



department for
culture, media
and sport

14 February 2012

Dear Mr Halford,

Re proposed claim for judicial review by Margaret Bailey

Alleged failure to respond to complaints

You have forwarded a judicial review pre-action letter alleging “on-going failure to determine or otherwise appropriately respond to the complaints” made to the Secretary of State concerning library closures in the London Borough of Brent.

In the light of the contents of this letter, that claim is now academic. However, for the avoidance of doubt, it is not accepted that there has been any failure or untoward delay on the part of the Secretary of State in arriving at this decision.

This issue has been under active consideration by officials in the DCMS. It was however plainly appropriate to make any decision about intervention in the light of as full a picture as possible. The views of local residents have been received over a period of time. And of particular importance has been the recently concluded judicial review which your clients have pursued against Brent Council. Even though both the High Court and the Court of Appeal determined the council’s decision of 11th April 2011 to be entirely lawful – if your clients had succeeded in pursuing an appeal to the Supreme Court it was possible that Brent Council would have had to re-take that decision and re-consider its library plans. For this reason, the Secretary of State considered it sensible to wait until the Supreme Court decided your client’s application for permission to appeal before making a final decision in this case. The Supreme Court rejected your client’s application for permission to appeal on 3rd February 2012.

Alleged unfairness

You assert that any decision would be unfair because the complainants do not know what the Council might have said about the complaints. It is not accepted that this represents a valid ground for challenge.

Brent’s plans have been given the widest publicity. It has consulted properly on those plans and considered with care all the various interests in play – as the Courts have found. Your client has had every opportunity to advance whatever views and position she considers appropriate on the plans publicly put forward by the Council. The nature of her

views and those of other complainants are clear. There is no need for the Secretary of State to engage in a yet further round of opportunities for debate. Fairness makes no such demand.

In any event, as appears below, this letter represents a 'minded to' decision. Your client is thus given an indication of the way in which the Secretary of State is currently minded to decide matters in order to give her a further opportunity to make whatever representations she wishes about it. Any such representations will of course be carefully considered by the Secretary of State. We invite them as soon as possible and in any event within a period of 14 days.

Decision on an inquiry

After careful scrutiny and deliberation, the Secretary of State has decided not to intervene by commencing an inquiry under the 1964 Act into the library proposals in Brent.

The backdrop to this decision is the unsuccessful judicial review proceedings brought against Brent by your client. It appears from the fact that each of the very numerous grounds of challenge that were advanced was rejected by the Courts that Brent's decision was lawfully taken. Thus for example, it has now been judicially confirmed that the decision was taken without any misdirection, following proper and fair consultation and having fully and properly assessed the various needs in play (including the risk of unlawful discrimination).

Your client now asserts that Brent is as you put it "in abject breach of its section 7 1964 Act duties". It is noted however that no such case was advanced in the judicial review proceedings. That is a fact which was also specifically noted by Davis LJ in the Court of Appeal when observing that your client "has not sought to say – and in my view rightly has not sought to say – that the decision is perverse or irrational or otherwise in itself unlawful" ([88]). If the position is as you now assert it to be, Brent would be, and from the outset would have been, acting unlawfully in taking the steps it has in relation to the libraries. It is not accepted that seeking to store up yet further avenues for litigation by choosing not to advance all bases of alleged unlawfulness against Brent is to be excused by raising the possibility of arguments based on alternative remedies. The entire case of unlawfulness could and, in the circumstances of the present case, should have been advanced against Brent.

Nevertheless, the Secretary of State has now considered Brent Council's library proposals with care, along with the various complaints made about them. He has noted that their duty is to provide a comprehensive and efficient service – a duty analysed by the Council in the passages quoted in Pill LJ's judgment at [12]-[13]. As appears from those passages, and from the structure of the legislation, what amounts to a comprehensive and efficient service is a question involving a significant element of judgement. Those judgements are in the first instance for the Council to make, with its intimate knowledge of local conditions and particular, direct accountability to the local population. Self-evidently, a wide range of acceptable final judgements are open to the Council. The Secretary of State's duties of superintendence, promotion and securing the proper discharge of such duties also involve an additional layer of judgements. In relation to the duty to secure proper discharge, the Secretary of State acknowledges the range of acceptable approaches open to Council's in the provision of comprehensive and efficient library services.

You ask specifically about the "appropriate threshold" for intervention by the Secretary of State under the Act, specifically in the form an inquiry. The Secretary of State's approach

has been to ask himself whether, having regard to the nature of the duties on Brent and on him under the Act, there is good reason in all the circumstances for him to exercise his discretion to direct an inquiry.

He is minded to conclude in all the circumstances that there is no such good reason for an inquiry; and that the implementation of those plans will not place Brent in breach of its section 7 duty. The following matters seem to him at present particularly to support that conclusion:

- i) The planned proposals are based on a comprehensive library service review. The manner in which the decision was taken was assiduous in its consideration of all the various interests at play. It was, as the Courts have now confirmed, lawfully taken.
- ii) Brent have taken the approach of modernising their library service by concentrating resources on what it judges to be the best located and most used libraries. The libraries that will remain open will afford wide accessibility.
- iii) Increased opening hours will operate at some of the facilities that Brent intends to retain.
- iv) Improvements will be made to the outreach and home delivery services.
- v) Library book stock (including e books and audio downloads) is set to expand.

The Secretary of State does not accept that the figures relating to usage of the remaining libraries, even if correctly analysed in your letter, would demonstrate that the service could no longer properly be regarded as being comprehensive and efficient. They would on no view demonstrate that the remaining library services did not strike a reasonable balance between efficiency and reasonable accessibility. In any event, it is difficult to draw definitive conclusions from the figures that you have produced because –

- the figures relate to a relatively short period of time (April 2011 to November 2011);
- migration patterns of library users in Brent during this time may be skewed by uncertainties around service provision pending the conclusion of the judicial review action;
- Brent's proposals for overall development of their library services (for example, refurbishments, outreach and home delivery services) are still to be implemented and this may have an effect on library migration patterns and overall usage in the Borough;
- Brent council have confirmed that the figures they hold for library visit numbers for December 2011 and January 2012 show substantial increases in visits to the six remaining libraries – as compared with figures for the same months for the previous years;
- Brent council's figures show an 18% increase in visits to the six remaining libraries and it is therefore reasonable to conclude that migration of a degree is occurring;

- The figures you have produced also show an upward trend in library visits at all the libraries remaining open in Brent over the material time period.

A second specific complaint is raised that there are to be further reductions in Brent's library services in the near future. The department has checked the position with Brent council. The council's plans are set out in their Libraries Transformation Project and this report includes a commitment to providing 21st century library spaces. In order to meet this commitment the Council is refurbishing a number of buildings. Ealing Road will temporarily close for one month at the end of February 2012 for redecoration, reopening on the 26th March. The council is also planning to refurbish Kilburn library later in the year. In September 2012 Willesden Green library will be closed for redevelopment. The redevelopment includes building a new modern library. During this time the council will make interim provision. Therefore it is not accepted that any of these temporary closures are such as to amount to a substantive breach of the section 7 duty necessitating intervention by way of local inquiry.

Finally, on this aspect, it is emphasised that the Secretary of State is well aware that the duties on the Council and on him are continuing ones. DCMS officials will continue to monitor Brent's library proposals carefully as they go forward.

Yours sincerely,

Legal Advisers - Department for Culture, Media and Sport