

Appendix B – 1964 Public Libraries and Museums Act

Background

Libraries are a statutory service, but it is up to local communities to determine how that service is delivered.

The Public Libraries and Museums Act 1964 makes it the duty of a local authority to provide a comprehensive and efficient library service for the benefit of residents. The Department for Digital Culture, Media, and Sport (DCMS) has indicated that the judgement of what constitutes a “comprehensive and efficient service” is, in the first instance, for the local authority to make.

The Secretary of State has expressed the view that decisions about local issues should be taken by democratically elected local representatives. The Secretary of State also notes that the local authority is entitled to take account of resources in deciding whether a proposal is efficient.

The following factors have been put forward by the DCMS to be considered when deciding whether to intervene in proposed Local Authority service changes to library services:

- Whether there was any doubt or uncertainty as to whether the Council is complying with its legal obligation to provide a comprehensive and efficient service.
- Whether the Council appears to be acting in a careless or unreasonable way.
- Whether the Council has failed to explain, analyse, or properly justify its proposals.
- Whether the local proposals are likely to lead to a breach of national library policy.
- Whether substantial further investigation is needed.
- The number of Council managed library buildings which would remain open.
- The proportion of active borrowers using the library buildings which would remain open.
- Opening hours at the library buildings which would remain open.
- Mitigating factors which could offset the effect of library building closures.
- Has there been appropriate consultations with residents and other stakeholders?
- Distance to library buildings which would remain open, travel time, car ownership and public transport option and any mitigation measures.

DCMS expect to see evidence of a robust and appropriate assessment of local need. Without this, a local council will not be able to demonstrate that its proposals are reasonable.

Role of Secretary of State in Library Superintendence and the Courts in relation to Judicial Review

The Secretary of State DCMS has a duty under the “Public Libraries and Museums Act 1964 (the Act)” to:

- Superintend and promote the improvement of the public library service provided by councils in England,
- Secure the proper discharge by councils of their functions as library authorities,
- The Act also provides the Secretary of State with the statutory power to intervene and call a local inquiry when a library authority fails (or is suspected of failing) to provide the required service.

The Libraries Team at DCMS is responsible for the superintendence and promoting the improvement of libraries across England on behalf of Ministers. To support this duty, they closely monitor developments in library services across England. Library authorities are required to provide DCMS with such information as the Secretary of State may require for carrying out their duties.

Arts Council England (ACE) is the national development agency for public libraries in England. ACE works with the leaders of library services and other partners and stakeholders, using its influence and convening power to help shape the future development of public libraries in England. It also funds Libraries Connected as the Sector Support Organisation.

Libraries Connected is the membership body for all public library services in England. Its focus is on shaping a positive operating environment for libraries, fostering innovation, and sharing good practice across the sector. Its core asset is its members' wealth of expertise as library leaders and practitioners, and their willingness to share this with their peers. It is particularly well-placed to broker strategic advice to decision-makers.

The DCMS Libraries team works closely with Libraries Connected. Slough Library Service is an active participant in Libraries Connected.

If anyone believes a council is in breach of its duties under the Act, they can make an official complaint to the Secretary of State. This is not restricted to residents, nor is the complainant required to follow the Council's Complaints Process in the first instance. DCMS has considered 20 formal complaints since 2010.

DCMS will consider investigating:

- Following a final decision taken by the council on library service provision
- A representation about the effect of the proposals on overall area provision is made to them
- A representation about the library service as a whole is made to them
- A representation about the effect of proposed changes on particular groups within the community, such as those sharing a protected characteristic set out in the Equality Act 2010

DCMS will consider each complaint on its own merits and following careful consideration against several factors. These include:

- Whether the local authority appears to be acting in a careless or unreasonable way.

- Whether the decision is or may be outside the proper bounds of the local authority's discretion, such as a capricious decision to stop serving a particularly vulnerable group in the local community.
- Whether the local authority appears to have failed to consult affected individuals or to carry out significant research into the effects of its proposals.
- Whether the local authority has failed to explain, analyse, or properly justify its proposals.
- Whether local proposals are likely to lead to a breach of national library policy.
- The advantages of local decision making by expert and democratically accountable local representatives.
- Whether there is any further good reason why a local inquiry should be ordered.

The process of consideration of a complaint is in two stages. The first is a thorough analysis of the evidence available to DCMS. This could result in DCMS officials submitting advice and recommendations to Ministers to consider, before issuing a Ministerial "minded to" letter setting out the reasons for the decision and indicating whether they are minded to order an inquiry.

The second stage is a final decision by the Secretary of State which follows careful consideration of further representations submitted in response to the "minded to" letter. If the Secretary of State considers that there has been a failure by the library authority to meet its statutory duties, they may make an order declaring this and directing the library authority to carry out any actions required to meet the duties within a specified time.

If the council fails to comply with any requirement of the order, the Secretary of State, instead of enforcing the order, may make an order providing that the function of the council relating to the public library service shall be transferred to the Secretary of State.

Judicial Review

Individuals or groups can also challenge the lawfulness of a council decision (whether due to a breach of the Act or for other reasons) through a Judicial Review (JR).

The judge in the Northampton Library Service JR said that the council's decision-making processes around its library provision broke down under increasing financial pressure. The council's Cabinet initially chose the least severe of three options presented to it following a review of its library services and a consultation. Then, when the council's precarious financial situation worsened, with the council issuing a Section 114 Report saying that its expenditure would exceed its resources, the Director of Finance recommended Cabinet change to a more severe option 2 for its library service savings.

In her judgement the Mrs Justice Yip said: "They [Cabinet] were told in the Finance Director's report... that they had "no choice" but to consider proposals which ... were now being put before them". The judge said, "this was serious error infecting the decisions of the Cabinet and that her "provisional view is that the Cabinet decisions ... should be quashed."

The judge said the Cabinet failed to apply a statutory test – to make sure that its new decision would result in a "comprehensive and efficient library service" as required by Section 7 of the Public Libraries and Museums Act 1964. She said: "This judgement is a clear warning to local authorities contemplating similar decisions. Decisions have to be made in a lawful manner and cannot be based solely on financial considerations."

As part of the JR process the courts will examine the council's decision and the process the council took in reaching that decision, including the council's approach to equality considerations.

A complainant can submit a formal complaint to DCMS in respect of the Public Libraries and Museums Act 1964 as well as request a Judicial Review.