



Internal Audit Report

Organisational learning – Libraries Project

Date: *January 2015*



Contents

Introduction	Page 1
Scope and Coverage	1-3
Background	4-10
Executive Summary	11-17
Suggested Areas for Improvement	18-20
Appendix A – Chronology of Events	21-29

The matters raised in this report are only those which came to our attention during our audit investigation. Our quality assurance processes ensure that our work is conducted in conformance with the UK Public Sector Internal Audit Standards and that the information contained in this report is as accurate as possible – we do not provide absolute assurance that material errors, fraud or loss do not exist.

This report has been prepared solely for the use of Members and Management of Lincolnshire County Council. Details may be made available to specified external organisations, including external auditors, but otherwise the report should not be used or referred to in whole or in part without prior consent. No responsibility to any third party is accepted as the report has not been prepared, and is not intended for any other purpose.

Auditors	Lucy Pledge Stephanie O'Donnell
Audit and Risk Manager	Lucy Pledge CMIIA

Introduction

- 1.1 A judicial review was lodged against the Council around the lawfulness of the Council's decision making process to cut back Library Services in Lincolnshire. The High Court quashed the decision – the Council wanted to identify any learning which would help strengthen its governance arrangements.
- 1.2 On the 17th July 2014 the outcome of the Libraries Judicial Review was announced. The High Court found no evidence that the Council had not complied with its statutory obligations under Section 7 of the Public Libraries and Museums act 1964 or those imposed by the Equality Act 2010. However, the Court ruled that the Council's decision making process was flawed – this was due to two key factors:
 - the consultation process itself was flawed
 - the Council made a mistake by not considering a proposal from Greenwich Leisure Limited (GLL) as an expression of interest under Section 81 of the Localism Act 2011
- 1.3 The Council decided to address the outcome of the Judicial Review by carrying out further consultation on the library service and to re-examine the GLL proposal. A decision was also made to commission an independent review of the events associated with this project to ensure a full understanding of what went wrong and to learn from that.

Scope and Coverage

- 2.1 We have been asked to provide the Chief Executive and the Audit Committee with some independent insight / review on the facts surrounding the decision making process and any lessons learnt through the following lines of enquiry:
 - timeline of decision and impact analysis supporting decisions – including preparatory work from 1st January 2011 onwards
 - review the circumstances when officers acted on their delegated powers
 - the extent legal and other professional advice was taken, considered and acted upon by both Officers and Members (Executive) throughout the timeline
 - the adequacy of advice provided to the Executive (through both the Council's formal and informal governance routes)

- a review of the consultation process adopted and the adequacy / extent the Council considered alternative proposals – identifying any lessons learnt for future consultations / decision making
- 2.2 We approached this review in two phases. During phase one – *information gathering* – we held discussions with relevant officers and members and examined the following documentation:
- Committee Records
 - Electronic project files (held on IMP), including Fundamental Services Review (FSR) Board papers and minutes
 - Hard copy project files
 - Hard copy Legal files
 - Email advice (Legal)
 - Electronic consultation files
 - Ad-hoc information / emails provided by interviewees
- 2.3 Completion of phase one culminated in the production of a comprehensive chronology of events enabling the Council to gain a full understanding of the facts and decision making timeline.
- 2.4 Phase two of the review involved:
- analysis of the results
 - an outcome report
 - identification of organisational learning
- 2.5 This outcome report will be considered by the Council's Audit Committee who will identify / recommend any improvements to the Council's governance framework.
- 2.6 In analysing the key events of the Libraries Project we have obtained knowledge and information that may not have been possessed by the Council or an individual at the relevant time to inform decision making, advice or actions. It should also be noted that we have looked back on judgements which were made in real time as part of a complex project. We have therefore attempted to assess and maintain the difference between:
- advice, an action or judgement which has been hindered by ignorance of particular information or facts,
 - advice and judgement based on risk assessments by officers at that time
 - advice which should have been given or an action / judgement which should have been taken given the information or known facts
- 2.7 We have approached this review with a strong emphasis on governance – the aim being to ensure the Council continues to run well in times of significant change and challenge. This requires recognition not just of what may have gone wrong but also what is involved in the taking of difficult decisions in

challenging times. It is important to acknowledge this context to ensure our findings have meaning for those members and officers at the centre of these decisions and that the organisational learning enables future good governance.

- 2.8 By way of background and to support an understanding of the key events leading up to the Executive decision in December 2013, we have included relevant extracts from our detailed chronology (Appendix 1). Our observations and overall lessons learnt will feature in the Executive Summary, followed by a section with our suggested areas for improvement. Inevitably there will be lessons for individuals – these matters will be reported separately and referred to management for action, as appropriate.
- 2.9 In order to fulfil the brief, we have focused on process, advice, governance and decision making. We have not, therefore, assessed the merits of the alternative service-wide proposals nor have we revisited the detail (where available) behind the officer evaluation of these submissions. For the same reasons, we have not deemed it necessary to validate the detailed work of the project team in developing the Library Needs Assessment and preferred delivery model.
- 2.10 The Judicial Review concluded that the Council’s consultation was flawed. To establish why this view might have been formed, we have examined the preparatory work, consultation documentation, the process during and after the consultation, the involvement of third parties (Consultation Institute, Sheffield Hallam University and legal advisors) and officer input. We have not validated the way in which the consultation results have been analysed or assessed the conclusions contained in the Consultation Outcome Report. The Judicial Review was critical of the consultation process not the analysis of the results.

Background

- 3.1 In January 2010 two project boards merged (Fundamental Heritage Review and Fundamental Libraries Review) to form the Fundamental Service Review (FSR) Board – the terms of reference were amended at this point. The Board’s remit was to lead on the future direction for Libraries and Heritage, receive and comment on regular reports from the head of service and to manage key strategic risks.
- 3.2 Membership of the FSR Board included both Officers and Members and although not explicit within the Terms of Reference, all attendees understood the FSR Board was not a decision making body – formal decisions were reserved for the Council’s Executive with the scrutiny role fulfilled by the Community and Public Safety Scrutiny Committee¹.
- 3.3 The Libraries decision was complex and multi-faceted. It was controversial both politically and in terms of public response. It involved, in no particular order:
- a needs analysis
 - development of a new model of service
 - a major public consultation
 - a major programme of community engagement
 - the managing of an expression of interest process
 - a staff redundancy consultation
 - a lengthy and comprehensive decision-making report
- 3.4 The changes were significant and included: a £2m reduction in budget, a two thirds reduction in the size of the static library service, the drawing of a distinction between a statutory and non-statutory service and the use of the new power of general competence encouraging community provision as a community development initiative rather than a part of the statutory library service. Much of this was at the cutting edge of library re-provision nationwide. Much of it was successfully established as lawful in the face of the Judicial Review challenge.
- 3.5 Significant service re-design and the processes associated with such change are inherently risky. They involve and demand risk-based judgements to be made by members and officers at regular stages. A Council may be able to minimise the risk of a successful Judicial Review but it cannot eradicate it. The Council should recognise these facts, ensuring it has the right culture that allows its members and officers to make those risk-based judgements. This in turn should support the Council to make these difficult decisions in a timely and efficient manner.

¹ Formerly – Communities Scrutiny Committee

- 3.6 Looking back at the reshaping of library services prior to the Core Offer in 2011 we can see that the potential closure of static libraries was not a new concept. Papers presented to the Fundamental Heritage and Library Review Project in January 2010 show that the Service was working on plans to rationalise the Library network following the outcome of their Fundamental Library Review in 2007. The outcome of the review had to ensure that the Council complied with the statutory requirement to have a "comprehensive and efficient" library service. The Core Offer, approved in February 2011, placed more emphasis on savings than in the earlier Library Review. The savings target was based on reducing the number of static libraries to 13.
- 3.7 A summary of the key events, extracted from our overall chronology, is detailed at Appendix 1 to assist with context, understanding and significance.

Summary of Events

- 3.8 Between March 2011 and July 2013, the Libraries Project Team, with the oversight and strategic direction of the FSR Board, were developing the Library Needs Assessment and preferred delivery model.
- 3.9 During this period the progress made on developing the Library Needs Assessment (not the delivery model) was presented to the Scrutiny Committee on two occasions (December 2011 and June 2012). The Committee noted the progress and provided comments on strategy, such as:
- proud of the way the library service & communities come together
 - need to retain professional library staff
 - rural communities rely on mobile service
 - support for the approach of libraries run in other buildings
 - agreed IT had a role
 - support the principle of volunteers but reservations about replacing staff

The next submission to the Scrutiny Committee was the pre-decision scrutiny meeting in June 2013 on whether to consult on the preferred model.

- 3.10 Informal Executive considered one paper early on in the development of the Library Needs Assessment (October 2011). The steer from this meeting was around:
- timing of the consultation (to be handled carefully)
 - the need to encourage volunteers in libraries
 - the closure of buildings to be avoided by encouraging community run libraries
 - libraries to be a catalyst for the Big Society
 - an alternative option of reducing staffing hours and making up with community volunteers
 - members to engage with communities supporting provision

- 3.11 The Corporate Management Board (CMB), made up of the Council's Executive Directors, received a short working note and presentation on the preferred

library model in October 2012 – this paper included a suggested decision making timetable which was aimed at achieving the Core Offer savings targets.

- 3.12 During 2011 various iterations of the Library Needs Assessment were presented to the FSR Board proposing comprehensive and phased consultation plans based on the future shape of the library services and proposals for change (i.e. the delivery model). These plans were changed following the steer from the Informal Executive in October 2011 regarding consultation timing.
- 3.13 Throughout 2011 and 2012 the project team were supporting a number of community library 'pilots' – this resulted in 6 Council libraries becoming community libraries with partnership or volunteer arrangements. A further two completely new community run libraries opened in 2012.
- 3.14 Legal advice was sought in December 2011, along with a query on how best to engage Legal Services throughout the project. A legal advisor was assigned to the project and the first written advice was provided in January 2012. This covered resources, what constitutes a 'comprehensive and efficient' service, needs assessment, consultation, service design and equality duties. Legal highlighted the key requirements for a defensible decision: substantial strategic work, good quality consultation, detailed needs assessment and an Equality Impact Assessment. Legal Services raised the importance of consultation prior to final decisions – they confirmed that there was no issue consulting on a preferred option but emphasised the need to demonstrate a willingness to revisit that option following the outcome of the consultation.
- 3.15 In March 2012 the FSR Board considered a paper outlining the possible shape of the library service in 2015. The proposal was based on one of the three original delivery models identified in a paper submitted to the Board in March 2011 – *more economic direct delivery* (based on 13 static libraries). The key components of the proposal put forward in March 2012 were:
 - Community libraries (35-60 facilities)
 - Enhanced libraries – located in Lincolnshire's 13 economic zones (combination of paid & volunteers delivered by LCC or partnerships)
 - Targeted Provision – 4/5 mobile libraries (for those unwilling or unable to support a static library in their own community)
 - Universal offer

This model also reflects the basis of the Core Offer – reducing the number of static libraries to 13. The FSR Board minutes record the need to keep elected members, including local members, up to date on developments.

- 3.16 In July 2012, the FSR Board supported the approach of commissioning the Lincolnshire Research Observatory (LRO) to independently analyse the libraries data collected up to that point and look at:
 - the rationale behind the 13 libraries proposal

- what would be a reasonable catchment area for enhanced (core) provision
- the most appropriate model for a future library service

3.17 In September 2012 the LRO reported back to the FSR Board on the results of their impact assessment on all household and active borrowers (based on the proposed 13 core library network) – there are no recommendations in the LRO report. The FSR Board agreed that the results on the LRO work were a good baseline for justifying 13 core libraries. In the same meeting the Board consider a draft discussion document which concludes:

- the universal services, core and targeted provision meets Lincolnshire's statutory library provision, and
- the non-statutory element (community provision) is also proposed as it is recognised other existing libraries may service other social functions

The FSR Board agreed that the project team were to continue with the current work strands and that there was a need for a decision making process and timetable.

3.18 The Legal section of the draft discussion document included their view on the preferred model – they felt the proposed model was capable of being lawful. Legal recommended further evidence & argument to withstand intense scrutiny i.e. a Judicial Review – they specifically referred to the impact analysis. Legal also stated that there was no reason why the FSR Board should not approve the model as its preferred option (with further work to test the design & evaluate its impact) prior to going to the Executive. Legal advised careful consideration of:

- timing of further work & activity
- timetabling of formal decision
- planning of the consultation requirements (users and staff)

3.19 In October 2012, a draft working note on the Library Needs Assessment, including the preferred model, was presented to the CMB. The paper explained, in summary form, the preferred delivery model and included a proposed decision timetable. CMB agreed to look into re-profiling the budget to ensure an achievable plan and also agreed to seek a political steer on future budget options. A proportion of the library savings was originally intended to be delivered in 2013/14 – the Heritage and Libraries 2013/14 budget was subsequently adjusted and the savings target was deferred.

3.20 The draft Executive decision paper was considered by the FSR Board in December 2012 and it was agreed that the paper did not need to go to the Informal Executive in January 2013. The minutes stated that the Conservative Group would receive a briefing.

3.21 Between March and June 2013 the project team focused on the consultation preparations. The Consultation Institute was appointed in March 2013 and they worked with Library Officers and the Community Engagement Team to

develop the consultation documentation, including the Consultation Mandate. The Mandate was considered and agreed by the FSR Board in June 2013.

- 3.22 On 26 June 2013, the Community and Public Safety Scrutiny Committee considered the Library Needs Assessment document, prior to the Executive Decision on 2 July 2013. This is the first post-election meeting of this Scrutiny Committee and there were a number of new members. There was strong opposition from some members and the Committee raised many concerns about the proposals, including issues around the volunteer commitment and a view that it was not the right consultation to take to the public.
- 3.23 The Scrutiny Committee did not support the recommendation to the Executive – they did not suggest any alternative course of action. The Executive noted the comments of the Scrutiny Committee and approved the consultations with the public.
- 3.24 The Council's consultation process ran from 2 July to 30 September 2013. During the same period, communities were invited to submit expressions of interest to run their local library i.e. those static libraries classified as Tier 3 – defined by the Council as non-statutory library provision.
- 3.25 On 31 July the Council received an alternative service-wide proposal from a member of the public² (Proposal X) – Project Officers engaged with the originator between August and October in an attempt to make the proposal a viable alternative. After extensive analysis, Project Officers concluded the "Proposal X" contained *"significant flaws and disadvantages compared to the revised LCC proposals"* – consequently, it was not recommend as an alternative option to the LCC proposal.
- 3.26 The Council received a large response from communities to run Tier 3 libraries as part of the non-statutory service – 43 in total. These responses were in the form of community expressions of interest – the Council had a defined process to evaluate the submissions and an evaluation panel assessed the expressions of interest during October 2013.
- 3.27 On the last day of the consultation, two further service-wide proposals were received, in the form of expressions of interest. The officer evaluation panel did not consider these two whole service expressions of interest in their assessment on the grounds they were potentially outside the scope of the current consultation.
- 3.28 An officer decision was taken not to pursue these submissions further, following advice from Legal and consultation with Executive Directors and Members. The rationale behind this decision was:
- insufficient detail provided / significant negotiation required to understand the proposal(s)
 - would lead to a procurement exercise

² Referenced throughout the report as "Proposal X"

- would delay the savings process / savings were not guaranteed
- no guarantee that it would provide a comprehensive and efficient service
- would not deliver the community benefits

These were deemed by Legal to be rational reasons for not pursuing the alternatives and they were sufficient to make a lawful decision. This judgement was challenged within the Judicial Review but the Judge did not find this element to be flawed – the issue was not recognising the GLL submission under the Localism Act.

3.29 Legal Services Lincolnshire instructed Counsel towards the end of the consultation period, primarily to advise and input to the Executive Decision Paper but also to:

- highlight any weaknesses in the arguments or procedures
- undertake a conference on 17 October to advise on the contents of the proposed final Executive report

The instructions also pointed out that LCC was keen to avoid any public law challenge, including equality issues and wanted input around other areas of potential challenge. A pack of background papers was provided with the instructions, including a sample community information pack.

3.30 Between October and mid-November 2013 Project Officers considered the consultation results and worked on revising the preferred model and final Executive report – Legal Services and Counsel supported with the latter. Sheffield Hallam University produced the consultation outcome report which was tabled at the Community and Public Safety Scrutiny Committee on 30 October 2013.

3.31 Officers made changes to their preferred delivery model following the results of the consultation, some of which were based on elements of "Proposal X" – this affected the amount and timing of the savings.

3.32 On 22 November 2011, there was an extraordinary meeting of Full Council. At this meeting a motion was proposed relating to the proposal submitted by a member of the public (Proposal X) – Lincolnshire Independents urged the Executive to consider this proposal at their meeting on 3 December 2013. The proposal had been designed to achieve the savings targets whilst retaining all static libraries with a core of professional staff. The motion was carried.

3.33 The Community and Public Safety Scrutiny Committee gave significant consideration to the revised proposals at the pre-decision scrutiny meeting on 2 December 2013. The vote was in favour of the recommendation to the Executive though some members did have reservations and felt the proposal would be open to legal challenge and would not deliver a comprehensive service. Some also felt the consultation was fundamentally flawed and that the high dependency on volunteers would mean a significant loss of staff.

Many Executive members attended the Scrutiny meeting and heard first-hand the scrutiny feedback.

- 3.34 The following day (3 December 2013) the Executive considered and approved the revised LCC model of library provision. In their presentation Officers covered the consultation findings, the revised delivery model and noted the two external service-wide proposals and the reasons for not pursuing them. Given the motion from Full Council, time was spent in the Officer presentation explaining the proposal submitted by a member of the public (Proposal X) and why it was not recommended as a viable alternative.
- 3.35 At the end of January 2014, the Council received a Judicial Review pre-action protocol informing of the challenge to the Council's decision to cut its library provision. There were four grounds to the challenge:
- failure to consult when proposal was at a formative stage
 - breach of Public Sector Equality Duty
 - failing to consider the proposed take-over of all libraries by Greenwich Leisure Limited
 - failure to provide comprehensive and efficient service
- 3.36 Legal Services and Counsel prepared the Council's defence and submitted, what they felt to be, a robust response to the challenge. On 17 July 2014 the Judge quashed the Council's decision on two grounds: 1) the consultation was flawed and 2) the manner in which GLL's proposal was dealt with. The Judge viewed GLL's submission as an expression of interest under Section 81 of the Localism Act 2011 and that GLL (a charitable trust) qualified as a 'relevant body'.

Executive Summary

- 4.1 During our review some people focused on the 'lawfulness' of the decision and the formal decision making process of the Council. Seen from this point of view, the key issue was that the decision was taken in a manner which would withstand legal scrutiny. This report does not question the validity of that viewpoint. On the other hand the Council is expected to act over and above legal requirements to ensure that the Council's business is run well. Further, good governance principles advocate that to maintain public trust and confidence the Council should be open as possible about all its decisions, actions, plans and use of resources. It is important that this context is acknowledged and clearly understood to be able to get the most out of the contents of this report.
- 4.2 The review of the Library Service involved a complex range of political, economic and social objectives. Officers and Members worked hard in their attempt to ensure these were delivered. The reality of the circumstances generated a different (and sometimes conflicting) set of external and internal constraints, which in our view affected the governance arrangements they then followed. These are explored more fully in the following paragraphs.

Option Appraisal

- 4.3 Option appraisal is a key feature of robust local government decision making and something which should be routinely evidenced in the Council's Executive Decision Papers. In the case of the review of Library Services, this did not happen and it was, in our opinion, a missed opportunity. An option appraisal would have helped determine the most appropriate deployment of the Council investment and provide evidence of a rigorous analysis of various options, including their projected risks and impacts. It is recognised that an option appraisal may not necessarily have changed the Council's preferred model; however, this level of analysis can clarify what is required for significant policy decisions and helps promote good governance. The Council's recent Commissioning Guidance makes this clear.
- 4.4 There is no doubt there was substantial analysis and intelligence gathering throughout the development phase of the project, all of which was designed to feed into the Library Needs Assessment and support the Council's preferred model. What the Council was unable to demonstrate (until the later analysis of "Proposal X") was a similar examination of alternative ways of achieving the savings within the library service or different service delivery options. Early intentions to look at, and consult widely on, different options and delivery models were lost with the imperative to achieve the Core Offer savings and the focus on the Council's preferred option.

Consultation

- 4.5 Early in the Libraries Project, the Council's Legal advisors raised the importance of the consultation process, the need to demonstrate an open

mind and a willingness to consider the preferred option in light of the outcome of the consultation. A crucial element of a consultation process is the documentation, in particular the Consultation Mandate and questionnaire. Legal had advised throughout the development stages of the project and were heavily involved in the Executive Decision Report – the lack of legal input into the consultation documentation (including the community expression of interest pack) was, in our opinion, a significant omission.

4.6 The decision not to engage Legal in the drafting of the consultation documentation was due to the involvement of the Consultation Institute as they were considered to be the experts in this field. Both Officers and Legal Services felt this to be a reasonable approach. However, we believe a review by Legal Services would have:

- a) identified the flawed wording in the Consultation Mandate relied on by the Judge (see paras 4.11 and 4.29)
- b) led to different wording on the expression of interest forms and guidance

This in turn may have enabled these issues to have been evaluated and risk assessed by Officers.

4.7 In the early stages of the project there were consultation plans on options and delivery models with various different consultation phases. In July 2011 a paper was taken to the FSR Board with a proposal for a 'Big Library Conversation'. This phased approach proposed to explore future library service priorities with focus groups in 2011, invite public comments on initial thoughts in early 2012 and work up viable delivery options with communities, members and parish councils towards the end of 2012. We understand, from a number of FSR Board papers, that there was no appetite for another widespread public consultation on what Lincolnshire's Library Service should be – consequently these consultation plans were not implemented.

4.8 In September and October 2011, Officers requested a political steer around the timing of the consultations. Minutes show that concerns were raised by members around the timing of this and it was subsequently suggested that this should be handled carefully. Whilst it is acknowledged that this is a perfectly reasonable steer to be given, the agreed timescales affected the focus of the consultation, the consultation process itself and increased the risk of not achieving the savings targets – in effect, it compressed the consultation evaluation period and subsequent formal decision making timescales.

4.9 The compressed timeframe (July to December 2013) placed significant pressures on all officers, advisors and organisations involved in the libraries consultation and subsequent reporting. In certain circumstances, it also affected the quality and robustness of analysis, advice and officer decision making. We do note, however, that there was no request for an extension to the original decision timetable – the focus was on delivery of the project milestones.

- 4.10 Officers placed reliance on the input and expertise of the Consultation Institute as they were involved in the drafting of the mandate and consultation questionnaire. The Community Information Pack, along with all other consultation documents, was sent to the Institute as part of their review. On 14 August 2013, the Institute issued a letter confirming the Scoping and Project Plan sign off – this stage included documentation review.
- 4.11 In our opinion, the consultation documents contained errors:
- Consultation Mandate (reference to decisions and agreements when in fact no formal decisions had been made)
 - Expression of interest (EOI) form (which included a declaration acknowledging that if the EOI is accepted, it would be subject to a procurement exercise)
 - Accompanying guidance headed up "Community Right to Challenge – Expression of Interest – Guidance Notes" (the process was not a community right to challenge)

We note that Council officers and the FSR Board missed these issues.

- 4.12 The rationale for running the processes in parallel was twofold: to ensure the community library idea was feasible and to enable swift implementation if the preferred model was approved. Legal Services were concerned that the Executive could not properly decide to approve a non-statutory community based service without evidence that communities were interested in running such services. We believe the effect of running the expression of interest process at the same time was to increase public perception that it was a 'done deal'. We note that the Council's preferred model was amended as a result of the consultation.
- 4.13 As a matter of wider governance, it may have been better had the consultation on the preferred model taken place prior to the community expression of interest process. Although this was never the intention, running the two processes in the same 90 day period gave GLL the process and opportunity to submit an offer for the entire library service. This exposed the Council to the section 81 challenge under the Localism Act – something no-one within the Council spotted and was not identified as such by GLL.

Alternative Proposals

- 4.14 Our findings show that the consultation process was not designed to invite alternative service-wide proposals to the Council's preferred model. Nevertheless, an alternative view of what the Library Service might be was submitted by a member of the public. Project Officers were not expecting to receive expressions of interest for the entire library service and so there was no controlled process or pre-set criteria for evaluating them.
- 4.15 Without a defined process to evaluate service-wide proposals it was difficult for officers to demonstrate a fair, controlled and robust appraisal of the submissions. This exposed the Council at the Judicial Review (particularly

around the GLL expression of interest) and caused misunderstandings and expectations around the handling and status of the proposal submitted by the member of the public (Proposal X).

- 4.16 Our review identified extensive officer time exploring the viability of "Proposal X", we did not find the same level of due diligence around the evaluation of the two expressions of interest. Time constraints, together with the drive to achieve the required budget (savings), the strong political steer and legal advice, all influenced the officer response and actions.
- 4.17 The most significant missed opportunity was not exploring the two service-wide expressions of interest. Putting back the decision making would not only have enabled more time for analysis and reporting of the consultation results but would have also permitted appropriate examination of the alternative proposals and more time for advisors (including Legal) to support the decision making process.
- 4.18 Our review identified conflicting accounts of what may have been said in the member briefing around one of the reasons for not pursuing the proposal from the charitable trust (Greenwich Leisure Ltd). The differing recollections related to whether this particular proposal included the mobile library provision.
- 4.19 GLL's proposal and the officer evaluation paper shows there was provision for mobile libraries (albeit reduced) and this reconciled with the Executive Decision Paper. However we note that councillors (when being asked for a view on the alternative proposal) believed, from the officer briefing, that GLL's proposal removed the mobile libraries. These conflicting accounts around the service-wide expressions of interest, show the briefing may have caused member misunderstanding which could also have potentially influenced their steer at that time. How this misunderstanding arose is not within the remit of this review; however this matter has been referred to the Chief Executive for consideration.

Localism / Open Public Services

- 4.20 Although in 2011 there was some early recognition of the potential implications of the Localism Act and Open Public Services, this became lost in the development of the Library Needs Assessment and preferred model. The Council applied the Localism ethos at the lowest level – community volunteers – as this fulfilled the political vision for community involvement and the pursuit of the 'Big Society'. An option appraisal process would have been more likely to stimulate a wider consideration of the Localism issues but this did not happen. After defining the statutory and non-statutory elements of the library service the Council was not as open as it might have been to the potential for a county-wide proposal to emerge.
- 4.21 The Council's idea of Localism in the context of the Library Service was to support local communities to run the non-statutory element of the service – i.e. their own library (those static libraries classified as Tier 3). This, together

with the need to make savings, was one of the issues driving the Executive's strategy – they saw this approach as a catalyst for the 'Big Society' and a way of maintaining library services beyond the statutory provision.

- 4.22 As the focus was on individual community (non-statutory) libraries, the Council was not expecting an offer for the entire library service through the consultation and no-one (including the legal advisors) recognised the service-wide offer as being potentially valid under the Localism Act.
- 4.23 Both Legal Services and Counsel had copies of the Community Information Pack. Given the time constraints, all legal focus was on the Executive Decision Report – their remit was to ensure a defensible decision and in that regard they did (in the most part) succeed; the Council's decision was not deemed unlawful but there were process issues leading up to that decision.
- 4.24 It is a fact that these two service-wide proposals were submitted via a process designed only for the non-statutory element of the library service. This was an unusual set of circumstances, outside of the defined process. Legal Services did not have sight of the two external proposals. It was not practical (or affordable) for Legal Services to validate all inputs to the decision report. However, we would have expected more comprehensive legal advice on the implications of the two external bodies submitting their proposals in this way.
- 4.25 Although the Community Information Pack and service-wide expressions of interest were not reviewed by Legal Services or Counsel prior to the Executive Decision, they were considered in preparation for the Judicial Review. Given that one of the grounds of the claim specifically covered the Council's failure to consider the Greenwich Leisure proposal in the context of the Localism Act, we would have expected this to feature higher in their risk assessment.
- 4.26 Legal Services felt that it was not well founded as a challenge to the Council's decision about the shape of its library service. Had the GLL proposal been identified at the time as a Localism Act challenge the Council would have dealt with it as it has since the Judicial Review. The challenge would be considered and either rejected or accepted, which (if the latter) would give rise to a procurement process. It would not however necessarily lead to a different model of service being adopted by the Council.

Effective Scrutiny / Decision Making

- 4.27 A phased approach would have been good practice for such a significant change as that proposed by the Library Service – an options appraisal around what a comprehensive and efficient library service might look like, followed by an option appraisal on how the service should be delivered. The deferred decision making timetable, which was a consequence of the political drivers and the financial timescales, resulted in the 'what' and the 'how' around the library services being formally considered at the same time. We believe a phased approach and consultation (as originally planned by officers via the

'Big Library Conversation')³ may have improved scrutiny, decision making and the overall outcome.

- 4.28 We identified some confusion around the Council's decision making – this is illustrated in the wording of the consultation documentation. The Consultation Mandate included “not in scope for consultation – matters already agreed by the library service” and numerous references to “...it has been decided that...”
- 4.29 In reality, the Council had not taken any decision on the future of the library service but was instead seeking views regarding the redesign of the library service, specifically the preferred model. The Mandate did not reflect this and instead informed the public that decisions had already been made around a significant part of the library service – consultation comments show that many felt it was a ‘fait accompli’. We believe legal input at this stage would have identified these anomalies.
- 4.30 The drafting of the Consultation Mandate was a joint exercise involving the Consultation Institute, Community Engagement Team and library officers. However, we also note from minutes and agenda papers, that the FSR Board considered and agreed the wording of the Mandate in June 2013.
- 4.31 Our review identified a potential point around officer understanding of the Council's informal and formal decision making process – this is illustrated in the above example and in other matters throughout the project some of which were identified and resolved by Legal Services.
- 4.32 We found the papers presented to both pre-decision Scrutiny and the Executive extremely lengthy, for example:
- Sheffield Hallam University’s consultation outcome report, 205 pages (tabled – 15 minutes prior to the meeting)
 - Library Needs Assessment (July 2013), 44 pages plus 7 appendices
 - Libraries Decision Report (December 2013), 84 pages plus 11 appendices
- 4.33 Members generally have five working days to reflect on the papers in advance of these meetings – in our opinion Councillors would benefit from more time to consider the bigger issues. We acknowledge that it is important to demonstrate that appropriate due diligence has taken place in any new proposal but we believe that the focus and key messages can sometimes get lost in such lengthy reports.
- 4.34 We found little effective scrutiny contribution to the Library Needs Assessment, preferred delivery model and Executive decision making. Earlier scrutiny meetings had acted more as a sounding board for library service concepts. Scrutiny over the option appraisal would have:
- increased the level of transparency and openness

³ Big Library Conversation – conversation plan developed July 2011 proposing a phased approach

- provided an understanding behind the rationale for the preferred model
- resulted in a smoother and more effective pre-decision scrutiny

4.35 We believe it would have been better had the Scrutiny Committee been engaged at an earlier stage to fully understand the legalities, business and service delivery issues associated with the library review. It would have also allowed officers to respond to scrutiny feedback within their proposal and carry out more work, if considered necessary.

Suggested Areas for Improvement

The Libraries Project Team completed lessons learned exercises in May and June 2014 which we advise should be considered alongside the suggested areas listed below to maximise organisational learning around project management, governance and decision making.

Option Appraisal

- 5.1 Decision makers should be presented with alternatives to any preferred model or intuitive solution and encourage options to be developed. All decision makers, particularly when considering significant and potentially contentious service restructure / redesign matters, should be satisfied that possible alternatives have been fully assessed. This would ensure that the Council:
- fulfils its due diligence responsibilities
 - has substantial evidence in support of its proposals
 - has a robust response to opposers and / or alternative suggestions
 - has increased confidence and informed decision making on key issues
- 5.2 The Council has invested significant resource into developing its commissioning capability. This includes commissioning toolkits which provides sound process and practice guidance for all stages of service redevelopment – the Management Board should ensure that these tools are used.

Project Resources

- 5.3 The Authority should ensure that sufficient project resources are available for robust option appraisal on its corporate priority activities / key projects. Early assessments around project resourcing should ensure that the right people with the right skills, knowledge and experience are assigned to the project from the outset. Ideally, service areas should develop project management skills from amongst their subject specialists. However, if such people are not available, then project management specialists, who can support the service area, should be appointed. Other subject matter specialists such as lawyers may also be required in a project team from the outset.

Project Plans

- 5.4 Project plans should allow sufficient time to introduce at least one additional pre-decision report into the Scrutiny process to enable earlier engagement and improved contribution to strategy, policy and decision making.

Consultation

- 5.5 Any constraints on the timing of public consultations should trigger a risk assessment and appropriate actions to mitigate the potential impact on decision making.
- 5.6 Consideration should be given to the Council's in-house capacity to support public consultations and whether it is desirable or necessary for the Community Engagement Team to co-ordinate, analyse and report on consultation exercises in addition to delivering their advisory role.
- 5.7 All projects requiring public and/or staff consultations should communicate provisional dates to the Community Engagement Team at the earliest opportunity – this would allow for suitable planning and resourcing.
- 5.8 At the start of any key project, officers should liaise with Legal Services to determine whether legal advice is required on proposed consultation documentation, in particular the consultation mandate – the extent and need for legal input may depend upon the nature and sensitivity of the consultation subject. The timing of the legal input should then form part of the project plan.
- 5.9 The Council should specify a minimum standard or guidance for consultation evaluation and the process should allow for extensions in particularly complex and contentious matters. All project leads should ensure they specify the format of the consultation outcome report to ensure it meets the needs of officers and decision makers.
- 5.10 Legal advice should be sought on the implications of unexpected issues or events arising from consultation exercises.
- 5.11 Where appropriate, consultations should provide the opportunity for consultees to suggest alternative proposals to the option(s) favoured by the Council. Project officers should devise a suitable process and evaluation criteria (prior to the consultation) upon which to assess any submissions – the criteria should, as a minimum, include: cost, quality, risk and strategic fit.
- 5.12 Project officers, if required to evaluate alternative suggestions submitted during consultation exercises, should retain suitable evidence to demonstrate compliance with the pre-defined evaluation criteria.
- 5.13 We advise a review of the Council's equality impact assessment forms to ensure it is fit for purpose and includes, for example, appropriate emphasis on people with protected characteristics.

Localism

- 5.14 We advise that all proposals to reconfigure services are considered in the context of the Localism Act and Open Public Services. Legal Services

should assist / review that assessment, seeking specialist advice where necessary.

Governance and Decision Making

- 5.15 All project boards should map a decision making route / plan at the outset, identifying key decisions, decision makers, timing and reporting requirements. Advice should be sought, where necessary, on those decisions requiring legal input and these should form part of the plan. Legal instructions should routinely include a risk assessment around wider public law issues associated with any new proposal / service re-design.
- 5.16 The Corporate Management Board should consider how they can effectively equip and support senior managers in understanding their responsibility and application of the Council's informal and formal decision making processes.
- 5.17 All complex projects should allow, as far as possible, a phased approach – focusing on consultation, strategy, option appraisal, scrutiny and decision (not necessarily in that order).
- 5.18 Where project timescales and key activities are affected by matters beyond the control of project teams, councillors and officers should jointly risk assess the impact and agree mitigating actions to avoid adverse effects on project activities and decision making. All project risk assessments should clearly think through the projected risks throughout the project lifecycle.
- 5.19 We advise a review of committee reporting with a view to producing guidance or a Council standard on content, length and clarity of recommendations. To maintain a focus on key messages, committee reports and decision papers could be enhanced by managing the length – certain items such as needs assessment, equality impact assessments and detailed consultation analysis could feature as appendices (supporting material) with summaries in the main committee report. The review should also assess the quality of the policy impact assessments of these reports.
- 5.20 Key briefings with members should be clear and concise – members should also be presented with the briefing papers to avoid potential misunderstandings.

Date	Person / Committee	Event Description
25.03.11	FSR Board	<p>Draft Library Remodelling Strategy (renamed Library Needs Assessment (LNA)) presented – LNA identifies 3 core delivery models (recognises there are others):</p> <ul style="list-style-type: none"> • More economic direct delivery (13 static libraries, mobile service, ‘back of house’ library, volunteers) • Commissioning model – as per economic direct delivery model but everything beyond 13 static libraries commissioned through e.g. private sector, District Council, Parish Council or Third Sector • Non-profit Distributing Organisation (NPDO) – a trust that would have charitable status, benefiting from tax breaks etc. <p>Indicative timescales show consultation on options to take place (as part of LNA) between April 2011 and September 2012, Strategy revised in October (following consultation) and delivery of strategy November 2012 to March 2014.</p>
18.10.11	Informal Exec / CMB (Paper)	<p>Paper on Library Needs Assessment (LNA) seeking Member's views on:</p> <ul style="list-style-type: none"> • scope of review & factors to consider when assessing future options • current library priorities for the future & political process to develop future options • timescale & process for the consultation re. potential changes to local arrangements <p>Context: budget reduction of £2.158m, the Localism Bill & the Open Public Service White Paper. Paper highlights scope to work with communities to design & develop services and work in innovative ways with new partners to commission the delivery of the services.</p> <p>Paper notes previous judicial challenges to proposed library changes elsewhere – includes insufficient consultation / ignoring results. 4 factors in future delivery models: sustainability, affordability, fulfilling needs, access. Key issues noted: LNA needs clarity re. context & purpose with consultation on detailed proposals. Important for 2 stage consultation: 1) role & changing nature of library service 2) proposals for change.</p>

Date	Person / Committee	Event Description
18.10.11	Informal Exec / CMB (Minutes)	Minutes re. LNA paper: <ul style="list-style-type: none"> • timing handled carefully • officers should encourage volunteers in libraries • library service not just about library buildings • closure of buildings to be avoided – encourage communities to run local libraries • library catalyst for Big Society • alternative option – reduce staffing hours, make up with community volunteers • members to engage in working with communities supporting provision
14.12.11	Communities Scrutiny Committee (Paper)	Paper asks Committee views on: <ul style="list-style-type: none"> • Aim of the review to "develop an affordable library service to meet Lincolnshire's needs" • Current activities shaping the review & development of future provision & delivery models <p>The paper covers: context (savings target & context), statutory requirements, what a library service provides & the benefits, changing context (Localism etc), work to date (including 3 pilot community LNAs & a review of opening hours in static libraries) and key issues to consider in the wider LNA (including need to consider services delivered via a variety of service providers, community organisations & groups and volunteers)</p>
14.12.11	Communities Scrutiny Committee (Minutes)	Various Scrutiny comments including: use of libraries for other purposes, 25k new library users per year, LCC proud of way library service & communities come together, need to retain professional library staff, rural communities rely on mobile service
22.12.11	Project Lead	'Legal Input Request' on the Library Needs Assessment – paper covers background & legal questions.
30.01.12	Legal Services Lincolnshire	Advice covers: resources, what constitutes a 'comprehensive & efficient' service, data for needs assessment, consultation, service design, equality duties and interim activities. Re. consultation – no conflict between keeping an open mind and consulting on a preferred option. The importance of

Date	Person / Committee	Event Description
		<p>consultation prior to final decisions was raised – emphasis on the need to demonstrate a willingness to revisit the preferred option following the outcome of the consultation.</p> <p>For a defensible position the Council needs – substantial strategic work, good quality consultation, detailed needs assessment and EIA.</p>
23.02.12	FRS Board paper	<p>Key activity milestones listed for 2012/13 listed, including:</p> <ul style="list-style-type: none"> • Needs analysis • Testing community options • Options analysis & Outline Business Case for future Lincolnshire libraries • Encourage communities to take on community library facilities <p>2013/14 list includes:</p> <ul style="list-style-type: none"> • Detailed Business Case & implementation plan for future delivery models • Consultation • Implementation of revised service model & management reductions
22.03.12	FRS Board paper	<p>The paper outlines possible shape of library service in 2015 – LCC to shift from being a provider to an enabler. Key components listed as:</p> <ul style="list-style-type: none"> • Community libraries (35-60 facilities) • Enhanced libraries – located in Lincolnshire’s 13 economic zones (combination of paid & volunteers delivered by LCC or partnerships) • Targeted Provision – 4/5 mobile libraries (for those unwilling or unable to support a static library in their own community) • Universal offer
13.06.12	Communities Scrutiny Committee	<p>Members views were sought on:</p> <ul style="list-style-type: none"> • Establishment of libraries in other buildings

Date	Person / Committee	Event Description
	Paper	<ul style="list-style-type: none"> • Potential for IT to contribute to delivery of the library service • Merits of using volunteers in service delivery <p>The report notes the review of library services & how they could be delivered will be considered within the context of a community’s right to run local authority services (Localism) and the Open Services White Paper which commits the government to a programme of modernisation of public services which can, among other principles, mean the opening up of services to a range of providers.</p> <p>The paper recognises the new legislation enables the Council to work in innovative ways and with new partners to commission the delivery of those services.</p> <p>Members supported the approach of libraries run in other buildings and the principle of volunteers but held reservations about replacing staff. They agreed IT had a role.</p>
20.07.12	FSR board Draft Discussion Paper – response to research & next steps	<p>Partially completed impact assessment – looking at impact of reducing number of static libraries from 47 to 13. Confirms the drivers are:</p> <ul style="list-style-type: none"> • Political – reshaping library services to meet future needs that are sustainable & affordable • Economic – savings of £2.1m by 2015 (budget reductions phases) <p>Proposal covers the impact of operating 13 enhanced libraries directly & supporting the remaining libraries to operate under other organisations or community groups.</p> <p>FSR Board supports the approach especially the involvement of the LRO to look at rationale behind 13 libraries, what is a reasonable catchment area for enhanced (core) provision and the most appropriate model for future provision.</p>
17.09.12	FSR board Draft Discussion Paper –	<p>The paper concludes the universal services, core & targeted provision meets Lincolnshire statutory provision under S7 (subject to further testing of rationale & equality duties).</p> <p>The non-statutory provision is also proposed as it is recognised the other existing libraries may</p>

Date	Person / Committee	Event Description
	response to research & next steps	<p>service other social functions – a community provision.</p> <p>The Legal section – no reason found why the proposed model should not be capable of being lawful. Recommends further evidence & argument which will withstand intense scrutiny i.e. a JR – impact analysis. Legal state no reason why FSR Board should not approve the model as its preferred option (with further work to test the design & evaluate its impact) prior to going to the Executive. Advises careful consideration of:</p> <ul style="list-style-type: none"> • Timing of further work & activity • Timetabling of formal decision • Planning of the consultation requirements (users and staff) <p>The Board agree to continue with the current work strands and clarify the decision making process & need for an Executive decision – a steer to be sought re. 3 possible decision timetables.</p>
10.10.12	CMB	<p>Draft working note on LNA. This paper explains (in summary form) the proposed preferred model: core libraries (13 economic zones), universal provision, targeted provision (e.g. mobile libraries etc) and community libraries (possibly 35 run by volunteers, third parties or face closure). It includes a proposed timetable, including Informal Exec, Communities Scrutiny (June 2013), Executive (July 2013), consultation July to September, Executive final decision (October), Implementation start November and finish (March 2014).</p> <p>CMB agree to look into re-profiling the budget to ensure an achievable plan. Political steer to be sought on future budget options for the Libraries Service.</p>
07.12.12	FSR Board working note on LNA for CMB / Informal Executive	<p>The working note covers opportunities (previously identified) and lists the core libraries & travel times, notes targeted provision & community libraries – the draft Executive Decision Paper is one of 11 appendices (including the impact assessment).</p> <p>Board agree paper does not need to go to CMB or Informal Exec on 15.01.13. Cllr to discuss LNA with the conservative group.</p>

Date	Person / Committee	Event Description
18.03.13	FSR Board – consultation draft	<p>LNA Consultation Draft is designed for the Board to:</p> <ul style="list-style-type: none"> • agree "opening offer" • consider & approve consultation process <p>Proposal identifies 10 x Tier 1 core libraries & 5 Tier 2 libraries (based on next most populous areas not causing overlap with Tier 1 libraries – Board is to decide on which site to retain as Tier 2 as there is an either/or for 2 of the 5 locations. Tier 3 provision is either a Super Mobile service or community operated static libraries. Tier 4 is access mobile for 1 hour per month & web access.</p> <p>A timetable is noted, including FSR Board to agree "opening offer", work to get consultation packs produced, Communities Overview & Scrutiny consideration (26.6.13), Exec authorisation for consultation, 90 day consultation period analysis & production of Exec Report October 2013 & final decision (November 2013).</p> <p>Propose LCC goes through Compliance Assessment Scheme offered by Consultation Institute – the independent assessor will sign off each stage of consultation – other counties using this method have not had their consultation successfully challenged. Board approve the use of the Consultation Institute.</p>
25.03.13	Consultation Institute	LCC appoints the Consultation Institute to provide an independent view of the Council's consultation process.
12.06.13	FSR Board – consultation mandate	Draft mandate considered and agreed by Board – states CI insists that consultations are clear about matters which are open to stakeholder influence. 16 May & 3 June – CI met with community engagement team about what should/should not be in scope.
26.06.13	Community and Public Safety Scrutiny	<p>Report invites the Scrutiny Committee to consider the Library Needs Assessment which is due to be considered by the Executive at its meeting on 2 July 2013.</p> <p>The Scrutiny Committee raised numerous concerns about the proposals – there is strong</p>

Date	Person / Committee	Event Description
	Committee	opposition by some members – the list of concerns includes (among numerous other things): <ul style="list-style-type: none"> • a number of large population areas not covered (e.g. Branston) • uncertainty the plans would generate the savings • belief the proposal was open to challenge under the Equalities Act • reassurance sought the consultation would be genuine & that people would be listened to • concern re. volunteer commitment • some felt it was not the right consultation to take to the public Scrutiny Committee do not support the recommendation to the Executive (vote not recorded)
02.07.13	Executive	The report was presented to Members with detailed information in relation to the proposed changes. Executive approve the consultations: <ul style="list-style-type: none"> • with the public on a new model of statutory library provision • with the public on proposals to offer a range of community library provision or support for community library provision
07.07.13	Consultation	Consultation begins.
30.07.13	Member of the Public	Submission of a service wide alternative " <i>Proposal X</i> " – Library Service engages with the originator from August to November 2013 in an attempt to make the proposal work. Alternative considered but not recommended as an alternative option.
14.08.13	Consultation Institute	Consultation Scoping and Project Plan Sign Off.
27.09.13	Legal	Instructions to Counsel to advise on Executive decision paper, highlight weaknesses and issues of a procedural nature. LCC keen to avoid any public law challenge and are keen for input around other areas of potential challenge.
30.09.13	Consultation	End of consultation. Receipt of two further service wide proposals – Bibliotheca and Greenwich Leisure Limited.

Date	Person / Committee	Event Description
14.10.13	Consultation Institute	Consultation Mid-term and Closing Date Review Sign Off.
14.10.13	Libraries Update Meeting (Notes)	<p>Alternative proposal from member of public – not to consult unless advised by QC (meeting planned 17.10.13)</p> <p>Bibliotheca & GLL Expressions of Interest – noted but would need to be procured which would delay savings process – so not keen to pursue.</p> <p>Logic of current model stays.</p>
28.10.13	Libraries Update Meeting (Notes)	<p>"Proposal X" (submitted by member of the public) – not to be taken forward</p> <p>Tier 3 Expressions of Interest – additional information requested after initial scoring & current timescale was supported with a further deadline of 31.1.14 with all to submit a Business Plan by 31.3.14.</p>
30.11.13	Community & Public Safety Scrutiny Committee	Libraries consultation – Committee received a report and presentation from Sheffield Hallam University on the findings of the consultation process for the proposals for changes to library provision in Lincolnshire.
14.11.13	Libraries Update Meeting (Notes)	Focus on the recommendation not to consider the GLL proposal.
22.11.13	Full Council	Extraordinary meeting of the County Council to receive a presentation of library proposals in the light of public consultation, followed by a debate. Former Assistant Director Economy & Culture and County Libraries & Heritage Manager delivered their presentation – a motion was proposed by a Councillor relating to "Proposal X" (submitted by a member of the public): Motion was carried.

Date	Person / Committee	Event Description
02.12.13	Community and Public Safety Scrutiny Committee	<p>Committee considers a report on Library Needs Assessment which is to be considered by the Executive on 3 December 2013. The views of the Scrutiny Committee are reported to the Executive.</p> <p>Significant consideration given to proposals – comprehensive minutes...many issues noted including:</p> <ul style="list-style-type: none"> • Aspects of "Proposal X" reflected in LCC's proposal • All 3 external 'service wide' proposals given 'due consideration' though staff time not logged re. consideration of other proposals • Some felt proposal open to legal challenge • Some believed consultation was fundamentally flawed • High dependency on volunteers / significant loss of staff <p>Committee supported the recommendations (vote 6 to 5 in favour) to the Executive as set out in the report.</p>
03.12.13	Executive	<p>Approval given to:</p> <p>(1) the proposed model of library provision in Lincolnshire</p> <p>(2) the delivery of support for communities of 550 households or more not served by a Tier 1 and 2 library (as defined in section 6 of the Report)</p>
30.01.14	Consultation Institute	<p>Final Consultation Report not signed off by Consultation Institute but Council is awarded with Certificate of Good Practice.</p>
31.01.14	Public Interest Lawyers Ltd	<p>Judicial Review pre-action protocol informing LCC of a challenge to the decision dated 3.12.13 to implement a programme of cuts to its library provision.</p>
17.07.14	Mr Justice Collins	<p>The Judge quashes decision of LCC on the shortcomings identified in the consultation and the manner in which the proposals from GLL were dealt with.</p>

This page is intentionally left blank