



Budget cuts and the equality duty

[R \(Barrett\) v Lambeth LBC \[2012\] EWHC 4557 \(Admin\)](#)

Summary

The High Court dismissed a judicial review challenge to Lambeth's decision to withdraw funding from People First Lambeth (PFL), a charity providing services to people with learning disabilities (PwLD).

The case is the latest in a line of challenges to Councils' budgetary decision-making processes based on the public sector equality duty (now s149 Equality Act 2010) and consultation.

The court held that Lambeth's decision to cut the budget that had funded PFL by £125,000 was unlawful for breach of the equality duty (§102). But in response to a threatened judicial review Lambeth decided in April to 'set aside its decision to decommission the type of services that it previously commissioned from PFL' (§45). This April decision culminated in a decision taken by officers in August to provide different services for PwLD at an annual cost of £22,000 (§56). This decision was lawful and hence the claim was dismissed (§112).

Key Points

1) **Budget making that satisfies the equality duty.** The problem faced by Lambeth will be familiar to many local authorities: when the full Council passed its annual budget in February it did so against a background of expected savings of £40m in 2011/12 (§8, 32). The budget proposed 107 cuts and 38 gave rise to equality issues (§20). Lambeth proposed to discharge its equality duty with regards to services for PwLD with an equality impact assessment (EIA). But because this was not shown to the full Council meeting Lambeth could not satisfy the duty (§100). A public body cannot discharge its duty by relying on trusted officers to have due regard to the duty (§101). The judgment suggests the following solutions:

- **Is there leeway in the budget?** When Lambeth passed its budget there was '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.' (§97) This type of decision has to be distinguished from those 'which create budgets for departments or sections at a higher level so that leeway is created for later decisions on the precise implementation of cuts' (§101) where the equality duty can be considered at the more detailed stage (see *R (Fawcett Society) v Chancellor of the Exchequer* [2010] EWHC 3522 (Admin) & *R (JG and MB) v Lancashire CC* [2010] EWHC 2295 (Admin)).
- **Decision takers can rely on summary EIAs:** It was suggested that any difficulties in asking 63 councillors to read and absorb separate EIAs in



respect of a budget proposing 38 cuts that engaged equality issues could be overcome 'by the provision of a fair summary of the EIA ... but it would have to cover the essential features of how the duty was being fulfilled' (§101).

- **Trusted officers can take a delegated decision:** Although trusted officers cannot satisfy the equality duty if they are not the decision takers they can satisfy the equality duty if they are the decision takers. This is how Lambeth made lawful decisions between April and August (see next point).

2) **Correcting possible/alleged failures:** Where a Council has reason to think that it has not complied with its equality duty before making a decision, it may be possible to remedy any error by setting aside the original decision and ensuring that the equality duty is complied with before reaching a further decision (§112). In Lambeth's case its reconsideration:

- took place 'against the background of tight financial constraints' although with some budget flexibility (§103),
- was at a time when the Council 'had a closed mind to whether it would fund any services through PFL' because the PFL business model was 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' (§§70, 108),
- was lawful because its officers did *not* have 'a closed mind over what services would be commissioned or from whom' (§108) and they made that decision after considering a lawful EIA (§§109-110).

3) **What is a lawful EIA?** The EIA that officers considered in August had set out '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. ... 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. ... It does not have to be a reasoned decision letter.' (§110)

4) **Duty to consult:** '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 ... It is quite unnecessary for a lawful consultation process to provide specific proposals, or to compare ... services [that have previously been provided by a particular organisation] with what might now be provided and to seek views on the difference.' (§107)

5) **Abuse of process:** The claimant was a director of PFL as well as being a PwLD who used PFL services. Lambeth alleged that the claim was an abuse of process because she was a nominal claimant chosen to obtain public funding in a claim concerned to secure continued funding for PFL. The Court did not find the claim to be an abuse of process because of the way it was argued in terms of the level of services to PwLD rather than with a 'continuing emphasis on the funding for PFL'. (§113)

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