Neutral Citation Number: [2018] EWHC 2178 (Admin)

Case No: CO/1328/2018 and CO/1400/2018

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

Birmingham Civil Justice Centre
33 Bull Street, Birmingham, B4 6DS

Date: 14/08/2018

Before:

MRS JUSTICE YIP DBE

- -

Between:

In the matter of CO/1328/2018

THE QUEEN (on the application of WX) **Claimant**

- and –

NORTHAMPTONSHIRE COUNTY COUNCIL **Defendant**

AND

In the matter of CO/1400/2018

THE QUEEN
(on the application of JOHN CONNOLLY) **Claimant**

- and –

NORTHAMPTONSHIRE COUNTY COUNCIL **Defendant**

- -
- -

Mr S Broach and Ms K Hafesji (instructed by **Irwin Mitchell LLP**) for the **Claimant WX**
Mr C Howells (instructed by **Watkins and Gunn**) for the **Claimant Connolly**
Mr P Oldham QC (instructed by **LGSS Law Limited**) for the **Defendant**

Hearing dates: 26 & 27 July 2018

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE YIP DBE

Mrs Justice Yip:

1. These two applications for judicial review concern decisions to make significant cuts to the library service in Northamptonshire. While austerity measures have led to the closure of many libraries around the country, evidence placed before me suggests that the scale of these cuts is unprecedented. They must be seen in the context of a local authority facing unprecedented financial difficulties. Although the claimants suggest that many of the problems are of the defendant's own making, the simple truth is that action must be taken to regain control of a very precarious financial situation.

2. Members of the local community feel very strongly about the proposals to close 21 of the 36 public libraries in Northamptonshire. There is no doubt that the provision of libraries is an essential public service. As the foreword to the Department for Culture, Media and Sport's 2014 Independent Library Report put it, libraries are "a golden thread throughout our lives." It must also be recognised that the Council must fund other essential services, including safeguarding children and vulnerable adults. The pressure on all statutory services is enormous. Some very tough decisions are still to be made in the coming weeks and months. In considering the applications, I am not concerned with the merits of what are undoubtedly difficult decisions, I am required only to determine whether the Council have acted lawfully.

3. The claimants are both residents of Northamptonshire. WX is an infant. She proceeds through her mother, who is very concerned that she will not have the same opportunity afforded to her older siblings to attend Desborough Library and the children's centre located there. Mr Connolly is a founding member of the St James Residents' Association and has been involved in a campaign to save St James Library. Both claimants seek to represent the wider public interest in libraries in Northamptonshire and their claims are not limited to consideration of the libraries at Desborough and St James. The witness statements served in support of the claims identify the potential impact of library closures across all sections of the community.

4. An issue was raised as to WX's standing. However, Mr Oldham QC did not press this point, while preserving the defendant's position in relation to any issue of costs that might arise. Subject to any further submissions, it appears to me that young children as a group are likely to be particularly affected by library closures and that the evidence of WX's mother establishes that she meets the relatively low threshold for standing. It is less clear to me why it was necessary for Mr Connolly to bring a claim covering essentially the same ground as WX's in the express knowledge that her claim was already proceeding. In due course, this is something I may have to revisit.

5. There is no need to set out the procedural history save to say that the applications were listed to be heard together at a rolled-up hearing for consideration of the applications for permission and, if appropriate, the substantive claims. I heard submissions over the course of two days (with extended sitting hours) and received some further written submissions thereafter. I observe that the parties recognised that the time estimate was insufficient. Recognising the wider implications that it may have at a time when the Council are still seeking to resolve the funding crisis, I have endeavoured to provide my judgment to the parties as quickly as possible while juggling other sitting commitments.

The statutory duty to provide a library service

6. Section 7 of the Public Libraries and Museums Act 1964 ("the 1964 Act") provides:

> "7.— General duty of library authorities.
>
> (1) It shall be the duty of every library authority to provide a comprehensive and efficient library service for all persons desiring to make use thereof...
>
> (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."

7. Section 10 of the 1964 Act confers powers on the Secretary of State to investigate a complaint that a library authority has failed to carry out its duties and to hold a local enquiry which may lead to an order requiring the authority to carry out its duties as directed.

Library Review 2017

8. In 2017, the need for the Council to make huge cuts in spending had been identified and library provision was reviewed in that context. I have been provided with the "Northamptonshire Libraries and Information Service Review 2017" dated September 2017. The executive summary to that report began:

> "Years of efficiency measures have ensured that Northamptonshire library service is exceptionally cost effective."

The report concluded that there was no room within the current structure for further efficiency savings and set out options to reshape the service. The introduction concluded:

> "This review sets out the rationale for preserving the greater part of the service that serves the most people who visit libraries, for ensuring the broadest geographical spread with libraries that are well situated to add most value to communities and for developing a service that secures the best value for money."

9. The claimants do not directly challenge the 2017 review. However, it is necessary to look at it carefully since it underpins much of the subsequent decision-making.

10. The Review was undertaken with reference to and shaped by the common design principles set out in a "good practice toolkit" produced by the Libraries Taskforce appointed by the Department for Culture, Media and Sport (DCMS). The first design principle was the need to meet legal requirements. The 2017 Review set out the core duty before turning to the other principles. It looked at accessibility, including considering distances between libraries and travelling time by public transport. It noted national data relating to trends and attitudes towards library use and analysed data it held about visits to libraries in Northamptonshire and trends in library use within the county. The Review proposed three options and stated:

> "All these options meet the 7 common design principles set out in section 2."

11. Option 1 involved retaining 15 libraries (not including Desborough and St James) and developing "a community-managed library model to be offered to all other current library communities". Option 2 would retain the same 15 libraries but without the additional model for community-managed libraries. Option 3 proposed retaining only the 8 large libraries in Northamptonshire.

12. The defendant's statistics were used to estimate that approximately 18.9% of active library users had not made use of any of the 15 libraries proposed to be retained in options 1 and 2 between February and June 2017.

13. The Review also noted the impact that library closures would have on designated children's centres. Of the 21 libraries affected by Options 1 and 2, 13 house children's centres. Those centres had been co-located with the library to improve value for money, although as confirmed during the hearing sharing only property and not members of staff. Under Option 2 it was recognised that there was potential for clawback of sums paid by way of grant to establish the children's centres. That risk was not recognised in relation to Option 1, presumably as it was hoped that the libraries would remain open under the community-managed scheme and that the children's centres could continue in the existing locations. Under Option 3, 19 libraries with children's centres would be scheduled for closure with the associated potential for clawback.

14. The claimants are critical of the Review. They further dispute the defendant's contention that the review concluded that all three options were compliant with the duty under s. 7 of the 1964 Act. However, when the document is read as a whole, it is clear that this was the author's conclusion.

15. I will return to the arguments on s.7 in greater detail below but I do not accept Mr Broach's submission that there were "fundamental flaws" in the defendant's approach at this stage. On the contrary, the Review appears to me to represent a perfectly rational

analysis of the data available to the Council. This was not, however, intended to be the end point. The toolkit notes that if the Secretary of State investigates a complaint about a library service not meeting its legal obligations he or she will expect the library authority to demonstrate that in drawing up its strategy it had consulted with local communities alongside assessing their needs. The Review and the recommended options arising from it were to form the basis of a consultation.

16. The defendant's Cabinet considered the Review at a meeting on 19 October 2017. It also had available an Equality Impact Assessment, dated July 2017 (approved 21 August 2017). In broad terms, this suggested that the spread of protected characteristics was roughly the same whether looking at all libraries or the libraries proposed for closure. It did not suggest that any group would be disproportionately impacted by the proposals compared to the pool of library users in Northamptonshire generally. The minutes of the meeting record that members were told that the Review had been carried out using government methodology for best practice; that it provided an opportunity for community groups and local businesses to take over the running of libraries; that the Council was committed to a library service that could co-locate services across broad locations and that equality impact assessment would be revisited and expanded on where needed.

17. The Cabinet resolved to commence consultation on the proposals relating to libraries and the impact on Children's, Families and Education Services. It is apparent that the Cabinet did not make any decision in relation to the library service at that stage other than to commence the consultation.

The Consultation

18. The consultation opened the following day and closed on 13 January 2018. The questionnaire explained that the Council needed to make savings, predominantly to meet social care costs in the county and that there was a need to seek to reduce the cost of the library service to the tax payer. It highlighted that 21 libraries were currently also designated children's centres and stated that those libraries not proposed for retention "would be closed, including the universal Children's Centres services delivered in those libraries." It highlighted that it was important to consider this when thinking about each of the proposals.

19. There were 5,255 responses. Submissions were also made via various organisations and local MP's. Responses revealed a campaign for an "option 4", which was no change to the number of libraries operated by the Council. Suggestions were made for further efficiencies and alternative models for delivering the service were proposed. Suggestions included co-location of services; reduced opening hours and greater use of volunteers. Many people expressed concern that if local libraries closed, the next nearest would be too far away, too inconvenient or too costly to access by public transport. Reference was made to the impact of cuts to bus subsidies which would compound the difficulties. Of the three options, Option 1 received the greatest support, largely it appears on a 'least worst' basis. Option 3 was particularly unpopular.

20. The results of the consultation were drawn together into a "Consultation Analysis". The library service provided a response suggesting that it was important to revisit the case for change in light of the campaign for "Option 4". The response set out current trends and then provided reasoned responses to the various themes emerging from the

consultation. In summary, the response suggested that the library service was already being run as cost-effectively as possible (it was the most cost-efficient service in the country); that co-location of services was a continuing and active part of the strategy; that staffing levels could not be reduced further without closing libraries and that reduced opening hours would not deliver property savings.

Cabinet Meeting 13 February 2018

21. The consultation analysis and library service response were provided to Cabinet members for their meeting on 13 February 2018.

22. In addition, the Cabinet had a report from the Finance and Resources Scrutiny Committee which recommended that the library services proposal should not proceed as the committee did not believe that the savings could realistically be achieved in the timescale proposed due to the range of risks involved. I have considered the minutes of the Committee. I note they had heard from the First for Wellbeing Managing Director, who made various points about the library proposal, including that the level of saving depended on which of the three options was chosen. Option 3 produced the clearest saving; the savings from the other options could only be estimated. If current library buildings were closed, the Council would aim to find other locations for services based there. Legal challenges had arisen in other areas when consultation had not been sufficiently effective. It was considered NCC were consulting effectively; it would need to show the results had been taken into account when a final decision was made. Option 3 was considered to meet the statutory duty. There was no alternative budget within First for Wellbeing or Public Health to provide compensatory savings if the library services proposal was not proceeded with. Having considered those points, the Committee recommended that Cabinet agree to allow more time to develop a long-term strategy for the library service.

23. The Cabinet considered the report of Mark McLaughlin, Director of Finance on the re-issued final budget. Within that report, Mr McLaughlin recommended that Option 1 was supported and that a strategy was developed to support the delivery of the library service. He noted that respondents to the consultation had made many suggestions, all of which would need "full and diligent exploration" before a final strategy was arrived at. It was suggested that the strategy would be developed and presented to Cabinet in July. Mr McLaughlin also noted that the library review did not include a review of options relating to children's centres and that given the strength of feeling from respondents it was right that this aspect of the library provision should be subject to a "more in-depth review of the options for future delivery in the context of a County and Community Library Service model". Within the recommendation for Option 1, there was provision for 2018/19 to be a transitional year with financial support being maintained and for rent to be paid on behalf of community managed libraries for a further year (2019/20). There was to be an "options paper" for children's centre services.

24. The Cabinet adopted Mr McLaughlin's recommendations. The effect was that Option 1 was to be supported but with the steps outlined above to be taken before a final strategy was developed.

25. I shall return to the claimants' grounds for seeking judicial review in due course and I note that Mr Connolly challenges the decision of 13 February 2018, However, on the

face of it, the defendant's approach at this point appears rational and it is hard to see that anything could be said to have gone seriously wrong with the decision-making process up to this stage. While the Scrutiny Committee had recommended that the proposals should not be proceeded with, Mr McLaughlin's recommendations had included further action to meet concerns before the final strategy was formulated. Nothing seems to have been set in stone at this point, particularly as funding was to be provided for the transitional period.

26. On 16 February 2018, WX's solicitors (then instructed by another client) sent a letter before action challenging the decision "to close up to 28 libraries". Shortly thereafter, the position changed significantly.

The section 114 Report

27. Under s. 114(3) of the Local Government and Finance Act 1988:

> "The chief finance officer of a relevant authority shall make a report under this section if it appears to him that expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to meet that expenditure."

Mr Mclaughlin issued such a report to be placed before a full Council meeting on 22 February 2018. The report (or at least the version which appears in my bundle) is undated. The KPMG notice (which I consider below) suggests that the s.114 report was issued on 2 February 2018. However, the report from Mr McLaughlin to Cabinet for their meeting on 13 February 2018 does not clearly state that a s.114 Report had already been issued. The s.114 report does not appear to have played a part in the Cabinet's decision making on 13 February, although they did follow Mr McLaughlin's recommendations. The Cabinet may well have had the s.114 report before them at the 13 February meeting. I would be very surprised if they were unaware of it.

28. The s.114 report advised (paragraph 2.9):

> "The purpose of this section 114 notice is to make it clear to members of the County Council that it faces a financial situation, in the current year and for 2018/19 of a serious nature. This is a situation that cannot simply be left for officers to improvise solutions. The Members of Council must take responsibility."

The KPMG Advisory Notice

29. On 20 February 2018, KPMG LLP, the appointed auditor for the defendant, issued an advisory notice under section 29 and Schedule 8 to the Local Audit and Accountability Act 2014. That is a very serious measure, the effect of which was that the defendant was not lawfully able to continue its process of setting a budget and precept for 2018/19. The basis on which it was issued was that the auditor considered that the budget the Council was proposing to pass would be unlawful.

30. The particular concerns identified by KMPG were in relation to the predicated use of capital receipts to fund expenditure which the Authority intended to account for as

capital expenditure under the Capital Flexibilities Direction issued by the Secretary of State for Housing, Communities and Local Government. This was dependent on the use of planned receipts of £40.9 million, which KMPG believed was "not on any view achievable". The receipts were to come from the sale of the Council's headquarters, One Angel Square, as well as the sale of "further, currently unidentified, assets worth £27.5 million during 2017/18 and 2018/19."

31. KPMG highlighted concerns about lack of prudence; inconsistent application of financial rigour and absence of robustness and transparency. They also stated (paragraph 28 of their statement of reasons):

> "In addition, there has not been a comprehensive and transparent exercise by the Authority to identify and cost its statutory services, which would help it to identify further potential savings."

32. The auditor advised that if the Council pursued its budget setting proposal as recommended by Cabinet, it would result in an unlawful council tax requirement and an unlawful failure to have regard to statutory guidance.

Full Council Meeting 22 February 2018

33. This was the meeting at which the budget was to have been set. However, this could not happen in light of the KMPG Advisory Notice. The Council accepted the section 114 Report and noted the KMPG Advisory Notice and the meeting was adjourned to 28 February 2018.

Cabinet Meeting 27 February 2018

34. In advance of this meeting Mr McLaughlin produced a revised budget report. Various amendments were proposed. Within his report, Mr McLaughlin indicated that the KPMG Advisory Notice had been issued:

> "with the intention that the Authority stops, pauses and considers the viability and sustainability of the proposed budget and therefore the Council tax precept for 2018-19."

He advised that in light of the auditor's concerns:

> "the Council has no choice but to consider proposals which have been rejected or considered undesirable due to the implications of the service reductions."

35. In relation to the library service, he recommended a change from Option 1 to Option 2. Updated equality impact assessments relating to the individual libraries were provided by weblink and Councillors were reminded to consider that information when making their decision.

36. At paragraph 5.2.2.2, Mr McLaughlin said:

> "Option 2 will mean that Northamptonshire County Council will have 15 libraries to deliver its statutory duty to provide a comprehensive and efficient library service."

At 5.2.2.7 he recommended the continued provision of children's centres in those libraries for a further three months whilst proposals were prepared for re-provision of those services.

37. The report noted at 8.4:

> "The fact that this further set of reductions has been derived with great urgency carries risks of accuracy and challenge. Even so they are recommended as a difficult, but necessary step towards financial sustainability in the medium term."

38. The Cabinet resolved to support Option 2, with a strategy to be developed to support the delivery of the library service.

Full Council meeting 28 February 2018

39. At the outset of the meeting it was noted that there was an urgent need to make a decision that day. It was noted that there had been a pre-action letter in relation to the library service. It is clear that there was a considerable amount of comment at the meeting about libraries, from Councillors and members of the public.

40. Councillor Robin Brown, the Cabinet member with responsibility for finance, addressed the meeting. He said that the budget was set "not solely to balance the books but to review the vital public services residents expected." He referred to the very hard decisions being made, including in relation to libraries.

41. The minutes record that councillors were unhappy about various aspects of the budget but recognised the need to approve the budget to move on and to protect statutory responsibilities.

42. The Council approved the revised budget and noted the Medium Term Plan, which included the Cabinet's support for Option 2 and for children's centre provision to continue while proposals for alternative provision were prepared. The budget for library provision was based on Option 2.

CILIP Complaint 2 March 2018

43. On 2 March 2018, Nicholas Poole, Chief Executive of the Chartered Institute of Library and Information Professionals (CILIP) wrote to the Secretary of State for Digital, Culture, Media and Sport, raising a formal complaint about the proposed closures. Allegations were raised about failure to consult; inaccuracy of equality impact assessments; failure to act appropriately on financial advice and failure to meet the statutory duty under s.7 of the 1964 Act.

44. In response to that complaint, the Secretary of State wrote to the acting leader of the Council on 19 March 2018 indicating that he was considering whether a local inquiry was required and that his officials would be seeking the cooperation of the officers dealing with the library changes. To date, there has been no local inquiry.

Cabinet Meeting 13 March 2018

45. Cabinet met again on 13 March 2018. They had a report from Lucy Wightman, Director of Public Health, and Lesley Hagger, Director of Children, Families and Education, headed "Library service – Moving Forward". The purpose of the report was said to be to provide clarity regarding the arrangements for Option 2, following the decision at Council on 28 February regarding library services.

46. At paragraph 3.6, the report stated:

> "Given the decision of Council on 28th February regarding Libraries provision, the Council will now commence detailed consultation on Children Centre provision and the delivery of universal children's services. Whilst these issues are related, it must be understood that a designated children's centre relates to physical premises at a specific location, and the provision of services is about a description of services that can be delivered via a number of different buildings or locations."

47. Section 4 of the report was headed "Property implications". It was noted that libraries designated for closure were to be offered for sale or lease to interested parties. It recognised that some libraries with children's centres had received funding through grants from the Department for Education. In relation to that, the report said:

> "4.1 … If the building has an historical DFE grant attached to it, an agreement between interested parties and NCC will be developed regarding provision of 0-5 children's services.
>
> 4.2 If buildings are surplus to requirement for library services, and there is a historical DFE grant attached to the property for children centre provision there will then be consideration regarding whether the properties are required for 0-5 Children's Services. Children's Service publish a Sufficiency Strategy, and this will help guide these plans.
>
> 4.3 Only when the considerations above have been made will the council declare the buildings surplus to requirement."

48. Section 5 explained that there was to be a 12-week consultation regarding provision of children's centres and universal children's services. Section 6 indicated that the library proposals had been subject to ongoing equality impact assessment and that the process would continue as the library strategy was developed and during the further consultation regarding children's centres and services.

49. Reference was made to the need to meet "required savings" through the implementation of Option 2. For the purpose of this claim, the parties agreed that the potential saving in moving from Option 1 to Option 2 was in the region of £250,000. There is though an issue as to whether the defendant has taken account of the impact of potential costs relating to children's centres.

50. The Cabinet considered the "Library Service – Moving Forward" report. Councillor Hughes, the member with responsibility for Public Health & Wellbeing, told Cabinet:

> "The Council took a decision on 28 February to implement the libraries option 2;"

Concern was expressed that it was not acceptable for such an important report to be added to the agenda at a late stage. It was also suggested that there had been a "rollercoaster ride" for the public and the libraries.

51. The Cabinet resolved as follows:

> "1. Agreed to the proposed approach, actions and timescales, which are presented in this report in relation to the implementation of the Libraries Option 2 budget decision made by Council on 28th February 2018;
>
> 2. Agreed that delegated authority be given to the Director of Public Health in consultation with the Director of Children, Families and education and Transport, Highways and Environment to make any decisions required regarding the decommissioning arrangements for libraries, including associated children's centre considerations; and
>
> 3. Noted that consultation will commence by 23 March 2018 regarding universal children's services and Children Centre provision and that a further paper will be presented to Cabinet in July regarding the Outcomes of this consultation."

Developments since March 2018

52. WX's claim for judicial review was issued on 28 March 2018. Mr Connolly's claim was issued on 6 April 2018. Garnham J dealt with an application for interim relief on 27 June 2018. The defendant undertook not to take any step that would lead irreversibly to the permanent closure of any library until trial or further order.

53. In evidence provided to the court, Mr McLaughlin has confirmed that there is no money in the budget for the 21 libraries due to be closed beyond 31 July 2018. However, he suggested that money would "somehow have to be found by flexing the libraries budget to keep them open" during August. Further, he said that this would be extended until September for those libraries where there was a progressing expression of interest. I note that this accords with the recommendations in the "Library service – Moving Forward" report (at para 3.3) that all libraries should remain open until 31 August 2018 and those where viable expressions of interest were progressing should be kept operating until 30 September 2018.

54. Unsurprisingly, the situation has not remained static since the issue of proceedings. In a statement dated 11 July 2018, Mr McLaughlin confirmed that the defendant's financial position remains extremely serious and may deteriorate. The Cabinet has instructed officers to identify further savings this year and for 2019/20. Mr McLaughlin indicates that it is likely that all statutory services, including those for the most

vulnerable people, will move to a minimum service level. I note that this is something that has been widely reported in the media. There can be no doubt that the defendant's financial position is extremely precarious. In that context, Mr McLaughlin states that:

> "the financial scope for reversing existing agreed savings proposals is zero."

55. Ms Wightman provided evidence that the defendant is developing a model for the future of children's centres and Universal Children's Services which is due to be proposed to Cabinet in August. She also explained that the Council is currently under intervention from central Government by way of the appointment of Commissioners and that they had asked the officers to look again at different models for library provision.

56. At the hearing, I was told that no step would be taken to permanently close any library before the end of September 2018. Subsequently, while I was writing this judgment, WX's solicitor forwarded a letter dated 2 August 2018 sent by Ms Wightman to one of the witnesses in WX's case. The letter stated:

> "It has been decided to pause the current Independent Library process."

It explained that meetings with community groups and interested parties had been hugely beneficial and more time is required to consider points arising. Applications to establish independent libraries require further consideration. Further, a second section 114 notice has been issued and significant work is now being undertaken to identify priority areas of spending. Ms Wightman wrote:

> "It is only when this work is complete can we make informed decisions about future service provision."

Confirmation was provided that no library closures, temporary or otherwise, will take place until this work is complete, subject to staffing levels, and a commitment was given to working with community groups to better understand how the Council can support library provision in the future.

57. It seemed to me that this letter was significant in the context of the judicial review and I invited representations from Counsel in relation to it. Mr Oldham QC, on instructions, informed me that a new chief executive took up her duties on 26 July 2018 and that she has been considering the subject matter of this litigation with officers and members. He summarised the current position as follows:

> "whilst there is no intention to reverse the decision of 13th March to close libraries, the future of libraries not in option 2 for retention is under review. This includes the possibility – and the Council stresses the word possibility – that some or all of the libraries not in the list for retention may be operated as community libraries, which is to say that they could go forward with some measure of Council support for them (rather as being independent libraries)."

I am very grateful to Mr Oldham QC for taking steps to provide this clarification despite being on holiday.

58. On behalf of the defendant, Mr Oldham QC floated the possibility of a stay of the proceedings or the option of me reserving my judgment until a clearer picture of the new plans emerged. I am also grateful to Counsel for the claimants for responding promptly. Each opposed a stay or delayed judgment. In the absence of any agreement between the parties, and largely for practical reasons, I decided to provide this judgment to the parties without delay and for it to be handed down at the first convenient opportunity.

The decisions challenged

59. The two claimants put their cases in somewhat different ways. Mr Broach for WX says that it is unsurprising that there is a degree of confusion about the relevant decisions and suggests that the confusion stems from a lack of clarity on the defendant's part as to the decisions being taken. He specifically challenges the budget decision of the full Council on 28 February 2018 and the executive decision of Cabinet on 13 March 2018. However, he invites me to look at the decision-making process in the round and submits that the defendant has failed to comply with relevant duties throughout the process.

60. Mr Howells, on behalf of Mr Connolly, also challenges the decisions made in relation to the library service at cabinet on 13 and 27 February 2018. The practical effect is similar in that both claimants seek to have the library service budget head set on 28 February 2018 quashed and for the executive decision as to future library service provision to be re-made, with all options open.

61. When looking at the defendant's decisions, it is important to have in mind the distinction between Cabinet and full Council roles. See *R(Buck) v Doncaster Metropolitan Borough Council* [2013] EWCA Civ 1190. There is no dispute that the decision to close libraries was for the executive (Cabinet) and the setting of the council tax calculations was for the Council. Accordingly, it was for the full Council to set the budget and to decide what went into it for the library service and for Cabinet to decide the plan for libraries within the available budget.

Grounds

62. Again, the claimants did not have a unified approach. Drawing their respective cases together, the following grounds fall to be considered:

    i) Failure to consult lawfully or to take account of the product of the outcome of the consultation (WX);

    ii) Alternatively, failure to consider realistic alternatives arising from the consultation (Connolly);

    iii) Failure to comply with section 7 of the Public Libraries and Museums Act 1964;

    iv) Breach of the public sector equality duty ("PSED") under section 149 of the Equality Act 2010;

    v) Breach of section 11 of the Children Act 2004;

vi) Failure to take account of all relevant considerations / irrationality;

vii) Failure to take account of the impact on children's centres contrary to section 5A(1) of the Childcare Act 2006.

63. It seems to me that there is a degree of overlap in some of the grounds. The claimants' arguments on each of the grounds are not identical. Further, I am required to consider four decisions. I have regard to all the grounds advanced and submissions made on behalf of the claimants and to the defendant's response. I shall focus on those arguments that I consider to be of greatest relevance and importance at each stage of the decision-making. Naturally, I shall not detail every argument made on every point but that does not mean that I have not had regard to the entirety of the submissions made to me before reaching my conclusions.

Consultation

64. The approach to the consultation issue taken by Mr Howells on behalf of Mr Connolly differs to that of Mr Broach on behalf of WX. Mr Connolly does not accept that the consultation was lawful but does not pursue this as a separate ground because consultees in fact identified realistic alternatives during the process which the defendant agreed to consider before a final strategy was arrived at. In short, I prefer this approach to that adopted in WX's case.

65. I have regard to the well-known principles taken from *R (Gunning) v Brent London Borough Council* (1985) 84 LGR 168, endorsed by the Supreme Court in *R (Moseley) v LB Haringey* [2014] UKSC 56 that:

a. Consultation must be at a time when proposals are still at a formative stage.

b. The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response.

c. Adequate time must be given for consideration and response.

d. The product of consultation must be conscientiously taken into account in finalising any proposals.

66. The test is whether the process was so unfair as to be unlawful. In reality, this is likely to be based on a factual finding that something has gone clearly and radically wrong (See *R (Baird) v Environment Agency* [2011] EWHC 939 (Admin)).

67. Put simply, I do not accept Mr Broach's arguments that the consultation was unfair. The three options selected for the consultation were based upon the analysis in the Review. It was open to the defendant to decide that they were the appropriate options to include in the consultation. The consultation questionnaire explained the financial context and explained that the new service was required to meet the greatest amount of need and to cover the greatest geographical spread, keeping libraries which are well placed to add value to as many communities as possible. It was explained that the three options:

> "look to achieve the greatest possible savings, the most potential for growth and enhancement of services for the least possible impact on customers of the library service."

That was a clear and concise explanation, which allowed consultees to consider the options and to make proposals. The assertion that consultees should have been told that it was possible more libraries could remain open if savings could be identified in other areas does not reflect the law and is not realistic. The consultation did not mislead in any way. The need to consider children's centres in libraries was also clearly highlighted.

68. I reject the criticisms of the consultation itself. The more important issue is whether the product of consultation was conscientiously taken into account in finalising any proposals.

69. I consider that, initially, the defendant's response to the consultation was appropriate. The responses were drawn together and analysed. The library service provided a response acknowledging that it was important to revisit the case for change.

70. The Cabinet had this material when it met on 13 February 2013. The decision then was to support Option 1 with additional financial provision in 2018/19 and 2019/20 to provide a transitional period. In taking that approach, the cabinet were following the recommendations of Mr McLaughlin, who had advised that "full and diligent exploration" of the consultation responses was required before a final strategy was arrived at. In my view, this represented an entirely lawful approach.

71. The difficulty, in my judgment, came after the KMPG Advisory Notice. That Notice plainly called for a response. A lawful budget had to be set. There can be no objection in principle to the defendant taking a revised approach motivated by the financial position. I appreciate the real pressure the Cabinet and the defendant's officers were operating under at the time. However, this did not relieve the defendant of the need to act lawfully. I will consider the defendant's decision-making generally below. In relation to the consultation though it does seem that, having appreciated a need to explore the consultation responses further before finalising a strategy, the Cabinet abandoned conscientious consideration of the responses before adopting Option 2 at the meeting of 27 February 2018.

72. It should be remembered that the Scrutiny Committee had questioned the predicated savings from the library proposal. The consultation responses had proposed alternative ways of making savings. In that context Mr McLaughlin had advised the Cabinet that further exploration of the consultation responses was required before a final strategy was reached.

73. Mr Oldham QC suggests that the case advanced on behalf of Mr Connolly on this issue is a new claim based on legitimate expectation, which is not pleaded and lacking in merit. While right that the claimants could not rely on a legitimate expectation based upon a suggestion in an officer's report to Cabinet, I do not accept that this is how the claim is framed.

74. In the face of concerns about the proposal (then Option 1) and the advice of the Scrutiny Committee, it is plain that the Cabinet decided to follow Mr McLaughlin's

recommendations. That provided a framework for further consideration of the consultation responses before any library closures. That appears to have fallen away in the rush to agree revised proposals on 27 February 2018.

75. I find that this led to a situation where the product of consultation was not conscientiously taken into account in subsequent decisions. I will consider the impact of that further when I have reviewed other aspects of the defendant's decision-making following the KMPG report.

Section 7 Public Libraries and Museums Act 1964

76. Considering the s.7 duty in *R (Draper) v Lincolnshire County Council* [2014] EWHC 2388 (Admin), Collins J cited with approval an extract from the judgment of Ouseley J in *R (Bailey) v Brent LBC* [2011] EWHC 2572:

> "a comprehensive service cannot mean that every resident lives close to a library. This has never been the case. "Comprehensive" has therefore been taken to mean delivering a service that is accessible by all residents using reasonable means, including digital technologies. An efficient service must make the best use of the assets available in order to meet its core objectives and vision, recognising the constraints on council resources. Decisions about the service must be embedded within a clear strategic framework which draws upon evidence about needs and aspirations across the diverse communities of the borough."

In fact, Ouseley J was simply recording what the library authority had said in that case. However, like Collins J, I regard it as a convenient summary that cannot be improved upon. I note that the parties accepted this as a starting point.

77. The parties were unable to agree the correct legal test for this court when considering the s.7 duty. Mr Broach contended that it was for the court to decide whether there has been a breach of statutory duty whereas Mr Oldham QC argued that the court cannot interfere unless the defendant's conclusion that a service is comprehensive and efficient is irrational.

78. I follow the approach of Ouseley J in *Bailey* (approved by the Court of Appeal [2012] EWCA Civ 1586). It was common ground in that case that the duty in s.7 could not be fulfilled unless an assessment of the needs which the library service should meet had been undertaken. I accept that is correct. Having referred to the duty of superintendence which rests with the Secretary of State under s.10, Ouseley J dealt with the test for the court [94]:

> "I would put it on the basis that if the Claimants can show that something has gone seriously or obviously wrong in law in the information gathering or analysis process, they should have their remedy in this court. Otherwise, it should be left to the Secretary of State."

He pointed out that the fact that the Secretary of State may choose not to intervene does not mean that the alternative remedy is nugatory. It may reflect the fact that there was no breach to be remedied.

79. Mr Oldham QC contends that the claimants' arguments in relation to the s.7 duty are in reality an attack on the Review dated September 2017 and, as such, are out of time. However, I am unable to accept his submission that the Review represented the defendant's concluded decision that all three options would provide a comprehensive and efficient library service. The Review was an important part of the assessment of local needs. It informed the executive's decision as to the proposals to consult on. It advised that all three options would appear to be meet the statutory duty. However, no decision to that effect was taken at that stage. The decision taken by Cabinet in response to the Review was to proceed to consultation. The consultation was another important aspect of the assessment of needs.

80. There are obvious flaws in some of the arguments advanced on behalf of WX. For example, Mr Broach submitted orally and in his written reply that Option 2 would result in closure of 60% of the libraries and Option 3 the closure of 78%. He said it was fanciful to suggest that the previous library service was operating that far above the statutory baseline. This appears to treat all libraries as equal, when the evidence was that 75% of usage was concentrated in those libraries proposed for retention in Option 2 and that just 18.9% of active members had not made some use of those 15 libraries between February and June 2017.

81. The defendant, in my view, made reasonable use of the data available from its records. It is common ground that the library service in Northamptonshire was extremely efficient and has served its community well. Indeed, it appears to have been a source of pride and to have had a reputation extending beyond the county. There is no doubt that the driver for change is the financial crisis. However, that is a sad reality which the defendant must address, having regard also to its other statutory duties and the need to have a balanced budget. In those circumstances, it is entirely rational to look at usage of the existing service as a starting point to see where cuts might be made while still preserving a service that remained accessible to those who want to use it. It seems to me that this is exactly what the Review set out to do.

82. As with statistics generally, arguments can be made as to the interpretation of the data generally. However, it would not be appropriate for me to descend into the detail of the analysis. I agree with Mr Oldham QC that many of the points advanced by Mr Broach cannot begin to found a case of such as would justify this court intervening. For me to weigh up each and every criticism made of the defendant's analysis would be to depart from the correct scope of judicial review.

83. I do not consider that it can be said that anything had gone seriously or obviously wrong in law in the information gathering or analysis through the Review and consultation stage. I stress though the need to take account of the product of the consultation in coming to a final assessment of whether the proposed option would meet the statutory duty.

84. A number of criticisms can be made of the evidence of Mr Poole of CILIP which was placed before me. Mr Oldham QC suggested it was expert evidence, for which the court had not given permission. Even if admitted as expert evidence, it goes further

than it should, straying into the court's territory. Leaving that aside, there are problems with the analysis in Mr Poole's evidence. He is entitled to point out that the scale of these cuts is much greater than anything seen before. However, it is, as Mr Oldham QC argues, a non sequitur to say that means the s.7 duty has been breached. It may be fair to say that the scale of the cuts and the impact that will have on the average rate of libraries per capita (1 per 60,000 compared to the European average of 1 per 16,000) highlights the need for a careful assessment against the duty to provide a comprehensive and efficient service. It is not permissible to go further and say that such evidence establishes a breach.

85. It seems to me the real point is expressed much more pithily in Mr Howells' skeleton argument, at paragraph 19:

> "the Cabinet signally failed to conclude that the re-structured library service would meet the section 7 duty."

86. The Cabinet just never took this decision. As at 13 February 2018, there was some real doubt as to the proposals. The Scrutiny Committee had advised that Option 1 should not proceed. They were told there was a need to take the consultation results into account (and to show they had done so). They proceeded on the basis that a final strategy was to be developed by July 2018. Funding was to be made available for the transitional period. There was also a need to look at the position of children's centres.

87. There is confusion generally in the defendant's decision-making after the KPMG Advisory Notice was issued. It is not clear that the Cabinet fully understood that they were taking the decision to close libraries. They were told in the Finance Director's report of 27 February 2017 (para 5.1) that they had "no choice" but to consider proposals which had previously been rejected but were now being put before them. In moving quickly to a strategy that was going to lead to imminent library closures, the Cabinet needed to be directed to the issues they had to address. They had not up until then decided that Option 2 (or indeed any of the options) would meet the duty to provide a comprehensive and efficient library service. They had the advice contained in the Review and they would, of course, have had regard to that. However, once they were being asked to make a decision that would lead to closures, there was a clear need for the Cabinet to address the statutory test. They did not do that. Indeed, the minutes of the meeting on 13 March 2018 suggest that they had wholly failed to understand that this was a decision for them.

88. The result was that the executive decision to close libraries appears to have been taken without balancing the statutory duty against the financial pressures. The Cabinet cannot be criticised for being motivated by financial concerns. However, finances could not be the sole consideration. The Cabinet still had to be satisfied that they were complying with their legal duties. On the evidence before me, I am not satisfied that they appreciated what they had to decide.

89. This was a serious error infecting the decisions of the Cabinet on 27 February 2018 and 13 March 2018. It was also carried into the Council's decision of 28 February 2018 in that the library budget head was based upon the decision to adopt Option 2.

PSED

90. The claimants contend that the defendant failed to have due regard to the public service equality duty contained in section 149(1) of the Equality Act 2010, in particular the need to "advance equality of opportunity" for protected groups. The defendant responds that the PSED was embedded into the re-design process from the start. There was an iterative process and as such it is unrealistic to say that the members of Cabinet and Council did not have due regard to the PSED when they made the decisions under consideration.

91. The legal principles were recently summarised by Andrews J in *R (Law Centres Network) v Lord Chancellor* [2018] EWHC 1588 (Admin) at [96]:

> "The relevant principles relating to the exercise of the PSED are adumbrated by McCombe LJ in *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 at [25]-[26] and were endorsed by Lord Neuberger in *Hotak v Southwark LBC* [2016] UKSC 30 [2016] AC 811 at [73]. The duty is personal to the decision maker, who must consciously direct his or her mind to the obligations; the exercise is a matter of substance which must be undertaken with rigour, so that there is a proper and conscious focus on the statutory criteria and proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them. Whilst there is no obligation to carry out an EIA, if such an assessment is not carried out it may be more difficult to demonstrate compliance with the duty. On the other hand, the mere fact that an EIA has been carried out will not necessarily suffice to demonstrate compliance."

92. I note also what was said by McCombe LJ in *Bracking* at [26]:

> "A [decision maker] must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a "rearguard action", following a concluded decision …"

93. I am satisfied that the defendant's officers had appropriate regard to the PSED and that appropriate equality impact assessments were carried out. An assessment was prepared before the Review was completed, correctly adopting library users as the appropriate pool with which to make comparisons (see the Court of Appeal decision in *Bailey*). There was minimal divergence in the demographic data for all libraries and for those proposed for closure.

94. Feedback from the consultation was fed into the EIA. When the proposal was for Option 1, uncertainty was expressed as to the final impact and it was recorded that it would be necessary to revisit and review this.

95. Individual library EIA's were updated again before the Cabinet meeting on 27 February 2018. They were provided on the morning via a weblink. The Finance Director's report expressly referred to the EIA's and reminded Councillors to consider the information

contained in them when making their decision. There was, however, no overall summary of the effect of the EIA's or help or direction as to how members should consider them.

96. It would have been better to provide members of Cabinet with a cumulative assessment such as that prepared in May 2018. As it was, there was a lot of material to be considered at short notice. However, I do not regard it as unreasonable to expect councillors to have read the material promptly given the circumstances.

97. In the end, I do not think this ground adds significantly to those already considered. The difficulty lay not with the EIA's or the way in which they were presented but with the apparent failure of the Cabinet to appreciate what they were required to do. They needed to take account of the feedback from the consultation, which included many comments about how closures would affect people with protected characteristics. As with the s.7 duty, they needed to recognise that the PSED had to be taken into account when making their decision. There is an absence of evidence as to the use made by members of the EIA's. The real problem, it seems to me, is the breakdown in the whole process of decision making after the KPMG Advisory Notice.

98. The claimants do not point to any significant disproportionate effect. Had this ground stood in isolation, I may well have refused permission. However, I recognise that the move from Option 1 to Option 2 appears to have been treated as a foregone conclusion rather than one which required a decision to be made with reference to the PSED.

Section 11 Children Act 2004

99. Section 11 of the Children Act 2004 provides that local authorities must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children. The s.11 duty requires that the welfare of children is "actively promoted" (*R (HC) v Secretary of State for Work and Pensions* [2017] UKSC 73).

100. Section 11 does not in terms require that the welfare of children should be the paramount or even a primary consideration. It is not necessary to explore the question left open in *Nzolameso v Westminster City Council* [2015] UKSC 22 as to the interaction with Article 3 of the UN Convention on the Rights of the Child to decide this case and Mr Howells abandoned this aspect of the claim advanced on behalf of Mr Connolly for that reason.

101. I am not sure that s.11 adds a great deal to the other substantive duties relied on here. I note that in *Kensington and Chelsea Royal London Borough Council v Mohamoud* [2015] EWCA Civ 780 Sharp LJ said [66]:

> "it would be wrong in my judgment to construe section 11 of the 2004 Act so that it changes the nature or scope of the functions to which it relates"

See also Davis LJ in *R (X) v Secretary of State for Justice* [2017] EWCA Civ 155:

> "Section 11 of the Children Act 2004 does not create any new specific functions for the identified bodies. Rather it regulates

> the way in which each such body's existing functions are discharged."

102. The Review recognised that the proposals would impact on designated children's centres. Consistent with the defendant's duty under s.11, it was recognised that this was an important consideration and it was highlighted as such in the consultation questionnaire.

103. I note that the "Library Service – Moving Forward" report for the Cabinet meeting on 13 March 2018 made specific mention of the need to improve the well-being of children, although it is not clear to what extent that was considered. In any event, it seems to me that, in relation to libraries, the defendant could probably demonstrate compliance in substance had the duty under s.7 (which includes specific reference to the needs of children) been met.

104. The s.11 duty perhaps comes into sharpest focus in this case in relation to the impact on children's centres which I deal with below. In short, it was another consideration for the defendant to have in mind when making decisions as to the future of libraries and the children's centres within them. As a separate ground, it does not add much more.

Relevant considerations / irrationality

105. The thrust of this part of the case relates to children's centres delivered within the libraries to be closed. The Review notes (at para 1.4) that the library service has "taken on the delivery of universal children's centre services, absorbing activity worth £444,000".

106. It is right, as Mr Oldham QC has pointed out, that there are repeated references within the material before me to children' centres in the context of the future of the library service. However, what will happen to the children's centres is still not clear. It is notable that the defendant's position in relation to children's centres appears to have shifted throughout the case. I fully accept that it is not inevitable that the closing of a library will mean that the children's centre housed within it cannot remain. It would be possible to close a library (saving the staffing and running costs of the library itself) while retaining the building for the children's centre. That may well be a reasonable course to take. The defendant is looking to make as many cuts as it reasonably can, and it certainly does not follow that the library should remain open simply because the building will still be required for a children's centre.

107. However, the interaction between libraries and children's centres was clearly an important consideration. It had been acknowledged at the outset; the consultation had revealed the strength of feeling about the impact of closing libraries on children's centres and it had been recognised that there was a need for a review of children's centre provision and an options paper.

108. When the decision was taken to move to Option 2 and to a plan that involved decommissioning libraries, the defendant still did not know what would happen to the children's centres or the financial impact of that. The evidence that has been put forward by the defendant on this issue, including the fourth witness statement of Lucy Wightman is vague. I have heard no clear statement as to how the defendant is taking

account of children's centres within the financial modelling of savings from the library closures. While I recognise that members were aware of the interaction between libraries and children's centres, there is no evidence of a real weighing of this at the time of the decisions leading to library closures.

109. The Cabinet decision on 27 February 2018 was addressed towards saving money in response to the financial crisis. However, the Finance Director's report to them does not detail the saving or balance potential costs related to children's centres. There are two aspects to this. First, there is a risk of DfE grants provided to establish children's centres being clawed back. The Review had identified a total potential clawback of £1,112,592. In the case of Desborough, the potential clawback was £333,567. This is to be compared with the property running costs of £16,611. Secondly, if a children's centre which is currently housed in a library is to move, any associated property costs must be factored in.

110. The defendant's response is somewhat vague. It is claimed that any clawback will rapidly be outrun by savings. The reality, it appears, is that the defendant did not and still does not know what will happen and what costs will be involved. I set this against the background of the Scrutiny Committee's warning prior to the meeting on 13 February 2018 that they did not believe the predicated savings under Option 1 could be achieved.

111. I accept Mr Oldham QC's submission that the defendant "had to start somewhere" and consider that they may reasonably have decided to close the libraries before finalising plans for the children's centres. However, an understanding of the potential financial impact was required to be weighed in the balance before a decision was taken to move to Option 2. There is no evidence of any proper cost benefit analysis or of this feeding into the decision-making. The Cabinet appears to have supported the change in plan to Option 2 for financial reasons without really understanding what the financial implications were. Even recognising the need for a light touch when reviewing executive decisions, I consider that this is a further example of the flawed decision-making following the KPMG Advisory Notice.

s. 5A Childcare Act 2006

112. As far as this claim is concerned, I consider that WX's new Ground F is really a reframing of the same point as the last one.

113. Section 5A(1) requires a local authority, so far as reasonably practicable, to include arrangements for sufficient provision of children's centres to meet local need. Section 5A(4) defines a children's centre as "a place or group of places" through which the relevant services are provides and at which activities for young children are provided. Under s.5D, a local authority must consult before any significant change is made in the services provided through a relevant children's centre and/or before anything is done that would result in a relevant children's centre ceasing to be one. The Sure Start children's centres statutory guidance sets out the statutory definition and states:

> "It follows from the statutory definition of a children's centre that children's centres are as much about making appropriate and integrated services available, as it is about providing premises in particular geographical areas."

114. I shall deal with this point fairly briefly. It seems to me that there is plainly scope for s.5D to be engaged if the effect of a library closing is that the children's centre there would also have to close. However, a consultation about children's centres has now taken place and the defendant is considering the position. In making decisions about children's centres, the defendant will need to have proper regard to the sufficiency duty under s.5A.

115. As no decisions have yet been taken in relation to the children's centres and as this claim is about the library provision, there is no relief that could flow directly from this ground. However, the statutory duty does emphasise the importance of making provision for children's centres. The defendant does seem to have recognised this. The issue comes back to the need to put the interaction between libraries and children's centres into the balance when making decisions about the library service. I have dealt with this under the preceding heading.

Conclusions

116. I am satisfied as to the lawfulness of the defendant's approach up to and including the cabinet meeting of 13 February 2018. However, I consider that the decision-making process broke down after the KPMG Advisory Notice was issued. I recognise and appreciate that this serious step called for a response and that decisions had to be taken in the context of real financial pressure. However, while the need to make further savings was a legitimate, indeed necessary, driver for further cuts, it did not relieve the defendant of the need to act lawfully.

117. Important decisions needed to be taken, having regard to the core duty under s.7 of the 1964 Act and other statutory duties. When taking decisions that would impact on the library provision, the Cabinet and the full Council needed to be properly informed as to the decisions required, the legal framework and all relevant considerations. Instead, the decision to move to Option 2 appears to have been presented as something about which they had "no choice" without any real cost benefit analysis or weighing of the financial interaction with children's centres or the consultation feedback.

118. I agree with Mr Broach's submission that the apparent confusion over the division of responsibilities between Cabinet and full Council perhaps explains why the Cabinet did not comply with their duties.

119. I consider that the flaws identified infected the Cabinet's decisions on 27 February 2018 and 13 March 2018 and the full Council decision on 28 February 2018.

120. I must deal first with the question of permission. I am asked by the defendant to refuse permission having regard to s.31(3C) of the Senior Courts Act on the ground that it is highly likely that the outcome would not have been substantially different absent any legal flaws identified. I do not feel able to reach that conclusion. I note that the provision is backward looking and so must be considered as at the time the decision was made. At that time, the Council was proceeding on the basis that reserves were available. The evidence of Mr McLaughlin as to the worsening position since then and the acceptance that all financial reserves are spent is not relevant on this issue, although it may be highly relevant to my discretion as to relief.

121. I therefore grant permission in both claims, limited to challenging the executive decisions on 27 February 2018 and 13 March 2018 and the library budget head decided by the Council on 28 February 2018

122. I indicated to the parties that if I found that any decisions were unlawful, I would allow them the opportunity to make any further submissions they wished to on relief in light of my findings.

123. My provisional view is that the Cabinet decisions of 27 February 2018 and 13 March 2018 should be quashed. I do not believe it would be appropriate to refuse relief on materiality grounds. The flaws in the defendant's decision making which I have identified are such that I consider that the whole question of library provision needs to be revisited by the defendant, paying attention to its legal obligations and all material considerations.

124. It appears that the defendant has already commenced some form of review as to what should happen with the libraries which were proposed to be taken out of statutory provision.

125. I make it clear that I am not deciding any issue as to the merits of any proposed library closures. This remains a matter for the Authority. I do recognise, as indeed the claimants indicated they did, that the defendant may still decide to take the same libraries out of the statutory service, provided that decision is reached lawfully.

126. The position is more difficult in relation to the budget decision on 28 February 2018. I note the approach taken by Laing J in *R (DAT) v West Berkshire* [2016] EWHC 1876 in expressing her provisional view that the reduction in funding for one particular service should be quashed, when she suggested that this would not offend s.66 of the Local Government and Finance Act 1992. Notwithstanding, HHJ Cotter QC's recent adoption of a similar approach in *R (KE & others) v Bristol City Council* [2018] EWHC 2103 (Admin), I am not convinced that the point is yet settled.

127. Certainly, there is no suggestion that it would be proportionate to quash the entire council tax calculation. In considering the quashing of the budget allocation for the libraries, it seems to me that I would, at least as a matter of discretion, have to consider the practical realities of the current situation. There are no reserves to draw on. Therefore, consideration would have to be given as to the extent to which there is any flex available. That would require a further update from the defendant. Having been told that there is simply no money available, it is not entirely clear how this fits with the letter of 2 August 2018, which provides an undertaking that there will be no library closures until further work has been undertaken. I regard the information I currently have from the defendant as somewhat vague and uncertain.

128. It would be unfortunate if this litigation were to distract the defendant from the serious business of seeking to resolve the financial crisis while meeting its statutory duties across its range of services. I have no doubt that the claimants and their supporters will have concerns extending beyond the library service and will be supportive of genuine attempts to resolve the problems. It seems to me that some encouragement is to be gained from the recent correspondence. Judicial review provides a practical remedy and the claimants need to be very aware of the limits of what might be achievable in the current circumstances. For those reasons, I would strongly urge the parties to give

serious consideration to agreeing the appropriate relief and consequential orders in this case. It seems to me that there is a very strong public interest in bringing this litigation to an end as swiftly and efficiently as possible.