



Neutral Citation Number: [2011] EWHC 151 (QB)

Case No: CO/11886/2010

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 01/02/2011

**Before :**

**MR JUSTICE CALVERT-SMITH**

**Between :**

**The Queen on the Applications of**

**(1)Zanepa Hajrula**

**Claimant**

**(2)Mura Hamza**

**- and -**

**London Councils**

**Defendant**

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**Helen Mountfield QC with Professor Aileen McColgan & Louise Whitfield (instructed by  
Pierce Glyn Solicitors) for the Claimants**  
**Jason Coppel (instructed by ) for the Defendant**

Hearing dates: 28<sup>th</sup> January 2011  
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**Supplementary Judgment on Relief**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**Mr Justice Calvert-Smith :**

Supplementary judgment on relief.

1. On Thursday 27<sup>th</sup> January 2011 I heard the claim for Judicial Review in this case which concerns the decision (“the first decision”) of the defendant to categorise services, which it currently funds by way of a levy upon the London boroughs and the City of London, so as to reduce by nearly 50% the amount it so levies by “repatriating” many of these services to individual boroughs for them to decide whether and to what extent they wish to continue to fund them. The case was listed that day pursuant to an order of Wyn Williams J after submissions that a later date would be likely to render the claim academic. I was therefore urged to give judgment at once.
2. On Friday 28<sup>th</sup> January I gave judgement.
3. I found that the process by which the categorisation had been carried out was flawed by reason of a failure to pay due regard to the defendant’s Public Sector Equality Duties (PSEDs). I proposed certain remedies which fell between the remedies sought on the one hand by the claimants and suggested on the other by the defendant in the event that I granted the Judicial Review.
4. Both sides asked for time to submit representations on the exact form of the remedies to be granted.
5. I have received a submission and a rejoinder to the claimant’s submission from the defendant and a submission and a letter in answer to the rejoinder from the claimants.
6. In summary the claimant submits that my finding means that the decision of the defendant on 14<sup>th</sup> December 2010 (“the second decision”) to set a budget based upon the flawed categorisation must be quashed.
  - a. The only possible consequence in law of my ruling must be to render the second decision a nullity. *Boddington v British Transport Police* [1999] 2 AC 146 at 158.
  - b. If the second decision were to be allowed to stand then individual borough councils will set their budgets on the basis of the levy imposed on them by the decision and that upon recategorisation following proper consideration of the defendant’s PSEDs it is very likely that the claimants and others will be in the same position as they were following the decision. The victory would thus be a Pyrrhic victory.
  - c. The deeming provision of section 48(4)(A) Local Government Act 1985 which would be engaged if the decision is quashed would enable the defendant to reduce its budget following the lawful recategorisation if it so chose.
  - d. It is the fault of the defendant that the court is faced with this problem. Had the defendants not successfully contended that the original application was premature, the matter could perhaps have been decided before the first and therefore of course the second decision had even been taken.
7. In summary the defendant submits that the remedy should be confined to the first decision of the defendant, there having been no specific challenge to the second decision.
  - a. The challenge was not to the amount of the budget but to the way in which the budget was allocated.
  - b. The court should not involve itself in “multi-faceted budgetary decisions ...which involve difficult policy choices for the council as the democratic

representatives of the local people has the primary function of exercising judgment and of making choice.” Silber J in *Capenhurst* para 16.

- c. None of the cases in which the PSEDs have been the subject of successful Judicial Review of a local council have resulted in the quashing of the council’s budget.
  - d. The claimant’s concern about the consequences of allowing the 2<sup>nd</sup> decision is misplaced. If the defendant upon re-evaluation of the categorisations decides that more services should be kept within its remit it has power to adopt a supplementary budget, and the cooperation of its members who are themselves leaders of the councils can be expected.
8. On this matter I am persuaded by the defendant’s arguments. Although my finding must mean that the second decision was undoubtedly tainted and therefore potentially quashable as the result of the flaws in the first decision, I am persuaded in the exercise of my discretion that the practical disadvantages of doing so are considerably greater than those of allowing it to stand subject to reconsideration following the further work which the defendant must now undertake to ensure compliance with the PSEDs.
  9. I have also received submissions concerning the details of the other remedies which I proposed.
  10. I accept the submissions of both parties that the defendant should not be ordered to reconsider its PSEDs in a particular way.
  11. I accept the submission of the defendant in respect of commissions which may be about to terminate by effluxion of time, or at least to do so before the reconsideration has taken place.
  12. I accept the claimants’ submission in respect of commissions which would run beyond 3 months from the date of any recategorisation.
  13. It was submitted by the defendant that no order was necessary to prevent commissioned providers from consenting to “repatriation” because in reality none of them had. The Ipsos Mori report (C1 326) suggests that some 64 of the 327 respondents to the defendant’s questionnaire supported or strongly supported the repatriation of services. Accordingly it is appropriate to except any commissioned organization which has been nominated for, and has accepted, repatriation from my order.
  14. Accordingly I order as follows:
    1. It is declared that the decisions taken under item 3 of the Agenda for the Leaders’ Committee of London Councils on 14 December 2010 adopting a categorisation of currently commissioned services, and deciding upon timing of proposed changes and transitional arrangements in respect of the London Councils Grants Scheme were unlawful because the Defendant reached those decisions without due regard to the statutory equality needs in the performance of its functions as required by s71 Race Relations Act 1976, section 76A Sex Discrimination Act 1976 and section 49A Disability Discrimination Act 1995.
    2. The said decisions are quashed.
    3. The Defendant is ordered to undertake a lawful process of reconsideration, in accordance with the public sector equality duties as set out above and, if and to the extent that it comes into force during the reconsideration process, the replacement public sector equality duty under s149 Equality Act 2010.

Approved Supplementary Judgment on Relief

4. All consequent decisions to terminate funding for existing commissions under the London Councils Grants Scheme, including the notification to the Roma Support Group of 21 December 2010 are quashed.
5. No funding agreement with any organisation commissioned by the London Councils Grants Scheme shall be terminated, save either
  - a. with the consent of the organisation, or
  - b. following the expiry of the 4 year period of the original commission of an organisation,until three months after the conclusion of the lawful consideration process.
6. The Defendant shall pay 60% of the Claimants' costs of and occasioned by this application.
7. There be detailed assessment of the Claimants' costs for the purposes of public funding."