

GLS Administrative Law Webinar

CASE REFERENCE

R. (on the application of Green) v Gloucestershire CC
R. (on the application of Rowe) v Somerset CC

Queen's Bench Division (Administrative Court)
16 November 2011

Westlaw Case Analysis 4 pages

R. (on the application of Green) v Gloucestershire CC

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Case Analysis

Where Reported

[2011] EWHC 2687 (Admin); [2012] Eq. L.R. 225; [2012] B.L.G.R. 330; (2011) 108(46) L.S.G. 19; [\[2012\] P.T.S.R. D19](#)

Case Digest

Subject: Libraries **Other related subjects:** Local government

Keywords: Consultation; Funding; Libraries; Local authorities' powers and duties; Public sector equality duty; Public services

Summary: The decisions of two local authorities to withdraw funding from their library services as a result of budget cuts were rendered unlawful by the local authorities' failure to comply with their public sector equality duty, each having failed to undertake a sufficiently thorough information-gathering process.

Abstract: In conjoined claims the claimants (G, R and H) applied for judicial review of decisions made by the respondent local authorities in the exercise of their duties under the [Public Libraries and Museums Act 1964 s.7\(1\)](#). G, R and H were residents of Gloucestershire and Somerset. All used their local library services. Both local authorities had decided to withdraw funding from their static library services and to reduce library opening hours. Gloucestershire had decided to withdraw, and Somerset to reduce, mobile library services. The result of the cuts was that some libraries would close completely unless volunteers came forward to run them. Gloucestershire's decision was informed by information and statistics on library usage, three equality impact assessments, and a three-month consultation. Somerset's decision was informed by a review process, an equality impact assessment, and a month-long consultation. G, R and H submitted that the local authorities had (1) failed to comply with their duty under s.7 of the Act to provide a "comprehensive and efficient library service" in that they had neither assessed the needs that their library services had to meet nor addressed whether their proposed services would "comprehensively and efficiently" meet those needs; (2) breached their public sector equality duties; (3) failed properly to consult, having failed to, amongst other things, approach the consultation with an open mind.

Application granted. (1) A local authority could not fulfil its s.7 duty unless it had assessed the needs that its library service had to meet. In the absence of information from such an assessment, the local authority could not form a lawful or rational view of whether its service was comprehensive and efficient, [Secretary of State for Education and Science v Tameside MBC \[1977\] A.C. 1014](#) considered. However, it was only if a claimant could show that something had gone seriously wrong in the information-gathering process that the court should intervene. Otherwise, it was a matter for the secretary of state under s.10 of the Act. The requirement to conduct an assessment of needs did not require a local authority to carry out a discrete information-gathering exercise. It was entitled to rely on the expertise and experience of its professionals and on information gathered from a variety of reliable sources. It was plain

from the evidence that Gloucestershire and Somerset had had sufficient information to make lawful decisions about their future library service provision, and it could not be said that something had gone so seriously wrong in the information-gathering process as to justify intervention by the court. Moreover, the s.7 duty could not be exempt or divorced from resource issues, and it could not escape the financial cuts that were an inevitable result of the country's economic crisis. The phrase "comprehensive and efficient" in s.7 did not import a requirement of blanket coverage across a large and geographically disparate county. In the absence of an unlimited budget there would always be gaps in the service that could be offered in the sense that some people might have to travel further to reach a library. Given the nature of the duty, it was not for the court to interfere with the local authorities' judgments as to how best to deploy their resources so as to reach those wishing to use their library services (see paras 29-30, 106-107, 112-114 of judgment).

(2) The decisions were, however, unlawful on the basis of the local authorities' failure to comply with their public sector equality duties. In deciding whether a local authority had fulfilled those duties, it was the substance of what had been done that had to be analysed. The carrying out of an equality impact assessment was not an invariable necessity for conformity with the duties and, equally, the fact that one had been carried out was not evidence that due regard had been given to statutory equality needs. It had to be borne in mind that the withdrawal of a local library might well indirectly discriminate against people with physical disabilities, women and the elderly. The question in the instant case was whether the local authorities' decision-makers had consciously directed their minds to their obligations under the legislation. The preponderance of the evidence was that they had not. They had failed to undertake a sufficiently thorough information-gathering exercise and to properly analyse the information gathered (paras 118, 122, 124, 130-131).

(3) There was nothing in the argument that there had been a failure to consult properly. There was no statutory duty to consult but, having decided to consult, the local authorities were obliged to act in accordance with the principles in [R. v Brent LBC Ex p. Gunning](#) 84 L.G.R. 168. There was no conflict between keeping an open mind and consulting on a preferred option. There was no evidence to suggest that either local authority had been unwilling to reconsider its proposals in the light of the consultation, and they were not obliged to consult on alternative means of achieving the same ends, *Gunning* considered (paras 138-141).

(4) The parties were invited to make written submissions as to the appropriate relief (para.145).

Judge: Judge McKenna

Counsel: For the claimants: Helen Mountfield QC, Mathew Purchase. For the defendants: James Goudie QC, Edward Capewell.

Solicitor: For the claimants: Public Interest Lawyers Ltd. For the defendants: In-house solicitors.

Related Cases

R. (on the application of Green) v Gloucestershire CC
[\[2011\] EWHC 3216 \(Admin\)](#); [Official Transcript](#); QBD (Admin)

Significant Cases Cited

R. v Brent LBC Ex p. Gunning
[84 L.G.R. 168](#); [Times, April 30, 1985](#); QBD

Secretary of State for Education and Science v Tameside MBC

[\[1977\] A.C. 1014; \[1976\] 3 W.L.R. 641; \[1976\] 3 All E.R. 665; \(1976\) 120 S.J. 735; HL](#)

All Cases Cited

R. v Brent LBC Ex p. Gunning

[84 L.G.R. 168; Times, April 30, 1985; QBD](#)

Secretary of State for Education and Science v Tameside MBC

[\[1977\] A.C. 1014; \[1976\] 3 W.L.R. 641; \[1976\] 3 All E.R. 665; \(1976\) 120 S.J. 735; HL](#)

Significant Legislation Cited

[Public Libraries and Museums Act 1964 \(c.75\) s.7\(1\)](#)

Legislation Cited

[Public Libraries and Museums Act 1964 \(c.75\) s.10](#)

[Public Libraries and Museums Act 1964 \(c.75\) s.10\(1\)](#)

[Public Libraries and Museums Act 1964 \(c.75\) s.7](#)

[Public Libraries and Museums Act 1964 \(c.75\) s.7\(1\)](#)

Journal Articles

Recent developments in public law

Administrative decisions; Banks; Belize; Bias; Discrimination claims; Fettering of discretion; Funding; Hospitals; Judicial review; Law centres; Legitimate expectation; Libraries; Local authorities' powers and duties.

[Legal Action 2012, Feb, 41-44](#)

In high regard

Consultation; Local authorities' powers and duties; Protected characteristics; Public authorities; Public sector equality duty; Regulatory impact assessments.

[S.J. 2011, 155\(47\), 14](#)

Books

Encyclopedia of Local Government Law

Chapter: Equality Act 2010

Documents: [3-999.4546.4 Public sector equality duty](#)

IDS Employment Law Handbooks

Chapter: Chapter 38 - General Public Sector Equality Duty

Documents: [Compliance](#)

IDS Employment Law Handbooks

Chapter: Chapter 38 - General Public Sector Equality Duty

Documents: ['Due regard'](#)

IDS Employment Law Handbooks

Chapter: Chapter 38 - General Public Sector Equality Duty

Documents: ['In the exercise of its functions'](#)

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