



Neutral Citation Number: [2011] EWHC 2687 (Admin)

Case No: CO/4093/2011
CO/4097/2011

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT (BIRMINGHAM)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 November 2011

Before :

HIS HONOUR JUDGE MCKENNA
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

Between :

**THE QUEEN ON THE APPLICATION OF
KIRSTY GREEN**

Claimant

- and -

GLOUCESTERSHIRE COUNTY COUNCIL

Defendant

- and -

**THE QUEEN ON THE APPLICATION OF
(1) JAMES ROWE (2) REBECCA HIRD**

Claimant

- and -

SOMERSET COUNTY COUNCIL

Defendant

Helen Mountfield QC and Mathew Purchase

(instructed by **Public Interest Lawyers Limited**) for the **Claimants**

James Goudie QC and Edward Capewell (instructed by **Nigel Roberts Director of Law and Administration Gloucestershire County Council and Catherine Witham County Solicitor, Somerset County Council, Solicitors**) for the **Defendants**

Hearing dates: 27, 28 and 29 September 2011

Approved Judgment

His Honour Judge McKenna :

Introduction

1. In these proceedings, the Claimants, residents respectively of Gloucestershire and Somerset, seek to challenge the following decisions made by Gloucestershire County Council (“GCC”) and Somerset County Council (“SCC”), made in the exercise of their duties under Section 7(1) of the Public Libraries and Museums Act 1964 (“the 1964 Act”) to provide comprehensive and efficient library services in their respective counties, to make changes to their respective public library services:-
 - i) In respect of GCC, the decisions taken by the Executive on 2 February 2011 and 12 April 2011 and by the full Council on 16 February 2011;
 - ii) In the case of SCC, the decisions taken by the Executive on 2 February 2011 and the full Council on 16 February 2011.
2. The GCC decisions were to withdraw funding from 10 of its 38 static libraries (subject to the possible “big community offer” if volunteers came forward to run them,) and to provide 7 libraries with a library link which would open 12 hours a week (or more if volunteers came forward from the communities); to withdraw its mobile library services altogether and radically to reduce its expenditure on and the opening hours of 5 of the remaining 21 libraries.
3. The SCC decisions were to withdraw full funding from 11 of its 34 static libraries; to reduce its fleet of mobile libraries from 6 to 2 and to cut the opening hours of the remaining libraries by 20% and “in the case of all unfunded libraries” to explore options for management by the community.
4. The Claimants in these two joined claims are users of libraries in Gloucestershire and Somerset respectively. Ms Green, the Claimant in the first (Gloucestershire) challenge is an unemployed single mother who lives in one of the most deprived areas of the country in Gloucestershire and is a user of Hester’s Way Library, a library which, under the proposals, will close completely unless a community group is willing and able to run it. Mr Rowe, the First Claimant in the Somerset challenge is an unemployed man who uses his local library at Wiveliscombe, a library whose opening hours will be reduced by 20% under SCC’s proposals, for leisure and social contact, to seek work and to assist his son with his education. Ms Hird, the Second Claimant in the SCC challenge has a reading disability. She uses her library (Watchet) for books especially audio books and internet access. That library will no longer be funded under SCC’s proposals and will therefore close unless its running can be taken over by a local group.
5. The cases have generated considerable strength of feeling in the respective communities and raise similar issues albeit in different factual contexts. The Claimant in the GCC case was granted permission by Beatson J after an oral hearing on 7 July 2011 and on 21 July 2011 Beatson J ordered that the SCC case should proceed to a rolled up hearing to be heard at the same time as the substantive hearing in the GCC case.
6. The Claimants’ case is that the decisions were taken

- i) in breach of the respective councils' duty to provide a comprehensive and efficient library service pursuant to Section 7 of the 1964 Act;
 - ii) in breach of the Public Sector Equality Duties under Section 49A of the Disability Discrimination Act 1995 ("the DDA") and Section 76A of the Sex Discrimination Act 1975 ("the 1975 Act") and in respect of those decisions postdating 5 April 2011, section 149 of the Equality Act 2010 ("the 2010 Act") and;
 - iii) without adequate consultation.
7. It was submitted on behalf of the Claimants that they readily appreciated the pressure on local authorities to cut spending in the face of significant funding cuts from central government but that limited resources could not justify a failure to comply with the statutory duties or the requirements of public law. The Claimants believed that each of the Defendants had adopted a fundamentally flawed and unlawful approach to the objective of making savings in their respective budgets, in particular, because they had each started by identifying budget cuts and then worked backwards to what would be provided (and thereby failed to identify with adequate particularity the needs which their services were required to address); failing to comply with equality legislation and properly to consult.
8. For their part it was conceded by the Defendants that whilst local authorities could not but face economic reality, it was no part of their case that challenging financial circumstances excused compliance with the requirements of public law or that those requirements were in any sense thereby diluted. On the contrary it was the Defendants' case that their decision making processes were undertaken with great care, were reasonable and lawful and that the decisions ultimately reached were well within the permissible bands of legality and reached with appropriate regard to all relevant considerations and as such should not be disturbed.

Legal Framework

The 1964 Act

9. Section 7 of 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. The duty is contained in Section 7(1) which provides as follows:-

"(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 person 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”.

10. Section 7(2) provides further statutory instruction as to the factors which 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; and

(b) of encouraging both adults and children to make full use of the library service, and of providing advice as to its use and of making available such bibliographical and other information as may be required by persons using it; and

(c) of securing, in relation to any matter concerning the functions both of the library authority as such and any other authority whose functions are exercisable within the library area, that there is full co-operation between the persons engaged in carrying out those functions”.

11. The expression “library service” is not defined nor are the concepts “comprehensive” and “efficient”. Library facilities are referred to but not defined but they are clearly not the same as library premises which are defined (in Section 8(7)).

12. Section 9(1) confers a power on a library authority to contribute towards the expenses of “any other person” providing “library facilities for the public” and Section 20 empowers local authorities to generate revenue by allowing library premises to be used for holding meetings, performances and the like in return for payment.

13. Section 1(1) is also material and provides:-

“From the commencement of this Act it shall be the duty of the Secretary of State to superintend, and promote the improvement of, the public library service provided by local authorities in England and Wales, and to secure the proper discharge by local authorities of the functions in relation to libraries conferred on them as library authorities by or under this Act”.

14. Section 10 provides the Secretary of State with default powers as follows:-

“(1) If –

- (a) a complaint is made to the Secretary of State that any library authority has failed to carry out duties relating to the public library service imposed on it by or under this Act; or*
- (b) the Secretary of State is of the opinion that an investigation should be made as to whether any such failure by a library authority has occurred,*

and, after causing a local enquiry to be held into the matter, the Secretary of State is satisfied that there has been such a failure by the library authority, he may make such an order declaring it to be in default and directing it for the purpose of removing the default to carry out such of its duties, in such manner and within such time, as may be specified in the order”.

15. In the cases of GCC and SCC no decision has been made by the Secretary of State to cause a local enquiry to be held.
16. At the time of the hearing of these claims there was no direct authority on the proper construction of the Section 7 duty although the duty was considered in the particular circumstances of two cases R -v- London Borough of Ealing ex-parte Times Newspapers [1987] IRLR 129 and Attorney General -v- Observer Limited [1988] 1 All ER 385. However, it was submitted on behalf of the Claimants that there is an implied duty under Section 7 of the 1964 Act to conduct an adequate assessment of local needs and that that requirement was an inherent component of the duty to provide a comprehensive and efficient library service, a submission rejected by counsel for the Defendants.
17. On 13th October 2011 Judgment was handed down by Ouseley J in R (Bailey & others) v London Borough of Brent [2011] EWHC 2572 (Admin), a case concerning a decision to close six libraries in Brent. Albeit in the context of very different factual matrices, similar grounds were relied on as in the instant cases, and on the facts of the Brent case Ouseley J refused the substantive applications. In that case however the primary dispute was whether the needs assessment which had been performed was adequate and not as to the construction of the section 7 duty. I am indebted to counsel for both parties for letting me have helpful notes containing their respective submissions on the relevance of the Brent case.
18. In support of the Claimants’ submission as to the proper construction of Section 7 of the 1964 Act, reference was made to three sources, the Oxford English Dictionary for definitions of the words “comprehensive” and “efficient”; the Bourdillon Report¹ of

¹ Standards of Public Library Services in England & Wales GCB page 742 and following

1962 and the Wirral Report² which followed an intervention by the Secretary of State into library provision by Wirral Metropolitan Borough Council in 2009.

19. In the Oxford English Dictionary, the definition of “comprehensive” includes “having the attribute of comprising or including much; of large content or scope” and the definition of “efficient” included “fitness or power to accomplish, or success in accomplishing, the purpose intended; adequate power, effectiveness, efficacy”. Thus it is said that the duty is to provide a library service which enables users to gain access to material which is comprehensive in the sense of being broad in range.
20. The Bourdillon Report¹ was extensively referred to during the parliamentary passage of the 1964 Act and considered “the basic requirements of an efficient library service” to include the following: -

“There are certain functions which should be within the capacity of any library unit setting out to provide the basic range of library service to its readers. The scope of a public library increases in relation to the size or density of the population served but in some fundamental respects the requirements which can be laid down for the basic service remain valid all the way up the population scale” (paragraph 13).

“There are areas where the population is too small or too sparse to justify the provision of a full library service, and where reliance must be placed on mobile units or small branches” (paragraph 13).

“The provision of books and other printed materials has two aspects: the provision on the spot of a wide range of books and related material for reading in the home or for reference in the library itself, and the ready access which the public library should afford to the far wider range of material which is not immediately at hand. Unless the public library performs both of these functions it is not doing its job properly” (paragraph 14).

“In urban areas no person should normally have to travel more than one mile to a library” (paragraph 103).

This was a report to which, the Claimants submitted, the Defendants should at least have had regard.

21. In the Wirral Report the following passage appears under the heading Conclusions and Recommendations on which reliance was placed by the Claimants:-

“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

² A local enquiry into the public library service provided by Wirral Metropolitan Borough Council led by Sue Charteris in September 2009 GCB page 792 and following

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 in to account, it becomes a rational impossibility for a library authority to provide a service which comprehensively and efficiently meets those needs in a demonstrable way”.

22. Earlier in the Report and under the heading Executive summary the following passages also appear:-

“14. ... the inquiry has found the Council to be in breach of its statutory duties under the Public Libraries and Museums Act 1964, because it failed to make an assessment of local needs in respect of its library services. It therefore cannot have acted reasonably in meeting such needs in the context of its statutory duties and 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.

15. In particular, there are some specific needs for adults that have not been addressed. These include the specific requirements for older people, disabled people, unemployed people and those living in deprived areas.

16. The Council has not been able to demonstrate that it had due regard to the general requirements of children which I consider to be a breach of its statutory duties.

17. The Council took the decision to close eleven of its libraries in the absence of a strategic plan for or review of the library service. As such, I believe that the Council’s approach to the re-visioning the service was fundamentally flawed, because their approach focused specifically on the issue of asset management and cost savings.

18. I also believe that the decision was made without a clear understanding of the extent and range of services currently being provided in the libraries, including those which are “core” to the service and those which are ancillary. This makes it difficult to see how the Council could plan for ceasing or re-locating aspects of the current service.”

23. Thus submitted counsel for the Claimants as a matter of legal principle, in order to comply with Section 7 of the 1964 Act, a library authority must undertake a proper analysis of the library related needs, both general and specific, of all persons desiring to make use of its library service before reaching a rational judgment as to what services would meet those assessed needs.
24. Moreover it is a cardinal principle of public law, as enunciated by Lord Diplock in *Secretary of State for Education -v- Tameside* [1977] AC 1014 at page 1065 that a decision maker must “ask himself the right question and take reasonable steps to

acquaint himself with the relevant information to enable him to answer it correctly” with the role of the court being as follows:-

“... it is not for any court of law to substitute its own opinion for his; 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?”

25. The Defendants for their part submit that neither the Bourdillon Report nor the Wirral Report is of any assistance since:-
- i) The Bourdillon Report merely represented the views of a pre-legislative working party and was concerned with a legislative proposal to provide an efficient library service at a time when the word comprehensive was not part of the then legislative proposal and therefore did not form part of the Committee’s considerations. Furthermore, the report dated from an era in which modes of the public access to information were incomparable with those of the present day; and
 - ii) The Wirral Report has no authoritative status whatsoever as an aid to construction and simply represented one lay inspector’s view of the shape and adequacy of one local authority’s library service and had no factual application to the current proceedings.
26. Counsel for the defendants submitted that comprehensive merely required a service which was evenly spread across an authority’s geographical area and which provided an even spread of the media most commonly found in modern libraries whilst the word “efficient” tempered the requirement of comprehensiveness by introducing an element of economic reality into the content of the duty so that what was required was not only a service which was internally efficient but also one which was efficient in the context of all of the local authority’s functions. Moreover, the phrase “shall in particular have regard to the desirability” had 2 elements namely that the list was not exhaustive but indicative and secondly that the authority was not bound to achieve the stated goals but merely had to have regard to their desirability.
27. Counsel for the Defendants also submitted that the statutory language of Section 7 of the 1964 Act makes it clear that it is a type of a statutory duty characterised by Woolf LJ (as he then was) in *R -v- ILEA ex parte Ali* (1990) 2 Admin LR 882 as a “target duty”. In his earlier decision in *R -v- Secretary of State of the Environment and Others ex parte Ward* (1984) 1 WLR 834 which concerned a similar target duty in section 6 of the Caravan and Sites Act 1968 Woolf J, as he then was, had stated:

“(The statutory duty) is qualified by the fact that what is or is not adequate accommodation is a question in the first instance for the authority concerned, which has to make a value judgment, taking into account all the circumstances. It is also qualified by the fact that except in exceptional circumstances, the court will not seek to enforce that duty, but leave the matter to the Secretary of State who can be expected to only exercise its powers when it is appropriate to do so.

In R -v- ILEA ex parte Ali which related to section 8 of the Education Act 1944 Woolf LJ held at page 828A-C:-

“The duty ... is in very broad and general terms ... In the language of (counsel for ILEA) there is built into section 8(a) a “degree of elasticity”. While there are a number of standards which are required to be achieved by the local education authority, the setting of those standards is, in the first instance, for the local education authority alone to determine as long as those standards are not outside the tolerance provided by the section”.

28. The Secretary of State in the instant cases has default powers under the 1964 Act and, submitted counsel for the Defendants, Parliament has thus seen fit to leave detailed oversight of the content of those target duties to the Secretary of State and not to the Court. This does not of course mean that the duty is incapable of being assessed or enforced or that judicial review has been ousted. What it does mean however is that the standard of review is lower and that the Court will intervene only exceptionally, the issue being one of relative institutional competence.
29. To my mind the duty under Section 7 of the Act could not be fulfilled unless an assessment of the needs which the library service should meet had been undertaken. In the absence of such information, the Defendants could not possibly form a lawful or rational view of whether the service was comprehensive and efficient and I accept the submission of counsel for the Claimants that this is really no more than a straightforward application of the Tameside principle enunciated by Lord Diplock. I note in passing that this was common ground in the Brent case. However I also accept the thrust of the Defendants’ submissions that it is only if the Claimants can show that something has gone seriously wrong in that information gathering process that this court should intervene. Otherwise it is a matter for the Secretary of State under Section 10 of the 1964 Act. This is not in my judgment an abdication of responsibility by the Court but a recognition of the Court’s more limited role in the light of the Secretary of State’s default powers.
30. Moreover, I accept the thrust of the criticism of counsel for the Defendants as to the appropriateness or otherwise of reliance on the Bourdillon and Wirral Reports when considering the measure of a comprehensive and efficient library service and to the effect that the availability of resources is highly material to the question of what constitutes a comprehensive and efficient library service. The section 7 duty cannot be exempt or divorced from resource issues and cannot in law escape the reductions which have been rendered inevitable in the light of the financial crisis engulfing the country. There is to my mind nothing unlawful in each of the Defendants seeking to

make overall budget decisions and then considering how best to structure their respective library service provision in the light of the available funding resulting from those budget decisions assuming, of course, an adequate assessment of needs. I also reject the substance of the submissions made on behalf of the Claimants that in these cases the Defendants closed their minds to alternatives or that they acted in any way improperly at the planning stage in anticipating the likely affect of the very changed financial landscape on their respective budgets as a whole and of the proportion of those budgets available for library service provision. This is not an example of asking the wrong question but of facing economic reality.

The Public Sector Equality Duties

31. Public authorities are required in the exercise of their functions to give “due regard” to three specific albeit overlapping statutory equality needs. These public sector equality duties are ongoing duties to have “due regard” to these three mandatory provisions. The decision making process in these cases spanned two separate statutory equality regimes. Prior to 6 April 2011 public authorities were subjected to general equality duties to give due regard to race, sex and disability equality. On 5 April 2011 those separate equality duties were replaced by Section 149 of the 2010 Act which put in place a consolidated and expanded general public sector equality duty covering all equality strands. In this case the Claimants rely on breaches of PSEDs in relation to disability, gender and age.
32. Section 49A of the DDA provides as follows:-
 - “(1) *Every public authority shall in carrying out its functions have due regard to:-*
 - (a) *the need to eliminate discrimination that is unlawful under this Act;*
 - (b) *the need to eliminate harassment of disabled persons that is related to their disability;*
 - (c) *the need to promote equality of opportunity between disabled persons and other persons;*
 - (d) *the need to take steps to take account of disabled persons’ disabilities, even where that involves treating disabled persons more favourably than other persons;*
 - (e) *the need to promote positive attitudes towards disabled persons; and*
 - (f) *the need to encourage participation by disabled persons in public life.”*
33. Section 76A of the 1975 Act provides as follows:

- “(1) *a public authority shall in carrying out its functions have due regard to the need:*
- (a) *to eliminate unlawful discrimination and harassment, and*
 - (b) *to promote equality of opportunity between men and women”*

34. Section 149 of the 2010 Act provides as follows:

- “(1) *a public authority must, in the exercise of its functions, have due regard to the need 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.*
- (2) *Having due regard to the need to advance equality of opportunity between persons who share a relevant characteristic and persons who do not share it 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 to that characteristic;*
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;
 - (b) *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.*
- (3) *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.*

- (4) *Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:*
- (a) *tackle prejudice, and*
 - (b) *promote understanding.*
- (5) *Compliance with the duties in this section 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 this Act.*
- (6) *The relevant protected characteristics are:*
- “age;*
 - disability;*
 - gender Reassignment;*
 - pregnancy and maternity;*
 - race;*
 - religion or belief;*
 - sex;*
 - Sexual orientation.”*

35. The public sector equality duties are mandatory relevant considerations but of course it must be remembered that they are only some of many relevant considerations, both mandatory and discretionary to which a local authority will have regard when taking decisions.
36. The Equality and Human Rights Commission (EHRC) has produced statutory and non statutory guidance giving advice on fulfilment of the equality duty, as did its predecessor bodies. Failure to follow this 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 which leads the Court to conclude that there has been a breach of the public sector equality duties.
37. There are important statements of principle set out by the Court of Appeal and the Divisional Court respectively in *R (Baker) v Secretary of State for Communities and Local Government* [2009] PTSR 809 and *R (Brown) v Secretary of State for Work and Pensions* [2009] PTSR 1506.
38. In *Baker*, Dyson LJ (with whom Sir Robin Auld and May LJ agreed) emphasised that the equality duty is about process and not outcome. Thus at paragraph 31 he said as follows:

“In my judgment, it is important to emphasise that the Section 71(1) duty is not a duty to achieve a result namely to eliminate unlawful racial discrimination or to promote equality of opportunity and good relations between persons of different racial groups. It is a duty to have due regard to the need to achieve these goals. The distinction is vital. ...What is due regard? In my view, it is the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality: and on the other hand, such countervailing factors as are relevant to the function which the decision maker is performing.”

39. In *Brown*, Aikens LJ giving a judgment with which Scott Baker LJ agreed, set out a number of guiding principles at paragraphs 90-96 inclusive as follows:

“89. Accordingly, we do not accept that either section 49A(1) in general, or section 49A(1)(d) in particular, imposes a statutory duty on public authorities requiring them to carry out a formal Disability Equality Impact Assessment when carrying out their functions. At the most it imposes a duty on a public authority to consider undertaking a DEIA, along with other means of gathering information, and to consider whether it is appropriate to have one in relation to the function or policy at issue, when it will or might have an impact on disabled persons and disability. To paraphrase the words of WB Yeats in *An Irish Airman Foresees his Death*, the public authority must balance all, and bring all to mind before it makes its decisions on what is going to do in carrying out the particular function or policy in question.

90. Subject to these qualifications, how, in practice, does the public authority fulfil its duty to have “due regard” to the identified goals that are set out in section 49A(1)? 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] 1WLR 3213 at para 284 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 paragraph 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 Institute for Health and Clinical Excellence [2007] EWHC 1941 (Admin) at paragraph 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.”*

40. The principles set out in the Brown case have been approved by the Court of Appeal in R(Domb) v Hammersmith and Fulham London Borough Council [2009] EWCA Civ 941.
41. During the course of argument I was taken to a number of authorities both first instance and higher in which these principles were applied in particular factual matrices and of course they were considered by Ouseley J. in the Brent case.

Consultation

42. It is common ground that there was no statutory obligation to consult in this case. However having chosen to consult GCC and SCC were obliged to act in accordance with the principles set out by Hodgson J in R v Brent LBC ex parte Gunning [1985] 84 LGR 168, as restated by Lord Woolf MR in R v North and East Devon Health Authority Ex Parte Coughlan [2001] QB 213 at paragraph 108:-

“It is common ground that, whether or not consultation of interested parties in the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals were 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”

43. In the recent case of *Vale of Glamorgan Council v the Lord Chancellor and Secretary of State for Justice* [2011] EWHC 1532 the position was restated in this way at paragraph 24 by Elias LJ:-

“... First, there is no general principle that a Minister entering into consultation must consult on all the possible alternative ways in which the specific objective might arguably be capable of being achieved. It would make the process of consultation inordinately complex and time consuming if that was so. Maurice Kay J (as he then was) recognised this in the Medway Case itself at paragraph 26:

“Other things being equal, it was permissible for him (that is the Secretary of State) to narrow the range of options within which he could consult and eventually decide.”

Consultation is not negotiation. It is a process within which a decision maker at the formative stage in the decision making process invites representations on one or more possible courses of action. In the words of Lord Woolf MR in ex parte Coughlan [2001] QB23 at paragraph 112, the decision maker’s obligation “is to let those who have potential interest in the subject matter know in clear terms what the proposal is and why exactly it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this.”

The Facts

Gloucestershire

44. The decisions which GCC have taken are in summary as follows:-

To make a 9.4% reduction in the libraries budget from £5.58m in 2010/11 to £5.28 million in 2011/12 and to plan a reduction in budget across four years of 30.9%.

To restructure its library service into three tiers: Main, Express and Library Link;

To withdraw funding from 11 of its existing 38 static libraries and offer them to the community to be run as part of its “Big Community Offer;”

To reduce opening hours in the remaining Council funded static libraries by 7%;

To withdraw funding from its existing mobile library service and offer alternative transport arrangements to static libraries for those with mobility difficulties who require it.

45. GCC's population is 589,100. In 2008-9 a national survey indicated that 43.2% of people in the county use the library service. This was a reduction from 48.5% the previous year and placed GCC in the lower quartile when compared with other similar authorities. In 2009/10 there were 564,392 registered borrowers of whom just 113,457 (19.25% of the population) were active, that is to say borrowing at least one item per annum.
46. In 2009/10 there were 2,905,187 visits (including repeat visits) of which 708,263 or approximately 25% were to the two largest static libraries in the county at Cheltenham and Gloucester. In respect of mobile libraries, in 2009/10 there were 2,124 active borrowers making 23,000 visits and being responsible for 133,869 issues. By way of illustration however, the cost per visit at the East mobile was £8.72 which is nearly seven times more than at the Claimant's local library, Hester's Way (£1.30).
47. Libraries also provide important additional services such as access to computers and the internet and they also act as a community hub not only because people meet there during ordinary visits but also because they are used as specific meeting places for community groups. They are also used by people searching for employment and to access public services. Librarians visit housebound people in the local area and libraries also provide a quiet area for study by local school children and adults. They are used and valued by vulnerable groups such as the elderly and the disabled and by single mothers with children. It is also said that libraries are particularly important for such groups not just for the purpose of access to materials and educational opportunities but also as an opportunity for social interaction and strengthening the ability of users to participate in their communities and public life. In short they provide a highly valued service for those who use it.
48. Although GCC's budget decision was taken on the 16 February 2011, work actually began on redesigning its library service in late 2009. As part of that process it is clear from the evidence of Ms Laurence³ GCC's Library Services Manager, that a significant amount of information as to users needs was considered including the Library Users Surveys of 2006 and 2007, the Manda Glen research report GWB pages 354-410 the data collected on the five year performance trends from 2005/6 to 2009/10 as well as data on library usage from 2009-10.
49. Throughout 2010 GCC continued to gather and collate information in order to inform itself as to the needs of its users. This included gathering data from its Multi Agency Information Database for Neighbourhoods (Maiden) on the social and economic profile of each library catchment area, mapping data from the Indices of Multiple Deprivation to library catchment areas and information on the accessibility by public and private transport of each library.⁴
50. During August and September 2010, GCC's Library Strategy Document was being drafted on the basis of the information which had been collated and on the basis of

³ GWB page 316 and following

⁴ See witness statement of Antonia Noble GWB p589 and following

discussions between members and officers. Two drafts of that document are at GWS pages 472-503 and 636-666 respectively. Its introduction makes it plain that it recognises that the 1964 Act remains the key piece of legislation governing library service provision and recited the duty to provide a comprehensive and efficient library service. The document went on to recognise that the service had been operating under increasing financial pressures and included the following sections :-

“Priorities

Living within our means

Providing the basics

Helping communities help themselves

Financial

The present net revenue budget for the library service is £5,811,000 which rises £6,549,000 gross when income is taken into account.

The revenue budget has been under severe pressure for several years and existing service arrangements will not be sustainable within present budgets.”

51. GCC’s vision was set out as follows:-

“Our vision is that by 2013-14 Gloucestershire will have a library service that is financially sustainable, modern, relevant to customers and consistently able to meet people’s reading, information and learning needs, and also support the delivery of other outcomes. Appendices 1, 2 and 3 show how libraries currently support the outcomes of the Children and Young Peoples’ Directorate, Adult Social Care and government policies and we believe the service could build on this.

Co-location and joined up working arrangements with partners on a strategic basis to deliver desired outcomes will be common place, making optimum use of property assets and shared staffing to achieve efficiencies as well as provide local communities with a shared facility.

In this way libraries will be an integral part of “hub” arrangements for local access to council and partner services, contributing to improving people’s lives and life chances, and shaping, and being shaped by the people who use them.

Technological enhancements will both support customer access to services at co-location premises, and also ensure that virtual access to information and resources is available 24/7 on a county wide basis wherever internet access is available.”

52. The criteria adopted were said to be:-

“The principal criterion in establishing a new physical network has been to ensure a minimum, comprehensive geographical spread of high level provision service points, giving access within reasonable driving time across the county. See Tier 1 below.

The second criterion has been to ensure ~~informed by MAIDEN~~ data access to ~~some point of physical access to~~ library services for all parts of the country within 15 minutes drive time through some level of provision at locations additional to those in tier 1.

The third criterion has been to take advantage of current and potential co-location opportunities with partners to provide both one stop advantages for the public and to maximise operational efficiencies.

Other considerations have been taken into account but are secondary to the two criteria above. These include performance (number of visits) and multiple deprivation indicators”

53. The results of the application of these criteria was said to be

“Nine libraries have been identified to give a comprehensive geographical spread of high level provision service points, allowing access within reasonable driving time for residents across the county.

~~Fourteen — twelve. (Including Longlevens note reduced provision and query on stonehouse.~~ additional locations have been identified which through their geographical position or/and their opportunities for co-location with other partners will provide access to library services albeit at a range of levels from ~~absolute~~ Library Links’ giving virtual access and collection drop off points to Library Express which offer a scaled down version of the nine “Primary libraries”

Tier 1

Nine “primary libraries” spread geographically to give reasonable access to people across the county (Cheltenham, Gloucester, Tewkesbury, Stroud, Cirencester, Newent, Dursley, Coleford, Stowe) and provide full traditional service and new technological enhancements.

Minimum standards of service provision

32 opening hours per week

Stock of fiction and non fiction books (including bestsellers) for all ages, information material; DVDs, audio books; magazines; e-books

Peoples' network PCs

Access to virtual information resources

Self service facilities

Library clubs for older people

Special events programmes to support council priorities and outcomes

Hubs for council and other partners' information services as possible

Venue for use by communities

Tier 2

Mixed level of provision as follows

Secondary "library express" libraries offering, where possible, co-location with other partners and hub arrangements for council and partners' information and services. Minimum standards of service provision will be:

14 opening hours per week (extendable with community/partners support)

Basic bookstock Collection for all ages with few brand new books added, but additions exchanges "handed down" from Primary Libraries. Limited DVD and audio books

People's network PCs

Access to virtual library and its information resources

Venue for use by communities

Order, collection and return points for books and other items

Management oversight from nearest Tier 1 library

Library Links with basic provision

3 hours per week access (extendable with community/partner support)

People's Network PC

Access to virtual library through PC

Self service point

1,000 book stock

Order/delivery/collection/return point

Management oversight from nearest Tier 1 library”

There is also reference to the named libraries not falling under category Tier 1 and Tier 2.

54. In November 2010 the Consultation Paper entitled Meeting the Challenge, Developing proposals for a new Library Strategy⁵ (“the developing proposals document”) was produced. Under the heading Context the following appears:-

“Over the next four years the County Council estimates it will need to find savings of around £108 million because of national debt, spending pressures and government cuts. We are making decisions on where to cut services, our cabinet are working to the following principles (values).”

55. Under the heading “the Legal Context” it included the following:-

“The Public Libraries and Museums Act 1964 remains the key piece of legislation governing library service provision. Under this Act the county council is required to provide a comprehensive and efficient library service for all persons desiring to make use thereof...”

The relevance and appropriateness of the Public Libraries and Museums Act 1964 in the 21st century remains a matter of debate. The broad requirement to provide a “comprehensive and efficient” library service leaves local authorities to determine how they will meet it’

56. Under the heading “Vision” is set out GCC’s main aims as being:-

“Invest in a core network of main libraries geographically spread across the country.

Make best use of technology in areas of service where customers value it most.

To be creative in how we sustain services in many communities where sharing costs and premises with partners.

⁵ See GCB page 112 and following

Give the community the opportunity to run community library themselves.”

57. Under the heading “Objectives” is set out the following:-

- “(1) Achieve a strategic spread of main libraries around the county supplemented by a modern library service.*
- (2) Retain our most used libraries*
- (3) Identify co- location opportunities that financially support the retention of the local library service.”*

58. The document also included the following provision:

“We will consult with individuals and groups with special needs within communities where library provision, either static or mobile, has been withdrawn to identify alternative ways for them to access library services.”

59. The Developing Proposals Document set out a proposal which provided for GCC to continue to fund nine main libraries open for at least 44 per hours per week, eleven library express libraries opened for 28 hours a week and up to 7 possible library link services where the library service would share facilities with “strategic partners open for just 3 hours per week with the potential for extension. GCC would cease to fund 11 static libraries and all of its mobile library services. In the case of the static libraries but not the mobile libraries GCC would offer the community the opportunity to take over the building for some form of community use.

60. On the 18 November 2010 Councillor Antonia Noble (Cabinet member for People with long-term support), was asked in a members question to explain the precise and transparent criteria (including weighting) which were used to determine into which category each library should be placed. Her reply was as follows:

“The primary criterion used was geographical access to a main library within a reasonable travel time. Nine main libraries were identified in this way. Additional libraries were then added to supplement the nine main libraries and to reduce travel time. The next criterion was to include the top most used libraries as additional Library Express. The final element was to consider co location with strategic partners where there was potential for sharing costs. Additionally as more people now access information services electronically; it was also decided to improve the virtual library as a more modern form to access library services.”

61. On 9th November 2010 GCC prepared a Equality Impact Assessment (“EIA”) GCB pages 144-147. This document did not refer to the relevant statutory provisions but in terms of evidence used noted:

“Library usage figures were considered as part of the criteria for proposing a new network of libraries but the prime consideration was to provide reasonable geographic access to libraries across the county.”

62. The EIA concluded in respect of all categories of individuals, including those defined by age, disability and gender that the proposals would have a “neutral” impact. In respect of each protected group it is stated;

“Reducing the number of GCC provided libraries may impact on all potential library users and this group is no more or less affected by it. The consultation process will enable this to be examined further.”

63. On the 18 November 2010 a decision was taken by Cabinet to consult on the draft corporate strategy 2011 - 14 and the Developing Proposals Document was published on the Council’s website at the same time, together with a summary and a consultation questionnaire which was available online, in all libraries and on request.
64. Consultation took place between the 18 November 2010 and the 11 February 2011. Eighteen drop in road shows were held in communities, the majority of which were attended by Councillor Noble who also received 20 petitions as well as letters and emails from residents. Invitations to take part in the consultation were also sent to groups representing particular needs including those with protected characteristics. Letters were sent to mobile library users, to reading groups and to music service users.
65. At the same time as the general consultation was taking place, there were a series of meetings with community representatives to discuss the Big Community Offer and the possibility of community owned and operated libraries.
66. On the 20 January 2011 in advance of the meeting of Cabinet of 2 February and Council of 16 February 2011 and based on the information collated and consultation feedback received to that point, a second EIA was prepared.⁶ This was the equality impact assessment which was relied upon by the Cabinet when making its decision of 2 February 2011 and by the full Council when they reached their decision on 16 February. Like the first EIA, it did not refer to the relevant statutory provisions or to the substance of the statutory objectives.
67. This second EIA was prepared whilst there was still approximately three weeks of consultation still to run. It noted that 3,000 responses had been received and that a higher proportion of elderly people and women were responding and that 13.8% of respondents considered themselves to have a disability. This second EIA noted that common themes arising from the consultation included accessing a library for those reliant on public transport and that the proposals might have a disproportionate impact on vulnerable adults and children.
68. By the time the consultation had closed approximately 2,000 further responses had been received which were accordingly not taken into account for the purposes of this second EIA.

⁶ GCB pages 154-160

69. In terms of evidence the second EIA stated as follows:

“Maiden data was analysed for each of the current libraries catchment areas with note of any “hotspots” where the data significantly differed to the Gloucestershire “norm”. Areas where multiple deprivation indices applied were assessed. Catchment populations and library usage figures were also considered as part of the criteria as was presence of children’s centres. The prime consideration in developing the proposals for the new network of libraries was however to provide a consistent level of service from a main library in all parts of the County within a reasonable travel time. Travel distances and the catchment coverage of main libraries was calculated by “Accession” software which produced maps illustrating the catchment and accessibility.”

70. Under the heading “Disability” GCC concluded as follows:

“Neutral: Although the number of GCC provided libraries may be reduced the ones that remain will still be accessible.

Neutral: The service for visually impaired people will continue so no adverse impact is expected.

Negative: The removal of the homelink service to older people’s homes may have some impact as may removal of the mobile library service.”

71. On 2nd February 2011 and in light of the consultation feedback received to that date, GCC’s Cabinet took the provisional decision to approve the new library strategy with certain revisions. In so doing the Cabinet had sight of a report on the library proposals, the second EIA and an interim consultation feedback report.⁷

72. Significant changes had by this time been made to the original proposals in the light of the consultation feedback. These included:

An extra £800,000 for the libraries budget: £650,000 in revenue funding for the service, a £50,000 grant to support community and library transition costs, and £100,000 to boost the book fund;

A Library Express for Cinderford to open 32 hours per week;

An increase in opening hours for Library Express locations;

A 75% increase in opening hours for Library Links (from 3-12 hours per week);

£20,000 each for Matson and Hester’s Way to help towards the costs of providing community run library as part of the Big Community Offer.

⁷ GCB page 393 - 399

73. That that decision could only be provisional is clear from the fact that the full Council had not at that point met to set the budget for the coming year, responsibility for which falls to the full Council under GCC's constitution.
74. On 14th February 2011 the Council's Overview and Scrutiny Management Committee held a meeting to consider the call-in of the Cabinet decision of 2nd February 2011. The call-in was rejected on all grounds. In a response to that calling in Councillor Noble confirmed that:
- “Any subsequent responses (to the consultation) will be evaluated and taken fully into account when further executive decisions are taken on the practical implementation of the proposals agreed by cabinet.”*
75. At the call-in Councillor Noble also confirmed the criteria which were taken into account when the Cabinet agreed the proposals on the 2nd February. She stated that these principles for outlining future library provision were not solely a matter of geography as usage was also a very important factor. She then set out a five fold approach to the criteria adopted. Social and economic deprivation and the potential impact on vulnerable groups did not feature.
76. On the 16 February 2011 the full Cabinet approved the 2011/12 budget, the Medium Term Financial Strategy (MTFS) to 2014 - 2015 and the Council Strategy. Before the full Council on that occasion was the full consultation feedback report GCB 644-651 which included a number of further revisions to the proposals and the second EIA.
77. On the 12 April 2011 Councillor Noble took the final executive decision on implementation of the library proposals. This decision was taken with the benefit of additional consultation feedback and an updated EIA which was completed on the 24 March 2011 a copy of which is to be found at GCB pages 162-170 which again made no reference to the statutory obligations.

Somerset

78. The decisions which SCC have taken are, in summary, as follows:-

To make a 9.26% reduction in the libraries budget from £5.420 million in 2010/11 to £4.9 million in 2011/12 and to plan a reduction in budget across 3 years of 25.94%;

To restructure its library service into 3 tiers: Hub Libraries, Market Town Libraries and Community Libraries of which there are 3 types: those which will be fully funded and run by SCC; community supported libraries which will be mainly funded by the community but continue to be part of SCC's statutory provision and community run libraries which will receive no funding from SCC and not be part of the statutory provision.

To withdraw funding from 11 of its 34 static libraries and offer them to the community to support or run.

To reduce opening hours in the remaining Council funded static libraries by 20%

To withdraw funding from 4 of its existing 6 mobile libraries.

79. Somerset's population is 528,800. There was a reduction of 8% in the number of physical visitors from 2008/09 to 2009/10 but an increase of 75% in online visits. In 2009/10 there were just over 93,000 active borrowers (that is to say persons borrowing at least 1 item per year) which is 17.7% of the county population.
80. In 2009/10 there were around 2.9 million physical visits to libraries (a figure which includes repeat visits) and 3.5 million issues, but 4.5 million visits to the library service website. In respect of mobile libraries, in 2009/10 there were just over 5,500 active borrowers but by way of illustration the net cost per visit at a mobile library was £4.18 compared with an average of just £1.78 per visit at a static library and 500 people took advantage of the Home Library Service.
81. As with GCC, SCC's libraries also provide important additional services including access to computers and the internet. Library users spent 240,000 hours using library computers in 2009/10. They also operate as a community hub, not only because people meet there during ordinary visits but also because they are used as specific meeting places for community groups and for exhibitions. They provide story time and rhyme time sessions for children and various family events so that for example some 6,000 children joined the Summer Reading Challenge in 2010. There are over 370 participants in reading groups and book clubs some of which are designed for visually impaired people. Libraries are also used by people searching for employment and to access public services and as quiet areas for study for children and adults alike. Libraries are much used by vulnerable groups such as the elderly and/or disabled and are also valuable to groups such as single mothers who use libraries with their children. In short SCC's libraries provide a highly valued service to those who use them.
82. In 2008 SCC gave consideration to making changes to its library service as part of a cultural services review undertaken by a Scrutiny Committee Cross Party Task and Finish Group on which Kay Allen was the lead officer. She was Head of Service for Community Regeneration. So far as the library service was concerned this involved the appointment of an external consultant, Mr Crawshaw, who, together with SCC officers, collated data on budgets and performance in order to look at new methods of service delivery and the achievement of economic efficiencies. A number of reports were presented to the Committee in 2008 on the work undertaken. In one such paper prepared for a scrutiny sub-committee meeting on 26 June 2008, SCC noted that there had been successive reductions in the libraries budget and stated:

“Because budget pressures on the library service have not been a priority in recent Medium Term Financial plans the Service has now reached a position where further savings cannot be realised without affecting the County Council's statutory duty to provide a comprehensive and efficient service within the terms of the Public Library and Museums Act 1964. The only place to seek further savings would be through the closure of libraries. A strength of the service in Somerset is that careful planning has ensured that it has public library provision in every community over 4,000 residents. It has not been faced with a need to close libraries in small communities because of over provision. A network of 6 mobile libraries provides appropriate service to such communities.”

83. There are copies of a PowerPoint presentation of the Consultant's final recommendations at SWB page 260 and following.
84. The Task and Finish Group recommended that SCC develop a new model of service within the existing resources based on a process of public consultation; that it consider rebranding the libraries as resource centres where possible with partners and that it re-establish the book fund as part of the 2010/11 Medium Term Financial Plan process.
85. Following the Task and Finish Group's recommendations, in 2010 a detailed review into the library service was commenced. The review was in two phases. Phase one was intended to identify changes which could be made to SCC's in-house library service in the context of a reduced budget for 2011/12 and subsequent years, arising out of the most recent local government finance settlement. Phase two which is ongoing, was intended to investigate alternate models of service delivery for SCC's library and heritage services.
86. In April 2010, following discussion with the Museums Libraries and Archives Council (MLA) and a competitive bidding exercise, SCC together with North Somerset District Council commissioned external consultants Shared Intelligence who delivered a report on the library service in August 2010 (SWS pages 274-308). The report was based on an initial desktop exercise and a series of joint workshops in May 2010 with service staff, library users and representatives of other public bodies such as Job Centre Plus, District Town and Parish Councils.
87. The Shared Intelligence report recognised the very difficult fiscal circumstances in which SCC was operating and included the following:

"Context"

"1.6 This is a time of radical change in all public services not least libraries. The pressure is on to accelerate improvement, share new lessons as they emerge, and provide leadership and support for difficult changes to be made.

1.7 Public libraries are well loved local resources for many; serving, in the words of Ed Vaizey "a tribe of incredibly diverse and passionate customers". For many they are a vital public service providing access to knowledge, learning information, communication and enjoyment of reading. Reflecting their importance, and the value attached to them, they are also well protected and local authorities have a legal obligation to provide "comprehensive and efficient public library services". This is backed up by routes for government intervention – as we have seen recently through the Wirral Inquiry.

1.8 However, there are major challenges for libraries and for heritage services, the toughest of which is the spending crisis; and the law does not insulate them

from cuts. This, coupled with acknowledged variability in the quality and nature of services, fast changing consumer tastes, and new media technology mean that services must change and adapt faster than ever before. The March 2010 policy statement The Modernisation Review of Public Libraries attempted to guide this change with a recommended “core offer” for all libraries. This offer would encapsulate “the established” service most library users would recognise, but would be complimented by a varied local offer of events, family activities, community run “open space” activities, cafes and local events. That policy statement was an attempt to answer five of the toughest challenges: reversing declining usage and attracting new users; respond to cuts; serving 24/7 instant access expectations; grasping the opportunities of digitisation; and making the case to citizens and other stake holders.

1.13 Transition will be difficult and the public will continue to expect high service standards and Councils will want to do their utmost to keep the public on their side. Library authorities will be wise to take account of the Charter for Public Libraries just published by a group of library users.

1.14 Yet the extent of budget cuts mean the services cannot stay the same. New approaches will be needed and local communities will have to be consulted on the service changes that will affect them. So this will mean working across services, and local authority boundaries, service user involvement and consultation, developing community led provision, community enterprise, and rapid decision making. This is a major challenge but one that must be tackled. This report shows North Somerset and Somerset Councils have the appetite to take on this challenge, and in fact have already started; but they will need other partners too.”

88. In chapter 4 at pages 294 and following the report sets out a possible route map.
89. Among the recommendations in the Shared Intelligence report was the adoption of a three tier system of libraries. It also suggested that consideration be given to shared services; streamlining the mobile outreach service and the development of greater freedom to allocate opening hours. It also recommended the development of proposals for community libraries and among other things in a “draft decisions criteria for community libraries” section suggested under the heading “what are the options for reducing costs” the question “does the site have an asset value that could be realised?”
90. Phase one of the service review also comprised what was termed a community needs analysis. This analysis used transaction data for the year 2009/10 to define the most regularly used library for each district electoral ward. Community needs were

assessed by considering the catchment population of each library by age, by geographical access to services and by use of the index of multiple deprivation. A performance cost analysis was also undertaken. The methodology of the needs analysis is explained at SWS pages 310-311 and by Kay Allen in her first witness statement in which she also indicated that SCC noted the Wirral recommendation to act reasonably in meeting needs with reference to statutory obligations and in the context of available resources. She continued at paragraph 14 at page 219 as follows:-

“In formulating proposals for the new service, we endeavoured to reach as many people as possible. The original proposal was to fund libraries that accounted for 80% of users, 78% of issues and 78% of active members. We also considered geographical spread: Dulverton, Castle Cary and Wiveliscombe were funded following public consultation feedback to address perceived gaps in isolated and rural areas”.

91. In order to gather further information on the needs of service users during the summer and autumn of 2010 SCC also held a “total place workshop” (SWS page 220) and a series of 13 focus groups around the county to seek the views on the emerging policy proposals. A presentation was made at these focus groups which set out to participants SCC’s library vision as it then stood (SWS pages 316-344) whose feedback helped to inform SCC’s draft Vision and strategy document.
92. At the same time as the library strategy document was being developed, SCC also developed its MTFP on which it held an on street tracker survey of 900 individuals in October 2010. This also included a questionnaire on cuts to SCC spending generally which asked respondents to score the impact of specified changes on them and asked for some equality specific information from them (SWS page 409).
93. On 1 November 2010 SCC’s Cabinet met and authorised a public consultation on the proposed budget reduction for the library service. In December 2010 the consultation document “A Library Service for Somerset” was finalised (SCB pages 163-172). The consultation ran only from 15 December 2010 to 14 January 2011 and the consultation document was available online from 15th December in libraries and on request and in a variety of formats. All library members with an email address on record (52,000) were sent the hyperlink to the consultation documents on the SCC website.
94. Consultation also consisted of an article included in the SCC newspaper in December 2010, 6 public meetings held on different dates in large central locations in January 2011 at which over 900 people attended and 12 community meetings held which were attended by officers and members. There were nearly 11,000 completed questionnaires, 1 petition and over 200 letters and emails received. An analysis of the consultation results was produced (SCB pages 173-204) the feedback being overwhelmingly against the proposals.
95. On 24 January 2011 an EIA was produced (SCB pages 205 to 216) which made no specific reference to the statutory provisions and which was based on data held by SCC on service users, the general county population, service staff, volunteers and library usage, and running costs. It identified negative impacts in particular on “children and young people and adults and children with a wide range of disabilities”

and set out mitigating actions which could be undertaken to try and reduce the identified impact.

96. The EIA noted that SCC had by this stage decided to alter its proposal so that 11 rather than the original proposal of 20 of its existing 34 static libraries would be wholly unfunded but with a corresponding reduction in opening hours of 20%, higher than previously planned in the remaining static libraries. It stated that,

“Under the proposed new models, library provision would be split as equitably as possible with the aim of reaching as many people who wished to use the service as the budget allows.”

And it acknowledged that:

“It is probable that the proposals would have the greatest impact on library users from the groups identified in section 2A, in particular children and young people and adults with a wide range of disabilities.”

97. The EIA went on to state that:

“12% of questionnaires were completed by people with a disability, 59% were completed by females which matches the breakdown by gender of library users. When compared with gender breakdown for Somerset (51% female) this suggests a disproportionate impact by gender.”

98. The EIA also noted that people with physical or learning disabilities, frailty, sensory loss or mental health issues might be less able to access libraries and might become more socially isolated.
99. On 2 February 2011 SCC’s Cabinet received two relevant reports. The first was the Future Shape of Library Services which set out SCC’s vision and strategies for the service and a series of principles on which the budget proposals were based and which referred to Section 7(1) and Section 7(2) (a) of the 1964 Act, the Wirral report and gave an account of the review process which had been undertaken (SCB pages 469 to 475.) The second report was the MTFP report and supporting appendices which set out in detail proposals to achieve the recommended savings (SCB pages 476 onwards). In the case of the library service, details of all the actions to be taken to implement the recommended reduction across the 3 years were included, including the names of the libraries that were to have their funding withdrawn. In addition a detailed analysis of the consultation feedback was available.
100. Following consideration of the reports and the consultation feedback and the EIA all the budget proposals were endorsed including those relating to the library service and they were recommended for approval by Council.
101. On 16 February 2011, having given consideration to the reports, the consultation feedback and the EIA the full Council approved the libraries budget the MTFP and related proposals.

102. Since the Council decision of 16 February 2011, SCC has taken further executive decisions to implement the library service proposals. Each of those decisions was taken by Councillor Lawrence (Cabinet member, Community) after consideration of detailed reports and separate EIAs. The decisions in question are as follows:-

On 3 May 2011 concerning achievement of the planned 25% budget reduction. On this occasion Councillor Lawrence also considered an alternative budget proposal put forward by the Friends of Glastonbury/Somerset libraries (FOSL) and whilst deciding to move forward with the SCC proposal she did decide to use the additional £30,000 identified in the FOSL proposal to provide one off grants to communities looking to run or support their library.

On 3 May 2011 concerning the reduction in opening hours for 23 libraries.

On 25 May 2011 concerning the withdrawal of funding from 11 libraries across the next 2 financial years.

On 15 June 2011 concerning reductions in mobile library service.

Grounds for Judicial Review

103. I now turn to consider the Claimants' various grounds for judicial review in each of the two claims.

Ground 1: Failure to comply with Section 7 of the 1964 Act

(a) Demonstrable failure to provide a "comprehensive and efficient library service for all persons wishing to make use thereof" (Somerset)

104. On this ground the Claimants rely on what they characterise as SCC's own admission that its new reduced library provision will not provide a comprehensive and efficient service for all people in its area who wish to use it. By way of example the Claimants point to the following passages:

"Further savings (as of 2008) cannot be realised without affecting the County Council's statutory duty to provide a comprehensive and efficient service". (SWB page 243)

"We should use available funding to reach as many Somerset residents as we can." (SCB page 166)

"Fourteen smaller community libraries would not be funded under this proposal, and unless they were taken over by the community they would close. The two mobile libraries in the service for the homebound could help to fill some of the gaps." (SCB page 168)

"Under the proposed new models, library provision would be split as equitably as possible with the aim of reaching as many people who wish to use the service as the budget allows." (SCB page 206)

105. What is said on behalf of the Claimants is that it is clear from these quotations that SCC were demonstrably not aiming at a proper library objective, but instead, and

impermissibly, were working backwards from the budget and asking themselves what range of services could they provide within that budget. In short, a service which had admitted gaps and which did not reach all the people who wished to use it did not by definition comply with the Section 7 duty under the 1964 Act. This it is said is to perform the duty irrationally.

106. While superficially attractive, I am not persuaded by this argument. Read fairly, I do not regard the passages quoted as amounting to an admission that SCC would under its proposals be failing to comply with the Section 7 duty particularly as the public consultation document from which two of the quotations are taken explicitly referred to the 1964 Act and the duty thereunder to provide a comprehensive and efficient service in the context of the proposals. Nor, does it seem to me that the phrase “comprehensive and efficient” imports a requirement of blanket coverage across what is a large and geographically disparate county.
107. In the absence of an unlimited budget there will always be gaps in the service that can be offered in the sense that distance to and from and journey times for some people might increase and the passages relied upon are in reality no more than an acceptance of economic reality and in those circumstances given the nature of the duty in this case it is not for this Court to interfere with SCC’s judgment of how best to deploy its resources so as to reach those who require to use the library service in the county. As I have already concluded, the Section 7 duty cannot be exempt from resource issues which inevitably lead to difficult decisions as to how best to structure the library services.

(b) Inadequate assessment of whether the proposals provided a “comprehensive and efficient library service for all persons wishing to make use thereof” (GCC and SCC)

108. What is said here is that GCC and SCC’s decisions to alter the way they fulfilled their duty under Section 7 of the 1964 Act were fundamentally flawed because neither was informed by any adequate prior assessment of the needs of potential library users and sub groups of them, which its services were intended to meet. In order for there to be compliance with the Section 7 duty it was necessary for GCC and SCC to assess the needs of all persons desiring to make use of the library services and then to address whether the library service “comprehensively and efficiently” met those needs as identified. This obligation it is said required GCC and SCC to inform themselves of and analyse the library related needs of people living in particular areas, the needs of particular groups of people and the particular ways in which people use libraries in different contexts. Further, in order to design a comprehensive and efficient service it was necessary to assess such factors as who used libraries in particular areas, what they use them for, when they use them and how they travel to them. Before deciding to withdraw funding from a library in a particular area or deciding what service levels to provide at a library there must be an assessment of the library needs and usage of persons in the specific area including persons with specific needs such as the elderly, the disabled, the poor, the unemployed and parents of children.
109. In the case of GCC it is said that the only criteria which had any meaningful influence on the new library service were geographical spread and library usage and that such analysis as was done fell short of what was required.

110. It is fair to say that on several occasions GCC did indeed identify geographical spread and library usage as criteria and I have referred earlier in this judgment to examples of those criteria being identified. However, they are not the only criteria identified by GCC. Susan Laurence, Library Services Manager (Strategy) for GCC, in her second witness statement at GWB page 316 at pages 322 and following includes the following:-

- “15. *I contacted the Council’s research team to discuss the type of data we would need to help us identify demographic, social and economic and other needs of the residents surrounding our current network libraries and tailor-made neighbourhood reports were produced. A sample of these reports, of which there are 39, is exhibited to the witness statement of Councillor Noble. A report was provided for every library area and they are broken down according to the Council’s priorities as identified in the Council strategy. A traffic light indicator system was used to identify where there was a move away from the “norm” for the county. In this way it highlighted areas of significance. My colleague John Holland and I also undertook an overview of these for three districts each and produced a key points report for the HL in May 2010 attached marked “SLG6”.*
16. *During the period from May to August 2010 I was aware that much discussion was going on between the HL, the Group Director and the Cabinet Member about the development of a new library strategy. During this period the HL did not involve me or any other of the assistant heads in wider discussion about this as this was a period where he was reducing the senior management team and we were all at risk of redundancy as part of the “Building Our Future” cost saving plans. My colleague John Holland left the service in August 2010....*
18. *I was aware that Council colleagues in the Asset Management Team had also been undertaking some research and gathering further data and information for the library strategy development. This included spreadsheets showing the various criteria being considered. It included, library performance data, running costs, areas of deprivation, co-location with children’s centres, building condition and improvement and listed other possible partners for co-location. There were several different maps produced showing travel times and combinations of libraries. These maps were generated by use of “Accession” software, the Department for Transport’s recommended tool for local authorities to apply when determining accessibility of*

services, and they too are exhibited by Councillor Noble.

19. *To the best of my knowledge I think the following elements contributed overall to the assessment of both general and specific local needs:*

The tailored neighbourhood profiles of key economic and service data on population living in each library catchment area as provided from MAIDEN the multi-agency database for neighbourhoods in Gloucestershire.

Plotting and collating all relevant Office of National Statistics and GCC data sets by the asset team at the Cabinet Member and HL's request.

Mapping travel and distances using Accession software by the asset team and cabinet member and HL's request.

Library population catchments and usage data including visits to libraries, library issues, People's Network PC use and active borrower figures. I attach as "SLM7" performance data on the visits to all individual libraries.

These built on the knowledge already acquired from the following sources:

Information gathered from the library network strategy 2006/09 and the consultation and discussions with communities that had taken place in this period,

Public Library User Surveys (Adult 2006, Children 2007)"

111. There is then the evidence of Councillor Noble in her second witness statement to be found at GWB page 589 and following under the heading "Needs analysis and development of the criteria for revised library strategy":

"11. *I would like to state at the outset that the allegation that the Council had no understanding of local needs omits to recognise that councillors cannot do their job as elected community leaders without an inherent understanding of the economic and social conditions of their Gloucestershire communities. I am confident that I and all my cabinet colleagues have such an understanding.*

12. *In the spring of 2010 Sue Laurence who was then an Assistant Head of Libraries, arranged with colleagues in the Chief Executive's unit to assemble a series of data from the Authority's Multi-Agency Information Database for Neighbourhoods ("MAIDEN") detailing the economic and social profile of each of the library catchment areas. A sample of the spreadsheets which were compiled showing the neighbourhood profiles is attached marked "ACN2".*
 13. *In addition to MAIDEN, information was taken from the "Indices of Multiple Deprivation" which is a model used by central government to measure the relative deprivation of every neighbourhood in England. It was developed by the Social Disadvantage Research Centre of the Department of Social Policy and Social Work at the University of Oxford. The model divides England into 34,378 geographical areas or neighbourhoods with an average population of 1,500 each. For each geographical area the model calculates the level of deprivation combining a range of statistics about the area. This includes statistics about income, health, employment, education, housing, living environment and crime. It then ranks each neighbourhood from the most deprived to the least deprived. Using this data, officers compiled a spreadsheet for Gloucestershire indicating wards where there are 'hotspots' i.e. wards in the top 10% of the county's most deprived areas. Thus I can say that we considered those deprivation factors such as income, employment and so forth. All were incorporated into our thinking. A copy of the spreadsheet showing indices of Deprivation 2007 with those wards in the top 10 highlighted in red is attached marked "ACN3". Furthermore in July 2010 officers in the Council's Asset Management team prepared a map showing this data in the context of the library areas. Further maps were produced showing areas where there are the greatest barriers to education, skills and training; also a map showing adult literacy data. These spreadsheets and maps were then used to inform the options leading to a revised library strategy. These maps are attached marked "ACN4".*
112. The requirement to conduct an assessment of needs does not in my judgment require a library authority to carry out a discrete exercise of information gathering. It is entitled to rely on the expertise and experience of its professionals and on information gathered from a variety of reliable sources. To my mind it is plain from the evidence of Susan Laurence and Councillor Noble that GCC did in fact, by a variety of methods and information gathering and consultation, have sufficient information in order to make a lawful decision as to their future library service provision. To my

mind, the criticisms made of GCC's needs assessment do not come close to demonstrating that it was so deficient as to be unlawful.

113. In the case of SCC too a number of allegations are made as to the sufficiency of its needs assessment. By way of example, criticism is levelled at the needs score allocated to individual libraries in the presentation document which is to be found in SCB12/135 at 145-157 which was said to be singularly opaque and where there was said to be no attempt to identify the particular needs of library users either in any particular community defined geographically or by reference to such characteristics as disability, age, means or employment status.
114. To my mind these criticisms are unfounded in the light of the totality of the evidence led by SCC on this issue to which I have already referred at least in part and really amount to a type of merits based attack better made under section 10 of the 1964 Act and whilst it can always be argued that more information could have been gathered and that it could have been more up-to-date and/or subjected to more analysis, I conclude that both GCC and SCC had sufficient information to draw the conclusions they did and to make lawful decisions as to the future of their respective library services. This is not a case where it can be said that something went so seriously wrong in the information gathering or analysis process to justify intervention by this Court.

(c) Failure to have “due regard” to the factors set out in Section 7(2).

115. What is said here is that so far as the material placed before GCC's Cabinet or full Council is concerned, none of it made councillors aware of their obligations to have regard to the matters set out in Section 7(2) of the 1964 Act and there is no evidence that they did have regard to those matters and that so far as SCC is concerned although a small part of sub-section 2 was cited in one of the reports available to Cabinet this was wholly inadequate.
116. Having regard to the totality of the evidence led by the Defendants I am not satisfied that either of these criticisms can be made out on the facts. The language of Section 7(2) merely requires an authority to “in particular have regard to the desirability” of securing by various means that “facilities are available for the borrowing of, or reference to “various types of media” sufficient ... to meet the general requirements and any special requirements both of adults and children.” On the evidence, it is plain that GCC and SCC did have such regard.

(d) The role of community libraries

117. On my findings I do not regard this criticism as adding anything to the debate. Both Defendants have made clear that community run libraries will not form part of their statutory provision and that they are not seeking to delegate their statutory duty to volunteer organisations. It follows that both Defendants regard the library service which they plan to continue to provide to be in compliance with Section 7 of the 1964 Act and that whilst it may be desirable that community libraries whether community run or community supported come into existence it is not legally necessary. If community libraries do not come into existence in certain areas or if they do not stand the test of time, each Defendant's statutory provision on my findings will

continue to be comprehensive and efficient for all persons desiring to make use thereof.

Ground 2: Failure to comply with the public sector equality duties

118. The public sector equality duties impose important and onerous burdens on public authorities. In carrying out all of their functions they must have due regard to the statutory equality needs. It is common ground that the question is whether the duties have been carried out in substance by the persons responsible for the decisions in question rather than whether a document referred to as an EIA has been produced. Carrying out an EIA is not an invariable necessity for conformity with the public sector equality duty but nor (conversely) is evidence that an EIA has been produced, evidence that “due regard” has been given to the statutory equality needs. The substance of the analysis is the key in this area.
119. The Claimants contend that the public sector equality duties were breached in a number of ways by both Defendants. Thus it is said that the substantive requirements of the legislation were not drawn to the attention of the councillors making their respective decisions and that it is not enough to have an EIA which in general terms identifies impacts and actions in respect of particular groups. The decision makers must know and comply with their particular duties and it is said that there is no evidence in this case that either GCC or SCC did so.
120. For my part I do not accept that there is any force in the submission that the decision makers were unaware of their duties. There is no obligation to refer to the statutory language; the decision makers clearly had EIAs at the time that the relevant decisions were made and evidence was led by both Defendants to the effect that the decision makers were fully aware of the legal requirements in connection with the equality duties. I accept the substance of that evidence. That said it would have been far better practice had the equality duties been expressly brought to the attention of the relevant decision makers in the documentation before them.
121. It was also submitted that the duty was not exercised in substance and with rigour and was not based on sufficient information and was not integrated into the discharge of the respective Defendants’ public functions on or before and at the time that the policies in question were formally being considered and that none of the EIAs considered whether the substance of the policies in question should be changed in the light of adverse impacts on vulnerable groups or in order to take positive steps to promote the statutory needs. Rather the EIAs proceeded as though their only function was to look at what mitigating steps might be taken to soften the negative impacts of an already formed policy. Indeed, it was submitted that much of the analysis of the effects on the protected groups took place after the formal decisions had been made rather than at a formative stage. To my mind there is no substance in this latter criticism. The formative stage at which the duty is to be performed is not at the early stage when officers are contemplating policy options but as part of the decision making process.
122. It must be borne in mind that the withdrawal of a local library might well indirectly discriminate against people with physical disabilities perhaps because they might find it more difficult to travel further than others; against women because they are more likely to be responsible for child care and in rural areas against the elderly not only

because they might find it disproportionately more difficult to travel the extra distance but also because there might be proportionately more of them living in a particular area. Such discrimination would be unlawful unless objectively justified balancing the disadvantages with the strength of the need to pursue the policy in question.

123. In particular, so far as GCC is concerned, the first EIA is criticised for the absence of evidence that the needs of any vulnerable groups played a part and in particular for concluding that the proposals would have a neutral impact. There is of course considerable force in that criticism.
124. However, regard must be had to the fact that in total three EIAs were prepared by GCC so I turn to consider the criticism which has been made of the second EIA so far as its timing is concerned and as to its failure to analyse and or draw conclusions from its realisation that common themes arising were that accessing a library for those reliant on public transport might be difficult and that the proposals might have a disproportionate impact on vulnerable adults and children. Thus it was said that the assessment of the likely equality impact of the proposals was at best cursory and inadequate. The only potential negative impact identified was in respect of the removal of mobile libraries. There was no consideration of the potential impact of the closure of static libraries or of the reduction in opening hours. By way of example it was also said there was no analysis of whether particular disabled people had particular needs or used the library services for particular purposes such as reducing social isolation, undertaking particular educational activities or that they were more likely to be unemployed or whether particular communities might have greater concentrations of disabled people or whether they might be less likely to be able to travel significant distances or be less likely to have home internet access.
125. So far as gender was concerned there was no analysis undertaken of the impact of closures on female users such as for example whether single mothers might be more reliant on libraries than others. To my mind there is significant force in these submissions.
126. The third EIA was also criticised as being too late to inform the Cabinet decision and the Council decision and in any event on the basis that essentially it repeated the flaws of the previous EIAs and was no more than a classic example of the rear guard action criticised in many of the cases to which I was referred.
127. So far as SCC is concerned in particular it was said that as with GCC its EIAs made no assessment of the impact on, for example, children and young people and adults with disabilities or women and there was no attempt to identify or consider whether and if so the extent of any different impact on people with disabilities to those without; whether there was any different impact on people with particular sorts of disabilities and the nature of that different impact; whether people with disabilities used libraries for particular purposes compared with others; whether disabled people had a particular need for libraries; how and to what extent disabled people would be able to use alternative services; the combined impact of the withdrawal of library services with proposed cuts to public transport routes; whether there were higher concentrations of disabled people living in certain areas and how they would be affected by the proposals; the need to promote equality of opportunity between disabled people and other people; the need to take steps to take account of people's disabilities even where that involves treating disabled people more favourably; the

need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life. Nor was there any effort to consider similar issues in respect of women nor any evidence that SCC considered altering its policy to account for the adverse impact on disabled people or women or even altering its mitigated effects. Nor did SCC consider taking positive steps to promote the objectives set out in the legislation.

128. I accept that it is of course the case that the Defendants were not required to achieve particular outcomes by Section 149 or its predecessors but rather to have due regard to the need to achieve those listed nor is there a requirement to devise policies to achieve those outcomes and having due regard permits a degree of latitude in how an authority approaches its consideration for various needs.
129. It is unfortunate, but not by any means determinative, that no specific reference was made to the statutory duties by the decision makers and I do not consider that in this case it can fairly be said that GCC or indeed SCC had no regard at all to their respective statutory duties in the light of the fact that both GCC and SCC produced a number of EIAs and in the light of the evidence led by both Defendants. On the other hand, nor do I consider that the existence of EIAs is in any way determinative that due regard to the statutory duties was had. It is of course substance not form which is the benchmark.
130. The real question on this aspect of the case, it seems to me, is whether there was a conscious directing of the mind by the decision makers to their obligations under the legislation and in particular to the need to exercise the duty to have due regard in substance and with rigour and based on sufficient information, appropriately analysed.
131. In my judgment, on the preponderance of the evidence, no such due regard was had in substance. In order to discharge their respective duties, GCC and SCC should have undertaken a sufficiently thorough information gathering exercise and then properly analysed that information. In this case I conclude that both GCC and SCC failed to comply with that obligation, accepting as I do the substance of the Claimants' criticisms made of their respective information gathering and analysis to which I have referred above.

Ground 3: Failure adequately to consult

132. I now turn to the final ground albeit briefly in the light of my findings on ground 2.
133. Beyond failings adequately to consult on equality issues, it was submitted that both Defendants have failed adequately to comply with the Gunning criteria for effective and genuine consultation, namely genuine and open minded consideration of the responses to questions asked at a formative stage and with sufficient information and time having been given to enable consultees genuinely to inform the decision making process.
134. So far as GCC's consultation is concerned, it was said that it was not undertaken at a formative stage and/or was not conscientiously taken into account because:-

The in principle Cabinet decision of 2nd February 2011 was taken before the conclusion of the consultation period and therefore the Cabinet did not have

regard and could not have had regard to the 2,000 further consultation responses received after the decision was made. Further those additional responses also resulted in changes to the substance as well as the volume of the consultation responses.

Each of the decisions in question was undertaken before consultation of users of mobile libraries and users of libraries which were to be withdrawn about alternative services including the adequacy of such services.

The consultation proceeded on the premise that there would be cuts to the library service; further or alternatively it did not invite representations on alternative proposals. Moreover, to be meaningful a consultation process should have allowed consultees a reasonable opportunity to suggest alternatives and here at least one of the alternatives namely the status quo had been ruled out. Finally, it was said that the consultation failed to inform consultees that they could suggest any alternatives.

135. It was also said that the GCC consultation document did not provide sufficient information to allow for a proper response because:

No information was given about the savings which were likely to flow from particular library closures or from particular aspects of the proposals.

The consultation documentation did not indicate that all (or any) mobile library services were to be withdrawn.

The consultation document did not set out the likely impacts of particular closures and nor did it provide information about travel distances or times or details of the facilities at the remaining libraries which users of the closing libraries were expected to be able to use.

136. So far as the SCC consultation was concerned it was criticised in that it did not take place when the library proposals were at a formative stage and consequently it was said did not inform the decision making process. In particular it was said:

That SCC did not have an open mind about a key issue of principle namely the level of the budgetary reduction which was set before the consultation process.

That the SCC's consultation clearly proceeded on the premise that there would be cuts and that it did not ask for representations on alternatives and did not ask for information which would properly have informed a genuine assessment of library users needs for particular services.

That the consultation document did not provide sufficient information to allow consultees to provide an adequately informative response. In particular because:

No adequate information was given about the intended criteria to be used in determining whether and if so which libraries were to close.

No information was given as to the savings which it was said were likely to flow from particular library closures or from particular aspects of these proposals.

The consultation document did not set out the likely impacts of particular closures nor provide information about travel distances or times or details of the facilities at the remaining libraries that users of the closing libraries were expected to be able to use.

137. It was also said that the consultation did not allow a sufficient time to respond because it only ran from the 15 December 2010 to the 14 January 2011 which was too short a period for so serious an issue given in particular that it ran over the Christmas and New Year holiday period and included 3 bank holidays.
138. I reject the suggestion that either Defendant failed to approach the consultation with an open mind. There is no conflict between keeping an open mind on the one hand and consulting on a preferred option on the other. There is no evidence to suggest that either Defendant was unwilling to reconsider its proposals in the light of the consultation process and indeed the evidence amply demonstrates that changes were in fact made in the light of the results of the consultation exercise by both Defendants. Moreover the Defendants were not obliged to consult on alternative means of achieving the same end nor can it properly be said that the absence of such alternatives lead to a conclusion that the Defendants had predetermined the issues been consulted upon. Nor do I consider that there was anything improper or unfair in the absence of the provision of any information as to what specific savings were aimed at by the proposals. There was ample information as to what the proposals were regarding closure and their rationale and the absence of information as to travel distance and times did not render the consultation inadequate.
139. I have already indicated that in my judgment there is nothing in the argument that the consultation was not at a formative stage. The final decision in each case was taken with the benefit of the results of the consultations in both cases. Equally, as it seems to me, the criticism of GCC that the in principle Cabinet decision of 2 February 2011 was made before the expiry of the consultation period is misconceived given that the full Council meeting authorising the budget did not take place until the 16th February 2011 by which date the updated consultation results were available and the full Executive decision was not made until the 12 April 2011 by which date all the consultation results were available and were considered.
140. Nor do I consider that there is anything in the submission that consultees were not given sufficient information about the proposals to permit intelligent consideration in response. There was for example no suggestion from those who presented the petitions (e.g. Friends of Gloucester Libraries or alternative budget scenarios (FOSL)) that they were not able appropriately to engage with the proposals. Where more information was sought it was provided and to my mind the consultation documents themselves provided sufficient information as to the nature of the proposed changes.
141. As to the complaint about the SCC consultation being too short, whilst it is perhaps unfortunate that it lasted only a month and that that month straddled both the Christmas and New Year holidays and coincided with some particularly severe weather conditions, the suggestion that this made it unfair is in my judgment untenable given that there was no duty to consult at all; that there is no statutory minimum period for such consultation and given the very large number of responses to the consultation in any event.

Conclusion

142. Accordingly I grant permission to apply for judicial review in the case of SCC.

143. Having reached the conclusion that the decisions under challenge were unlawful for failure to comply with the public sector equality duties the question then arises as to what relief, if any should be granted. In this regard in the concluding paragraph of their Skeleton Argument Counsel for the Defendants submitted that the Court should exercise its discretion to refuse the relief sought by the Claimants, alternatively that the Claimants' relief should be limited to the three libraries which are used by the Claimants and having regard to the Claimants' lack of a sufficient interest in the mobile library service of either Defendant, any relief granted should certainly exclude mobile libraries.
144. The Claimants by contrast seek declarations and orders quashing the decisions I have found to be unlawful and requiring the Defendants to restore services to pre- decision levels.
145. Neither Claimants nor Defendants had an opportunity to develop their respective submissions at the oral hearing and I therefore invite both parties to file and serve written submissions on the issue of the appropriate relief to be granted within 7 days of receipt of the draft of this Judgment.