

## **Local authority bus cuts; are legal duties being fulfilled?**

### **Introduction**

Campaign for Better Transport has commissioned Zoe Leventhal, a barrister from Landmark Chambers, to produce some guidance on the law and local buses. We asked for the note following campaigning work on local authority cuts to bus subsidy - because we found that not all local authorities understood exactly what they legally did and did not have to do. In the case of Cambridgeshire we believed that the local authority bus cuts broke the law and we worked with a local bus user to start a legal challenge called a judicial review. This type of challenge requires a lawyer, time and hard work. It can only be used as a last resort, but at the same time the challenge must be made less than three months after the decision. In the Cambridgeshire case the council backed down before we got to court.

I suggest that you contact me to ask specific questions before taking forward a request for judicial review. A complaint to the Local Government Ombudsman for example might be more appropriate, as you do not need a lawyer and there is a 12 month deadline. However I hope the note will also be helpful for campaigners attending council meetings and engaging in consultations. Knowing the law puts you and your campaign in a much stronger position.

You might find the note attached perfectly clear, but it is in some places written in legal language, so I have provided this summary to help highlight what I, as a campaigner, found to be the key points.

### **General public law duties**

- Local authorities must follow normal public law obligations to act fairly, rationally and lawfully, and for proper purposes.
- They also have to follow specific statutory duties. Statutory duties are laws that come from Parliament.
- If there is a failure to comply with these public law duties, it might be appropriate to challenge the local authority. The last resort is to take the challenge to the High Court, in a process called judicial review.

### **The difference between what they are allowed to do and what they must do**

- A statutory duty is an obligation on the local transport authority. If they fail to follow these duties the court can force them to.
- A statutory power gives the local transport authority discretion whether to act. They must still follow the other normal public law duties, as explained above, but at the end of the day they can use their power, or decide not to.
- In some cases the difference between the two is not clear cut. For example there might be an underlying duty, but the local authority might have discretion to decide exactly how the duty applies in their area. This is covered in relation to buses in more detail below.

## Transport Acts 1968 and 1985

The note attached goes into the full detail however I wanted to highlight the key point here; that local transport authorities must secure the provision of appropriate services to meet public transport requirements. In practice this means that where it is socially necessary to have a bus service, but the bus operators will not run a bus commercially, local authorities step in and subsidise a bus service or part of a bus service. They do this almost always using a contract with a bus company. Transport Act 1985, Section 63(1)(a), explains that local transport authorities must:

*“... secure the provision of such public passenger transport services as the council consider it appropriate to secure to meet any public transport requirements within the county which would not in their view be met apart from any action taken by them for that purpose.”*

This principle, or something almost exactly the same, applies to Intergraded Transport Authorities (the local transport authorities in the big city areas outside of London), county councils, and unitary authorities. However, when deciding what is “appropriate” the local authority has to make a judgement call. How they make that judgement, and what factors they take into account was the topic of a case usually called the *Three Rivers* case. This set a legal precedent, so that what the judge decided in that case must now be followed like any other law by local authorities.

In the *Three Rivers* case the court found that local transport authorities had a duty to 1) to identify public transport requirements which would not otherwise be met and then 2) once identified, to secure what is appropriate. Also they are entitled to take into account the funds available.

In the *Three Rivers* case, the judge said:

*“I would accept that if the Council had simply looked for a number of service cuts which would save them £75k in the financial year, they would have failed to discharge their duties under section 63(1) and section 63(8) of the Act. Equally, the decisions might have been flawed if it were to be demonstrated that a community within the district having an established public transport requirement had been left without any public passenger transport service at all.”*

If you are looking at a local authority decision it might have broken the rules if:

- The council papers talk about bus subsidies as a “discretionary role”.
- The council has decided on the budget cut, and then simply found a number of bus services that if cut would save them that amount.
- The council bus cuts have left a community with a transport need with no passenger transport service at all.

However it would be difficult to challenge a local authority if:

- They assessed the needs in their area, and the impact of particular bus services being withdraw, in particular on the elderly, disabled, and people with mobility problems, and after all that had decided that because of lack of funds some bus cuts would have to happen.
- If demand responsive services replace the buses (or other steps are taken to cushion the blow).
- If community transport replaces the bus (however if the council simply states that they hope that a community transport scheme will fill the gap without investigating or supporting this option, their position is much weaker).

## Transport Act 2000: Local Transport Plans

Each local transport authority has to have a Local Transport Plan (LTP). It is a good idea to get hold of this, and check to see if the bus cuts will undermine the plan. If the LTP and the bus cuts are not compatible, and the local authority has not done what they need to do to change the plan, including a consultation, this might be unlawful.

## Equality Act 2010

Since 5 April 2011, the new piece of law called the Equality Act 2010 has been in force. If the decision to cut buses was made before this, the same principles applied. The difference is that the duties used to be set out in several different pieces of law but these were brought together in the 2010 Act.

Section 149 of the Equality Act 2010 says that:

- (1) *A public authority must, in the exercise of its functions, have due regard to the need to –*
- (a) *Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
  - (b) *Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it; and*
  - (c) *Foster good relations between persons who share a relevant characteristic and persons who do not share it.*

Exactly what 'having due regard' means was the topic of a piece of a law called *R (Brown) v Secretary of State for Work and Pensions*. The upshot is that:

- The local authority must be aware of their equalities duties.
- The issue of equalities needs to be thought about at a stage when the policy is still being considered.
- They do not have to mention the exact piece of law they are following by name but it is good practice to, and to keep a record of the things that they considered.

This means that an equalities impact assessment must have been made before the decision was taken. For example, the case *R (Meany) v Harlow District Council* was about this issue. In that case there had been no proper assessment of equalities impact at the initial stage of deciding whether to make cuts of 50 per cent or 80 per cent to a welfare rights service. The court decided that there had not been "due regard" and found the council had broken the law.

It could also be unlawful if the local authority discovers that their plans will cause problems, but decide to steam on in the short term and assess the impacts later. If there is a problem steps need to be taken to avoid the impacts. So check to see when the council did an equalities impact assessment, and whether they amended their plans in light of what they found.

In the Cambridgeshire case the main issue was that the council had made a decision to cut its entire bus subsidy budget over a four year period, but it had done so without considering which individual routes would be affected. There was therefore a limit to how far the council could consider the impacts on vulnerable groups. There was no detail in the assessment about who used buses in Cambridgeshire and why, and nothing about which routes they used or what alternative options might be available.

## Consultations

In many cases a local authority has a statutory duty to consult properly and fairly, and there are rules about what this exactly means.

- First, a consultation must be at a time when the proposals are still at a formative stage. We would say this is at the beginning of the process.
- Second, the proposer must give sufficient reasons for any proposal to permit intelligent consideration and response. We would say that this means saying exactly which buses are at risk.
- Third, adequate time must be given for consideration and responses.
- Fourth, the product of consultation must be conscientiously taken into account in finalising any statutory proposals. We would say that there is no point having a great consultation and then ignoring the outcome.

If the decision alters the Local Transport Plan a local transport authority is legally required to conduct a consultation. If the bus cuts do not alter the Local Transport Plan it is a little more difficult to claim a consultation must be conducted. However, it could be argued that it is only fair and legitimately expected that people affected by bus cuts should be given the chance to have their say about why the bus is important to them and their community in a consultation.

In the Cambridgeshire case, the council had commenced a major review of public transport *after* the decision had been made to cut all bus subsidies. We believe this defeated the purpose of the consultation and was not when the proposals were at a formative stage; this consultation exercise should have been undertaken before the decision was taken. Since the case against Cambridgeshire, the council has started a consultation process all over again. It is important to note that finding a decision was made unlawfully does not necessarily mean that the bus cuts will not be made, but it does mean that the local transport authority will be forced to make the decision again, this time following all the rules.

I hope that you found this useful. Of course the note from the barrister goes into much more detail and covers more ground. This is just a summary of the issues from a campaigner's point of view. Please do not hesitate to contact me if you have any questions or comments.

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Campaign for Better Transport's vision is a country where communities have affordable transport that improves quality of life and protects the environment. Achieving our vision requires substantial changes to UK transport policy which we aim to achieve by providing well-researched, practical solutions that gain support from both decision-makers and the public.

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