a retroactive basis, after the event; and

… he intended that it should be performed in the same manner as envisaged in the draft [equality impact assessment] from early August 2020, namely, by monitoring and updating the analysis" (paragraph 157). He continued (in paragraphs 158 to 163):

> "158. That method of proceeding accorded with the statutory procedure for making an [experimental traffic order]. Four such [experimental traffic orders] had already been made, for [the] Oval Triangle [Low Traffic Neighbourhood], using that procedure. The statutory context was that the traffic authority is *not* equipped with all the knowledge it needs to decide whether a traffic order should be made permanent.
>
> 159. The claimant's assertion of a lack of adequate *Tameside* enquiries is correspondingly weakened. I do not accept that it is made out by reason of inadequate consultation. …
>
> 160. In my judgment Mr Mould is right to submit that the director incontestably had some regard to the equality objectives and the question is whether the regard he had was sufficient to qualify as due regard. He was not aware of the detailed findings made up to that point but I do not think that unawareness is sufficient to condemn his regard for equality objectives as less than what was due.
>
> 161. In my judgment, there was enough consideration of equality objectives in the October report to qualify as due regard to those objectives. That included, legitimately, consideration of the point that the same equality objectives would be looked at further, in much more detail and with a sharpened focus, at later stages in the statutory process.
>
> 162. That does not mean, as the claimant would have it, that performance of the duty was put off to another day, when it was too late to perform it because the relevant function had already been exercised. In the present context, I find that the duty was performed at the time of the October report and that part of the performance was the director's acknowledgment of his expectation that there would be detailed future [equality impact assessments] before any decision about permanence.
>
> 163. There is nothing in section 149 of the 2010 Act which prevents, in an appropriate case, performance of the duty by means of a conscious decision to undertake equality assessment on a "rolling" basis. A decision to do that is not, as a matter of law, contrary to the pre-requisites of performance identified in McCombe LJ's judgment in *Bracking* at [26]."

46. Kerr J. then sounded a note of caution. Neither the legislation or the case law precluded "rolling assessment", but nor did they legitimise it for all cases. The more "evolutionary" the function being exercised, the more readily this approach may be

justified. But for a "one off" function it was hard to see how it could be justified (paragraph 164). The judge then said this (in paragraphs 165 and 166):

> "165. So that this judgment is not misunderstood, I should make it clear that I am not deciding that equality impact assessment on a rolling basis is always acceptable where the function being exercised is to initiate an experiment, as in the case of a decision to make an [experimental traffic order]. It may or may not be on the facts, depending in each case whether such regard (if any) that was had to the equality objectives in section 149(1) of the 2010 Act was sufficient to pass the test of being "due regard" to those objectives.
>
> 166. Here, it was acceptable because of unusual factual features: the urgency expressed in the statutory guidance, the near stasis of public transport and the need to restrain vehicle traffic in residential areas to allow walking and cycling to flourish. Those factors (all caused by the prevalence of the virus) propelled [the council] to curtail its research and truncate the timescale, using [experimental traffic orders]. Had those factors been absent, Mr Dosunmu's approach to equality assessment might not have passed the "due regard" test."

47. Ms Sheakh had "demonstrated that her particular problem of dependence on car transport with increased journey times and stress, was not identified until after the operative decisions in October 2020; but she has not demonstrated that [the council] thereby, or at all, breached the public sector equality duty" (paragraph 167).

Did the council lawfully discharge the public sector equality duty?

48. For Ms Sheakh, Mr Tim Buley Q.C. made two main submissions. First, he submitted, it was wrong to think that a default in the performance of the public sector equality duty could be overcome by monitoring the equality implications by means of a "rolling review". Contrary to the judge's conclusion (in paragraphs 163 and 164 of his judgment), the duty could not be discharged by a process of "rolling assessment" after the challenged decisions. The adoption of such an approach could not justify a failure to scrutinise the equality implications at the time the decisions were made. This, Mr Buley contended, amounted to saying that Mr Dosunmu had intended to perform the duty in the future, not to discharge it at the time of the decisions themselves. No real attempt had been made to engage with disabled people to find out what the impacts on them would be. The public sector equality duty had to be discharged when the decisions were taken.

49. When asked what more the council ought to have done, Mr Buley suggested, for example, that it could have used its experience of the "blue badge" scheme to identify the likely impacts on people with disabilities; that it could have consulted more widely among groups representing disabled people, not limiting consultation only to "Wheels for Wellbeing"; and that it could have made specific exemptions for disabled persons.

50. Mr Buley accepted that what constitutes "due regard" depends on the context. He sought to distinguish *Hollow* from this case on the basis that the decision there was "inchoate", whereas here the decisions were "choate". It was wrong to regard the orders as truly "experimental", or unusually urgent. They were going to remain in effect for 18 months, and some had already been preceded by temporary orders. But in any event, their experimental nature could not alter the council's statutory obligations. Nor could the Secretary of State's guidance. The council had to comply with section 149 on 9 October 2020, when the relevant decisions were made. The legislation governing the procedure for making traffic orders could not override the duty in section 149.

51. Secondly, relying on the proposition stated by McCombe L.J. in paragraph 26(3) of his judgment in *Bracking*, Mr Buley submitted that it was necessary for Mr Dosunmu, as decision-maker, to apply his own mind to the equality implications of the decisions. He could not simply rely on others to have done so on his behalf, or adopt their conclusions without considering the issues himself. But it was apparent from section 7 of the report for the decisions on 9 October 2020 that he had not personally considered the relevant issues at all. He had simply relied on the assertion that the Assistant Director for Highways, Capital Programmes and Sustainability had approved an assessment by the project team which concluded that the proposed measures would not disproportionately affect people with protected characteristics. It was impossible to tell from a second-hand report of the project team's conclusion what its thinking had been. This, submitted Mr Buley, would not do, especially when the impact on disabled people would be severe and the "due regard" duty correspondingly stringent.

52. Mr Buley accepted that, in principle, it was lawful for Mr Dosunmu to rely on advice given to him by other officers. But as decision-maker, he had to grapple with the equality impacts himself. And he could not do so. The equality impact assessments were in draft and had not been signed off by the relevant team leaders. In reality, therefore, Mr Dosunmu did not have any regard to the listed needs, let alone "due regard".

53. In further written submissions invited by the court, Mr Buley argued that the *Carltona* principle does not permit a decision-maker to rely on the knowledge of others without being properly informed himself on the relevant matters. And this principle, he submitted, applied equally to delegation in the sphere of local government. The decision in *National Association of Health Stores* showed that a decision-maker could not be taken to have discharged the section 149 duty simply because he was told that someone else had found the relevant impacts acceptable.

54. For the council, Mr Tim Mould Q.C. emphasised that the report before Mr Dosunmu on 9 October 2020 represented a "change of plan" by the council. The circumstances of the pandemic and the statutory guidance issued by the Secretary of State made this necessary. Experimental traffic orders would now be introduced promptly and full equality impact assessments carried out, taking into account the further information gained about the measures when in place. The public sector equality duty was clearly explained in the report, and it was undoubtedly in Mr Dosunmu's mind when the decisions were taken. The report made it clear that the effects on those with protected characteristics were not expected to be disproportionate; that any harmful consequences would be monitored; and that consultation would continue for six

months. All this was enough to constitute "due regard" under section 149 in the circumstances as they were in October 2020. Mr Dosunmu did not put off, or avoid, the performance of the public sector equality duty. He concluded, rightly, that the duty was complied with at the time of, and for the purposes of the decisions he took on 9 October 2020.

55. We do not accept the argument put forward by Mr Buley. It seems to us to be based on a false understanding of the public sector equality duty. Mr Mould's submissions in support of the judge's analysis and conclusions are, we think, essentially correct.

56. The authorities show that the concept of "due regard" is highly sensitive to facts and context. How intense the "regard" must be to satisfy the requirements in section 149 will depend on the circumstances of the decision-making process in which the duty is engaged. What is "due regard" in one case will not necessarily be "due regard" in another. It will vary, perhaps widely, according to circumstances: for example, the subject-matter of the decision being made, the timing of that decision, its place in a sequence of decision-making to which it belongs, the period for which it will be in effect, the nature and scale of its potential consequences, and so forth. When the decision comes at an early stage in a series of decisions, and will not fix once and for all the impacts on people with protected characteristics, the level of assessment required to qualify as "due regard" is likely to be less demanding than if the decision is final or permanent. This may especially be so if the decision is also experimental, and is itself conducive to a more robust assessment of equality impacts later in the process.

57. Although in *Bracking* this court provided useful guidance on what may constitute "due regard", the judgment must not be read as if it were a statute. The guidance it set out will apply differently in different contexts. We have in mind here the salutary words of the Lord Chief Justice in *End Violence Against Women* (at paragraphs 85 and 86).

58. The main contextual factors here are to be seen in the report for the delegated decisions. There are six.

59. First, the function being performed by the council under delegated powers on 9 October 2020 was the making of experimental traffic orders, and only that. The orders were neither permanent nor merely temporary. They were of statutorily limited duration, under section 9(3) of the 1984 Act. Crucially, they also constituted an experiment – as Mr Mould described it, a "trial run" – for traffic management measures that the council wanted to test in practice, which were foreshadowed in its Transport Strategy. The experiment was not an artificial expedient to avoid the statutory requirements for permanent orders. It was a genuine test of the measures proposed, conducted in good faith. The judge considered and rejected a ground contending the opposite, and Ms Sheakh did not seek permission to appeal on that ground.

60. Second, as Kerr J. said (in paragraph 166 of his judgment), "the urgency expressed in the statutory guidance" and "the near stasis of public transport and the need to restrain vehicle traffic in residential areas to allow walking and cycling to flourish", against the backdrop of the pandemic, were factors which "propelled [the council] to curtail its research and truncate the timescale, using ETOs". It had already made temporary

traffic orders. It now acted upon the Secretary of State's guidance, which expected measures to be taken "as swiftly as possible" so that travel habits could change "before the restart takes full effect" (paragraph 1.3 of the report). It intended "before the emergency which triggered these temporary traffic orders subsides", to consider whether the Low Traffic Neighbourhoods created in the emergency should be kept, and whether more should be created to give effect to the Secretary of State's guidance (paragraph 1.4).

61. Third, the selection of experimental traffic orders was clearly influenced by the accelerated procedure involved. The necessary "speed of delivery" was seen as justifying such orders as "the most appropriate legislative mechanism" (paragraph 2.3 of the report). The statutory scheme imposes few procedural requirements before an experimental traffic order is made. The council had to consult under regulation 6 of the 1996 regulations, and give seven days' notice of the making of the orders under regulation 22(2). If it turned out that the Low Traffic Neighbourhoods could help to achieve its long-term objectives, they would have to be replaced within 18 months by permanent orders.

62. Fourth, the Transport Strategy Implementation Plan envisaged that Low Traffic Neighbourhoods would help the council to get information about the effects of the measures and the response of the local community. The "inherent uncertainty" of drivers' responses to the Low Traffic Neighbourhoods informed the recommendation in the report to make experimental traffic orders and carry out "full public consultation on the precise design of the scheme … after installation" (paragraph 5.1 of the report).

63. Fifth, the whole experiment was predicated on the council's commitment to consultation. The report recommended that the public be consulted in the six months after the experimental traffic orders came into force. The consultation would inform a decision on whether the Low Traffic Neighbourhoods should be made permanent. Any objections received in that period would be considered in a report to the relevant Assistant Director. For the time being, all options remained open. As the report said (in paragraph 5.2), "ongoing formal public consultation shall be undertaken to inform whether the changes should be withdrawn, modified or made permanent".

64. And sixth, although equality impact assessments for the experimental traffic orders had not yet been completed (paragraph 7.1 of the report), section 149 of the 2010 Act was clearly taken into account. The statutory provisions were accurately represented in the report, including the "due regard" duty (in paragraphs 4.16 and 4.17). The possible implications of the experiment for those with protected characteristics, including people with disabilities, were recognised, and a provisional conclusion stated. The Assistant Director had "approved the project team's assessment that there is a reasonable expectation that the measures will not disproportionately affect people with one or more of the above protected characteristics" (in paragraph 7.2). This was not yet a definite conclusion, but a provisional one. The report confirmed that "[the] veracity of this conclusion will be explored as part of the six-month post-implementation period" (ibid.).

65. We must avoid the error of considering the experimental traffic orders solely from Ms Sheakh's point of view – though we recognise the consequences that she and others have experienced. When the council made the orders it had to consider a wide range

of factors, including their effects on people with protected characteristics. It had to decide how that multitude of factors should be balanced. This was, inevitably, a matter of evaluative judgment. The council was entitled to think that in the circumstances it had to act quickly, and before it could gather all the information relevant to a future decision to retain the Low Traffic Neighbourhoods permanently, to change them or abandon them altogether, including information about their effects on those with protected characteristics. With more time, it could have got hold of more information about those impacts – both beneficial and harmful. And it later did.

66. From the report for the decisions on 9 October 2020 it seems clear that the view taken by Mr Dosunmu, in accepting its advice and recommendations, was that Low Traffic Neighbourhoods would be likely to lead overall to some reduction in vehicular traffic in those areas and some improvement to the local environment; but that the actual consequences, including those for people with protected characteristics, would need to be evaluated as the experiment proceeded.

67. Given the correct encapsulation of the section 149 duty in paragraphs 4.16 and 4.17 of the report and the advice in paragraphs 7.1 to 7.3, the suggestion that Mr Dosunmu did not consciously direct his mind to the questions arising under section 149 is, in our view, untenable. The question comes down, therefore, to whether the regard that demonstrably was had to those questions, was, in the circumstances, sufficient to constitute “due regard”. In our view it was.

68. The basic considerations here are those we have mentioned. One of the purposes of the experimental traffic orders was to enable a better assessment to be made of the potential effects of the Low Traffic Neighbourhoods on people with protected characteristics. Inherent in the experiment was this question: whether the effects of the proposed traffic management measures in increasing congestion on roads outside the Low Traffic Neighbourhoods, and the consequences for journey times, would be disproportionately or unacceptably harmful for people with protected characteristics, including those with disabilities. Until the measures had been tested by the experimental traffic orders, uncertainty would remain. Monitoring, consultation and assessment would show what the real effects of the measures would be, overall.

69. Although some of the equality impacts of Low Traffic Neighbourhoods could have been predicted, it is clear that there were cogent reasons for the council to use the experiment to gather data about the impacts of the scheme, good and bad, and to use that information in deciding how to balance those impacts. The displacement and re-routing of traffic might well have unintended consequences for some residents of the borough, which could not all be predicted with confidence. This was certainly true of the effects on those with protected characteristics, and, in particular, disabled people reliant on a car. Such effects would emerge during the “trial run”. The provisional view, evidently, was that any harmful consequences would not be disproportionate to the benefits, nor unacceptable. But only after the data had been collected and assessed, and the responses to consultation considered, could the council properly weigh the advantages and disadvantages, including those for people with protected characteristics.

70. In this case – where the measures in question were designed to give effect to urgent guidance issued by the Government during a pandemic, were demonstrably influenced by that urgent guidance and were also deliberately and formally

experimental in nature, where the decisions taken on 9 October 2020 were only one stage in a sequence of decision-making, and where the full effects of the decisions were going to be ascertained over time – the court must take care not to apply too demanding a standard in establishing whether the "due regard" duty was discharged when those particular decisions were made (see the judgment of the Divisional Court in *Hollow,* at paragraphs 80 to 84).

71. That mistake was avoided in the court below. Kerr J. rightly held that in the particular circumstances of this case the council had "due regard" to the relevant considerations at the time of its decision to go ahead with the experiment, and did not fall short of what was required of it at that stage. The judge was careful, and right, to confine this conclusion to the specific circumstances of the experimental traffic orders under challenge. We would stress the caveat in paragraph 165 of his judgment that a so-called "rolling assessment" is not automatically appropriate "where the function being exercised is to initiate an experiment" in which further information is to be gathered. It may be appropriate; but this will always depend on the particular facts and legal context. The fact that a particular decision is "choate", in the sense that the further stages in the authority's decision-making are known and not conjectural, is not in itself determinative. And we would also add, though it should not be necessary to do so, that urgency alone – even the urgency of a pandemic – will not excuse a failure to discharge the "due regard" duty.

72. Our conclusion that the judge's analysis was sound is not undone by the fact that the equality impact assessments for the Low Traffic Neighbourhoods were yet to be finalised. That they were only in draft reflects the reality that they were, as was appropriate, a work in progress. The council's Transport Strategy, which embraced the concept of Low Traffic Neighbourhoods, had itself been the subject of a broadly framed equality impact assessment, which did not pre-empt the assessment for the experimental traffic orders later proposed. The fact that an equality impact assessment had not yet been carried out for each of the Low Traffic Neighbourhoods under consideration on 9 October 2020 does not prevent a conclusion that the council had properly fulfilled the public sector equality duty at that stage (see *Brown*, at paragraph 89).

73. We do not accept Mr Buley's criticisms of the approach adopted in the report for the delegated decisions on 9 October 2020, and by Mr Dosunmu himself in following the advice and recommendation it contained. It is not right to say that the performance of the section 149 duty was based on mere generalities. It was founded on a consideration of the relevant matters under section 149, within the experiment proposed. In that context, Mr Dosunmu cannot be said to have failed in his obligation to take effective steps to acquire relevant information, in accordance with the *Tameside* duty. As the Divisional Court recognised in *Hollow*, "it will only be unlawful for a public body not to make a particular inquiry if it was irrational for it not to do so; and … it is for the public body, not the court to decide on the manner and intensity of any inquiry" (paragraph 83). In this case, in our view, the *Tameside* duty was not breached by the decisions taken on 9 October 2020. And as Mr Dosunmu envisaged, further enquiry would take place as information about the effects of the experimental traffic orders became available.

74. It is true that when the orders were made the council did not grapple with the point that people with disabilities who rely on a car would have longer journey times, and

might experience other disadvantages, as a result of the measures proposed. This, however, does not mean that it failed to have "due regard" to the aims listed in section 149. Before the experiment itself had generated further information, it was lawful for the council to consider the statutory needs without the benefit of that information. The judge's conclusions on this aspect of the case, in paragraphs 160 to 167 of his judgment, were realistic and, in our view, right.

75. We also reject the other main argument put forward by Mr Buley. Mr Dosunmu did not unlawfully delegate his decisions. He did what he had to do himself, aided by the advice he was given by his fellow officers, with the approval of the Assistant Director for Highways, Capital Programmes and Sustainability. With that advice in mind, he made the decisions entrusted to him under delegated powers, basing them on his own consideration of the experimental traffic orders on their merits. Part of this exercise was his performance of the section 149 duty, with the help he was given by his colleagues. He took their advice at face value, as he was entitled to do; he accepted it; and he acted upon it.

76. It is, we think, clear that Mr Dosunmu consciously directed his own mind to the matters he had to deal with in discharging the duty of "due regard" when making the decisions he did on 9 October 2020. He was demonstrably aware of the considerations relevant to the statutory equality needs. He was expressly reminded of his duty under section 149 of the 2010 Act to have "due regard" to the need to eliminate discrimination, advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. With those matters in mind, he could legitimately rely on what he was told about "the project team's assessment" when deciding whether the council should proceed with an experiment, into which equality impact assessments would be integrated as a necessary component. The "due regard" duty did not compel him to go behind his fellow officers' assessment. In accepting their provisional view on the equality impacts, he recognised that further enquiry would be made, and that the "due regard" duty would continue to be discharged as the experiment went forward, in the light of the relevant facts as they unfolded. Accepting this would happen as more information became available did not amount to his putting off the performance of the duty to another day. He had "due regard" to the relevant considerations under section 149. There was no default in his performance of the public sector equality duty when he made the delegated decisions on 9 October 2020.

77. We see no error here of the kind contemplated by Sedley L.J. in his judgment in *National Association of Health Stores*. Mr Dosunmu did not fail to attend to any material fact which he was bound to consider. He was sufficiently informed on the relevant matters when deciding whether experimental traffic orders should be made. And this conclusion does not rest on the mistaken assumption that he can be taken to have known everything the project team knew. On the contrary, he was told enough to ensure that nothing he needed to know, because it was legally relevant, was left out of account.

78. We therefore conclude, as did the judge, that the council lawfully discharged the section 149 duty when it made the experimental traffic orders for the three Low Traffic Neighbourhoods challenged in these proceedings.

The effect of paragraph 37 of Schedule 9 of the 2004 Act

79. An issue considered by the judge in deciding whether to grant permission to apply for judicial review of the experimental traffic orders made for the Oval Triangle Low Traffic Neighbourhood on 16 September 2020 was the effect of issuing a claim for judicial review more than six weeks after the relevant orders were made. The question is whether the prohibition in paragraph 37 of Schedule 9 to the 2004 Act precludes a declaration that the public sector equality duty was breached. The judge considered it arguable that paragraph 37 did not have that effect, though he had his doubts (paragraph 109 of his judgment). He recorded a concession by Mr Mould that the court could, on a claim for judicial review, grant relief even if the claim was issued more than six weeks after the date of the experimental traffic orders, so long as the relief was limited to a declaration that section 149 had been breached (paragraph 108).

80. We would not endorse that concession. At the hearing before us Mr Mould withdrew it. But in any event, given the conclusion we have reached on the issues in the appeal, the question is academic. We leave it moot. It will be for the court to revisit in any future case in which it has to be resolved.

Conclusion

81. For the reasons we have given, the appeal must be dismissed.