



Neutral Citation Number: [2012] EWHC 1520 (Admin)

Case No: CO/915/2012

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 01/06/2012

**Before :**

**MR JUSTICE CRANSTON**

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**Between :**

**The Queen (on the application of Zofia Siwak)**

**Claimant**

**- and -**

**London Borough of Newham**

**Defendant**

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**Helen Mountfield QC (instructed by Deighton Pierce Glynn) for the Claimant**  
**Bryan McGuire QC and Matt Hutchings (instructed by London Borough of Newham) for**  
**the Defendant**

Hearing dates: 22 May 2012  
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**Approved Judgment**

**Mr Justice Cranston:**

INTRODUCTION

1. This is an expedited hearing of a challenge to a decision taken by the defendant, the London Borough of Newham (“the Council”), late last year in relation to the provision of advice services in its area. The claimant is a Roma woman with multiple problems. In the past she and her family received assistance from the Roma Support Group in relation to welfare benefits, housing and debt. At the hearing before me the claimant’s case was said to be illustrative of the situation with many thousands of Newham residents who have been assisted with problems by advice services offered by the voluntary sector. The Council withdrew funding from these in July 2011 and it has not been resumed. It is not that decision which is being challenged in these proceedings but a decision of 17 November about the shape of future advice services in Newham.

BACKGROUND

2. Newham is the sixth most deprived local government area in England and Wales and the third most deprived in London. Residents have the lowest average gross annual income in London at £24,958, compared with £37,622 for London as a whole. According to ethnic population projections of the Greater London Assembly for 2010, some two-fifths of Newham’s residents are white, 13 percent black African and 12 percent Indian. Other groups comprise less than 10 percent of Newham’s population. Newham has a young population; the number aged over 65 has been in slow decline since the early 2000’s.
3. In 2008-2009 the Legal Services Commission funded legal advice and assistance in Newham through some 13 providers for family matters, 10 for housing, 7 for welfare benefits and 4 for debt. In its procurement plan for 2010, the Legal Services Commission invited bids for 1170 so-called “new matter starts” for family services (with an additional 400 for combined housing and family advice) and 4,980 new matter starts in the area of social welfare law (i.e. housing, debt and welfare benefits). It noted that there was currently a good level of access to family and social welfare law services in the borough.
4. Complementing the legal advice services supported by the Legal Services Commission, since at least 2004 the Council has funded independent advice for Newham residents with housing, welfare benefits and debt problems. This covered advice work outside the scope of the legal aid scheme, and for clients who did not have the means to pay for advice privately but who, nonetheless, did not qualify for legal aid. The service enabled voluntary organisations, which did not hold legal aid contracts, to provide advice services to those such as minority ethnic groups, older people and victims of domestic violence.

Funding of Newham Advice Consortium

5. On 1 April 2008, the Council awarded a three-year contract to Newham Advice Consortium to provide these advice services, with an annual value of £284,000 per year. The Consortium consisted of eight voluntary sector organisations and community groups: Community Links (the lead member, which provided a drop-in

service, used by about 7,500 people a year), Aanchal (which works with Asian women who have experienced domestic abuse), Age Concern, Coreco (which works with the Congolese community), Newham Action Against Domestic Violence, Newham United Tamil Association, the Roma Support Group and Shelter (the national housing charity). Client monitoring data collated by Community Links on behalf of all Consortium members for the period April to December 2010 revealed that 74 percent of advice service users who disclosed their ethnicity were from black and minority ethnic communities and 54 percent were female.

6. On 20 October 2010 the Chancellor of the Exchequer announced the Government's Spending Review, which fixed spending budgets for each government department up to 2014-15. It envisaged a 28 percent reduction in central government funding for local government over the following four years. The ensuing Local Government Finance Settlement was published on 10 December 2010. These measures hit Newham Council particularly hard. The total savings required was originally estimated at £116 million for the three years 2011-2013/14, although this was revised to a limited extent downwards. In January 2011 the Council estimated that it needed to save about £44 million in 2011/2012.
7. As indicated, the funding contract with the Newham Advice Consortium was due to end on 31 March 2011. At an internal meeting between senior officers of the Council in December 2010 it was agreed that the contract would not be renewed following its expiry. Following a meeting on 17 January 2011 with representatives of the Consortium it was decided that there would be a limited extension to mitigate the impact of the cessation. On 28 January 2011, the Council wrote to Community Links that "within the context of these severe financial reductions" it had begun a process of "transforming its services with a focus on early intervention; ensuring people are able to gain access to universal services; and providing more targeted support when required". The letter stated that the contract with Newham Advice Consortium would not be renewed but that due to the nature of the services provided it would be continued on a month by month basis until the end of July 2011, albeit at a reduced level. Following discussions with the Consortium, interim funding was set at 70 percent of what it had been.
8. Not unexpectedly the decision to cease funding gave rise to correspondence with the Council. In a letter dated 21 February 2011 the mayor, Sir Robin Wales, responded to a letter from Geraldine Blake, the chief executive of Community Links. The mayor wrote that in agreeing the Council's budget in the face of savage government cuts the Council had listened to what its residents had said, including at recent sessions of "Newham Together". Hard choices were necessary and some services would change. The vast majority of cuts would come from what went on behind the scenes "so we can protect the priority areas of tackling crime, cleaner streets and access to jobs". Later in the letter the mayor explained:

"In terms of the services currently commissioned through Community Links, as you know the present contract with Newham Advice Consortium will actually end on 30 April 2011, having been extended. There will then be reduced roll over funding on a monthly basis until the end of July, to mitigate the effects on the organisations and to allow them to wind down the provision of the services."

In conclusion the mayor noted:

“Inevitably we have tough choices to make and our over-riding priority is to protect the services and facilities that will make the most difference for our residents. I’m afraid that the sustainability of Community Links must come behind this.”

9. There was no legal challenge to this decision. At the end of July 2011 the funding ceased, and the Consortium was wound up. Since then the Council has provided advice itself from its Housing Centre. As well it has continued to fund advice provided by Workplace, the mayor’s Employment Pilot and Connexions. This advice is aimed mainly at those wishing to gain employment or set up businesses, although advice on welfare benefits is also given.

#### Information, Advice and Guidance project

10. Meanwhile the Council had been considering the long-term provision of advice services across all of its departments. To this end it had established an Information, Advice and Guidance (“IAG”) project. Already the Council’s Customer Access Strategy, adopted on 24 September 2009, envisaged a three tier level of service across Newham’s various departments to achieve greater efficiency. The IAG project adopted that three tier approach to advice services at a relatively high level of abstraction. Tier 3 was for “problem solving” advice given on referral by an “advice centre” for persons resident in Newham for a year. At the 17 January meeting, mentioned earlier, when Sylvia Ingmire of the Roma Support Group asked one of Newham’s senior officers about the role of the voluntary sector in delivering future advice services she was told that it was all to be performed in-house. On 7 February 2011 that same officer emailed the head of Community Links that the Council had a clear vision for the new framework, so there would not be consultation per se. There was, however, “ongoing information/engagement which contributes to the development of our approach, and we would of course welcome your support in that”. In his letter to Geraldine Blake on 21 February 2011, mentioned earlier, Newham’s mayor had written:

“It [the IAG] will be delivered within our Customer Access Strategy ... When people can be assisted quickly through the web or by a customer service officer, this should happen. If they need specialist support and assistance they will receive this according to an agreed strategy. We will provide that top tier of IAG from East Ham as a key borough location.”

11. The Council recognised that the introduction of the IAG service model would be likely to raise equalities issues and it commissioned an Equality Impact Assessment. A first draft was prepared by Anne O’Connell, a Money Advice development officer, on 10 February 2011. At the outset the draft stated:

“The Equality Impact Assessment is to be managed through the Customer Access Project, as an integral part of the Information, Advice and Guidance (IAG) project. The working document to be circulated before and be on the agenda for future stakeholder meetings of relevant Council divisions – both for development

of the document and as a tool in drawing up a new model for debt, benefits and housing advice.”

The Equality Impact Assessment noted that under the new model, the current commissioning of social welfare law services through the Newham Advice Consortium would cease. As well, it explained that existing commissioning of the Consortium was due to end on 30 April 2011 and that there would be interim rolling arrangements for funding “until the new model was agreed and implemented”. That was clearly a mistake since funding was to end in July 2011, as explained in the letter to Community Links on 28 January and in the mayor’s 21 February 2011 letter. The mistake was corrected in a second draft of the assessment, dated 5 April 2011. The impact of ending advice through the voluntary sector was canvassed at some length in the draft. The draft Equality Impact Assessment had no role in the decision in January 2011 to cease funding the Newham Advice Consortium.

12. There was discussion of a report on the IAG project on 1 March 2011 at a meeting of the Council’s executive board. A brief summary of the relevant report to the board explained that it “provide[d] the background and rationale for a new approach to provision of IAG, defined as debt, benefits and housing advice, with the emphasis on providing encouragement and advice to residents of Newham to obtain paid work”. The executive board agreed the report with a number of comments, including this: “Are there any points of initial contact with the public in any service not within the IAG scope?” The board agreed the scope of tiers 1 and 2 of the IAG project although it was decided to widen that of tier 3. Each of the executive officers was required to explain what was or could be within the scope of tier 3 advice.
13. As part of the internal discussions slides were prepared in the middle of 2011 about how the new model of advice under the IAG project might operate. Thus one slide stated that tier 3 advice would open on the East Ham council site in the first quarter 2013. Another slide appeared to show that the voluntary sector would have no role in tier 3 advice. It seems that the mayor saw some of the slides.
14. Internal difficulties arose in the development of tier 3 of the IAG model over whether advice provided by the Council’s housing department would be included. The housing department had designed its own advice services, in parallel with IAG. Over a number of months it was not possible to reach an internal consensus over housing advice services and their role in the IAG model. That was still the position at a meeting of the Council’s executive board on 4 October 2011. (At that meeting it was noted that the new model of delivery would replace the debt, benefits and housing advice previously commissioned from the voluntary advice agencies).
15. To overcome the impasse, the matter was referred to the mayor in cabinet. For the meeting on 17 November 2011 five relevant documents were available for this agenda item: an officer’s report detailing a proposed new advice model; an accompanying equality impact assessment; a commentary on tier 3 advice services; a current risk register for the IAG project; and a matrix of the then-current tier 3 services.
16. The report dated 9 November 2011 was marked at its head as a “key decision” and a “forward plan” document. Key decisions under Newham’s constitution are those which are significant financially for the service or in terms of community impact. The report’s purpose was described as follows:

“This report seeks to present the new model for advice, consistent with the Council’s resilience policy and developed through the corporate Information Advice and Guidance (IAG) project.

The report also seeks to gain agreement to develop a new problem solving package service delivered by the Council for residents and to gain agreement on which services which should be in scope to consider including in this service.”

17. In the report tier 3 was described as the “one-to-one problem solving package” advice service, where council officers would deal with immediate crises and work with clients “to identify root causes of problems, address those problems and enable future self-help”. Options not recommended included

“commissioning an external organisation to provide the one to one problem solving package ... because it would not maximise opportunities to monitor closely, manage and pro-actively develop an innovative service, informing overall Council delivery of services”.

18. There had been no public consultation, but the report noted that once it was determined which services were to be included in the new tier 3 service any advisable public consultations would be carried out. As to the public sector equality duty, the report said:

“Once it is determined which services are in scope for consideration of inclusion in the problem solving package it will be possible to conduct Equality Impact Assessments for those particular services. Many of the issues will be similar to those in the Equality Impact Assessment in Appendix 2, which is a working document and covers debt, benefits and housing advice previously commissioned through Newham Advice Consortium”.

Tier 3 advice was to be at the East Ham council site, which was accessible from all parts of the borough by public transport.

19. Accompanying the report was the draft Equality Impact Assessment, dated 8 November 2011. It was the sixth draft of the February document. It noted that the IAG project was working towards the provision of debt, benefits and housing advice which encouraged and supported residents in obtaining paid work; helped employed residents to maximise the rewards of paid work; and provided advice for those unable to undertake paid work and to encourage self-sufficiency where possible. The new model had the potential to have a high impact on the protected characteristics of age, disability, transgender, pregnancy and maternity, race, sex and class and socio-economic disadvantage. It was expected to be in place by April 2013. Table 2 contained detailed comments on the potential impacts and the mitigating measures under consideration. The evidence accompanying the draft included figures showing the high percentages of protected groups in Newham, the numbers previously assisted by Newham Advice Consortium and a breakdown of a sample of clients by protected

groups. The Assessment stated that a relevant benchmark would be the difference in outcomes for protected groups as between what happened formerly with the consortium provision and any new service model.

20. At the 17 November 2011 meeting the mayor in consultation with cabinet made the following decision:

“Decision

The mayor in consultation with Cabinet agreed:

1. that officers develop a new service delivery model for one to one ‘problem solving package’ advice service for residents;

2. the potential scope of the services to be included in this new service delivery model, as set out in this report, including (but not exclusively) [Housing] for consideration as part of the new model’s problem solving package, along with advice on debt problems and benefits ...

3. that the mayor is asked to note that following the development of the ‘problem solving package’ the proposal will be brought back to Cabinet for approval by the mayor in consultation with Cabinet;

4. to note that other services may be added to the problem solving package at a later date, as required, subject to further reporting back; and

5. agree that in accordance with the Council's previous strategic decision on its service delivery model, the problem solving package should be the most intensive level of help for residents developed through the IAG project. The full offer will provide three tiers of service:

\* Tier 1 - Quality online self-help information, advice and guidance on debt, benefit and housing issues for residents able to self help.

\* Tier 2 - Direction from Council officers, when required, in using the above online self-help.

\* Tier 3 - A one-to-one problem solving package advice service where Council officers deal with immediate crises and work with clients to identify the root causes of problems, address these problems and enable future self-help."

21. Mrs Ingmire, of the Roma Support Group, understood that the Council had decided to develop third tier advice based on in-house provision only, without the voluntary sector having any role. On 27 November 2011 the claimant’s solicitors wrote a pre-action protocol letter challenging, among other things, the 17 November decisions that “future advice services will not be commissioned from voluntary sector

organisations, but will be provided by council officers” and “to make no provision for face-to-face advice services until April 2013”. The Council sent a substantive response on 14 December 2011, which stated:

“Officers of the Council were seeking formal approval for the development for a new service model and not the approval of a series of changes/variations to any pre-existing arrangements. As we explain, the Council’s decision not to renew the previous arrangement ... was taken in January 2011 and properly communicated to the Newham Advice Consortium (Enclosure 2). The arrangement ended on 31 July and there has been no arrangement of the previous kind to “change” since 31 July 2011.”

The response also confirmed that the Council would consult widely and would examine a wide range of options, including the commissioning of services from the voluntary sector and community groups. The question of accessibility to the services would be considered. The response added:

“The Council confirms, as the report of 17 November indicates, that it will conduct and publish an evidence based analysis of the impacts of the different potential models on people with protected characteristics and on the fulfilment of the Section 149 objectives.”

Judicial review proceedings were issued on 25 January 2012.

22. On 7 March 2012, officers reported to cabinet on the legal challenge, that in their view it was contending that the 17 November decision had the effect of determining the model for future advice services. That was a misunderstanding of the situation. In consultation with cabinet the mayor was requested to clarify that the extent of tier 3 services "including the identity of those providing the advice ... will be the subject of formal consultation". On 15 March 2012 the deputy mayor in consultation with cabinet agreed to clarify the position that no decision had yet been taken to exclude external advice agencies from any new tier 3 advice provision and that such a decision would be the subject of a formal consultation.

“Decision

The mayor in consultation with Cabinet agreed to clarify that:

1. The recommendations agreed on 17 November do not exclude the possibility of future face to face advice services being provided by independent organisations within Tier 3 of the IAG model presently being worked up;
2. The extent of the face to face advice services in Tier 3, including the identity of those providing the advice and the eligibility criteria applied to those seeking the advice, will be the subject of formal consultation carried out;



3. The consultation, conducted in accordance with the Council's public sector equalities duties, will inform the development of the IAG model; and
4. Officers will report back to the mayor in consultation with Cabinet before Tier 3 of the IAG model be formally considered for adoption/implementation."

### THE CLAIMANT'S CASE

23. The claimant challenges the decision of the mayor in cabinet of 17 November that future problem solving tier 3 advice services will be provided by Council officers, and will not include, as previously, any advice commissioned from the voluntary sector. The claimant also challenges what she contends is an implied decision arising from this decision, that there will be a hiatus in face-to-face advice services in Newham until April 2013. It is the claimant's case that there was a strategic decision as to the identity of the provider in the model to be developed. The criterion on which a decision was reached was that the service would be provided in-house and not as in the past commissioned from external providers such as the voluntary sector.

### Public sector equality duty

24. The main ground of challenge advanced by the claimant is that, in reaching these decisions, the Council failed to comply with its public sector equality duty under section 149(1) of the Equality Act 2010. (Although the section did not come into force until 5 April 2011 it was common ground that that was not relevant to the outcome of the case). Section 149 provides, so far as material:

"149 Public sector equality duty

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

...

(b) advance equality of opportunity 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;

...

(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.

...

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—

age;

disability;

gender reassignment;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation.

25. With her deep knowledge of the equality case-law, Ms Mountfield QC for the claimant was able to lay out clearly the legal framework of the section 149 duty. She accepted as a convenient summary of the basic position a passage in the recent judgment of the Court of Appeal in R (on the application of Greenwich Community Law Centre) v Greenwich London Borough Council [2012] EWCA 496. Elias LJ (with whom Ward and Black LJ agreed) said this:

“[29] Cranston J ... expressed his conclusions in the following terms (paras. 48-51):

"48. Due regard is the regard that is appropriate in all the circumstances: R (Baker) v Secretary of State for Communities and Local Government [2008] EWCA Civ 141; [2009] PTSR 809, [31]. In that case Dyson LJ said: "The question is whether the decision-maker has in substance had due regard to the relevant statutory need. It is

necessary to turn to the substance of the decision and its reasoning": [37]. Paying due regard is an essential preliminary to any decision: R (BAPIO) v Secretary of State for the Home Department [2007] EWCA Civ 1139, [3]. While the circumstances may point strongly in favour of undertaking a formal equality impact assessment, that is not a statutory requirement: R (Brown) v Work and Pensions Secretary [2008] EWHC 3158 (Admin); [2009] PTSR 1506, [89]. In that case the Divisional Court identified a number of helpful principles that demonstrate how a public authority should fulfil its due regard duty: [90]-[96]. These included that the due regard duty must be fulfilled before and at the time that a particular policy which might affect relevant persons is being considered; the duty has to be integrated within the discharge of the public functions of the authority; and the duty is a continuing one. Clearly the duty applies not only to the formulation of policies, but also to the application of those policies in individual cases: Pieretti v Enfield LBC [2010] EWCA Civ 1104; [2011] HLR 3.

...

[30] The relevant legal principles are now well established and were not in dispute. The basic approach is summarised in paragraph 48 of Cranston J's judgment set out in the previous paragraph. I would emphasise the need for the court to ask whether as a matter of substance there has been compliance; it is not a tick box exercise. At the same time the courts must ensure that they do not micro-manage the exercise. Furthermore, as Pill LJ observed in R (Bailey) v Brent London Borough Council [2011] EWCA Civ 1586 para 83, it is only if a characteristic or combination of characteristics is likely to arise in the exercise of the public function that they need be taken into consideration. I would only add the qualification that there may be cases where that possibility exists in which case there may be a need for further investigation before that characteristic can be ignored: see the observations of Elias LJ in Hurley and Moore para 96. (Perhaps more accurately it may be said that whilst the Council has to have due regard to all aspects of the duty, some of them may immediately be rejected as plainly irrelevant to the exercise of the function under consideration - no doubt often subliminally and without being consciously addressed. As Davis LJ observed in Bailey para 91, it is then a matter of semantics whether one says that the duty is not engaged or that it is engaged but the matter is ruled out as irrelevant or insignificant).

26. In my view the difficulty which Ms Mountfield QC's submissions on the public law equality duty could not surmount was the reality of what the Council decided on 17 November 2011 (the decision under challenge). The terms of what the mayor in consultation with the Newham cabinet agreed are set out earlier in the judgment. The

decision authorised the officers to develop a new service delivery model for the problem solving tier 3 advice service for Newham residents. What Ms Mountfield QC accurately described as the turf war within the Council was resolved and housing was brought within the scope of the model. It will be recalled that this turf war had delayed over a number of months the Information Advice and Guidance project so that the matter had to be referred to the mayor in cabinet to resolve. Significantly, the 17 November decision then records that following the development of the new problem solving model “the proposal would be brought back to Cabinet for approval by the mayor in consultation with Cabinet.” Thus the 17 November decision did not itself introduce any new service model. Point 4 of the decision also made clear that other services might be added at a later date, subject to report back.

27. Now it may be that some officers within the Council – and perhaps members – had firm views that the voluntary sector would have no role in the future provision of advice services in Newham. That is evidenced in the information Ms Ingmire of the Roma Support Group received at the 17 January 2011 meeting, the 7 February email to Community Links, the mid-2011 slides and one of the recommendations in the report for the 17 November meeting (which was against commissioning an external organisation to provide the problem solving, tier 3 advice). Moreover, it seems from the documentation that the Council machinery was moving towards the introduction of the tier 3 service in the first quarter (or by 30 April) 2013.
28. The crucial point is that there was no formal decision of the Council on either of these matters. There was the decision of the Council on 28 January 2011, where the Council decided to cease funding advice services from the voluntary sector by the end of July 2011. There was also the decision of 17 November 2011, just described, which ended the turf war within the Council about the future of housing services. But there was nothing more about the final shape of the tier 3 model. It was to be developed further now that the housing advice problem was resolved. The matter was then to revert to the mayor in cabinet for further decision. If there was any doubt about this there is the further decision of the deputy mayor in cabinet on 15 March 2012, which made it abundantly clear that no decision had yet been taken as to an advice service model for tier 3, and that it was a matter for further decision following consultation.
29. Ms Mountfield QC herself acknowledged that there was no decision to adopt any future service provision model on 17 November. In canvassing the case-law, however, she pointed to a remark of Moses LJ, that the “impact of any proposed policy” must be considered “before it is adopted” ((R (Kaur) v London Borough of Ealing [2008] EWHC 2062 (Admin), [23]) and to what Calvert-Smith J said in R (Hajrula) v London Councils [2011] EWHC 448 (Admin), that the complaint was that the impact on protected groups was not considered early enough: [62]. She also drew attention to Blake J’s criticism in R (on the application of Rahman) v Birmingham City Council [2011] EWHC 944 (Admin), that “the obvious thing for any decision maker to consider was whether continuing the existing services at least in those areas where there was no reasonable equivalent that vulnerable users could access until re-commissioning took place” [36]. But in Kaur Ealing council had determined that the criteria for the provider of services to victims of domestic violence should be a single source (or the single leader of a consortium) before a full racial equality impact assessment had been undertaken, and in Hajrula the council officers had proposed,

and the committee had made, decisions concerning future funding of voluntary organisations in the light of public spending cuts. As for Rahman, that was a case where the challenge was to the decision to end the funding to voluntary agencies.

30. None of that is this case. No decisions had been made by Newham in relation to the future shape of tier 3 advice. There was the hiatus after termination of funding in July 2011, but that was as a result of the earlier decision in January 2011, which is not challenged in these proceedings. Proposals were certainly being formulated and it was taking longer than anticipated because of internal council disagreements. Importantly, however, the process was continuing. Accompanying this ongoing process was the preparation of an Equality Impact Assessment, in its sixth draft by November 2011. In it the different options of Council and voluntary sector provision and their impacts on the protected characteristics set out in section 149 of the Equality Act 2010 were very much in evidence. In my view this puts paid to the criticism by reference to the guidance produced by the Equality and Human Rights Commission, which is to the effect that equality analysis should be engaged in with policies under formulation. In Newham's case, this was being done. As Elias LJ made clear in the Greenwich Community Law Centre case, notwithstanding the importance of the public sector equality duty the courts must ensure that they do not micro-manage the decisions of public authorities: [30]. In my view, for the court to interfere at this stage would be to breach this sensible injunction and would constitute an unwarranted interference into local democratic processes.
31. In relation to the public sector equality duty, Ms Mountfield QC submitted that the concept of paying due regard – the statutory language of section 149 – also meant that the Council had to undertake consultation to understand, for example, the adverse impact on protected groups of any measures it did take. Certainly consultation must be considered: R (on the application of Hurley and Moore) v Secretary of State for Business Innovation and Skills [2012] EWHC 201 (Admin); [89]-[90]. The Equality and Human Rights Commission suggests early engagement with those affected and engagement at each stage of the process. However, it seems to me that consultation was premature in this case when the tier 3 service was only in the process of being formulated, was uncosted and was still undefined as to the scope of services within it. Consultation at that stage of the proposals would have been wasteful as to resources and unhelpful, possibly misleading, in outcome since it would have been based to an extent on conjecture. In any event the report to the 17 November meeting made clear that any advisable consultation would follow when the scope of the tier 3 advice was determined.

#### Duty to consult

32. A second flaw in the 17 November 2011 decision is said to be that it was unfair because of a failure to consult. Drawing on the well known authority R v North and East Devon Health Authority ex parte Coughlan [2007] QB 213. Ms Mountfield QC contended that there were various bases for a duty to consult persons affected by the 17 November decision:

“1. consultation was needed to secure compliance with the public sector equality duty in circumstances where, as here, there is no indication that the Defendant had any other source of information as to the likely impact of its proposed decision

on protected equality groups and no other way of making a structured, rigorous, informed decision on equality issues;

2. the Council had a policy on equality impact assessments that there would be consultation as part of the intelligence gathering process, unless existing consultation evidence could be reviewed;

3. the Council had previously provided advice services to those groups for many years, and there was a legitimate expectation that there would be consultation before such a service was removed;

4. because section 3(2) of the Local Government Act 1999 read with the Department for Community and Local Government's Best Value Statutory Guidance; and

5. the Council's own Compact with the voluntary sector obliged it to consult those likely to be affected by its decisions.”

33. In my view there was no obligation to conduct a public consultation before 17 November. As already indicated it would have been impossible, at that stage, to have engaged in a meaningful dialogue with the public when sufficient detail of the proposals had not been fleshed out. Despite Ms Mountfield QC's submissions the language of the report prepared for the 17 November meeting takes the matter no further. The report was certainly headed as a “key decision” and the reader was informed that a decision was being sought on problem solving 3 tier advice. But that language has to be read in the context of the Information Advice Guidance project being delayed by the turf war within the Council over housing advice and the need to resolve it. There was also the actual decisions made on 17 November, which meant that although housing was now being brought within tier 3 advice other options still remained open, and when proposals were worked up further they would have to be brought back to the mayor in cabinet for further decision.
34. In terms of the specific reasons advanced by Ms Mountfield QC for a duty to consult it is evident that I am unpersuaded that there was any such duty at that stage following from the public sector equality duty. Consultation in accordance with Newham's policy on the preparation of an Equality Impact Assessment is intended, as confirmed at the latest by the 15 March 2012 decision. The 17 November decision was not the decision to cut the former services provided by the Newham Advice Consortium; there was in fact no commissioning decision involved at that point. Since there was no need to consult the Best Value Statutory guidance and the Newham Compact do not arise. (As a matter of record I was assured that the intended consultation would comply fully with them when it was conducted.)

#### Failure to take into account a relevant factor

35. For good measure a third ground of challenge advanced is that there was a failure to take into account an essential relevant consideration, namely the potential advantages of commissioning external advice services and the Best Value Statutory Guidance of

the Department for Community and Local Government. In my view this head of challenge goes nowhere, since there was no decision choosing between adopting an in-house new service model and commissioning services from the voluntary sector. As the Council made clear on 15 March 2012, the proposed new service model may include advice services being provided by independent organisations within tier 3 of the IAG model.

### CONCLUSION

36. For the reasons outlined the challenge to the 17 November 2011 decision fails. Even if I were wrong in reaching that conclusion, in my view the decision of 15 March this year cured any defect in the Council's decision-making and renders these proceedings pointless. That 15 March decision made clear that no decision had yet been taken and that any such decision would be the subject of formal consultation. I dismiss the claim.