

**From:**

Richard Stevens, Solicitor  
County Hall  
New Road  
Oxford  
OX1 1ND  
[richard.stevens@oxfordshire.gov.uk](mailto:richard.stevens@oxfordshire.gov.uk)

Emma Chamberlain, Barrister  
11 Rawlinson Road  
Oxford  
OX2 6UE  
Tel 0207 269 0435  
[emma@jmchamberlain.freeserve.co.uk](mailto:emma@jmchamberlain.freeserve.co.uk)

**To:**

Joanna Simons (by email)  
Chief Executive  
Oxfordshire County Council  
County Hall  
New Road  
Oxford  
OX1 1ND

Copies to:

Rt Hon Andrew Smith MP, Oxford East  
Nicola Blackwood MP, Oxford West & Abingdon  
Rt Hon David Cameron MP, Witney  
John Howell MP, Henley  
Ed Vaizey MP, Wantage  
Tony Baldry MP, Banbury

19 January 2011

Dear Ms Simons

**Proposals in relation to Oxfordshire libraries: an open letter**

We are writing to you as Oxfordshire residents and legal professionals in connection with the proposals put forward by Oxfordshire County Council to cease funding for 20 of the Council's 43 public libraries.

The Council's proposals were first publicised in a press release issued on 26 November 2010. The press release indicated the Council's intention to "cease funding 20 of the 43 facilities that currently operate in the county, with possible further changes to service levels in future years". The 20 libraries which it was proposed would see their funding cease were named specifically in the press release.

**The Council's statutory duty under the Public Libraries and Museums Act 1964**

The Public Libraries and Museums Act 1964 (the "**1964 Act**"), section 7, places the following general statutory duty on a library authority [emphases in bold added]:

**"(1) It shall be the duty of every library authority to provide a comprehensive and efficient Library Service for all persons desiring to make use thereof,...**

*Provided that although a library authority shall have power to make facilities for the borrowing of books and other materials available to any persons it shall not*

*by virtue of this subsection be under a duty to make such facilities available to persons other than those whose residence or place of work is within the library area of the authority or who are undergoing full-time education within that area.*

**(2) In fulfilling its duty under the preceding subsection, a library authority shall in particular have regard to the desirability—**

*(a) of securing, by the keeping of adequate stocks, by arrangements with other library authorities, and **by any other appropriate means, that facilities are available for the borrowing of, or reference to, books and other printed matter, and pictures, gramophone records, films and other materials, sufficient in number, range and quality to meet the general requirements and any special requirements both of adults and children;** and*

*(b) of encouraging both adults and children to make full use of **the Library Service**, and of providing advice as to its use and of making available such bibliographical and other information as may be required by persons using it; and*

*(c) of securing, in relation to any matter concerning the functions both of the library authority as such and any other authority whose functions are exercisable within the library area, that there is full co-operation between the persons engaged in carrying out those functions."*

The 1964 Act sets down the basic statutory duty of a library authority. We note in this context the Council leader's comments in the press release of 26 November 2010:

"In line with the Government's Big Society agenda, we are very keen to hear from local communities and organisations who may wish to take on the running of local libraries and we believe there will be enthusiasm from people who wish to get involved."

We do not propose in this letter to consider in detail what constitutes a "comprehensive" and "efficient" library service, but we do note as a matter of law that the statutory duty of the Council under the 1964 Act cannot be substituted, in whole or in part, by any "Big Society" initiative, however that term may be understood.

### **The Wirral Report**

Of great assistance in understanding the Council's statutory duty under the 1964 Act is the published report of "A Local Inquiry into the Public Library Service Provided by Wirral Metropolitan Borough Council", dated September 2009, by Sue Charteris (the "**Wirral Report**"). The Wirral Report was prepared following a public inquiry ordered by the then Secretary of State for Culture, Media and Sport, Rt Hon Andy Burnham MP, pursuant to section 10(1) of the 1964 Act. Ms Charteris was appointed to lead the inquiry, which was conducted in accordance with the Public Libraries (Inquiries Procedure) Rules 1992.

The Wirral Report concluded that Wirral Borough Council, in deciding to close 11 of its 24 public libraries, had been in breach of its statutory duties under the 1964 Act by reason of its:

*"...[failure] to make an assessment of local needs (or alternatively to evidence knowledge of verifiable local needs) in respect of its Library Services... Without any such reference point of the needs to be met, the Council was unable*

*to identify a reasonable option for meeting such needs both comprehensively and efficiently."*

[Emphasis in bold in the original.]

After a thorough analysis of the legal and factual arguments presented to the inquiry, Ms Charteris concluded as follows:

*"The primary reason for this breach is that the Council **failed to make an assessment of local needs** in respect of its Library Services. The Inquiry has accepted the implicit and explicit interpretation of the 1964 Act that a **comprehensive and efficient service is one that is based on local needs (hence why there can be no single definition which is true to all library authorities** in England), and if those needs are not fully assessed and taken into account, it becomes a rational impossibility for a library authority to design a service which comprehensively and efficiently meets those needs in a demonstrable way. It is therefore impossible for the Inquiry to endorse the Council's plans."*

[Emphasis in bold in the original.]

We make no judgment here on the specific circumstances of Wirral Borough Council's proposals and, as the Wirral Report concluded, no single definition of what constitutes a "comprehensive and efficient" service can be true to all authorities in England.

What the Wirral Report does underline is the importance of conducting an "assessment of local needs". It also provides guidance on the issues a library authority should consider when undertaking that assessment. The key findings of Ms Charteris on pages iii to iv of the Wirral Report (paragraphs 15 to 19) are, in this respect, illuminating:

*"15. In particular, there are some **specific needs for adults** that have not been addressed. These include the specific requirements for older people, disabled people, unemployed people, and those living in deprived areas.*

*16. I am also concerned that although the Act does not specifically cover the role of schools in library provision, the Council has not been able to demonstrate that it has had due regard to the **general requirements of children** which I consider to be a breach of its statutory duties.*

*17. The Council took the decision to close 11 of its libraries in the **absence of a strategic plan for or review of the Library Service**. As such, I believe that the Council's approach to re-visioning the service was fundamentally flawed, because their approach focused specifically on the issue of asset management and cost savings.*

*18. I also believe that the decision was made **without a clear understanding of the extent and range of services** currently being provided in the libraries, including those which are 'core' to the service and those which are ancillary. This makes it difficult to see how the Council could plan for ceasing or re-locating any aspects of the current service.*

*19. The Council's decision, which is better described as an indication of intent rather than a fully worked up plan, risks being a partial response to need that would disadvantage relatively isolated and deprived communities. I therefore believe there to be **a further breach in relation to the needs of deprived communities...**"*

[Original emphasis in bold.]

### **The importance of consultation**

In March 2010 the Department of Culture, Media and Sport published "The modernisation review of public libraries: A policy statement". This policy statement refers favourably to the Wirral Report, and further states in bold (on page 15, Section 2) the following:

*"It is important to reiterate that **the Government recognises that library closures may sometimes be necessary, but closures must form part of a strategic approach to service provision and decisions must only be taken after consultation with the community.**"*

A full assessment of local needs in respect of library services involves an assessment of, inter alia, the following factors:

- (1) whether physical presence is needed to meet local needs, e.g., in an area of significant deprivation;
- (2) whether libraries have particular characteristics within the local population and/or geography of the local area that makes access more difficult;
- (3) whether libraries have strong links with schools and/or children's centres, seemingly meeting the needs of both children and adults; and/or
- (4) whether the Council's decision changed thereby depriving the local residents and users of the opportunity to outline to the Council their library service needs and express their views on how these can be met.

(Wirral Report, paragraphs 6.13 and 6.26.)

Moreover, s.138 of the Local Government and Public Involvement in Health Act 2007, which added s.3A to the Local Government Act 1999 (the "**1999 Act**"), and the new "Statutory Guidance for the Duty to Involve" (the "**Guidance**") will be relevant to decisions of a library authority made after 1 April 2009 (which was not the case in the Wirral Inquiry). These provisions place authorities under even clearer explicit duties to consider the possibilities for provision of information to, consultation with and involvement of representatives of local persons across all authority functions. This extends to people who live, study or work in the area.

A library authority will have a discretion under s.3A of the 1999 Act as to whether it considers it appropriate for representatives of local persons to be involved in the exercise of any of its functions. It must exercise this discretion reasonably and such exercise can be challenged by judicial review. Once a library authority has decided that it is appropriate to involve representatives of local persons, it "**must take such steps as it considers appropriate to secure that such representatives are involved in the exercise of the function in that way**" [emphasis in bold added].

According to the Guidance, local authorities should provide representatives of local persons with appropriate information about services, policies and decisions which affect them or might be of interest to them. The duty also specifies that the authority should offer appropriate opportunities for people to have their say about the decisions and services that affect them through consultation. Consultation needs to provide genuine opportunities for people to be involved.

### Clarification sought

We should be grateful if you would confirm the following and respond to the specific questions below:

1. **Was an assessment of local needs carried out by the Council prior to the issuance of the press release on 26 November 2010?** If so can we see this assessment? We presume that such an assessment must have been made prior to 26 November 2010, as the press release named all the 20 libraries that would see their funding cease. This suggests that a detailed analysis was undertaken. If it was not, then announcing which libraries were to see funding withdrawn before undertaking the proper analysis would appear seriously to prejudice the outcome of that analysis.
2. **Was the assessment of local needs prepared in accordance with the considerations outlined in the Wirral Report?** The press release of 26 November 2010 indicated that, "A total of 82 per cent of library visits take place to the 23 libraries that are currently proposed for continued funding by the county council." Whatever the statistical basis or veracity of this claim, the Council should have applied the criteria set down in the Wirral Report. The Wirral Report criteria go further and deeper than a simple statistical analysis of usage.
3. **Why were local representatives not consulted on the proposals?** County councillors and other local representatives were not consulted on the proposals prior to the publication of the press release on 26 November and (as at the date of this letter) have not been consulted since, despite specific libraries in specific divisions being identified for funding withdrawals.
4. **Did the Council take specific legal advice on the proposals (particularly in the context of the 1964 Act) before the issuance of the press release on 26 November?** If so can we see a copy of that advice?

We appreciate that the proposal to cease funding almost half of Oxfordshire's public libraries is in itself controversial. However, **the way** in which the cut is proposed to be implemented is what concerns us at this stage. The Council's decision making processes in relation to the proposals must be transparent and in the public domain, particularly as the libraries earmarked for funding withdrawal were specifically identified in November 2010. If a full assessment was not done by the Council it is apparent that the exercise of the Council's discretions as announced in November would be flawed, not in accordance with its statutory duties and therefore open to judicial challenge. We therefore look forward to hearing from you as a matter of urgency with full answers to the above questions. We have supplied our email addresses in order to speed your response.

Yours sincerely

**Richard Stevens**  
Solicitor

**Emma Chamberlain**  
Barrister