Case No: C1/2013/0290

Neutral Citation Number: [2013] EWCA Civ 116
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT
MR JUSTICE UNDERHILL
CO/832/2013

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/02/2013

Before:

THE CHANCELLOR OF THE HIGH COURT
LORD JUSTICE SULLIVAN
and
LORD JUSTICE PITCHFORD

- -

Between:

THE QUEEN ON THE APPLICATION OF SARAH STIRLING	**Appellant**
- and -	
THE LONDON BOROUGH OF HARINGEY	**Respondent**

- -

(Transcript of the Handed Down Judgment of
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- -

Ian Wise QC and Jamie Burton (instructed by **Irwin Mitchell**) for the **Appellant**
Clive Sheldon QC and Heather Emmerson (instructed by **LSTET Solicitor**) for the **Respondent**

Hearing date: 12th February 2013

- -

Judgment

Lord Justice Sullivan:

Introduction

1. On the 12th February we dismissed the Appellant's appeal against the order dated 7th February 2013 of Underhill J dismissing her claim for judicial review of the Respondent's decision on 17th January to make its Council Tax Reduction Scheme ("the Scheme") under section 13A of and Schedule 1A to the Local Government Finance Act 1992, (as amended by the Local Government Finance Act 2012) ("the 1992 Act"). We were told that there were a number of judicial review challenges to the Council Tax Reduction Schemes that have been adopted by other local authorities. We said that we would give the reasons for our decision as soon as possible. These are my reasons for dismissing the appeal.

The new statutory scheme

2. Council Tax Benefit was abolished by section 33 of the Welfare Reform Act 2012. As from 1st April 2013 it will be replaced by Council Tax Reduction Schemes locally determined by each billing authority under section 13A of the 1992 Act. Paragraph 2 of Schedule 1A sets out the matters which must be included in a scheme. Paragraph 3 prescribes the procedure which a billing authority must follow when preparing its scheme:

> "3(1) Before making a scheme, the authority must (in the following order) –
>
> (a) consult any major precepting authority which has power to issue a precept to it,
> (b) publish a draft scheme in such manner as it thinks fit, and
> (c) consult such other persons as it considers are likely to have an interest in the operation of the scheme……
> (3) Having made a scheme, the authority must publish it in such manner as the authority think fit."

If an authority has failed to make a scheme by 31st January 2013 a default scheme will take effect in its area: see paragraph 4(6) of Schedule 1A.

3. Billing authorities had to prepare their Council Tax Reduction Schemes in a difficult economic climate. Council Tax Benefit was funded by Central Government. The Government announced that there would be a 10% reduction in the funding given by Central Government to local authorities for Council Tax support under the new arrangements for Council Tax Reduction Schemes. The default scheme follows the former Council Tax Benefit scheme, but it does not make any provision for the cut in funding from Central Government. Where the default scheme takes effect the authority will have to make good the shortfall in funding.

Preparation of the Scheme

4. Having considered a number of options the Council's Cabinet on the 10th July 2012 approved its officers' recommendation that it consult with the Greater London

Authority (the relevant "major precepting authority" for the purpose of paragraph 3(1)(a) of Schedule 1A) on a proposal to adopt a scheme

> "…that will reduce Council Tax Benefit payments for all claimants in line with the reduction in government grant. In real terms [because of increased demand for benefits and because benefit payments must be maintained for pensioners], this will mean a reduction in benefit payments of between 18% and 22% [for all claimants of working age]."

It was also proposed that changes would be made to the existing Council Tax Benefit rules to mitigate the loss to the Council.

5. On 29th August 2012 the Council published its draft scheme and commenced a consultation exercise which ran until 19th November 2012. A document with the title "The Government is abolishing Council Tax Benefit – Find out more about its replacement inside" was hand delivered to all 36,000 current Council Tax Benefit claimant households in Haringey, was published on the Council's website, and prominently displayed at the Council's main offices and other locations such as libraries and Citizen Advice Bureaus. It was also discussed at various forums. I refer to the consultation document below (paragraph 11). Its contents are set out in the judgment of Underhill J.

6. On the 16th October 2012 the Government announced a transitional grant scheme ("the TGS") in a written statement to Parliament by the Parliamentary Under-Secretary of State at the Department for Communities and Local Government. On the 18th October 2012 the Department issued a circular – "Localising support for Council Tax: Transitional grant scheme" – which explained the TGS in more detail. Details of the TGS were also published on the DCLG's website. In summary, an additional £100 million of funding from Central Government was made available to those billing authorities whose Council Tax Reduction Schemes met three criteria as follows:

> "(i) Those who would be entitled to 100% support under current council tax benefit arrangements pay between zero and no more than 8.5% of their net council tax liability;
>
> (ii) The taper rate does not increase above 25%;
>
> (iii) There is no sharp reduction in support for those entering work. The taper should continue to operate as under current council tax benefit regulations……."

Annex A to the Circular set out the amounts that would be available to each eligible authority. If Haringey's scheme met the three criteria it would receive £706,021. Applications for the TGS had to be made after 31st January 2013 and the deadline for applications was 15th February 2013.

7. The consultation exercise closed on 19th November 2012, the responses were collated and analysed, and a report to Council set out a detailed analysis of the responses to the consultation exercise. The Council received over 1400 responses or enquiries relating

to the consultation including 1251 questionnaires, 36 letters and emails and 209 enquiries to its customer contact centres and call centre. A large number of those responding felt that disabled people should be protected from the reduction in funding and corresponding increase in payments towards Council Tax. The full Council was due to finalise the content of the Scheme at an extraordinary meeting on 17th January 2013. By letter dated the 11th January Irwin Mitchell, the Solicitors who now act for the Appellant, contended (inter alia) that the consultation process had been unfair and unlawful because consultees (i) would have been left with the impression that there was no alternative to the Council's draft scheme, (ii) had not been provided with sufficient reasons in support of the draft scheme to enable them to make an intelligent response to the consultation, and (iii) had not been informed of the existence of the TGS. It was contended that the Council should have explained in the consultation document why it had not decided to meet the shortfall in government funding by (a) raising the level of Council Tax for all council taxpayers, (b) reducing services, or (c) utilising part of the Council's reserves. It was also contended that the Council should have carried out additional consultation on the question whether the proposed scheme should be revised so as to comply with the three TGS criteria, thereby making the Council eligible for its share of the transitional grant from Central Government, £706,021.

8. At its meeting on 17th January the Council considered a Report dated 9th January and an Addendum Report dated 16th January from the Director of Corporate Resources. The latter responded to the letter from Irwin Mitchell. The two reports explained why the officers recommended the Scheme (which differed from the draft scheme by the inclusion of protection for disabled claimants), and did not recommend adopting either the default scheme or some other scheme that would comply with the three TGS criteria. The reports also explained why the officers did not consider that it would be appropriate to meet the shortfall in funding from Central Government by (a) raising the level of Council Tax, (b) reducing services or (c) using the Council's reserves. Paragraph 10.1 of the Addendum Report summarised the cost burdens on the Council of the different options (making no allowance for non-collection) as follows:

- Council to absorb the cost (with default scheme): £3.846 m
- If eligible for the transitional grant this would reduce to: £3.14 m
- Passing on 8.5% (net of Transitional Grant): £1.489 m
- Passing on 19.8% £0

The Council accepted the recommendations in officers' reports and made the Scheme which is challenged in these proceedings.

Discussion

9. It is not necessary to set out the content of the two reports because the Appellant's challenge to the Council's decision on the ground of irrationality was not pursued before Underhill J. The challenge was confined to the consultation process. Before the Judge it was submitted that the consultation process was unfair, and therefore unlawful, for three reasons:

(a) that consultees were not provided with sufficient information to enable them to appreciate that there were alternatives to the draft scheme;

(b) that the information provided in the consultation document, as to the shortfall that would have to be met by the Council, was not accurately and fairly presented; and

(c) that the Council should have told consultees about the TGS and asked them if they wished to make any, or any further, responses in the light of the availability of that scheme.

10. The judge rejected all three grounds of challenge to the consultation process. Ground (b) (above) is no longer pursued. It is not suggested that, insofar as there was information about the Scheme in the consultation document, it was not accurately or fairly presented. The complaint made on behalf of the Appellant is not that the information in the consultation document about the draft scheme itself was in any way inaccurate, incomplete or unfair, rather it is said that fairness required that the consultation document should have included "sufficient information" about the other options that the Council had considered – raising Council Tax, reducing services and utilising the Council's reserves – and the reasons why it had not adopted them.

11. It is unnecessary to examine the detail of the consultation document because it is common ground that it did not refer to these other, rejected options. The consultation document said that in the proposed scheme the Council was seeking "to apply the Government cut in Council Tax funds as fairly as possible", and that the Council believed that the fairest way to do this was to reduce payments to all working age claimants by an equal flat proportion in line with the reduction in Government funding, explained the draft scheme and its implications for those affected, and asked for answers to a number of questions. Questions 1-5 asked consultees whether they agreed with various aspects of the draft scheme, but question 6 was open-ended. It invited consultees to:

> "use the space below to make any other comments about our draft Council Tax Reduction Scheme."

A number of consultees took the opportunity to make representations, expressed in more or less polite terms, to the effect that the Council should increase Council Tax, make cuts to its other services, or meet the shortfall by some "other means."

12. It is common ground that whether a consultation process has been fair will depend on the particular circumstances of the case. General guidance was given by this Court in R v North and East Devon Health Authority, Ex p Coughlan [2001] QB 213: see paragraph [108], per Lord Woolf MR giving the judgment of the Court. There are four basic requirements. Consultation must

(i) be undertaken when proposals are at a formative stage;

(ii) include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response;

(iii) give consultees sufficient time to make a response; and

(iv) be conscientiously taken into account when the ultimate decision is taken.

In this appeal, we are concerned only with the second requirement.

Ground 1

13. In support of his submission that in order to give "sufficient reasons" for this particular proposal, the Council's draft scheme, the consultation document had to identify the other options that had been considered and rejected, and explain, however briefly, why those other options had been rejected, Mr. Wise QC relied on a passage in paragraph 10 of the judgment of this Court in R (on the application of Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts [2012] EWCA Civ 472, 126 BMLR 134. Arden LJ, giving the judgment of the Court, said that an aspect of fairness was that a consultation document:

> "…..must present the available information fairly. The options for change must be fairly presented. None the less, a decision-maker may properly decide to present his preferred options in the consultation document, provided it is clear what the other options are: *Nichol v Gateshead Metropolitan Borough Council* (1988) 87 LGR 435, [1988] COD 97"

14. In Nicol v Gateshead MBC the Court of Appeal had allowed the Council's appeal against an order of McCowan J quashing a scheme for the reorganisation of secondary education in its area. The principal issues were whether the Council had considered a "report" as required by the Education Act 1944 and whether there had been effective consultation. The Council's Director of Education had presented a report setting out the advantages and disadvantages of three options. He recommended the adoption of a preferred option. The Council agreed with his recommendation. The Court of Appeal concluded that the Council had considered a "report" and that the consultation process had not been flawed. It noted (on page 463) that in a further report the Director of Education's preferred option had been outlined and the alternatives had been mentioned as having been rejected.

15. It is one thing to say that when options for change are presented in a consultation paper (as they were in the Brompton case, see paragraphs 57-65 of the Court's judgment) they must be fairly presented, it is quite another to submit, as Mr. Wise submitted on behalf of the Appellant, that in order to be fair a consultation paper must present information about other options that have been rejected. What fairness requires depends on the circumstances of the particular case. In some statutory contexts a decision maker may be required, or may choose to consult as to which of a number of options should be adopted. In Brompton the PCT was required to consult persons to whom services are being, or may be provided on "the development and consideration of proposals for changes in the way those services are provided" emphasis added: see paragraph [6] of the Court's judgment.

16. Nichol is not authority for the proposition that alternatives to a preferred scheme must in all cases be mentioned as having been rejected, and it was not regarded as such by this Court in Brompton. In that case the Director of Education in a further report had identified the preferred option and briefly mentioned the alternatives which had not been adopted. The Court's conclusion that proper consultation had taken place was a conclusion on the lawfulness of that particular consultation exercise, and not a statement of principle that fairness requires rejected alternatives to be mentioned in every case. In Brompton the Court cited Nichol as authority for the limited proposition that in a consultation exercise where consultees are being invited to

consider options, (as was the case in both Brompton and Nichol), the decision maker may present his preferred option, provided it is clear what the other options are.

17. In The Vale of Glamorgan Council v Lord Chancellor and Secretary of State for Justice [2011] EWHC 1532 (Admin) the Divisional Court considered a challenge to the Lord Chancellor's decision to close the Barry Magistrates Court. One of the grounds of challenge was that the Lord Chancellor had failed to consult about any alternative scheme. Rejecting that ground, Elias LJ giving the judgment of the Court said that:

> "24….there is no general principle that a Minister entering into consultation must consult on all the possible alternative ways in which a specific objective might arguably be capable of being achieved. It would make the process of consultation inordinately complex and time consuming if that were so. Maurice Kay LJ recognised this in the Medway case itself, at para 26:
>
> "Other things being equal, it was permissible for him (that is, the Secretary of State) to narrow the range of options within which he would consult and eventually decide.
>
> Consultation is not negotiation. It is a process within which a decision maker at a formative stage in the decision making process invites representations on one or more possible courses of action. In the words of Lord Woolf MR in *Ex parte Coughlan* [2001] QB 23 at para 112, the decision maker's obligation "is to let those who have potential interest in the subject matter know in clear terms what the proposal is and why exactly it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further that this."
>
> This passage was approved by the Court of Appeal in *R (Forest Heath DC) v Electoral Commission* [2010] PTSR 1227 at para 54.
>
> 25. In our judgment, the Lord Chancellor was entitled to identify the issues for consultation in the way he did. There was not express statutory duty to consult and subject to considerations of fairness, it was the Lord Chancellor himself to determine the scope of any consultation. In a context where he was rationalising the court estate, he was perfectly entitled to conclude that he would consult only about proposed closures….."

The Court distinguished other cases to which it had been referred as "exceptional cases" where some reference to alternatives had been necessary on the facts in order to explain the reasons for the proposal.

18. In the present case the scope of the consultation was prescribed by paragraph 3(1) of Schedule 1A. Having consulted the Greater London Assembly, the Council was required to publish a draft scheme and then to consult those persons who were likely to have an interest in the operation of that draft scheme. In the course of preparing their draft schemes Councils will, no doubt, consider various ways of meeting the shortfall in government funding, but paragraph 3(1)(c) does not require them to consult on those alternatives. Unlike some enactments which may provide for a more open-textured consultation process, paragraph 3(1) of Schedule 1A prescribes a sequential process in which a draft scheme is prepared, and the Council then consults, not the Council Tax payers as a whole, or all of its inhabitants who are in receipt of its services, but only those persons who are likely to have an interest in the operation of the draft scheme. In this statutory context fairness does not require the Council in the consultation process to mention other options which it has decided not to incorporate into its published draft scheme; much less does fairness require that the consultation document contain an explanation as to why those options were not incorporated in the draft scheme.

19. Even if the statutory scheme had been less prescriptive and more open-textured as to the subject matter of the consultation process, I would not have concluded that the consultation document's failure to mention the other possible ways of meeting the shortfall in Central Government funding rendered the consultation process unfair. As Underhill J observed, the existence of the three options now relied upon by the Appellant – raising Council Tax, reducing other Council services or utilising some of the Council's reserves - were all reasonably obvious ways of meeting a shortfall in Central Government funding, and the form of the consultation document (in particular question 6) did not prevent consultees from suggesting them as possibilities. I accept that the mere fact that some consultees did make such suggestions does not, of itself, mean that the consultation process was fair (see R (W,M and others) v Birmingham City Council [2011] EWHC 1147 (Admin), [2011] 120 BMLR 134 at para [189]). However, this is not a case in which the failure to mention the three options in the consultation document might have had the consequence that the decision-maker would have failed to appreciate their existence. The full Council would have been well aware of these three ways of meeting a shortfall in Central Government funding. They were discussed in the officers' reports, particularly the Addendum Report, and the Council's reasons for not adopting any of the three options are no longer challenged on irrationality grounds. For these reasons I would reject the first ground of challenge.

Ground 2

20. Was the Council required to draw consultees' attention to the publication of the TGS by the Department for Communities and Local Government? For the reasons given in paragraphs 15-19 (above) the Council was not required to consult on the TGS, it was required to, and did, consult on its own draft scheme. In his witness statement, Mr. Ellicott, the Council's Head of Revenues, Benefits and Customer Services explains that, following the Government's announcement of the TGS, he and the Lead Cabinet Member for Finance considered whether the draft scheme should be modified so as to meet the three criteria for eligibility under the TGS. They decided that the draft scheme should not be so modified. Irwin Mitchell's suggestion that the scheme should be modified to meet the TGS eligibility criteria (a suggestion to the same

effect had been made by the Greater London assembly in its response to consultation) was considered by the full Council at its meeting on 17th January 2013 with the benefit of the Addendum Report. It is unnecessary to go into any detail because the Council's reasons for not modifying its draft scheme to meet the TGS eligibility criteria are no longer the subject of any challenge in these proceedings. Adopting a TGS compliant scheme would have reduced the funding gap which would have to be met by some other means – raising Council Tax, cutting services or drawing on the Council's reserves - from £3.14 m to £1.489 m, for one year only, and it would not have eliminated it altogether (see paragraph 8 above).

21. If the Council had been minded to modify the Scheme to enable it to apply for funding under the TGS it is arguable that it might have been required as a matter of fairness to re-consult on the basis that there had been a material change of circumstances because those who were likely to have an interest in the operation of the draft scheme were principally those claimant households whose Council Tax Benefits payments would be reduced, whereas those who would be likely to have an interest in the operation of a TGS compliant scheme would potentially include all of the Council taxpayers and/or some or all recipients of the Council's services, depending on how the Council decided to meet the remaining shortfall in Central Government funding after receipt of £706,021 under the TGS.

22. Underhill J accepted the submission of Mr. Sheldon QC that if the Council's duty to consult under Schedule 1A was more extensive then a duty to consult on the operation of its draft scheme (see paragraphs 15-19 above), reconsultation would have been necessary only if there had been a fundamental change of circumstances, and the publication of the TGS did not amount to such a fundamental change. In support of his submission that a "fundamental change" of circumstances was required Mr. Sheldon referred Underhill J, and this Court, to the decision of Silber J in R(Smith) v East Kent NHS Hospital Trust [2002] EWHC 2640 (Admin), 6 CCLR 251. In that case Silber J said in paragraph [45] of his judgment that:

> "……there should only be re-consultation if there is a fundamental difference between the proposals consulted on and those which the consulting party subsequently wishes to adopt."

23. If the approach in paragraphs 15-19 (above) is correct, this question does not arise. However, we heard submissions on the relevance of the Smith case, and I think it appropriate to express my view on the applicability "fundamental change" test in the context of the present case. While I do not doubt the correctness of Silber J's decision in Smith, I do not consider that it is of assistance in this case. As Underhill J pointed out, Silber J was dealing with a case where four options were consulted upon, and having considered the consultees' responses, the decision maker decided to proceed with a fifth option which incorporated elements from the other options. Underhill J rightly identified the distinction between those cases where, following consultation the decision maker decides to adopt a new proposal, and cases, such as the present case, where a new factor emerges during the course of a consultation.

24. In the latter type of case, I am not persuaded that the "fundamental change" test is appropriate. Mr. Wise accepted that there would often be a "moving target", and a decision maker was not obliged to draw each and every change of circumstance

during what might be a lengthy consultation process to the attention of consultees. It is easy to postulate the test – that the new factor must be of such significance that, in all the circumstances, fairness demands that it must (not may) be drawn to the attention of consultees; it is much more difficult to decide what fairness demands in any particular set of circumstances. A holistic approach should be adopted, all relevant factors should be considered, and these may include, in addition to the nature and significance of the new material, such matters as the extent to which the new material is in the public domain, thereby affording consultees the opportunity to comment upon its relevance to the proposal the subject of the consultation, and the practical implications, including cost and delay, of further consultation.

25. The TGS was a potentially relevant change of circumstance, but the Council had decided to publish and consult upon a draft scheme which avoided the need to meet the shortfall in Central Government funding by the three options now advocated by the Appellant, raising Council Tax, reducing services or recourse to its reserves. In this respect the TGS differed from the draft scheme only in degree: there would still be a substantial shortfall which would have to be met by the adoption of one or more of the three rejected options. While I accept that it would be unrealistic to assume that ordinary Council Tax Benefit claimants would be aware of the detail, or perhaps even the existence, of the TGS, the fact remains that it was a Government proposal which was in the public domain. Of course, it would not have been impossible for the Council to have drawn consultees' attention to the TGS, but I accept Mr. Sheldon's submission that in practical terms the consultation process would have had to be commenced afresh, if only because the Council would have had to consider who would be likely to have an interest in the operation of the scheme if it was to be suggested that it should be modified to meet the TGS criteria (see paragraph 18 above).

26. In these circumstances, even if the Council's duty to consult was not as I have described it in paragraphs 15 – 20 (above), I do not consider that the TGS, though plainly relevant, was a change of such significance that the Council would have been bound to draw it to the attention of what would, inevitably, have been a much broader category of consultees than the 36,000 current Council Tax Benefit claimant households in its area. For these reasons I would reject the second ground of challenge.

Anonymity

27. For the sake of completeness I should mention the Appellant's application for the continuation of an order preserving her anonymity. The basis for this application was set out in paragraph 20 of her Witness Statement in which she explained that she has young children and she is concerned that they may be teased or bullied if publicity is given to her family's financial situation. We refused the application at the beginning of the hearing on 12th February and indicated that we would give our reasons in our judgments. The starting point must be that open justice is the general rule, anonymity is very much the exception. The Appellant's children are not parties to this Appeal. Although we have rejected the Appellant's challenge to the lawfulness of the Council's consultation process we have been able to do so without needing to consider the detail of her financial circumstances. There is no reason to believe that placing her identity in the public realm will have any impact on her or her children. In my view, there was no justification for maintaining anonymity.

Lord Justice Pitchford

28. In common with my Lords I concluded that the appeal should be dismissed. I differ from the reasons in which Sullivan LJ and the Chancellor concur in one respect only.

29. The statutory obligation to consult *"such other persons as it* [the local authority] *considers are likely to have an interest in the operation of the scheme"* (schedule 1A, paragraph 3(1)(c), paragraph 2 above) does not, in my judgment, limit the ambit of consultation to the question how the burden of withdrawal of Government funding should be shared between those who "have an interest in the operation of scheme" proposed, but embraces also the question whether those who have an interest should alone bear that burden. In other words, I favour a construction of paragraph 3(1)(c) which required the more open textured consultation described by Sullivan LJ at paragraph 19 above. Underhill J, at page 20 of our transcript of his judgment, found that "inevitably" the consultation would embrace consideration of alternative means of meeting the shortfall. I agree with him. It would be strange if the process did not include consultation on the main political and social issue at stake.

30. Underhill J went on to find, at page 21, that although it would have been "better" had the Respondent drawn the attention of consultees specifically to the alternatives mentioned in the last paragraph, its failure to do so did not undermine the fairness or the legality of the consultation because those alternatives would have been "reasonably obvious" to consultees. Again I am agreement with the judge. The consultation presented the issue as one of "fairness", as follows:

> *"Our preferred approach is to keep the current rules to decide how much support claimants should receive. Our proposed Local Council Tax Reduction Scheme seeks to apply the Government cut in council tax funds as fairly as possible. We believe the fairest way to do this is to:*
> ***1** Reduce payments to all working age claimants by an equal flat proportion in line with the reduction in Government funding...."*

In my opinion these words embraced the first and second elements of the decision to be made: (1) upon what group, if any, should the burden fall and (2) how that burden should be distributed within the group identified. The Respondent's reference to "fairness" in the second sentence of the passage quoted was calculated to stimulate responses from consultees going to both elements of the decision. The evidence is that responses to both elements were indeed stimulated. At paragraphs 59-61 of his witness statement, Mr Paul Ellicott, the Respondent's lead officer in the development of the CTRS scheme, has summarised several of them (3SB/4/120).

31. The Appellant argued that the ordinary consultee would have had no way of knowing what the alternatives were unless informed by the Respondent. There was no evidence presented to Underhill J or to this Court to make good that argument. We were informed only that the Appellant herself was unaware of the consultation and made no response at all. In my opinion it must have been obvious to any person able to read the consultation document that if the shortfall in Government funding was not to be met by the group identified it would have to be met either by savings from existing council services, by eating into reserves or by the imposition of higher taxes. Mr Wise QC did not seek to argue that in a consultation such as this it would have been appropriate to

justify with the relevant figures (which we have in the witness statement of Ms Julie Ann Parker (3SB/3/39-43)) the Respondent's decision as to the "fairest" proposal. He suggested that a couple of paragraphs would have been enough. In my judgment the weakness in Mr Wise's argument upon ground 1 is revealed by his concession. The ordinary consultee could not be expected to advance arguments based on the authority's current and budgeted finances as to the advantages or "fairness" of one proposal by comparison with another. We have seen the figures; it was a matter for expert advice to members. What the Respondent needed was a response to the issue of principle, namely whether those admittedly least able to bear a financial burden should be asked to do so and, if so, whether there were, even within that group, those whose personal circumstances were so disadvantaged that they should be exempted. In other words, the Respondent was soliciting, rightly in my view, information about the impact of the proposed scheme upon those most affected by it and about the strength of feeling for and against it. As Sullivan LJ has observed, the responses received were analysed for members and no complaint is made that relevant material was not considered.

32. These are my reasons for rejecting the Appellant's ground 1. In every other respect I am in agreement with my Lords.

The Chancellor

33. I agreed that the appeal should be dismissed for the reasons given by Sullivan LJ.