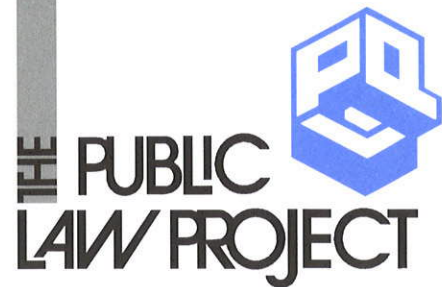


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Date: 10 March 2011

Mr Jeremy Hunt, M.P  
Secretary of State for Culture, Communications  
and the Creative Industries  
Department for Culture Media and Sports  
2-4 Cockspur Street  
London SW1Y 5DH

By post and email: [huntj@parliament.uk](mailto:huntj@parliament.uk)

Dear Sir

**The statutory duty of the Secretary of State and of London Borough of Lewisham Council pursuant to the Public Libraries & Museums Act 1964 (the 1964 Act)**

PLP is advising Mr. Peter Richardson and Mrs. Patricia Richardson ('the Richardsons') who are library service users and resident in the London Borough of Lewisham ('the Borough Council').

1. By letters dated 18 February 2011 and 25 February 2011, the Richardsons wrote to the Secretary of State and Minister to submit a complaint pursuant to section 10 of the Public Libraries & Museums Act 1964 (the 1964 Act).
2. Their complaint is against the London Borough of Lewisham Council who, on 17 February 2011, decided to close five local libraries.
3. The urgency of the situation was highlighted in their submissions.
4. To date the Secretary of State has failed to respond to the Richardsons' complaint.
5. We now write on behalf of the Richardsons regarding the Secretary of State's duty pursuant to section 1 of the 1964 Act.

The Secretary of State's duty

6. Section 1 of the 1964 Act imposes a duty on the Secretary of State to oversee and promote the public library service and to secure discharge of the statutory duties of local authorities as well as providing certain powers to take action where a local authority is in breach of its own duty (emphasis added).

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### **1 Secretary of State to superintend library service.**

(1) From the commencement of this Act it shall be the duty of the Secretary of State to superintend, and promote the improvement of, the public library service provided by local authorities in England and Wales, and to secure the proper discharge by local authorities of the functions in relation to libraries conferred on them as library authorities by or under this Act.

(2) Every library authority shall furnish such information, and provide such facilities for the inspection of library premises, stocks and records, as the Secretary of State may require for carrying out his duty under this section.

### Discharge of the duty

7. Further, section 2 of the 1964 Act provided for an Advisory Council on libraries (ACL) to be appointed by the Secretary of State and to advise the Secretary of State about the library service in England. An Advisory Council was indeed appointed and proceeded to advise the Secretary of State on policy documents (including those produced by other government departments) and on the progress of policy bodies; ensure the Secretary of State was always well informed about the sector; and provide the Secretary of State with an external perspective.
8. However, as the Secretary of State is aware, in July 2010, the Minister, Mr Ed Vaizey announced the winding down of the ACL and its abolition was subsequently confirmed in October 2010. It is noted that the abolition of the ACL followed on the abolition of the national Public Library Service standards in early 2010.
9. It is noteworthy that, over the years, there have been audit inspections and research reports (for example, <http://www.audit-commission.gov.uk/nationalstudies/localgov/Pages/buildingbetterlibraryservices.aspx>) and Select Committee Reports (for example, <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmcomeds/81/81i.pdf>) which have, in part, provided an assessment of whether the Secretary of State is properly discharging his section 1 duty although the Secretary of State has not always demonstrated a proper regard to or respect for their findings.
10. Furthermore, in direct discharge of his duty, the Secretary of State has previously used his powers under section 10 of the 1964 Act to undertake 'A local Inquiry into the Public Library Service provided by Wirral Metropolitan Borough Council' and pursuant to section 17 has reported this to Parliament in respect of this Inquiry. ([Report by the Secretary of State for Culture, Olympics, Media and Sport on the exercise of his functions under the Public Libraries and Museums Act 1964 in 2009/2010](#). (RTF))
11. In terms of public statements issued by the Minister and the Department of Culture Media and Sport (DCMS), there has been a consistent and public commitment to a sustained drive for improvements in library services but moreover that these improvements are based on the principle (and practice) that library services must be relevant to the needs of the community.
12. Further, there has been continued public acknowledgment that libraries are at the heart of our communities and that library services are one of the most valued and high profile services that Council's provide.

13. There have also been consistent statements that 'comprehensive and efficient' library services must be set in the context of local need.
14. We note also the DCMS initiatives including the Future Libraries Programme and Race Online.
15. However, over the past one year, the Secretary of State's 'policy position' on library provision has been made public only via series of public statements made by his Minister, Mr Ed Vaizey MP or his officers.
16. It is our view that this 'sound-bite' approach falls far short of proper and lawful discharge of the Secretary of State's section 1 duty.
17. This approach is particularly flawed in the present economic conditions and given the Secretary of State is fully aware that, in their pursuance of budget savings, councils are making drastic cuts to front line services.
18. We note the DCMS website states,

...the closure of one or even a small number of library branches is not necessarily a breach of the 1964 Act. Sometimes a local authority will close a library to ensure a better, more efficient service across its whole area. We judge such cases on the basis of the authority's overall provision.

We would be concerned if libraries were closed, or their services disproportionately reduced, just to save money.

[http://www.culture.gov.uk/what\\_we\\_do/libraries/3416.aspx](http://www.culture.gov.uk/what_we_do/libraries/3416.aspx)

19. Further, we refer to Mr Vaizey's speech, *Re-modelling partnerships to meet the challenges of 2010* made to the London Re-modelling Library Services Conference on 1 July 2010. He stated,

"Public libraries have a unique status in the nation's consciousness as places where anyone can go without judgement in order to learn, read, access information, get online, find entertainment. They are spaces for the individual alone or as part of a community. ... Libraries are the facilitators of a national passion for reading. The book trade itself is a success story - The UK publishing industry has total annual sales of around £20 billion, just over 1% of UK Gross value added....Libraries support literacy. The Reading Agency's Summer Reading and Six Book Challenge show some impressive results in terms of literacy rates and reader confidence...But libraries are also places where anyone can go to access information and entertainment, go online and find out about public services and citizenship."

20. Mr Vaizey also put libraries at the heart of the Big Society:

Libraries also have a home at the heart of the Big Society where communities have more of a role in determining the shape of the public service and what it delivers.

21. In acknowledging the need for austerity, Mr Vaizey stated:

In the challenges ahead it is critical that we commit to improving that quality of outcome, not input...During economic challenges people need the library service more than ever - to help get back to work, to access learning and entertainment and to provide community cohesion...



I think library users will be right to challenge where frontline services are closed if library services haven't thought about some radical efficiency options - shared services, merging functions or staffing across authorities or public services, use of volunteers or of other community buildings.

22. The Secretary of State's recognition of the vulnerability of library services to cuts also appears to have been prompted the letter dated 3 December 2010 from the Minister to "Councillors" regarding "Spending decisions and library services". The Minister drew Councillors' attention to
- their statutory duty to provide a "comprehensive and efficient" library service under the 1964 Act;
  - the Secretary of State's statutory power to intervene.
23. However, the letter dated 3 December 2010 falls far short of discharging the Secretary of State's section 1 statutory duty 'to superintend, and promote the improvement of, the public library service provided by local authorities'.
24. By way of 'guidance' to Councillors, the Minister set out key considerations that every local authority should have in mind. These considerations which he contends are what the Wirral Inquiry determined would ensure a "comprehensive and efficient" library service are such an inaccurate and inadequate presentation of the substance and meaning of the findings of the Wirral Inquiry that they (i) misdirect Councillors as to how they can comply with their own statutory duty and (ii) wholly fail to discharge the Secretary of State's statutory duty pursuant to section 1 of the 1964 Act.
25. The Secretary of State has failed to issue clear guidance to local authorities as to compliance with their section 7 duties and discharge his duty to superintend library services and further he has failed to promote the improvement of library services by clear guidance that comprehensive and efficient library services should be based on strategic review including a proper assessment of local need.
26. It is our position that the Secretary of State's proper compliance with his section 1 statutory duty in ensuring that councils comply with their section 7 statutory duty would result in long term cost-efficiencies without the need for closure of local libraries which continue to hold "*a unique status in the nation's consciousness as places where anyone can go without judgement in order to learn, read, access information, get online, find entertainment.*" (Mr Ed vaizey, 1 July 2010).

### The MLA

27. Above, we noted the abolition of the ACL in the context of the statutory provision (section 2 of the 1964 Act) for advisors to the Secretary of State in the discharge of his statutory duty to 'superintend, and promote the improvement of, the public library service...and to secure the proper discharge by local authorities of the functions in relation to libraries conferred on them as library authorities by or under this Act'.
28. There is no statutory basis for the MLA. However, public statements indicate that, notwithstanding the decision to abolish the MLA by the end of March 2012, the Secretary of State increasingly relies on the MLA to advise and support local authorities and, indeed, to formulate 'guidance', 'standards' and to make public statements as to how local library authorities should be reconciling austerity measures with provision of local library services.

29. It remains unclear whether the MLA is also performing a 'section 2' statutory function and advising the Secretary of State about the library service.
30. However, in effect by co-opting the MLA – a charity and limited company – into the role of government advisors to local authorities, the Secretary of State has sought wholly improperly to abdicate his superintendent duties.
31. In November 2010, the MLA published a research report and Practitioner Guidance "What do the public want from libraries?"
32. The MLA website overview of the research states as follows,

The research, carried out by Shared Intelligence and Ipsos MORI, provides an up to date picture of what the public wants from library services, and provides a timely pointer to how councils, faced with difficult financial choices, should shape the service for the future.

Overall, the research shows the English public widely value public libraries as a force for good and one that should be provided free. A significant proportion (74 per cent) of current users surveyed described libraries as "essential" or "very important" in their lives. Fifty-nine per cent of non users also think libraries play an "important" or "essential" role in the community. But it also suggests that the notion of library users and non-users is an artificial divide and that instead that people's reliance on libraries tends to vary as their life circumstances change, for example through taking up study, becoming unemployed, having children or retiring.

Book choice, good customer service, staff expertise and convenience are seen as key to user satisfaction. Both users and non-users often expressed concern about books being "squeezed out" for other services and although they accepted greater automation, they do not think this should be at the expense of maintaining a knowledgeable and helpful staff base.

<http://research.mla.gov.uk/evidence/view-publication.php?dm=nrm&pubid=1161>

33. We note that key personnel at 'Shared Intelligence' include Sue Charteris, previously appointed by the Secretary of State to conduct the Wirral Inquiry. Indeed, her findings in the Wirral Inquiry established that a comprehensive and efficient library service is one which provides for properly assessed local needs.
34. The Practitioners Guide was 'written for library practitioners...in order to help them increase participation and usage' (page 3). We note the "health warning", as follows:

The research tells us very clearly that we need to be listening to our users more and studying what motivates them to use libraries (and what fails to motivate them). This guide is written to be relevant to all public libraries. However, the actions taken locally will only be as good as the local knowledge, intelligence, insight and evidence about their own community...(page 3)

35. The Guide concludes with the following comment:

Public libraries though trusted and well-loved must devote significantly larger proportions of their remaining resources to studying their target audiences and creating their own demand through engaging communication and participation campaigns.

36. Further to abolition of the national Public Library Service standards, the MLA-produced Practitioner Guidance has been the only indication of government policy (if indeed it is - as it is notably not produced by the DCMS). However, there is no evidence that library authorities have adopted let alone followed the Practitioner Guidance and moreover that the Secretary of State – in accordance with his section 1 duty - has acted to:

...superintend, and promote the improvement of, the public library service provided by local authorities in England and Wales, and to secure the proper discharge by local authorities of the functions in relation to libraries conferred on them as library authorities by or under this Act.

### Lewisham's library services

37. The Richardsons have set out the substance of their complaint against Lewisham in their letter dated 25 February 2011. In brief, the complaint is that, the Borough Council are failing in their duty to provide a comprehensive and efficient library service because they have failed to base the decision to close five local libraries on a real assessment of local need. The complaint is based on the following:

- The Borough Council failed to undertake an assessment of local need for library services.
- The Borough Council failed to undertake a strategic review of library services.
- The Borough Council failed to make any statement regarding provision of a comprehensive and efficient library service for all those covered by its statutory duty and has failed to define what they regard to be 'comprehensive and efficient' in respect of Lewisham's public library services.
- The proposal/decision to close five local libraries was based entirely on costs/savings;
- The decision to close the five libraries was pre-determined;
- The consultation on the proposal to close five local libraries was not an assessment of local need for the purpose of providing a comprehensive and efficient library service and cannot be constructed or contrived as such;
- In any event the consultation process was fundamentally flawed because the public were not given accurate or complete information about costs and consequently could not make intelligent response(s);
- The public were not given accurate or complete information about alternative or mitigating library provision (particularly for those already vulnerable to discrimination) and consequently could not make intelligent response(s);
- The Equalities Impact Assessment was fundamentally flawed in its premise and conclusions. Moreover the 'mitigating actions' proposed will lead to discrimination in library service provision.
- Any public response (articulation of local need) contrary to the Council's view was stonewalled and rejected as naive and/or unsustainable, including an alternative strategy for making cost-efficiencies.

- Indeed, the Borough Council criticised the public for failure to propose sustainable alternative provision notwithstanding detailed alternatives for cost-efficiencies.
- The Borough Council officers failed to properly inform the Council of the substance of its statutory duty in respect of library provision.

38. We understand that the Richardsons drew their concerns to the attention of the Secretary of State as early as August 2010. The Secretary of State was consequently 'on notice' at an early stage that the Borough Council was pursuing a decision-making process which was flawed and would lead to the Borough Council failing to discharge its statutory duty.

39. It is of particular concern that although the DCMS and the MLA continues to offer "practical support and advice" as part of the Future Libraries programme

([http://www.mla.gov.uk/news\\_and\\_views/press\\_releases/2010/future\\_libraries\\_programme](http://www.mla.gov.uk/news_and_views/press_releases/2010/future_libraries_programme)), the Borough Council pursued a course of decision-making which was contrary to the Secretary of State's public position in respect of a real assessment of need being the foundation of a comprehensive and efficient library service and furthermore that cuts-driven library closures would be unacceptable.

### Conclusion

40. We contend that the failure of the Secretary of State to discharge his duty pursuant to section 1 of the 1964 Act is demonstrated by the decision of Lewisham Borough Council dated 17 February 2011 to close five local libraries in breach of the library authority's statutory duty pursuant to section 7 of the 1964 Act.

41. We write to request that:

- (i) The Secretary of State responds substantively to the Richardsons' letters dated 18 February 2011 and 25 February 2011; and
- (ii) The Secretary of State indicates that he intends to conduct an Inquiry into the Public Library Service provided by the London Borough of Lewisham; and
- (iii) The Secretary of State directs the London Borough of Lewisham Council not to take any further action in respect of the decision dated 17 February 2011 pending the final outcome of any Inquiry.

Please respond to the Richardsons and this correspondence directly to the Public Law Project, 150 Caledonian Road, London N1 9RD.

Yours faithfully

*Public Law Project*

### **PUBLIC LAW PROJECT**

c.c. Rt. Hon. Mr. Ed Vaizey, M.P. Minister for Culture, Communications and the Creative Industries. By post and email: [vaizeye@parliament.uk](mailto:vaizeye@parliament.uk)

c.c. Sir Steve Bullock, Mayor of Lewisham. By post and email: [steve.bullock@lewisham.gov.uk](mailto:steve.bullock@lewisham.gov.uk)