



Neutral Citation Number: [2012] EWHC 4557 (Admin)

Case No: CO/4557/2011

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/02/2012

Before :

**MR JUSTICE OUSELEY**  
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THE QUEEN ON THE APPLICATION OF

BARRETT

**Claimant**

- and -

LONDON BOROUGH OF LAMBETH

**Defendant**

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Ms Kate Markus (instructed by **Pierce Glynn Solicitors**) for the **Claimant**  
Mr Jon Holbrook (instructed by **Sternberg Reed Solicitors**) for the **Defendant**

Hearing dates: 22<sup>nd</sup> and 23rd November 2011

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**Approved Judgment**

**MR JUSTICE OUSELEY :**

1. The Claimant has mild to moderate learning disabilities. She is a director of a small charity called People First Lambeth, PFL, founded in the 1990s and working in the voluntary sector to provide services in Lambeth to people with learning disabilities. People with learning disabilities have been referred to in this case and its documents by the shorthand of PWLD. The Claimant also uses the services of PFL. It is an unusual and, to the Claimant, an important feature of PFL in the case, that its board of directors consisted entirely of PWLD. It was the only organisation in Lambeth run by PWLD. PFL had two full-time and five part-time staff.
2. PFL had three key activities or projects: (1) *the user-involvement project* which in particular assisted PWLD to influence the provision of services for PWLD in Lambeth (a) through supporting PWLD representatives on full and Executive Board meetings of Lambeth BC's Adult Learning Disability Partnership Board, inevitably LDPB, a consultation body, (b) through supporting the Friendly Group, which discussed the activities of the LDPB, enabling a broader input from PWLD into the LDPB, (c) through other activities for example involving the Culturally Diverse Learning Disabilities Group, and training other authorities such as the Fire Brigade on dealing with PWLD; (2) *the "self-advocacy" project* which assisted PWLD to meet together, to organise groups for different activities such as painting and relaxation, sharing experiences and making representations on issues concerning them locally and more widely; (3) *the management project* which ran PFL. The user involvement project employed a full-time worker supported by a full-time manager. Ms Barrett's evidence, but not the Skeleton Argument, categorised some of the activities at (1)(c) as within (2) self-advocacy.
3. Since about 2004, PFL had contracted with Lambeth BC to provide services under contracts which in 2010 were renewed for one year to the end of March 2011. These contracts provided for the work of the user involvement project, and amounted to just under £50000, or a third of the total Lambeth BC funding. The rest was provided by annual grants from Lambeth BC. The funding PFL received from Lambeth BC amounted to by far the greater part of its income; in the financial year 2010-2011, the grants and contract revenue from Lambeth BC amounted to 89% of its total income.
4. These proceedings challenge two decisions taken by Lambeth, in the light of budget cuts which it had to make, which stopped its funding for PFL with effect from the end of March 2011. The decision not to renew the contract was announced to it on 18 January 2011. That is the first decision challenged. PFL contends that, if not by that date, then by 23 February 2011, Lambeth had decided not to renew the annual grants. A subsequent decision on 21 April 2011 to reconsider the earlier decision to de-commission the type of services PFL provided did not consider commissioning those services again through PFL. Permission to challenge the January decision was granted at an oral permission hearing on 28 July 2011. The application for interim relief was not pursued. On 31 August 2011, Lambeth decided to commission a user involvement worker to support PWLD, and to establish and run a discussion forum for them. The application for permission to challenge that decision in these

proceedings was directed to a rolled up hearing with the rest of the challenge. I grant permission.

5. Ms Barrett does not bring these proceedings on behalf of PFL, nor as a director, but in her own name and right as a user of its services. She is not debarred from doing so as a director of PFL. I make that point as it was argued, albeit as a lesser point by Mr Holbrook for Lambeth, that these proceedings were an abuse of process, brought by her in reality as a director of and for the benefit of PFL, but with the benefit of public legal funding which PFL could not obtain. I deal briefly with that later. I note however that the relief which Ms Markus on her behalf continued to seek was the reinstatement of PFL's funding, as the "only means of redressing the illegality" pending a lawful decision by Lambeth.
6. The theme running through the contention that the decisions were unlawful was the asserted failure by Lambeth to comply with the duties in s49A of the Disability Discrimination Act 1995 and in s149 of the Equality Act 2010 which replaced it with effect from 5 April 2011. The failure to consult over the 18 January 2011 decision was treated as going to a breach of the disability equality duty rather than being a ground of challenge in its own right; but it was a separate ground of challenge to the decision of 31 August. Lambeth contended, as a last minute change of heart, that the only relevant challenge was to the decision of 31 August, which had rendered the challenge to the earlier decision otiose. There had been no breach of any aspect of the duty to consult, nor of the various equality duties.

## **Facts**

7. I turn to these first, since the sequence of events is important, and does not appear readily from either skeleton argument or from the statements and documents.
8. Ms Looney, Lambeth's Divisional Director of Policy, Equalities and Performance, described the background to the letter of 18 January 2011 in her witness statement. The Government's Comprehensive Spending Review in October 2010 led Lambeth to anticipate that it would have to make savings of £40m in the financial year 2011-12, with further savings in subsequent years. The Council envisaged a two stage equality impact assessment, EIA, process: first, of the 162 cuts proposed, the 81 likely to raise equality issues were identified; 25 of the 81 were identified as relevant to disability equality. Advocacy services was one of them. Then there was to be a full EIA process of those identified.
9. On 13 December 2010, the local government financial settlement was announced, and the full extent of the required cuts was ascertained. The Council's proposed budget was due for publication on 19 January 2011.
10. On 16 December, the Council's senior management board which included all its executive directors, considered a report prepared by Ms Looney. The report was also considered on the same day at an informal Cabinet meeting.
11. Her report pointed out that the scale of public funding cuts meant that some services would need to stop or be reduced. Proposed cut 138 out of 162 was advocacy services. There had been an initial equality impact screening. To help mitigate

impacts on particular groups, those which were relevant to equality “must be subjected to a thorough equality impact assessment”:

“Our approach to equality considerations and impact assessment is to ensure that it is carried out at the formative stage so that it is an integral part of the SFP process not a later inclusion.”

12. The equality duties were summarised, but the report added that they did not prevent the making of difficult decisions on service reductions, although the decisions had to be as fair as possible and based on robust evidence.
13. The next steps for the full assessment process were set out; they included an EIA Panel review of cumulative impacts on 12 January, which did not take place on that date, and Divisional Directors of Resources, DDRs, were to decide which of the 81 requiring a full equality impact assessment, EIA, should have priority for that purpose.
14. Organisations affected by the cuts were telephoned to arrange meetings. The Council’s statements were silent as to who made the specific decision which underlay the 18 January letter, but Mr Holbrook explained that it was made by the Departmental Leaders Team, DLT, comprising the Executive Director of Adult and Community Services, three other directors including Ms Charlesworth-May as Director of Integrated Commissioning, and also Councillor Dixon.
15. The letter of 18 January 2011, addressed to Mr Price, the full-time manager of PFL, told him that Lambeth had to make significant and immediate cuts to its spending; Adult and Community Services had had to review every contract and make difficult decisions. It continued:

“As you will be aware your organisation currently provides the following services under contract which run until 31<sup>st</sup> March 2011:

- services to people with a learning disability
- self advocacy to support people with a learning disability
- user involvement worker.

We regret to inform you that the above contracts will not be extended beyond the 31<sup>st</sup> March 2011.”

(Some of the services referred to were provided under grant and not under contract). Applications could be made for assistance from a transitional fund; there was an opportunity for discussions; PFL was thanked for its contracted work and wished success in the future.

16. So at this stage there had been no EIA.
17. The Claimant contends that this decision was not in substance just a decision to stop funding PFL to provide services for it; it was a decision to stop commissioning at least in part the type of services provided by PFL, and in any event there was no other

provider which comprised PWLD themselves. Lambeth said it was a decision that it was not going to fund PFL to provide services because of the basis upon which PFL did business, its existing business model, but it wanted to discuss with PWLD the services they wanted, and had reached no final decision as to what the replacement services would be. That is an important bone of contention. To PFL, the questions of who provided the services and what services were provided are inextricably or very largely interlinked given the services provided and by whom in PFL. The Claimant says that the upshot of the decision was that the particular role of PFL as an organisation for PWLD run by PWLD ceased by the end of March; a User Involvement worker, initially engaged for 6 hours and later 12 hours a week could not provide the self-advocacy and other support, eg at the LDPB, which the 35 hours provided by PFL did. The services of the PWLD volunteer was lost; the Friendly Group ceased to exist.

18. There was a meeting on 25 January 2011 between two members of the Lambeth commissioning team, Ms McTeare, Assistant Director of Commissioning Health and Well Being, and Mr Lebon, Senior Joint Strategic Commissioning Manager Learning Disabilities, Health and Well Being, and Mr Price of PFL, which discussed the reasons for the decision and transitional funding. Mr Price said that he was clear to them that PFL would have to close, and that no other equivalent services were available to Lambeth PWLD. But Lambeth was clear that the 18 January decision would not be changed. Ms McTeare saw the import of the discussions in a slightly different light: Mr Price said that PFL might not now be viable, but he was going to apply for funding from other sources, although he had been turned down in the past.
19. PFL received £10,000 transitional funding in two tranches, but, to PFL, that really only helped with the run down and closure costs. The expressed purpose of the Council in providing that sum was to enable PFL to “restructure/move to a new business model and the costs associated with the downsizing of the project”. The Council contended that PFL had raised the prospect, and the Council thought it could happen, that PFL would continue in a different form, performing some of the same functions, but with different sources of funding.
20. In January, Ms Looney prepared a further report for the Cabinet meeting on 7 February 2011. Her report was described as an “initial cumulative equalities review” of Lambeth’s proposed savings. It had been carried out alongside the service and financial planning processes, and provided “an initial overview assessment of the impacts”. It was just at the start of the impact assessment process, and as individual proposals were taken forward, they would be subject to further assessment. Several would require individual EIAs developed at departmental level. By this time the number of cuts proposed had fallen to 107, and 38 gave rise to equality issues, 21 of which included disabilities, of which 8 were in Adult and Community Services. Her report was reviewed at an informal cabinet meeting and considered at a special meeting of the Corporate Equalities Impact Assessment Panel, at which departments had to describe to the Panel, which included councillors, trade union representatives and members of the community, what the changes were, what impact on “equality groups” there might be and what mitigation was proposed for any adverse consequences. Minor changes in respect of this proposal were made and the Panel agreed it.

21. The revised Appendix to the report, by the time it reached full Council on 23 February, and may be on 7 February as well, showed savings of £125000; it was described as “Commission day centres and befriending through hubs, rather than individual organisations. This will mean fewer outlets” and the mitigation proposed was “An information, advice and advocacy hub will be commissioned to provide a well-resourced and advertised one stop service offering increased accessibility to a wider range of client groups. A full EIA is required in line with departmental EIA processes”. The report was one of a number of appendices to the full papers in relation to the service and financial proposals across Lambeth. It was agreed on 7 February in whatever form it then was. The most notable changes are the reduction in savings from £150,000 to £125,000, and the inclusion of the reference to a full EIA.
22. Meanwhile by 2 February 2011, Mr Lebon had prepared a “Full Equality Impact Assessment report” on the de-commissioning of services provided by PFL. The Claimant, and PFL, were not aware of this at that time. Ms McTeare and Ms Charlesworth-May were two of the three who signed it off. “It was proposed to decommission services provided by” PFL with effect from 1 April 2011. “This decision has been taken as a direct result” of cuts to the Adult and Community Services budget of £10m. Ms Markus submitted that this showed the decision had already been taken, and was not a proposed decision.
23. The EIA described PFL, and set out the work it did:

**“People First**

People First Lambeth is an independent charity which supports people with learning disabilities to speak up for themselves. It runs self-advocacy groups for adults with learning disabilities and supports their inclusion as partners on the Learning Disability Partnership board run by Lambeth First, the local strategic partnership. People First also supports adults with learning disabilities to participate in consultation exercises and provide feedback to inform commissioning and procurement across health and social care in Lambeth.

The roles of user involvement worker and manager in People First were commissioned by Adults’ and Community Services and NHS Lambeth jointly.

ACS has undertaken to support People First through a transitional process in order to determine its future direction.”

24. The manager’s role was to support the twelve PFL directors who all had learning disabilities, and were elected annually by PFL members, in contributing to the delivery of services to PWLD. The user involvement worker helped the six PWLD representatives to participate as partners in the Learning Disability Partnership Board, LDPB. He assisted a forum of PWLD, the Friendly Group, to contribute to the views which the representatives could take to the LDPB. The Council recognised the value

of services which support PWLD to be independent and to have a voice in leading and directing the services they need:

“It is anticipated that many of the groups that have been set up and the representation on the partnership board could continue beyond the demise of the roles currently commissioned by the council and NHS Lambeth. It is proposed that the Friendly Group can be expanded to support people with learning disabilities” in a variety of ways which it listed.”

It continued:

“ACS recognises that adults with learning disabilities require additional support to set up forums where they are able to meet with their peers, organise social activities and contribute to the development of the services they need. The ACS Partnership Board Commissioning Co-ordinator will work closely with the Friendly Group to ensure that people with learning disabilities, including people with profound and multiple learning disabilities and people from black and ethnic minority communities, have full access to the information they need to participate in service evaluation and decision-making processes.

ACS will also seek the input of the Friendly Group into the developments outlined above to ensure that these meet their needs.”

25. The PFL self-advocacy service aimed to help PWLD to be more in control of their lives, to have a voice and to understand their rights.
26. The EIA then referred to the Government’s commitment in 2005 that each locality should have by 2010 a user-led centre for independent living, CIL, which would empower disabled people through a variety of means. It had got this far: “Work has begun to bring together a vision for a Lambeth CIL”. A steering group had been set up. PFL is on it, and its service users could access the CIL. Lambeth expected its CIL to “go live” within two years.
27. It was likely that the number of meetings of the LDPB, and the other partnership boards would be less frequent, which would reduce the support needs of PWLD. There was likely to be less commissioning activity, reducing the work of the user involvement worker.
28. The impact on the range of equality strands which could be affected was analysed briefly. The proportion of PFL users from ethnic minorities was slightly higher than for the Borough as a whole. But the development of the hub and CIL would strengthen the capacity for a wider range of services such as translation; the current fragmented approach, of which the funding of PFL was by implication seen as part, was often a barrier to “culturally appropriate services” because of the cost of providing them to the smaller organisations. There was no disproportionate gender impact. There might be a negative impact on PWLD, but it did not appear that the numbers of PWLD currently reached by PFL was particularly high, and the impact would be limited. The CIL would enable a more cohesive approach to advice and

advocacy. PFL users fell into the age range 19-50, reflecting the age profile of the Borough as a whole. The hub and CIL would also provide a more cohesive approach for advice and advocacy for older people.

29. The EIA concluded that it was not anticipated that the proposal to decommission services provided by PFL would have “a markedly disproportionate effect on adults with learning disabilities who are involved in the organisation.” Sessional support could be provided to those who attended the LDPB. Payment to the five PFL representatives on it would probably not continue. But the Partnership Board Commissioning Co-ordinator would work closely with the Friendly Group to ensure that people with the full range of learning disabilities, many more serious than served by PFL, and ethnic minority groups, had full access to the information they needed to participate in decision-making. The work to expand the role of the Friendly Group would await proposals from PFL. Appended to this EIA was information Mr Lebon had been requested to obtain from PFL in June 2010, and which Mr Price had provided to him.
30. Mr Price was told that an EIA had been done, and would be published on the Council’s website, when he met Ms McTeare and others on 15 February; she also then told him about Lambeth’s intentions for supporting PWLD, and a possible role for PFL users in training staff in dealing with PWLD. (It appears that it was published towards the end of March). Mr Price said in his statement that at this meeting Ms McTeare had said that the Council did not know what PFL did. Ms McTeare says that she told Mr Price that an EIA had been done which would be published on the Council’s website.
31. Ms Markus for the Claimant contended that this EIA was irrelevant to the case since she contended that it did not form part of Lambeth’s decision-making, and was never before the Cabinet or Council, whatever use officers may have made of it. Mr Holbrook said that it was considered by the decision-makers.
32. On 23 February 2011, the budget was agreed at a meeting of the full Council. It resolved “To adopt the budget as set out in this report, which, for the avoidance of doubt, includes: 1.The growth and savings proposals set out in Appendices 3 to 6.” Appendix 4 listed the new savings proposals for the years 2011/12 to 2013/14. The Adult and Community Services Department savings included “Advocacy” £125000, and this is agreed to be the reference to the savings which include those from the cessation of funding to and contracts with PFL, after some reprovision of services in a different way. Appendix 6 described the ACS proposals for the reduction in core “Advocacy” services. Annual spending on non-statutory information and advocacy services, such as those provided through PFL, ran at £880000. The net savings were the result of a gross reduction of £468000, and the gross cost of reprovision of some services in line with the Information, Advice and Advocacy Strategy. PFL is not mentioned by name.
33. There is little description of what is to be closed or lost, but there is some description of what is to be provided instead:

“It is planned to procure a “hub” which offers advice and information to support people in the community, including advocacy, support and advocacy in care homes, advice and support to minority communities, and support for self funders. The services affected within this proposal are those provided within the voluntary sector offering advice and information to people with support and care needs in the community. Current contracts broadly cover the areas of befriending, day centres with or without advice provision, and information services.”

34. The expected impact on the service was as follows:

“There will be an impact on the number of service “outlets” or geographical availability. Overall, there will be a re-focussing and prioritisation of service delivery, with more efficient use of resources. Advocacy and advice will be available to vulnerable Lambeth citizens in the re-commissioned service, with a re-focus on the needs of older people and the inclusion of self-funders.”

35. Customers would be affected by the reduced number of outlets for support and advice services; there was ongoing consultation with users about the hub. The concern expressed by some voluntary organisations at the loss of funding was mentioned. EIAs, it said, had been developed according to Council policy. This is a reference to the February 2011 EIA, but it was not itself part of the reports or Appendices presented to the Council for this meeting.
36. Not long before this there had been a meeting, on 17 February 2011, between Ms McTeare, Mr Price, and a number of users of PFL services, at which they heard an outline from her as to how the Council would support PWLD in attending LDPB meetings, engage in commissioning and activity and in the provision of training.
37. A written proposal, under the title “Project Outline: AWLD Engagement in Commissioning and Procurement Processes and Training Staff”, was sent by her on 21 February 2011. It recognised there was a role for services which supported AWLD to be independent and active citizens in Lambeth. This would require additional support in order to set up forums where they could meet, organise social activities and contribute to the development of services in Lambeth. A Partnership Co-ordinator role was described, various forums for AWLD could be developed, with the LDPB becoming a smaller meeting. The project wanted to put arrangements for effective “service user involvement” in place. It would support the inclusion of PWLD, including people with profound learning disabilities, and those from ethnic minority communities, to participate in various ways such as monitoring and evaluating commissioned services, providing learning disability awareness training to public sector workers with whom they had dealings, developing a Lambeth forum of PWLD, and providing opportunities for them to have paid roles. The Co-ordinator would work closely with the Friendly Group so that those with profound disabilities and from ethnic minorities would be able to participate equally. Additional support might be required and provided through the sessional employment of a user involvement worker. The generally favourable outcomes of the proposal were then listed.

38. The Friendly Group responded on 23 March 2011, with a variety of suggestions, including that they needed a good independent support worker. Ms McTeare emailed Mr Price to say that this response was not what was expected; it lacked detail and realistic costings. It required rent for premises and permanent staff which was not what the Council had in mind at all.
39. At the end of March most of PFL's services had ceased. Litigation was already in the air. The decision of 18 January was challenged in correspondence on behalf of the Claimant; she wanted PFL's funding restored within 14 days.
40. On 2 April 2011, Ms McTeare drafted a further EIA for the purpose of ensuring that the new Adults WLD, AWLD, services did not breach the equality duty in s149 of the 2010 Act. It was in draft because service users and providers were to be consulted. The EIA reviewed briefly the services provided by PFL, the money it had received and where its expenditure took place: well over two thirds on staff, with premises as the next highest single cost. They had had some 50-60 service users a month with 2-3 new referrals; a disproportionately high number lived in the Brixton area. The services proposed were: self-advocacy support from a new user involvement worker on a sessional basis, whose tasks would include developing a wider forum for people with learning disabilities, representative of the broad and diverse range of needs by age, location, race and so on, and supporting the forum at the LDPB; engaging AWLD in the commissioning of services; disability awareness training; developing the Centre for Independent Living, CIL, and hub.
41. The benefits of doing this were summarised: including building on the work of the Friendly Group to bring in those with greater degrees of disability, carers of children, and representing people in all areas, not just Brixton. Some of the PFL groups could continue through support of the User Involvement Worker, UIW, and by charging for and selling services. The way in which PFL delivered its services was seen as beneficial to those who used them but they were costly, and not as good value for money as the proposed changes would be.
42. The disadvantages were that the services provided by the PFL staff would not be provided and could not be made up by the UIW, in 6 hours a week; some of the PFL groups might not continue without raising other money e.g. by charging. The PFL services had been particularly relevant to advancing equality of opportunity and fostering good relations between those with and those without learning disabilities. But that would be mitigated by the UIW, an expanded role for the forum, and by the CIL and hub.
43. This outcome was justified by Lambeth's needs to make significant savings across its whole budget, and therefore to the Adults and Community Services budget; Lambeth faced a cut of £10m in 2011/12 with more in the two subsequent years. Lambeth's spending on AWLD had been relatively high compared to other comparable boroughs, and compared to its spending on other equality groups. These were not services required by law; they were relatively expensive for those who used them, and were used by those aged 18-50 in the Brixton area. It could not do more in the current financial climate.

44. In a letter dated 12 April 2011 from Lambeth's solicitors to the Claimant's solicitors, they explained that in deciding where the budget cuts would fall, the Council had to have regard to its equalities duties with particular regard to the disability equality duty. These were addressed in the February EIA, which it was said recognised the services provided by PFL but also their limited reach. There had been a review of the provision of information, advice and advocacy services for disabled and older people in Spring 2010; as a result Lambeth would commission an information and advice hub; it would continue to commission advocacy services in certain forensic contexts but would "not be commissioning self-advocacy services". It was consulting on the proposed CIL.
45. However, Lambeth's solicitors' letter of 21 April 2011 to the Claimant's solicitors told them:
- "Our client has decided to set aside its decision to decommission the type of services that it previously commissioned from PFL. It will continue to draw up a draft outline for the types of service that it intends to commission or provide and it will draw up a draft equality impact assessment (EIA) regarding the proposed new services. This process is anticipated to take 4 to 6 weeks and it will involve discussing drafts of both the outline and the EIA with service users. These discussions are intended to include service users of PFL together with other adults with learning disabilities..."
46. The letter stressed however that this did not mean that Lambeth was "going to continue to fund PFL either in the short or long term." PFL's funding had ended. Interim support for those who used PFL's services, and others, would continue until the new services had been finalised. A sessional worker would be appointed to support PWLD at meetings of the LDPB, Friendly Group and others. This was not a decision to set aside, stressed Mr Holbrook, the decision to decommission those services from PFL.
47. In a letter of 3 May 2011 to the Claimant's solicitors, Lambeth's solicitors informed them that it would be drawing up a draft EIA for the proposed new services, and again rejected the notion that only PFL could provide the services which Lambeth might decide to commission.
48. Both in respect of this letter and one dated 12 May 2011, the Claimant was critical of Lambeth's request for information as to what services, other than the support worker, PFL thought were essential, and for PFL's Management Committee Minutes and report for the year ended March 2011. Lambeth wanted to understand better what services PFL had provided, the better to "reshape" its services for AWLD. This was said to show that the decision challenged had been reached on the basis of admittedly inadequate information.
49. In May 2011, the UIW was appointed; she is employed by an organisation independent of Lambeth. But the consultation process over the alternative services to be provided was continuing still in July. A draft EIA pending consultation had been prepared by early June 2011. Its description of the services provided by PFL and of the proposed services, its analysis of the advantages and disadvantages, and the

justification very much foreshadow what appeared in the later version which I set out in paragraphs 55-64.

50. Not surprisingly, the Claimant, PFL and other users took issue with some of its assessments and comments; their main theme was that the proposed services and 6 hours a week, as then proposed from a UIW, could not match what PFL provided and so there would be a lesser, and in some areas, no replacement, service. The Council had been unduly optimistic in what it thought could be achieved. The Claimant and others missed the support for self-advocacy, and awareness training. PFL gave PWLD some control over the provision of services. The EIA then turned to the implementation and review of the proposed changes.
51. On 28 July 2011, permission to apply for judicial review was granted after a hearing lasting nearly a day. The Claimant did not pursue her application for interim relief.
52. On 9 August 2011, Lambeth sent a letter to the providers of services for AWLD, referring to a document seeking the views of AWLD on a draft plan for new services. There were to be two meetings with AWLD. The first part of the meeting would be run by the Learning Disability Forum for the purposes of discussing services, followed by a second part at which their views would be sought. Ms Markus pointed to the subject matter of the consultation: “The consultation is about what support there is to help you be involved in the Partnership Board and other Council meetings. We also want to hear what support you might need if you helped us to make sure the council is doing a good job”.
53. People would be there to help them understand what was said and to express their views. A questionnaire with five questions was prepared and sent out at the same time. Those who did not go to the meetings could fill them in as well. They asked whether the consultee used the support services of PFL, what support they needed to get involved in decision on matters of importance to them, including somewhere to meet others with learning disabilities. They were invited on the form to add anything else they wanted to say. The Claimant was critical of the process, along with others. Its simplicity was criticised by Ms Markus but Mr Holbrook pointed out that its aim was to obtain the views of those with learning disabilities, in association with the two meetings. The two meetings were held in August.
54. A report on the consultation, accessible to those with learning difficulties, was produced in September in a form more readily understandable by PWLD. The purpose of the consultation had been to know about how people wanted to be involved in developing services, and how they wanted the Partnership Board and the new forum to work, and what support they needed to take part in this. Some of the 67 responses were from the users of PFL services and some were from those who used other sources of support and not PFL; leaving aside the “don’t knows”, more had not used PFL than had. Some of those who had used them said that they would miss them, and the groups they ran.
55. A draft EIA, concluded as a draft on 23 August 2011, was considered by the Corporate EIA Panel on 30 August. The report to the DLT, on 31 August 2011, said:

“Following significant concerns raised by the users of the service, their families and carers, independent advocates and a legal challenge the Council agreed to re-consider its decision. In that context the Council has taken steps to consult with existing and prospective service users and their carers to establish what an appropriate service might be. The consultation has now ended and it is proposed that the Department commissions a User Involvement Worker to support people with learning disabilities to develop a forum, which will inform policy development and decision making in respect of learning disability services.”

56. The report proposed that a UIW be commissioned on a sessional basis for, now, 12 hours a week, which would over a year cost £22,000, saving £18,000 on the service provided by PFL. VoiceAbility would continue to provide the service until March 2012; the service thereafter would be provided after competitive tender. The key concern expressed by people who used PFL’s services had been the anxiety about losing the UIW’s support. The proposals had been developed in conjunction with PWLD including those who used PFL’s services. The consultation response showed that some of the users of PFL’s services were unhappy and angry that Lambeth had stopped funding it, but “the overall response to the new services is very positive”.

57. It commented on the EIA, attached to it, as follows:

“The Equality Impact Assessment attached at Appendix A gives clear information about the impact of this service provision, as previously mentioned, this has been further validated through the consultation process that has been put in place with people with a learning disability, their carers (both formal and informal) and specialist organisations providing services in Lambeth. We have listened to the concerns that people expressed in relation to the de-commissioning of the role of UIE with PFL, and have put this post in place to ensure that there is appropriate support to people with a learning disability to participate meaningfully in the Lambeth LDPB.”

58. There was verbal comment by Ms Charlesworth-May on a concern raised by the EIA Scrutiny Panel about the level of involvement of young black men. The report’s recommendations were accepted. This decision by the DLT is challenged in these proceedings.

59. The EIA stated that its purpose was to ensure that, with the ending of funding for PFL, the new services for AWLD did not breach s149 of the Equality Act 2010. So it described the activities of PFL and their cost. It set out the services which were being developed: self-advocacy support with the UIW, who would also develop a wider forum for PWLD, representative of the “broad and diverse range of people with learning disabilities in Lambeth in terms of location, age, degree of disability and race etc.” Carers would also be involved. The work of the LDPB would be supported. AWLD would be involved in staff recruitment, and disability awareness training. There would be a CIL and an information hub. Next, the EIA set out the data sources used, followed by the results of the public consultation.

60. The positive and negative impacts were assessed on a variety of protected characteristics. The benefits and disadvantages were summarised as follows:

- “Lambeth intends to expand its involvement of people with greater degrees of disability and their carers, together with the carers of children with learning disabilities; also to ensure that there is representation within the group of people who live in all areas of the borough, not just SW9. The objective being to support a forum that is representative of the broad diversity of people in Lambeth with learning disabilities.
- There is scope for some of PFL’s groups to continue, providing they raise money such as by charging for services and by selling their services which is something the Training Group, for example, may be able to do. This would be challenging but, with the support of the user involvement worker, would enable adults with learning disabilities to have financial independence.
- Although PFL’s services have been beneficial for its service users, the overheads that come with the funding for an office and for salaried staff have rendered the model an expensive one. The proposals are intended to secure better value for money.”

61. The changes in service provision and delivery outlined above may have the following disbenefits:

- “PFL’s staff, two of whom were full time, will no longer be available to provide support and there will be a limit to what the user involvement worker, who is expected to be employed for 12 hours per week, will be able to achieve.
- Some of PFL’s social support groups, such as the Relaxation Group and People Group, may not continue to operate although it may be possible for some groups to do so, for example by charging an admission fee; the user involvement worker may be able to assist these groups with setting themselves up. The Training Group may be similarly supported.”

62. The services that were provided by PFL were perceived to be particularly relevant to advancing equality of opportunity for adults with learning disabilities and to fostering good relations between those with and without a learning disability, primarily through the user involvement work.

63. In this regard the loss of PFL services was mitigated by the following developments which are described in detail in section 1.3:

- “The employment of a user involvement worker who is expected to work with adults with learning disabilities 12 hours per week, subject to review.
- An expanded role for the forum such as by having an input into commissioning, procurement and contract monitoring activities.
- The setting up of an information hub and a Centre for Independent Living later this year.”

64. The justification commenced with the need to reduce the spending budget, to which I have referred above, the £10m savings in Adult and Community Services for 2011/12:

“However, ACS savings for 2011/12 formed a lower proportion of the overall budget than was the case for other departments, reflecting councillors’ desire to protect services for vulnerable adults. Of the 10million, more than 30% has come from savings on internal staffing costs.

In recent years Lambeth’s spending on adults with learning disabilities has been relatively high compared to spending per head by comparable boroughs. Information on this compiled by CIPFA (the Chartered Institute of Public Finance and Accountancy) is provided as a separate document. It is also relatively high compared to the per head amount spent on other equality groups in Lambeth.

The services that were provided by PFL were not statutory services, ie services that Lambeth was required to provide by law. Their services were also relatively expensive for the numbers of people who used them (which is not to say that they were not valued and useful for those who did). PFL’s services were used by people aged 18-50 who lived in the SW9 postcode area. The main service provided by PFL was self-advocacy and Lambeth intends to continue to provide this by employing a user involvement worker for about 12 hours per week.

Lambeth would like to do more to assist adults with learning disabilities but it has to make policy decisions in the context of a very challenging financial climate.”

65. The EIA then turned to the implementation and review of the proposed changes.

66. The EIA Panel had raised a number of queries about the draft EIA, to which officers produced a response. These included noting explicitly that the new services were not to be a like for like replacement for PFL’s services, but rather to develop new provision, “which involves people with greater degrees of disability and their carers, from all parts of the borough.” Self-advocacy would be supported through the new UIW. The activities and hours of the UIW would be kept under review. Focus groups had been held with young black men most of whom had not previously been involved

with PFL, but who were interested in receiving support with their learning difficulties; the Council was seeking to bring a “diverse range of residents with learning disabilities into the council’s new services”.

67. The EIA, which had been in draft at the 31 August 2011 meeting, was later finalised on 20 September 2011. There were a number of changes from the draft to reflect what the Panel had said. Ms Markus said that it was not until the hearing that any reliance had been placed on this version of the EIA by Lambeth. It added that Lambeth’s intention was “not simply to replicate the services provided by People First but rather to develop provision which involves people with greater degrees of disability and their carers, from all parts of the borough”. Further on, this was expressed as service provision which could fully support the involvement of PWLD across the borough; Lambeth would work to involve those people with profound and multiple learning disabilities. The UIW would aim to make the new services accessible to the broad diversity of adults with learning disabilities.

“This is built into the user involvement worker’s job description and current activities such as the outreach work highlighted above are designed to involve people with a range of learning disabilities. The user involvement worker is using a variety of communication tools to ensure that services are accessible and inclusive. The learning disabilities forum will be meeting in different parts of the borough and at different times and days of the week to maximise opportunities for people with learning disabilities to participate.

Lambeth residents with learning disabilities are being consulted on the development of these new services.”

68. The previous consultation process was described in a little more detail, as follows:

“Invitations to two consultation events were sent out with the questionnaire and 25 people attended the first event and 40 people attended the second. Organisations including Lambeth Mencap have also been involved in the consultation. In addition, a focus group has taken place through L’Arche Lambeth, a community of people with and without learning disabilities. A second focus group with young black learning disabled men was arranged through Lambeth College. In addition, we carried out 10 telephone interviews direct with service users.”

69. There were minor changes to the description of benefits and disbenefits: the broader base of service recipients was mentioned, along with the transitional funding given to PFL, and an approximate timetable for the hub and CIL.
70. Ms Charlesworth-May added in her third witness statement that PFL’s services were “very useful for those who used them”. This is a qualified compliment since the Council’s concern was in part directed at those who did not do so. It had an expensive business model, because of staff and premises overheads, which had become unaffordable for the “relatively small number of PwLD who used PFL

services...given Lambeth's desire to secure value for money in the current financial climate". Almost all of the Adult and Community Services budget went on meeting statutory expenditure; and savings had to come therefore from the relatively small area of discretionary expenditure, much of which was already spent on those who had statutory care packages. It was recognised that the UIW could not provide the extent of services provided by PFL.

### **The statutory framework**

71. Section 49A Disability Discrimination Act 1995 (DDA) provides:

“(1) Every public authority shall in carrying out its functions have due regard to-

- (a) the need to eliminate unlawful discrimination and victimisation;
- (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
- (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.”

72. Section 149 Equality Act 2010, which replaced the provisions of section 49A DDA with effect from 5<sup>th</sup> April 2011, provides:

“(1) A public authority must, in the exercise of its functions, have due regard to the need to-

- (a) eliminate discrimination, harassment, victimisation and 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.

...

- (3) Having due regard to the need to advance equality of opportunity 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) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) 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.
- (5) 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.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act. ”

Disability is a relevant protected characteristic.

### **The challenge to the decision of 18 January 2011**

73. The Claimant recognised that the decision complained of might in fact have been taken on 7 or 23 February, but her ground of challenge remained the same. No point arises on the precise date of the decision, though it may affect the response. The decision complained of is the decision to stop funding PFL, which she said was the same or essentially the same as a refusal to continue to commission the type of services it provided. There was no separate decision on the decommissioning of the type of services provided by PFL, and the February EIA had contemplated that some of the services would be provided by other means. The decision was acted on. It was not left to the DLT to decide how to act on the budget cuts, with an EIA at that later stage; there was insufficient flexibility left in the decision for that to happen. It had not been suggested until the hearing that the decision to cease funding PFL was a reversible decision; and by the end of March, it had almost entirely ceased operating.

74. There were parallels between the part played by PFL here, as the only body providing services through PWLD themselves, with the decision in *R (Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2062 (Admin), Moses LJ as a first instance judge, in which the ending of funding provided to the Southall Black Sisters to combat domestic violence engaged the equality duties since black and ethnic minority women, to whom the Sisters provided services, were disproportionately likely to suffer domestic violence; the cessation of funding to the group disproportionately affected those to whom they provided services.
75. Ms Markus contended that there had been no due regard to the requirements of the disability equality duty in s49A of the 1995 Act, and so the decision was unlawful. There had been no consultation with affected groups, a necessary part of having due regard to the statutory duties. No minutes described how in January the issue had been considered by those who took the decision. The February EIA, though referred to, was not before the Council when the 63 councillors reached their decision on the budget. In any event, it had not covered all the types of service provided by PFL, in particular the self-advocacy groups. Although there were sections which dealt with self-advocacy, they were confined to those activities which enabled PWLD to control their lives and to influence the services provided, and how they were treated, and did not extend to any broader activity based groups. The letter of 12 April 2011, which said that the Council had reviewed services for PWLD and others, was clear that self-advocacy in the broader sense of the various activity groups would not be commissioned.
76. Mr Holbrook submitted that the decision to cease funding PFL was reasonable in the circumstances. Subject to compliance with the equality duties, that is clear but no answer to the claim. He submitted that it was reasonable to do so without considering what services and how would be replaced, since the decision was based on the cost of the PFL business model as the means of their provision.
77. The decisions should be seen as a sequence: there was no more than a screening EIA in the first place; after the budget, officers were dealing with its implementation. Ms Charlesworth-May said in her third witness statement that there was sufficient flexibility in her delegated decision-making after the budget to deal with the provision of whatever services were found to be necessary were provided. Neither the January decision nor the budget closed off any decisions on the provision of services to PWLD other than that PFL would not provide them on its existing business model. Regard had to be had to the huge volume of paperwork involved if the full Council at the budget were to have had all the EIAs which went with the budgetary decisions. There were subsequent discussions with PFL, actual or attempted, in which information and views were sought. This led up to a final decision on 31 August on the services to be provided to PWLD - and others since a broader approach to who needed support had been taken. The September 2011 EIA was the written reflection of earlier Panel conclusions. The Claimant's case broke the sequence of iterative decisions into artificial stages. The equality duties, which did not have to be satisfied in the January or February decisions, had been satisfied in the 31 August decision.
78. This approach was in line with the comment of Lloyd LJ in *Barnsley MBC v Norton* [2011] EWCA Civ 834 at para 26 that a public authority's obligations under this Act are not necessarily to be discharged by a decision once and for all at the outset. In

relation to budgetary decisions, Mr Holbrook relied on what I said in *R (Fawcett Society) v Chancellor of the Exchequer* [2010] EWHC 3522 (Admin), para 9, a strongly contested permission application concerning the national budget:

“So far as the public spending envelope is concerned, Miss Monaghan submits that it is not possible to challenge the limits set when the precise distribution of funds within the departmental Budgets comes to be dealt with and if that limitation means that an otherwise remedial gender inequality exists then there is at least an arguably unlawful approach by the government. Again, for my part I cannot see that if the analysis of the individual items on the line by line basis that I have seen is carried out, that there is an answer to it from the fact that there is a limit which has been set by the public spending department. Not merely is there, as Mr Eadie accepted, no door that is irretrievably closed, the reality is that a departmental Budget will have considerable scope for the reallocation of monies within it so that if there is an otherwise irremediable gender inequality that an analysis of the public spending limit at an earlier stage would have avoided, remedies are available to enable that to be dealt with.”

79. He also drew parallels with *R (JG and MB) v Lancashire County Council* [2011] EWHC 2295(Admin), in which at para 50 Kenneth Parker J said:

“What, in fact, has happened in this case is that the decision-maker has taken a preliminary decision in relation to its budget, fully aware that the implementation of proposed policies would be likely to have an impact on the affected users, in particular, disabled persons, but not committing itself to the implementation of specific policies within the budget framework until it had carried out a full and detailed assessment of the likely impact. In my view there is nothing wrong in principle with such an approach and nothing inconsistent with the duties under the DDA. The economic reality was that to meet imperative needs of reducing expenditure it would be extraordinarily difficult to avoid an adverse effect on adult social care. But there remained flexibility as to how any such effect on disabled persons could be minimised and mitigated, and I am satisfied that the Council kept an open mind as to the precise policies that would be implemented.”

80. That notwithstanding, Mr Holbrook submitted that the EIA of February 2011 had been before the decision-makers, Ms McTeare, Mr Lebon and Ms Charlesworth-May who took, he said, the decision on the savings which had to be made. It had considered the reduction in support for PWLD and the loss of self-advocacy groups.

### **The challenge to the decision of 31 August 2011**

81. Mr Holbrook argued that any defects in the earlier decision had been overtaken by this decision. Ms Markus contended that even if this decision were lawful, the earlier decision should be quashed since the later decision only dealt with the UIW; the

decision not to fund PFL remained; it was not even kept as a potential provider, at least not on its existing business model. This decision was not set aside in April, when the Council set aside its decision not to commission the same type of services. There remained the serious impact on the claimant, and others, of the lower level of service and the services which were omitted: the degree of UIW support for attendance at the LDPB and elsewhere, a variety of groups from the relaxation group to the Friendly Group had ceased, and the services would not be run by PWLD.

## **Consultation**

82. The decision was challenged first on the ground that the duty to consult on what services were to be provided had been breached. This duty arose from the legitimate expectations derived from promises made in a number of documents, general and specific. The general were Lambeth's own EIA guidance, which said that the EIA process required consulting and involving citizens in key decision-making; Lambeth's "Compact" of 2001 with the voluntary sector on its involvement in decisions affecting them. The specific documents were letters of 21 and 27 April and 3 May, Ms Charlesworth- May's second witness statement dated 25 July 2011, the skeleton argument of Mr Holbrook at the permission hearing, and the report to the DLT itself. Ms Markus also relied on the fact that Lambeth had tried to consult on this new decision.
83. This duty was breached since the consultation did not take place at the formative stage of the decision-making: the consultation was only about whether or not to have a UIW and if so for how many hours weekly. There was no consultation on whether to commission the type of services provided by PFL for self-advocacy, the Friendly and other support groups, the degree of participation, training awareness and so on, and none on whether to implement the funding cut to PFL.
84. Insufficient information was provided to enable reasonably informed responses. There was no specific proposal; there was no comparison of the services provided by PFL and those which were contemplated, nor explanation of the impact of the differences. The draft EIA was not included in the consultation. It was not until October that the claimant received a copy of the September EIA. Mr Price was never contacted over it.
85. Lambeth had also failed conscientiously to consider the responses to consultation. The thinking was already advanced beyond the subject matter of the consultation, as the description of the services in development in the draft August EIA showed. The comments on the loss of PFL's services were not explained to the DLT or in the Report on Consultation, since it confined itself to what was said about the UIW, and general comments that there was anger from some that PFL's funding had stopped. And the Report did not point out that the consultation had not asked for comments on the loss of PFL services.
86. Mr Holbrook said that there had been no promise to consult on the loss of the PFL contract and grant, but only on the provision of new services. It would have been pointless to consult on whether PFL should provide services since it had already been decided that it should not. It was for the decision-maker to decide on the scope of the issues to be consulted on, subject to fairness, and the scope had been set out fairly in the letters and questionnaire. But there was no point in asking users or PFL if they

regretted that it or others could not provide all the services that were being provided, since that was obvious. What Lambeth needed to know was what the users' priority needs were and what the UIW could achieve. The questions did permit responses however about other activities. The report on consultation was fair and did point out that some regretted the loss of PFL; it was referred to in the report to the DLT.

87. There was no statutory obligation to consult on the EIA; and although there was no wider circulation of it to AWLD, the correspondence between the parties did show that PFL was consulted.

### **S149 Equality Act 2010**

88. Ms Markus submitted that this duty was engaged by the decision and the EIA lacked the substance and rigour required for due regard to be given to the duty. What mattered as much as the assessment of the services provided was the assessment of the services lost. What PFL did was not properly understood or analysed. There was no evidence for those preparing the EIA about the impact of the loss of PFL services, or of those which were not replaced, or of what could and could not be achieved, in comparison, with a UIW for 12 hours especially given her intended wider remit; there was no inquiry into the basis of the belief that PFL could raise money for some of its activities from other sources. There was no clear analysis of the mitigation which the hub could provide.
89. The duty was not approached with an open mind, since Lambeth had already decided that it would not fund PFL, and would only replace user involvement services. The Scrutiny Panel's comments on new service users were not before the decision-makers.
90. Mr Holbrook submitted that the EIA dealt adequately with the loss of the PFL services which were not being replaced. The unhappiness and anger of some at that was noted. Lambeth had simply not ignored the impact of the loss of services from PFL. An EIA did not have to be very detailed. The draft EIA, although attached to the DLT report on the permanent use of a UIW, was not simply for that purpose. Its purpose was to see if that would be sufficient to have due regard to the equality duty arising out of the termination of PFL's funding. The lawfulness of Lambeth's acts in terms of the duty in s149 should be judged by the final EIA of September.
91. No relief should be granted anyway, because the Court should trust Lambeth to put right what the Court might find it had done wrongly.

### **Conclusions on the challenge to the 18 January 2011 decision**

92. I have not found it easy to follow the decision-making processes involved here. I am prepared to accept that a proper distinction can be drawn between stopping grants and funding to PFL and stopping funding the services it provides. The former would not of itself engage the equality duties; the latter plainly would do so. The fact that some of the people who provided the services in PFL were PWLD, who helped themselves as PWLD through that work, and may have provided more informed help to those who received PFL services, would be a factor in assessing the impact on equality duties of decommissioning the type of service PFL provided. I see no real parallel with *Kaur and Shah* referred to in Ms Markus' argument; the issue in that case was

still about the impact of the loss of the services provided; the error was to fail to appreciate the nature of the impact.

93. The challenge was to the decision of 18 January 2011 in form, and I see nothing unlawful in the January decision confined, as the Council say it should be seen as confined, to the simple question of whether PFL itself should be funded, with the decision on the type of services which might be reprovided and by whom other than PFL, to come later. But in substance, as Mr Holbrook appreciated, the challenge was not so narrowly confined. It was a challenge to whichever of the decisions in January or February led to the cessation of funding for PFL with the result that the type of services it provided largely stopped or were changed very significantly.
94. The true sequence of decisions up to 21 April 2011 is as follows to my mind. PFL funding would cease in anticipation of the budgetary cuts which Lambeth knew it would have to make. This was the decision of 18 January 2011. No decision was made at that stage about what services would replace those which might cease on or about 31 March 2011 as PFL's money ran out. There was some hope and belief on the part of Lambeth officers, well-founded or not, that PFL would remain in existence and continuing to provide services, through charging for them or through raising funds from other sources. This was, rightly or wrongly, what the officers thought the position to be at its meetings with PFL on 25 January, 15 and 17 February, and in the written proposal sent to PFL on 21 February 2011.
95. However, although the decision to cut PFL funding had been made in January, officers understood that a cut in funding to PFL would have equality duty effects on the provision of services, as PFL services ran down and ceased. The duty would be fulfilled in this case by a full EIA, as was recognised from as early as December 2010, and continued to be recognised through the budgetary decision-making.
96. It is at this point that the decision-making process on the cut in the budget, which represented the cut in PFL funding, and the EIA process on the reduction in services got out of kilter. As I discern the position, the Cabinet on 7 February 2011 was dealing with the cut of at least £125000, which represented the funding to PFL, less some generally expressed mitigation. It was told that a full EIA was required, not that it had been done. It had no EIA before it, but confirmed that a full EIA would be necessary for the cut.
97. The full Council on 23 February agreed the budget, which included the detailed cuts down to the level of the £125000 for advocacy services, which is the saving from the cut to PFL less the cost of reprovision of some services in a different way. There is no qualification to this budget to the effect that departmental or sections of departmental budget cuts could be varied within the total envelope of that department, nor did the budget resolution itself contain some general delegated authority to reduce a cut in one area of a department at the expense of a larger cut in another. The resolution was to approve that detailed budget. In that respect, it is different from what I saw as the position in the *Fawcett Society* case. This decision on the cut in PFL funding therefore implies a decision about the cost and hence level of PWLD services which can be provided.

98. The process culminated in the Council decision on the budget on 23 February. It is undeniable that after January, there was a decision which in substance and effect was a decision that PFL type services should largely not be reprovided or should be changed significantly. That was the budget. I say that not just because that budget approved the cut and a form of replacement service, but Lambeth's solicitors' letter of 21 April makes it clear that a decision to decommission the type of service it previously commissioned from PFL had been taken. Such a decision must have been taken for it to be set aside. That points back to the budget as the decision. The officer decision in January on PFL, as it worked its way through the budget in February, led to an effective Council decision, almost as if by default, on the level and type of services to be provided. Although a further EIA was in draft by April 2011, the services provided by PFL had ceased; there appeared to be no prospect of Lambeth's hopes of another source of funding for them or for the provision of services through charging coming about.
99. It is impossible to avoid the conclusion that the budgetary decision was the exercise of the Council's functions. The equality duty was clearly engaged since the decision concerned the type of services which would be cut or reprovided for PWLD as disabled. It follows that unless the regard had by officers can be attributed to the councillors, through the reference to the EIA having been undertaken, no due regard can be attributed to the Council to the disability equality duty.
100. The difference between the full Council decision and the earlier Cabinet decision is what was said about an EIA, and hence in this case about the stage at which the equality duty would be fulfilled. The Cabinet was told that an EIA was required. There is no evidence that they were told about, let alone shown, the EIA which Mr Lebon had prepared on 2 February 2011, even though some officers at least would have known about it. If the functions which engaged the equality duty were exercised by the Cabinet, they could not have been fulfilled since the Council's chosen method of having due regard was through an EIA, which it regarded as still outstanding. The full Council however was told that the EIA procedure had been fulfilled but was not itself shown Mr Lebon's EIA.
101. I shall assume that the content of the Lebon EIA would suffice for satisfaction of the duty. However, I do not regard a decision on a function as compliant with the equality duties, and this would apply to many aspects of decision-making in a public body, if due regard is had by officers, and the different body which takes the decision relies simply on the fact that trusted officers have had due regard. It cannot say that it too has therefore had due regard. It is the decision-maker itself which must have due regard. The one decision cannot be cut up into artificial parcels. I was not persuaded by Mr Holbrook's argument that the Councillors could not realistically have been given all the EIAs to read and absorb for all the budgetary decisions which required full EIAs, and therefore the process, if it was adopted in reality, of leaving the due regard to officers had to be lawful. Instead, the provision of a fair summary of the EIA might suffice for the Councillors rather than the whole EIA, but it would have to cover the essential features of how the duty was being fulfilled. Decisions which created budgets for departments or sections at a higher level so that leeway was created for later decisions on the precise implementation of cuts could also suffice, with the equality duty being considered at the more detailed stage as in the *Fawcett Society* case.

102. I conclude that the decision on the budget cut of £125000 was unlawful since it had no due regard to the disability equality duty. That is not saying at all that a decision to stop funding PFL is itself unlawful.
103. I appreciate that errors can be corrected, but that goes to relief and not to the existence of an error. I appreciate that local authorities can lawfully alter their decisions for many reasons. Lambeth did do so here. This unlawful decision was set aside by the time of the letter of 21 April 2011. It does not matter whether it was set aside because of a desire to avoid a potentially successful challenge or through some delegated discretionary power within a departmental budget to which Ms Charlesworth-May speaks, or a combination of the two. It was set aside and a new decision would be taken on what PWLD needed, in the light of the cessation of funding to PFL. This was not confined to the same precise figures as in the budget, as I understand it, though it would be taken against the background of tight financial constraints. No challenge is made to the lawfulness of the decision embodied in the letter of 21 April 2011. It is that decision which eventually led to the second decision now under challenge.

### **Conclusions on the challenge to the 31 August 2011 decision**

#### **Consultation**

104. The decision at issue was taken by the DLT. That team had within it Ms Charlesworth-May, and perhaps others, who had close knowledge of what PFL did and had been told by Mr Price if they did not, and had had the debate in claim forms and witness statements in these proceedings about what it did. The services provided by PFL were adequately set out in the August EIA. I do not accept the contention that by this stage the decision-makers were unaware of all that PFL did.
105. The consultation issue does not turn on the existence of a duty to consult. It turns on the scope of that duty in this case. I accept that there was no promise or legitimate expectation, from the documents relied on, that PFL or any one would be consulted about the cessation of funding to PFL. It was for Lambeth to decide the scope of consultation; there is nothing unfair about excluding that topic. The Council were well aware of what PFL did, and that its users appreciated the services they obtained from it. The EIA did not require consultation on that point in order to be adequately informed; the EIA shows that it was adequately informed. Lambeth was entitled to treat the issue it was consulting about as the nature of the services PWLD used and needed.
106. I accept that Ms Charlesworth-May's second witness statement and Mr Holbrook's skeleton argument for the permission hearing on 28 July 2011 say that Lambeth was in the process of consulting on the draft EIA, and that no draft of the EIA was circulated to the Claimant or to Mr Price after that date. An early draft was exhibited to Ms Charlesworth-May's first statement of 6 June 2011, expressed to be a draft for consultation. The Claimant, Mr Price and PFL had the opportunity to comment on that draft and did so. The differences between that draft and later versions which I have seen are not so significant as to mean that those people would not have had sufficient information about what was proposed to comment on it or on

the deficiencies of the Council's information or thought-process. I do not read what was said in the second statement or in the skeleton argument as promising that a further version would be consulted on, or that some further formal stage of seeking responses from them was yet to happen. They were reasonably abreast of what the Council was proposing, and were obviously aware of the August consultation process.

107. I reject the argument that insufficient information was provided for reasonably informed responses on that issue. The way in which a council goes about consulting on the question of what services are needed is very much a matter for its judgment, especially as it was seeking the views of PWLD. It was quite unnecessary for a lawful consultation process to provide specific proposals, or to compare PFL services with what might now be provided and to seek views on the difference. Lambeth knew that users of PFL services would wish to see them recreated as nearly as possible. The content of the questionnaires, and the general and specific questions enabled their views and importantly the views of those who had not used its services to be gathered. PFL was in a position to respond to the process even if the questionnaire did not specifically ask for all the information that it wished to and was able to provide. The report on the responses shows that the process provided sufficient information on what was needed.

108. The consultation responses were properly considered. The EIA had not been finalised, and no decision on what the replacement services should be had been taken. The comments on the loss of PFL services were adequately summarised, but it had not been the object of the exercise to obtain views on what PWLD felt about what PFL did, so much as what PWLD needed, PFL users or not. Lambeth certainly had a closed mind to whether it would fund any services through PFL, but that is not the same at all as having a closed mind over what services would be commissioned or from whom. It is clear to my mind that Lambeth did not have a closed mind to what would be reprovided. The budgetary decision on this cut was reversed by a decision taken before the letter of 21 April 2011.

## **Equality duty**

109. Although the 31 August 2011 decision appears to relate only to the provision of a UIW for 12 hours weekly subject to review, the report makes it clear, in its references to Appendix 3, that that is not the only measure being put in place to provide services for AWLD after the ending of PFL's services. What was to be reprovided was determined not only in that decision but in the others referred to in it, supported by the EIA as it was finalised. That is borne out by the August/September EIA which covers the wider measures and does so since its stated purpose was to ensure that, after the ending of funding for PFL, the new services did not breach the equality duty. The August/September EIA is what Lambeth relies on to show that, taking the other measures together with what was to be provided in the August decision, due regard had been had to the equality duty. It is clear from the content of the EIA that it examined whether there were omissions and differences in reprovizion which required remedy because of s149. Its specific purpose was to make good the deficiencies which Lambeth rightly suspected lurked in the way it had considered matters thus far. In looking at the effect of what was to be reprovided, it considered the effect on PWLD of what was not to be reprovided.

110. The nature of the new services in development, the differences in service provision, the limitations in what PFL did, the advantages of the new services, and the losses were adequately set out and understood for the purpose of this duty. The decision not to fund PFL was not the focus of the EIA, rightly; the focus was on the services to be provided. There is no need for very detailed explanations and lengthy analysis so long as the features necessary for due regard to be had are properly understood. The analysis, whether in an EIA or not, does not have to resolve with reasons every issue which a party may raise. It does not have to be a reasoned decision letter. In my judgment, the contents were sufficient to show that the equality duty was fulfilled. No further assessment of the possibility of PFL raising money by charging was required; no detailed analysis of what the hub would do was required. In my judgment, on the issue of whether Lambeth had due regard to its duty, the EIA suffices to show that it did. The changes in September wholly or largely reflect, as I understand it, points already made by the Scrutiny Panel of which the DLT were aware, since Ms Charlesworth-May mentioned them at the DLT meeting. It was more a tidying up exercise after the meeting to reflect what had been known rather than new material of which the DLT were unaware. My decision would be unchanged without them.
111. Accordingly I dismiss the challenge to the second decision. By this time Lambeth had put its house in order.

### **Consequences for the first challenge**

112. I can see no point in granting any relief in respect of the first decision. I have stated that it was unlawful. It is not an effective decision and has not been effective since 21 April 2011 at the latest. True, the decision not to fund PFL remains but that is not an aspect of the earlier decision which I regard as unlawful, yet it is the only basis upon which Ms Markus could suggest that its quashing would have some point. The change in services now results from the decision of 31 August 2011, and the associated decisions referred to in the EIA. That is a lawful decision.

### **Abuse of process**

113. I do not regard this claim as an abuse of process by the Claimant. She can bring it as a PFL service user in her own right and as a person with learning disabilities. The fact that she is a director of PFL, and has an interest in that respect does not of itself debar her from bringing these proceedings. I accept that if she were the nominal Claimant for PFL, chosen to obtain public funding, there would be a case for holding that this claim was an abuse of process on the lines in *R (David Edwards) v The Environment Agency* [2004] EWHC 736 (Admin), Keith J at paras 17-20. This point was raised at a time when the claim was seen, in the way it was formulated and with its continuing emphasis on the funding for PFL, which shaded into the claim in relation to the level of services for PWLD, as directed to funding for the body of which she was a director. But the case was argued in large measure and I have considered it on the wider basis of the change of services for PWLD, which is the true legal issue it raises.
114. However, the claim is dismissed.