



Neutral Citation Number: [2025] EWHC 1518 (Admin)

Case No: AC-2024-CDF-000133

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT IN WALES

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 19/06/2025

Before :

THE HONOURABLE MR JUSTICE TURNER

Between :

The King
(on the application of
LOWRI EVANS)

Claimant

- and -

1. ANEURIN BEVAN UNIVERSITY LOCAL
HEALTH BOARD
2. BETSI CADWALADR UNIVERSITY LOCAL
HEALTH BOARD
3. CARDIFF & VALE UNIVERSITY LOCAL
HEALTH BOARD
4. CWM TAF MORGANNWY UNIVERSITY
LOCAL HEALTH BOARD
5. HYWEL DDA UNIVERSITY LOCAL HEALTH
BOARD
6. POWYS TEACHING LOCAL HEALTH BOARD
7. SWANSEA BAY UNIVERSITY LOCAL
HEALTH BOARD

Defendants

and

1. THE WELSH MINISTERS
2. WELSH AIR AMBULANCE CHARITABLE
TRUST
3. CITIZEN VOICE BODY FOR HEALTH AND
SOCIAL CARE, WALES (operating as LLAIS)

**Interested
Parties**

Joanne Clement KC and Christian J Howells

(instructed by **Watkins & Gunn Solicitors**) for the Claimant

Fenella Morris KC and Katherine Barnes

(instructed by **Blake Morgan LLP**) for the Defendants

Jonathan Moffett KC

(instructed by **Geldards LLP**) for the Second Interested Party

The First and Third Interested Parties did not appear and were not represented

Hearing dates: 22-23 January 2025, 7 February 2025

Final written submissions 20 May 2025

Judgment Approved by the court for handing down

This judgment was handed down remotely at 10.30am on Thursday 19th June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

The Honourable Mr Justice Turner :

INTRODUCTION

1. This case involves a challenge by way of judicial review of a decision taken by the NHS Wales Joint Commissioning Committee (“the JCC”) on 23 April 2024. The decision approved plans for a significant reorganisation in the deployment of the Emergency Medical Retrieval and Transfer Service (“EMRTS”) in Wales. An important part of the plans entailed the closure of two EMRTS bases in mid and north Wales (with limited operating hours) to be replaced by a single base (with longer operating hours).
2. The service which EMRTS provides involves transporting specialist medical teams and equipment to the scene of serious medical emergencies in Wales. In this regard, it operates in partnership with the second interested party, the Welsh Air Ambulance Charitable Trust (“the Charity”). The Charity funds the vehicles and the bases from which they and the medical staff are deployed. The seven Local health Boards (“LHBs”) funds the staff and the medical equipment they need.
3. The JCC is a committee on which each of the LHBs in Wales are represented. It has no legal identity and so this challenge is brought against the individual LHBs which do. The LHBs are each responsible for planning and delivering NHS services for their respective regions. There is no Welsh equivalent to NHS England. The standing orders of the JCC provide that Officer Members must ensure they do not favour their own LHB and must act for the collective benefit of all Welsh citizens.
4. I note, in passing that, in addition to the officers of the LHBs, the membership of the JCC included a chair and three lay members and that, although these four were parties to the making of (and all voted in favour of) the decision under challenge, they are not defendants to this claim. Furthermore, two of the LHBs (the second and sixth defendants respectively) are parties despite having actually opposed the decision in respect of which this challenge is brought. In the event, no point was taken on this arrangement in either written or oral argument before me and I am satisfied that this pragmatic procedural course (which was in accordance with the approach of Eyre J who dealt with the permission application on paper) best served the ends of fairness whatever objections the purist might otherwise have taken.
5. Also involved in the process leading up to the making of the decision was Llais which is the Citizen’s Voice Body for Health and Social Care in Wales. The extent of its role and the level of its participation will be considered later in this judgment.
6. The claimant is a single parent of three children. She lives in the village of Brynchrug close to the town of Tywyn which is to be found on the coast of

Cardigan Bay in southern Gwynedd. She suffers from a number of health related problems and, although she had never required their services herself, she strongly believes that the decision to reorganise EMRTS will be detrimental to many of those who, like her, live in mid and north Wales. Her views are shared by many others. Together with the other campaigners, she launched an online petition opposing the closure of the two bases under threat. It is a measure of the level of public concern that this petition attracted over ten thousand signatures.

7. Also in evidence is a witness statement from Robert Benyon, a member of the “Save Air Ambulance Mid Wales Base Campaign Team”, who supports this challenge.
8. The lengthy process leading up to the making of the decision under challenge has generated thousands of pages of documentation which, in turn, have become the subject of detailed written submissions made on behalf of the claimant, the defendants and the Charity. The hearing, optimistically listed to be heard over a period of one day, eventually extended over a period of three days the third of which was heralded by more, very detailed, submissions. Further written submissions were thereafter served in respect of two recent Court of Appeal authorities.
9. I stress that, in the particular circumstances of this case, I make no complaint about the quantity and length of the skeleton arguments with which I have been provided. Indeed, I have found them to be helpful. However, for reasons of proportionality, it has been necessary for me to be discriminating in my selection of the detail of the facts and arguments to which I have made express reference in this judgment. Any omissions are not to be interpreted as evidence of unfamiliarity with the material as a whole. The determination of any unresolved matters would not, had they been expressly referred to and adjudicated upon, have made any difference to my conclusions on the central issues in the case. This judgment is long enough as it is.

EMRTS

10. In order properly to understand the nature and scope of the decision subject to challenge, it is first necessary to describe in greater detail the service which EMRTS provides and the reason why plans for its reorganisation have proved to be so controversial. A full account of the role of EMRTS was provided to the court in the first witness statement of Ross Whitehead who, since September 2024, has been Director of Commissioning for Ambulance Services and 111 in Wales. His job involves overseeing the planning, delivery and transformation of emergency and urgent care services across the country. Prior to his appointment to his present post he was Deputy Chief Ambulance Services Commissioner and had been

involved with the decision making process throughout. What follows is intended to be no more than a concise summary of some of the more salient aspects of his evidence.

11. EMRTS was established on 27 April 2015 and operates only in Wales. There is no precisely equivalent service in England. It is responsible for transporting critical care consultants and other highly trained practitioners directly to the scene of serious medical emergencies. The aim is to bring personnel and equipment, more usually to be found in a hospital emergency department, straight to the scene. In this respect, EMRTS is complementary to, but distinct from, the service provided by the Welsh Ambulance Services Trust (“WAST”).
12. Only about 1% of 999 calls result in the involvement of EMRTS. This accounts for an average of about thirteen incidents per day. The deployment of EMRTS, however, has been shown significantly to improve the outcomes for patients who are thus treated. Examples of the highly specialist critical care interventions provided by EMRTS include but are by no means limited to: providing blood products; limb amputation; neonatal continuous positive airways pressure; prehospital anaesthesia and thoracostomy. The sort of incidents giving rise to the need for such interventions include: high speed road traffic accidents; major chest, head and pelvic injuries; stabbings; shootings; and mass casualty events such as aircraft or train crashes. The deployment of the EMRTS service is not in substitution for the ambulance service and, indeed, an EMRTS team will, more often than not, reach the scene after paramedics have already arrived by ambulance.
13. The transport provided by the EMRTS teams comprises helicopters and Rapid Response Vehicles (“RRVs”). Just over half of the EMRTS missions involve the deployment of helicopters.
14. At present, EMRTS operates from four bases each of which is home to one helicopter. They are located at: Cardiff; Dafen (Llanelli); Welshpool (Mid Wales) and Caernarfon (North Wales). Only Cardiff provides both a day shift and an overnight shift. The other three bases operate only a twelve hour day shift.
15. The bases do not provide services limited to the geographical area within which they are located. An all Wales service is provided from all bases.
16. The process for deciding whether EMRTS should be dispatched is undertaken by the EMRTS Critical Care Hub (“ECCH”) which is located at the WAST site in Cwmbran. The ECCH is staffed by an EMRTS Critical Care Practitioner and an EMRTS Dispatcher. The ECCH decides if and when an EMRTS response is required and which team to dispatch to any given incident. The ECCH covers all EMRTS bases and is the single point of contact for logistics, communication and coordination. The typical

decision-making process and approach adopted by the ECCH when dispatching an EMRTS team is as follows:

- When a call handler receives and processes a 999 call from the operator, the ECCH listens to the call whilst it is being processed to identify whether there is a critical care need;
- In those relatively rare cases in which a critical care need is identified, a decision is then made about the constitution of an appropriate team to attend and from which base they will be deployed. The decision about which base should be involved may often be based on geographical proximity to the incident but may also need to take into account the availability of the required clinical crew mix and the occurrence of any other incidents which may arise or be ongoing at the same time;
- ECCH will then contact the relevant base and tell them where the team is needed;
- The base crew will then decide on the type of vehicle (air or road) that they will use to travel to the incident. They will need to consider: the location of the incident, travel time, the likely onward destination of the patient and weather conditions;
- The clinician will contact the ambulance paramedics, whether they are already at the scene or en route, to interrogate the call further and give clinical advice if required. Contact is maintained thereafter until the EMRTS crew arrive at the scene;
- Additional information provided by the WAST crew may, on occasion, result in the EMRTS crew being stood down or re-directed to a different incident.

THE DECISION

17. The controversial decision to reorganise EMRTS was approved by a majority of the members of the JCC. It involved adopting four recommendations set out in a report presented by Stephen HARRY, who was Mr Whitehead's predecessor as Chief Ambulance Services Commissioner and 111 ("the Commissioner").
18. The details of the decision are set out later in this judgment but, in summary, it endorsed four recommendations. Three of these involved the consolidation of the EMRTS services currently operating at the Welshpool and Caernarfon bases into a single site in North Wales. The fourth concerned the development of a commissioning proposal for bespoke road based enhanced and/or critical care services in rural and remote areas.
19. For convenience, the location of the existing bases and their times of operation are identified in the map below.



The bases and their times of operation

THE GROUNDS OF CHALLENGE

20. There were originally five grounds of challenge. Permission was granted only in respect of grounds 1, 2 and 5. Renewed permission was sought in respect of ground 4 which, by agreement between the parties, was argued before me on a rolled up basis. The surviving grounds are:

Ground 1:

The Defendants acted irrationally in approving Recommendation 1 when they had not made any decision about the nature/extent of the mitigating measures required as part of Recommendation 4. It was irrational to assess the affordability/value for money of the proposals in Recommendation 1 when a bespoke road-based service for rural/remote areas was also to be commissioned, at unknown cost, as part of Recommendation 4.

Ground 2:

Further or alternatively, the Defendants breached the Tameside principle in approving the recommendations without having sufficient information about the nature/extent of the mitigating measures required as part of Recommendation 4 and/or the cost of providing those measures.

Ground 4 (consultation)

Limb (a): failure to comply with section 15(3) and (5) of the Health and Social Care (Quality and Engagement) (Wales) Act 2020 (failure to have regard to representations made by Llais and the relevant statutory guidance); and/or

Limb (b): failure to have regard to the Welsh Ministers' guidance on changes to health services in Wales ("the Service Changes Guidance") and failing to recognise that the proposals amounted to a significant service change, requiring a full consultation; and/or

Limb (c): having decided voluntarily to carry out what was in substance a consultation, and/or having recognised that fairness required the Defendants to comply with the Gunning principles, failing to provide sufficient information at Phase 3 to allow those responding to provide an intelligent response to the consultation.

Ground 5:

Breach of the Equality Act 2010 ("the 2010 Act") (PSED and socio-economic duty [the latter of which applies to Wales but not to England]). The Defendants were not given any directions about what was required to comply with these duties, and the Equality Impact Assessment ('EIA') that was prepared fell far short of the requirements to exercise the duties "in substance, with rigour and with an open mind". No steps were taken to acquire the necessary material to properly assess the impact, and no attempt was made to consider whether the proposals would amount to indirect discrimination.

21. The defendants contend that there is no merit in any of the grounds relied upon. Alternatively, it is argued that, by the application of section 31 of the Senior Courts Act 1981, the court is, in any event, precluded from granting relief because it is highly likely that the outcome for the complainant would not have been substantially different even if the conduct complained of had not occurred.
22. Finally, even if this point were to fail, the defendants contend that I should, on the particular facts of this case, exercise my discretion not to afford the relief sought.

THE STATUTORY FRAMEWORK

23. The structure of the relevant statutory framework within which the decision fell to be made is not controversial.

The NHS (Wales) Act 2006 and the Joint Commissioning Committee

24. The National Health Service (Wales) Act 2006 (“the 2006 Act”) governs the operation of the National Health Service (“the NHS”) in Wales:
 - (a) under section 3(1), duties are imposed on the Welsh Ministers to provide various services throughout Wales;
 - (b) under sections 11 and 12, the seven Local Health Boards were created which are directed to exercise certain of the Welsh Ministers’ functions in relation to their respective geographical areas; and
 - (c) pursuant to section 13, the Welsh Ministers have directed that certain specialist provision is commissioned on a pan-Wales basis by the LHBs jointly acting through a joint committee.
25. The National Health Service Joint Commissioning Committee (Wales) Directions 2024 (“the JCC Directions”) provide that, as from 1 April 2024, the LHBs must jointly exercise certain “relevant functions”. Under paragraph 3(2)(e), these include the planning, securing and commissioning of EMRTS.
26. Paragraph 3(3) provides that, for the purpose of jointly exercising these relevant functions, the LHBs must establish a joint committee. Under its Standing Orders, the members of the JCC consist of: the chief executive of each LHB (or their nominated representative); a chair; and not more than five non-officer members.
27. When the JCC came into being on 1 April 2024, it replaced the previous joint commissioning arrangements which had hitherto been undertaken by other joint committees, including the Emergency Ambulance Services Committee (“the EASC”). It follows that, in this case, much of the procedural history of the decision-making process, although relevant, unfolded before the JCC was created.

Public involvement in and scrutiny of services in NHS Wales

28. Part 12 of the Act concerns public involvement and scrutiny.
29. Section 182 of the 2006 Act had previously made provision for consultation with Community Health Councils (“CHCs”) but this section was repealed by the Health and Social Care (Quality and Engagement) (Wales) Act 2020 (“the 2020 Act”). Part 4 of the 2020 Act established, on 1 April 2023, a new “Citizen Voice Body for Health and Social Care” (known as “Llais”) to which I have made earlier passing reference.
30. Section 15 of the 2020 Act provides:

“15 Representations to public bodies

- (1) The Citizen Voice Body may make representations to a person mentioned in subsection (2) about anything it considers relevant to the provision of a health service or the provision of social services.
- (2) The persons are—
 - (a) a local authority;
 - (b) an NHS body.
- (3) A person to whom representations under subsection (1) are made must have regard to the representations in exercising any function to which the representations relate.
- (4) The Welsh Ministers must issue guidance to the persons mentioned in subsection (2), in relation to representations made under this section.
- (5) Those persons must have regard to the guidance.”

31. Section 183(1) of the 2006 Act provides:

“Each Local Health Board must make arrangements with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are, directly or through representatives, involved in and consulted on –

- (a) the planning of the provision of those services,
- (b) the development and consideration of proposals for changes in the way those services are provided, and
- (c) decisions to be made by the Local Health Board affecting the operation of those services.”

32. On 5 May 2023, the Welsh Government published new Guidance for NHS organisations on changes to health services in Wales (“the Service Change Guidance”). Section 5 of the Guidance sets out examples of the types of service changes and the levels of engagement and consultation required. Where what is being considered is a “substantial service change” (defined as including “a reconfiguration of services across NHS organisations” such as regional services or “raising highly sensitive issues with the local population”) then there should be a full public consultation following a period of engagement (up to 12 weeks). The first stage is for NHS organisations to undertake extensive discussion with all the key stakeholders including: Llais; the Health Professionals’ Forum and other public bodies; staff and their representative bodies; service users of the

specific service considered for change; and other key partners such as other healthcare commissioners or providers upon whom the proposed change may have an impact. There should then be a further public consultation which complies with the four Gunning principles (see R v Brent London Borough Council ex parte Gunning (1985) 84 LGR 168) of which more later.

33. The Guidance on Representations made by The Citizen Voice Body (“the Llais Guidance”) provides at page 6 that:

“In relation to service change in the NHS, representations from the CVB [Llais] would be a critical piece of information in the consultation on changes, to which NHS bodies must have regard, and NHS bodies would be required to respond in their summary and consultation responses on the matters raised and action taken to resolve concerns...

Where representations are made by the Citizens Voice Body in relation to service change matters, they should be (as with any other representations made) formally and fully considered by the NHS body and, given the potential significance of service change matters, an NHS body may wish to attribute considerable weight to such a representation.”

The Equality Act 2010

34. Section 1(1) of the Equality Act 2010 (“the 2010 Act”) provides that a relevant authority must, when “making decisions of a strategic nature about how to exercise its functions” have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.
35. Section 149(1) of the 2010 Act provides that a public authority must, in the exercise of its functions, have due regard to the need (a) to eliminate discrimination and any other conduct prohibited by the Act, and (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The relevant protected characteristics include: age, disability, pregnancy, sex and race.
36. Section 29 prohibits discrimination in the exercise of a public function. The term “discrimination” includes indirect discrimination, as defined in section 19(1) of the 2010 Act (in summary, that a neutral policy places particular protected groups at a particular disadvantage and the defendant cannot show the policy to be a proportionate means of achieving a legitimate aim).

THE FACTUAL BACKGROUND

Initial proposals for reform

37. In 2021, the Charity undertook a strategic review of its operations. Of particular concern was the fact that the available data appeared to reveal a shortfall between the number of patients requiring the service and those who actually received it. The level of “unmet need” was considered to be such that about two or three patients a day who required the EMRTS service were not getting it. Furthermore, utilisation rates of EMRTS teams at Caernarfon and Welshpool stood at about half of those at Dafen and Cardiff. For at least one hundred days in the year, teams at the Caernarfon and Welshpool bases did not attend any incidents. After 8:00pm, the only EMRTS resource available to mid and north Wales was based in Cardiff.
38. The Charity concluded that the problems “of unmet need and under-utilisation” they had identified could both be mitigated by consolidating the Caernarfon and Welshpool bases into a new base in north Wales to be located conveniently close to the A55 dual carriageway and which would be in operation for longer hours.
39. On 6 September 2022, a ‘Focus On’ session was held at the EASC (which it will be remembered was the predecessor of the JCC) during the course of which members discussed an internal service analysis presented by EMRTS and the Charity which identified the issues and possible solutions. The minutes record that:

“Key headlines from the service analysis included underutilisation and unmet need (geographic, overnight and hours of darkness). The robust analysis and modelling indicated the need for extended hours of operation and changes to optimise base location. Members resolved that a formal Service Development Proposal should be submitted for consideration.”

There were, however, already signs that some of the options for change to be considered would be likely to prove to be highly controversial. The minutes go on to record:

“Members noted recent challenges due to a media leak ahead of the finalisation of the data analysis and the subsequent planned stakeholder engagement process. A strong reaction was reported and a perception of a loss of service, particularly in Powys.”

40. On 4 October 2022, EMRTS submitted details of the proposed service change to the Board of Community Health Councils (“the CHC”) which was the predecessor organisation to Llais. At the centre of the proposed change was the controversial concept of reducing the number of bases from

four to three. The CHC agreed that an engagement process of at least eight weeks should be embarked upon and that a review of the process should be undertaken after six weeks.

41. On 14 October 2022, a briefing note was sent to all key stakeholders and the public via email providing an update on the current position of the work done on the service development proposal. An online site was developed to enable the public to ask questions or make comments.
42. On 18 October 2022, Mr Harrhy, the Commissioner, attended a meeting with the full North Wales CHC. He gave a presentation and took questions from members. He stressed that no decision had been taken and he wanted to ensure that all views were considered in the decision-making process.
43. On 20 October 2022, an EASC management group meeting took place during the course of which a further 'Focus On' session involved a discussion of the problems with the existing EMRTS arrangements and what might be done to mitigate them.
44. In a meeting on 8 November 2022, the EMRTS Service Development Proposal was formally presented to the EASC and it was agreed that the next steps would be agreed upon at the following meeting.
45. That meeting took place on 6 December 2022. The minutes recorded that;

“Members noted the requirement to undertake scrutiny in key areas as agreed at the previous EASC meeting and given the challenges raised by Committee members and stakeholders a decision was taken to start the process of undertaking this analysis afresh.

Stephen Harrhy [the Commissioner] confirmed that he would lead this impartial scrutiny process working with the EASC team [which] will be independent of the assumptions, comparisons and modelling included within the original EMRTS Service Development Proposal.”

The Commissioner's First Review

46. In March 2023, the Commissioner duly published the EMRTS Service Review Technical Document. This outlined the history of EMRTS and concluded there was scope to improve EMRTS in terms of: population coverage; RRV usage; under-utilisation of the Caernarfon and Welshpool bases and unmet need. The document also set out proposed metrics and weightings to be used for the evaluation of different options for the development of EMRTS. This initial step of the Review was preceded by an Equality Impact Assessment (EqIA).

The First Phase of Public Engagement

47. Between 15 March 2023 and 16 June 2023, the Commissioner undertook the first phase of public engagement. It ran for fourteen weeks (which was six weeks longer than had been earlier thought to be appropriate by the CHC).
48. The process involved providing: a questionnaire, both online and in hard copy; eighteen drop-in session meetings; and a number of meetings with stakeholders. The focus at this stage was upon obtaining feedback from the public on the proposed metric and weightings. In light of the feedback received, the metric was changed so that the weighting for “Clinical Skills” was increased and that for “Value for Money” was lowered.
49. It was during the course of this phase that, on 1 April 2023, the CHC was replaced by Llais and the Llais Guidance was published.

The Commissioner’s Second Review

50. In October 2023, the Commissioner published the EMRTS Service Review Phase 2 Report with supporting documents, preceded by an updated EqIA. The Phase 2 Report set out the modelling which had been undertaken for six main scenarios:

Scenario 1: Maintaining the status quo.

Scenario 2: Maintaining existing bases and capacity but testing different shift times.

Scenario 3: Merging two existing bases into a single base with existing capacity.

Scenario 4: Merging two existing bases into a single base and increasing capacity via an extra car crew.

Scenario 5: Maintaining existing bases but adding capacity via an extra crew.

Scenario 6: Maintaining existing bases (taking the best shift option from scenario 2) but adding capacity via an extra car crew.

51. Taking into account all the various possible and plausible permutations of the ingredients of each scenario, a total of 20 options were generated.
52. At that stage, no preferred option was identified but the independent consultancy which had carried out the relevant modelling advised that a variation based on Scenario 4 would result in the best performance in terms

of: dispatches; scene arrivals; crew utilisation; duration of overall response; duration of vehicle response; and residual unmet need.

53. None of the options that were modelled included, at that stage, an additional ambulance road based response. During the phase 1 engagement, however, it had been suggested that such additional resources may merit consideration and so, for consistency, this unmodelled option was introduced as a possible adjunct to each of the other modelled options. The seeds had thus been sown for what was later to become the controversial “Recommendation 4”.

Phase Two

54. Between 9 October 2023 and 12 November 2023, the Commissioner carried out the second phase of public engagement to seek views on the longlist of 20 options that had been set out in the Phase 2 Report. The period of engagement was extended by a week at the request of Llais. It involved seven public meetings (online and in person) and a number of meetings with stakeholders. The original intention had been for the Commissioner thereafter to present a recommended final option to the JCC for consideration based on the feedback from the phase 2 engagement.
55. However, on 29 November 2023, Llais wrote to the Commissioner expressing the view that a yet further phase of public engagement should be carried out before any decision was made. It also asked for a formal public consultation given the sensitive nature of the issue and expressed concerns about the clarity of some aspects of the Phase 2 engagement.

Prelude to Phase Three

56. The Commissioner met with Llais on 15 December 2023 who continued to advocate that there should be a third phase involving an “engagement” rather than a “consultation” over a further period of four weeks.
57. At the next EASC meeting on 21 December 2023, the Llais concerns were aired and it was resolved that:

“Phase 3 would last for 4 weeks, online during February 2024, and in order to address the needs of the digitally excluded in the population, health board engagement teams would provide local opportunities for their populations to be supported to contribute to this important process.

The following range of bilingual documents would be developed as a minimum:

Updated equality impact assessment

Phase 3 document focusing on the impacts and pros and cons and costs with an opportunity to comment

A plain language or easy read version

The aim of the documents would be to meet the principles for ‘consultation’ to ensure that sufficient reasons were put forward for any proposal to permit ‘intelligent consideration’.

This would include data where possible with as much explanation (and costs) as possible to continue the work of Phases 1 and 2.”

58. On 3 January 2024, the Commissioner wrote to Llais confirming the EASC decision to move to a third phase.
59. On 12 January 2024, the Commissioner produced the “Summary of Options Appraisal Process” and the “EMRTS Service Review Options Appraisal Process (Final)”. These documents reveal that, following the modelling results and Phase 2 public feedback, the Commissioner had reduced the longlist of twenty options to a shortlist of seven:

Option 1: Keep all four bases but change the Welshpool shift to 2pm-2am;

Option 2: Keep all four bases but change the Caernarfon shift to 2pm-2am;

Option 3: Merge the Welshpool and Caernarfon bases into a new base in North Central Wales (Rhuddlan) and change the shift timings to 8am-8pm and 2pm-2am;

Option 4: Merge the Welshpool and Caernarfon bases into a new base in North Central Wales (Rhuddlan) and change the shift timings to 8am-8pm and 2pm-2am. Also add an extra car crew 8pm-8am in Wrexham;

Option 5: Keep all four bases but change the Caernarfon shift to 2pm-2am (i.e. Option 2) and also add an additional crew 8pm-8am to Caernarfon;

Option 6: Keep all four bases but also add a car crew 8pm-8am to a new location in North Wales;

“Emerging” Option 7: reflected the unmodelled option referred to in the phase two report and involved the deployment of additional vehicles in the North Powys and North West Wales coastal areas, and marked a further step in the direction of Recommendation 4, the controversy over which lies at the centre of grounds one and two of this judicial review.

60. Also on 12 January 2024, a workshop was held at which a panel, the membership of which included the defendants and other NHS representatives, scored the first six shortlisted options by reference to the agreed scoring metric which had been developed in the light of the earlier public engagement. This was to be applied to the constituent elements of: health gain; equity; clinical and skills sustainability; affordability and value for money. The emerging option 7 was not, however, either assessed in this way or costed.
61. The highest scoring option was Option 3, followed by Option 4 (both of which involved merging the Welshpool and Caernarfon bases into a single base). On this analysis, it was agreed that Options 3 and 4 (renamed as Options A and B) were the preferred options to be taken forward to Phase 3.
62. There was, however, an error in the costing of Option 4 which remained undiscovered until after the final decision had been made, the subject matter of this challenge. I will address the nature of the error and its significance later in this judgment.

The Commissioner's Updates

63. On 30 January 2024, there was an EASC meeting which received an update report and an update on the Options Appraisal at which the emergence of the preferred Options A and B was noted. Appendix 6 provided the scores and weighted scores for the shortlisted options without further elaboration.
64. There was discussion regarding the public and stakeholder feedback which had been received throughout Phases 1 and 2 of the formal engagement and it was recorded that:

“There were several consistent emerging themes, some within the scope of the Review. These included:

- Concern about WAST [the Welsh Ambulance] services regularly being pulled out of area and lengthy handover delays adversely affecting ability to respond to communities;
- Concerns that mid, rural, and coastal communities are more vulnerable and ‘less equal’ than those in urban areas located closer to better road infrastructures and general hospitals and therefore need something more bespoke to reflect their rural needs;
- Concern that EMRTS is too specialised and could respond to a wider range of conditions for rural and remote areas through a more bespoke clinical model;

- Concern about paramedic staffing levels in mid and rural north Wales;
- Concerns about EMRTS staff retention with any base moves;
- Concerns that the Charity will lose the goodwill of support in base location areas and the impact on charitable donations which could decrease and destabilise this important service provided in partnership;
- Concern about vulnerability of rural communities generally ('lost all other services already');
- Current bases perceived as a 'local lifeline' and visual presence is reassuring".

65. It was further recorded that:

"It was agreed that, as the Commissioner of both road and air ambulances, the CASC had the opportunity to address some of these issues to complement Option A. These actions would involve better use of the available commissioning allocation and would not incur additional costs.

The additional benefits of taking these actions were discussed as follows:

- ✓ Provides additional pre-hospital resources and improves the ability to respond to rural and remote/coastal communities;
- ✓ Responds to the need for a different model in rural and remote and coastal areas;
- ✓ Involves a bespoke clinical model with EMRTS responding to a wider range of conditions in rural and remote and coastal areas, retaining a visual presence in these areas;
- ✓ Improves ambulance resources in rural and remote and coastal areas;
- ✓ Provides an alternative for EMRTS staff not wishing to work from a centralised base ensuring improved resource in rural and remote and coastal areas;
- ✓ This is a service improvement; the Charity has agreed to support the work of the EMRTS Service Review if the evidence supports an improved service for the population of Wales."

66. Paragraph 2.16 of the report stated:

“Phase 3 engagement will seek views on:

- The six options shortlisted and evaluated in the Options Appraisal workshop.
- The two shortlisted options - Options A and B.
- The additional actions that have been identified to address the public and stakeholder feedback from Phases 1 and 2.”

67. The plan was for all LHBs “to duly consider the two shortlisted options during the engagement period and each Board will provide feedback to the Commissioner by 29 February 2024.”

68. However, on 31 January 2024, Llais sent an email to EASC’s deputy director for communications and engagement raising a number of concerns:

“Many thanks for taking our feedback into consideration. We can see that the report has been changed but we feel more clarity is needed in order for the public to understand the proposal and to feedback.

Please see below comments:-

- We remain concerned that some members of the public will be digitally disadvantaged e.g. there are a number of electronic links within the report.
- We remain concerned about the tight timeline and how it will fit in with the HB’s public board meetings.
- We believe the descriptions of the options are still unclear to a member of the public who is looking at the information for the first time.
- We believe that the identified benefits and risks in the document still do not provide enough clarity. The public need to have a clear understanding of how the expected options are likely to affect them.
- The additional detail added on the supporting information of the options is difficult to understand. There appears to be more information on the unsuccessful options.
- The under-utilisation section remains unclear.

- The section about what the differences are with the rapid response vehicles needs to be clearer, e.g., what does it mean for people?
- The table and map on page 20 are still not clear”.

Phase 3

69. From 1 February 2024 to 29 February 2024, the Commissioner undertook the third phase of public engagement. The third phase report identified the agreed evaluation framework and summarised the advantages and disadvantages of each option.

70. Option 3 was placed first in preference with the following comments:

“Scored first position (highest) overall, this was because:

- It gets to more incidents than most other options.
- It improves the population coverage by road.
- It has the lowest number of days where crews do not respond to an incident.
- EMRTS have high confidence they could deliver the shift.
- The cost to deliver it is lower than most other options.
- It has the lowest cost per extra incident attended.”

71. Option 6 was placed fourth in preference with the following comments:

“Scored at 4th position overall, this was because:

- It gets to the second highest number of extra incidents.
- It covers more of the population by road at certain times of the day.
- It has the highest number of days where crews do not respond to an incident.
- EMRTS have low confidence they could deliver the shifts.

It is the most costly option.

- It is the second highest cost per extra incident.”

72. However, the report recognised the relative popularity of option 6 recording:

“There was significant public and stakeholder support for shortlisted Option 6 ...throughout Phase 2 of the public engagement. NHS Wales health board representatives gave Option 6 a total weighted score of 550 (4th in terms of ranking). Option 6 scored well against the Health Gain and Equity factors. It did not score well against factors 3, 4 and (Clinical Skills and Sustainability, Affordability and Value for Money). This was because extra base facilities would need to be provided alongside the introduction of an extra crew that would be used on an infrequent basis.”

73. Emerging “Option 7” was not labelled as such in the report but its substance was dealt with under the heading “Extra Actions” which included the following observations:

“However, the Commissioner's role presents a unique opportunity to consider an extra set of actions that could help improve some of the issues highlighted in public and stakeholder feedback. Option A could benefit from extra actions. These extra actions involve placing more cars set at strategic points within Powys, Betsi Cadwaladr or Hywel Dda Health Board areas. This could give better geographical coverage.”

74. Phase 3 involved the deployment of a public questionnaire which set out the six shortlisted options, including the two preferred options. Respondents were invited to give views on all six options and on the preferred options specifically.

75. Reference was made to the “Extra Actions” in the questionnaire in the following terms:

“There are extra actions that could be taken that would support Option A. These actions could help to address the issues heard in the earlier public engagement phases. These extra actions involve placing more car crews at strategic points within Powys, Betsi Cadwaladr or Hywel Dda Health Board areas. This would give help give better geographical coverage.

More details about these extra actions can be found in the engagement documents:
<https://easc.nhs.wales/engagement/sdp/p2ep1/>

Question 8: Please let us know what you think about the extra actions as described above.”

76. Respondents were also given the opportunity to give feedback more generally (“Please let us know if you have any other feedback not already covered in the questions asked”). The Options Appraisal Report was not provided to the public but they were able to access an 84 page information pack.
77. In the meantime, the Charity was becoming increasingly frustrated by the time it was taking for a decision to be reached. The chair of the Board of Trustees wrote a letter to the Commissioner complaining about the lack of progress. Thus it was that the Charity was concerned that the process was going too slowly, and Llais that it was going too quickly.
78. It remained apparent, however, that much public support remained for Option 6. On 21 February 2024, an email was sent to the Commissioner by a group of concerned individuals which included local elected politicians and members of the “Save Air Ambulance Mid Wales Base Campaign”. It raised a number of concerns. They were expressed in trenchant terms and strongly advocated for the Option 6 approach to be adopted with a night-time shift in North Wales.

The Commissioner’s Final Report

79. On 12 March 2024, the Commissioner published his EMRTS Review Final Report (the Commissioner’s Final Report) in advance of the next EASC meeting scheduled for 19 March 2024. It concluded:

“This process has clarified the need for the service to develop and enhance the access, effectiveness and efficiency of the service across Wales. This is particularly required during night-time hours, where currently approximately 530,000 of the North Wales population do not have access to an aircraft within 60 minutes after 8pm.

Due to the predominance of feedback from the engagement process stating that no change in the service bases would be optimal it is important to understand that the current high levels of unmet need, unequal and low levels of utilisation (including no-arrival days), lack of night time capacity and poor population coverage at night mean that doing nothing is not an acceptable option.

The process has recognised the importance of balancing community expectations with operational realities of service delivery.

Meticulous analysis and public engagement, has highlighted the essential role of EMRTS in providing advanced medical interventions in life and limb threatening situations across Wales.

Six operational scenarios with multiple variations were crafted based on maintaining the status quo, consolidating bases and adjusting or increasing existing capacity.

Detailed modelling of these scenarios was conducted to assess their impact on service coverage, response times, utilisation rates, and unmet needs.

An appraisal workshop evaluated the scenarios against key factors such as Health Gain, Equity, Clinical Skills and Sustainability, Affordability, and Value for Money. This led to the selection of a consolidated base model with and without additional capacity being selected as the preferred options for further consideration.

Throughout the engagement phases, concerns were raised about the potential impact of operational changes on rural coverage, service specialisation, staff retention and community support. These concerns guided the recommendations.”

80. The Final Report concluded by making four recommendations:

“Recommendation 1 – The Committee approves the consolidation of the Emergency Medical Retrieval and Transfer Services currently operating at Welshpool and Caernarfon bases into a single site in North Wales.

Recommendation 2 - The Committee requests that the Charity secures an appropriately located operational base in line with the findings of this Report.

Recommendation 3 - The Committee requires that a joint plan is developed by EMRTS and the Charity, that maintains service provision across Wales during the transition to a new base and that this plan is included within the Committee’s commissioning arrangements.

Recommendation 4 – The Committee approves the development of a commissioning proposal for bespoke road-based enhanced and/or critical care services in rural and remote areas.”

81. The Final Report incorporated a number of supporting documents identifying the work done to date together with a further updated EqIA (the Final EqIA). The Final EqIA found that EMRTS is more likely to be used by those with certain protected characteristics (namely age and disability) and/or experiencing economic disadvantage but considered that relocating the bases would be unlikely to change the impact on these groups. It was recognised that some people with such protected characteristics in Wales

would find themselves closer to the bases and others further away. However, given the absence of data to enable detailed analysis because of the exceptionally low numbers of patients, it was considered that an adverse impact could not be ruled out. Accordingly, the Final EqIA went on to identify the “possible likelihood of a moderate downside impact as it is recognized that during periods when the air ambulance is unable to fly (e.g. due to very poor weather conditions) then communities located closer to the current bases in Welshpool and Caernarfon may experience a reduced service during these “no fly” periods than now because of the increased distance for a RRV response”.

82. It was then noted that an implementation plan should be developed “in recognition that increased need for EMRTS may be associated with factors such as age, deprivation and disability”.

The response to the Review

83. On 15 March 2024, Llais wrote to the chief executives of all the LLBs expressing concerns that there was insufficient detail in the recommendations to provide assurance that community concerns had been addressed, incorporated and mitigated.

84. The EASC met on 19 March 2024 to consider the findings of the Review in advance of making a final decision. To this end they were provided with a report from officers (the EASC March Report) along with the following appendices:

(1) Engagement Report;

(2) EASC response to Llais email of 8 March 2024;

(3) EASC response to engagement responses received after deadline for phase 3;

(4) Picker Public Engagement Survey Report (national engagement);

(5) Final EqIA; and

(6) Commissioner’s Final Report.

85. In summary, the EASC Report began by outlining the engagement process and the feedback received. It noted that the Phase 3 feedback did not identify anything materially different from the earlier phases and that the common themes included: “Concerns about longer response times, reduced coverage, and compromised emergency care, especially in rural and remote areas”.

86. The EASC Report went on to refer to the Final EqIA before outlining the Review and its final recommendations. It asked members to consider the Review and seek support from their respective LHBs to inform the final decision to be made at the next EASC meeting. Members were warned of the risks of further delay given the ongoing problem of significant unmet need.
87. The minutes of the meeting record that it was resolved to:
- Present the EMRTS Service Review Engagement Report, the EMRTS Service Review document and the updated Equality Impact Assessment to all health boards for consideration ...
 - Receive further information in relation to Recommendation 4
 - NOTE the risk to the Charity
 - NOTE the conclusion of Phase 3 and the overall engagement process
 - NOTE the response to Llais and the additional responses in Appendices 2 and 3
 - NOTE the risk to patients and under-utilisation levels across Wales
 - NOTE that the EASC Team continue to work with Health Board engagement, communication and service change leads, and Llais throughout the conclusion of the Review.
88. The minutes also record that the EASC gave express consideration to Llais's representations dated 15 March 2024 (received after the papers for the meeting had been circulated). In so doing, it was noted that many of the issues were similar to those previously raised by Llais. More generally, an explanation was provided as to how feedback received had been addressed. In particular:
- The public perception that both preferred options would lead to a reduced emergency pre hospital critical care provision in rural Wales. However, the Review contradicted this and had confirmed that more patients would be treated across Wales and that the options also include increased cover beyond 8pm, particularly to north Wales.
 - People and communities reported that they believed that they had been engaged with, but some reported they did not feel listened to and believed that the decision had been made before any engagement had been undertaken. However, the development of a bespoke rural model (Recommendation 4) was being developed as a direct result of the feedback received regarding the differing needs of rural populations.
89. It was resolved that the EMRTS Service Review Engagement Report, the EMRTS Service Review document and the updated Equality Impact Assessment would be promulgated to all Health Boards for consideration,

and it was noted that further information in relation to Recommendation 4 was awaited.

90. In an email of 21 March 2024, the Charity expressed mounting concern over how long it was all taking and threatened to escalate their concerns in the event that a decision was not reached promptly.
91. A meeting of the Chief Executives of the LHBs took place on 22 March 2024 at which it was noted, in respect of Option 1 plus Recommendation 4, that “Stephen will flesh out in more detail what this addition to the Option 1 would look like and the expected impact in terms of further improvement on the unmet need position, and in mitigating some of the concerns raised particularly in Powys and North Wales.”
92. The Commissioner thereafter responded to the Charity’s email of the day before in conciliatory terms stating:

“It is essential that health boards can evidence, both individual and joint decision-making and that they have taken due regard and conscientious consideration of the issues raised during engagement. Chief Executives, in making a recommendation to their Boards, will need to give assurance that due consideration has been given to all of the information and engagement. In addition, they all support the view that my recommendations need to be considered collectively rather than separately to ensure coherence in the subsequent implementation. Chief Executives did therefore feel that further assurance was required in relation to two key elements to assure their Boards, and to reassure the communities of Wales, that the stated benefits are deliverable and that potential downside impacts have been adequately addressed. Therefore, a meeting of the new Joint Commissioning Committee has been arranged for Tuesday 23rd April 2024 to make a decision on this important matter. This will enable sufficient time to ensure that:

1. Further assurance is provided in relation to the issues raised by Llais in their capacity as the statutory Citizen Voice Body and the points they have raised in their most recent correspondence of 17th March.
2. Further detail is provided in relation to Recommendation 4.
3. They understand how their shared commitment that “if people receive the service now they should receive the service in future” is achieved, particularly in relation to road response when the air ambulance is not available. In addition to the areas for further consideration set out above, they will be asking their Boards to support immediate progress on your work to scope an appropriately located operational base in line with the findings of the review, so that this can support final decision-making.”

93. On 27 March 2024, the Commissioner met Alyson Thomas, the Chief Executive of Llais, who expressed satisfaction with the suggestion that the new JCC would take the decision by 23 April 2024. A note of the meeting records:

“Alyson confirmed that the only other aspect was looking for additional detail on [Recommendation] 4. CASC explained briefing note of what that could look like but that detailed work is needed and further engagement but there would need to be enough detail for engagement conversations to take place. CASC explained that this outline would need to be taken back to JCC by September time approx. CASC also explained about sequencing of getting that service in place before any other changes take place as recommendations need to work as a package.”

94. On the same day, the chair of the EASC sent papers to the members which included an “Appendix 1” containing further information on Recommendation 4:

Current wording for Recommendation 4

The Committee approves the development of a commissioning proposal for bespoke road based enhanced and/or critical care services in rural and remote areas. It is recommended that the EASC Team establish a Task and Finish Group to further refine and develop the approach and to deliver a detailed implementation plan by the end of September 2024.

Recognising that no changes will be made to current EMRTS base locations until 2026 at the earliest.

The Group would work in partnership with health boards and key stakeholders and report to the Joint Commissioning Committee.

General Points of Principle

- Recommendation 4 is a direct response to the concerns raised during the public engagement phases from people who shared their anxiety around emergency health provision in rural and remote areas.
- This is in addition to the highly specialised EMRT Service not a replacement for or instead of.
- Many of the concerns raised related to conditions that would not require pre-hospital critical care and so would not fall into the remit to receive the highly specialised EMRTS service as it currently operates.
- Whilst outside the scope of the Review and therefore not required to deliver the additional attendances provided by Recommendation 1, it

has been included in response to the concerns raised during the public engagement phases.

- All 4 of the recommendations in the EMRTS Service Review report are to be considered as a ‘bundle’ and they can be delivered within the existing commissioning allocation for Ambulance and EMRTS services.
- No changes to existing base locations would be made until the bespoke service referred to in Recommendation 4 was in place.
- The service would be provided from two additional bases in rural areas bringing the number of bases available to EMRTS from 4 to 5
- The location of these bases would be modelled to ensure they are in the ideal locations to maximise their effectiveness.
- Scope – Joint Commissioning Committee (JCC) to agree on the scope of the work and a Terms of Reference be developed.
- Likely to be 6 months work to sign off at the JCC.

Potential Scope and Operating Principles

- Currently the EMRTS service responds to less than 1% of all 999 incidents.
- If all of the EMRTS unmet need was responded to this would represent only 1% of all 999 incidents.
- It is estimated that this type of bespoke specialist service could respond to circa 12% of 999 incidents in the areas covered which represent the most serious cases in the red and amber 1 categories.
- It is assumed that 2 crews will need to operate 7 days a week 365 days a year.
- It is assumed that it would cover remote and rural areas in parts of Powys, Gwynedd, Anglesey and Ceredigion.
- It is assumed that the service would be road based and have its own rapid response vehicles.
- It is assumed that the vehicles would stay in their own areas to avoid them being taken out of area for potentially long periods of time.

Staffing Principles

- It is assumed that the service would be staffed by critical care practitioners and critical care paramedics.
- It is assumed that these staff could be employed in rotational roles into the EMRTS service with potentially 80% of their time in the bespoke service and 20% of their time with EMRTS.
- Staff not wishing to rotate into EMRTS would not be required to do so.

- It is understood from the CEO of WAST and the EMRTS National Director that these would be attractive posts for paramedics and that it would help to fill previously difficult to recruit to posts in rural areas.
- The ability to recruit doctors into the service would be explored, one potential avenue may be links into BASICS schemes and this could be helpful in recruiting new GP's into rural areas and practices.

Financial Principles

- The bespoke service will be financed within the existing EMRTS and Ambulance Service commissioning allocations.
- There are significant efficiencies that can be realised from the current underutilisation of EMRTS resources in Mid and north Wales with a combined total of circa 270 days when a crew does not attend a patient per year from the Caernarfon and Welshpool bases (a similar but not so pronounced situation was being experienced in south Wales which led to a Cardiff daytime car service being introduced with no additional commissioning allocation).
- WAST have experienced difficulties in recruiting to a number of posts in rural areas particularly Cymru High Acuity Response Unit (CHARU) posts. This new service represents an opportunity to recruit new staff.
- Discussions are underway with Welsh Government for a specific capital allocation for EMRTS. If these do not prove successful the approach of bidding for slippage will continue and this has proved effective if time consuming since the establishment of the service.

Other Potential Opportunities

- Enhanced diagnostics linked to 'Connected Support Cymru' and the national diagnostics plan. This will aim to introduce mobile or fixed locations where the populations of these areas can access advanced diagnostics and remote assessment by expert clinicians speeding up their time to definitive treatment.

Benefits

- This service will address the concerns and representations made by members of the public who shared their anxiety around emergency health care provision in rural and remote areas.
- This service will improve patient outcomes and ambulance response times in certain rural areas within Wales.

- This service will be available to the highly specialised EMRTS service if needed in certain rural areas.
 - This service will help to level up access to enhanced clinical care in certain rural areas.
 - This service will remain within its operational location and not be moved out of area.
 - This service will provide better value for the overall commissioning allocation made available by Health Boards.
95. On 28 March 2024, the day upon which it had originally been envisaged that the decision would be made, the EASC met “in committee” i.e. in private. The Commissioner agreed to respond to requests from the members to provide further detail with respect to Recommendation 4 and the public meeting did not go ahead.
96. On 2 April 2024, the day after the EASC had ceased to exist, the Commissioner sent its former members an email which set out a number of general points in bullet point form:

“GENERAL POINTS

- EMRTS is a highly specialised service responding to circa 1% of 999 incidents. It is also a highly effective service with more people surviving and living better quality lives as a direct result of being seen by EMRTS.
- There are currently 3 calls a day which the service is unable to attend that require an EMRTS response. Most of those missed calls are at night and in north Wales.
- There are currently 4 crews a day on duty between 8am and 8pm 365 days per year from 4 bases. The crews are a combination of doctors and critical care practitioners. There is 1 crew after 8pm based in Cardiff this means circa 530,000 people in North Wales do not have access to a service at night and many of those after the hours of darkness.
- Crews workload varies significantly with crews based in mid and north Wales not responding to any calls on over 130 days per year compared to south Wales where Cardiff has only 10 days per year when it does not respond to any calls.
- Crews respond to calls either on a helicopter or on a road based vehicle. The use of a road based response is much lower in north Wales than south Wales. Cardiff has 41 days in a year when a road based response is not used whereas Welshpool and Caernarfon have more than 310 days a year when a road based response is not used.
- The service is funded two thirds by the Wales Air Ambulance Charity and one third by the NHS.

- Generally people in Wales believe this service to be a ‘fast ambulance’ service that must respond quickly which is available to them if an ambulance is not available. This is not the case, the service is nearly always second on scene with an ambulance already present.
 - Two independent reviews have demonstrated that as well as continuing to provide a service to people receiving it now more people could also receive within existing resources.
 - This would mean closing two bases in Welshpool and Caernarfon and opening a new base in the middle of north Wales adjacent to the A55. The new base would have two crews operating from it and would have extended hours of operation i.e. 8am to 2am each day.
 - It is also possible to retain the existing bases and see more people but this would cost more money circa £750,000 to £1,000,000, it would also mean that the variation in how busy they are would increase with the number of days when bases in mid and north Wales would not respond to a call increasing to nearly 200 days per year.”
97. On 4 April 2024, the Commissioner sent the former members of the EASC a bundle of papers to put before their respective boards. On the same day, the Commissioner wrote to Llais providing the further detail relating to Recommendation 4 which he had distributed to the former members of the EASC two days earlier.
 98. Llais replied on 9 April 2024 suggesting that the decision should be postponed further.
 99. On 9 and 11 April 2024, the LHBs held their respective board meetings to decide whether to approve the recommendations in the light of the additional information provided. A Llais representative was in attendance at each meeting. Save for Betsi Cadwalladr UHB and Powys Teaching HB (representing areas in north and mid Wales respectively) the LHBs were in favour of approval.
 100. On 23 April 2024, the new JCC met. There was some overlap with the previous members of the EASC to the extent that the Chief Executives of each of the defendant LHBs were members of both. There was a different independent chair and three more new lay members. (On 9 April 2024, an in-person briefing session had been held with the Commissioner, the chair of the JCC and the JCC lay members to ensure that those who had not previously been on the EASC were made aware of the background to the upcoming EMRTS decision.)
 101. On 23 April 2024, the JCC (which had replaced the EASC from 1 April 2024) met to decide how to improve EMRTS in light of the Review and the further information that had subsequently been provided.
 102. The JCC was also provided with a report from officers (“the JCC April Report”) with two appendices:

- (1) decisions of each of the LHBs with brief reasons; and
- (2) the metric developed by the Commissioner to produce his recommendations.

103. The JCC April Report reminded members of the background and provided a link to all the documentation associated with the Review. It went on to summarise the options appraisal process carried out by the Commissioner as well as his four recommendations. As agreed at the previous meeting, further information about Recommendation 4 was then provided including the following “General Points of Principle”:

- “• Recommendation 4 is a direct response to the concerns raised during the public engagement phases from people who shared their anxiety around emergency health provision in rural and remote areas;
- This is in addition to the highly specialised EMRT Service not a replacement for or instead of;
- Many of the concerns raised related to conditions that would not require pre-hospital critical care and so would not fall into the remit to receive the highly specialised EMRTS service as it currently operates;
- Whilst outside the scope of the Review and therefore not required to deliver the additional attendances provided by Recommendation 1, it has been included in response to the concerns raised during the public engagement phases;
- All 4 of the recommendations in the EMRTS Service Review report are to be considered as a ‘bundle’ and they can be delivered within the existing commissioning allocation for Ambulance and EMRTS services;
- No changes to existing base location would be made until the bespoke service referred to in recommendation 4 was in place;
- The service would be provided from two additional bases in rural areas bringing the number of bases available to EMRTS from 4 to 5;
- The location of these bases would be modelled to ensure they are in the ideal locations to maximise their effectiveness;
- Scope – [JCC] to agree on the scope of the work and a Terms of Reference be developed; and

- Likely to be 6 months; work to sign off at the JCC.”

104. In relation to financial principles, the JCC April Report recorded: “The bespoke service will be financed within the existing EMRTS and Ambulance Service commissioning allocations”.
105. The JCC April Report went on to summarise the findings of the public engagement including the further representations submitted by Llais on 9 April 2024. It then set out the previous three recommendations as well as a slightly amended version of Recommendation 4:

“Recommendation 4 – Additional service provision. The Committee approves the development of a commissioning proposal for bespoke road based enhanced and/or critical care services in rural and remote areas to enhance the core service model. It is recommended that the Ambulance and 111 Commissioning Team establish a Task and Finish group to further refine and develop the approach and to deliver a detailed implementation plan by the end of September 2024. The Group will work in partnership with HBs and Llais and other key stakeholders and report to the JCC in October 2024. Following conclusion of this work, and agreement of the way forward, the implementation plan will be updated.”

106. The minutes for the JCC meeting of 23 April 2024 record that the JCC approved recommendations 1 to 4 as set out in the JCC April Report (which in turn reflected the recommendations in the Commissioner’s Final Report). At the meeting, the Commissioner re-presented the background, the feedback received from the engagement exercises and the results of the Review. He expressly acknowledged the advice that had been given by Llais and the diversity of views that the engagement processes had revealed. He also emphasised the point that the advice in the JCC April Report that the bespoke service with which Recommendation 4 is concerned emerged in response to general concerns received about ambulance arrival times in rural areas such that it is “not as an addition to the proposals to develop the highly specialist EMRT service”. It was reiterated that, in any event, there was no intention to implement the proposed reforms to EMRTS until the new bespoke service was in place.
107. During the discussion it was acknowledged that “all populations should see an improved response irrespective of Recommendation 4. Recommendation 4 provides further enhancement to the access of service”.
108. The Interim Chief Commissioner of the JCC noted:

“The key decision points will need to be set out in a more detailed implementation plan. This would be a signal that we are moving to start the detailed work to implement the proposed service model and in parallel we would be running the work on

the further enhancement outlined in recommendation 4. If things changed we would need to take those into consideration.”

109. Despite continuing concerns about the scope and timing of the changes to be included in Recommendation 4, the proposals were approved by the JCC, having been supported by a majority of its eleven members (five of the seven LHBs, the chair and the three lay members). Betsi Cadwalladr UHB and Powys Teaching HB dissented and were unwilling to support Recommendation 1 without further details about Recommendation 4.

Subsequent decision-making by the JCC regarding Recommendation 4

110. Decision-making by the JCC as to the development of Recommendation 4 continued after 23 April 2024. In summary, a Task and Finish Group was set up to develop the proposed service model. An updated report considered by the JCC on 17 September 2024 noted that work was on track (with the intention for the JCC to give final approval for the proposals on 18 March 2025) and that six weeks of public engagement would take place with the possibility of extending this to eight weeks. The update report also records that the LHBs “are in agreement that Recommendations 1-3 are not contingent on the outcome of Recommendation 4”.
111. On 12 November 2024, the JCC noted a further update report and, as requested, asked the ambulance service to provide a detailed delivery model for future consideration by the committee based on the following requirements:
- The service should operate within the commissioning resource envelope available for ambulance services
 - The delivery of the service should not adversely affect the availability of operational resource in other parts of Wales
 - The service should as far as possible, build on and complement the existing Cymru High Acuity Response Units in these areas maximizing value and outcomes for patients.

THE CLAIMANT’S CONCERNS

112. The claimant’s main concern is that amalgamating the two bases into one will have a number of negative effects which include the following:
- (i) the response times of the air ambulance to incidents in Gwynedd will increase;
 - (ii) in bad weather the RRVs will take much longer to arrive and will have to compete with poor road conditions;
 - (iii) there is a large geographical area that will have no service in bad weather within 90 minutes;

- (iv) the older population in North Wales who live on the coast, in remote or rural areas will be disproportionately impacted by the service change.
113. These conclusions are disputed. However, it must be stressed that it is not the function of this court to substitute its own evaluative judgement of the competing merits of the arguments relating to the advantages and disadvantages of the decision under challenge in place of that reached by the JCC. The challenge must be adjudicated upon by way of review and by the application of public law principles, and not as the re-exercise of the discretionary balancing exercise as originally performed by the decision maker.
114. As Simon Brown LJ observed in *R v SoS Education and Employment ex parte M* [1996] ELR 162:
- “It has been said time without number that in exercising its supervisory jurisdiction this court is not concerned with the substantive merits of an administrative decision and will not entertain an appeal on the facts.”

THE GROUNDS OF CHALLENGE

Grounds One and Two: Irrationality and Tameside

115. There is a very considerable overlap between the scope of grounds one and two such as to make it convenient to address them together.
116. The claimant contends that one of the reasons that the claimant’s favoured option 6 did relatively badly was that it was identified to be the most costly option. However, since the four recommendations finally accepted, if treated as a package, would have involved the extra cost of Recommendation 4, which was not calculated, the balancing process was logically and seriously flawed. Furthermore, there was insufficient information available to the JCC concerning the proposed geographical coverage of Recommendation 4 and its impact on the issues of health gain and equity to equip the members to evaluate the extent of the mitigation that it was intended to achieve.
117. It is contended that for the JCC to proceed to endorse all four recommendations in ignorance of the cost of and mitigating efficacy of Recommendation 4 was irrational in the sense that no reasonable decision maker would proceed on that basis and/or the process of its analysis was contaminated by a serious logical or methodological error. Further or alternatively, the decision was flawed by a breach of the well-known “*Tameside* duty” (which takes its name from the analysis of Lord Diplock

in *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014).

118. In *Balajigari v Secretary of State for the Home Department* [2019] 1 W.L.R. 4647 the Court of Appeal set out the respects in which the application of the *Tameside* duty have been refined over the intervening years:

“70. The general principles on the *Tameside* duty were summarised by Haddon-Cave J in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2015] 3 All ER 261, paras 99–100. In that passage, having referred to the speech of Lord Diplock in *Tameside*, Haddon-Cave J summarised the relevant principles which are to be derived from authorities since *Tameside* itself as follows. First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a *Wednesbury* challenge (*Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223), it is for the public body and not the court to decide upon the manner and intensity of inquiry to be undertaken: see *R (Khatun) v Newham London Borough Council* [2005] QB 37, para 35 (Laws LJ). Thirdly, the court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further inquiries if no reasonable authority possessed of that material could suppose that the inquiries they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it.”

119. The claimant places particular reliance upon the description in the final report of Recommendation 4 being a mitigating factor with respect to the plans set out in the other three recommendations.
120. The defendants responds to these two grounds by seeking to categorise Recommendation 4 as an initiative distinct from the other recommendations. Accordingly, it was not necessary for the JCC to equip itself with a detailed knowledge of its economic or other implications

before deciding to approve Recommendations 1 to 3. If future decisions as to the form and scope of the implementation of Recommendation 4 were to be considered to be unlawful in a public law sense then they would be vulnerable to a subsequent challenge by way of judicial review within the context in which they were made.

121. The claimant argues, in response, that attempts by the defendants to circumvent this challenge by seeking to uncouple Recommendation 4 from the first three recommendations must fail taking into particular account the following features some of which, for convenience of reference, I repeat from the history set out earlier in this judgment:

- (i) The Phase 3 documentation notes that “Option A could benefit from extra actions” to “give better geographical coverage”;
- (ii) The Commissioner’s Final Review states that the recommendations within the review mitigate against the risk of an adverse impact on persons with protected characteristics:

“However, in terms of the rapid response vehicle usage (when helicopters are unable to fly) for the population coverage at 90 minutes further mitigation is required to ensure no diminution of service compared to the status quo.

For example, if there is a risk that for example parts of western Betsi Cadwaladr or north Powys areas may experience reduced access to the service when the helicopter cannot fly due to bad weather and because the RRV is now located further away – the mitigation for this risk is identified within recommendation 4 as follows:

Recommendation 4 – The Committee approves the development of a commissioning proposal for bespoke road based enhanced and/or critical care services in rural and remote areas.”;

- (iii) Section 4.1.1 of the 23 April 2024 Report states that:

“All 4 of the recommendations in the EMRTS Service Review report are to be considered as a ‘bundle’...”;

- (iv) The further information provided by the chair of EASC to members on 27 March 2024 in Appendix 1 stated:

“It is assumed that the service would be staffed by critical care practitioners and critical care paramedics. It is assumed that these staff could be employed in rotational roles into the EMRTS service with potentially 80% of their time in the bespoke service and 20% of their time with EMRTS”;

- (v) The minutes of the meeting of 23 April 2024 recorded that it was agreed that there was a need for a bespoke service in place before any base changes could take place to ensure the additional service could be provided;
 - (vi) Llais contended in its letter of 9 April 2024 that further detail was required to provide a fuller picture of how services would look for people living in rural and remote areas before taking a decision and asked the JCC to pause the decision making until this was available;
 - (vii) The EASC/JCC members would only have asked for further information on Recommendation 4 before making a decision if such information was necessary to proceed upon the other three recommendations.
122. The defendants maintain that Recommendation 4 was, in substance, a response to the concerns expressed by rural and remote communities about the provision of ambulance services and not EMRTS. They categorise the features identified by the claimant to support the contention that Recommendation 4 was inextricably bound up with the others as examples of “cherry-picking”. They submit that:
- (i) The decision itself in relation to Recommendation 4 was to approve “the development of a commissioning proposal for bespoke road based enhanced and/or critical care services in rural and remote areas to enhance the core service model.” The decision itself does not categorise the decision on Recommendation 4 to be a necessary corollary to the decision under Recommendation 1.
 - (ii) The JCC April Report states that “Recommendation 4 is a direct response to the concerns raised during the public engagement phases from people who shared their anxiety around emergency health provision in rural and remote areas. This is in addition to the highly specialised EMRT Service not a replacement for or instead of. Many of the concerns raised related to conditions that would not require pre-hospital critical care and so would not fall into the remit to receive the highly specialised EMRTS service as it currently operates.”
 - (iii) The Phase 3 documentation indicating that “Option A could benefit from extra actions” does not mean that such enhancement was considered necessary for the preferred option to be acceptable. In any event, the engagement materials only represented the position at that time rather than when the decision was eventually taken.
 - (iv) Taken as a whole, the Commissioner’s Final Report acknowledges public and stakeholder concerns regarding service accessibility and specialisation suggesting “complementary actions to address these alongside the preferred operational changes”. In any event,

Recommendation 4 was clarified and developed further before the final decision was taken.

- (v) The reference in the JCC April Report to considering the four recommendations as a “bundle” takes the case no further. The concerns to which Recommendation 4 was a response emerged during the course of the EMRTS review and so it was sensible for the JCC to deal with the recommendations together without treating the first three as being dependant upon the fourth.
- (vi) Appendix 1 to the Commissioner’s Final Report refers to EMRTS staff, via the “extra actions” working “to a broader clinical response” but this does not mean that the bespoke service under Recommendation 4 is an extension of EMRTS but rather that staff would have the option of working for both (separate) services.
- (vii) The minutes of the 23 April 2024 meeting refer to no changes being made to the existing bases until the bespoke service under Recommendation 4 was in place. That does not, in itself, mean the delivery of the bespoke service was required mitigation for Recommendation 1.
- (viii) Llais was entitled to its opinion that further detail on Recommendation 4 was required before a decision on Recommendation 1 should be made but it was not, ultimately, the decision-maker.
- (ix) The fact that EASC/JCC members asked for further information about Recommendation 4 does not mean that their decision was contingent upon the provision of more information than had already been provided but rather that members understandably wanted to be clear about the decision they were making.

Discussion Grounds One and Two

123. It is, of course, important that a reviewing court should scrutinise all the relevant documentary material before determining whether or not a decision is flawed. This I have done. However, there is a risk that, in the process of determining the central issues, too much weight may be placed upon the choice of words used in any given document or combination of documents selected from the voluminous material which has accumulated during the long process leading up to the making of the decision under challenge. The following factors fall to be taken into account:

- (i) Care should be exercised to avoid embarking upon a minute textual exegesis of the wording of all documents generated in the lead up to the making of a decision at the expense of discerning the broader factors underlying the reality of the process involved and the central purpose of the exercise in the context of which the decision fell to be

- directed. The reviewing court must, at the conclusion of its journey, be satisfied that it has been able to see the wood for the trees;
- (ii) The exercise of such care is particularly appropriate in cases, such as this one, in which the volume of documentation involved is very considerable and the opportunities for the detection of infelicities in the choice of language and ambiguity of expression are necessarily broadened;
 - (iii) The choice of words must be seen in the context of the particular purpose or purposes for which the relevant document was generated and the role, expertise and depth of knowledge of its author. Not all documents or sources command equal status in the exercise of forensic interpretation.
124. In this case, I am satisfied that, despite the points made on behalf of the claimant, Recommendation 4 genuinely related to a plan sufficiently distinct from the other recommendations to justify separate consideration by the JCC for all the reasons relied upon by the defendants.
125. The JCC did not, therefore, have to explore further the financial or other ramifications of Recommendation 4 as a prerequisite to proceeding with the decision to endorse the other three recommendations. I reject any suggestion that the stance taken by the defendants in resisting this challenge amounted to an ex post facto rationalisation of what was already an inherently and irremediably flawed decision.
126. The distinctions to be drawn between the needs addressed by EMRTS and the general ambulance service are very clear. Although, the proposals envisaged under Recommendation 4 involve a degree of overlap (both in the range of the services they provide and how and by whom they are provided) the needs which they were intended to address were discrete in all of the important respects I have identified earlier in this judgment.
127. Thus I accept that there is some degree of overlap between the purposes intended to be fulfilled by the implementation of Recommendation 4 and the other three recommendations (as evidenced, for example, by the description in the final report of it representing a mitigation of the possible impact on eliminating discrimination).
128. Nevertheless, I am unpersuaded that the relationship between the recommendations was such as to preclude the JCC from proceeding to reach its conclusions notwithstanding the fact that the details of Recommendation 4 had yet to be fully worked out.
129. I am satisfied that a high proportion of those in mid and north Wales who expressed concern about the proposals to consolidate the two bases into one had not fully appreciated the important distinctions between EMRTS and the ambulance service. Nevertheless, their valuable contributions to the debate brought to light legitimate grounds for more general disquiet

over the level of first responder service in those areas in respect of which they were expressing valid concerns.

130. Recommendation 4 was, therefore, primarily directed towards alleviating these concerns. In the event, however, a decision to implement a plan principally intended to address first responder problems (Recommendation 4) was then used as a basis of challenge to the plan to alleviate the EMRTS unmet need and under-utilisation problems (Recommendations 1 to 3).
131. The claimant understandably placed some reliance upon the procedural chronology which might, at first blush, appear to bind together all four recommendations. However, I find that it was convenient that the JCC should consider its options in parallel and thereafter make its decisions simultaneously in respect of all four recommendations at the conclusion of the consultation and reporting stages directed towards the reform of EMRTS. At this time, the information co-incidentally relevant to Recommendation 4 remained fresh and readily available. It was also appropriate to take Recommendation 4 forward in step with the other three without mandating the conclusion that all four recommendations were thus rendered inextricably linked.
132. It is understandable that assurances were given that Recommendation 4 would be put in place before the EMRTS plans were put in place. Although, I find that there was no logistical imperative behind this approach, it would have the advantage of helping to assuage any lurking doubts in the minds of concerned members of the public that the implementation of Recommendation 4 would not be proved in its implementation to be de-prioritised in the wake of progress with the other three recommendations.
133. As the claimant properly concedes in her skeleton argument: “As a point of principle, it might conceivably be open to a public body in some cases to take the view that a mitigating measure in relation to a particular policy is desirable without finalising what those mitigating measures might be...” I accept the defendants’ submission that Recommendation 4 was sufficiently distinct in its purpose not only from Recommendations 1 to 3 but also from all six of the shortlisted options that its costs would be additional even if Option 6 had been preferred.
134. Furthermore, consideration of the various options for change were not circumscribed by a requirement that there should be costs savings. Indeed, all of such proposed changes entailed additional expenditure which would fall to be drawn from the resources available to NHS Wales more generally. The evidence from Mr Whitehead was that Recommendation 4 was to be funded from the total available commissioning resource for ambulance services in Wales. Each year, the Commissioner and the provider make prioritisation decisions on how money should best be spent to meet the needs of the population of Wales. Sometimes that requires the expenditure of more money, sometimes efficiencies are made by the service that is re-

invested, sometimes there is additional money from Welsh Government and sometimes it is a combination of some or all of these. Recommendation 4 was to be prioritised in the usual manner.

135. In an appendix to their speaking note of 31 January 2025, the defendants provided a long list of material extracted from the documents generated both in the lead up to and as a result of the decision under challenge the purpose of which was to establish the proposition that the adoption of Recommendation 1 was not parasitic upon finalisation of further detail and costings of Recommendation 4. No purpose would be served by rehearsing all of those references, many of which appear in the extracts which I have already incorporated within this judgment. However, they can be fairly summarised in an extract from the update report of 17 September 2025 on the progress of the implementation of Recommendation 4 in the following terms:

“[the LHBs] are in agreement that Recommendations 1-3 are not contingent on the outcome of Recommendation 4, that Recommendation 4 is in response to the concerns raised during the public engagement process and is in addition to the highly specialised pre-hospital critical care EMRTS service and not a replacement for it”.

136. The JCC had a broad discretion to exercise against the background of an intricate factual matrix involving a wide range of competing priorities with a legitimate aim to resolve the situation as promptly as was consistent with the demands of procedural fairness. I am not persuaded that the course which they took is subject to valid challenge. It is inevitable, during the course of a process as long and complex as that which faced the JCC, that there arose certain respects in which, particularly with the benefit of hindsight, more could have been done. However, there comes a point at which the best is the enemy of the good. That is a point beyond which the claimant now seeks to encroach.
137. I am therefore satisfied, subject to an issue relating to the later discovery of an error in the costings, that the decision of the JCC was not irrational and that the *Tameside* principles were duly adhered to. It is that error of costings to which I now turn.

An error in costings

138. As I have already noted, there was a mistake in the calculation of the cost of Option 4 in the context of the materials presented for consideration for the JCC which only came to light shortly before this matter came to court. It is therefore necessary to consider the context in which this error arose and the implications which arise from it. I am satisfied that the other costs

estimates were sound. The Commissioner had considerable experience in the field of such costings and his input and recommendations in this regard ought otherwise to attract due deference. It ought also to be noted in this regard that the concepts of “affordability” and “value for money” cover considerations which extend beyond the budget sums likely to be required. A more expensive option may well provide better value for money than a cheaper alternative. In the circumstance of this case, value for money was unlikely to be achieved where the proposed expenditure would otherwise fail adequately to tackle the twin problems of unmet need and under-utilised resources.

139. The factors set out within the Option Appraisal Document and Scoring Pack which had been agreed at the EASC Meeting on 21 November 2021 were as follows:

- (1) Health Gain – 25% weighting;
- (2) Equity – 25% weighting;
- (3) Clinical Skills and Sustainability – 25% weighting;
- (4) Affordability – 15% weighting; and
- (5) Value for Money – 15% weighting.

140. The NHS costings specifically for services were provided by the finance team at Swansea Bay University Health Board. They were calculated by considering the pay for both medical staff and critical care practitioners for each shortlisted scenario taking into account: the number of shifts; the number of staff required for each shift; and how much they would be paid.

141. The costing for Option 4 was inaccurately calculated. One 12-hour shift with 2 members of staff had not been accounted for. When the figures were later corrected in the context of this challenge, Mr Whitehead calculated that, if the additional 12-hour shift had been included, the costs of Option 4 have turned out to be similar, if not identical, to Option 6. The cost of Option 6 would have remained the same. The error thus factored into both the affordability and value for money criteria.

142. It was therefore necessary to address the question as to what, if any, impact this may have had upon the decision under challenge. Mr Whitehead concluded that, inevitably, the scoring under the affordability and value for money factors in respects of Option 4 would have been lower. Nevertheless, even after importing the corrected weightings, it can be seen that Option 4 would still have been the second ranked option in the Options Appraisal Process. Only the top two options were taken forward following

the Workshop and Option 6 would not have made the grade regardless of the underestimate of the costs of Option 4.

143. Mr Whitehead also arranged for an email to be sent to each member of the JCC to enquire whether he or she would have reached a different decision had they been provided with the further representations which may have been made by consultees in the event that the accurate costings had been factored into the decision-making process. Such representations were articulated in My Benyon's witness statement. The responses were to the general effect that their decisions would have been the same.
144. Because the error was not discovered until after these proceedings had commenced, the original grounds of claim did not make specific reference to it. The claimant contends that the error should be taken into account in respect of Grounds 1 and 2, Ground 4(c) in that it undermines both the rationality of the decision and the adequacy of the consultation or engagement process which preceded it.
145. It is now established following the decision of the Court of Appeal in *E v Secretary of State for the Home Department* [2004] Q.B. 1044 that a decision maker who operates under a mistake of fact is susceptible to a public law challenge where four conditions are satisfied:
 1. The mistake is one as to an "existing fact".
 2. The fact or evidence must be "established" in the sense that it is "uncontentious and objectively verifiable".
 3. The appellant (or his advisors) must not have been responsible for the mistake.
 4. The mistake must have played a "material" but not necessarily decisive part in the decision-maker's reasoning.
146. The costings error is also relied upon by the claimant as giving rise to a breach of the second *Gunning* principle on the basis that the consultees were precluded from giving intelligent consideration and an intelligent response to the proposals because the information provided was wrong and they had no means of knowing this at the time.
147. Of course, caution must be exercised in circumstances in which a decision maker seeks, ex post facto, to justify a decision shown to have been based upon an error of fact.
148. In this case, however, there is a reliable and contemporaneously fixed analytical framework within which to work through and factor in the arithmetical error. The agreed points based scoring system and the recorded details of the history leading up to the decision are such as to lead

me to the conclusion that the error made no difference to the decision which would otherwise have been reached.

149. It was not, therefore, material and the claimant fails to surmount the fourth and final hurdle identified in E.

GROUND 4

Consultation

150. Eyre J refused permission on this ground finding that the defendants had undertaken an “extensive engagement exercise”. Alternatively, by the application of the provisions of section 31 of the Senior Courts Act, even if the consultation process were flawed in the ways relied upon by the claimant, he found that it is highly likely that the outcome would not have been substantially different.
151. The grounds under this head have since been amended to reflect subsequent evidential developments. The matter now comes before me on a rolled-up basis with the issues of a renewed application for permission and the substantive challenge to be considered together.
152. The claimant approached the consultation issue with reference to a number of “limbs” with which I will deal in turn.

Limb (i)

Llais

The claimant’s case

153. There is no dispute that the defendants were under a statutory duty to have regard to the Llais Guidance; this guidance was not put before the JCC; and JCC members received no legal directions on how to treat the representations made by Llais.
154. The claimant contends that, in the absence of evidence that the JCC did in fact have regard to the guidance, particularly those parts that say that Llais representations should be treated as a “critical piece of information” to which “considerable weight” should be attached, the court cannot be satisfied that they complied with their statutory duty under section 15(5) of the 2020 Act.
155. Second, the letter from Llais to the Commissioner dated 15 March 2024 was not put before either the EASC or the JCC and the letter of 9 April 2024 was not put before the JCC.
156. The claimant accepts that a “very high-level summary” of the 15 March 2024 letter was discussed at the EASC meeting on 19 March 2024, but contends that the key representation (“that there is insufficient detail in the

- five recommendations to provide assurance that community concerns have been (a) addressed, (b) incorporated and (c) mitigated”) was not set out.
157. Similarly, an extract from the 9 April 2024 letter was included at para 4.4 of the Report for the 23 April JCC meeting. However, the full letter was not put before the JCC. The full letter clearly set out Llais’s representation that a decision should not be taken now, before the proposed further work on Recommendation 4 is undertaken and before there is a fuller picture of how services would look for people living in rural and remote areas.
158. The Llais letter of 9 April 2024 was included in the pack of papers provided to each LHB. However, there is no evidence as to whether the JCC members from each LHB read that letter. In any event, the independent Chair and the 3 lay members are all voting members of the JCC, and, by definition, are not members of the LHBs. There is no evidence they were ever provided with copies of the Llais letters.
159. If the defendants had had regard to the Guidance, and understood they should treat Llais’s representations as a “critical piece of information” to which “considerable weight” should be attached, the treatment of Llais’s representations may well have been different.

The defendants response

160. The defendants were expert and experienced NHS decision makers and it is unrealistic to suggest that they were ignorant of the Llais Guidance and the related need to afford considerable weight to Llais’ representations.
161. In any event, on 13 April 2023, the Llais Guidance was circulated to all the defendants by email (which incorporated an introductory letter from the National Clinical Director of NHS Wales) to coincide with the creation of Llais.
162. Furthermore, it is clear from the contemporaneous documents that, as a matter of substance, the defendants and their predecessors went to great lengths to consider all the representations made by Llais and made several changes to the engagement arrangements and to the proposals as a result.
163. The Llais letter of 15 March 2024 was received on 17 March 2024. This was too late to be included in the papers circulated before the meeting of 19 March 2024. Nevertheless, it was discussed orally at the meeting of 19 March 2024 as the minutes reveal:

“Members also noted matters raised in correspondence that had been received from Llais Regional Directors since the EASC papers had been circulated for the meeting (dated 15 March). It was noted that many of the matters raised were similar to the points raised by the Llais National Team letter (dated 8 March) above, and that these were not re-examined. The additional

representations from Llais in the second letter were raised and considered, this included:

- The tight Phase 3 timescales and the potential to compromise the time available for ‘adequate consideration’, Members noted the timescales had been discussed and agreed at the December Committee meeting and the planned approach had been discussed then with the Llais National Team. Members agreed this was a difficult issue to ensure sufficient time for consideration of representations.
- Weekly Snapshot Reports had been provided to health boards and to Llais representatives to ensure consideration of the feedback as it was received, initial feedback had been received back and these had been considered helpful and informative of the public feedback.
- Phase 3 feedback had been consistent with feedback received throughout the processes and was predominantly from the communities of mid and north Wales...

Members were asked:

- If they felt that the representations made by Llais had been properly considered by way of the updates provided and whether there was anything else that should be provided...

Hayley Thomas (PTHB) confirmed that the letters from Llais were really important as representations needed to be properly considered. There was a need to respond to provide assurance in terms of the points raised. As a Committee there was also a need to ensure that there was sufficient time to consider their points and the strength of feeling within these to form a view.

Stephen Harrhy (CASC) agreed that it was really important that Members paid due regard to the important representations made by Llais and that a draft formal response by way of a letter to the most recent correspondence received on 17 March would be prepared following the meeting.”

164. In this context, the defendants contend that it is clear that the decision-makers were made aware of the substance of the representations and were able to build on their knowledge of Llais’ previous representations which had been along similar lines.

165. Llais's letter of 9 April 2024, was provided in the pack of papers given to each of the defendants and the chair of the JCC and was discussed by all the defendants at their respective meetings held between 9 and 11 April 2024 all of which were attended by a Llais representative. The letter was also referred to in the JCC April Report. In those circumstances there can be no doubt that the defendants had regard to the Llais letter of 9 April 2024.

Conclusion on Limb (i)

166. It is important to consider the involvement of Llais as a whole and not to isolate and scrutinise specific details out of context. When approached on this basis, I am entirely satisfied that the JCC and its predecessor both fully and conscientiously had regard to the contributions from Llais in a way which complied with its statutory obligations and in accordance with the Guidance. The fact that the JCC were not simply paying lip service to the view of Llais is perhaps best illustrated by their decision to accede to its request to embark upon a previously unplanned third phase of engagement in the face of the concerns expressed by the Charity over the delay.
167. I find that there is no evidence to justify the conclusion that the members of the JCC were either ignorant of or under any misapprehension as to the level and nature of their responsibilities in this regard. Indeed, the duration and extent of their engagement with Llais is amply evidenced by the very extensive contemporaneous documentation. I accept that the evidence of earlier engagement with Llais does not, without more, preclude a finding that the JCC later fell short of its public law obligations to engage. However, I am entitled to have regard to the history when considering the likelihood that the decision subsequently taken was flawed by ignorance or disregard of the matters to which they were bound to have regard.
168. In ***R v SoS Education and Employment ex parte M*** [1996] ELR 162 Simon Brown LJ observed:

“Prominent amongst the considerations relevant to determining the precise demands of consultation in a given case will be ... The urgency with which it is necessary to reach a decision ... The extent to which during earlier discussions or consultative processes opportunities have been afforded (and, indeed, taken) for views to be expressed by interested, and in particular opposing, parties and the likelihood, therefore of material and informed additional views or information emerging upon further consultation...

The Court should not “overlook[] ... the wealth of material, much of it fiercely antagonistic to the closure proposal, already elicited during those earlier consultation processes, all of which

material remained available to the [decision maker]. It overlooks too the likelihood that those opposed would long since have been deciding not merely their opinions and approach but also their tactics – how best and through what groups or representatives to express their views.”

169. In my view, the claimant is advocating a counsel of perfection. Even if one starts from the proposition that more detail *could* have been given to every member of the JCC, this falls far short of establishing that the decision is thereby rendered vulnerable to challenge.
170. As Sullivan J (as he then was) observed in **R (Greenpeace) v SoS Trade and Industry** [2007] Env LR 623:

“It is an accepted general principle of administrative law that a public body undertaking consultation must do so fairly as required by the circumstances of the case ...

A consultation exercise which is flawed in one or even in a number of respects is not necessarily so procedurally unfair as to be unlawful. With the benefit of hindsight it will almost invariably be possible to suggest ways in a consultation exercise might have been improved upon. That is most emphatically not the test. It must also be recognised that the decision-maker will usually have a broad discretion as to how a consultation exercise should be carried out ... In reality, a conclusion that a consultation exercise was unlawful on the ground of unfairness will be based upon a finding by the court, not merely that something went wrong, but that something went ‘clearly and radically wrong.’”

171. Circumstances may well arise in any given case in which the engagement with consultees is so prolonged and detailed that the quantity of material thus generated gives rise to more, not fewer, opportunities for criticism. This is just such an instance. Looking at the process of engagement with Llais as a whole I am in no doubt that the JCC fulfilled both its statutory and common law obligations and that any criticisms made fall short of the level of importance which would be capable of supporting a valid public law challenge.

Limb (ii)

Service Change Guidance

172. The claimant points out that the duty under section 183(1) of the 2006 Act is imposed on each LHB to make arrangements with a view to securing that relevant persons are “involved in and consulted on” various matters including (a) the “planning of the provision of health services”; (b) the

development and consideration of proposals “for changes in the way those services are provided”, and (c) “decisions to be made by the LHB affecting the operation of those services”.

173. Section 183 does not itself impose a duty to consult on each and every occasion one of (a)-(c) applies but is aimed at “securing meaningful participation in the relevant decision making process”. However, the arrangements must be designed both to secure public involvement and public consultation. Whether mere involvement or something more, namely consultation in the full Gunning sense, is required, will depend upon the circumstances identified in (a)-(c).
174. The Welsh Ministers’ Service Change Guidance identifies the correct approach. Section 5 sets out the different types of service change (small, moderate and substantial) and the level of consultation required in each case. A “substantial service change” is one which exhibits one or more of the characteristics in the five bullet points which follow.
175. The claimant contends that the proposals in this case engaged two of these five points and either involved a “reconfiguration of services across NHS organisations – e.g. regional services” or raised a “highly sensitive issue with the local population”.
176. Although the defendants took issue with the claimant’s interpretation of the scope of service change involved, the issue is rendered academic by the fact that, regardless of the label to be attached to it, the process of engagement did, in fact, amount to a consultation. As such, the central question is as to whether it was so flawed as to render it unlawful. It follows that my analysis should now be directed towards Limb (iii) which raises this issue head on.

Limb (iii)

Failure to comply with the Gunning principles

177. In Gunning, to which I have already made passing reference, Stephen Sedley QC (as he then was) identified in his submissions to the court four principles he contended should be applied when determining the adequacy of a consultation process in the context of a public law challenge. These principles were adopted by Hodgson J in his judgment.

“Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third ... that adequate time must be given for consideration and response and, finally, fourth, that the product

of consultation must be conscientiously taken into account in finalising any statutory proposals.”

178. Their general application was finally endorsed at the highest level by the Supreme Court in *R (Moseley) v Haringey London Borough Council* [2014] 1 W.L.R. 3947 at para 25:

“It is hard to see how any of his four suggested requirements could be rejected or indeed improved.”

179. Often the duty to consult will arise, as here, by statute

“But irrespective of how the duty to consult has been generated, that same common law duty of procedural fairness will inform the manner in which the consultation should be conducted...

Fairness is a protean concept, not susceptible of much generalised enlargement. But its requirements in this context must be linked to the purposes of consultation.” (Moseley paras 23 and 25).

180. In any event, the defendants in this case, in my view realistically, accepted that the *Gunning* principles ought to be followed. Indeed, the question of whether or not a consultation has been embarked upon is a matter of substance, not form. The proper approach to be taken by the court is not mandated by the label which the proposer may seek to apply to the process.
181. In this case, it is the second of the four *Gunning* principles upon which the claimant relies. This requires the court to consider whether the proposer has given sufficient reasons for any proposal to permit of intelligent consideration and response. The issue arises specifically with respect to the third phase of engagement.

The claimant’s case

182. The Llais letter of 29 November 2023 stated that further public involvement through a formal consultation was necessary and proportionate, given the “highly sensitive nature of this issue” before any final decision was taken. Llais contended that the defendants had not provided any detailed information about the estimated costs of the options and, because estimated costs were not included, people had not had a meaningful chance to evaluate the options:

“Although the Phase 2 engagement documents recognise that some of the options will cost more money than others, there is no detailed information about the estimated costs of the options identified in the documents.

You have been clear in your commitment that the formal engagement process would:

- Describe how EMRTS works now
- Agree the ‘rules’ for comparing different options
- Present the benefits, risks, and impact of each option.

Because the presentation of the benefits, risks and impact of each option does not include estimated costs, we do not believe people have had a meaningful chance to think about and evaluate the different options taking into consideration all the important information.

Having some idea of the likely costs of the different options could make a real difference in what people think about which option/s are best.”

183. The EASC minutes of 21 December 2023 record:

“The aim of the [Phase Three] documents would be to meet the principles for ‘consultation’ to ensure that sufficient reasons were put forward for any proposal to permit ‘intelligent consideration’. This would include data where possible with as much explanation (and costs) as possible to continue the work of Phases 1 and 2.”

184. The Commissioner’s letter of 3 January 2024 responding to the Llais letter of 29 November 2023 stated that:

“The aim of the documents [Phase 3] will be to meet the principles for engagement and consultation to ensure that sufficient reasons are put forward for any proposal to permit ‘intelligent consideration’. This will include data where possible with as much explanation as possible to continue the work of Phases 1 and 2.”

185. The Phase 3 “engagement” report records that:

“The Gunning principles were considered in underpinning the communications and engagement approach and delivered in the following key activity phases...”

186. The public were provided with the information in the “Phase 3 engagement report” and appendices which contained the required information on Options A and B (the Commissioner’s preferred options). However, they were not provided with the same information for the other four shortlisted

- options. The Phase 3 document provided only the scores for these options, their ranked position, and the “Easy Read Ref” in Appendix 11.
187. For Option 6, the only information on costs was: *“It is the most costly option. It is the second highest cost per extra incident”*. No data was provided on the actual costs, so no comparison could be made with the preferred options on either affordability or value for money.
 188. The necessary information was available, and was contained in the Full Options Appraisal Document. However, this was not published as part of the Phase 3 material and was not available to the public. They were not published until the final EMRTS report was published on 12 March 2024, which contained the Commissioner’s final decision.
 189. The defendants did not provide any details of the “Extra Actions” that became Recommendation 4 and did not provide any costings for these “Extra Actions”. The claimant alleges that they have not identified any reason why costings were not carried out or why this information was not provided to consultees. Respondents could not therefore make any comparison between “Option A and the Extra Actions” and Option 6.
 190. The Phase 3 questionnaire asked the public to give their views on (a) the six shortlisted options; (b) the Commissioner’s preferred options; and (c) the “Extra Actions”. In an email of 24 February 2024 and signed by a number of concerned parties (including an MP, a number of councillors and representatives of the Save Air Ambulance Mid Wales Base Campaign), Russell George MS told the Commissioner that they were unable to make representations on the shortlisted options, and compare them to the Commissioner’s preferred options, as they did not have the necessary information to do this. Nor could they comment on the Extra Actions as they did not have any details of what they would entail, or the costs of the same.
 191. Mr Benyon contends that if the costings information has been provided then representations would have been made about (a) the cost of the single car in Option 6; (b) the comparison with the cost of an additional car in Wrexham and in Option 6; (c) costings for what became Recommendation 4; and (d) a true comparison between Option 6 and Option A (plus Recommendation 4).
 192. It is further contended that Options A and B both involved base consolidation so the public were deprived of the opportunity of making meaningful representations on the alternative of maintaining Caernarfon and Welshpool bases. As a result, Phase 3 was bound not to satisfy the second **Gunning** principle.
 193. A distinct point is briefly alluded to in the claimant’s skeleton argument to the effect that respondents were not told anything about why EMRTS had low confidence they could deliver the shifts (relevant to Clinical Skills and Sustainability factor).

The Defendants' response

194. The defendants contend that the additional information which it is alleged ought to have been provided to consultees was of such granular detail that it was simply not required for the purposes of meaningful consultation.
195. Respondents to the process were provided with a comprehensive, 84 page information pack ("the Phase 3 Engagement Pack") which set out the six shortlisted options and how they had been developed. It provided the scoring for each of the six options for each of the evaluation criteria given at the options appraisal workshop in January 2024. A summary was also provided as to why option 6, despite being popular with the public, was not selected as a preferred option: *"It did not score well against factors 3, 4 and 5 (Clinical Skills and Sustainability, Affordability and Value for Money). This was because extra base facilities would need to be provided alongside the introduction of an extra crew that would be used on an infrequent basis."*
196. The Phase 3 Engagement Pack provided further detail as to the two preferred options which included a breakdown of the costs involved in running both.
197. Finally, it was explained that the public engagement carried out to date had identified various concerns about rural communities needing better emergency health transportation services. Feedback was therefore sought on "extra actions [that] involve placing more cars set at strategic points within Powys, Betsi Cadwaladr or Hywel Dda Health Board areas". Costings were not provided because these services could be provided *"within the existing commissioning allocation. This means that there would be no added costs. Therefore, these extra actions are not included within the two options of the Phase 3 engagement."*
198. The defendants contend that this was sufficient information to enable respondents to provide a meaningful response to the consultation. To the extent that complaint is made that there was a deficit in the details relating to the options which had made it through to the final round the defendants rely on the observations of the Supreme Court in Moseley at paras 27 and 28:

"27. Sometimes, particularly when statute does not limit the subject of the requisite consultation to the preferred option, fairness will require that interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options...

28. But, even when the subject of the requisite consultation is limited to the preferred option, fairness may nevertheless require passing reference to be made to arguable yet discarded alternative options. In Nichol v Gateshead Metropolitan

Borough Council (1988) 87 LGR 435 Gateshead, confronted by a falling birth rate and therefore an inability to sustain a viable sixth form in all its secondary schools, decided to set up sixth form colleges instead. Local parents failed to establish that Gateshead's prior consultation had been unlawful. The Court of Appeal held that Gateshead had made clear what the other options were: see pp 455, 456 and 462. In the Royal Brompton case 126 BMLR 134 , cited above, the defendant, an advisory body, was minded to advise that only two London hospitals should provide paediatric cardiac surgical services, namely Guys and Great Ormond Street. In the Court of Appeal the Royal Brompton Hospital failed to establish that the defendant's exercise in consultation upon its prospective advice was unlawful. In its judgment delivered by Arden LJ, the court, at para 10, cited the Gateshead case as authority for the proposition that “a decision-maker may properly decide to present his preferred options in the consultation document, provided it is clear what the other options are ...” It held, at para 95, that the defendant had made clear to those consulted that they were at liberty to press the case for the Royal Brompton.”

199. The defendants contend that respondents needed to understand in broad terms the pros and cons of the six options and that is what the completed scoring matrix achieved. In relation to costs specifically, respondents needed to appreciate that certain options were more expensive than others (the scores allowing a comparison to be made), but it was neither necessary nor appropriate for technical detail about costs to be shared. Indeed, it is said, that the only reason that some detailed costings information was provided was to allow respondents to express an informed preference between preferred Options A and B given that, without this information, these options seem very similar.
200. As for the “Extra Actions”, the Phase 3 Engagement Pack explained why costings were not provided (the services would be provided within existing budgets). In any event, the comparison contended for by the Claimant between “Option A and the Extra Options” and “Option 6” would not have been appropriate because the Extra Options are a different service from EMRTS designed not to increase EMRTS capacity but to bolster the standard ambulance service in rural areas.
201. As to the Claimant’s complaint about a lack of information about EMRTS’ reasons for low confidence in their ability to delivery some shifts, this was a matter of judgement informed by EMRTS’ experience and expertise. Their reasons for their view were not suitable for critique by members of the public, and their provision was not necessary to enable members of the public to respond to the questionnaire in a meaningful manner.

Discussion on Ground 4(iii)

The costs of Option 6

202. I reject the defendants' primary case to the effect that, by the application of section 183(1)(b) of the 2006 Act, since Option 6 was not put forward by the defendants as a proposal for change then, strictly speaking, no consultation on it was required in any form. However, Section 183(c) of the Act refers to "decisions to be made by the Local Health Board affecting the operation of those services." Thus I find that at least some reference to the other four options was required.
203. Nevertheless, the claimant's concern that both remaining options at stage three involved the closure of the two bases must be seen in the context that, in many cases, the final consultation is in respect of one preferred option as is evident from the observations of the Supreme Court in Moseley. It may well be that, in any given case, the fewer the number of preferred options and the greater the contrast between such options and those which have been earlier discarded then the greater is the onus on the proposer to provide some level of detail about those which were discarded. The level of such detail will be very much a matter to be determined on the facts of the case under consideration.
204. In this case, I accept the defendant's contention that Option 6 did not fall to be afforded the same status within the context of the consultation process as the preferred options.
205. Furthermore, regard must be had to the fact that the costs of different competing options may not always be a central or even a significant matter upon which the process of consultation is intended to be focussed. In Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345, the Court of Appeal considered a challenge to the Secretary of State's decision to close the Independent Living Fund. One of the grounds relied upon related to a failure to give details as to the likely costs implications of the decision. McCombe LJ observed:

"28. For the Respondent, Ms Busch submitted that there was no obligation to ensure that consultation extended to the costs of closure. These estimated costs had been included in the first draft EIA but did not appear either in the consultation document or in the EIA published at the time of the decision. Ms Busch submitted that these costs were essentially matters of internal accounting and did not affect the impact of the fund closure on users. She submitted that the likely costs were also subject to changes as they could not be fully predicted.

29. I agree with Ms Busch's submissions on this point. In my judgment, as the Judge found, the omission of this matter did not

detract from the ability of consultees to explain how the closure of the fund would impact on them: see paragraph 38 of the judgment of the Judge below. Further, as can be seen from the consultation responses actually received, respondents were well able to state clearly and fully their fears for the adverse impact on them from the closure of the ILF. The amount of provision of devolved funding to local authorities in future years under the proposed new regime would obviously be a matter for discussion between HM Treasury and funding departments and would be unrelated to the costs of closure incurred by the ILF itself and/or the Respondent's department. The consultees had no special insight or experience as to the relevance of the costs of closure on the decision and the Minister was fully entitled to conclude that she would not be assisted by any views they may express on that subject.”

206. The fact that the JCC were privy to some information not made available to the consultees did not, in itself, render the consultation inadequate or flawed. As Lord Woolf MR observed in *R v North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213 at para 112:

“It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this.”

207. Taking all aspects of the history of engagement, I am satisfied that the consultation process was not flawed by reason of lack of detail provided with respect to the costings of the discarded options. In particular:
- (i) As discarded options, they did not enjoy the same status as the preferred options and the level of detail required to be disclosed was lower than that which would have been apt in the event that Option 6 was still on the table;
 - (ii) The options involving the retention of the bases at Caernarfon and Welshpool had been expressly identified throughout the engagement process;
 - (iii) The costs of the various options were not a matter upon which the consultees would be expected to have any special insight or experience. If a decision is otherwise rational taking into account costs considerations then it would not usually be the case that a failure to consult on the costs of discarded options would found a free standing viable basis of public law challenge.

EMRTS staffing

208. In her amended pleading the claimant contends that the defendants did not comply with the second limb of Gunning because it did not provide: “data on the cost of all six shortlisted options ... any details of the ‘Extra Actions’ that became Recommendation 4 ... and ... did not disclose the Full Options Appraisal Document that was provided to the Appraisal Panel.”
209. In her skeleton, she argues that respondents were not told why EMRTS had low confidence that they could deliver certain shifts and that was a failure to provide sufficient information.
210. In oral argument the claimant submitted that information should have been provided as to the basis for the views expressed and information about contact with staff on the topic.
211. There is considerable force in the defendants’ contention that the case presented in oral argument marks such a significant departure in scope and detail from her pleaded case that she ought not to be permitted to rely upon it without an amendment. Any such amendment would require the permission of the court which would have been refused. Reliance is placed upon the observation of the Divisional Court in R (AB) v Chief Constable of Hampshire Constabulary and others [2019] EWHC 3461 (Admin) at paras 113 and 114.
212. In any event, the question of what could or could not be achieved on the issue of staffing had, in fact, been given careful consideration by the decision makers who had the expertise and experience to equip them to form a view. It fell within the discretion of the JCC not to descend into more granular detail on the topic as part of the consultation process.
213. Accordingly, I consider that the claimant ought not to be permitted to raise third point so late in the day and, even if I were wrong to preclude argument on the issue, I would resolve it against her.

Recommendation 4

214. The claimant contends that there was inadequate engagement with the consultees in respect of Recommendation 4.
215. An issue arises as to whether the consideration of Recommendation 4 called for a lower level of engagement because it was not the focus of the initial consultation but emerged in response to wider public concern about rural health care services.
216. There is, however, a risk in this context that an over-mechanistic and rigidly taxonomic approach may distract from the overarching and fact sensitive requirement that a public body undertaking consultation must do so fairly as required by the circumstances of the case. Ultimately, the level of consultation must be proportionate and appropriate to the nature and

- scope of the matters under consideration and the extent to which consultees may be expected to make a material contribution to the process as a whole.
217. I have already found that the adoption of Recommendation 4 by the JCC was neither irrational nor in breach of the Tameside principles. My consideration of the adequacy of the consultation must, therefore, be seen against this background.
218. The claimant contends that the likely costs of implementing Recommendation 4 were not adequately identified or communicated to consultees. There is, however, force in the defendants point that Recommendation 4 involved the approval of the development of a commissioning proposal for bespoke road based enhanced and/or critical care services in rural and remote areas to enhance the core service model. There was no sufficiently defined end-point to the implementation of the decision to enable a meaningful estimate of costs to be promulgated. Any attempts to predict such costs now are, and would have been at the time, wholly speculative. In this context, there was no obligation upon the JCC to provide any greater detail than they did. They were certainly not under an obligation within the process of consultation to provide a level of disclosure akin to that appropriate in the context of litigation.
219. I have already found that the involvement of Llais was compliant with the Gunning principles. Llais had access to the relevant additional information that was before the decision-makers and retained its power to make representations throughout. It will be recalled that section 183(1) of the 2006 Act provides for involvement and consultation with persons to whom those services are being or may be provided may be directly “or through representatives”.
220. Furthermore, the issue as to how, eventually, the costs of the implementation of the additional services could be accommodated with the several potential sources of funding is very much a matter for the decision maker guided by the experience and expertise of the Commissioner. In this regard, the situation is similar to that which arose in Bracking in which “the consultees had no special insight or experience as to the relevance of the costs of closure on the decision”.
221. It follows that this limb of challenge also fails.

Conclusion on Ground 4

222. I am satisfied that Eyre J was right to refuse permission under this ground. In short, the level of consultation was perfectly adequate and, in some respects, generous. Any imperfections relied upon fell far short of what would be necessary to support a public law challenge. I therefore refuse the renewed application for permission to appeal on this ground.

GROUND 5

Breach of the Public Sector Equality Duty and Socio-Economic Duty

223. The scope and nature of the PSED was recently addressed by the Supreme Court in **R (Marouf) v Secretary of State for the Home Department** [2025] A.C. 130 (paras 14-15):

“14. The nature of the duty under section 149 was considered by the Court of Appeal in R (Bracking) v Secretary of State for Work and Pensions [2014] Eq LR 60 and in R (Bridges) v Chief Constable of South Wales Police [2020] 1 WLR 5037 (“Bridges”). In the latter case, the court emphasised the following principles (para 175):

- (1) The PSED must be fulfilled before and at the time when a particular policy is being considered.
- (2) The duty must be exercised in substance, with rigour, and with an open mind. It is not a question of ticking boxes.
- (3) The duty is non-delegable.
- (4) The duty is a continuing one.
- (5) If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required.
- (6) Provided the court is satisfied that there has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, then it is for the decision-maker to decide how much weight should be given to the various factors informing the decision.”

15. The Court of Appeal in Bridges accepted (para 176) that the PSED is “a duty of process and not outcome” but said that that did not diminish its importance. Public law is often concerned with the process by which a decision is taken and not with the substance of that decision. This is for at least two reasons. First, good processes are more likely to lead to better informed, and therefore better, decisions. Secondly, whatever the outcome, good processes help to make public authorities accountable to the public.”

224. There were a total of 5 Equality Impact Assessments published throughout the process leading up to the making of the decision in this case:

- The first EqIA - submitted with the service change proforma to CHC and dated 29 September 2022.
- The second EqIA - published on 6 January 2023 which formed part of Phase 1 engagement documents.
- The third EqIA– published on 12 September 2023 which formed part of Phase 2 engagement documents.
- The fourth EqIA– published on 17 January 2024 which formed part of Phase 3 engagement documents.
- The fifth and final EqIA– published on 11 March 2024 encompassing Phases 1, 2 and 3.

225. The claimant contends that the defendants failed to comply with the “have regard” duties in the 2010 Act in a number of respects.

The claimant’s point one

226. The Report does not refer to the PSED (or the socio-economic duty) and gives no guidance to decision makers as to how they should discharge that duty. Under the box headed “Impact Assessment”, the Report ticks the box saying that an “Equality Impact Assessment Screening” has been undertaken. An EqIA was available on the link but members were not told they should read it. The resolutions of the meeting contain no reference to the contents of the EqIA and Mr Whitehead in his witness statements says nothing as to whether the voting members of the defendants read it. Accordingly, there is no evidence that the defendants had due regard to the relevant matters.

Defendants’ response to point one

227. Due regard to the duties requires neither specific reference to the relevant statutory provisions nor explicit guidance as to how the duties should be discharged. The proper approach was summarised by Lewis J in **R (Buckley) v Bath and North East Somerset Council** [2018] EWHC 1551 (Admin) at para 36:

“The duty is one of substance, not form, and the real issue is whether the relevant public authority has, in substance, had regard to the relevant matters having regard to the substance of the decision and the authority's reasoning. The absence of a reference to the public sector equality duty will not, of itself, necessarily mean that the decision-maker failed to have regard to the relevant matters although it is good practice to make reference to the duty, and evidentially useful in demonstrating discharge of the duty.”

228. In this context, it is argued that what matters is that the defendants were mindful of the substance of the equalities implications in the context of this particular decision. A central aim of the JCC was to reduce unmet need across Wales. Its members had particular expertise in the equitable allocation of health care resources. Therefore inherent in the decision-making was the reduction of health inequalities and socio-economic disadvantage.
229. The Commissioner's Report included the following:

“5.2 Equality Impact Assessment (EQIA)

It is recognised that people in protected characteristic groups are likely to be impacted by any change more than the general population and that in particular children, older people, disabled people and those living with social & economic disadvantage could be disproportionately affected. Intersectionality can also mean that some people receiving the service will have more than one of these protected characteristics and so the impacts on them would be disproportionately greater.

Data regarding EMRTS missions is not available in a format that enables further detailed analysis by equality protected characteristics and therefore any potential impact cannot be discounted.

Also, there are significant numbers of those who responded during Phase 3 who believe that there are adverse impacts on those with protected characteristics.

Whilst there is clear evidence of an overall health gain to the people of Wales from Option A and Option B, there is a possible likelihood of a moderate downside impact as it is recognised that during periods when the air ambulance helicopter is unable to fly (e.g. due to very poor weather conditions) then communities located closer to the current bases in Welshpool and Caernarfon may experience a reduced service during these “no fly” periods than now because of the increased distance for RRV response.

An implementation plan would need to be developed if the recommendation is approved by EASC particularly in recognition that increased need for EMRTS may be associated with factors such as age, deprivation and disability.

Importantly, the implementation plan would need to consider the impact on EMRTS staff.

Also, the plan will need to specifically include communication with the public to better understand and trust the partnership service once more.

However, the recommendations within the review mitigate against these.

The aim of the Review is to use the existing resources to provide services to those who currently need it but don't receive it (2-3 a day) and therefore this consideration is influential for decision making (those 'unmet need' patients may also have protected characteristics).

An example of this would be that approximately 530,000 people in north Wales would not receive a response after 8pm within 60 minutes."

230. The 23 April 2024 report for the JCC provided:

"2.10 All documentation related to the Review is available and this report should be read in conjunction with these documents available at [Final Report Supporting Documents - Emergency Ambulance Services Committee \(nhs.wales\)](#)."

231. In a witness statement dated 9 January 2025, Mr Ian Greene OBE, the chairman of the JCC, stated:

"15. I fully understand the importance of ensuring members or stakeholders are briefed effectively. To this end as Chair, I ensured that:

- The new lay members received a comprehensive briefing session on 9 April 2024; the CEO members had been involved in the process since September 2022 and had been shaping the process to date and were therefore not included. A copy of the timetable for this induction session is at exhibit IG1.
- Key points from the experts in the team were communicated clearly and accurately.
- Members were provided with the necessary context and all background information. This was in the clear expectation that they would read the documentation in question, and my understanding is that they did so as conscientious members mindful of their responsibilities and given the importance of the decision under consideration.
- Any potential risks, opportunities, or actions arising from the reports were highlighted to facilitate informed discussions and decisions, particularly for the second meeting of the JCC on 23 April 2024."

232. The CEO members had already been provided with the final report as part of the papers for the meeting of 19 March 2024.

Conclusion on point one

233. I reject the claimant's contention that there is no evidence that the lay members had regard to the final EqIA and the Equality Act requirements. Mr Green's full briefing combined with ready access to the necessary materials provided in the context of an important decision ensured that any reasonably conscientious member would be fully equipped to factor in the relevant considerations in the context of the decision in the making of which they were to participate. Furthermore, there is no evidence that any member of the JCC had demonstrated an approach to his or her task that indicated an ignorance of the requirements of the PSED.

The claimant's point two

234. The EqIA was not sufficient to discharge the public sector equality duty. The defendants cannot have due regard to the need to eliminate discrimination without considering whether discrimination existed. Such discrimination includes both direct and indirect discrimination. There was a real possibility, flagged repeatedly by respondents to the "engagement" exercise, of particular disadvantage being suffered by the elderly and the disabled. In those circumstances, the defendants could only have due regard to the need to eliminate discrimination if they asked themselves whether the proposals would breach section 19 of the 2010 Act, i.e. whether any particular disadvantage could be justified. The adoption of Option 6 would have ensured a greater coverage of the population as a whole and made a greater contribution to reducing unmet need.

The defendants' response to point two

235. The Final EqIA addressed in substance the possibility of both direct and indirect discrimination. Direct discrimination did not arise. There was no change to the eligibility criteria for the service.
236. Indirect discrimination was addressed in two ways. It was recognised that some of those who would be brought within the reach of the Service would have protected characteristics. The consequence of this, where meeting more need overall, was that there was unlikely to be any adverse impact. Inevitably, some members would be closer to the bases and others further away whether bases were moved or remained where they were.
237. In any event, a possible moderate adverse impact was identified in relation to those with protected characteristics currently living near the Welshpool and Caernarfon bases when poor weather conditions meant that helicopters

could not fly. It was, however, recognised that this impact would have to be weighed against the “influential” benefits of the decision, namely the resulting reduction in unmet need and, accordingly, there was a potential justification for any discriminatory impact.

238. The defendants also argue that the fact that Option 6 may have had better equalities implications takes the claimant’s case no further. It was not the proposal under consideration by the time the decision fell to be taken.

Conclusion on point two

239. I accept that the identification of an overall potential moderate adverse impact was, in any event, a strongly precautionary stance for the defendants to have taken. Bearing in mind the likely benefits of more successfully meeting the unmet need of seriously ill and injured patients as a whole there was ample justification for such discriminatory impact (if any) as may have been feared. The claimant therefore fails on this point.

The claimant’s point three

240. It was incumbent on the defendants to consider the equalities implications of those living in mid and north Wales and to identify the ways in which older, disabled and pregnant women would be negatively affected by the proposal (as well as those who are socio-economically disadvantaged).

The defendants’ response to point three

241. The identification of a potential moderate adverse impact demonstrates that due regard was paid to the equalities implications for those living in mid and north Wales. The defendants were not required to embark upon a quest for further statistical or other data. As the Court of Appeal noted in *R (West Berkshire District Council and another) v Secretary of State for Communities and Local Government* [2016] 1 W.L.R. 3923 at para 73:

“The requirement to pay due regard to equality impact under section 149 is just that. It does not require a precise mathematical exercise to be carried out in relation to particular affected groups or, for example, urban areas as opposed to rural areas.”

Conclusion on point three

242. I accept that it was clearly the potential impact of the decision on the equalities of those living in mid and north Wales which had been addressed in the EqIA. Specific reference was made to “communities located closer to the current bases in Welshpool and Caernarfon”. It was a perfectly

proper exercise of the defendants’ discretion not to seek further data on this issue. Indeed, there was a strong likelihood that this would have resulted in mere fruitless delay. As the Court of Appeal observed in *R (on the application of Margaret Bailey & Others) v London Borough of Brent Council* [2011] EWCA Civ 1586:

“102. The importance of complying with s.149 is not to be understated. Nevertheless, in a case where the council was fully apprised of its duty under s.149 and had the benefit of a most careful Report and EIA, I consider that an air of unreality has descended over this particular line of attack. Councils cannot be expected to speculate on or to investigate or to explore such matters ad infinitum; nor can they be expected to apply, indeed they are to be discouraged from applying, the degree of forensic analysis for the purpose of an EIA and of consideration of their duties under s.149 which a QC might deploy in court. The outcome of cases such as this is ultimately, of course, fact specific (see Harris). All the same, in situations where hard choices have to be made it does seem to me that to accede to the approach urged by Miss Rose in this case would, with respect, be to make effective decision making on the part of Local Authorities and other public bodies unduly and unreasonably onerous.”

The claimant’s point four

243. The EqIA did not identify how those impacts could be mitigated. In particular, it did not consider what would be required of the enhanced road-based provision to ensure the negative impacts were reasonably mitigated. In the same respects, the defendants failed to comply with section 1 of the 2010 Act. The EqIA fails to consider the socio-economic make up of population currently served by the Welshpool and Caernarfon bases, compared to the population who will be served by the proposed new base at Rhuddlan.

The defendants’ response to point four

244. If the court finds that Recommendation 4 was not intended to be a mitigation of Recommendation 1 then the foundation upon which this point is based is fatally undermined.

Conclusion on point four

245. I have found that the decision in respect of Recommendation 1 was not contingent upon the details of the implementation of Recommendation 4 and accept that this deprives the claimant’s point four of weight. Again, in

any event, any further enquiries into the nature and location of the populations currently served by the Welshpool and Caernarfon would have been very likely to have been disproportionate and impracticable and it fell comfortably with the exercise of the discretion of the defendants to seek no further information on this issue.

Conclusion under the Equalities Act 2010

246. For the reasons I have given, the challenge under Ground five must fail.

Section 31 Senior Courts Act 1981

247. Having found against the claimant on each of the grounds upon which she relies, it is not strictly necessary for me to address the question concerning the operation of the provisions of section 31 of the Senior Courts Act 1981 but having received both written and oral submissions on the point, I will approach the matter on the counter-factual assumption that any or all of my earlier findings are wrong. However, I will deal with the issues more shortly than I would have done had I considered that the outcome of these challenges depended on it.

248. Section 31(2A) Senior Courts Act 1981 provides:

“(2A) The High Court—

- (a) must refuse to grant relief on an application for judicial review, and
 - (b) may not make an award under subsection (4) on such an application, if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.
- (2B) The court may disregard the requirements in subsection (2A)(a) and (b) if it considers that it is appropriate to do so for reasons of exceptional public interest.
- (2C) If the court grants relief or makes an award in reliance on subsection (2B), the court must certify that the condition in subsection (2B) is satisfied.]
- (3) No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

- (3C) When considering whether to grant leave to make an application for judicial review, the High Court—
 - (a) may of its own motion consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred, and
 - (b) must consider that question if the defendant asks it to do so.
- (3D) If, on considering that question, it appears to the High Court to be highly likely that the outcome for the applicant would not have been substantially different, the court must refuse to grant leave.
- (3E) The court may disregard the requirement in subsection (3D) if it considers that it is appropriate to do so for reasons of exceptional public interest.
- (3F) If the court grants leave in reliance on subsection (3E), the court must certify that the condition in subsection (3E) is satisfied.

249. After the hearing in this case, the Court of Appeal revisited the issue of the proper application of section 31 in two decisions: **R (Greenfields (IOW) Limited) v Isle of Wight Council** [2025] EWCA Civ 488 (“**Greenfields**”) and **R (Bradbury) v Brecon Beacons National Park Authority** [2025] 4 W.L.R. 58 489 (“**Bradbury**”). The judgments in these cases were handed down sequentially on 16 April 2025. The lead judgment in both cases was given by Lewis LJ. I am grateful to the parties for providing me with further written submissions on the implications of these decisions for the instant case.

250. Much of the debate between the parties before me was directed to the guidance given by a deputy High Court judge in in **R (Cava Bien Ltd) v Milton Keynes Council** [2021] EWHC 3003. This decision was, however, given short shrift by the Court of Appeal in the more recent cases. Lewis LJ confirmed that the 14 point “guidance” given in **Cava Bien** was flawed and should not be followed.

251. The correct approach to section 31(2A) was set out in para 73 of **Greenfields** (and repeated in para 71 of **Bradbury**) in the following terms:

“In relation to section 31(2A), the court is concerned with evaluating the significance of the error on the decision-making process. It is considering the decision that the public body has reached, and assessing the impact of the error on that decision in order to ascertain if it is highly likely that the outcome (the decision) would not have been substantially different even if the decision-maker had not made that error. It is not for the court to try and predict what the public authority might have done if it had not made the error. If the court cannot tell how the decision-

maker would have approached matters, or what decision it would have reached, if it had not made the error in question, the requirements of section 31(2A) are unlikely to be satisfied.”

252. This is therefore the test which I will apply to each of the grounds in this case.

Grounds 1 and 2

253. If I were wrong in concluding that the relationship between Recommendation 4 and the other recommendations was not such as to mandate further consideration by the JCC of the costs and implications of the implementation of the former then I would, at least, by moving on to consider the application of section 31, run the risk of straying into the forbidden territory of assessing the merits of a public decision under challenge by way of judicial review.
254. The court will often find it harder to apply section 31 in circumstances, as here, in which the basis of its application is both untethered to a specific and defined procedural lapse and which is hypothecated upon the premise that the court may have been wrong in reaching its primary conclusion that the decision under challenge was not susceptible to judicial review. In such cases, there may arise a difficulty in identifying with sufficient precision what counter-factual assumptions ought to be made upon which the statutory hurdle should be assessed.
255. In *Greenfields*, for example, the council placed neither a proposed section 106 agreement nor the final agreement on the Council's planning register as required by article 40(3)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the Order”). There was never any dispute that there had been a failure to comply with the Order. The task facing the court did not, therefore, involve the consideration of a range of potential permutations regarding the procedural flaw identified. It is also to be noted that, despite the binary premises upon which the issue fell to be determined, the Court of Appeal was still not satisfied that the criteria laid down in the section 31 test had been met.
256. In this case, in contrast, if I were to be wrong in my conclusions on Grounds 1 and 2, that the claimant’s challenges lacked merit, there would remain open the question as to the precise extent to which I was wrong. If further detail were required, for example, about the nature, scope and cost of Recommendation 4, there would then need to be a determination of what extra detail would have been required. Only then could the counterfactual assessment be made. In my view, the number of hypothetical permutations involved in this exercise at this stage would lead to far too much

speculation to result in a safe conclusion. I am therefore satisfied that the defendants must fail on this issue.

Ground 4

257. For the purposes of applying section 31 to the consultation ground, I will assume that, when taken together, all of the shortfalls identified by the claimant are made out and give rise to what would otherwise be a sound basis for judicial review. To pitch the analysis upon any other more nuanced assessment would engage the same problems which I found to have precluded me from grappling with the issues under Grounds 1 and 2.
258. On this assumption, however, I can approach the application of the statutory test with more confidence. I am entirely satisfied that it is highly likely that nothing that either Llais or any combination of individual consultees may have said about the choices facing the JCC would have made any (let alone any substantial) difference to the outcome for the claimant.
259. Llais had made exhaustive representations throughout the process leading up to the making of the decision. There was simply nothing of substance which remained to be said which had not already been said. The force of their advocacy would not have been enhanced by repetition regardless of what further documentation or material they were provided with.
260. The evidence of Mr Whitehead removes all reasonable speculation about how the member of the JCC may have acted differently in the event that consultees had raised the points relied upon by Mr Benyon.
261. To the very considerable extent that the concerns raised by the consultees relate to the relevant costings of the various options, these are not, in any event, the central purpose to which the engagement/consultation was directed. They are, therefore, likely to have carried little or any weight with the member of the JCC on the facts of this case.
262. Even if, contrary to my primary findings, the decision of the JCC were flawed under grounds 1 and/or 2, it is highly likely that that it would have reached substantially the same conclusion regardless of any further contributions from Llais or other consultees.
263. It follows that I consider that the defendants have, in the alternative, made out the conditions which are prerequisite to the application of section 31 under this Ground. I would have refused permission under this ground regardless and I find that Eyre J was right to refuse leave on this basis also.

Ground 5

264. I am not prepared to apply section 31 to this Ground.

265. Despite my confidence (I hope not unfounded) in the conclusion that the PSED was discharged, I cannot altogether rule out the possibility that, if I were wrong about this, then there may be certain circumstances in which, hypothetically, more detailed investigations may have reset the balance of the considerations which upon which the JCC may thereafter have reached their conclusions.
266. I would have to have been very much in error in my assessment of the scope of the PSED for section 31 to become relevant but since my approach at this stage is contingent upon that possibility I am unable to exclude it.

DISCRETION

267. As with all judicial review challenges, I would retain a residual discretion as to what, if any, relief I should grant in the event that the claimant had surmounted all of the other substantive hurdles in the way of success. In this case, the matter is rendered academic by my earlier findings.
268. Furthermore, notwithstanding the wholly understandable enthusiasm of the defendants and the Charity to proceed towards the implementation of the decisions of the JCC under review, it would extend well beyond the bounds of legitimate pragmatism to endorse that approach in the face of proven public law flaws particularly in the event that the safety net of s31 had already failed.
269. It follows that I consider that it would not be appropriate to embark upon a consideration of how my discretion would ultimately have been exercised in the event that I had reached different substantive conclusions.

CONCLUSION

270. For the reasons I have given, these challenges must fail.
271. I understand and readily appreciate the depth of feeling involved and the disappointment that this decision will bring to many people in mid and north Wales. However, it is not the function of this court to usurp the decision making function of those to whom parliament has delegated the responsibility. In the absence of valid public law grounds of challenge, the decision of the JCC must stand.