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Case No: CO/14653/2013

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2013

**Before** :

**MR JUSTICE FOSKETT**

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**Between :**

**THE QUEEN**
**on the application of**

**LONDON BOROUGH OF ISLINGTON (1)**
**LONDON BOROUGH OF SOUTHWARK (2)**
**LONDON BOROUGH OF CAMDEN (3)**
**LONDON BOROUGH OF TOWER HAMLETS (4)**
**LONDON BOROUGH OF HACKNEY(5)**
**LONDON BOROUGH OF LEWISHAM (6)**
**LONDON BOROUGH OF GREENWICH (7)**
**INGRID RICHARDSON (8)** — **Claimants**

**-v-**

**THE MAYOR OF LONDON (1)**
**THE LONDON FIRE COMMISSIONER (2)**
**THE LONDON FIRE AND EMERGENCY PLANNING AUTHORITY (3)** — **Defendants**

**-AND-**

**FIRE BRIGADES UNION(1)** — **Interested Party**

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**Daniel Stilitz QC and Hannah Slarks** (instructed by **London Borough of Islington**) for the **Claimants**
**Richard Drabble QC and Charles Banner** (instructed by **Transport for London Legal Department**) for the **1st Defendant**
**Jonathan Moffett and Heather Emmerson** (instructed by **Legal and Democratic Services, London Fire and Emergency Planning Authority**) for the **2nd and 3rd Defendants**
**Antony White QC and Sarah Hannett** (instructed by **Thomsons Solicitors**) for the

**Interested Party**

Hearing dates: 26-29 November 2013

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# Approved Judgment

## MR JUSTICE FOSKETT:

## Introduction

1. Against the background of a need to make significant savings of expenditure in 2013-4 (in the region of £29.5 million) and 2014-5 (in the region of £35.5 million) in relation to the cost of the provision of fire and emergency services in London, decisions were taken in August and September this year which, if implemented, would have the following principal effects:

   (a) the closure of 10 London fire stations (reducing the number from 112 to 102);

   (b) the decommissioning of 14 fire appliances (in other words, reducing the number of fire engines from 169 to 155);

   (c) the reduction by 552 in the number of fire-fighters in London (a reduction of approximately 10% of the total fire-fighting force).

2. If implemented, the impact of this decision <u>across the whole of London</u> will be to increase the average attendance time of the first fire engine at an incident to 5 minutes 33 seconds (an increase of 13 seconds from the current position) and the average attendance time of the second fire engine to 6 minutes 32 seconds (an increase of 10 seconds from the current position). However, it is the specific effect upon the seven Claimant boroughs of increased attendance times generally that underlies the claim made in these proceedings.

3. During the period from 2009/10 to 2012/13 budget savings of £52 million had been made across the London fire and rescue services necessitated by the Government's 2010 'Comprehensive Spending Review' which required the fire service <u>nationally</u> to save 25% over the 4-year period to April 2015. Savings totalling £71 million had been made over the five years prior to the consideration of the proposals under challenge in these proceedings. The savings thus made had not hitherto affected "front line" services in London, but the need to make yet further significant savings in the light of the provisional Local Government Finance Settlement for 2013-14 (which set out Government grant funding for every local authority), published for consultation on 19 December 2012, made this a necessary consideration for the first time.

4. The need to make the cuts in expenditure is not under challenge in these proceedings. It is the manner in which the cuts are to have an impact that forms the backdrop to the issues before the court.

5. The formal decision under challenge in these proceedings is embodied in what is known as the "Fifth London Safety Plan 2013-16" ('the Plan' or 'LSP5'). Prior to its ultimate acceptance it was known as "the draft Fifth London Safety Plan" ('the draft Plan').

6. It hardly needs stating that the decision and the process that led to it have been controversial and that the issues surrounding the decision are sensitive from a number of points of view. People are, understandably, very concerned when they hear that

their local fire station may be closed or that the number of fire engines and/or fire-fighters in or who serve their locality are to be reduced. Their elected representatives have reflected these concerns during the debates and votes that have taken place. The concerns have led to petitions, local demonstrations and strong opposition from some quarters.

7. It is important that anyone interested in this case and its outcome should understand the extremely narrow basis upon which the court is being asked to interfere with the decision made. The hearing does not constitute a public inquiry into the fire safety proposals for London and it has not involved an evaluation of competing evidence about the proposals. The case is also not about whether the court agrees or disagrees with the proposals. What is the subject of legal challenge in these proceedings is primarily the process by which that decision was reached. Whatever conclusion may be reached by the court in relation to this challenge, it is important to understand that the court's focus is primarily upon the process leading to the making of the decision, not upon the merits of the decision itself or any individual aspect of it, or indeed upon how relevant factors were weighed in reaching the decision: those have always been matters of judgment for the elected decision-makers with the help of advice from those with expertise in the field. The court is not the place where any such decision is made and, of course, any political issues that may arise are not matters for the court either. The issue for the court in this case is primarily whether the process by which the decision was made has led to an unlawful decision, as is contended by the Claimants (and supported by the Fire Brigades Union - 'the FBU'), or to a lawful decision, as is contended by the decision-makers.

8. The principal decision-makers for this purpose were the Mayor of London ('the Mayor') and the London Fire and Emergency Planning Authority ('LFEPA'). The substantive reality is that it was the Mayor who made the decision based upon advice from and the recommendations of the London Fire Commissioner ('the Commissioner') although that fact may not be conclusive as to who should have been made parties to the present proceedings (see paragraphs 403-410 below) and the relief sought. The Commissioner is employed by LFEPA and may only exercise the functions delegated to him by LFEPA: he does not have a statutory role as such. The report and recommendations of the Commissioner upon which the decision of the Mayor was founded are criticised by the Claimants and the FBU in these proceedings.

9. The FBU represents over 90% of the uniformed staff of the United Kingdom fire and rescue service and has in the region of 41,000 members. They include fire-fighters, area managers, emergency fire control staff and fire-fighters working in what is known as the retained duty system. (Retained fire-fighters have other occupations than merely that of fire-fighter, but respond to an emergency call to become part of a team that attends an incident.) The FBU has over 5000 members in London.

10. It is right to observe that LFEPA as a body was not in favour of the Plan (in the sense that a majority of its members voted against its adoption), but reluctantly accepted eventually that in law it had to comply with a direction from the Mayor to implement it. However, notwithstanding that background fact, LFEPA joins with the Mayor in rejecting the criticisms made in the present proceedings of the process by which the ultimate decision was made. The Commissioner rejects the criticisms of his report and recommendations and contends that it is not open to the Claimants to bring, as indeed they seek to do, a free-standing claim for judicial review of his report.

11. The parties advancing the criticisms are seven Inner London boroughs (Islington, Southwark, Camden, Tower Hamlets, Hackney, Lewisham and Greenwich) and one individual, Mrs Ingrid Richardson. Each of those boroughs claims that its residents, particularly certain vulnerable sections of their communities, will be seriously affected by the Plan if implemented. I will say more about the position in each individual borough later (see paragraphs 101-128 below).

12. Mrs Richardson (the 8th Claimant) and her husband live in the Brunswick ward of Southwark on the 7th floor of a 15-storey apartment block. Mrs Richardson, who is housebound and moves about with a walking-frame, has severe Parkinson's Disease and her husband suffers from Alzheimer's disease. Her participation in the proceedings as a claimant is designed to highlight and illustrate the impact that the Plan is said to be likely to have on older and disabled residents in Southwark.

13. The other Interested Parties in these proceedings are listed in Appendix 1 to this judgment. Of those interested parties, as I have indicated, the FBU supports the challenges made by the Claimants and makes its own submissions in support. None of the other interested parties has played any part in the proceedings.

14. The final decision in the process (that made by LFEPA) was made on 12 September following the direction from the Mayor dated 2 August (see paragraph 66 below). The claim for judicial review was received in the Administrative Court Office on 3 October. On 17 October Ouseley J directed a "rolled up" 3-day hearing commencing on 26 November with the substantive claim for judicial review to proceed immediately if permission was granted. He gave detailed directions in relation to the preparations for the hearing that were modified slightly on 29 October. In the event, the hearing did go into a fourth day for an hour or so.

15. Those directions were complied with by all parties and I express my appreciation for the way in which the papers in the case (running to over 3000 pages) were prepared and collated and for the high quality Skeleton Arguments I received prior to the hearing. When I describe those submissions as "Skeleton Arguments", it should be noted that they totalled 140 pages in length. The agreed bundle of authorities runs to over 1000 pages. The Commissioner's witness statement runs to over 100 pages with many pages of exhibits. (I should say that I make no complaint about this given the importance of the issues at stake, but it demonstrates the nature and extent of the material that needs to be considered.)

16. The 10 fire stations that would close if the Plan is implemented are due to close on 9 January 2014. However, LFEPA has undertaken not to take any irreversible implementation steps pending the outcome of these proceedings.

17. The outcome of this case will affect the budgetary position of the Greater London Authority ('the GLA') both in respect of the current financial year and the financial year beginning in April 2014 and, accordingly, all parties have expressed the wish that I should give judgment before Christmas if possible, particularly if there should be any appeal from it. In those circumstances it is inevitable that I have had to prepare this judgment in a much shorter period than I might otherwise have wished to have available and the opportunity to edit it has been very limited. I have had to be somewhat selective in my choice of areas to cover in detail and I have focused on

those aspects of the evidence and argument that, in my judgment, advance the position of each party with the greatest force.

18. Although the proceedings were listed on a "rolled up" basis (see paragraph 14 above), the reality of the hearing was that the merits of the judicial review claim were examined in full, the primary issue being whether any of the grounds relied upon by the Claimants withstood the arguments mounted against them. Some of the arguments advanced by Mr Jonathan Moffett and Miss Heather Emmerson, for the Commissioner and LFEPA, were to the effect that permission ought not to be granted. I will address matters on that basis where appropriate.

## The statutory context, the institutions within it and the funding of the Greater London Authority

19. Before turning to the substance of the arguments and counter-arguments, it is necessary to review the statutory and institutional context within which the decision-making process under scrutiny in this case was carried out and the broad nature of the funding issues that arose during the relevant period.

LFEPA

20. LFEPA is the 'fire and rescue authority' for Greater London established under section 1(2)(c) of the Fire and Rescue Services Act 2004 ('the FRSA'). It has 17 members, all of whom are appointed formally by the Mayor. Eight are nominated by the London Assembly, seven are nominated by the London boroughs and two are nominated by the Mayor. LFEPA operates the London Fire Brigade ('LFB') which is managed by the Commissioner (see paragraph 8 above). The LFB has no separate legal status of its own and is a name used colloquially by LFEPA to refer to the operational activities undertaken to meet LFEPA's statutory duties.

The FRSA

21. Part 2 of the FRSA prescribes the core functions of a fire and rescue authority. Section 6(1) declares that such an authority "must make provision for the purpose of promoting fire safety in its area" and the balance of that section relates to how that duty may be fulfilled.

22. Section 7 provides for "Fire-fighting" as follows:

> "(1) A fire and rescue authority must make provision for the purpose of -
>
> (a) extinguishing fires in its area, and
>
> (b) protecting life and property in the event of fires in its area.
>
> (2) In making provision under subsection (1) a fire and rescue authority must in particular—

> (a) secure the provision of the personnel, services and equipment necessary efficiently to meet all normal requirements;
>
> (b) secure the provision of training for personnel;
>
> (c) make arrangements for dealing with calls for help and for summoning personnel;
>
> (d) make arrangements for obtaining information needed for the purpose mentioned in subsection (1);
>
> (e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in subsection (1)."

23. Other functions are prescribed in succeeding sections of the FRSA.

24. With effect from 1 October 2004 a new statutory scheme for fire and rescue services in England and Wales was introduced by the FRSA. Until then the Secretary of State recommended national standards for the times within which appliances should attend incidents. Expected response times varied across the country, but were dictated (or at least recommended) centrally. The Act followed from the recommendations of an Independent Review of the Fire Service chaired by Professor Sir George Bain who produced a report in December 2002 entitled 'The Future of the Fire Service: reducing risk, saving lives'.

25. So far as Greater London was concerned, from 1985 to 2004 it was divided by geographical area into four categories (A to D) based on property characteristics: Category A represented the highest risk to property and Category D represented the lowest risk to property. In his witness statement, the Commissioner makes the point that the area within Category A constituted 2% of London in geographical terms, Category B comprised 43%, Category C comprised 54% and Category D constituted 17%. Between these categories there were differing target attendance times. For example, an area within Category A demanded a fast response time (i.e. 5 minutes for the first two appliances and a third appliance within 8 minutes) whereas in Category C areas the required response rate was <u>one fire engine</u> in 8-10 minutes and in some Category D areas <u>one fire engine</u> in 20 minutes. He makes this further comment about the position in those earlier times:

> "Category A areas were generally focussed on parts of inner London which had main shopping centre and business buildings, theatres and other entertainment venues or high risk industrial property; significantly, there was no mention of housing in the Government's 'A' risk category."

26. The result of this prioritisation, according to the Commissioner, was as follows:

> "The effect of the Government's targets was that prior to 2004, London's emergency response and station locations were configured to provide a faster response in central and inner

> London than outer London and there was a cluster of resources in the inner London boroughs."

27. The main general purpose of the FRSA was to confer greater autonomy and flexibility on the new fire and rescue authorities (which were to be locally based) and the withdrawal of the recommended national standard attendance times. This enabled LFEPA to take a fresh look at its own service and I will say more about the approach adopted from then on in due course (see paragraphs 79-94).

28. Although there was at this time a perceptible shift from nationally-dictated standards to more locally-based assessments of risk and need, when the Act came into force the then Office of the Deputy Prime Minister issued a series of Guidance Notes concerning the way in which a fire authority might wish to approach the formulation of an "integrated risk management plan" ('IRMP') (see paragraphs 36-40 below). Since reliance is placed upon Guidance Note 1 by the Claimants, this is a convenient point at which to note those parts of it that are said to be potentially relevant. I should, perhaps, record that Mr Moffett makes the point that this Guidance Note was produced in 2003 before any fire authority had actually produced an IRMP, that it is no longer generally available and is only available on National Archives website. That website does indeed indicate that "[following] the change of government we are reviewing all content on this website". In those circumstances he suggests that the Department for Communities and Local Government is unlikely to consider it to have much ongoing relevance. It is, however, fair to say that the Commissioner, in Supporting Document 21, described the guidance documents issued as "old but … still regarded to be current." I will return to the implications of this later, but for present purposes will simply record those paragraphs that have formed the subject of some debate before me.

29. Paragraph 1.1 of the Guidance Note says this:

> "This is the first of a series of Guidance Notes designed to provide advice and assistance to fire authorities and those who are asked to develop Integrated Risk Management Plans (IRMPs). It explains what you need to do to produce an IRMP and what it might contain. The guidance is intended to be neither prescriptive nor exhaustive, and you may wish to develop your own arrangements based around the content of this document."

30. The other provisions said to be of relevance are as follows:

> "1.2 The Government thinks that a modern and effective fire and rescue service should serve all sections of our society fairly and equitably by:
>
> a. reducing the number of fires and other emergency incidents occurring;
>
> b. reducing loss of life in fires and accidents;

c. reducing the number and severity of injuries in fires and other emergency incidents;

d. reducing the commercial, economic and social impact of fires and other emergency incidents;

e. safeguarding the environment and heritage (both built and natural), and

f. providing value for money.

1.3 It does not believe this can be done on the basis of the present prescriptive and formulaic national approach to providing fire cover. Instead, the fire service needs a more modern, flexible, and risk-based approach that can deliver improvements in community safety based on locally identified needs. This is the purpose of asking each fire authority to develop an IRMP.

1.4 The Government thinks effective IRMPs will do the following fundamental things:

- identify existing and potential risks to the community within the authority area
- evaluate the effectiveness of current preventative and response arrangements
- identify opportunities for improvement and determine policies and standards for prevention and intervention
- determine resource requirements to meet these policies and standards

1.5 IRMPs are not only about replacing national fire-cover standards with local ones. They involve shifting the focus in planning to put people first, looking at the risks arising from the full range of fires and other emergency incidents, and at the options for their reduction and management. To be effective, IRMPs will need to provide a fully integrated, risk-managed approach to community safety, fire safety inspection and enforcement, and emergency response arrangements that will contribute to a safer environment. In order to provide a fair and equitable service it will be necessary for fire and rescue authorities to take into account in their IRMPs the diverse needs of the population they serve and to assess how best to meet these needs, particularly in relation to community safety provisions. Local authorities already have a duty to prepare strategies and plans for a number of other purposes, e.g. community strategies, Equality Action Plans, etc. IRMPs will

need to be co-ordinated with these and the plans of other relevant agencies if they are to have maximum effect.

…

2.5 As some people become aware that fire authorities will be setting locally determined response standards to replace the nationally prescribed fire cover standards, it may initially cause some concern. You will need to explain that this process provides for the first time an opportunity for fire authorities to achieve a real step-change in the provision of community safety activities to meet locally determined needs. You will need to be able to show that the intention of the policies and standards you propose to introduce will have a net effect of improving community safety.

…

3.3 **Identify existing and potential risks to the community within the authority area**

3.3.1 The first task in preparing an IRMP is to identify, characterise and prioritise the existing and potential risks within your fire authority's area. You will need to look in some detail at what has happened in recent years, and what might reasonably be expected to happen. This will include examining the number, type, geographical location and time of day of all incidents attended in recent years (fires, RTAs, other special services e.g. flooding, co-responder, etc). While risk to property, the environment and heritage will continue to be of importance, risk to life will in future be given the highest priority.

…

**3.3.4** You should be aiming to produce plans, maps, summaries or tables that show actual incidents and identifies areas, time periods, community groups, etc in terms of their relative risks. This may include risks that have not previously been considered. You may also identify in this part of the process data that it would be helpful to collect or improve, or research you would like to do into correlation between incidents and possible causal factors. These needs could feed into the first Action Plan so that work is undertaken over the year to fill the gaps.

**3.4 Evaluate the effectiveness of current preventative and response arrangements**

…

3.4.4 Given the way the current risk assessment categories are defined and the way the national recommended standards of fire cover work, you may find that some aspects of current response arrangements are not the optimum for the risks identified. In evaluating risk to life, you will take into account where the priorities lie. For example the risk to life from fires is highest in residential premises, especially higher density, lower quality housing, while there is a lower risk of injury or death from fire in commercial premises, reflecting the massive investment in in-built detection, suppression and public protection measures. You will need to make adequate arrangements to ensure your plans are based on knowledge rather than assumptions.

**3.5 Identify opportunities for improvement and determine policies and standards for prevention and intervention**

…

3.5.9 In setting response standards for those incidents the authority has decided to attend, you will need to identify the attendance times to be met and the resources to be deployed, the net effect of any change being improved community safety. You may wish to set different standards for fires and for other emergency incidents. Because of the geographical variation in risks, it is expected that emergency response standards will vary throughout the authority area and be proportionate to the risks. They should not be constrained by artificial boundaries (such as existing fire station areas).

**Appendix**

This appendix provides some more detailed suggestions about questions to ask and issues to consider at each stage of developing IRMPs. It is organised in sections to correspond to the main guidance. The list is not intended to be exhaustive, but is indicative in order to promote consideration of local issues based upon what has happened in the recent past, and what might possibly occur in the future

…

**A.1. Identify existing and potential risks to the community within the fire authority area**

…

A.1.2 There is clear evidence nationally to link the occurrence of fires and other emergency incidents with socio-economic patterns. Local patterns will become clear when the activity data referred to above is compared with the local demographic

picture. This should provide clear evidence of those sectors of the community most at risk, and inform the process to achieve improvement.

…

**A.3. Identify opportunities for improvement and determine policies and standards for prevention and intervention**

…

A.3.3 Each fire authority is required to determine, in consultation with the communities it serves, the policies and standards to be adopted for intervention measures. The emergency response set should be proportionate to the risk.

…

**A.4. Determine resource requirements to meet these policies and standards**

…

A.4.1 In following this risk management process you will have recognised the need to adopt a flexible and proportionate approach to providing and deploying resources to meet the local standards you have set for preventative action and to provide a dynamic emergency response. In practice, of course, you are not starting with a blank sheet of paper, and you will need to consider carefully how existing policies and resource allocation can best deliver improvements in small stages rather than seeking to implement a 'grand plan'. A 'one size fits all' approach is unlikely to be appropriate.

…"

31. As I have indicated, I will return to the implications of this Guidance Note later where relevant.

The National Framework

32. The role of the Secretary of State in the context of the Fire and Rescue National Framework ('the National Framework') is prescribed in section 21 of the FRSA as follows:

"(1) The Secretary of State must prepare a Fire and Rescue National Framework.

(2) The Framework -

(a) must set out priorities and objectives for fire and rescue authorities in connection with the discharge of their functions;

(b) may contain guidance to fire and rescue authorities in connection with the discharge of any of their functions;

(c) may contain any other matter relating to fire and rescue authorities or their functions that the Secretary of State considers appropriate.

(3) The Secretary of State must keep the terms of the Framework under review and may from time to time make revisions to it.

(4) The Secretary of State must discharge his functions under subsections (1) and (3) in the manner and to the extent that appear to him to be best calculated to promote -

(a) public safety,

(b) the economy, efficiency and effectiveness of fire and rescue authorities, and

(c) economy, efficiency and effectiveness in connection with the matters in relation to which fire and rescue authorities have functions.

(5) In preparing the Framework, or any revisions to the Framework which appear to him to be significant, the Secretary of State -

(a) must consult fire and rescue authorities or persons considered by him to represent them;

(b) must consult persons considered by him to represent employees of fire and rescue authorities;

(c) may consult any other persons he considers appropriate.

(6) The Framework as first prepared, and any revisions to the Framework which appear to the Secretary of State to be significant, have effect only when brought into effect by the Secretary of State by order.

(7) Fire and rescue authorities must have regard to the Framework in carrying out their functions."

33. The extant National Framework is the *Fire and Rescue National Framework for England* (July 2012).

34. The Ministerial Foreword to that National Framework presaged in the highlighted passage below the economic context in which some of the issues that have fallen for consideration by the decision-makers involved in the present case have to be viewed:

> "The fact that fire deaths in the home have halved since the 1980s, and that since 2007 the number of accidental fire deaths in the home has stabilised at around 210 per year, is a significant testament to the commitment to prevention shown by fire and rescue authorities.
>
> There are new challenges. Fire and rescue authorities need to be able to deal with the continuing threat of terrorism, the impact of climate change, and the impacts of an ageing population, against the need to cut the national deficit.
>
> It is against this background that we launch this revised National Framework. One of the key principles of which is to acknowledge the proficiency and experience of fire and rescue authorities; and to allow them the freedom and flexibility to deliver the services for which they are respected and renowned without being hampered by Whitehall bureaucracy and red tape.
>
> The National Framework will continue to provide an overall strategic direction to fire and rescue authorities, but will not seek to tell them how they should serve their communities. They are free to operate in a way that enables the most efficient delivery of their services. This may include working collaboratively with other fire and rescue authorities, or with other organisations, to improve public safety and cost effectiveness. Ultimately, it is to local communities, not Government, that fire and rescue authorities are accountable."

35. The first paragraph in the above extract from the National Framework highlights another factor said to be of relevance in this case (see, e.g., paragraph 282 below).

36. As will be apparent from paragraphs 28-30 above, a key concept within the National Framework is the "integrated risk management plan" ('IRMP'). At paragraph 1.3 of the National Framework the following appears:

> "Each fire and rescue authority must produce an integrated risk management plan that identifies and assesses all foreseeable fire and rescue related risks that could affect its community, including those of a cross-border, multi-authority and/or national nature. The plan must have regard to the Community Risk Registers produced by Local Resilience Forums and any other local risk analyses as appropriate."

37. Paragraph 1.10 provides as follows:

> "Each fire and rescue authority integrated risk management plan must:
>
> - demonstrate how prevention, protection and response activities will best be used to mitigate the impact of risk

on communities, through authorities working either individually or collectively, in a cost effective way

- set out its management strategy and risk based programme for enforcing the provisions of the Regulatory Reform (Fire Safety) Order 2005 in accordance with the principles of better regulation set out in the Statutory Code of Compliance for Regulators, and the Enforcement Concordat"

38. Paragraph 1.11 is as follows:

> "Fire and rescue authorities must make provision to respond to incidents such as fires, road traffic accidents and emergencies within their area and in other areas in line with their mutual aid agreements, and reflect this in their integrated risk management plans."

39. Paragraph 2.3 provides as follows:

> "Each fire and rescue authority integrated risk management plan must:
>
> - be easily accessible and publicly available
> - reflect effective consultation throughout its development and at all review stages with the community, its workforce and representative bodies, and partners
> - cover at least a three year time span and be reviewed and revised as often as it is necessary to ensure that fire and rescue authorities are able to deliver the requirements set out in this Framework
> - reflect up to date risk analyses and the evaluation of service delivery outcomes"

40. The decision under challenge in these proceedings finds expression in an IRMP (namely, the Plan) adopted by LFEPA.

<u>Public sector equality duty</u>

41. The 'public sector equality duty' imposed upon a public authority by section 149 of the Equality Act 2010 is as follows:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to -
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to -

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to -

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are -

age;

disability;

gender reassignment;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation

…"

42. There is no suggestion in this case of any direct discrimination, but the suggestion is that there is indirect discrimination (see paragraphs 344-379 below). Section 19 of the Act defines the circumstances in which this may occur:

> "(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
>
> (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
>
> (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
>
> (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
>
> (c) it puts, or would put, B at that disadvantage, and
>
> (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
>
> (3) The relevant protected characteristics are [as defined above]."

<u>The Mayor</u>

43. So far as the powers of the Mayor in relation to the fire services in Greater London are concerned, section 328A of the Greater London Authority Act 1999 ('the 1999 Act') provides as follows:

"(1) The Mayor may issue to the [fire and rescue authority] any of the following -

(a) guidance as to the manner in which it is to exercise its functions,

(b) general directions as to the manner in which it is to exercise its functions,

(c) specific directions as to the exercise of its functions.

(2) Directions issued by the Mayor under subsection (1)(c) above may include a direction not to exercise a power specified in the direction.

(3) The guidance or directions which may be issued by the Mayor under subsection (1) above include guidance or directions as to the manner in which the [fire and rescue authority]—

(a) is to perform any of its duties, or

(b) is to conduct any legal proceedings.

(4) The Mayor must send to the chief officer of the [fire and rescue authority] a copy of any guidance or directions issued under subsection (1) above.

(5) In exercising any power conferred by this section, the Mayor must have regard to each of the following—

(a) the Fire and Rescue National Framework …

…"

44. Section 328B of the 1999 Act provides as follows:

"(1) This section applies if the Secretary of State considers that any guidance or directions ("the inconsistent guidance or directions") issued under section 328A above by the Mayor are inconsistent with -

(a) the Fire and Rescue National Framework

…

(2) In order to remove the inconsistency, the Secretary of State may direct the Mayor—

(a) to make such revisions of the inconsistent guidance or directions as may be specified by the Secretary of State in the direction, or

> (b) if the inconsistency arises from a specific direction under section 328A(1)(c) above, to revoke the direction.
>
> (3) Any direction given by the Secretary of State under subsection (2) above must specify or otherwise identify the inconsistency in question.
>
> (4) The Mayor must comply with any direction under subsection (2) above.
>
> …"

The Greater London Authority's budgetary arrangements

45. So far as the funding of the GLA is concerned, the witness statement of Martin Clarke, Executive Director of Resources, indicates that the "major sources of revenue are council tax, grants paid by the Secretary of State, retained business rates, fares, a business rate supplement levy, and other sources such as advertising and road user charging." He explains the way in which the GLA's budget is determined in the following way:

> "9. In accordance with sections 85-93 and Schedule 6 of the GLA Act, the Mayor is responsible for the preparation of the annual budgets for the GLA (which comprises two separate components for the purposes of budget setting – the Mayor and the London Assembly) and its functional bodies (LFEPA, Transport for London, Mayor's Office for Policing and Crime, and the London Legacy Development Corporation). Under paragraph 1 of Schedule 6 the Mayor and Assembly are responsible for the preparation of (i) a component budget for each "constituent body", that is, the Mayor, the Assembly, and each of the functional bodies, and (ii) a consolidated budget for the GLA. The Mayor must prepare a draft component budget for each constituent body, consulting the Assembly before preparing the draft component budgets for the Mayor and the Assembly, and the functional bodies before preparing their draft component budgets. (These component requirements are amounts to be raised from London's council tax payers for these bodies and it is these that the London Assembly has the power to amend.) The Mayor must then prepare a consolidated budget for the GLA, consisting of the component budgets for each of the constituent bodies, which together constitute the consolidated budget for the GLA. This comprises the first stage, described as the 'draft consolidated budget', i.e. a statement of the amount of the component council tax requirement for each body and the calculations which give rise to this amount, and a statement of the aggregate of these component council tax requirements, called the consolidated council tax requirement.

> 10. After the draft consolidated budget has been approved (amended by the Assembly or not) the Mayor has to prepare a 'final draft budget', i.e. a final draft of the proposed consolidated budget. This may be the same as the draft consolidated budget, or the draft consolidated budget amended by the Assembly or the Mayor. The final draft budget is then to be presented to the Assembly for consideration at a further public meeting, and for approval with or without amendment.
>
> 11. The process of determination of the component and consolidated budgets is expected to take place between December, when central Government's provisional financial settlement is published, and the end of February, when the final draft budget must be approved by the Assembly in accordance with paragraph 8(7) of Schedule 6.
>
> 12. Under section 110 of the GLA Act, the Mayor may request any information relating to the financial affairs of a functional body to be provided to the GLA where such information is required for the purpose of any functions exercisable by the Mayor or the Assembly. Under section 125, the Mayor may serve a notice on a functional body requiring it to provide him with such specified information as he needs for the purpose of deciding whether to exercise his powers and how to perform his functions concerning revenue and accounts."

46. That process helps to explain some of the timing issues that will become apparent when dealing with the more detailed background to the decision-making process.

**The background to the decision-making process**

47. As will be apparent from the Introduction to this judgment (see paragraph 2), there was a somewhat more prolonged history to the process that led to the adoption of the Plan than is simply reflected in the period from December 2012 to September 2013 although that is the important period.

48. Mr Clarke's statement indicates that "[key] public expenditure decisions affecting the GLA Group over the Government's Comprehensive Spending Review Period of 2011/12 to 2014/15 were announced in October 2010." He comments that at that stage there were published cuts in the grant funding for Transport for London for the four year spending review period, "but only two year figures at most were available for other members of the GLA Group" which included the fire services. The Comprehensive Spending Review provided for an average total reduction in grant funding of 25% to fire authorities in England, but its distribution amongst individual authorities had not been determined. This led to uncertainties about what would be available through this source for LFPEA which were, he says, "compounded by the impending impact of changes to the local government finance system for 2013-14." It was only when the Local Government Finance Settlement for 2013-14 was published for consultation on 19 December 2012 (which set out proposed government grant funding for every local authority) that the position became clearer.

49. Some pre-planning, however, had to be undertaken in view of the anticipated cuts in funding from central government for the fire services. In June 2012 the Mayor issued budget guidance for 2013-14 and 2014-15 for LFEPA and the other "functional bodies" of the GLA. For the purpose of preparing the budgets, the June 2012 guidance set out the Council Tax requirements for LFEPA and, according to Mr Clarke, "based on those requirements estimated savings to be made by LFEPA of £29.5 million in 2013/14 and £35.3 million in 2014/15." Because of the uncertainties over the level of central government funding for the future, no final budget for LFEPA could be set in accordance with the usual timetable and, accordingly, it was agreed that this should await the publication of the provisional Local Government Finance Settlement which was anticipated in December. As indicated above (paragraphs 3 and 48), it was published on 19 December 2012 and following a period of consultation the final Local Government Finance Settlement was published on 4 February 2013 and the associated 2013/14 Local Government Finance Report was approved by Parliament on 13 February 2013.

50. The likely position in relation to central government funding was not, therefore, known until shortly before Christmas 2012, but the Commissioner had already started looking at how the necessary savings might be made. On 22 November 2012 he presented his preliminary proposals for LSP5 to LFEPA which at that stage did not contain any reductions in the number of fire stations or fire appliances. In his witness statement, the Commissioner says that he "advised Members that officers [had] been working on potential changes to the numbers of fire stations and pumping appliances but that that work was not complete [and that he] made clear that the work anticipated that the [LFB] would have diminished financial resources in the future, but also responded to the diminished demand on the [LFB's] services over the last ten years." He records also that LFEPA "agreed an initial draft for pre-consultation engagement with key stakeholder organisations and staff, including the FBU."

51. In the light of the provisional Local Government Finance Settlement (see paragraphs 3 and 48 above), the Mayor wrote to the Chairman of LFEPA on 20 December 2012 with revised guidance on the budget proposals for 2013/14 confirming that, after allowing for the impact of the revised savings target for 2013/14, there would need to be a savings target for 2014/15 of a similar scale to that previously notified for 2014/15. He stated that the indications were that the settlement for LFEPA for 2014/15 would reduce by at least £21.5 million, that this would not necessarily be LFEPA's savings target for that year and that "further substantial savings will need to be made … including the rationalisation of the fire estate". He stated that the impact of the settlement gave LFEPA greater flexibility to manage the reduction in Government support over the next two years and that "it is imperative that [LFEPA] brings back proposals in early 2013/14 to manage the scale of reductions anticipated in 2014/15". He requested the submission of plans for both 2013/14 and 2014/15 in time to conclude the preparation of his draft consolidated budget for the London Assembly meeting on 8 February 2013.

52. There seem to be two conclusions to be drawn from this: (i) that there was to be no escape from significant cuts to the fire service budget across both 2013/14 and 2014/15; (ii) that urgent consideration had to be given to the finalisation of appropriate plans to secure these savings. The first was effectively a decision imposed upon the GLA by central government as it was upon other local authorities

around the country. The second was a function of the way the central government cuts were announced and the way the GLA's budgetary arrangements were organised.

53. The Commissioner then prepared a further draft of the Plan for consideration by LFEPA at its meeting on 21 January 2013. In summary, he suggested that the best way forward, given the financial constraints, was to allocate resources on the basis of 151 appliances at 100 fire stations (usually referred to as the '151/100 option') – in other words, suggesting the closure of 12 fire stations (Clerkenwell, Clapham, New Cross, Southwark, Bow, Kingsland, Downham, Belsize, Knightsbridge, Silvertown, Westminster and Woolwich) and the decommissioning of 18 appliances. I will say more about how this recommendation emerged in due course. That, however, was the draft Plan upon which the Commissioner was inviting LFEPA to embark upon a consultation process.

54. It is, perhaps, not surprising that there was considerable resistance to any proposal that any front-line service cuts should be made (such cuts, as I have said, not having been necessary before) and at the meeting on 21 January 2013 LFEPA voted to amend the draft Plan that the Commissioner had formulated to remove all references to reducing the number of fire stations and appliances in Greater London. This, of course, would have emasculated any cost-cutting exercise of the sort contemplated by the budget guidance given by the Mayor.

55. There was an exchange of letters between the Mayor and the Commissioner on 28 and 29 January. The Mayor had asked the Commissioner whether there were any viable alternatives to the proposals in the draft Plan presented at the meeting on 21 January. His answer was that the proposals represented his "preferred approach to achieving cost reductions and preserving compliance with London-wide targets" and that he recommended them for consultation.

56. In consequence on 30 January 2013 the Mayor issued a direction under section 328A(1)(c) of the 1999 Act requiring LFEPA to adopt the draft Plan as proposed by the Commissioner and presented to the meeting on 21 January 2013 without amendment as its Draft Fifth London Safety Plan "for all purposes and to begin public consultation on the Draft LSP5 within 14 calendar days of his direction" (i.e. by 14 February 2013).

57. On 11 February, at an extraordinary meeting of LFEPA, a bare majority resolved not to comply with the direction notwithstanding the advice of Mr Peter Oldham QC given on 4 February 2013 that the authority had no option but to comply with the direction. On 18 February the Mayor told LFEPA that he would seek immediate legal redress in order to ensure that his direction was followed. On 26 February LFEPA's Appointments and Urgency Committee met and agreed to proceed with consultation on the draft un-amended Plan.

58. On 4 March LFEPA began a public consultation on the draft Plan which was supported by a number of "supporting documents". I will be referring to some of those supporting documents in due course, but they are listed for convenience in Appendix 2 to this judgment. All documents up to and including Supporting Document 21 were issued on 4 March when the consultation started. Supporting Document 22 was issued on 7 May, Supporting Document 23 on 29 May and Supporting Document 24 on 14 June. The consultation ran until 17 June. The

supporting document entitled 'Third appliance response times by wards' was published on 27 June and thus after the consultation had closed.

59. I will return to the criticisms sought to be made of the consultation process in due course (see paragraphs 275-343), but I will, in the first instance, complete the chronology of the decision-making process.

60. After the conclusion of the consultation process, the Commissioner produced a revised plan for the purpose of a meeting of LFEPA on 18 July. The new draft Plan was released on 10 July. For present purposes, the 'headline' changes to the original draft plan would result in the retention of two fire stations previously earmarked for closure (Clapham and New Cross) and the retention of four further appliances resulting in the overall reduction in appliances to 155 rather than 151 as originally proposed. The revised draft Plan proposed to reduce the number of fire-fighter posts by 552 instead of the 520 proposed in the original draft Plan. The revised draft Plan also proposed the reduction from 16 to 14 of the number of fire rescue units ('FRUs') available in London and to reduce to 4 from 5 the minimum crewing levels on FRUs. (A FRU is a purpose built vehicle designed to provide specialist rescue functions which include incidents that involve line rescue, water rescue, road traffic accidents, people trapped in machinery and/or hazardous materials. A FRU also provides an extended duration breathing apparatus role for use in large complex building fires and to support or rescue fire-fighters in need of assistance.)

61. This latter recommendation had no equivalent predecessor in the original draft Plan and was thus a new proposal. It forms the subject of one part of the FBU's challenge to the decisions under challenge (see paragraphs 325-343 below).

62. The day before the revised Plan was released the Mayor had issued his budget guidance for 2014/15 which indicated that budget plans should be prepared reflecting the impact of a £21.5 million reduction in LFEPA's estimated Revenue Support Grant for 2014/15. The budget guidance contained the following paragraph:

> "Although the Government's Spending Round announcement reduces further the funding for the fire service in 2015-16, the funding figure above for LFEPA includes additional support to offset this reduction. Therefore, LFEPA's previous savings targets remain unchanged."

63. The "funding figure above" was a reference to the total funding for LFEPA from Council Tax, Council Tax Freeze Grant, Retained Business Rates and Revenue Support Grant totalling £379 million in 2014-15 compared with £400.8 million in 2013-14.

64. This was considered and noted at the meeting of LFEPA on 18 July where the revised draft Plan was also considered. At the same meeting LFEPA again decided (by 9 votes to 8) to delete from the draft Plan all references to station closures, appliance reductions and reductions in the number of fire-fighters. It instructed the Commissioner to tell the Mayor of its decision and to ask the Mayor to allocate full funding in line with the draft Plan as amended. This the Commissioner did by a letter dated 19 July. The Mayor replied on 23 July indicating that he was not minded to provide additional funding.

65. A meeting of LFEPA's Appointments and Urgency Committee on 24 July resolved to establish a Working Group to examine how the budget gap could be met without closing stations, removing fire appliances or making fire-fighters redundant and to report by 12 September. Following further exchanges of letters between the Mayor and the Commissioner (see paragraphs 381-382 below), on 2 August the Mayor directed LFEPA to adopt the revised Plan the Commissioner had proposed at the meeting on 18 July.

66. The Executive Summary of the 'Request for Mayoral Decision' stated that LFEPA had "resolved to remove all references to reductions in numbers of firefighters, fire stations and appliances from [the] proposals, leaving LFEPA with savings in the order of £35m to find for 2014-15 of which in excess of £29m (over 80% of the savings required) directly relate to the changes made to the Plan by LFEPA Members on 18 July 2013" and that the Mayor could not "allow this situation to continue and has indicated that, in the knowledge that frontline savings can be made without affecting public safety, he wishes to direct LFEPA to adopt and publish the final Plan in the form put forward by the Commissioner and to authorise the Commissioner to commence implementation." (The underlined expression is one upon which the Claimants place reliance in support of their case: see paragraphs 380-389 below.)

67. On 23 August the local authority Claimants invited the Secretary of State for Communities and Local Government in writing to issue a direction to the Mayor under section 328B(2) requiring the revocation of his direction on the basis that it was inconsistent with the National Framework, but by a letter dated 10 September the Secretary of State declined to do so on the basis that the Mayor's decision did not appear to have been inconsistent with the National Framework.

68. Further legal advice was obtained by LFEPA about the need to comply with the Mayor's direction and similar advice to that given previously (see paragraph 57 above) was given by Mr Gavin Millar QC. As a result, on 12 September 2013 it resolved by the Chairman's casting vote to comply with the direction.

**The essential challenges made by the Claimants**

69. In a nutshell, there are challenges to the decisions on traditional public law grounds (whether in the context of "standard" scrutiny or "heightened" scrutiny by the court), on the basis of an alleged breach of the public sector equality duty ('PSED') imposed by section 149 of the Equality Act 2010 and on the basis of an alleged unfair and flawed consultation process. There is inevitably some overlap between these various approaches and compartmentalising the submissions under one heading or another has been difficult.

70. Mr Daniel Stilitz QC and Miss Hannah Slarks, for the Claimants, contend that the effect of the decision will have a systematic and disproportionately adverse impact on the Claimant boroughs and their residents, reducing fire-fighting resources in Inner London, whilst maintaining and in some cases improving resources in Outer London. In his oral submissions Mr Stilitz asserted that, taken as a whole, these proposals, if implemented, would result in "a decimation of the London Fire Service", namely, "roughly a 10% cut to London's front-line fire-fighting capability".

71. Whether that broad contention is or is not justified is, of course, essentially irrelevant to the court's decision on the challenge made by the Claimants. Subject to the question of whether "heightened scrutiny" is called for in this situation (see paragraph 72 and 227 below), for the court to be able to intervene the Claimants must demonstrate that the decision was flawed on classic public law grounds and/or that the process of consultation was unfair in such a way as to render the final decision following the consultation invalid.

72. So far as the challenge based upon "classic public law grounds" is concerned, in summary Mr Stilitz contends that the decisions taken (i) failed to take into account all essential material considerations, (ii) failed to comply with the requirements of the National Framework to take into account all foreseeable risks and (iii) were, by "treating manifestly unlike boroughs alike", irrational. These arguments reflect the established *Wednesbury* approach (see *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223) that the court may intervene only if it can be demonstrated that the decision-maker failed to take into account material considerations, took into account immaterial considerations or otherwise reached a decision that no reasonable decision-maker could reach. I will return to further articulations of the appropriate approach in that context in due course (see paragraph 218 below), but, as I have already indicated (see paragraph 71 above), it is also to be noted that Mr Stilitz also contends that because fire-fighting resources are being reduced by 10%, potentially matters of life and death are at stake and that, accordingly, a heightened level of scrutiny should be adopted in such cases. He relies on *R (Rogers) v Swindon NHS PCT* [2006] 1 WLR 2649, *per* Sir Anthony Clarke MR at [56] and *R (Hillingdon LBC) v Lord Chancellor* [2008] EWHC 2683, *per* Dyson LJ at [67]. Again, I will return to this contention in due course (see paragraph 218).

73. The ground of claim alleging an unfair and flawed consultation process is based on the suggestion that the most controversial and unpalatable implications of the cuts were not disclosed fairly and that relevant information was masked, delayed and misrepresented and in one case simply withheld from the public. It is suggested that "a fair consultation process might have made a difference to the direction of travel of the consultation on these highly controversial and divisive cuts" which, relying upon *R (Smith) v North Eastern Derbyshire PCT* [2006] 1 WLR 3315, is said to be all that needs to be established.

74. It is alleged against the Mayor that (a) he relied upon a flawed recommendation and, in any event, (b) misdirected himself about its effect by believing that the savings could "be made without affecting public safety" (see paragraphs 380-389 below).

**The essential answer of the Defendants**

75. Mr Moffett and Miss Emmerson, on behalf of the Commissioner and LFEPA, and Mr Richard Drabble QC and Mr Charles Banner, on behalf of the Mayor, reject all these arguments.

76. In summary, so far as the merits are concerned, Mr Moffett says that the Claimants have misunderstood or misrepresented the modelling process involved in formulating the Plan and the sensitivity analysis conducted in relation to the emerging Plan. As a result of those processes all relevant risks were identified and factored into the final Plan with the result that both the National Framework and the public sector equality

duties were complied with. The ultimate Plan took account of all those matters and the matters raised in the consultation process and also reflected the professional judgment of the Commissioner who has immense experience in the field. There is, he submits, no possible basis for suggesting that a decision based upon the Commissioner's recommendations passes any of the *Wednesbury* thresholds such as to justify the court's intervention. An irrationality challenge does not, he submits, "even get off the ground".

77. In relation to the criticisms of the consultation, Mr Moffett contends that the criticisms are inextricably linked to the substantive case and are unfounded. This was, he submits, a consultation where the Commissioner was entitled to decide on what issues appeared to him to be of substantial importance, but that when asked for further information as part of the consultation process he provided it. Nothing was masked or concealed, he contends, and everything that was necessary to enable a meaningful response by the consultees and the public was provided.

78. Mr Drabble adopted these submissions, supplementing them with some of his own, and contended that the Mayor was entitled to rely upon the professional judgment and recommendations of the Commissioner. He also submitted that there was no misunderstanding by the Mayor of the effect of the Plan.

## The approach to the provision of fire services in London after 2004

79. Before turning to the detail of the challenges made and the response to those challenges, it would be helpful to describe briefly the way in which fire service provision for Greater London had been organised after the new dispensation introduced by the 2004 Act came into being (see paragraph 21 *et seq* above). Inevitably, any more locally-based approach from that date had to take account of the existing infrastructure (buildings, appliances, manpower and so on) and the more flexible approach permitted following the Act necessarily involved re-visiting the standards that had applied across London hitherto. I summarised the effect of the application of those standards in paragraphs 25-26 above.

80. The current Commissioner, Mr Ron Dobson CBE, was not the Commissioner at the time. He became London Fire Commissioner from 1 October 2007. Nonetheless, basing the following account largely on his undisputed evidence, it should be noted that the first IRMP, the London Safety Plan ('LSP1'), was adopted by LFEPA in March 2004. This stated that the LFB would continue using the former recommended attendance times on a temporary basis whilst consideration was given to what the appropriate standard should be. Since then LFEPA has adopted three further LSPs, excluding the Plan under consideration in these proceedings. The Second London Safety Plan 2005/2008 ('LSP2') was approved in March 2005, the third for 2008/2011 ('LSP3') was approved in March 2008 and the fourth for 2011/2013 ('LSP4') in March 2011.

81. Since LSP2, LFEPA has applied broadly to the organisation of fire services in London what has come to be known as "the principle of equal entitlement". The Commissioner describes how the principle came to be adopted in his witness statement and I will return to that briefly (see paragraphs 84-85 below) after spelling out what it involves. Since the adherence to the principle in the Plan under consideration in these proceedings is heavily criticised by the Claimants, it is

important to understand its implications. The Commissioner describes it in this way in his witness statement at [23]:

> "The [LFB] plans the allocation of its resources on a London-wide basis. By this I mean that we plan the location of fire appliances (and other resources) so they can arrive at incidents as quickly as possible, wherever the incident occurs in London. Since LSP2, the [LFB] has adopted as a guiding principle the concept that Londoners should have equal entitlement to the fastest possible attendance times, irrespective of whether they live in an area in which there is a higher likelihood or a lower likelihood of fire occurring in the first place. The [LFB's] view is that in the event of a serious incident, each person should be entitled to expect a broadly similar response in terms of resources deployed and the time to arrive. Just because a person lives in an area with a lower likelihood of fire occurring, this does not mean that they should have a slower response time when a fire actually does occur. For convenience, this is referred to in this witness statement as the principle of "equal entitlement". This is a guiding but not overriding principle because it is subject to a number of other objectives and operational constraints as I explain below. However, it is important to appreciate at the outset that one of the [LFB's] guiding principles since 2004 has been to organise ourselves in such a way that one person receives broadly the same response as another, regardless of where they are located in London."

82. He expands on it in the following paragraphs:

> "64. The overriding aim of the [LFB] in responding to emergencies is to arrive at the scene of the incident as soon as possible. Arriving quickly at an incident is an important factor which affects the [LFB's] ability to protect the public from fire, however there are complex and difficult judgment calls to make as to how to balance a desire for a fast response with the fact that in some areas the demand for emergency responses is lower.
>
> 65. For example, if Camden has better attendance times than Harrow, but Camden has more incidents, how should resources be allocated where it is necessary to make changes to the overall service in line with a budget reduction? In allocating resources should greater weight be accorded to improving attendance times in Camden, reflecting the higher incident numbers there, or, should greater weight be accorded to making improvements in Harrow where attendance times are poorer?
>
> 66. There are a number of different approaches which a fire and rescue authority could adopt in relation to protection of the public and which influence decisions in allocating resources.

> 67. One possible approach is to differentiate between different geographical areas, affording priority (and therefore allocating more resources) to responding to incidents faster in a particular area. If this principle was adopted, a fire service could take into account any number of factors in determining its "priority areas", for example, a service could decide to prioritise attendance times in areas which have the most significant public buildings, or the most valuable property, or the highest population density, or the highest numbers of people with particular characteristics, or any combination of these factors. This may well involve difficult judgement calls as to which categories of people or premises should benefit from faster attendance times and thus be prioritised over others. Such an approach, in particular the prioritisation of particular groups of people, may practically be very difficult to organise because any identified "priority" areas would be likely to be dispersed around London.
>
> 68. Another option, and the one that has been adopted by the [LFB] since 2004, is the principle of seeking to achieve similar attendance times across the whole of the area covered by the service, without prioritising attendance times in particular areas. … this is referred to as the concept of "equal entitlement". Equal entitlement means that one of the [LFB's] aims is to deliver the fastest attendance times to the widest possible coverage of London's population, or, put another way, one of our guiding principles is to respond to every incident in the best time possible wherever the incident occurs within London.
>
> 69. In practice, the guiding principle of equal entitlement means that people in similar situations living in different parts of London can expect reasonably similar attendance times. For example, an elderly disabled person living in a high-rise building in Camden can expect a similar attendance time to an elderly disabled person living in a high-rise building in Croydon. In my opinion, both individuals are entitled to expect similar attendance times from a [LFB] that serves the whole of London, in so far as reasonably practicable."

83. He goes on to explain his opinion as follows:

> "In my opinion a person in Barking & Dagenham (for example) should not have to wait longer for an appliance than a person in Islington (for example) in the event of a fire, just because the former happens to live in an area with (for example) less high-rise buildings, less high profile buildings, or less vulnerable people than the latter (and vice versa). Further, in my opinion, a person in London should not be treated as being a lower priority for the [LFB] in the event that a fire does occur, simply because they live within an area in which the number of

> incidents is statistically lower. This is an opinion that was shared by my predecessor as Commissioner when LSP2 was introduced. As a result, the critical point that drives the [LFB's] guiding principle is the desire to minimise attendance times to a fire wherever it occurs in London, subject to other objectives and operational constraints."

84. As I have indicated (see paragraph 81 above), the principle of equal entitlement first found expression in the approach to London's fire services in LSP2. Although it was not his personal responsibility at the time, the Commissioner has drawn attention to a Corporate Management Board paper of 8 June 2004 prepared for the purposes of LSP2 which was couched in the following terms:

> "There is a powerful argument that at the point when a fire actually breaks out (notwithstanding those control measures that have been put in place) the risk is broadly the same whatever its location. In other words a fire in a bedroom in Westminster has the same potential consequence as a fire in a bedroom in Sutton or Bromley. In risk terms it is also difficult to argue that, just because one person is less likely to have a fire that it follows they should receive a slower response if they do have one. If this logic is accepted it moves us towards developing a single set of attendance standards across London."

85. He indicates that consultees on the draft LSP2 were largely supportive of the principle of developing more even patterns of emergency cover across London with 74% strongly or largely agreeing with the proposal to provide a more even response to emergency incidents wherever they occurred in London. That indeed was so although it is right to observe that 20% "largely or strongly disagreed", with 6% not having enough information or had no preference. History also shows that none of the Claimant boroughs objected to the proposal and indeed Islington and Tower Hamlets (the only two of the Claimant boroughs to respond to the consultation) expressed positive approval.

86. The Commissioner also records that the FBU has historically not opposed the principle of trying to equalise attendance times across London. Indeed in its first response to the consultation on LSP5 in June 2013 it said this:

> "We applaud the current Commissioner Ron Dobson for trying to equalise attendance times across London. But we do not accept reducing station numbers in inner London arrears is an acceptable method. We believe that if there is a requirement for equalisation, the same level of response currently received by Londoners in inner-city areas should also be delivered to those outer London areas as well. Where we differ is that it is our belief the only way this can be achieved is by increasing resources in the areas that are not meeting the attendance times. For instance, the Commissioner recognised this problem in LSP4, by the opening of a new fire station at Harold Hill on the outskirts of east London. Why? Because the [LFB] could not meet a suitable attendance time in a high area of life risk. This

> therefore proves that in areas where standards in outer London cannot be reached, the [LFB] should either increase staff numbers or build new fire stations as a blueprint to ensure the equality of service across London." (Emphasis added.)

87. In its final observations on the draft Plan dated 14 July the FBU stated, in almost identical terms, as follows:

> "We understand the need to equalise attendance times across London. But we do not accept reducing station numbers in inner London arrears is an acceptable method. We believe that if there is a requirement for equalisation, the same level of response currently received by Londoners in inner-city areas should also be delivered to those outer London areas as well. Where we differ is that it is our belief the only way this can be achieved is by increasing resources in the areas that are not meeting the attendance times. For instance, the Commissioner recognised this problem in LSP4, by the opening of a new fire station at Harold Hill on the outskirts of east London. Why? Because the [LFB] could not meet a suitable attendance time in a high area of life risk. This therefore proves that in areas where standards in outer London cannot be reached, the [LFB] should either increase staff numbers or build new fire stations as a blueprint to ensure the equality of service across London." (Emphasis added.)

88. In other words, the FBU continues to support the principle, but is of the view that resources (manpower and fire stations) should be made available to enable the principle to operate satisfactorily in all parts of London. The Claimant boroughs would appear to challenge the continued applicability of the principle in Greater London although it needs to be noted that no submissions, either in favour or against, have been made by the other 26 boroughs that have been made interested parties to the proceedings.

89. I will return to consider the arguments concerning the applicability of this principle in the context of the Plan when analysing the challenges made to it.

90. There is, however, one further practical aspect of the principle that needs to be noted at this stage, namely, the level of response time that was adopted as the objective across London during the post-2004 period.

91. LSP2 had apparently proposed that the then existing attendance times would be maintained, but set the target of achieving them on a London-wide basis. Those response times were attendance of the first appliance within 5 minutes 65% of the time and within 8 minutes 90% of the time and attendance of the second appliance within 8 minutes 75% of the time and within 10 minutes 90% of the time.

92. Since LSP3 three attendance standards have been adopted by the LFB: (i) to get the first appliance to an incident within an average attendance time of 6 minutes; (ii) to get the second appliance to an incident within an average attendance time of 8 minutes; and (iii) to get an appliance to an incident anywhere in London within 12

minutes on 95% of occasions. The manner in which these attendance times were taken into account in the modelling process for the draft Plan, to which I will refer in more detail later (see paragraphs 165-195), lies at the heart of one feature of the Claimants' case (see paragraphs 197-204).

93. Given another criticism made by the Claimants, it is important to note that the attendance times are calculated by reference to a period starting at the time when the crew is mobilised at the fire station and ending at the time when the appliance arrives at the incident. The period does not commence when the 999-call is received. I will return to this matter in due course (see paragraphs 140-146).

94. I will have to return to the issues arising from the continued adoption of these attendance standards for the purposes of the Plan, but it is, perhaps, appropriate to record at this stage that the attendance standards are seen by the Commissioner (and, by virtue of the acceptance of his view, by the LFB and LFEPA) as performance indicators, not as measures for assessing risk. The Commissioner makes the point in his witness statement that "it would be incorrect to assume … that an attendance time of 5:59 will prevent adverse outcomes from fire whereas an attendance time of 6:01 (or even 7:01 or 8:01) will not." The Claimants have a different view of the matter to which I will turn later.

## The detailed challenges

### (i) the fundamental challenge

(a) the "high level" challenge

95. The most fundamental challenge made to the Commissioner's report and, in consequence, to the Mayor's decision is put in a number of ways and various factors are embraced within it. However, in short, it is that the formulation of the Plan commenced from the wrong starting-point. It is said that the National Framework and the extant Guidance (on the assumption that it was extant and relevant) demanded that LFEPA should prepare an IRMP having identified and assessed "all foreseeable fire and rescue related risks that could affect its community" and which also then demonstrated how "prevention, protection and response activity will best be used to mitigate the impact of risk". In other words, it is said that a comprehensive risk assessment of "all foreseeable risks" must be carried out before considering how those risks are to be addressed. If that had been done, it is argued, in respect of the seven Claimant boroughs, certain vulnerable sections of the community would have been identified as being at higher risk than others elsewhere in London and more extensive and intensive provision would or should have been provided in relation to those "higher risk" sections of the community such that the response (or attendance) time to deal with a fire would be shortened. By adopting an approach to the Plan predicated upon seeking to achieve uniform attendance time targets, it is argued that the Commissioner's approach was "back to front". The Claimants submit that the proper approach is look at the risk first and then decide what the appropriate attendance times should be rather than adopting the attendance times as parameters before looking at the risk.

96. It is argued that the adoption of the principle of equal entitlement results in a "one size fits all" approach which is not what the National Framework and the Guidance Notes

contemplate and is, in any event, irrational: a plan that does not take account of local risk factors cannot, it is contended, be one in which increasingly scarce resources can be said to be deployed rationally and proportionately.

97. I will turn to what might be termed the "high level" features of this argument in due course, but it is necessary, in the first instance, to set out why the Claimant boroughs say that their residents (or at least sections of their communities) are particularly adversely affected by the Plan. The principal, though not exclusive, focus of each borough is upon the number of high-rise dwellings in their area and upon the proportionately greater number of elderly people than elsewhere in London. Compared with the Outer London boroughs, it is said that they have far higher population densities, far higher levels of social deprivation, more social housing (much of it of a high-rise nature), more high profile buildings and concentrations of high-risk groups with certain "protected characteristics" (see the Equality Act 2010 at paragraphs 41-42 above) such as the disabled, young people living alone and older people living in social housing.

98. The Claimants acknowledge that the principle of equal entitlement might be justifiable if Greater London were a broadly homogenous city, with little variation in terms of population and risk factors across its neighbourhoods, but assert that that is not so. Drawing on the Commissioner's Report, the draft Plan and the Supporting Documents, they highlight the facts that (i) London includes city, suburban and semi-rural areas, (ii) population density varies from 82,000 people per square kilometre in parts of Inner London to 100 people per square kilometre in parts of Outer London, (iii) approximately 50% of London's population is concentrated in just 20% of its total area and (iv) nearly 40% of Greater London is classified as green open space.

99. Within that unevenly spread population there are groups with particular lifestyle characteristics who are assessed to be at greater risk than others and to whom LFEPA have ascribed "priority postcodes" (sometimes referred to as "P1s"). The lifestyle characteristics include those fitting the description of young people renting flats in high-density social housing, elderly people reliant on state support, lower income workers in open terraces in often diverse areas and young, well-educated city dwellers. The Claimants rely upon the fact that the majority of these postcodes are in Inner London and that in the Inner London boroughs priority postcodes make up around 56% of homes and account for 63% of dwelling fires and 71% of casualties whereas in Outer London boroughs, priority postcodes make up only 2% of homes and account for only 5% of dwelling fires and 5% of casualties. The source of those statistics is Supporting Document 5 to the Plan and the Claimants, accordingly, contend that the Commissioner's own documents show the highly variable risk profile across London, with high risk factors being heavily concentrated in the Inner London boroughs. I will be returning to the question of priority postcodes and the Commissioner's response to the kind of argument being advanced in due course (see paragraphs 184-185), but will continue for present purposes to outline the Claimants' case.

100. The broad pattern to which reference is made in the preceding paragraph is, it is said, borne out by an analysis of the risk areas in each of the individual Claimant boroughs. I will deal briefly with the demography of each as it has been presented, but it may be helpful to record initially what the effect of the Plan will (according to the Plan) be

upon attendances times both for 1st and 2nd appliances and then for 3rd appliances, both matters of importance to the cases presented on behalf of each borough.

101. Supporting Document 16 indicates as follows in general terms about the 151/100 option being proposed in the draft Plan:

> "10. In absolute terms for 1st appliance attendance times:
>
> - The following boroughs would see performance worsen, although in some cases by as little as one second and none by more than 45 seconds:
>
>   Camden, City of London, Greenwich, Hackney, Hammersmith and Fulham, Hillingdon, Islington, Kensington and Chelsea, Lambeth, Lewisham, Newham, Redbridge, Southwark, Tower Hamlets, Waltham Forest, Wandsworth, Westminster. (Claimant boroughs underlined.)
>
> - The following boroughs would see performance improve (between one eight seconds):
>
>   Barnet, Brent, Bromley, Harrow, Hounslow, Richmond upon Thames
>
> - The following boroughs would see no change:
>
>   Barking and Dagenham, Bexley, Croydon, Ealing, Enfield, Haringey, Havering, Kingston upon Thames, Merton, Sutton.
>
> 11. In absolute terms for 2nd appliance times:
>
> - The following boroughs would see performance worsen, although in some cases by as little as one second and none by more than one minute 24 seconds:
>
>   Bexley, Camden, City of London, Enfield, Greenwich, Hackney, Hammersmith and Fulham, Hillingdon, Islington, Kensington and Chelsea, Lambeth, Lewisham, Newham, Redbridge, Southwark, Tower Hamlets, Waltham Forest, Wandsworth, Westminster. (Claimant boroughs underlined.)
>
> - The following boroughs would see performance improve (between one second and one minute 20 seconds):
>
>   Barnet, Brent, Bromley, Harrow, Hounslow, Richmond upon Thames

- The following boroughs would see no change:

  Barking and Dagenham, Croydon, Ealing, Haringey, Havering, Kingston upon Thames, Merton, Sutton."

102. More detailed information is given in relation to each borough on the following page of the document. The effects at borough level for each of the Claimant boroughs can be seen from the following table:

| Location | Increased attendance time for 1st appliance (in seconds) | Increased attendance time for 2nd appliance (in seconds) |
|---|---|---|
| London-wide | 15 | 16 |
| Camden | 45 | 26 |
| Greenwich | 30 | 35 |
| Hackney | 33 | 38 |
| Islington | 26 | 52 |
| Lewisham | 31 | 12 |
| Southwark | 32 | 39 |
| Tower Hamlets | 23 | 47 |

103. This information was supplemented by information concerning the effect within the wards of each borough given in Supporting Document 22 (issued in May) – which can be found at http://www.london-fire.gov.uk/Documents/ward-impacts.pdf. The print is so small that it is very difficult to read across easily, but I will record the effects in relation to the wards in each borough when dealing with the profile of each borough. I do not understand there to be any issue about what is asserted. (It should be noted that with the ultimate acceptance of the 155/102 option, the above times varied somewhat. A table showing the effects is included in the Commissioner's witness statement and is reproduced in Appendix 3.)

Islington

104. According to the witness statement of Lela Kogbara, the Assistant Chief Executive (Strategy and Community Partnerships), Islington is the most densely populated borough in the UK (13,862 people per square kilometre) and has “a rising population and a high concentration of buildings requiring multiple response times, and many high-profile sites.” The population has grown by 17% between 2001 and 2011 with growth being greatest among young, single people. She says that it is “the 14th most deprived borough in the country, has the second highest rate of child poverty, and the 4th highest rate of older people living in poverty.” Of the 206,000 resident population she says that “more than 8,000 are over 75 years old, 60% of residents are single, 39% of households are single-person, 34% are deprived in at least one [of the four dimensions of deprivation used to classify households, namely, employment, education, health/disability and housing] 8% in at least 3 dimensions and 46% of the borough live in high density social housing.” She says that the “20 to 39 year old age group accounts for the largest proportion across all wards, ranging between 38% and 50%.”

105. Islington is in the top five London Boroughs (behind Southwark and Lambeth) for the largest amount of social rented housing units from the local authority.

106. Ms Kogbara also says this in her witness statement:

> “The revised Plan … continued to include the closure of Clerkenwell Fire Station in the south of Islington. This is one of the five busiest fire stations in London and covers an area with a very high incidence of high rise buildings, including a substantial amount of student accommodation and two residential blocks of 25 and 27 stories respectively. Fire crews from Clerkenwell could also be expected to assist at incidents in very high profile sites such as the Emirates Stadium, Kings Cross/St Pancras Station, the Royal Courts of Justice, the British Museum and numerous other important and high-profile sites.”

107. So far as appliance attendance times are concerned at ward level, Ms Kogbara says as follows of the 16 wards in Islington:

> “First appliance response times would increase by 2:07 minutes (49%) in Clerkenwell ward to 6:26. In Barnsbury ward, second appliance response times would increase by 2:21 to 8:27 (38.5%) and in St Peter’s ward by 1:57 to 7:48 (33.3%) …. Three of sixteen wards would have first appliance response times above 6 minutes (Caledonian – 6:17, Clerkenwell – 6:26 and Mildmay – 6:41) and one ward would have a 2nd appliance response time above 8 minutes (Barnsbury – 8:27).”

Southwark

108. Mr Jonathan Toy, the Head of Community Safety and Enforcement, says in his first witness statement that Southwark has an above-average number of fires, deaths and injuries compared with any London borough. He says that in contrast to the national trend, the number of fire-related fatalities in Southwark has risen over the last 10

years even allowing for the Lakanal tragedy in July 2009 when 9 people died. The numbers of fires, injuries, rescues and mobilisations in Southwark are all above the London average. Southwark has a population density of 9988 residents per square kilometre and is the largest social landlord in London. 75% of the council housing stock consists of high rise flats or maisonettes (i.e. four floors or over) and he estimates that "at least 37% of dwelling fires in Southwark over the past 5 years were in high-rise buildings which required 3 appliances to arrive before the fire could be tackled." He also says (and I do not understand it to be disputed) that by reference to the 'P1' postcode assignment, Southwark houses "a far greater density of people at high risk from fire than outer London boroughs." He also foresees a significant increase in the number of elderly and disabled residents, and those with mental health problems, which is projected in the years to 2020.

109. In Southwark there are 21 wards. It is asserted in the Statement of Facts and Grounds that the impact upon attendance times is such that first and second response times will increase in all 21 wards, with six missing the target for first response time. If I read the detailed information correctly, 17 wards see an increase of less than 30 seconds for 1st appliances (but that does include College ward that already has a 1st appliance response time of just over 7 minutes), but there are 4 wards where the increases are essentially 1-1½ minutes. The 2nd appliance response times all appear to increase, in one or two cases by 1½-2 minutes and in most other cases by 30-60 seconds.

Camden

110. In her witness statement, Ms Sarah Moyies, Head of Emergency Management, says that Camden has experienced a higher number of fire-related fatalities since 2002/3 until 2011/12 than the average for London. (This is indeed correct, though it is to be observed that in the period from 2004/5 the number, 14, was closer to the average, 12, than for the longer period.) She also indicates that the number of fire-related injuries from 2004/5 were higher (376) than the London average (352). Camden had the third highest number of pump mobilisations in London in 2011/12 (totalling 9868) and the second highest of mobilisations into the borough for the same year (totalling 3169). It has the largest student population in London (24,300), 31% of whom live in flats or halls of residence.

111. Ms Moyies also draws attention to the level of social deprivation in Camden by reference to the proposition that 58 out of 133 Lower Layer Super Output Areas (small geographical areas used by the Office for National Statistics to improve the reporting of small area statistics usually called 'LSOAs') are in the 30% most deprived areas in the country.

112. She also draws attention to the fact that, as a local authority, it owns over 238 buildings that are 6 storeys or higher and that their 4 tallest high-rise residential buildings are three at 23 storeys and one at 25 storeys. Incidents in such buildings demand, she says, the attendance of a minimum of 3 appliances (but see paragraph 260 below).

113. Ms Moyies helpfully tabled the effects on attendance times at a ward level in her witness statement and I reproduce those tables at Appendix 4 to this judgment.

Tower Hamlets

114. Mr Stephen Halsey, the Head of Paid Service and Corporate Director of Communities, Localities and Culture, says that Tower Hamlets has the third highest number of dwelling fires in London – based upon the 3-year average from 2009/10 to 2011/12. The number of primary fires has reduced more slowly in Tower Hamlets than across London as a whole over the previous six years (by 4.6% compared to 9.3% London-wide). 79% of all households in the borough are within purpose-built blocks of flats or tenements, the second-highest proportion nationally after the City of London. It is estimated that at least 50% of these blocks are of six storeys or more and thus require attendance by a third appliance (see paragraph 260 below). 14% of primary fires in Tower Hamlets occur in high-rise buildings. Approximately one-third of residents of Tower Hamlets do not have English as their main language and nearly one-third of residents are in the 18-30 age group.

115. There are 17 wards in Tower Hamlets. Mr Halsey highlights four in his statement that will experience significant changes in appliance attendance time. Helpfully, he highlighted them in a table which I reproduce as Appendix 5 to this judgment.

Hackney

116. Ms Sonia Khan, Head of Policy, says in her witness statement that Hackney is the second-most deprived local authority in the country and all of its wards are in the 10% most deprived nationally.

117. She also gives details of the profile of Hackney's population as follows:

> "…
>
> - There are 67,925 young (18-30) people in Hackney, 28% of the population.
>
> - There are 157,240 non White-British people in Hackney, 63% of the population. According to the 2011 census, 14% of local households in Hackney reported that English was not a main language. Hackney has a low proportion of English language households compared with the national average (91%) but sits in line with the London average (74%). The proportion of English speakers is significantly lower than the national figure of 92% and two points lower than London's figure which stands at 77.9%, and can be attributed to Hackney's diverse migrant population.
>
> - There are 22,526 full time students in Hackney aged 16-74, 9% of the population. In the 2011 Census, 14.6% of Hackney respondents said they a long-term illness that limited their daily activities. In February 2012, 15,240 people, 6.1% of Hackney's population, were claiming Disability Living Allowance or Attendance Allowance."

118. The rates of fire casualties and mobilisations in Hackney are higher than the London averages, but the rate of fatalities, certainly since 2006/7, appears to be slightly less

than the London average. It is the fourth borough in the top five London Boroughs for the largest amount of social rented housing units from the local authority.

119. In her witness statement, Elizabeth Hughes, Head of Safer Communities, says that there are 263 high rise blocks within the borough (namely, those with 6 storeys and over).

120. Hackney has 19 wards. Ms Khan highlights Dalston where the 1st appliance response time will be 25.85% slower than the London average and De Beauvoir where the 1st appliance response time will be 37.24% slower than the London average and the 2nd appliance response time will be 30% slower than the London average. A glance at the table shows that there are two other wards where there are measurable increases in 1st appliance time attendances, but otherwise the increases are generally measured in a few seconds. A glance at the table for 2nd appliance times also demonstrates that Dalston and De Beauvoir both experience fairly significant increases, as does to a lesser degree Queensbridge, but in most others the increase is also measured in seconds.

<u>Lewisham</u>

121. The witness statement of Geeta Subramaniam-Mooney, Head of Crime Reduction and Supporting People, indicates that in Lewisham there are 43,221 residents (over the age of 3 years) for whom English is a second language. This is 16% of the total population.

122. There are 1061 ‘P1’ postcodes in Lewisham. Its fire fatalities are higher than the London average and its number of fire-related injuries is also greater the London average.

123. Within the borough there are 177 high rise buildings which are classified as five storeys or above.

124. Lewisham has 18 wards. Ms Subramaniam-Mooney says that 6 wards will fall outside of the average 6-minute first appliance response time: Bellingham (6:55), Catford South (6:13), Downham (7:38), Grove Park (6:27), Sydenham (6:21) and Whitefoot (7:57). She says also that a further two of these wards will fall outside the 8-minute response time: Downham (8:18) and Whitefoot (8:02).

<u>Greenwich</u>

125. Matthew Norwell, Director of Community Safety and Environment, speaks of two wards (out of seventeen wards) within the borough (Woolwich Common and Woolwich Riverside) which have a particularly high concentration of people whose main language is not English and who cannot speak English either well or at all. There are particularly high concentrations of young people in those wards also. For the three performance years 2009/10 to 2011/12 those two wards were amongst five in the borough where three appliances were most called.

126. He speaks also of three prisons (HMP Belmarsh, HMP Thameside and HMP & YOI Isis) and the associated high-security Crown Court at Belmarsh, together with the other tourist attractions such as the Greenwich World Heritage Site, the Maritime

Museum, the Greenwich Observatory, Queen Anne's House and the Cutty Sark, all of which are within the borough.

127. Although Mr Norwell's statement does not indicate the present prevalence of high-rise buildings within the borough, he does suggest that the Plan fails to take account of several proposed high rise buildings, all of which have planning permission, in the Woolwich Common and Woolwich Riverside wards. These include 16 storeys (100 units) at Mast Pond Wharf (Woolwich Riverside), 11 storeys (177 units) at Callis Yard (Woolwich Riverside), The Warren Masterplan (including Crossrail station) (Woolwich Riverside) comprising mostly 6/7 storeys high, although several blocks will include towers of 16-25 storeys (3,711 units) and Love Lane (Woolwich Common) comprising up to 27 storeys (960 units).

128. Greenwich has 17 wards. Mr Norwell says that under the Plan, 8 will not meet the target first response time and the first response time for 3 wards will be over 7 minutes. 4 wards will not meet the target second response time. He highlights Woolwich Common which currently has a first response time of 5 minutes 32 seconds (5.32). Under the Plan this would increase by 58 seconds to 6:30 minutes. He also refers specifically to Woolwich Riverside which has a current first response time of 4:57 minutes which would increase to 7:21 minutes, Shooters Hill from 6:35 minutes to 7:00 minutes and Thamesmead Moorings from 7:07 to 7:13. Those latter two wards are mentioned in the context of 2nd appliance response times with the former increasing from 7:54 minutes to 8:22 minutes and the latter from 7:51 to 8:15.

129. That, in a nutshell, represents the broad profile of each of the Claimant boroughs from the perspectives said to be relevant for present purposes.

130. Attached to the Claimants' Skeleton Argument were some tables extracted from the borough statistics to be found on the LFB website which show fatalities, casualties and pump mobilisations in all the London boroughs over a 10-year period or so. Mr Stilitz submits that they demonstrate generally consistently higher levels of pump mobilisations, fire fatalities and fire casualties in the Claimant boroughs compared to the London average. I cannot reproduce those tables in this judgment, but his comment is broadly justified although, as with all figures of this nature, there is considerable variation from year to year. It is equally to be observed that there are other non-Claimant London boroughs where the annual levels in the respects he has highlighted are usually higher than the overall London average. Inevitably, of course, there are boroughs where the levels are ordinarily lower than that average. There is, of course, the countervailing suggestion that it is the more recently identifiable <u>trends</u> in what is occurring that is the important consideration, not what an average over a lengthy period reveals.

131. In order to illustrate the nature of this evidence, I have appended as Appendix 6 and Appendix 7 to this judgment the raw material from the same source as that used by the Claimants for the purposes of the tables referred to in the preceding paragraph demonstrating the numbers of <u>dwelling fires</u> and <u>fire fatalities</u> respectively for each London borough for the period from 2006/07 to 2012/13. Had it been possible to do so, I would have attached the equivalent table for fire-related <u>injuries</u>.

132. Casting an eye down Appendix 6 would show that all the Claimant boroughs generally do see more dwelling fires per year than the average, although Islington

usually appears to be relatively not far above the average when it is above average, although Southwark, Tower Hamlets, Lewisham and Hackney do always seem to be well above average. It does, however, have to be observed that there are a good number of other boroughs that are not Claimants in these proceedings which regularly experience dwelling fires significantly, or at least materially, in excess of the annual London average.

133. Performing the same exercise in relation to the fatalities does, fortunately, record that the average annual fatality rate for all of London never exceeds 2 per borough and the average figure is usually 1 or 2 per borough. There will obviously be the occasional tragedy such as Lakanal that will put a particularly high figure into the statistics for one year (as that particular tragedy did for Southwark in 2009/10), but the picture does broadly reveal that, for example, Southwark is usually (though not always) above average, as from time to time is Tower Hamlets, but there is a variation across all the Claimant boroughs as indeed there is across many of the other non-Claimant boroughs.

134. One trend that even a layman can discern from these figures appears to be a general reduction in the number of dwelling fires in London over the 6-7 year period which is reflected in the reduction of the average figure from 215 in 2006/07 to 196 in 2012/13. I will have to return later to what the Commissioner says about the calls on the fire service (see paragraph 135), but the observation I have just made does chime with what he said in his witness statement that "[there] is a strong decreasing trend in relation to all types of incidents which demand a response from the [LFB] in London, including the number of dwelling fires."

135. In order to put the figures relating to dwelling fires (which, of course, represent a significant risk to life and limb) into context, the Commissioner in his witness statement draws attention to the comparative infrequency of dwelling fires as a source of "incident type" requiring the active intervention of the fire service. Supporting Document 2 demonstrates that the 10 most common incident types in London, in <u>descending</u> order of frequency, are false alarms from automatic fire alarms ('AFAs'), outdoor fires, false alarms from members of the public (made with good intent), releasing people from passenger lifts, gaining entry to people locked in or locked out, flooding, dwelling fires, road traffic accidents, other building fires and road vehicle fires. The figures for 2009/10 to 2011/12 show that of these 10 most frequently attended incidents (accounting for about 90% of the incidents attended in those three periods) dwelling fires accounted for only 6% whereas, for example, AFAs accounted for 35%, outdoor fires 12% and good-intentioned false alarms from members of the public 11%. It will be appreciated that the fire service will send differing numbers of appliances to an incident depending on the nature of the incident and the type of premises. Each type of incident has what is called the "pre-determined attendance" ("PDA") which is the initial response to a 999-call. The PDA for a dwelling fire is always two appliances. It can be higher for more complex situations.

136. Having thus identified the nature of the Claimant boroughs and the relevant demography of each in the way it has been highlighted by Mr Stilitz, I should return to the main argument he advances about the way the Commissioner formulated the Plan. He contends that applying uniformly the target times referred to in paragraph 92 above pursuant to the "principle of equal entitlement", irrespective of the particular

features of the particular borough, necessarily involved an analysis that did not take into account the local risk factors peculiarly associated with each borough.

137. That is, as I have sought to characterise it, the "high level" argument he advances. It pervades the more detailed criticisms he seeks to make of the decision-making process in which, he asserts, material matters were left out of account. Leaving those matters out of account resulted, he argues, in a flawed reasoning process that also (and, as I understood the argument, independently of the "high level" argument) would justify the court's interference with the ultimate decision reached.

138. I will endeavour to address these contentions in the way that they have been advanced. However, it seems to me to be somewhat unreal to take the "high level" argument at this stage and to endeavour to deal with it before at least examining the way in which the other criticisms are advanced. Those criticisms, if justified, are said to underline and confirm the failure of the Commissioner to address the particular factors within each borough (of the nature identified above) that demand a different response to the provision of fire services in those boroughs from the provision to be provided elsewhere. Dealing with the issues in this way will enable the rather bigger picture to be viewed than it would be if each individual component of the Claimants' case was isolated and considered separately.

(b) <u>other criticisms of the decision-making process (other than arguments concerning the consultation process)</u>

139. In addition to the general contention that the principle of equal entitlement should not have been applied, there are four specific matters that the Claimants argue were left out of account in the formulation of the Plan that could, if taken into account, have made a material difference. Mr Stilitz identified them as follows:

(i) "Drive time" should not have been equated with "response time" - in other words, the full time from the 999-call to active fire-fighting should have been considered;

(ii) third appliance attendance times should have been taken into account, but were not;

(iii) the effect on risk of "ring-fencing" and protecting from closure 28 fire stations was left out of account;

(iv) the effect of the temporary closures of fire stations in Southwark was left out of account.

<u>Drive time/response time</u>

140. As I have already indicated (see paragraph 93 above), the attendance time (or response time) targets utilised in considering the Plan were constituted by the period from when the crew is mobilised at the fire station to the time when the appliance first arrives at the incident. The period does not commence when the 999-call is received nor does it end when active fire-fighting begins: it starts later and ends earlier than either of those events.

141. For that reason Mr Stilitz characterises the period used for this purpose as "drive time" and says that the impression given by its adoption is that appliances will arrive much more quickly than they will in practice. The suggestion is that there is more to the whole period of response time than simply the "drive time". In the first place, there is the duration of the 999-call. He submits that the extent to which significant sections of the local populations may not speak English (a factor likely to be linked to race) is left out of account and that it should be considered when assessing the risks in a community where significant parts of the population may not speak English or where English is their second language. In the second place, there is the issue of high-rise buildings.

142. As to that second factor, he submits that in a high-rise or complex building, there is likely to be a delay before fire-fighters can physically get to the location of the fire itself and commence active fire-fighting. Use of "drive time", he contends, operates to understate the delay in commencing fire-fighting in the Claimant boroughs because each has a far higher concentration of high-rise and more large and complex buildings. It follows, he submits, that when deciding which stations to close and appliances to decommission, the Commissioner has under-estimated the risks occasioned by fires in the Claimant boroughs.

143. Mr Stilitz drew my attention to what appears in the 'Fire Incidents Response Times: England, 2012-13', published by the DCLG. It says that "Response times are from the time of call to the arrival of the first pumping appliance." That would appear to take account of the time of the telephone call, but not the time needed to prepare for engaging in active fire-fighting. Mr Antony White QC and Ms Sarah Hannett, for the FBU, who also referred to the DCLG publication, say that the measure of response time used by the Commissioner (a) masked differences in call time that can vary substantially (for example, if a caller's first language is not English) and (b) makes comparison with other fire and rescue services more difficult (contrary to the requirement in the National Framework that "communities need to be able to access information in a way that enables them to compare the performance of their fire and rescue authority with others").

144. Mr Halsey, whose witness statement was lodged in support of Tower Hamlets' case, said this:

> "In calculating response times accurately, this should include call time as well as driving times. Call times can be longer when callers speak English as a second language. This appears not to have been taken into account in assessing the impact of increases in probable response times. Two of the wards where first appliance response times will exceed the target are those with the highest proportions of Black and Minority Ethnic (BME) residents and limited English fluency."

145. Distilling these various ways of putting the matter, it would seem that the material factor thus alleged to have been overlooked by the Commissioner in his report and recommendations was the "true" response time for boroughs with significant high-rise buildings and significant populations for whom English is not their first language.

146. I will return to the Commissioner's response to this aspect of the case when I have dealt with the other three points relied upon in this context by Mr Stilitz.

Third appliance attendance times

147. Irrespective of the argument concerning what response time ought to have been taken into account when formulating the Plan, it is contended that the failure to factor in appropriate attendance times for third appliances represented another material omission in the decision-making process.

148. Supporting Document 20 referred to the need for 3rd appliance attendance in certain situations (see paragraph 149 below), but it has, Mr Stilitz submits, "inexplicably been completely left out of account when determining which stations should close and which appliances should be decommissioned." The model upon which the Plan was formulated was, he said, designed to demonstrate particular outcomes for 1st and 2nd appliance attendance times only and it could not, he submits, have indicated that a 3rd appliance attendance time was too great because it was not something being considered. He contends that an "important feature of fire-fighting in London has been left wholly disregarded" and an essential relevant matter thus left out of account. This was particularly so in relation to the Claimant boroughs because the attendance of a third appliance is a disproportionately greater feature of operations than in London as a whole because of the higher concentration of high-rise buildings. According to Mr Toy's statement, he says that whilst it has not been easy to analyse the number of high-rise dwelling fires, "we estimate that at least 37% of dwelling fires in Southwark over the past 5 years were in high-rise buildings which required 3 appliances to arrive before the fire could be tackled: Southwark is second highest in absolute terms for high-rise fires and third highest in terms of the proportion of high-rise fires to total fires." In Tower Hamlets, according to Mr Halsey, 35% of all primary fires in buildings required a three appliance response, compared with the London average of 32% (excluding false alarms and other incidents).

149. As a result of concerns raised about this during the consultation process, the Commissioner produced a new supporting document (Supporting Document 24) on 14 June, very shortly before the consultation period ended, entitled "Third fire engine attendance time performance" which set out third appliance attendance times at London and borough level. That supporting document referred to what had appeared in Supporting Document 20 concerning third appliance attendance. Supporting Document 20 had said this:

> "A 3rd appliance is often needed as the initial response to an incident, to ensure safe systems of work (e.g. a call to a fire in a high-rise domestic building), so we have looked at the impact on the arrival of the 3rd appliance. The modelled impact on average 3rd appliance response (+23 seconds London-wide) is greater than on both 1st appliance (+15 seconds) and 2nd appliance (+16 seconds) response times, as to be expected with 18 fewer pumping appliances. However, the 151/100 position does provide more equitable level of 3rd appliance coverage. London-wide, the percentage of incidents that receive a third appliance with 10 minutes falls by 2 percentage points (from 84.6 per cent to 84.4 per cent)."

150. This was laid out more fully in Supporting Document 24 and that document also contained an appendix that showed how the third appliance response times would change across the boroughs. All the Claimant boroughs would experience an increase in attendance time as follows: Camden (55 seconds), Greenwich (57 seconds), Hackney (52 seconds), Islington (26 seconds), Lewisham (17 seconds), Southwark (33 seconds) and Tower Hamlets (44 seconds). These must be viewed against the London-wide average increase of 23 seconds. Simply for comparison purposes, it might be noted that Hillingdon, Lambeth, Waltham Forest and Westminster would also experience increases in the broad range of 50-55 seconds. 4 boroughs were shown by the model to have some reductions in time (only two, Barnet and Harrow, being reasonably substantial reductions), but overall most boroughs either stayed about the same or saw an increase of up to 30 seconds. Mr White makes the point that those boroughs that will experience a decrease in third appliance response time as a result of the Plan are those which had few or no high rise fires in 2011/12 (see the document referred to in paragraph 153 below). He cites Barnet as gaining a 20% improvement in third appliance response times, but having had only 2 fires at high rises in 2011/12 and Harrow as gaining a 43% improvement in third appliance response times, but having had no high rise fires in 2011/12.

151. There had been a request for the figures in Supporting Document 24 to be broken down further by reference to the wards. Supporting Document 24 said this:

> "The production of ward level data for a third fire engine attending an incident is complicated by the, sometimes, very small numbers of historic incidents in some wards (over the last five years) where a third appliance would attend. At this point in time, we are not certain that it is possible to produce reliable data at ward level, because of the problem of very small numbers. However, we are continuing to examine this."

152. It was apparently not possible to provide this information until 27 June (after the consultation had closed), but at that stage 'Third appliance response times by Ward 2011/12' were set out in a table in the document supplied. These were historic figures and no figures for the post-Plan position at ward level are given so that a comparison of the pre-Plan and post-Plan situation is not revealed.

153. That document did, however, contain information reflecting the numbers of fires in high-rise buildings (domestic and non-domestic). In 2011/12, taking all the London boroughs, the largest number of fires in high rise buildings occurred in Southwark (24), Tower Hamlets (20), Westminster (19), Wandsworth (14), Islington (13), Newham and Lambeth (each 12), Enfield and Hammersmith & Fulham (11 each) and Greenwich (10). All other boroughs were between 0 and 10.

154. Again, I will return to the Commissioner's response to this part of the argument in due course (see paragraphs 259-263 below).

<u>The effect of "protecting" 28 fire stations</u>

155. The argument advanced is that the Commissioner wholly disregarded the risk implications arising from the decision to exclude from the prospect of closure 28 "protected stations".

156. The decision concerning these 28 fire stations was described in Supporting Document 20 in the following way:

> "22. Officers also needed to take into account the range of issues associated with the current estate. As is known, it is not generally flexible stock and the introduction of so many new special appliances has been (and some cases continues to be) a challenge. Some 40 per cent of the stations are more than 60 years old; 34 per cent are listed or locally listed and/or in conservation area and 18 of these are Grade II listed. In general, it is an expensive estate to maintain. Accordingly, in thinking about the issues addressed in this paper, officers took into account:
>
> • That some stations have received substantial levels of recent investment, or are shortly due to receive such investment;
>
> • That some stations are in the PFI programme;
>
> • That Lambeth fire station is an integral part of the redevelopment plan for the site; and
>
> • That some stations provide multiple or difficult to relocate functions. For example, at Barking fire station, in addition to the pumping appliances, we also have a Command Unit; a Bulk Foam Unit; a Hose Layer Lorry; an HR advisor; the Borough Commander; an office for the firefighters charity and the protective equipment group.
>
> 23. The effect of this consideration was that officers identified 28 fire stations which, in the modelling, we identified as "protected" i.e. no closure proposals were to be generated. However, they could go from two appliances to one, or from one appliance to two. (In LSP5, it might usefully be said that (eight of the nine) PFI stations have been "future-proofed" in terms of their physical capacity and are each capable of taking further appliances. If a need for savings persists well into the future, consolidating resources in these new parts of the estate might become more important)."

157. In an appendix to the document, the reason for protecting each of the identified fire stations was given in the form of "10 years old or less", "Rescue Centre", "Recent/planned investment - £1m in last 3 years (minimum)", "Large/useful site" or "PFI station".

158. Mr Stilitz argues that the Commissioner based his decision on a series of predominantly financial factors and that there is no suggestion that he considered the impact on risk of his decision to ring-fence these stations. He submits that this was another example of the process being back-to-front: as with the incorporation within the modelling process of the first and second appliance response times, the

Commissioner had decided in advance to ring-fence these fire stations and then let the modelling process proceed on the fixed premise that these stations were to be protected.

159. Mr Stilitz contends that the Commissioner ought to have considered any risks arising from ring-fencing these stations and then weighed those risks against the benefits of retaining them.

Temporary fire station closures in Southwark

160. The final matter relied upon in this context is what Mr Stilitz describes as "a local issue to Southwark." It arises, it is said, from the fact that during the three-year lifetime of the Plan, two stations in Southwark (Old Kent Road and Dockhead) will be closed for refurbishment under PFI schemes for 18 months successively with the consequence that one or the other of these stations will be closed throughout the currency of the Plan. That consideration was not factored into the modelling process which was run on the basis that those stations would be open.

161. The Old Kent Road station was apparently closed on 14 October 2013 and it is argued that in the absence of a risk assessment which takes into account the temporary closure of Old Kent Road and later Dockhead the full impact of the Plan has not been considered.

**(ii) The Commissioner's response to the fundamental challenge**

162. A strong legal argument has been advanced by Mr Moffett that this is simply not the kind of decision-making area in which the court ought ordinarily to intervene and that indeed no legitimate case has been made out for any such intervention. I will, of course, address these legal issues in due course, but it is again unrealistic to isolate the propositions of law from the decision-making matrix to which they are said to apply and, accordingly, I need to examine that matrix in the first instance.

163. I would merely preface that review by recording that the Commissioner's position as a general proposition is that all relevant factors were considered in the decision-making process, a process to which he also applied his experienced professional judgment in weighing up relevant factors, including those required directly or indirectly by statute, and that he formulated a recommendation upon which the Mayor was justified in relying.

164. The timescale within which to prepare a report and recommendations for savings of the amounts required will have been apparent from paragraphs 47-60 above. Even allowing for some advance warning of the need for further savings, the time for producing a comprehensive package of measures, for consulting upon them and then producing a final recommendation was short. Starting with a blank sheet of paper was not an option, nor, of course, could it have been unless resources were unlimited and the timescale for making recommendations extremely generous. However, over the years an electronic modelling process had been developed and refined which was designed to incorporate the many complex facets of organising fire and rescue services across the whole of Greater London for which, of course, the LFB is responsible. It was that model that was brought into play in formulating the draft Plan.

165. Supporting Document 11 gives details of the nature of the modelling process and the Commissioner's witness statement describes its essential elements. I need not go into great detail about this because there is no suggestion that the decision-makers were wrong to place intrinsic reliance on the results of the modelling exercise. What is contended is that some of the fixed parameters fed into the modelling process as inputs (for example, it is said, the attendance times for 1st and 2nd appliances, the assumption that 28 fire stations would not close and so on) resulted in the assessment of local risk being ignored with the result that the output failed to reflect this aspect also. I will return to that aspect later. However, I should say a little about the way the modelling process works.

166. The Commissioner indicates that since 2004 the LFB has worked closely with ORH Ltd ('ORH'), an experienced company that specialises in providing modelling processes and analysis in order to improve the efficiency and effectiveness of emergency services. ORH appears to have provided much, if not all, of the content of Supporting Document 11. There is a paper within Supporting Document 11 in which the company describes itself in this way:

> "ORH has been working with the emergency services in the UK and overseas, using these modelling techniques, for over 26 years, and in that time has undertaken about 600 studies for over 100 clients. ORH has worked with 14 Fire and Rescue Services using this modelling approach, typically supporting their IRMP process."

167. Of its modelling approach, it says this:

> "ORH provides a bespoke modelling service based on proven Operational Research (OR) techniques. ORH models have been designed to help understand the complex relationships between demand, performance, resources and efficiency, for services involving emergency response (Fire, Ambulance and Police) and public access to facilities.
>
> The modelling process involves validation (accurately representing the current situation), optimisation (identifying the 'best' solutions), simulation (asking 'what if?' questions) and sensitivity modelling (testing that solutions are robust) …."

168. The Commissioner says that the "modelling process has been used in order to assist decisions as to how to allocate the [LFB's] resources to maximise the efficiency and effectiveness of the service that we provide to Londoners." He gives some more detail of what it involves which, in the first instance, I can summarise briefly as follows. First, the 'validation' part of the process ensures that the model accurately reflects the operational responses of the LFB's appliances in terms of response performance and appliance utilisation. He describes the model as "an electronic representation of the [LFB]". He also says that it "reflects the demand on the [LFB] at any particular time." Second, the 'optimisation' part of the process seeks to identify the "best" options for allocating resources, where what is "best" is determined by the objectives and constraints that the LFB places on the model. Third, the 'simulation' part of the modelling process helps to assess the workload and performance impact of

any change in appliance and station deployment, taking account of appliance availability. At this stage, incidents are generated electronically at particular locations across London and vehicles are assigned to respond based on the LFB's rules relating to crew skills, type of incident and so on, and the likely effects of different deployment scenarios, without having to test it in the real world. This stage also assesses how any changes impact on attendance times to all incidents over a particular period and produces information about the attendance times both at London and borough levels. Finally, the sensitivity analysis is designed to ensure that the solutions identified are robust and that factors which have not been input directly into the optimisation process are considered in the process. It takes account of the impact of any changes proposed in the optimisation stage in relation to particular factors (for example, attendance times to high-rise buildings, attendance times to areas of deprivation) to ensure that the outcome that has been proposed in the optimisation process is acceptable as against these factors.

169. Before looking at the components of the modelling process that are said by Mr Moffett to afford an answer to the Claimants' criticisms, it is, perhaps, pertinent to recall that the historical approach to the provision of fire and rescue services prior to 2004 had resulted in what the Commissioner described in his witness statement as "a cluster of resources in the inner London boroughs" (see paragraph 26 above) resulting in faster response times in central and inner London than outer London. It has not been easy to reproduce in this judgment some of the pictorial representations of the locations of incidents in relation to the location of fire stations, but reference, for example, to the illustration at Appendix B5 to Supporting Document 11 (which can be found at http://www.london-fire.gov.uk/Documents/Sup11-Fire-service-modelling.pdf) demonstrates the location of existing fire stations in Greater London superimposed on the plan showing the distribution of the most serious incidents (i.e. non-false alarms receiving two or more appliances as a response) that occurred in the period from April 2007 to March 2012 (see paragraph 172 below) and the "cluster" to which the Commissioner refers can be identified clearly. A scanned version of this plan can be found at Appendix 8 to this judgment.

170. The Claimants' suggestion that "local risk" has not been properly considered is refuted strongly by the Commissioner by reference to one fundamental feature of the modelling process. I will record his own words and those of ORH about this below (see paragraphs 171-172), but in summary (and put very simply) what is said is that at the initial validation and optimisation stage of the process, the history of where the most serious incidents (as defined in paragraph 169 above) for the <u>previous five years</u> have occurred is fed into the modelling programme to inform the programme of where this aspect of the demand upon the LFB's services is likely to emerge in the future. Because the definition of a "serious incident" for this purpose involves not less than two appliances being sent out, because the PDA for a dwelling fire is always two appliances (see paragraph 135 above) and because excluded from the history are false alarms, what is thus fed into the programme is the history of the true demand for "real" fires that threaten life and limb. The history will include all "real" fires in high-rise dwellings, whether in the Claimant boroughs or elsewhere in London. The Commissioner's position is that this will almost certainly represent an accurate measure of the true demand and the modelling programme will thus "know" where the demand has to be met (and its intrinsic frequency) when it is asked to put forward various options in the light of other factors fed into the modelling exercise. It follows,

he asserts, that the true measure of "local risk" of any sort involving a dwelling fire, including those in high-rise buildings, has been reflected in the modelling process from the outset. This is not, of course, the only factor injected into the modelling process, but it is the principal factor that the Claimants are suggesting was ignored totally.

171. The Commissioner put the general position in this way in his witness statement:

> "97. In the context of the claim that is brought, it is important to understand that emergency cover for London is planned on a risk-based approach. One of the ways in which this is achieved is through populating the model with historical data about incidents. There is a strong correlation between where we have attended incidents in the recent past and those we currently attend, so we know that the historical data is a very strong predictor of future demand on the service given the strong year-on-year correlation between incident locations. For the purposes of the optimisation process, the model is run against all serious incidents occurring over the last five years that are not false alarms (i.e. those incidents that receiving two or more appliances in attendance). However, all incidents are considered when the model is simulating the outcomes that have been proposed during the optimisation stage in order to see the real effect of any changes on the [LFB]. This approach means that the options generated during the optimisation process are not influenced unduly by the number and location of automatic false alarms, however all incidents are considered when the simulation process is run to ensure that true impact of the proposals are measured.
>
> 98. Historical data on serious incidents are a good proxy for risk as they represent all the occasions over a five year period where risk has given rise to an actual incident (likelihood) and a response of two or more fire engines was sent (consequence). The location of serious incidents is highly correlated between the five years of incident data used for optimisation modelling and is a sound basis for predicting where the [LFB] might get called in the future …."

172. He went on to say that the correlations were dealt with in a section of Supporting Document 11 entitled 'Model Revalidation in 2012'. The three paragraphs that appear to deal with this are as follows:

> "9. To validate against periods when normal operational activity is being carried out is essential as the primary use of the model will require comparison to the base position of 169 appliances across 112 stations. The most recent complete financial year (April 2011 to March 2012) can be confidently taken as a reliable sample period for demand rates and performance measurement.

> 10. The geographical distributions of incidents (for each of the five incident types …) are mapped in Appendices **B1** to **B5** using a five year sample period (April 2007 to March 2012). The distribution of false alarm incidents … are highly concentrated around Central London. The most evenly distributed incidents are one appliance fires ….
>
> 11. A geographical correlation analysis (covering the five year sample) is presented for each of the five incident types in Appendix **B6**. As expected, false alarm incidents have the strongest year on year correlations. For all incident types the analysis shows that the correlations become only marginally weaker as the time period increases; this supports the use of a five year sample for incident distributions to be used in the model validation."

173. The "five incident types" referred to are 'False Alarm - 1 Appliance Attended', 'False Alarm - 2 Appliances Attended', 'Fire - 1 Appliance Attended (typically Secondary fires), 'Other incident - 1 Appliance Attended (includes Flooding, Shut in Lifts, etc)' and 'Fire/Other Incident - 2+ Appliances Attended (Serious Incidents)'.

174. Mr Moffett makes the legitimate point that this correlation exercise has never been challenged by the Claimants and no evidence contradicting its validity has been put forward. It would, of course, have been surprising if any such challenge had been mounted if, as ORH says, it has "worked with 14 Fire and Rescue Services using this modelling approach, typically supporting their IRMP process" (see paragraph 166 above).

175. The Commissioner emphasised his position in the following passage in his witness statement:

> "I also understand that it is said by the Claimants that the decision in relation to resource allocation does not take account of the characteristics of particular boroughs, for example the types of premises located in that borough such as high-rise buildings, high profile buildings and heritage buildings. However, this … misunderstands the modelling process. The model considers the location of all serious incidents across London for the last five years. Given that serious incidents includes any incident to which two or more fire appliances have attended that is not a false alarm, the model will take account of any fires that have taken place in high-rise buildings, high profile buildings and heritage buildings across London over the last five years. Given the strong correlation between the locations of these incidents year on year, the modelling process optimises the location of resources in order to best respond to these serious incidents, including, for example, high-rise buildings, heritage buildings, or high profile buildings. To the extent that particular types of premises or particular groups of people generate demand for the [LFB] to attend to serious incidents, this is taken into account in the model through the

> risk nodes. This means that the method adopted by the [LFB] is grounded in evidence of the actual likelihood of serious incidents occurring in particular localities. The Claimants appear to be advocating an approach which looks at the theoretical likelihood of a fire occurring at a particular type of premises, for example high-rise buildings or high profile buildings. However, the approach adopted by the [LFB] is to look at actual evidence as to the likely locations of serious incidents based on historical data and to plan by reference to this."

176. His reference to "risk nodes" needs to be understood. ORH's modelling process requires, amongst other things, input relating to "travel times" and the establishing of a "travel time matrix" for London. At its simplest this matrix establishes the travel times between a very large number of permutations of location within Greater London. Once inputted into the modelling programme the programme will "know" how long, in a variety of traffic conditions, it will take to get from A to B, C to D and A to D and so on. This is obviously important when computing response times to incidents from various fire stations.

177. The "travel time matrix" is constructed using sophisticated navigation technology data which is then "calibrated against travel times actually achieved" (Supporting Document 11). ORH describe the process thereafter as follows:

> "22. The ORH travel time matrices are developed using a node system, with an appropriate geographical distribution of nodes essential for modelling purposes. The requirement for a large number of nodes to improve the granularity (and potentially the accuracy of travel times) must be balanced with the need to avoid introducing too many redundant nodes and to ensure a quick processing speed of the models.
>
> 23. The travel time matrix currently used for the LFEPA models is based on the distribution of Lower Super Output Areas (LSOAs) across London, of which there are 4,765. Incident weighted centroids were defined for each LSOA and nodes were therefore created at these locations; for the larger LSOAs (in terms of size and incident volumes), additional nodes were placed to improve the relationship between incident locations and nodes. This gave a total of 4,935 nodes across London including the station locations.
>
> 24. Advancements to computer processing power and enhancements to the models used by ORH have enabled an increase in the number of nodes for the travel time matrix in London.
>
> 25. Although the LSOAs have remained the principal building blocks in terms of generating an appropriate node set, the smaller census boundaries – Output Areas (OAs) – have been used across substantial sections of London with high demand,

> or where the underlying LSOA is too large in terms of geographical area. As a result, there are now 6,697 nodes within London to which incidents can be assigned, an increase of 40% from the previous travel time matrix ….”

178. It will be recalled that the role of an LSOA was mentioned in the witness statement of Ms Moyies (see paragraph 111 above). What, of course, is being said by ORH is that, compared with the information the model had about the location of localised demand in previous LSPs, the information available for LSP5 was significantly greater and considerably more extensive.

179. The Commissioner takes this a little further in his witness statement where he says this:

> “The optimisation modelling used 6,700 risk nodes across London which were populated with the analysed demand of serious incidents. In this respect, the size of a node does not relate to the size of the geographical area to which it relates, but to the number of incidents in the area to which it relates.”

180. In his witness statement a map appears that is reproduced in Appendix 9 to this judgment which the Commissioner says “presents the analysed demand of serious incidents.” He goes on to observe that “a larger number of serious incidents occur within central London but that there are localised examples where higher demand is observed in outer London, for example, around Heathrow airport.” A glance at the map would confirm the accuracy of that observation.

181. When it is said by ORH that incidents are “assigned” to a particular node (see paragraph 179 above), it means, as I understand it, that an actual incident is treated for modelling purposes as having occurred at a particular node. It is a means of giving a broadly accurate geographical location within the model for each incident. The more populated with serious incidents the node is, the greater the need for the model to ensure that appliances can reach the location of the node within an appropriate response time.

182. Responding to the suggestion made on behalf of the Claimants that his approach failed to descend to the detail of the needs of local areas with sufficient particularity, the Commissioner said this in his witness statement:

> “The Claimants argue that LSP5 and the methodology underlying the proposals do not take account of the likelihood of fire at ward level. This overlooks the point that the model considers risk at a much more detailed level than even ward-level as there are 6,700 risk points, and only 649 wards across London. For example, there are ordinarily a number of risk points within each ward ….”

183. He exhibits to his witness statement (at RD/174) an enlarged map (which is a portion of the map attached as Appendix 9 to this judgment) where the seven Claimant boroughs are highlighted and the ward boundaries of each ward can be seen within each borough. It has not been possible to reproduce it in this judgment, but reference

to it does demonstrate clearly where the various nodes are within the individual wards and the Commissioner is correct when he says that virtually every ward has at least one node within it and in many there are many nodes, some to which a good many serious incidents are assigned (see paragraph 181 above).

184. On the Commissioner's case, it is at this stage of the modelling process that the detailed local risk is fed directly into the process. His evidence is that the next stage in the overall process when the local impacts of the proposals were considered - and thus factored into the final recommendation and the ultimate decision - was at the sensitivity analysis stage (see paragraph 168 above). This, he says in his witness statement, "involved consideration of the impact of the proposals on nine different areas of interest … those living at priority postcodes, the impact on accidental fires in the homes that were severe or significant, high-rise housing incidents, the impact on the top 10% of deprived lower super outputs areas, fatalities at fire, injuries at fire, rescues at fire, third appliance attendance times and heritage buildings." That stage comes after the stage at which the issue of response times is addressed in the modelling process, but I am endeavouring at present to focus on the issue of intrinsic local risk assessment and will return to the response time issue shortly (see paragraphs 202-204). The sensitivity analysis to which I am about to refer related, of course, to the "151/100" proposal that appeared in the draft Plan.

185. The source for the Commissioner's evidence about this is to be found in Supporting Document 20 and, in particular, Appendix 14. I will record those aspects that are of relevance to the issue of "local risk". The first relates to priority postcodes. In relation to "P1 households" the following is recorded:

> "**Priority 1 postcodes used to identify and target the people with lifestyles which make them more at risk from fire**
>
> The Brigade's Incident Risk Analysis Toolkit (iRAT) helps target community safety activity by analysing and identifying those lifestyle characteristics which mean that people are more likely to experience a fire or suffer the consequences of the fire in the home. We call these P1 (priority one) households. We have used this data to look at the impact of the option on those households. The impacts on range coverage are as follows:
>
> - Average 1st appliance range cover deteriorates by 13 seconds (London-wide). The proportion of incidents within 6 minutes deteriorates by 5.0 per cent.
>
> - Average 2nd appliance range cover deteriorates by 10 seconds (London-wide). The percentage of incidents within 8 minutes deteriorates by 1.1 per cent."

186. In relation to the issue of severe/significant fires in the home, the following is recorded:

> "This sensitivity measure uses the fire severity index developed for fires in the home which uses a range of factors to categorise fires as severe, significant, moderate and slight. The analysis

> has used data since 2008 and is the historic location of fires in the home with a fire severity categorisation of 'severe' or 'significant' and considered range cover …. The impacts on range coverage are as follows:
>
> - Average 1st appliance range cover deteriorates by 11 seconds (London-wide). The percentage of incidents within 6 minutes deteriorates by 4.9 per cent.
> - Average 2nd appliance range cover deteriorates by 10 seconds (London-wide). The percentage of incidents within 8 minutes deteriorates by 0.5 per cent.
> - Presently, there are four boroughs where average second appliance range cover to fires in the homes with fire severity of significant is greater than the 8-minute standard …."

187. That paragraph goes on to explain, in relation to the 8-minute standard, that in Bromley, Harrow and Richmond-on-Thames there is improvement in 2nd appliance cover and no change in Kingston-on-Thames.

188. The next area considered is "High rise housing incidents". The appendix records as follows:

> "The Brigade records where appliances are mobilised to an incident where the Control Officer knows that the fire is in a high rise housing block. This historic data … has been used to look at the impacts on these fires. These incidents are most typically found in areas of central London and therefore the London-wide impacts are greater than those observed for all incidents. The impacts on range coverage are as follows:
>
> - Average 1st appliance range cover deteriorates by 21 seconds (London-wide), but only impacts on 13 boroughs. The percentage of incidents within 6 minutes deteriorates by 8.7 per cent.
> - Average 2nd appliance range cover deteriorates by 23 seconds (London-wide), but only impacts on 17 boroughs. The percentage of incidents within 8 minutes deteriorates by 4.0 per cent.
>
> Presently:
>
> - There is one borough where just first appliance average range cover to high rise incidents greater than the 6-minute standard.

- There are three boroughs where just second appliance average range cover to high rise incidents greater than the 8-minute standard.

- There is one borough where both first and second appliance average range cover to high rise incidents falls outside of the standards for LFB-wide first and second response.

The changes would mean:

- Two boroughs would improve their average second appliance range cover to high rise incidents to within 8 minutes, and two boroughs, already within 8 minutes for their second appliance average range cover to high rise incidents, would further improve.

- No borough would deteriorate from within, to outside of, 6 minutes for the first appliance average range cover to high rise incidents.

- One borough would deteriorate from within, to outside of, 8 minutes for the second appliance range cover to high rise incidents, and one borough, already outside of 8 minutes for second appliance range cover to high rise incidents, would deteriorate further.

189. The final area that is arguably of relevance in this context is that relating to LSOAs (lower super output areas). The following is recorded:

> "This sensitivity analysis has looked at the Index of Multiple Deprivation (IMD) and has considered range cover to the lower super output areas rated as being the top 10 per cent most deprived. The current position and impacts of our proposals on range coverage are as follows:
>
> Presently:
>
> - There are two boroughs where just first appliance average range cover is greater than the 6-minute standard.
>
> - There is one borough where just second appliance average range cover is greater than the 8-minute standard.
>
> - There is one borough where both first and second appliance average range cover falls outside of the standards for LFB-wide first and second response.
>
> The changes would mean:

- One borough would improve its average second appliance range cover to within 8 minutes.

- No borough, already outside of either the first or second standard for LFB-wide response to rescues, would deteriorate further.

- No borough would deteriorate from within, to outside of, either the first or second standards for LFB-wide first and second response to rescues."

190. In relation to this sensitivity analysis, the Commissioner said this in his witness statement:

> "127. During the consultation process, sensitivity analysis was undertaken in relation to the impact of the 151/100 proposal at ward level. The sensitivity analysis therefore focussed on the impact of the proposals on particular types of premises and particular sectors of the population. Whilst these factors had already been factored into the optimisation process indirectly by way of the 6,700 risk nodes representing the likelihood of fires in particular locations, the sensitivity analysis was a method to ensure that the direct impact on particular sectors of the population, particular areas or premises, and the consequences of the fire were not unacceptably worse under the proposals. I therefore do not accept the Claimants' argument that the proposals were formulated without regard to particular characteristics of particular areas."

191. The ultimate aim of the sensitivity analysis was to see whether the impacts of the draft Plan were unacceptable. The Claimants submit that merely recording the effects of the proposed Plan at this stage in the process in the way set out above does not constitute any active engagement with the issues and demonstrates that the issues were not considered as part of the decision-making process. I will deal with this argument in due course.

192. I am, as I have indicated, dealing at this point with whether the Claimants have established the argument that the draft Plan does not take into account "all foreseeable fire and rescue related risks that could affect its community" (the essential requirement of the National Framework), rather than the argument that this requirement has been subverted by the adoption of the principle of equal entitlement. If I have understood the Claimants' arguments correctly, these contentions, though related, are to be treated separately. The emphasis of the argument at the level at which I am considering it appears to be that the Commissioner did not incorporate local risk factors (such as high rise buildings, demographics, local deprivation and so on) in the analysis and thus that these factors simply did not feed into the decision as to where the cuts in service should be made.

193. I should also observe that I am not at this stage dealing with the alleged relevance of the role of fire prevention measures that, it is said, informs the way local risk is to be perceived. I will return to that in due course (see paragraphs 233-246).

194. Mr Moffett on several occasions challenged the Claimants on the basis that they had ignored a fundamental aspect of the modelling process, namely, that reliable predictions of where fires were likely to occur in future had been injected into that process from the outset and that those predictions descended to a very localised geographical framework because of the adoption of the nodes to which I have referred above. Mr Stilitz rejected the charge, but I am bound to say, having reviewed the arguments for the purpose of preparing this judgment, it is difficult to find any meaningful response to the contention that local risk was taken into account in this way and, subject to the argument concerning the principle of equal entitlement, that it was an entirely effective, rational and fair way of doing so. If and to the extent that the Guidance Note issued by the ODPM (see paragraphs 28 *et seq* above) remains of relevance, Mr Moffett suggests that this approach certainly meets the spirit, if not indeed the letter, of paragraph 3.3.4 of the Guidance Note and indeed also paragraph 3.4.4 of the same Note. He submits that, subject to the argument about the principle of equal entitlement, the Commissioner was implementing the statutory framework or, more accurately, was affording the Mayor the basis, if he accepted the Commissioner's recommendation, for complying with that framework.

195. If one adds to that the fact that the modelling process adopted was one previously adopted by the Commissioner (and his predecessor), is obviously adopted by other fire service authorities throughout the country and the consequences of its utilisation have not been the subject of any adverse direction by the Secretary of State since 2004, it is quite impossible for the court to reach any conclusion other than that its use in the way it was used in formulating the draft Plan was entirely lawful and rational. It did address in arguably the most meaningful way (namely, by reference to the detailed history of the previous 5 years) the local vulnerabilities to fire at a level at least commensurate with ward level (though in fact more particularised than that). The National Framework and indeed the Guidance Notes are not prescriptive as to the means by which all foreseeable risks are identified – what is required is that they are addressed at a level of detail that enables proper planning of a response to the needs thus identified. That, as it seems to me on the evidence, was done.

196. I have not been persuaded that this aspect of the approach to the Plan was other than lawful and rational. That conclusion is independent of the issues arising from the application of the principle of equal entitlement.

197. Has the application of that principle subverted what is otherwise an acceptable approach to the modelling or, as Mr Stilitz put it, has its adoption "necessarily [disavowed] local risk when setting the uniform targets across … London"? This question needs to be addressed at the same time as addressing the question of whether, as the Claimants assert, the Commissioner has, in practice, treated attendance times as a proxy for assessing risk?

198. In relation to that latter question, the Commissioner addressed it directly in his witness statement in the following way:

> "… it is important to understand that the attendance standards are not a proxy for risk. This is important, because the Claimants' case appears to proceed on the wholly mistaken assumption that it was the attendance standards which drove my deployment proposals, as an alternative to risk. This was not the case. The Brigade's overall aim is to get to emergency incidents as quickly as possible anywhere in London. Performance against this objective is measured by reference to the attendance standards, which operate as key performance indicators. Whilst I accept that the speed of attendance is an important factor in mitigating the risk of casualties from fire, there is no clear dividing line in relation to the risk of casualties as between an attendance time of 5:59 and 6:01. Therefore, where the average attendance time for a particular borough exceeds the attendance standard, this does not mean that an unacceptable risk is therefore posed to people living and working in that borough. The same can be said in relation to individual wards within boroughs. In setting the attendance standards at 6 minutes for the first appliance and 8 minutes for the second appliance, I acknowledge that some responses will be faster and some will be slower than those averages. It is inherent in the use of average attendance times that there will be some variability in performance either side of the average. In short, the attendance standards are principally used to measure performance on an ongoing basis, however they can also be used to feed into decisions in relation to reallocation of resources to ensure that proposals do not result in undesirable outcomes at borough level. One of the reasons for adopting the third attendance time measure in LSP3 (i.e. an appliance to arrive within 12 minutes in 95% of occasions) is to ensure that no incident has an exceptionally protracted attendance time."

199. There are some other passages in the Commissioner's statement that are of some relevance in this context. Reverting to the modelling process, it is important to see what was "fed into" the initial stages of the process. In relation to the optimisation part of the process (see paragraphs 168 and 171 above) the Commissioner said this:

> "There were two overall objectives of the optimisation process: (i) the need to identify a particular level of savings and (ii) <u>the need to minimise attendance times to serious incidents across London</u>. Three constraints were also imposed on the optimisation process: (i) protecting particular stations from closure, (ii) maintaining a minimum of one fire station in each Borough, and (iii) station capacity (those stations that could take a second appliance). A further stage was to apply particular rules to the model, namely protecting performance at borough level by <u>ensuring that no borough that was currently outside of the attendance standards had poorer performance as a result of the reallocation of resources and any boroughs that were within the attendance standards did not move to outside</u>

> the attendance standards. I refer to this as the application of "borough rules". (My emphasis.)

200. In relation to the realisation of the objective of minimising attendance to serious incidents, in a passage in his witness statement that followed shortly after to his reference to the plan at Appendix 9 to this judgment (see paragraph 180 above), he also said this:

> "I understand that one of the Claimants' arguments is that the decision to allocate resources in a particular way was arrived at without consideration of "risk" and that the allocation was driven simply by the need to meet standardised attendance times across London. This is incorrect. It is important that I emphasise that compliance with the attendance standards at a London level was not an objective or criteria input into the optimisation process. As I have explained above, the optimisation process sought to minimise first and second appliance attendance times to all serious incidents across London, irrespective of the attendance standards. Although 6 and 8 minute attendance standards were used as a reference point to judge the effect of making particular changes in the simulation stage of the model …, London-wide attendance standards did not directly influence the optimisation process which sought to allocate resources in a way which reduced attendance times across London to the maximum possible extent, whether this be to 4 minutes, 5 minutes, or 6 minutes. In short, the optimisation process would produce the same suggested outcomes at this stage irrespective of the attendance standards. To this extent, the Claimants' suggestion that the first and second attendance standards formed the basis of the decision as to where to make the cuts betrays a fundamental lack of understanding of the modelling process, which was set out in Draft LSP5 and the supporting documents …." (My emphasis.)

201. Notwithstanding this evidence, Mr Stilitz contends that Supporting Document 20 shows that the 6- and 8-minute attendance targets did not arise from the model as outputs, but they represented inputs into it. Only once those targets had been inputted, he submits, did the model identify the best configuration of appliances and fire stations.

202. The distinction between what the Commissioner says was the position and the position adopted by Mr Stilitz may seem a fine one, but it is a real one. As I understand his submission, it is to the effect that the model was, in effect, "instructed" to produce a resource deployment configuration that met those average attendance targets. However, reference to Supporting Document 20 does, in my judgment, show that what the Commissioner has said is correct. Paragraph 28 of the document referred to the many possible combinations of appliances and fire stations that the model could, for example, generate in order to provide savings of £50 million. It continues thus:

> "ORH employed sophisticated optimisation techniques to find the best configuration – i.e. the minimum impact of 1st and 2nd appliance response times – for each of the combinations in the matrix. This approach ensured that for each level of savings the configurations put forward for further assessment were optimal in terms of providing emergency cover to London." (My emphasis.)

203. Under a heading entitled 'Modelling £25m for optimum London-wide performance' the following three paragraphs appeared:

> "31. In the case of the £25m target, 34 options were summarised (ranging from 143 appliances at 112 stations to 159 appliances and 80 stations). The summary identified seven different performance impacts, which were:
>
> • average 1st response time to all incidents (target is 6 minutes).
>
> • average 2nd response time to all incidents (target is 8 Minutes).
>
> • 1st appliance performance at 95th percentile (target is 95 per cent within 12 minutes).
>
> • appliance utilisation impacts (how busy the appliance is attending incidents).
>
> • the number of boroughs that would achieve the 1st and 2nd appliance target (i.e. the 'borough score').
>
> • the combined 1st and 2nd appliance performance (average).
>
> • the number of boroughs achieving 1st appliance performance within the 95th percentile.
>
> 32. For each option, the optimisation model then identified the best configuration of appliances and stations, applying the operational objective to minimise aggregate London-wide 1st and 2nd appliance response times to serious incidents. This led to the identification of results, reported in terms of the performance criteria described above. The modelling also ensured that a station could not be identified for closure at, for example, £10m and then be re-opened at £25m. At this stage, specific deployment options were still not identified or under consideration.
>
> 33. For the £25m savings options, the average 1st response times ranged from 5:24 (143 appliances at 112 stations) to 6:02 (159 appliances at 80 stations). The standards for average 2nd

> response and the 95th percentile were comfortably met for all options. In considering the "borough score" and the combination of 1st and 2nd average response times, the deployment options of 152 appliances at 95 stations and 153 appliances at 93 stations were identified in the ORH modelling as providing the strongest levels of performance. However, because the performance impacts for the option of 154 appliances at 91 stations were also very strong and taking into account the benefits of larger stations, the work to look at actual deployment impacts proceeded on the basis of further examination of 152 appliances at 95 stations and 154 appliances at 91 stations." (My emphasis.)

204. Whilst the phraseology of these paragraphs presents its challenges, they do, to my mind, convey tolerably clearly that the model had been "instructed" to find configurations that minimised the aggregate (i.e. the total) of 1st and 2nd appliance response times to serious accidents across the whole of London. When it had done so, each configuration (with its myriad of likely attendance times) was assessed against the performance criteria identified which included the 6- and 8-minute attendance targets referred to above. (Indeed reference to the succeeding passages in this document, dealing with other configurations such as 152/95, 154/91 and so on, each speaks in terms of the objective of "minimising London-wide 1st and 2nd appliance times to serious incidents".)

205. This approach does not, of course, render irrelevant the influence of those targets on the appraisal of the particular configuration generated by the modelling process (and does not mean that the role of the principle of equal entitlement on the overall outcome is rendered irrelevant either), but it does mean that the modelling process was not, as the Claimants suggest, configured to produce results that had to be consistent with those targets. To the extent that that argument is maintained, I do not consider it well-founded and it is not consistent with the evidence.

206. However, because the output of the modelling process was judged by reference to what have been described as "pan-London" attendance time targets (as identified in paragraph 92), the principle of equal entitlement has undoubtedly had some influence on deciding whether the Plan was an acceptable way of achieving the necessary budgetary savings. Indeed this has never been denied by the Commissioner. The important question, as it seems to me, is whether it was unlawful or irrational for the decision to adopt the proposed Plan to be made when the assessment of the acceptability of the Plan was influenced by the application of that principle.

207. The essence of Mr Stilitz's argument was outlined in paragraphs 95-98 above. The essence of the Commissioner's response was outlined in paragraphs 81-94. I need not repeat those contentions other than to remind myself that the Commissioner was at pains to emphasise that the principle of equal entitlement was a "guiding" principle, not an overriding one (see paragraph 81 above) and that what lies at its heart is the proposition that everyone in London should be entitled to expect a broadly similar response in terms of the arrival time of a fire appliance or appliances to the scene of, in particular, a dwelling fire irrespective of where they live and the likelihood of a fire in that particular locality. Thus expressed, it is easy to see why such an egalitarian principle would resonate positively with a majority of those originally consulted about

its validity and applicability (see paragraph 85 above) and why it continues to attract significant, though not overwhelming, support.

208. Whatever formulation of the legal test might be adopted, it is quite plain that blind adherence to a principle, guiding or otherwise, that either ignores the will of Parliament, expressed in clear statutory language, or has become so obviously outdated or otherwise inappropriate as to make its invocation irrational, would be a matter upon which the court might be driven to intervene in appropriate circumstances. The question is whether the influence of the principle in the context of the formulation of the Plan falls within either of those two territories.

209. An apparent immediate hurdle for the Claimants is that the principle has plainly influenced previous plans for London since the FRSA and no-one has sought to argue that by doing so those responsible for deciding to adopt those plans were acting in breach of the Act (or any other statutory provision) or that they were acting irrationally. However, it is fair to say that none of those earlier plans involved cuts to front-line services and an interference with response times and that, accordingly, the context of the decision under review in the present case might be said to be different from the context of the decisions previously made. Mr Moffett submitted that the context did not matter: the approach was either lawful or unlawful. I am not sure that I can accept that proposition in quite the unequivocal terms in which it is advanced. That no-one has mounted a challenge previously does not inexorably lead to the conclusion that what had been done previously was lawful when examined carefully. However, in any event, of course, the arguments concerning the effect of the principle in relation to the Plan under consideration in these proceedings would need to be addressed irrespective of any historical perspective, subject only to the question of whether it would itself have been irrational, notwithstanding the need to look at matters afresh, to ignore the way the fire services across London had been organised in the preceding 8/9 years.

210. As I have said, it is plainly necessary to examine the case advanced by the Claimants on its own merits. The court is being asked only to evaluate that case and nothing more. That being so reference to what happens in other fire authority areas will not be determinative and is of only passing relevance. However, the Commissioner does draw attention in his witness statement to the 2013-2016 IRMP for Merseyside Fire and Rescue Authority which has adopted a <u>county-wide attendance standard</u> described as the "Single Emergency Response", namely, 10 minutes for the first attending appliance and also West Midlands Fire and Rescue Authority which has adopted a single <u>county-wide attendance standard</u> for "life risk incidents" in its 2013/2016 IRMP.

211. The Commissioner acknowledges that other metropolitan fire and rescue services do have policies that seek to prioritise attendance times for particular areas or particular incidents and thus set differential attendance standards by reference to particular areas or incidents. He accepts that it is a legitimate view that if, for example, there is a preponderance of high-rise buildings in an area greater resources should be devoted to that area (or at least that consideration should be given to the devotion of greater resources) and that this would, in principle, be one way in which to approach an exercise such as that which is the subject of challenge in this case. However, he says that "a fire with serious consequences can occur anywhere in London" and that it is his view that "pursuant to the guiding principle of equal entitlement … such fires

should receive broadly the same attendance time wherever they occur." He supplements that view with this example relating to the position of an elderly disabled person living at the top of a high-rise block:

> "… the potential for … serious consequences are the same whether the elderly disabled person lives at the top of a high-rise block in (say) Islington or (say) Barking & Dagenham. … crudely put, the question therefore arises whether an elderly disabled person living in Islington should benefit from a faster attendance time at the expense of the elderly disabled person living in Barking & Dagenham because there are more elderly disabled persons living in high-rise blocks in Islington than in Barking & Dagenham. I accept, and have recognised throughout, that it is potentially legitimate to answer "yes" to that question. However, my view (and the Brigade's view since 2004) is that as the potential consequences that might be experienced by an elderly disabled person living at the top of a high-rise block are the same no matter where in London he or she lives, he or she should not receive a slower attendance times simply because of the nature of the milieu in which he or she happens to live."

212. Mr Moffett also says, by reference to the modelling exercise to which I have referred, that the application the principle of equal entitlement does not prevent the model, when generating particular configurations of fire stations and appliances for further evaluation, from allocating emergency response resources according to the risk of serious incidents occurring in particular localities. Given the initial injection into the modelling process of the location of all serious fires over the previous 5 years (see paragraph 170-173 and 195 above), the modelling inevitably results in more substantial resources being allocated to inner London because serious incidents are more likely to occur in inner London: the model will try to ensure that sufficient fire appliances are allocated to attend those areas however many serious fires are predicted to occur per day there, just as it will to ensure that sufficient fire appliances are allocated to attend those areas where a lesser number of serious fires are predicted to occur per day. The principle of equal entitlement seeks to ensure that the fire appliances arrive within broadly the same periods irrespective of where the fire may be.

213. I will, of course, be dealing with the issue of the consultation process in due course, but the question of whether the principle should be applied did provoke some responses. Of the 1465 members of the public who expressed a view on the question of whether there should be a single response time standard for the whole of London, 47% agreed and 53% disagreed.

214. Before reaching a conclusion on this issue I should refer to an observation made by Mr Stilitz about the Commissioner's justification for the principle of equal entitlement. The paragraph of his witness statement that I quoted in paragraph 207 above is similar to paragraph 69 of his witness statement that I quoted in paragraph 79 above. He suggests that the Commissioner's example given in his paragraph 69 "dodges the hard questions" and "means that a fit middle-aged person living in a semi-detached house in Croydon can expect the same attendance time as an elderly

disabled person living at the top of a high-rise block in Camden." Mr Moffett submitted that it was difficult to understand the point being made here and, with respect to Mr Stilitz, I agree. Mr Moffett emphasises that the Commissioner's approach is to try to ensure that similar people in similar circumstances have the benefit of similar response times if a dwelling fire occurs and, in order to see whether the principle works, endeavours to compare like-with-like. Mr Moffett's riposte was telling: on the Commissioner's approach, he argued, a disabled person in Camden benefits from the same response time as a fit person in Croydon, but if the argument advanced by Mr Stilitz is valid, a fit person in Camden would benefit from a better response time than a disabled person in Croydon.

215. Whether this kind of debate assists directly on the resolution of this issue is open to question, but it does highlight one consideration that, to my mind, anyone standing back from looking at a particular local effect of the Plan would observe. It would be that it is possible to conceive of almost any number of permutations of individual and collective circumstances throughout Greater London that could promote a discussion, possibly a lively one, about what is a "fair" or "the safest overall" arrangement for the emergency fire services. There will be "hard questions" to address from almost any angle. At the end of the day, someone or some body has to make a judgment about how best to allocate limited resources. Similar considerations will arise in any other fire service authority area in the country, whether in rural or urban communities. Judgments have to be made. It is unlikely that everyone will agree with the judgments made.

216. This, of course, leads to the issue of where the court can step in and demand reconsideration of a judgment made. As I emphasised at the outset (see paragraph 7), and as I shall repeat before I conclude (see paragraph 397), the court does not replace such a judgment with its own appraisal of such an issue: it can only direct a reconsideration of such a judgment if it can be shown that the process leading to it was unlawful and/or irrational.

217. I have so far only made passing reference to the legal parameters within which the court must operate, but I do not think I can proceed further in the present context without referring briefly to some well-established principles and some authoritative articulations of the relevant approach.

218. Mr Moffett understandably referred to Lord Diplock's articulation of the meaning of "irrationality" in this context in *Council of Civil Service Unions and Others v Minister for the Civil Service* [1985] AC 374, 410:

> "By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" …. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

219. He referred also to a number of passages in the opinions of the House of Lords in *Regina (Ahmad) v Newham London Borough Council* [2009] PTSR 632, a case involving a challenge to the lawfulness of the policy by which a local authority allocated the social housing within its control. In 2002, following certain legislative

changes, the local authority changed its housing allocation scheme from a "needs based" points system to a "choice based" system under which all those with priority need, save for a limited number of exceptional cases who were made a direct offer of an appropriate property, were classified in one group and entitled to bid for any available housing which matched their assessed needs. The house was then allocated to the bidder who had been on the housing list for the longest time. The scheme also allowed existing local authority tenants who wished to transfer to a different, but equivalent, property within the area to bid on equal terms with priority needs applicants, but provided that a maximum of 5% of available properties could be allocated to such bidders in any one year. The legislative changes (to be found in section 167(2) of the Housing Act 1996) required a local authority to have a scheme for allocating social housing which gave reasonable preference to those with urgent housing needs.

220. Whilst the context in that case was different from that in the present case, there are some parallels, principally on the issue of how choices are made between competing approaches to the way a statutory responsibility is carried out.

221. Lord Scott of Foscote said this directly of the issue in the case at paragraphs 4 and 5:

> "4. It would be impossible, in my opinion, to challenge the rationality of including waiting time as one of the factors properly to be taken into account by a housing authority when deciding to whom an available dwelling should be allocated. But why should waiting time be the determinative factor? Why should apparently greater needs of one person in the priority band be subordinated to apparently lesser needs of another person in the band simply because the latter had been longer on the waiting list? This was the question that [Counsel for the Claimant's] submission posed for your Lordships. The question is, I think, best answered by posing a further question. What is the alternative? The formulation of sub-bands within the … priority band, with the sub-bands being placed in order of priority, has been suggested as a preferable alternative. A points system, with points allocated for various types of special need and priority accorded to the person having the highest number of points, has been suggested as another. But both these suggested alternatives have their drawbacks.
>
> 5. No matter how many priority sub-bands were to be formulated, and the formulations would be far from easy and likely to be contentious, there must always be some basis on which to distinguish between those within the same sub-band who are in competition for the same dwelling. To allow the choice to depend upon the judgment of a council official, or a committee of officials, no matter how experienced and well trained he, she or they might be, would lack transparency and be likely to lead to a plethora of costly litigation based on allegations of favouritism or discrimination. The waiting time criterion constitutes a basis of selection that has the merit of

> certainty, the absence of any subjective evaluation and that, therefore, avoids these drawbacks."

222. Baroness Hale of Richmond made two observations upon which Mr Moffett placed reliance. In relation to the argument that the policy under challenge in that case was irrational she said this:

> "15. … even if the scheme is not unlawful because it fails to comply with section 167(2), is it unlawful because it is irrational? The earlier decisions in the High Court and Court of Appeal … concluded that a policy was irrational if it did not contain "a mechanism for identifying those with the greatest need and ensuring that so far as possible and subject to reasonable countervailing factors (for example, past failure to pay rent etc) they are given priority" …. There are numerous problems with that approach. … The trouble is that any judicial decision, based as it is bound to be on the facts of the particular case, that greater weight should be given to one factor, or to a particular accumulation of factors, means that lesser weight will have to be given to other factors. The court is in no position to rewrite the whole policy and to weigh the claims of the multitude who are not before the court against the claims of the few who are. Furthermore, relative needs may change over time, so that if the council were really to be assessing the relative needs of individual households, it would have to hold regular reviews of every household on the waiting list in order to identify those in greatest need as vacancies arose. No one is suggesting that this sort of refinement is required. It would be different, of course, if the most deserving households had a right to be housed, but that is not the law."

223. She also endorsed the approach of the Deputy Judge (Nicholas Blake QC, as he then was) in the following passage:

> "22. It is fitting to conclude by endorsing these words of the deputy judge (para 49 of his judgment):
>
> > "It is apparent that all judges considering this problem have stressed that it is for the local authority to provide an allocation scheme according to its Part VI duty, and the merits as to who, how and when priority should be afforded is a matter for the local authority subject to its special duties. Judges must be particularly slow in entering the politically sensitive area of allocations policy by over-broad use of the doctrine of irrationality. A particular scheme cannot be castigated as irrational simply because it is not a familiar one to the court or is not considered to be the perfect solution to a difficult, if not impossible, question to resolve."
>
> Castigating a scheme as irrational is of little help to anyone unless a rational alternative can be suggested. Sometimes it

> may be possible to do this. But where the question is one of overall policy, as opposed to individual entitlement, it is very unlikely that judges will have the tools available to make the choices which Parliament has required a housing authority to make."

224. Lord Neuberger of Abbotsbury echoed those latter sentiments at paragraphs 46 and 47 and, in relation to the irrationality argument, said this:

> "51. The main argument for the claimant is that it is indeed irrational to include every applicant who satisfies one or more of paragraphs (a) to (e) of section 167(2) in the same band, and then to select successful applicants by how long they have satisfied this criterion. It is undoubtedly a rough and ready system. However, it has many advantages over a more nuanced system. Thus, it is very clear, relatively simple to administer, and highly transparent. Once an authority has a number of different bands based on degree of need, or the degree to which the section 167(2) factors are satisfied, the banding exercise will be much more expensive, much more time consuming, much more based on value judgment, much more open to argument, much more opaque, and, as Baroness Hale pointed out, it would require much more monitoring, as applicants' circumstances will inevitably be liable to change."

225. Mr Moffett cites these passages as support for the proposition that the principle of equal entitlement is one of a number of ways in which the acceptability of the Plan might be evaluated, that it is a matter of judgment as to whether it is appropriate to invoke the principle in the present situation and that its adoption as a principle was well within the reasonable band of decisions open to the decision-makers. Its adoption came nowhere near, he submits, the test articulated by Lord Diplock as the basis upon which a court might intervene. Acceptance that adopting the principle was irrational means that I must have been persuaded that no reasonable organiser of London's fire services could reasonably have applied the principle in any part of the process of formulating or approving the Plan. But, as Baroness Hale said in *Ahmad,* the court is in no position to re-write the policy that has led to this approach, and, as she put it, to weigh the claims of the multitude not before the court (and who might be affected if a different principle was adopted) against the claims of the relatively few who are.

226. All that I can say as, for this purpose, an informed layman, is that there would appear to be at least two approaches to the influence of attendance times on evaluating the Plan: the utilitarian approach advocated by the Claimants and the egalitarian approach adopted in the past by the LFEPA (and supported in principle by the FBU) and felt by the Commissioner still to have a role to play in the present situation. He recognises the legitimacy of the former as one approach, but believes the latter to be more appropriate. The Claimants contend that the former is the only approach in the present context. It is at this point that I cannot agree. I would agree that, if its adoption had the effect of causing all local risk factors to be ignored or so devalued in the process as to have no meaningful impact, there would certainly be grounds for concern that the National Framework had not been properly reflected in the process

and indeed that a rational approach was not being followed. However, for the reasons I have given (see paragraphs 194-196 above), I have not been persuaded that that is indeed the effect of its adoption. As I have previously indicated (see paragraphs 204-205), the actual influence of the principle on the Plan is less potent than the Claimants contend. Whether the Commissioner's approach to its influence at the stage in the process at which it was considered is right or wrong is not for me; but I cannot see how its influence can fairly be described as irrational. Accordingly, it cannot be said to be unlawful in this sense either.

227. I have approached the foregoing issue on the basis of what I have characterised previously as "standard" scrutiny. Although the provision of fire services may arguably have an impact on some unspecified person's Article 2 rights in the event that he or she is awaiting the arrival of a fire appliance to extinguish a fire that is constituting a threat to life, that circumstance is very far removed from the situation in *Rogers* (paragraph 72 above) where the decision of the Health Trust to refuse funding for the treatment of the claimant's breast cancer was a relatively immediate matter of life and death for her. At that level, one can well see the need for anxious or rigorous scrutiny. The situation here, however, reflects a very much more distant and intangible threat to life and comprises essentially a review of the process by which the limited resources for the many facets of the work of the LFB are deployed. Adoption of heightened scrutiny in this context could call for its adoption in other contexts where it could be said that taking one decision rather than another might involve some increased danger. Whilst any court would subject the influence of the principle of equal entitlement (as indeed all other aspects of the challenges advanced in this case) to careful scrutiny, I do not consider it necessary to go further than the standard *Wednesbury* approach. I do not, with respect, think that there is anything in the *Hillingdon* case (see paragraph 72) that suggests the need for anxious or heightened scrutiny in the present case.

228. It follows that I have, therefore, concluded that the need to consider all foreseeable local risks in the formulation of the Plan was met by injecting into the modelling process the very detailed five-year history of the location of serious fires (see paragraph 170-172 above). Asking the programme to generate a plan or plans minimising all attendance times across London by reference to that information constituted a response to the need to generate a proposal designed to meet those risks. Judging the proposal that emerged by reference to the attendance time targets was one (rational) approach to considering whether the plan is acceptable as a means of providing an emergency fire service for the whole of London. If that analysis is correct, the role that the sensitivity analysis played in the overall decision-making process is arguably a rather less important part in the process. However, I shall address the arguments about it briefly.

229. I reflected on what was said about the particular features of the sensitivity analysis that seemed relevant in paragraphs 184-191 above and I will not repeat that description. That sensitivity analysis related, of course, to the 151/100 option. A second sensitivity analysis occurred in connection with the 155/102 option that became LSP5. It formed an attachment to the Commissioner's final report. Mr Stilitz complains that the exercise was a very limited exercise and says that this is evidenced by the cursory way, as he suggested it to have been, that third appliance attendance times were dealt with. I will, of course, be looking at that discrete issue shortly (see

paragraphs 259-263), but it seems to me that the true criticism here is that there appears to have been no active engagement with the consequences for the Plan in the specific areas to which reference was made by those considering the sensitivity analysis. Mr Stilitz says that what appears in the Report from which those references were drawn was a series of observations without any engagement with the issues that had arisen.

230. As the Report is phrased at this point, I think there is some force in what Mr Stilitz says. It is not the only part of the very substantial documentation produced in support of a plan that is expressed in somewhat matter-of-fact terms. It does not reveal expressly any particular thinking about the matters thus stated. It is, of course, always easy to criticise a particular style, but had there been the odd sentence saying, for example, something along the lines that "these consequences are regrettable but, in our judgment, acceptable in the light of the need to make the level of savings required" would at least have given greater confidence that the consequences <u>had</u> been addressed and that there was a reason why they were adjudged acceptable.

231. That having been said, however, it is difficult to see what purpose the sensitivity analysis had at all unless thought processes of that nature took place. This is what the Commissioner effectively records in paragraph 127 of his witness statement (see paragraph 190 above) and I do not think the court is in any position to go beyond that in proceedings of this nature.

232. At all events, I do not consider that the sensitivity analysis contributes a great deal to the question of whether the Plan took account of local risk factors: those factors were, in my judgment, injected into the process at an earlier stage in a manner that it is impossible for the court to say was inadequate for the purposes of the National Framework and the Guidance Notes.

233. Before turning to the four specific areas highlighted above (see paragraph 139), this is a convenient point to note the arguments concerning the role that the prevention of fires had in the formulation and evaluation of the Plan.

234. The Commissioner made this general point in his witness statement:

> "… It is important to understand what is meant by "risk". The Brigade understands the term "risk" in two ways. Firstly, the likelihood of an incident occurring and, secondly, the consequences that arise when an incident does occur. The reason why it is important to distinguish between "risk" in the sense of the likelihood of an incident occurring, and "risk" in the sense of the consequences of an incident should it occur is because, in general terms, different activities of the Brigade are directed at these different types of "risk". For example, the Brigade's fire prevention and protection activities are primarily directed at minimising the former, whereas its emergency response activities are primarily directed at minimising the latter on a pan-London basis …. That is not to say that a certain type of risk is irrelevant when it comes to determining how the Brigade plans and provides for its activities (and I explain further below how the likelihood of an incident occurring is a

> very important factor when determining the organisation of emergency response resources). However, it is important to recognise that the organisation of emergency response resources in a particular area is not something that has any real influence on the likelihood of an incident occurring in that area …. As I explain below, a holistic approach to prevention, protection and emergency response is a key part of LSP5."

235. He develops the theme about a holistic approach in the following way:

> "… the best way to reduce the likelihood of fire occurring (and therefore the likelihood of casualties from fire in London) is through proper fire prevention and protection and it is important to understand that LSP5 promotes a holistic approach to addressing the likelihood and consequence of fire by incorporating a large number of fire prevention and protection measures alongside the new proposals for resource allocation to respond to emergency incidents. For example, LSP5 promotes a number of activities to further fire prevention and fire protection, including campaigning for the installation of domestic sprinklers, enforcing safety regulations, influencing the planning process to ensure the built environment is more resilient against fire, and educating people to change their behaviours to reduce the likelihood of fire. This complements our emergency response work and together provides our integrated risk management approach as reflected in LSP5."

236. Mr Stilitz characterises these assertions, and the more detailed references that the Commissioner makes to the role of fire prevention, as an attempt by the Commissioner to justify his failure to take into account local risk factors in deciding where to make the cuts and that reference to preventative measures is "something of an afterthought in this process" and that no attempt has been made by the Commissioner to evaluate how preventative measures will reduce risks.

237. I am bound to say that a review of the material that focuses on this issue does not, in my judgment, sustain the criticisms that Mr Stilitz makes. This appears to me to be more a criticism of the weight that has been attached to this factor (upon which the court is not in a position to comment) than upon whether the factor was a truly material factor in the formulation of the Plan. That being my view, I will try to confine reference to the material on the issue to its bare essentials.

238. In his report to LFEPA of 21 January (which became part of Supporting Document 21), the Commissioner recorded this:

> "34. Brigade officers have a good understanding of risk in London developed over a number of years but continuing to develop an understanding of the complex and interrelated nature of risk in London has been the critical element in the development of the draft LSP5.

> 35. The Plan itself includes a high level review of risk in London (expanded from the earlier version of the Plan presented to the Authority); and supporting documents to the Plan look at the number of incidents over time … and focus in detail on the top ten incidents which make-up some 90 per cent of the Brigade's day-to-day emergency response work …. These supporting documents also include projections of the likely number of incidents in London up to 2030 …. This work has drawn on a range of data from the GLA, and government, to model the change to London and its population, the numbers of homes and business, to present a picture of incident demand over the next 20 years. We have a wide range of data available, not just about the emergency calls received and the incidents attended, but also about London which provide the risk proxies. Through our incident risk analysis toolkit (iRAT), which uses some 70 different data sets, it is known how different lifestyles impact on the likelihood of fire occurring and the casualties resulting from fire. Supporting document 5 explains how the Brigade targets those most at risk from fire.
>
> 36. From our understanding of risk it is known that:
>
> • The number of incidents attended are over one third lower (35 per cent) than 10 years ago; some parts of London have seen the number of emergency incidents attended drop by two-thirds.
>
> • Fires (at 27,000 in 2011) are lower than at any time in the last 40 years.
>
> • False alarms make up nearly half (48 per cent) of all the calls attended.
>
> • Fewer people die in fires – average of 56 a year for the ten years 2002 to 2012 compared to an average of nearly 80 a year for the ten years 1991 to 2001.
>
> 37. During the period since November, one Member of the Authority has put to me the proposition that the presentation of this data can be experienced as pejorative in considering the role and value of fire-fighters. I understand this point and I and other officers have tried to be careful about creating this effect. However, it is difficult not to draw on the facts as far as demand is concerned; and in a context when my proposals involve some reduction in resources, it is also important that I do my best to explain that Londoners are generally less vulnerable to fire that at any other time."

239. Supporting Document 5 does indeed deal with how the LFB targets those most at risk from fire. 'iRAT' has already been referred to in paragraph 185 above. It is described further in this way:

> "Developed during 2005 and launched in the autumn of 2006, iRAT combines what we know about incidents with the information we know about people and where and how they live. iRAT identifies the areas of London, and the lifestyles of the people, where incidents are most likely to occur so that preventative campaigns can be focused in those areas to reduce incidents, stop fatalities and casualties and improve London-wide performance.
>
> iRAT can be used to identify the likelihood of any type of incident occurring, but most of the work in developing the models has focused on accidental dwelling fires (ADFs) – fires in peoples' homes, where most fire fatalities occur – where we target our home fire safety visits (HFSVs) and the majority of our prevention campaigns.
>
> In 2008, the outputs from the statistical modelling and our knowledge about lifestyle risk were combined to create 'priority postcodes' for targeted HFSVs. Priority postcodes (which are sometimes referred to as "P1s") enable the iRAT risk information to be more easily interpreted and provide an easy tool for station-based staff to plan and prioritise their HFSV work."

240. Supporting Document 5 goes on to describe the 2008 analysis in this way:

> "To understand which types of people are at the greatest risk from accidental fires in the home, Mosaic lifestyle profile data has been used. Mosaic is a commercial product (used by many public sector organisations and service providers) that describes households by different lifestyles. The segmentation approach adopted by Mosaic combines various data about household composition and activities to characterise households into groups and types.
>
> The Brigade collects detailed information about the people involved in fatal fires, but less data is collected about people who experience fire in the home but are not killed by it. The Mosaic data can be matched to those individual incident records to give an approximation for the types of people who experience the most fires. For this reason, the Mosaic data is a valuable product as it covers every identifiable home in London in a standard and comparable format.
>
> To determine which groups are 'at risk' the number of incidents, by Mosaic group, is compared with the base number of those lifestyles present within London. If accidental fires in the home are a random event, then the rates should be similar (for example, if Group A make up x per cent of London, then they should also have x per cent of the fire incidents).

> However, the data shows that fire adversely affects some groups more than others."

241. The 2008 data was up-dated in 2009. It yielded results that are tabulated in the papers before the court: the table can be found at http://www.london-fire.gov.uk/Documents/Sup05-Targeting-those-most-at-risk-from-fire.pdf.

242. It shows, for example, that over a 3-year period the highest proportion (31%) of dwelling fires were in respect of young people renting flats in high density social housing (with a 33% casualty rate), the next (at 25%) being young, well-educated city dwellers (with a 24% casualty rate) and the third largest (at 15%) being lower income workers in urban terraces in often diverse areas (with a 24% casualty rate). However, this is not the measure used to determine the lifestyle group(s) most at risk. The differences in proportions between each Mosaic Group and the number of fires and casualties within them can be converted to an index score which highlights where particular groups are over- or under-represented and a chart of the index scores, both for the likelihood of an incident occurring and the chance of that incident causing a casualty (death or injury), is produced to identify the lifestyle groups most at risk.

243. This is then used to determine P1s (see paragraphs 99 and 185, in particular, above) and these postcodes dictate the target for HFSVs or some other form of contact (e.g. via social media).

244. The Commissioner describes what occurs in relation to these priority postcodes:

> "The identification of priority postcodes forms a key focus of the Brigade's fire prevention activities. Priority postcodes areas are situated in all London boroughs, although there are more priority postcode areas in the inner London boroughs, including in the Claimant boroughs. This means that our fire prevention work in these areas is more directly focussed on the inner London boroughs, and in the claimant boroughs. For example, in 2011/12, the Brigade was able to target more than 47,000 high risk households for HFSVs and the majority of these were in inner London boroughs. We continue to undertake visits to priority postcode households on a regular basis. In 2013/14 (despite the reduction of resources from the closure of some fire stations and removal of some fire engines) we aim to conduct 72,500 HFSVs, of which 58,000 will be visits to priority postcodes - an increase on the previous year 2012/13. Many of our prevention priorities, including those involving priority postcodes, are more effectively delivered by working with services that are currently located at borough level (for example, social services, planning/building control, housing providers). Furthermore, in many cases additional funding for prevention work is available for and controlled by local councils (e.g. local strategic partnerships)."

245. Mr Stilitz made a number of criticisms of this programme, but I am unable to see how any of them advances his argument. The most telling criticism, if it was valid, would be that no analysis of the effect of the preventative measures on risk had been made.

Mr Stilitz does not say how such an analysis should have been undertaken, but the Commissioner does respond in the following broad way in his witness statement:

> "As part of the research and analysis undertaken in formulating LSP5, I looked at projected incidents from the present until 2030. The purpose of this exercise was to ensure that my proposals took into account any anticipated changes to the number of incidents and considered whether the downward trend is likely to continue. It is anticipated that by 2030 the number of fires and overall incidents will have decreased further, in particular the number of fires is estimated to decrease by 23% between 2010 and 2030. I understand that representatives of the London Boroughs of Islington and Southwark express the view that the downward trend in incidents and fire deaths is not expected to continue, however I do not believe that this view is supported by empirical data or evidence. The analysis undertaken by the Brigade is that the downward trend in relation to the number of incidents (in particular fires) will continue."

246. This is one area, in particular, where, since what is involved is a prediction, it is difficult other than to express a judgment on the prospects in general terms, but it follows that it is an area where the judgment of someone experienced in the field must be accorded particular respect. I can see no basis for the court saying that this judgment was flawed or that the weight given in evaluating the Plan to the trend identified was wrong.

**(iii) The Commissioner's response to the other criticisms of the decision-making process (other than arguments concerning the consultation process)**

247. I set out between paragraphs 139 and 161 the four specific areas of criticism of the decision-making process upon which the Claimants place reliance. I will indicate the nature of the Commissioner's response to each of these matters and express my conclusion in relation to each.

Drive time/response time

248. The Commissioner does not accept (a) that using "drive time" is in any way different from the way other fire authorities calculate "response time", (b) that the way it was used in any way distorts the conclusions derived from the modelling and (c) that its use was in any way overlooked in the decision-making process.

249. As to (a), his evidence is that attendance times have traditionally been calculated from when, as he put it, "resources are mobilised" and he refers to a period starting no later than 1993 when the performance indicators required by the Government were assessed by reference to "assigning appliances by control" – in other words, the starting point was when the appliance was notified by the control that it was required. He says that "[all] other metropolitan brigades count their attendance time from the same point." Although he asserts this, he does say (and the documentation supporting the draft Plan confirmed) that that "the calculation methodology used in LSP5 … had been used by the Brigade since 2008", rather suggesting that it was a

relatively recent innovation. I should also say that I have noted the content of the report of Mr Deon Webber, a Senior Investigator at International Fire Investigators and Consultants Limited, filed in support of the Claimants' claim, which says that the DCLG's definition (see paragraph 143 above) "forms the basis of most risk management, and is widely accepted by the UK FRS as the norm." The status of this report was put in issue by Mr Moffett although the matter was not considered during the hearing and little, if any, reference was made to it by Mr Stilitz.

250. I am not, of course, in any position to resolve such conflict as there is between Mr Webber's report and what the Commissioner says. However, Mr Webber does appear implicitly to accept that <u>some</u> fire authorities use the approach adopted by the LFB for the purposes of risk management and he does not say that there is <u>universal</u> acceptance of the DCLG's approach (he refers merely to "wide" acceptance). According to the Commissioner, this definition appeared for the first time in 2012 and, if that is so, it would seem too early for it to be said with conviction that there is either wide or universal acceptance of the approach. Even that approach does not, of course, include any period of time <u>after</u> the arrival of the appliances before active fire-fighting takes place which, it is suggested on behalf of the Claimants (and indeed the FBU), ought to be included.

251. Against that background, I think I must conclude that the approach of the Commissioner is a legitimate and accepted approach. He does make the point (which goes to (b) above) that this particular measure is one that can be ascertained with a good degree of accuracy. Furthermore, it is the one period of time in the overall period from the commencement of a fire until the beginning of active steps to extinguish it (or indeed its extinction) over which the fire authority has a degree of control (subject, of course, to traffic conditions and unexpected interruptions in getting to the fire). It is the most reliable performance indicator that can be devised in the circumstances.

252. There is nothing irrational with that approach. The main question, however, seems to me to be whether the travel time matrix (see paragraphs 176-177 above), which establishes the travel times between locations in London for the purposes of the modelling exercise, is sufficiently attuned to the <u>actual</u> time from the receipt of a 999-call to (at least) the time of arrival of the fire appliances at the scene, to be a reliable basis for generating an acceptable plan. It seems to me that, properly understood, the Claimants' argument is that it is not.

253. For the purposes of a judicial review application, the Claimants would have to demonstrate clearly that the only legitimate conclusion was that the modelling exercise was invalidated because of this fundamental deficiency, not simply that the issue might have been addressed differently or in what might be termed a "more drilled down" fashion in the modelling process. Mr Moffett makes the fair point that the Claimants have not explained how some alternative – and compellingly better – approach for London can be fashioned.

254. The Commissioner does make one telling point that informs this whole issue. It is a point made in Supporting Document 8 from which the Commissioner effectively quotes in his witness statement, but I will record what is said in the Supporting Document:

> "We also know that on very few occasions are we called to a fire immediately after it starts. On less than seven per cent of occasions are we called straight away. For two-thirds of the home fires we attend, the 999 call was made five or more minutes after the start of the fire – the point after flashover can occur.
>
> The fatality rate in fires where we are called in the first five minutes is low (at around 15 fatalities per 1,000 fire casualties). When we are called between five and 10 minutes this rises slightly to 19 fatalities per 1,000 fire casualties. But in fires where we are called to the fire after the first 10 minutes, the rate more than doubles to around 47 fatalities per 1,000 fire casualties.
>
> When the Brigade responds to the incident in less than five minutes (but including any delay before the 999 call was made) the fatality rate is around 39 fatalities per 1,000 fire casualties. When the response time is between six and 10 minutes the rate is 38 fatalities per 1,000 fire casualties (97 per cent of all fatal incidents were responded to in less than 10 minutes)."

255. The Commissioner quotes the middle of those paragraphs in his witness statement. By way of explanation, "flashover" is the point at which a fire can develop from something relatively minor into a much more severe fire, research indicating that such a fire "can become very hostile less than five minutes from the start" and that "anyone still in the room at the time of flashover would be critically injured."

256. It follows that, whilst no-one would suggest that the speed with which appliances arrive at the scene once informed of the need to attend is not of paramount importance, a more significant factor in preventing fatalities is the speed following the beginning of a fire with which the fire authorities are informed.

257. I should, perhaps, say that at one stage Mr Moffett made a submission to the effect that, having regard to the last of the three paragraphs quoted above, where the attendance time is longer, there are less fatalities. He did go on to say that one had to be careful about statistics and drawing any conclusions about a causal link. If he was suggesting that one can conclude from the figures to which I have referred that there are less deaths the longer one waits for the fire brigade, then that is, with respect, obviously wrong. I think he would be entitled to say, on the basis of the figures to which he refers, that <u>statistically</u>, in the circumstances with which that paragraph is concerned, there is no greater likelihood of a fatality if the response of the LFB is less than 10 minutes than it is if the response is less than 5 minutes. However, I would not have thought that anyone considering the deployment of fire appliances would attach much significance to such a statistic: the objective must be to get the appliances there as quickly as possible.

258. As I have indicated, the true potential public law criticism that might have been sustained in this connection would be as set out in paragraph 253 above. Although there has been a suggestion that the issue of too short an attendance time being taken in the decision-making process was "overlooked", that does not seem to me to be

sustainable: the issue was raised and considered, but not considered valid by the Commissioner and, via him, the ultimate decision-maker, the Mayor. That was a matter of judgment that the court is in no position to reject on the evidence in this case.

Third appliance attendance times

259. It is not disputed that third appliance attendance times were not injected directly into the modelling process as such. Neither, of course, were the first and second appliance attendance times if my analysis of the evidence and argument concerning that issue is correct (see paragraph 204-205 above). It was at the "simulation stage" of the modelling process that the first and second appliance target times were used to assess the Plan that the model had produced. What is also not in issue is that third appliance times were not used at that stage to assess the impact of the proposed Plan. The reasons for that, according to the Commissioner, are that third appliance attendance is relatively unusual, the vast majority of incidents being resolved by the attendance of one or two fire engines. He develops this point, in relation to the modelling, in the following way:

> "… The average number of appliances sent to any incident in London is 1.6. In terms of incident type, the highest number of appliances attending an incident is an average of 2.1, namely for primary fires, with all other types of incident being sent on average less than 2 appliances. Further, there are currently no attendance standards associated with third appliance attendance times. The combination of the very low number of serious incidents attended by a third appliance and the absence of a standard means that modelling the impact on third appliance response performance is not as straightforward as the other LSP5 work in modelling terms. Further, third appliances may often not be immediately mobilised but may be sent later, for example if it becomes apparent that two appliances are unlikely to be sufficient to deal with the incident. Similarly, on some occasions a third (or even fourth or fifth appliance) will be sent as part of a PDA for particular buildings and a third appliance is not, at a given incident, actually required. The relatively low number of incidents, coupled with the variety of factors that influence the mobilisation of a third appliance means that it is more difficult to model. It is important to recognise that irrespective of the complexities of modelling the data in this area, my view is that only a limited amount of insight or understanding about the Brigade's response is brought about by information based on the attendance of a third appliance at a small number of incidents."

260. That, as I say, indicates, why in his judgment, it was not necessary or appropriate to include third appliance attendance times in the way that he had applied first and second appliance attendance times. The basis, of course, of the suggestion that third appliance times should be taken into account in the process is that they would inform the modelling process of how serious incidents that may demand the arrival of three appliances should be accommodated in the modelled plan. There is an issue between

the Commissioner and the FBU (which I am not in a position to resolve) about what precisely can be achieved in relation to a serious fire before a third appliance arrives, but the Commissioner does make it clear that, from his perspective, it is not necessary for a minimum of thirteen fire fighters to be present at the scene of a serious accident before actual fire fighting can commence and, accordingly, it is not necessary to await the arrival of the third appliance before active steps to extinguish the fire can be taken.

261. At all events, he makes the point that the injection into the modelling process of all serious incidents over the previous five years will capture all "real" serious dwelling fires at which three appliances were present. He put it in this way in his witness statement, having referred to the way in which the first and second appliance attendance times and the "borough rules" (see paragraph 199 above) were used:

> "… This does not mean, however, that the process of determining the application of resources overlooked the need for a third appliance to attend some incidents, as the Claimants suggest. The optimisation process takes into account serious incidents and therefore any incident that required three or more appliances was factored into the 6,700 risk nodes."

262. The borough level impact of the Plan on 3rd appliance attendance times was as I endeavoured to summarise it in paragraph 150 above. Mr Moffett makes the point that when the absolute predicted attendance times under the 151/100 proposal for 3rd appliances are considered, all of Claimant boroughs are within the 10-minute average, some of them well within: Camden (7:56), Greenwich (9:19), Hackney (8:05), Islington (7:14), Lewisham (7:29), Southwark (6:50) and Tower Hamlets (6:51). Some of these, he observes, rank amongst the best attendance times in the whole of London. Indeed reference to the table produced at Appendix A to Supporting Document 24 does show that Southwark and Tower Hamlets (as boroughs) have the fastest third appliance response times in London after a plan based on 151/100 is implemented.

263. The evidence is that since 2005 (and since LSP2) the LFB has used attendance times of first and second appliances only by which to assess standards of performance. The judgment of the Commissioner (and presumably that of ORH also) was that it was unnecessary to go further than that when formulating the present plan. Can that decision or judgment be characterised as irrational? There is certainly an argument that, if the information was available in reliable form, it could have been directly influential in the modelling process. However, that is an entirely different position from saying that a process which does not involve its direct influence is fundamentally flawed and irrational. I do not consider that that can be said of this part of the process such that it undermines its validity.

264. I will return to deal with the way this issue is also relied upon in support of the contention that the consultation process was flawed at a later stage (see paragraphs 313-319).

Protected stations

265. The basis of the decision to ring fence these stations is set out in paragraph 156 above.

266. The Commissioner says this in his witness statement by way of amplification:

> "113. The Brigade's estate has a number of complexities that need to be taken into account, including that many of the stations are either of some age, or Grade II listed buildings or located in a conservation area which restrict the ability to develop and modernise the stations to ensure they meet modern operational needs. Some stations have received substantial levels of recent investment and have been recently upgraded, including a number in central London. I did not think that it was reasonable or responsible for the Brigade to consider closure of those fire stations which had benefited from significant additional investment for particular purposes. In my view, it would be unreasonable, for example, to close a fire station which had just undergone a £10 million investment in order to refurbish it for a special purpose, namely to accommodate particular vehicles. Such a closure would amount to a considerable waste of public money.
>
> 114. Similarly, some stations are in a government funded PFI programme and I thought it was appropriate that these stations be retained as they represent a good opportunity to secure better quality accommodation that is more flexible and fit for purpose which confers an overall benefit in terms of fire-fighting in London. Other stations had particular features which meant that it was not sensible to close them, for example, some stations provide space for resources that are difficult to locate such as the Bulk Foam Unit or specialist protective equipment. Taking into account these factors, I concluded that 28 stations in London should be protected from closure by any changes to the allocation of resources. However, I kept open the possibility that these stations could be subject to a change in the number of appliances accommodated, for example, a station that was protected from closure could be reduced from a two appliance station to a one appliance station (or vice versa)."

267. The high point of Mr Stilitz's argument on this issue seems to me to be that the decision about this matter was taken before a risk assessment was carried out. He does not suggest that the financial factors that drove this decision could not then have been taken into account and, if I understood the argument correctly, might have led to the same decision, albeit at what he would suggest was the "correct" stage of the process.

268. At the risk of appearing dismissive, I can see nothing in this argument. Whilst the National Framework does start with the need for a risk assessment, it goes on (at paragraph 1.10 – see paragraph 37 above) to say that an IRMP must "demonstrate how … response activities will best be used to mitigate the impact of risk on communities … in a cost effective way". If at no other point, then certainly at this point, it would be open to a fire authority to consider its estate and decide whether closing a particular fire station was a "cost effective" way of dealing with matters in the light of the results of the risk assessment. There is nothing in the National

Framework which says that cost factors may not, in certain circumstances, outweigh the risk factors. However, I can see no sustainable objection to taking a view at the outset of the modelling process that closing certain stations upon which there has been considerable recent expenditure, or where there are obvious benefits from retention within the estate, would be unlawful, unreasonable or irrational.

Temporary closures in Southwark

269. Without, I trust, in any way diminishing the importance of this issue from Southwark's point of view, when looked at in the context of the whole picture of 33 London Boroughs, it is unlikely that this is something that would persuade the court to set aside the whole Plan even if the point was well-founded.

270. However, it seems to me Mr Moffett is right when he submits that this kind of local issue, where temporary closures are already in the programme, are matters for the judgment of someone with professional experience of what the consequence of those closures would be and, accordingly, there is no need for the modelling process to be "troubled" with those matters.

271. The Commissioner says that he did take the closures into account as follows:

> "… I have carefully considered and planned for the short term closures of these two stations to minimise the impact on attendance times and the works have been co-ordinated to ensure that both stations are not closed at the same time. The rebuilding of Old Kent Road fire station is phase 1 of the PFI project and will be completed by October 2014 when it will be necessary to close Dockhead fire station as part of phase 2 of the PFI project. Plans have been made to reallocate appliances to nearby stations during this period and this forms part of the broader consideration that has been given to the arrangements for temporary reallocation of appliances whilst PFI building works are being carried out. I took account of these closures in considering the proposals (as I did in respect of other stations when applying my professional judgment to the proposals)."

272. In my judgment, this ground could not possibly succeed.

Ward analysis

273. The essentials of the case advanced by the Claimants and by the FBU, namely, that insufficient attention was paid in the formulation of the Plan to the effect of the proposals at ward level, has already been considered and I have given my reasons for not accepting it.

274. The fact that I have rejected it does not necessarily lead to the conclusion that the consultation process should be upheld if it did not deal adequately with this issue. I will return to the issue in that context in the next section of the judgment.

**The consultation process**

275. I have dealt with Grounds 1-3 of the Claimants' grounds as supported by the FBU. Grounds 4-6 are principally directed at the Mayor's decision and it seems to me to be logical to consider the challenge reflected in those grounds when I have considered the remaining grounds advanced by the Claimants and the FBU on the consultation process (Grounds 8 and 9 of the Claimants' grounds and the additional ground sought to be advanced by the FBU) and by the Claimants in relation to the public sector equality duty. The challenge to the Mayor's decision is discrete and, of course, would become irrelevant if the other grounds succeeded.

276. Given also that the Mayor's decision substantially reflected acceptance of the Commissioner's report and recommendation, it seems more logical to consider all criticisms of the process that led to it before considering the Mayor's specific role in accepting it.

277. I set out the essential chronology of events leading to the final report and recommendation of the Commissioner in paragraphs 47-68 above. I need to add a few points of detail and some further features to the chronology in order to explain the background to the challenges made to the consultation process.

278. In the first place, the dates of various public meetings should be noted. A total of 24 public meetings organised by the Commissioner's staff were held covering every London borough and the City of London, seventeen of which were for individual boroughs and seven of which were for certain combination of boroughs. Each Claimant borough had its own meeting. There were 2 meetings in March (the first taking place on 25 March), 5 in April, 13 in May and 4 in June (the last being on 4 June).

279. In addition to those meetings, a number of organisations held other meetings to which LFB officials were invited to provide answers to questions raised. These meetings are referred to in the Commissioner's report for the meeting of LFEPA on 18 July (see paragraph 60 above). There were 27 such meetings including a day-long meeting with the Central London Forward Group, comprising seven local authorities (including four of the Claimant boroughs).

<u>General criticism</u>

280. The consultation, it needs to be recorded, was in relation to the 151/100 formulation of the draft Plan. The charges levelled by Mr Stilitz at the whole consultation process included that it failed to disclose "the most controversial and unpalatable implications of the cuts", that aspects of the ways certain information was conveyed was "misleading", that "statistical slight of hand" was employed, that certain calculations were "doctored" and generally that the whole process was an exercise in "spin". All this, he submits, demonstrates that the need for an "effective consultation", as demanded by the National Framework (see paragraph 39 above), was not satisfied in this case. He suggests that the process of under-playing the bad news started with the Commissioner's Foreword to the draft Plan and was evident in the leaflet inviting the public to attend the various public meetings. Mr White also submitted that inadequate and/or misleading information was provided in the consultation exercise and added that no consultation took place on the decision made after the consultation process closed to reduce the crewing levels on FRUs and to reduce the overall number of FRUs (see paragraph 60 above).

281. Even allowing for some forensic licence on the part of Mr Stilitz, supported to some extent by Mr White, these are serious charges. I will, of course, focus on the specific matters to which Mr Stilitz draws attention shortly, but I should at the outset record what the Commissioner said in the Foreword and what was said in the leaflet.

282. The full Foreword of the Commissioner (which runs only to 434 words) was in the following terms:

> "In the past decade, firefighters, fire engineers, fire investigators, fire inspectors, community safety specialists, information analysts and many other staff in London Fire Brigade have made huge progress in advancing the cause of fire safety. Compared to ten years ago, the Brigade attends half as many fires, a third fewer house fires and almost a third fewer incidents overall. But there is always more to be done.
>
> In the future, the resources available to the Brigade will reduce and the number of people who can work for the Brigade and provide our services will also reduce; we have passed the point where we can make the necessary level of savings without any impact on our fire stations.
>
> In this draft plan, I set out how I propose to make those savings, while continuing to provide an excellent emergency response service and also protecting the delivery of community safety and fire safety services. This has involved difficult considerations, but I have made my central concern the protection of the emergency response targets set by the Authority in 2005. I believe the targets to be the highest standards in the country and our performance in meeting them has been excellent.
>
> Under the proposals in this plan, the Brigade would maintain its existing target attendance time of getting its first fire engine to an emergency within an average six minutes and the second fire engine, when needed, within eight minutes. But I also acknowledge that it is not possible to make reductions in fire stations and fire engines without impacting on arrival times at incidents. Whilst we have worked hard to make changes that minimise the impact, our incident response will not always be the same as currently and these changes would see different standards of performance to some incidents in some parts of London, albeit maintaining performance within our 1st and 2nd appliance targets London-wide.
>
> An understandable concern of all Londoners is that the Brigade is prepared and equipped to deal effectively with major incidents, such as terrorist attacks and natural disasters. This plan sets out a strong commitment to continue to deliver against our national resilience priorities and to maintain our specialist vehicles, equipment and capabilities to their current levels.

> Working closely with our resilience partners is a core ongoing commitment for the Brigade.
>
> I remain committed to my long term vision for London Fire Brigade to remain a world class fire and rescue service for London, Londoners and visitors. This draft plan sets out in more detail how I plan to continue to achieve that over the next three years. I welcome your views." (Emphasis added.)

283. I have highlighted two passages where it might be said that "bad news" was being conveyed.

284. The short leaflet inviting the public to the public meetings contained the following paragraph:

> "The plan sets out how the fire and rescue service could be delivered over the next few years. Amongst other things, it includes plans to keep within our target attendance times for getting to incidents and details how savings worth £28.8m could be made. These proposals also involve the closure of 12 fire stations, the removal of 18 fire engines, the redeployment of four fire engines and a reduction in the number of firefighter posts of 520."

285. Again, I have highlighted the "bad news" passage.

286. I will revert to those matters when I have considered three specific matters to which attention is drawn on behalf of the Claimants.

Fatality rate

287. The first specific matter relates to the way in which, it is argued, the consultation process underplayed (or simply concealed) what is said to be a predicted increase in the rate of fatalities from fire under the proposals in the Plan. (This issue is relied upon elsewhere and I will return to it in that context at paragraph 383 below.)

288. The material suggesting an increase in fatalities is a note prepared by the "LFB S&P Intelligence Team" dated 1 May 2013. It refers to a study carried out in, or at least reported on, in October 1999 by a company called Entec UK Limited. The study was carried out for the Home Office. Although the Commissioner has expressed reservations about the utility of this study, it was used by those responsible within the LFB to assess whether, under the Plan, there were likely to be more deaths than under the existing arrangements. The passage that deals with the calculations reads as follows:

> "Using the Entec Bands at a London Ward level (small units of Local Authority administration), together with LFB's data on incidents and fire casualties, we can calculate the Entec predicted number of fire fatalities.

> Based on a three year average for fire casualties (2009/10 to 2011/12), with the current arrival time bands, the Entec calculation predicts 49 fire deaths a year (48.70).
>
> In the proposals to change fire cover in LSP5, 47 of London's 649 Wards would change Entec Bands. Three would move from the 6-10 min band to the 0-5 min band and 44 would move from the 0-5 band into the 6-10 min band.
>
> Based on a three year average for fire casualties (2009/10 to 2011/12), with the changed arrival time bands, the Entec calculation predicts 49 fire deaths a year (49.09) [a change of 0.39 fire fatalities to 2dp]."

289. This calculation was done in response to a request during the consultation process from, as I understand it, a representative at a meeting between LFB officials and representatives of Westminster City Council. A version of the calculation was disclosed to Councillor Ian Rowley in a letter dated 3 May from the Deputy Commissioner, Rita Dexter. That letter asserts that "based on a three year average for fire casualties, the Entec calculation predicts 49 fire deaths a year currently and after the proposed reduction." The underlying calculation was not disclosed in the full version referred to in paragraph 288 above, but concluded in the following way:

> "Using the Entec Bands at a London Ward level we can calculate the Entec predicted number of fire fatalities. Based on a three year average for fire casualties (2009/10 to 2011/12), with the current arrival time bands, the Entec calculation predicts 49 fire deaths a year; with the changed arrival time bands, the Entec calculation still predicts 49 fire deaths a year."

290. Mr Stilitz has submitted that this was a sanitised version that was misleading. Between 1 May and 3 May, he says, someone had decided to delete from the calculation the actual figures which show that the two figures of 49 are arrived at only by rounding those actual figures. He submits that this must be seen as an attempt to hide from the consultees to the true underlying figures which indicate a higher underlying death rate.

291. I have to say that the way this particular issue (which is plainly a sensitive and potentially emotive issue) has been handled by the LFB is less than satisfactory. I think that most people who saw and considered objectively the original version of the calculation would say that, whilst no additional death - even over a three-year period - would be acceptable, the figures are so close that there is no material difference between them, and accordingly, it would be wrong to conclude that there would inevitably be more fatalities arising from fire with the introduction of the proposal then being considered. It is possible that the person who decided to present the shortened version of the calculations in the letter to Councillor Rowley thought much along these lines and felt that presenting the issue in that way was the best way of not raising unwarranted concern. However, unfortunately, having chosen that course the not wholly unexpected suspicion that some other agenda was being addressed has arisen.

292. With the benefit of hindsight, it would have been far better if the whole calculation had been released with an explanation (if that indeed was the view) that there was no significant statistical difference between the pre- and post-plan situations and that, accordingly, the only sensible way of expressing the conclusion was that the plan then under consideration would make no difference to the fatality rate.

293. It should, perhaps, be noted that the calculation was carried out in relation to the proposal being considered in May (namely, the 151/100 proposal). So far as I am aware, no further calculation was carried out in this regard in relation to the 155/102 proposal that finally found favour. Given that two further fire stations and four further appliances were to be retained, it is possible that the differential between the pre- and post-plan situation so far as the fatality rate was concerned might have varied very slightly from the earlier calculation so that the statistical increase was even less than shown by the calculation to which I have referred. However, that is speculative although the Commissioner's letter to the Mayor dated 31 July (see paragraph 382 below) does contain a sentence which conveys that message. The question is whether this particular feature in the consultation process, whether of itself or as part of a bigger picture, renders that process invalid.

294. Whilst, of course, even a marginal increase in the fatality rate would be a matter of concern, it is important, in the scale of an exercise such as this, to maintain a sense of proportion. For my part, looking at the matter as objectively as one can, I cannot see how the revelation of the full calculation would or could have made any difference at all to the outcome and I am unable to conclude that, certainly taken in isolation, the failure to reveal the full calculation led to a flawed consultation. I will consider the issue again, as part and parcel of the whole consultation exercise, when I have considered the other matters of which criticism is made.

Ward times

295. This is a matter upon which Mr Stilitz and Mr White specifically join forces.

296. To a large extent this is a replication, but also an amplification, of the argument that the evaluation of the draft proposals did not descend to sufficient detail at the local level (a) for local risk to have been properly identified and then (b) for the effects at that level to be revealed in the consultation exercise. Although I have concluded that the evaluation of local risk did descend to appropriate detail, that is not necessarily conclusive of whether sufficient information was given in the consultation process.

297. The essential complaint is that neither the draft Plan nor any of the Supporting Documents provided any information about the impact of the proposals on attendance times at ward level. This information was provided only in response to requests made during the consultation process. Mr White says that the draft Plan merely stated that average first and second appliance response times across London would remain within the established attendance standards and that there would be measurable improvements at borough level, but nowhere was it stated that response times in certain wards would increase from well within the attendance standards to significantly outside the attendance standards. He submits that the use of response times averaged across the boroughs effectively masked the deterioration in response times at local ward level.

298. Mr White contends that had the ward level data been made available from the outset of the consultation period, the FBU (and other opponents of the draft Plan) would have had more time to ensure that its real impacts were appreciated particularly in those wards most adversely affected.

299. Mr Stilitz highlighted the following as examples of ward level impacts that, had they been available at the outset of the consultation, might have led to a different response to the consultation:

(i) the first attendance time in Belsize ward in Camden would increase from 4:37 to 7:59;

(ii) in De Beauvoir ward in Hackney first attendance time would increase from 4:24 to 7:37 and second attendance time would increase from 5:43 to 8:37;

(iii) in Bow East in Tower Hamlets first attendance time would increase from 4:09 to 7:20 and second attendance time would increase from 5:45 to 9:09;

(iv) in Barnsbury ward in Islington first attendance time would increase from 6:06 to 8:27;

(v) in Telegraph Hill ward in Lewisham first attendance time would increase from 5:15 to 7:24;

(vi) in Woolwich Riverside ward in Greenwich second attendance time would increase from 6:57 to 8:29.

300. In order to put that into perspective, it does have to be borne in mind that there are 649 wards across the whole of London and, accordingly, there are 1298 1st and 2nd appliance response times to consider. Those examples total 6. That is not to diminish their importance so far as those wards are concerned, merely to put them into the bigger picture that it would be wrong to ignore.

301. Mr Stilitz says that this information was not volunteered at the outset and only came to hand on 3 May when some of the public meetings had already taken place. In fact, so far as the specific ward examples he has given are concerned, all the public meetings for the boroughs were after 3 May, although the Tower Hamlets meeting was only a few days later. At all events, Mr Moffett emphasises that this was some 6½ weeks before the close of the consultation exercise. Nonetheless, the issue still remains as to whether this information ought to have been revealed at the outset of the consultation process.

302. I should, perhaps, also say that the Claimants place reliance on the fact that Supporting Document 23 (which contained a series of graphs showing the cumulative and non-cumulative response times for first and second appliances on a borough-by-borough basis) was not published until 29 May 2013. Mr Stilitz suggests that this shows that average response times increase significantly in Camden and that the Outer Boroughs have not been affected significantly. It also confirmed the wide variations between attendance times at ward level within the boroughs. He submits that all this should have been made plain earlier in the consultation.

303. The objective of the National Framework is "effective consultation". Mr Moffett relied upon the approach of Ouseley J in *Devon County Council v Secretary of State for Communities and Local Government* [2011] LGR 64 where, in relation to a consultation process concerning the re-organisation of local government, he said this at [68]:

> "What needs to be published about the proposal is very much a matter for the judgment of the person carrying out the consultation, to whose decision the courts will accord a very broad discretion …. But, in my judgment, sufficient information to enable an intelligible response requires the consultee to know not just what the proposal is in whatever detail is necessary, but also the factors likely to be of substantial importance to the decision, or the basis upon which the decision is likely to be taken. I accept what Silber J said in *R (Capenhurst) v Leicester City Council* (2004) 7 CCLR 557."

304. Mr Moffett suggested that the test for what needed to be published was whether it was sufficient to enable a meaningful response to the consultation (see *HS2 Action Alliance Limited and ors v Secretary of State for Transport* [2013] EWCA Civ 920 at [107]), but subject to that it was within the Commissioner's discretion to decide what to publish. He submits that the effect of the argument of the Claimants and the FBU is that the ward-level information should have been at the forefront of the Commissioner's approach to whole exercise of formulating the draft Plan and, accordingly, consultees should have been told about it and given an opportunity to comment upon it. However, the Commissioner, he submits, was entitled to place his focus on the impacts at borough level and publish information concerning the effects of the draft Plan at that level.

305. There is undoubtedly an area of discretion on the part of any body embarking on a consultation exercise to determine the ambit of the material to be published and thus the likely area of response. However, it is important to avoid the consequences of the potentially self-fulfilling nature that is arguably endemic in leaving to the ultimate decision-maker what should or should not be published: certainly, the court has to decide the issue if called upon to do so, it is not just for the decision-maker.

306. For reasons I have given already, I consider that it was lawful and rational for the Commissioner to assess the draft Plan after it had been formulated through the modelling process on the basis of assessing its impacts at borough level. That, as it seems to me, also justified the decision (if indeed it was a conscious decision) not to publish information concerning the impacts at ward level. That was itself a reasonable decision to take although I do not consider that that would have absolved the Commissioner from responding to a reasonable request for details of the impact of the proposals at a more localised level during the consultation process, which indeed is what he did. There was sufficient time thereafter for representations to be made about the impacts by those who had interested themselves in the process. When it comes down to it, the only real complaint that Mr Stilitz and Mr White can make is that, if the information had been given at the outset, more people would have complained about the effects in their particular locality.

307. However, that does not seem to me to be sufficient to conclude that the consultation was unfair. In the *HS2* case (see paragraph 304 above), Ouseley J was faced with an argument that insufficient detail of certain routes had been given in the consultation process. In that context he said this:

> "… Although I accept without hesitation that knowledge of the detail can affect the nature and degree of opposition to the principle, and that the results of the consultation in all probability would have shown greater opposition in principle if the routes to the north had been identified in detail, that does not make such a process so unfair here as to be unlawful."

308. The Court of Appeal expressly agreed with his reasoning in that regard: [86] Although the context was different, the principle has a resonance in the present context.

309. Again, one has to exercise a degree of proportion and reality here: it is obvious that anyone who lives in an area where it is predicted that local attendance times might be affected significantly may (not necessarily will, but may) want to register a protest in the consultation process. If (which is highly unlikely) the Commissioner and his team were unaware of that at the beginning of the consultation, it must have become plain that there was a groundswell of opposition in particular localities once the detailed information was given on 3 May.

310. Since one purpose of any consultation is to enable consultees to draw to the attention of the decision-makers any reasoned objection to the proposals advanced (see, e.g., *R v. North and East Devon Health Authority, ex p. Coughlan* [2001] QB 213 at [108]), the ultimate test must often be whether that in fact has occurred in any particular consultation. There can be no doubt that this did occur in the context of this consultation, with a number of individuals as well as certain of the boroughs drawing attention to the effects of the draft Plan at a local level.

311. Those representations were considered by the Commissioner before commending the 155/102 proposal to the Mayor.

312. In all these circumstances, I do not consider that this aspect of the consultation process was flawed.

<u>3rd appliance attendance times</u>

313. The relevance of third appliance attendance times is said to be related principally to the impact that the draft Plan would have upon the time at which fire-fighting a fire in a high-rise building could begin effectively (see paragraphs 149-152 and 259-263 above). Information concerning these attendance times was supplied when the issue was raised and I have drawn attention to the way it was supplied (see paragraphs 149-152 above). Mr Stilitz and Mr White argue that this information should have been revealed at the outset and the failure to do so invalidated the consultation. Mr White contends that the Commissioner and the Mayor cannot demonstrate that if the material concerning third appliance times had been provided in the course of the consultation (and not on the final working day and further after the close of consultation) would inevitably have been the same.

314. I have, of course, already addressed the question of whether it was unlawful and/or irrational of the Commissioner not to incorporate 3rd appliance attendance times into the modelling exercise. I will not repeat that analysis, but my conclusion was that it was neither. One point of significance is that, whilst 3rd appliance attendance times were not used to assess the draft Plan to emerge from the modelling process (indeed "there are currently no attendance standards associated with third appliance attendance times", according to the Commissioner's evidence), it is quite plain that all fires that had demanded the attendance of a third fire engine in the previous 5 years (which meant that all high-rise building fires were assigned appropriately to one of the 6700 nodes) had been fed into the modelling process at the outset.

315. The substantive reality behind the point raised in relation to third appliance attendance times is that it is essentially a variant of the argument concerning the principle of equal entitlement. In that context the argument was that if there was in any particular locality a preponderance of high-rise buildings, resources should be deployed in a way that ensured a speedier response time for first and second appliances in those areas than for areas where there are fewer high-rise buildings, rather than to look to ensure that the area more sparsely populated with high-rise buildings should not receive a slower service than the average London-wide response times. Again, I will not repeat my analysis of that argument. However, as it seems to me, all that this issue would do would be to offer another dimension to that argument.

316. That conclusion would not, of course, be determinative of whether information concerning third appliance attendance times ought to have been made available as part of the consultation process. However, because the principle of equal entitlement was at the forefront of the consultation process (see paragraphs 85-86 above), there was plainly a clear opportunity for consultees to express a meaningful view on that issue (and indeed they did so). The view of the Commissioner was that "the very low number of serious incidents attended by a third appliance" meant that modelling of the impact of third appliance attendance would not advance the process in any meaningful way. This was expressed in two particular passages in his witness statement:

> "The relatively low number of incidents, coupled with the variety of factors that influence the mobilisation of a third appliance means that it is more difficult to model. It is important to recognise that irrespective of the complexities of modelling the data in this area, my view is that only a limited amount of insight or understanding about the Brigade's response is brought about by information based on the attendance of a third appliance at a small number of incidents."
>
> "… the view that was held by myself and the Deputy Commissioner was that very limited conclusions could properly be drawn from the information on the predicted attendance times for third appliances at ward level given the very low number of incidents involved."

317. The net effect of these expressions of view is that there is nothing that the Commissioner would have learned in terms of fire appliance deployment from revealing in the consultation process information about third appliance attendance

times. He would undoubtedly say that comments in the consultation about this issue would have made no difference to the outcome because there would be nothing to learn from them.

318. It is, of course, important for the court not to take a course that simply permits a closed mind to remain closed, but there is nothing in the material before me to suggest that this is an invalid or illegitimate view and, accordingly, whilst it was right to make available to consultees such information as was available when it was requested, the fact that it was made available late in the process is not a matter for legitimate complaint.

319. For the reasons I have given, I do not consider that the consultation process was flawed on this ground.

320. I have concluded that the three specific issues highlighted principally by Mr Stilitz, but with support from Mr White, have not individually led to a flawed consultation process. Notwithstanding that, do they amount collectively to a factor that undermines the consultation process? It is, perhaps, appropriate to address this in the context of whether there was, as Mr Stilitz suggested, a deliberate policy of underplaying anything that was unpalatable.

321. So far as the Foreword to the draft Plan is concerned (see paragraph 282 above), there were positive and encouraging aspects as well as warnings of the effect that the cuts would have. It was only a relatively short passage (Forewords usually are short), but I do not consider that it can truly be said to present an unbalanced picture. The leaflet (see paragraph 284 above) contains two substantive sentences, one of which speaks of the need to make cuts of over £28 million and the second of which indicates that this will involve the closure of 12 fire stations and a substantial reduction in the number of fire-fighters. For my part, I cannot see how it can be said that this would encourage the view, as Mr Stilitz suggested, that there was nothing to worry about.

322. If that was the intended effect of these two documents (which I do not think represents a fair reading of them), it hardly succeeded: as Mr Stilitz said as part of his submissions, there was 94% opposition to the proposed plans and there was plainly close interest from many quarters, including most (though not all) of the seven Claimant boroughs, into the issues raised. In the light of the actual response to the consultation process, it is unrealistic to suggest that anyone was misled by the documents into thinking that everything would be the same. The mobilisation of individual responses by way of petitions is just one example of how the views of the public were brought to bear in the process.

323. Returning to the issue of whether the individual matters to which I have referred, if looked at collectively, amounted to something that undermined the consultation process, the answer, it seems to me, must be "no". The fatality issue was poorly handled, but on a fair and objective analysis, was not a significant factor. The other two matters were in some respects related to each other and I do not see that one adds to the other.

324. Subject, therefore, to the additional issue raised by the FBU, I do not consider that the consultation process was flawed.

The FBU's additional argument about the consultation process

325. In paragraph 60 above I alluded to the final recommendation of the Commissioner following the consultation process, which the Mayor accepted, namely, the reduction from 16 to 14 of the number of FRUs available in London (with Hornchurch and Millwall to lose their existing FRUs) and to reduce to 4 from 5 the minimum crewing levels on FRUs.

326. Mr White says that the consultation documents made no reference at all to FRUs and, whilst the draft Plan referred to the reduction in numbers of pumping appliances by 18, it did not refer to a reduction in numbers of FRUs. Equally, none of the consultation documents referred to a reduction in the minimum number of crew on FRUs. Indeed the draft Plan stated that "we have no plans to change the current normal or minimum number of crew on our regular fire engines or on most other appliances." Accordingly, there was no consultation on either of these proposals, neither of which, he submits, were foreseeable from the draft Plan. He contends that they amounted to fundamental changes to the proposals "of a kind that it was conspicuously unfair to adopt the proposals without giving the FBU and other consultees an opportunity to make representations." An assessment of the safety implications of a reduction in crew numbers of FRUs was not undertaken prior to the recommendation in the report of 18 July and there was no consultation on the consequences for public and fire-fighter safety of the reduction in the number of FRUs or whether the two specific FRUs chosen for disbandment were the appropriate choices.

327. I will return shortly to the test that needs to be applied to the question of whether such a fresh proposal (because it plainly was a fresh proposal) needs to be made the subject of consultation and to the question (raised by Mr Moffett and by Mr Drabble) as to whether it is open to the FBU to take this point at this stage of the process. However, the way in which the recommendation was formulated and then questioned by the Mayor needs to be addressed first of all.

328. The background to the fresh proposal is set out in the Commissioner's report to LFEPA dated 18 July. That reported was released on 10 July and the Press Notice referring to it on that day refers to the decision concerning the FRUs in the following terms:

> "The new proposals are to reduce Fire Rescue Units (FRU's) by two, still leaving the Brigade with the highest number of FRU's in the country at 14, and continuing to provide London with the FRU capability it needs in order to respond to a range of incidents. In addition, the proposals include reducing the crewing levels of each FRU from 5 to 4.
>
> This proposal is made on the basis that other options were sought, and based on the utilisation of FRU appliances reducing to an average rate of 4 per cent, with the number of mobilisations reducing by 720 since 2010/11.
>
> The cost saving of reducing the fleet of FRUs from 16 to 14 and reducing the minimum crewing levels on fire rescue units

> from five firefighters to four provides a combined saving of £6m, which would be used to keep two fire stations open and four pumping appliances on the road.
>
> Under the proposals the FRUs would be removed from Hornchurch and Millwall fire stations."

329. In his report the Commissioner indicates that, responding to requests made during the consultation process, he asked for inquiries to be made to see if further savings could be made elsewhere. I should record the relevant passages in his report:

> "**Looking for additional savings**
>
> 119. Taking all of this into account, I tasked officers to go back and do what some people asked us to do (particularly those Council Leaders who said that they believed that there were savings to be made elsewhere, with more effort from officers), which is to try and find savings which do not affect front line pumping appliances. It has not been my first choice to do this and my draft proposals reflect my belief that it is possible to safely make operational reductions from the pumping appliance fleet. However, I do not want to ignore what I have heard during the consultation and so I have gone back and looked again at the operational fleet as a whole.
>
> 120. The action already taken to introduce more widespread use of alternate crewing, together with the proposals in the draft plan, have consumed the available opportunities for a significant saving that does not reduce the number of front line vehicles. The aerial fleet has been protected in recent years, despite low levels of utilisation, but my sense is that these appliances have the same characteristics as pumping appliances in terms of their perceived value. Consequently, I now propose to make savings by reducing the spend on Fire Rescue Unit (FRU) resources."

330. That was the introduction and the report then went into detail on how the savings were to be made. It appears that Westminster City Council had expressed the view during the consultation that FRUs were "an under-utilised facility" and that the Commissioner ought to look at the staffing of FRUs. The Commissioner summarises the position in his witness statement in this way:

> "… I identified that the capabilities of FRUs are for the most part carried out by four FRU qualified personnel, save for level 2 rescue operations where five FRU personnel are required. In these incidents two FRUs are mobilised and therefore it would be possible to contemplate a reduction in crewing levels from a minimum of 5 to a minimum of 4. This proposal would save £3.6m and in my view will have no detrimental impact on capabilities. Further, in light of the low level of utilisation of FRUs (namely 4%) I considered that the fleet could be reduced

> by two units, namely those at Millwall and Hornchurch, the reasons for these locations being identified in my report to the Authority … resulting in a further saving of £2.2m."

331. Elsewhere in the report it is recorded that "Hornchurch and Millwall are both technical hazmat FRUs in the East of London with low levels of utilisation, with Millwall having consistently the lowest level of utilisation of any FRU."

332. In a letter dated 30 July 2013 the Mayor asked the Commissioner why these proposals "emerged comparatively late in the process" to which the Commissioner replied the following day stating that the proposals were a "practical response to the consultation" and that he had "looked to the wider resources at [his] disposal to facilitate changes to [his] original proposals". He also explained the legal advice he had received in this way:

> "It is in the nature of consultation that revisions might be proposed which were not the subject of the original consultation, but so long as those revisions are not clearly beyond the scope of the original consultation there is no obligation to consult further.' In a case on the legal principles governing the need to re-consult (East Kent Hospital NHS Trust) the judge said, 'In determining whether there should be further re-consultation, a proper balance has to be struck between the strong obligation to consult … and the need for decisions to be taken that affect the running of the … service. This means that there should only be re-consultation if there is a fundamental difference between the proposals consulted on and those which the consulting party subsequently wishes to adopt."

333. In his letter to the Mayor, the Commissioner said that, in the light of that advice, he "decided that it was not necessary to consult on the FRU proposals."

334. In the report of 18 July, the Head of Legal and Democratic Services made the following comment:

> "179. The Commissioner is proposing to include in the final LSP5 some revisions to the draft LSP5 which was consulted on. Some of those revisions (the FRU proposals and the deployment of an additional appliance to East Greenwich fire station) did not feature in the consultation. It is in the nature of consultation that revisions might be proposed which were not the subject of the original consultation, but so long as those revisions are not clearly way beyond the scope of the original consultation there is no obligation to consult further. I am satisfied that members can properly decide whether to adopt those proposed revisions.
>
> 180. In considering the revisions members should have regard to the reasons for them, the Commissioner's professional advice, the merits of any reasonably practicable alternative

> courses of action (including the option of retention of the savings produced by the FRU proposals to set against future budgetary constraints) and their fit with the underlying principles guiding the preparation of LSP5. I am satisfied that the revisions can be properly decided upon by members."

335. The legal advice was derived in part from the case of *R (Smith) v. East Kent Hospital NHS Trust* [2002] EWHC 2640 (Admin), a decision of Silber J concerning the proposed re-organisation of health service provision in Kent. The question arose as to whether there should have been a re-consultation on certain proposals that emerged during a consultation process. Before expressing his view of the relevant test, Silber J referred to what Schiemann J, as he then was, with whom Lloyd J agreed, said in *R v. Shropshire Health Authority ex parte Duffus* [1990] 1 Med. L.R. 219 at p.223:

> "A consultation procedure, if it is to be as full and fair as it ought to be, takes considerable time, and meanwhile the underlying facts and projections are changing all the time. It is not just a question of an iterative process which can speedily be run through a computer. Each consultation process if it produces any changes has the potential to give rise to an expectation in others that they will be consulted about any changes. If the courts are to be liberal in the use of their power of judicial review there is a danger that the process will prevent any change – either in the sense that the authority will be disinclined to make any change because of the repeated consultation processes which this might engender, or in the sense that no decisions get taken because consultation never comes to an end. One must not forget that there are those with legitimate expectations that decisions will be taken."

336. Silber J said this at [45]:

> "So I approach the issue of whether there should have been re-consultation by the defendants in this case, on the proposals now under challenge on the basis that the defendants had a strong obligation to consult with all parts of the local community. The concept of fairness should determine whether there is a need to re-consult if the decision-maker wishes to accept a fresh proposal but the courts should not be too liberal in the use of its power of judicial review to compel further consultation on any change. In determining whether there should be further re-consultation, a proper balance has to be struck between the strong obligation to consult on the part of the health authority and the need for decisions to be taken that affect the running of the Health Service. <u>This means that there should only be re-consultation if there is a fundamental difference between the proposals consulted on and those which the consulting party subsequently wishes to adopt</u>." (Emphasis added.)

337. So was there a fundamental difference between the proposals in the draft Plan and those ultimately recommended for acceptance? In relation to whether the 155/102 proposal should be seen as fundamentally different from the 151/100 proposal upon which there was consultation, the answer is plainly "no" and no-one has sought to suggest otherwise. That, of course, is the biggest part of the overall picture. Should the "add-on" features concerning FRUs be seen as injecting something "fundamentally different" into the picture such that fairness demands re-consultation, if not on the whole process, at least on that part?

338. In his witness statement in these proceedings dated 25 October 2013, Mr Gordon Fielden, the Regional Chair of the London Region of the FBU, said that the Commissioner undertook a risk assessment of the impact of a change in crewing levels on FRUs after he had recommended that the crewing numbers be reduced and he also asserted that removing the FRUs at Hornchurch and Millwall would be dangerous for the reasons he sets out.

339. Mr Moffett and Mr Drabble submit that the changes were not so fundamentally different as to place them in the category of post-consultation changes that required a further round of consultation. Mr Moffett says that the changes should not be characterised as fundamental change to the proposals as a whole and that the change did emerge from the consultation process.

340. I have not found this issue quite as easy to resolve from that particular point of view as Mr Moffett and Mr Drabble suggest I should. There is a sense of a different qualitative "feel" to a proposal that was never identified as a "runner" at the outset of the consultation process and, if looked at in isolation, I could see the argument for saying that, whilst not truly fundamental to the proposals as a whole, the new proposals did reflect a sufficiently fundamental change to what was proposed such that, in fairness, those affected ought to have the opportunity to comment.

341. However, having given the matter anxious consideration, I think that my concerns are misplaced. Those most directly affected by the fresh proposals would be the members of the FBU who operate FRUs and also those boroughs in which the FRUs that are to be decommissioned are currently to be found. The FBU did take advantage of the period from 10 July to 18 July to make some representations about what was proposed in the final report, but no suggestion was made that there should be a re-consultation on this issue. Instead certain representations were made about the proposal in the sense that the observation was made that no suitable risk assessment had been carried out. Furthermore, whilst Millwall is in the borough of Tower Hamlets, Tower Hamlets has made no submissions about this particular matter. Hornchurch is in the borough of Havering, but no representations have been made by that borough. In those circumstances, the natural inference to be drawn is that the issue is not seen generally to be as fundamental as is now being sought to be suggested.

342. Equally, so far as the FBU is concerned, it has not brought its own judicial review claim in respect of this matter. It is an interested party in these proceedings. There is nothing in the Claimants' case about FRUs and, therefore, this particular matter forms no part of the Claimants' case. Mr Moffett and Mr Drabble suggest that that fact precludes the FBU from seeking to rely upon this ground as a free-standing ground for judicial review. In view of my decision on the merits of the proposed challenge, I

do not have to consider that particular procedural objection which is, of course, open to be taken should this matter go further.

343. In order not to preclude the procedural point from being taken later, should the grant of permission to apply for judicial review be seen as a green light for bringing this claim, I propose to refuse permission to apply for judicial review on this ground.

**The public sector equality duty ground of challenge (Ground 7 of the Claimant's grounds)**

344. I set out the terms of section 149 of the Equality Act 2010 in paragraph 41 above.

345. The most recent authoritative decision on how the provisions of section 149 fall to be applied is the case of *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, in which the judgments were handed down on 6 November. The judgment of McCombe LJ sets out at [26] a series of propositions, distilled from previous cases, that articulate the principles to be applied in this context. I will not extend an already lengthy judgment by a recitation of the principles, but will refer briefly as necessary to what is said. I would, however, respectfully add reference to a passage in the judgment of Elias LJ in *R (on the application of Greenwich Community Law Centre) v Greenwich LBC* [2012] EWCA Civ 496 (with which Ward and Black LJJ agreed) at [30]:

> "The relevant legal principles are now well established and were not in dispute …. I would emphasise the need for the court to ask whether as a matter of substance there has been compliance; it is not a tick box exercise. At the same time the courts must ensure that they do not micro-manage the exercise …."

346. This is a reflection in part of the proposition, repeated in *Bracking*, of what Elias LJ said in *R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin) (Divisional Court) to the effect that the court cannot interfere with the decision of a decision-maker simply because it would have given greater weight to the equality implications of the decision than did the decision-maker. To do otherwise "would allow unelected judges to review on substantive merits grounds almost all aspects of public decision making." In the same passage of his judgment in the *Greenwich* case to which I referred above, Elias LJ also referred to the judgment of Pill LJ in *R (Bailey) v Brent LBC* [2011] EWCA Civ 1586 (with which Richards and Davis LJJ agreed) where he said this:

> "… The thought processes of decision makers need to include having regard for the duties in the 2010 Act. The section 149 duty must be kept in mind by decision makers throughout the decision-making process. It should be embedded in the process but can have no fixed content, bearing in mind the range of potential factors and situations …. What observance of that duty requires of decision makers is fact-sensitive; it inevitably varies considerably from situation to situation, from time to time and from stage to stage …."

347. I must approach the criticisms made by Mr Stilitz and Mr White with all those considerations well in mind. I will need to return to *Bailey* in slightly more detail because of the reliance placed by Mr Moffett upon the approach adopted in it (see paragraph 363 below).

348. Mr Stilitz submits that far from conscientiously abiding by his duties under the section 149 the Commissioner has (i) simply collated a certain amount of data related to protected characteristics, but then has done nothing with the data in terms of feeding it into the decision-making process or the analysis of risk and (ii) has side-stepped the questions posed by the section by "purportedly focusing on lifestyle characteristics" instead which, in any event, "has not [been] fed into [the decisions about] allocation of resources." Since the duties are personal to each decision-maker (in other words, the Mayor and LFEPA), but neither has carried out an independent equality analysis, he submits that their reliance upon the Commissioner's approach has in effect "infected" their own exercise of the duties.

349. Mr White submitted that the Equality Impact Assessment ('the EIA') completed in respect of "operational efficiencies" (see paragraph 355 below) was wholly deficient. He contended that the statement that "belonging to a protected characteristic group in the first place does not place individuals at risk" is simply wrong because, for example, the protected characteristics of disability and age may, he suggests, self-evidently place people at risk and also that those with physical or mental disabilities may be more difficult or take longer for fire-fighters to evacuate from premises subject to a fire. He gives other examples.

350. I will turn to the specific criticisms shortly, but whilst it is plainly important for a decision-maker not to be dismissive of the statutory responsibilities under the 2010 Act and indeed to apply them conscientiously, there must equally plainly be some appreciation of context in which they are to be applied. In the present situation that involves endeavouring to have due regard to the needs of all those with protected characteristics within Greater London (the population of which exceeds 8 million) in the context of proposing changes to the fire and emergency service regime for that whole area and for that whole population. That, I would respectfully suggest, is the kind of factor that Pill LJ had in mind when advancing the proposition to which I referred above. "[W]hether as a matter of substance" (*per* Elias LJ) there has, in any particular situation, been compliance with the Act is equally something that needs to be evaluated in the context of the task with which the public body is confronted. As to the need to approach this kind of issue "as a matter of substance, not form", see also *per* Davis LJ in *Bailey* at [92].

351. I should describe as briefly as I can the way in which the Commissioner sought to comply with the Act. Supporting Document 16 contained equality analyses in five policy areas (namely, management of calls to automated fire alarms, working with neighbouring brigades, operational efficiencies, shut in lift incidents, and targeting people at risk) and the analysis of each was reviewed during the consultation process. The relevant attachment to the Commissioner's report for the meeting on 18 July (which ran to many pages) contained the following paragraph on its introductory page:

> "Each analysis outlines the purpose of the policy, the anticipated impact on people who share protected

> characteristics, and evidence to support any such impacts. Each analysis has also been updated to take account of further information collated as part of the public consultation on LSP5. This specifically includes analysis of comments provided by under represented or disadvantaged groups, and summarises general observations made by respondents as a whole."

352. Each analysis is broken down into sections, the two most relevant for present purposes being sections 3 and 4. Section 3 is headed "What is the anticipated impact (negative, positive or neutral) on the equality groups and people who share protected characteristics?" Underneath is set out a series of six issues that fall to be addressed under this heading. Those issues are as follows:

> Assessment across the equality groups and any potential for differential impacts on any groups.
>
> The identification of impacts via the consultation and what weight they should carry (after consultation).
>
> Positive, neutral and adverse impacts.
>
> The extent of the anticipated impact and any actions so far identified that could either promote a positive impact or mitigate an adverse one (including policy revisions and/or additional measures that can be taken to ensure the policy can achieve its aims without risking the adverse impacts).
>
> How might the policy promote good relations? (Helping groups to work together/ remove barriers that isolate people from participating, etc.).
>
> Whether any impact has a legal consequence.

353. Section 4 is headed "What is the evidence or other information in support of this?"

354. It is these two sections that have formed the focus of the attack made by Mr Stilitz and Mr White on the way that the equality analysis was conducted. Mr Stilitz says that the fourth of the issues listed in paragraph 352 above sets what ought to have been done and had it been done the Commissioner might have complied with the duty under the Act. However, he suggests that the tasks identified were simply not carried out.

355. In the context of "operational efficiencies" the Section 3 issues are addressed by a recitation of the effects of the 155/102 proposal, namely, identifying the fire station closures and the impact on attendance times across the individual boroughs, all 33 of which are identified an referred to. There then follows the following paragraph that is roundly criticised by Mr Stilitz and Mr White:

> "Reducing the numbers of stations would mean that physical access to the closed stations is removed. However, each borough is served by a Borough Commander, and local

> community and partnership initiatives, particularly those that target people most at risk will remain in place, either delivered centrally or by area teams. Removing the station will not affect this important work, and there will be no anticipated impact on people with protected characteristics. Indeed our prevention and protection work is focussed on those who are most at risk, many of whom will share protected characteristics, and this will continue to be our priority."

356. Before commenting on that I should refer to the paragraph in Section 4 that deals with the evidence. It (paragraph 20) is in these terms:

> "Impacts of the proposal on boroughs as a whole have been outlined in section 3. In terms of impacts on users of the service, it is difficult to quantify the exact effect on people who share protected characteristics. The Brigade targets its fire safety work on lifestyles of individuals rather than groups of people who share protected characteristics. This is because information about incidents collected by the Brigade indicates that the behaviour and lifestyles of individuals remains one of the primary factors in the number of fires that LFB attends. Whilst it is true that certain lifestyles identified as being at higher risk will also contain people who share protected characteristics, belonging to a protected characteristic group in the first place does not place individuals at risk."

357. A little later under this section the following two further paragraphs appear that have occasioned comment on behalf of the Claimants:

> "32. Looking across most of protected characteristic groups, the 155/102 option would introduce a range of impacts for the London boroughs that place in the top 5 for people with these characteristics. Some boroughs would have improved attendance, others would remain the same, and some would get worse. However, even where attendance times are slower as a result of the proposal, some boroughs are still better than the London-wide averages for first and second appliance attendance, and the majority remain inside the six and eight minute attendance standards respectively.
>
> 33. It is anticipated that the effect of the changes will be the same across the community. As previously stated, information collected by the Brigade indicates that lifestyle is much more of a factor in determining the level of risk of fire rather than protected characteristics. However, some individuals who share protected characteristics will also lead lifestyles that increase their risk to fire – as such, it is possible that the operational efficiency proposals will impact these people negatively."

358. Leaving aside for a moment the substantive criticisms sought to be made of these paragraphs in particular, these are passages that require re-reading on a number of

occasions before their true meaning emerges. Naturally, any criticism in this respect has to be tempered in the knowledge that this was one document of many that had to be produced within a relatively short period of time after the conclusion of the consultation process and the formulation of the plan to be advanced as the final recommendation. But the language is opaque in a number of places and the meaning is not immediately apparent.

359. Mr Stilitz submits that the paragraph quoted in paragraph 355 above is meaningless and falls a long way short of the kind of rigorous and conscientious analysis that a case like *Bracking* demands. He says that it contains no analysis at all. Moving to the paragraph quoted in paragraph 356 above, he and Mr White invite condemnation of the approach that appears there. Mr White's essential criticism is articulated in paragraph 349 above. Mr Stilitz says that the formula used in this paragraph is the means by which the Commissioner tries to "duck" the issue of the impact of the proposals on people with shared protected characteristics. The means adopted to achieve this, he submits, is for the Commissioner to say that <u>lifestyle</u> is a better indicator of risk than possession of a particular protected characteristic and that since having a particular protective characteristic does not necessarily marry up with lifestyle, protected characteristics can be ignored.

360. He submits that unless a risk analysis by reference to protected characteristics has been undertaken it is not possible to say to what extent fire risk may correlate with those characteristics and that, in any event, some protected characteristics (e.g., disability) will correlate directly with fire risk. He also criticises the implicit assumption in this paragraph that there will be no indirect discrimination against persons having certain protected characteristics, "even though it is entirely plausible that there would be such an effect". He cites as examples young single adults in social housing who share the characteristic of being young or of older residents in social housing who share the protected characteristic of being old. Mr White joins by saying that the EIA failed to identify where in London persons with particular protected characteristics were concentrated and, in particular, did not examine whether persons with particular protected characteristics were concentrated in specific wards.

361. Mr Stilitz makes other criticisms, but the essence of his principal criticism (supported by Mr White) is that focusing in the equalities analysis on <u>lifestyle characteristics</u> rather than "protected characteristics" means that the Act has not been complied with and that its provisions have been "side-stepped".

362. Mr Moffett (supported where relevant by Mr Drabble) rejects these criticisms. He submits that reading the equality analysis as a whole demonstrates (a) the Commissioner was aware of the need to have due regard to the Act and (b) did so "in substance" which is all that the law requires. Both Mr Moffett and Mr Drabble take head-on the criticism that focusing on lifestyle characteristics in some way avoids addressing protected characteristics and reject it. I will refine the argument a little further below, but in essence it is that focusing on lifestyle characteristics where relevant means that those assessed as most vulnerable to fire, including any with protected characteristics, are targeted for the deployment of resources. Mr Moffett particularly draws attention to the fact that the paragraph quoted in paragraph 355 above was <u>not</u> concerned with attendance times, but with "prevention and protection work" which is not affected by the closure of fire stations. All that this part of the

equality analysis is saying is that the resources in connection with prevention and protection will continue to be focused on those with those lifestyle characteristics assessed as most likely to cause them to be victims of fire. Mr Drabble adds that focusing resources in this way will have the inevitable effect of benefiting those with protected characteristics who are at risk from fire and that there is nothing wrong with this approach. As Mr Moffett put it, the impact on those with protected characteristics will, because of their lifestyle, be targeted specifically.

363. As indicated previously (see paragraphs 170-172), the rationale for feeding into the model at the outset the previous five years' serious incident locations was to ensure that those most vulnerable to fire in all locations would be targeted for the deployment of resources. Mr Moffett contends that this pool, as well as the pool with lifestyle characteristics that makes them vulnerable to the risk of suffering a fire, is the pool by which to judge whether there is indirect discrimination within the Act. He draws on the approach in *Bailey* for this purpose. There the question was whether the appropriate pool for analysis was the whole population of the Borough of Brent or the more limited pool of library users in the borough. The Court of Appeal held that it was correct to choose the more limited pool for this purpose. The matter was addressed in this way by Pill LJ, drawing upon what was said by the House of Lords in *Secretary of State for Trade and Industry v Rutherford*:

> "52. In *Secretary of State for Trade & Industries v Rutherford (No.2)* [2006] ICR 785, an issue arose as to the pool of employees to be chosen in considering the disparate impact of a proposal and whether the entire workforce should be chosen. The applicants were male employees dismissed when they were over 65. It was held that the provisions applied to the same proportion of women in that group as men and there was no indirect sex discrimination. Baroness Hale of Richmond, with whom Lord Scott of Foscote and Lord Rodger of Earlsferry agreed, stated, at paragraph 77: "But in my view one should not be bringing into the comparison people who have no interest in the advantage in question."
>
> 53. Baroness Hale added, at paragraph 82:
>
> > "The common feature is that all these people are in the pool who want the benefit - or not to suffer the disadvantage - and they are differentially affected by a criterion applicable to that benefit or disadvantage. Indirect discrimination cannot be shown by bringing into the equation people who have no interest in the advantage or disadvantage in question. If it were, one might well wish to ask whether the fact that they were not interested was itself the product of direct or indirect discrimination in the past."
>
> That approach justifies the adoption of library users as the appropriate pool for analysis in this case, [Counsel for the local authority] submitted.

> 54. In *Grundy v British Airways PLC* [2007] EWCA Civ 1020, a sex discrimination case under the Equal Pay Act 1970, the court considered the application of *Rutherford.* Sedley LJ, with whom Waller LJ and Carnwath LJ agreed, stated, at paragraph 31:
>
> > "*Rutherford (No 2)* seems to me to be a striking illustration of Lord Nicholls' proposition that the assessment of disparate impact is a question of fact, limited like all questions of fact by the dictates of logic. In discrimination claims the key determinant of both elements is the issue which the claimant has elected to pose and which the tribunal is therefore required to evaluate by finding a pool in which the specificity of the allegation can be realistically tested. Provided it tests the allegation in a suitable pool, the tribunal cannot be said to have erred in law even if a different pool, with a different outcome, could equally legitimately have been chosen. We do not accept that *Rutherford* is authority for the routine selection of the widest possible pool; nor therefore that any question arises of "looking at" a smaller pool for some unspecified purpose short of determining the case."
>
> A discretion in pool selection is thereby recognised as are the problems facing a decision maker, including one under the 2010 Act, in deciding upon the scope of his investigation in a context where "due regard" is required."

364. Pill LJ said later (at [82]) that it "was legitimate to take … the pool of library users rather than a pool comprising the entire population of the Borough, in making an assessment" under section 149. Davis LJ said (at [101]) that he was "convinced that the correct comparator pool in this case was the pool of library users in Brent, not the general population of Brent." Richard LJ agreed with both judgments.

365. Mr Moffett argues that the approach the Commissioner took identified the correct pool for the purposes of this exercise, namely, the pool of those most likely to experience a fire in the future. If the choice of pool was simply a matter of discretion for the decision-maker then, subject to a potential public law challenge, it would seem to me that the Commissioner's approach was well within his discretion and there would be no basis for judicial review. However, it does seem to me that there is a compelling logic to doing so in any event for the reasons summarised in *Bailey*. Whilst any member of the whole population of London could be affected by a fire, there are certain sections of the population that are more likely to suffer a fire and the effect upon them as future users of the fire service is the correct area in which to address the question of whether there would be indirect discrimination within the Act.

366. It also seems to me to be a legitimate view that identifying these sections of the population is a more focused and proportionate way of carrying out the necessary evaluation under the Act than simply to assume that, for example, the elderly, the young or the disabled are more vulnerable to the risk of a fire. Mr Moffett makes the strong point that merely belonging to one of those categories does not increase the

risk that someone within that category will experience a fire. He recognises, of course, that someone with a particular protected characteristic (e.g., old age) may be affected more seriously if they do experience a fire, but that to target resources by reference simply to the number of elderly people in a locality, without regard to whether they are within a group likely to be at risk from fire, is not an approach dictated by having due regard to the Act.

367. Is it fair to criticise the assertion made in the paragraphs quoted in paragraph 357 above that "[it] is anticipated that the effect of the changes will be the same across the community", the community for this purpose being the whole of London? Mr White criticises this approach because, he says, it ignores the fact that people who share protected characteristics are concentrated in certain wards in London. He cites as examples:

(a) Kilburn (in Camden) where 18.5% of the population are disabled as compared to 14.4% of the London average;

(b) Dalston and De Beauvoir (in Hackney) where 32% and 31% of the population respectively is between the ages of 18-30 compared with the London average of 21.9%;

(c) Bow East (in Tower Hamlets) where 32% of the population is between the ages of 18-30 compared to the London average of 21.9%;

(d) Mile End East (in Tower Hamlets) where 38.6% of residents do not have English as a first language compared with a London average of 22%.

368. He goes on to say that having failed to note these factors the Commissioner then failed to analyse the effect of worsening response times at these ward levels on groups sharing relevant protected characteristics, citing these factors as the kind of factors that should have been noted:

(a) in Kilburn the first appliance response time would increase from 6:15 to 6:38 and will thus remain outside the attendance standard for first appliances;

(b) both Dalston and De Beauvoir would move from within the attendance target for the first appliance to outside it and De Beauvoir would move from within the attendance target for the second appliance to outside it;

(c) in Bow East the first appliance response time will move from within the attendance target to 1:20 over the attendance target and the second appliance response time will move from within the attendance target to 1:09 over it;

(d) in Mile End East the first appliance response time will move from within the attendance target to 18 seconds over.

369. Mr Moffett's response is that these are examples from a very few wards out of the 649 in London and that ultimately the case being advanced in respect of section 149 is that the analysis should have descended into a significantly greater level of detail and that

rather than conducting an equality analysis on a borough-by-borough basis (as was done in the annex to the Commissioner's report to the meeting on 18 July) the analysis should have looked at matters on a ward-by-ward basis across all wards in London. This, he submits, is not what the Act requires and, not unnaturally, draws attention to what Davis LJ said in *Bailey* when he said this at [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 …. 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 [Counsel for the claimants] 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."

370. I am prepared to accept that the phraseology of the EIA in the present case was difficult and somewhat obtuse in some respects, but the question is whether, in substance, the Commissioner complied with his obligation to have due regard to the Act. It does seem to me that focusing at a borough level on those most likely to experience fire was a legitimate means of considering, amongst others, those with protected characteristics and that approaching it as the Claimants and the FBU suggest would almost amount to starting with a blank piece of paper and subjecting the whole of London to a very detailed analysis reflected in the examples given by Mr White. It is the kind of analysis that Haddon-Cave J may have had in mind in *R (Branwood) v Rochdale MBC* [2013] EWHC 1024 (Admin) when he said (at [60]) that it was "not the law that public authorities must … collect, analyse and record each scrap of data with regard to every single protected group and then analyse each such group *seriatim* against every limb of section 149 looking at endless permutations and combinations." He said that a "sense of proportionality and reality is required." I respectfully agree.

371. I reject the submissions that the Commissioner's approach did not adequately address the Equality Act.

372. What is the position of the Mayor and LFEPA? The Mayor asked the Commissioner in his letter of 30 July whether he had satisfied himself that the equalities analyses provide sufficient data relating to the extent to which the proposals then being advanced "impact disproportionately on those with protected characteristics" in the light of section 149.

373. The Commissioner's reply was as follows:

> "I take my duties under the Equality Act very seriously and that is why I provided such comprehensive equality analyses of my proposals, including one for the five main policy areas and an additional one for staff. As the equality analyses make clear the fact that someone may share protected characteristics does not in itself place that person at risk from fire. The lifestyle of an individual is a much more relevant factor and whilst certain lifestyles identified as being higher risk will also contain people who share protected characteristics, belonging to a protected characteristic group in the first place does not place individuals at risk.
>
> During consultation there was considerable focus on the impact of attendance times at the ward level. Nevertheless I did not undertake a further equality analysis at this level, partly because the Brigade's emergency cover has always been planned and resourced on a pan-London strategic basis, but mainly because the analysis of the data at the borough level showed that whilst the original draft proposals would have had an impact on attendance times, they would not have disproportionately affected those with protected characteristics. This is because people who share protected characteristics live across London. Providing a further breakdown at a ward level would not have revealed anything different – there would have just been more data.
>
> I also updated each equality analysis following consultation to address concerns about my proposals, including those from people who share protected characteristics. This included providing further information about how we would address the concerns of those who felt they were vulnerable. I am satisfied therefore that the information in respect of the equality analyses was sufficient to enable the Authority to satisfy itself that it was able to comply with Section 149(1) of the Equality Act 2010."

374. Mr Stilitz says that the Mayor did not carry out any analysis himself, relied entirely on the Commissioner and does not appear to have gone beyond the Commissioner's assurances. He suggests that there is no indication that the Mayor even read the Equalities Analysis and that he appears simply to have taken it on trust from the Commissioner that the analysis was robust.

375. I do not know to what extent the Mayor descended into the detail of the documents before deciding on issuing the direction on 2 August: there is no evidence one way or the other about that. However, if the suggestion is that he ought to have commissioned his own review of this issue then (a) it is unrealistic and (b) was not necessary as a matter of law if that is what is being contended. The duty imposed upon him may have been a personal duty, but this is no more than a personal duty to apply his mind to the statutory provisions and satisfy himself that all appropriate analyses had been carried out. He was entitled to conclude that the Plan was consistent with section 149 and, as Mr Drabble said, he had available to him all the

relevant material, including the Draft Plans, the Commissioner's Reports, the Equality Analyses themselves and the Commissioner's letter of the 30 July.

376. For completeness, I would simply say that there is nothing, in my judgment, in the case of *R (National Association of Health Stores) v Department of Health* [2005] EWCA Civ 154 that undermines this view. As McCombe LJ said, what matters is what the decision-maker took into account and what he or she knew. The Mayor here knew very clearly the view of the Commissioner and he was entitled to rely upon that provided that he addressed the question of compliance with the Act which his letter of 30 July shows that he did.

377. Mr Stilitz suggests that when LFEPA made its decision in September, it did not consider the section 149 duty, but merely complied with the Mayor's direction because it was obliged to do so. On that analysis he submits that it failed in its duty.

378. I do not think Mr Stilitz was suggesting that this amounted to a free-standing challenge to the decision. If he was, I would regard it is a far-fetched submission. As I have said before, the substantive reality in this case is that the Mayor made the effective decision in this case based upon the report and recommendation of the Commissioner. If the combined effect of the Mayor's decision and the Commissioner's recommendation is that there was a breach of section 149, LFEPA's decision would also be invalid. But if the Mayor's decision did not breach the Act, I would not consider that LFEPA was, in the circumstances of this case, under any independent duty to conduct a section 149 analysis. Given its legal responsibility to obey the direction of the Mayor, its primary duty was to take that course. If it had conducted its own analysis and had reached a different view from that of the Mayor, a rather difficult situation would have been reached about which, happily, I need express no view. However, that was not the position and, in my judgment, in the events that happened, LFEPA had no option but to comply with the direction and it cannot be in breach of its duty under section 149 by not conducting its own analysis.

### Misdirection (Grounds 4-6 of the Claimants' grounds)

379. These grounds (which though expressed in various ways amount to the same thing) relate to the suggestion made by the Claimants (and supported by the FBU) that the relevant decisions were made on the erroneous basis that the savings made by virtue of the Plan could be made "without affecting public safety", the words in the Executive Summary of the request for a Mayoral Direction that I highlighted in paragraph 66 above.

380. The background to the use of this expression appears to be the exchange of letters between the Mayor and the Commissioner on 30 and 31 July to which I have already referred on occasions. In his letter of 30 July the Mayor asked the Commissioner the following question:

> "In your opinion, are you satisfied that the proposals you put forward are appropriate for keeping Londoners safe in the light of the responses received to the consultation and the budgetary considerations?"

381. The Commissioner's reply was as follows:

> "I am satisfied that my original and revised proposals are appropriate for keeping Londoners safe. Some respondents were concerned that the increase in attendance times in some parts of London would result in a higher number of deaths from fire. I gave this careful consideration during the consultation period and, although I do not generally favour this methodology (for reasons that are explained fully in the draft plan) I responded to requests to do so and used the government's methodology to calculate whether or not my proposals would lead to an increase in such deaths. The methodology predicts that even the original draft proposals would not have resulted in a higher number of fire deaths. Given that the proposals I put to the Authority in July have the effect of ameliorating some of the greatest effects in the original proposals I am confident that my revised proposals will not increase the number of people who die from fire.
>
> It must be remembered that on average fire appliances in London spend less than 8 per cent of their available time attending incidents and that the evidence shows that there is sufficient capacity to continue to provide an excellent response across London. My proposals also mean that I can continue to focus efforts on prevention and protection work, work that is vital if we are to further reduce the number of people who die or are injured in fires, thereby making Londoners safer."

382. Mr Stilitz says that although the analysis in the Commissioner's reply is based only on fatalities, not casualties, the Mayor has interpreted it as a statement that "public safety" would not be "affected" <u>at all</u> by the proposals. In relation to this he submits that the Commissioner's statement about fatalities did not amount to a statement that public safety would not be affected and that a reading of the report and Plan as a whole would have made it clear to the Mayor that the cuts would impact on the safety of the public. Furthermore, he repeats his argument (see paragraph 287 above) that any statement that the Plan would not lead to more fatalities was misleading. I have expressed my conclusion about that latter matter (see paragraph 294) and will not repeat it: taking a balanced view, I do not consider that the point has any real substance.

383. Mr Drabble submits that if Mr Stilitz is suggesting that the Commissioner advised the Mayor that the effect of the Plan would be to pose some material adverse effect on public safety, it would be a misreading of his report taken as a whole. Indeed Mr Drabble contends that whilst the Commissioner acknowledged that the draft Plan (dealing with the 151/100 proposal) would have some impact on arrival times at incidents in some parts of London (and refers to the Foreword to which I referred in paragraph 282 above), it would not be of an order that presented a significant safety risk. Mr Drabble says that in his report of 21 January the Commissioner stated that he did "not believe that the level of reductions posed in this report will have a significant detrimental impact of the safety of Londoners." Perhaps more relevant, because it represents his final publicly expressed word on the issue before the Mayor considered

the position, is the Foreword to the final report. In the relevant part of the Foreword he said this:

> "In this plan, we would maintain our existing target attendance time of getting a first fire engine to an emergency within an average six minutes and the second fire engine, when needed, within an average of eight minutes. But I also acknowledge that it is not possible to make reductions in fire stations and fire engines without impacting on arrival times at incidents. Whilst we have worked hard to make changes that minimise the impact, our incident response will not always be the same as currently and these changes would see different standards of performance to some incidents in some parts of London, albeit maintaining performance within our first and second appliance targets London-wide.
>
> Reducing resources must be seen in the wider context of everything in this report, including how we will work to reduce fires amongst vulnerable groups such as those living in sheltered housing; lobby for sprinklers; introduce charges for repeat false fire alarm call outs and continue to carry out thousands of home fire safety visits each year. Fire stations and fire engines do not stop fires happening - proactive prevention work does." (My emphasis.)

384. The Commissioner's final view, as expressed to the Mayor, was set out in the passage in the letter I have quoted in paragraph 381 above. That was more discursive than some of his previous comments, but his general conclusion was that the proposals (both the original and the revised proposals) were "appropriate for keeping Londoners safe."

385. Listening to the arguments in court, and re-reading the material for the purposes of preparing this judgment, the picture created is one of all parties dancing on the head of a pin on this issue. The Claimants wish to suggest that the Mayor confidently asserted that following the adoption of the Plan there would, in effect, be no change at all in the overall safety implications for all Londoners. By seeking to make good that assertion they wish to suggest that the Mayor must have misdirected himself as to the effect of the Plan and, accordingly, overlooked a material consideration when deciding to issue his direction on 2 August. That could be the only effect in law of such a contention if it was established.

386. If the Mayor's expressed view had been that the adoption of the Plan would not "materially affect public safety", then it could not realistically be argued that he was stating anything inconsistent with what the Commissioner had been saying from the outset concerning attendance times. As a starting proposition, it is obvious that longer attendance times could (not necessarily would, but could) increase the risk of serious injury or death and, whilst not having said so expressly in the Foreword, that must be the natural inference to be drawn from it unless a redeployment of existing resources can be managed in such a way as to minimise those potential adverse consequences. However, another side of the message being conveyed in the Foreword (and indeed the other side of the coin on this particular point) is that the continued "proactive

preventive work" over the three year period of the Plan would reduce the incidence of fires, mostly those in dwellings. Both those messages were conveyed in the Commissioner's letter to the Mayor of 31 July, but the Commissioner chose to focus on the fatality rate as an indicator of whether the proposals were "appropriate for keeping Londoners safe from fire".

387. Doing the best I can to interpret the message conveyed in that letter, it was to the effect that, taken as whole and over the period of the Plan, Londoners would be kept safe by the fire services. If the Commissioner had said that the redeployment of resources had been modelled on the most likely location of serious incidents, the letter might have been more overtly persuasive, but he expressed himself as he did.

388. Endeavouring to take a realistic view of the overall position, I have to say that I do not see how the Commissioner's view could have been misunderstood by the Mayor: there were some minuses and some pluses, but overall he was suggesting that the safety of Londoners was maintained by the proposals. That, I apprehend, was the message being conveyed. (I emphasise that it is not for me to decide whether that message was justified or not; merely, for present purposes, to decide what the message to the Mayor was.)

389. Whether it would have been more accurate thereafter for the Mayor to express himself as indicated in paragraph 386 above, or to say that "frontline savings can be made without public safety being affected over the period of the Plan", is a matter about which there could doubtless be debate. However, whatever phraseology the Mayor chose for the purposes of his direction, given that he was directing LFEPA to adopt and publish the final Plan "in the form put forward by the Commissioner", it is inconceivable that he was unaware of its implications of the proposals as clarified by the Commissioner's letter. As I have said, it could only be if it could be demonstrated that the Mayor displayed a fundamental misunderstanding of the implications of the Plan that it would be open to the court to consider declaring the direction of 2 August invalid. I do not consider that such a misunderstanding can be inferred from the phraseology of the direction notwithstanding the somewhat absolute terms in which it was expressed.

## Mrs Richardson's claim

390. Mrs Richardson is an individual claimant although Mr Stilitz did not refer to her position in detail during his oral submissions.

391. I have mentioned her specific circumstances in paragraph 12 above.

392. The block in which she and her husband live is the "sister block" to neighbouring Lakanal which was the scene of the major (and tragic) fire in 2009. The block apparently has the same lay-out and construction as Lakanal. It is contended in the Grounds of Claim that Mrs Richardson is liable to be disproportionately impacted by the cuts because the average response time for the second appliance in Brunswick ward will increase by 1.32 minutes to 6.29 minutes which is 27 seconds higher than the borough average. It is suggested also that a third appliance would be needed to respond to a fire in their block and average third appliance attendance times will increase by 33 seconds across Southwark as a whole. It is also said that it will be more difficult to evacuate the Richardsons than people who are not disabled.

393. The Commissioner did respond directly to the points made on her behalf in his witness statement in the following way:

> "… I note that [the increased attendance time is] still more than 1 minute 30 seconds within the attendance standard for a second appliance and one of fastest second appliance attendance times in London. It is also said that a third appliance will be needed to respond to fires in her block and attendance times for a third appliances will increase across Southwark. It is incorrect … that three appliances are needed before fire-fighting commences at the block in which Mrs Richardson lives.
>
> The Claimants also state that it will be more difficult to evacuate Mrs Richardson and her husband. High-rise buildings are designed to protect the occupants in their own flat for up to an hour (or four hours in some cases) and the only occupants who need to immediately evacuate are those in the flat in which the fire starts. Many high-rise buildings are constructed with mobility refuges on each floor which is a place where those with mobility issues can wait safely for a planned evacuation. Nothing in [the Plan] will impact the ability of the Brigade to evacuate people from premises as crewing levels of pumping appliances will not be changed."

394. Mrs Richardson will, I trust, appreciate that, sympathetic though naturally I am to any anxieties she may feel about the effects of the Plan, I have to take the very narrow view that the law requires me to take when assessing these matters. Regrettably, her individual case can take my evaluation of the issues no further.

**Final overview**

395. A layman will have no difficulty with the intuitive feeling that "every second counts" when it comes to fighting a fire which threatens life and limb. Indeed it must be so: it is why we see fire-engines racing through the streets, why all drivers make way for them and why the statistics, whether for London or elsewhere, are focused on the time taken to get to an incident. What is known to everyone also, of course, is that no matter how efficient and well-funded a fire service may be and no matter how well-trained, well-intentioned, fit and committed its fire-fighters are, it will never be able to guarantee that no-one will die or be injured as a result of fire. The present front-line emergency response system in London cannot prevent in the region of 50 deaths per year as a result of fire. It is equally obvious to any well-informed layman that cuts to the existing front-line services in London which will increase response times to serious incidents are bound to increase at least the statistical likelihood that deaths or serious injuries will continue to occur at the same, or possibly a greater, rate <u>unless there is some unused capacity in the existing system</u> that, redeployed, can redress the situation and/or there is <u>some countervailing reduction in the incidence of serious fires</u>, particularly those in dwellings. Any pretence to the contrary would be regarded by most people as untenable.

396. There is no doubt, on the evidence put before the court, that there has been a decreasing incidence of dwelling fires, both countrywide and in London, over the years and there is some evidence that that decline is continuing in the seven Claimant boroughs although, equally, some doubts are expressed about it. The LFB has a programme that exists to try to educate people about how to avoid creating fires. Whilst the expression may be a little old-fashioned, there can be little quarrel in this context with the adage that 'prevention is better than cure'. Fire-fighting will only be necessary if there is a fire to fight. The National Framework makes clear that this is an important and integral component in any fire service authority plan. In his letter to the Mayor of 31 July (see paragraph 381 above), the Commissioner refers to the focus to be placed on that during the currency of the Plan. He also says in the same letter "that the evidence shows that there is sufficient capacity to continue to provide an excellent response across London", that response being (according to the evidence before me) directed to the areas of London most likely to experience a serious fire (based upon the experience of the previous 5 years). The response is judged against the attendance standards to which much reference has been made in this case although not, on the evidence, dictated as such by those standards.

397. It is not for me to say whether that assessment is right or wrong, merely to determine whether the opinion that it constitutes has been arrived at by a lawful route. There are obviously very strongly held views that the proposals are seriously misguided and the FBU has characterised the Plan as "the most reckless integrated management plan ever put forward by any fire and rescue authority in the country." It is wholly outside the province of the court to determine whether there is any validity in an assertion of that nature and it does not arise for consideration.

398. One factor was emphasised by Mr Moffett to which I have made little reference so far, but it is an important point and it emerges in most, if not all, cases where a court is asked to intervene in a process where there are limited resources to meet certain established objectives. There have been a good number of such cases over the last few years. It is a factor of which it is sometimes necessary to remind those who consider that the court can put right what they consider to be wrong in a decision of this nature. Simply expressed, it is that the court cannot make the choices involved because (a) constitutionally it is not for the court to do so and (b) in most such cases (and certainly the present case) the court does not have every party affected by the decision before it. In this case I have received what may well be very genuine and well-founded concerns about the effect of the proposals in seven boroughs. I have not heard from the other 26 and it does not require much imagination to appreciate that, if the Plan was quashed and re-considered in a way that addressed the concerns of the seven boroughs, other boroughs may then emerge to say that the interests of their residents have been overlooked or not given sufficient weight in the new dispensation. I have, from time to time in the judgment, noted the impact of attendance times on other boroughs not before the court simply to remind myself that there could be another side to the argument.

399. Mr Moffett reduced the factor to which I am referring to the pithy description that the process involved here is a "zero sum game", which for this purpose simply means that, given the finite pot of resources for meeting the fire services budget in London, a gain in expenditure achieved in one area will result in a loss somewhere else. The court has never engaged in determining how a finite pot is to be distributed between

competing demands. Baroness Hale of Richmond touched on this in the case of *Ahmad* to which I referred above (see paragraph 219). There are many examples in the cases, but an authoritative reminder of the principle appears in the speech of Lord Slynn of Hadley in *R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd* [1999] 2 AC 418, at 430:

> "The courts have long made it clear that, though they will readily review the way in which decisions are reached, they will respect the margin of appreciation or discretion which a chief constable has. He knows through his officers the local situation, the availability of officers and his financial resources, the other demands on the police in the area at different times: *Chief Constable of the North Wales Police v Evans* [1982] 1 WLR 1155, 1174. Where the use of limited resources has to be decided the undesirability of the court stepping in too quickly was made very clear by Sir Thomas Bingham MR in *R v Cambridge Health Authority, ex parte B* [1995] 1 WLR 898, 906 and underlined by Kennedy LJ in the present case. In the former the Master of the Rolls said in relation to the decisions which have to be taken by health authorities 'difficult and agonising judgments have to be made as to how a limited budget is best allocated to the maximum advantage of the maximum number of patients. That is not a judgment which the court can make.' The facts here are different and the statutory obligations are different but mutatis mutandis the principle is relevant to the present case…."

400. The situation is no different in the present case. I am not, of course, being asked to re-adjust the provision made for the seven boroughs, but I am being asked to set aside the currently planned provision so that it can be re-adjusted in their favour in due course.

401. That particular factor may be one reason why Parliament provided for the Secretary of State to be the effective "supervisor" of role of a fire and rescue authority in the preparation of an IRMP (see paragraph 32 above). Mr Moffett has questioned why the Secretary of State's decision not to interfere with the Mayor's direction has not been challenged in these proceedings. The bottom line for present purposes is that no such challenge was mounted, but it raises the question of the extent to which the court can truly engage in issues of irrationality in such a context (as opposed, for example, to issues concerning the consultation process). At all events, there has been no extensive debate about that and I merely raise the question without endeavouring to answer it. I have, as will be clear, engaged with the issues raised in the case and have not sought to suggest that the court should not do so.

## The orders to be made and the relevant parties

402. I have considered all material arguments (to the extent I consider necessary) on their essential merits. I will revert to how I should dispose of those matters by way of order shortly, but I need to consider briefly certain arguments advanced concerning whether the Commissioner should have been made a defendant to this proposed claim and whether his final report is susceptible to a free-standing claim for judicial review.

403. My attention was drawn to a good deal of pre-action correspondence concerning the identity of the relevant defendants. I trust I will be forgiven, at this stage of a lengthy judgment, for not setting out the competing contentions in full. The Claimants seek to justify making LFEPA and the Commissioner defendants, in addition to the Mayor, because, they say, no particular body or person was prepared to take full responsibility for the decision to proceed with the final version of the plan. To my mind, that may go to the question of costs, but not, I apprehend, any further.

404. As I have said on more than one occasion in the substantive part of this judgment, the decision to accept the Commissioner's recommendation was made by the Mayor and it was the Mayor who decided to issue the direction to LFEPA in August that it was obliged to obey. The substantive decisions under challenge were, therefore, made by the Mayor. LFEPA resolved to implement the Plan because of the Mayor's direction and I can see why, at least as a matter of formality, it was necessary to make LFEPA a defendant because, if the Claimants were right, that decision would have to be quashed. The Mayor, of course, had to be a defendant in any event.

405. However, whilst, as I have said, the Mayor made the relevant substantive decisions, he did so substantially by accepting the final report and recommendation of the Commissioner to implement the final version of the Plan. Any criticisms of the process by which that report and recommendation came to be made were, in all practical senses, always likely to be responded to by the Commissioner, not by the Mayor himself. Given the Mayor's personal responsibility, by virtue of his office, to make the final decision, he was always destined to take part in the proceedings as a defendant, but if the Commissioner had not been a party, whether as a defendant or an interested party, it is highly likely that the Mayor would have asked the Commissioner to play a part in the proceedings by justifying the process and the report that emerged from it. That, of course, is what effectively happened: Mr Moffett, with the agreement of Mr Drabble, took the principal role at the hearing in defending the Commissioner's report and the consultation process for which, on a day-to-day basis, he was responsible.

406. The issue raised is whether the Commissioner should have been made a defendant and whether his report could be the subject of a free-standing judicial review claim. The short point is that it is usually a <u>decision</u> that is the subject of a judicial review claim. The decision may be based upon a report, which is examined in detail at the hearing, but the report is not made the subject of a judicial review application itself. The "quashing" of a report, whether it contains a recommendation or not, is an elusive concept. A decision based upon an inadequate or defective report can plainly be quashed, but quashing the report itself makes little obvious sense.

407. I have been referred to the case *R (United Co-operatives Limited) v Manchester City Council* [2005] EWHC 364 (Admin) and, through the judgment of Elias J (as he then was) in that case, to the case of *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] 1 AC 112. Whilst the nature of the advice in the *United Co-operatives* case was rather different from the advice or recommendation of the Commissioner in the present case, it seems to me that the Commissioner's report and recommendation is much more on the *United Co-operatives* side of the divide between the two types of advice referred to by Elias J. Although Mr Stilitz suggested that the report was a "statutory report" pursuant to section 21(7) of the 2004 Act, I do not think that is so: the Plan is arguably a statutory plan once adopted because it is

made pursuant to the National Framework which itself is provided for by statute, but that seems to me to be different from saying that the report is statutory in form.

408. Accordingly, I do not consider that the Commissioner should have been made a defendant in the case and the application for judicial review of his report as such was misconceived. That does not mean that he should not have (as indeed he has) played a very active part in these proceedings, but he should not, in my view, have been made a defendant as such. Accordingly, I would not myself have granted permission to apply for judicial review of his report and recommendation and, accordingly, it seems right that I should refuse it formally now. Had I been persuaded that the Commissioner's report and recommendation could have been the subject of a free-standing judicial review claim, I would have granted permission to apply for judicial review, but would have dismissed the substantive claim for the reasons I have given earlier in this judgment.

409. Because LFEPA made the formal decision to implement the Plan then, subject to the claim being arguable, I would have granted permission to apply for judicial review because, as I have indicated, its decision is the decision that would have to be quashed if the Claimants' case succeeded. The same, of course, applies to the Mayor's involvement. Having had full argument in the case (albeit much of it on behalf of the Commissioner), I would grant permission to apply for judicial review both against LFEPA and the Mayor, but dismiss the substantive claim on the merits for the reasons given elsewhere in this judgment. For the reasons given in paragraph 343, I have indicated that I would propose to refuse permission to apply for judicial review to the FBU in relation to the additional matter on which they sought to rely which I now do formally.

### Concluding observations

410. I would repeat my expression of thanks to all Counsel for their considerable assistance and to their Instructing Solicitors for the manner in which the documentation has been prepared.

411. I appreciate that the outcome will come as a disappointment to a number of people who had hoped to see the proposed changes to the provision of fire services in their area set aside. However, I hope that I have explained in reasonably accessible, albeit lengthy, terms why I have not felt able to take the course that they would have wished me to take.

## APPENDIX 1

### Interested parties

Central government

The Secretary of State for Communities & Local Government

Local authorities

Barking & Dagenham
*Shared* – Barnet and Harrow
Bexley
Brent
Bromley
City of London Corporation
Croydon
Ealing
Enfield
*Shared* – Hammersmith & Fulham, Kensington & Chelsea and Westminster
Haringey
Havering
Hillingdon
Hounslow
Kingston Upon Thames
Lambeth
*Shared* – Merton & Richmond Upon Thames
Newham
Redbridge
Sutton
Waltham Forest
Wandsworth

## APPENDIX 2

1 - Our aims, objectives, risks, commitments and targets
2 - Incident profiles
3 - Historical data 1970 to 2011
4 - 2030 incident projections
5 - Targeting those most at risk from fire
6 - Management of Calls to Automated Fire Alarms
7 - Review of shut in lift policy
8 - Getting to emergency incidents as quickly as possible
9 - Working with neighbouring brigades
10 - Station workloads and capacity
11 - Fire service modelling
12 - Charging for attendance at incidents
13 - Three year headline targets 2013 - 2016
14 - Fire Service performance comparisons
15 - Deliberative consultation and polling results
16 - Equality analyses
17 - Sustainable development impact assessment
18 - Crewing of appliances
19 - Adjustments to officer rota cover
20 - Operational efficiency work
21 - Report to Authority

***

22 - Ward impacts of changes to fire stations and engines
23 - Attendance time performance distributions by borough
24 - Third fire engine attendance time performance

***

Third appliance response times by wards

# APPENDIX 3

***Times given in m:ss***

| | Current | | LSP5 agreed | | Impact | |
|---|---|---|---|---|---|---|
| | 169/ 112 | | 155/ 102 | | | |
| Borough | 1st to All | 2nd to All | 1st to All | 2nd to All | 1st to All | 2nd to All |
| London-wide | 5:20 | 6:22 | 5:33 | 6:32 | 0:13 | 0:10 |
| Camden | 4:41 | 6:00 | 5:26 | 6:26 | 0:45 | 0:26 |
| Greenwich | 5:28 | 7:01 | 5:52 | 6:50 | 0:25 | -0:11 |
| Hackney | 4:45 | 5:08 | 5:18 | 5:46 | 0:33 | 0:38 |
| Islington | 4:43 | 5:12 | 5:08 | 6:04 | 0:25 | 0:52 |
| Lewisham | 4:47 | 6:03 | 5:08 | 6:09 | 0:22 | 0:05 |
| Southwark | 4:43 | 5:24 | 5:05 | 5:51 | 0:22 | 0:27 |
| Tower Hamlets | 4:32 | 5:24 | 4:55 | 6:11 | 0:23 | 0:47 |

# APPENDIX 4

## CAMDEN RESPONSE TIMES

| 1st Appliance response | | | | | |
|---|---|---|---|---|---|
| Ward | 2011/12 Fire Incidents | 2011/12 All Incidents | Current Performance (3 year average) | Post LSP5 Performance | **Response Increase Time** |
| Belsize | 23 | 185 | 04:37 | 07:59 | **03:22** |
| Bloomsbury | 73 | 933 | 04:32 | 04:45 | **00:13** |
| Camden Town with Primrose Hill | 45 | 289 | 05:23 | 06:27 | **01:04** |
| Cantelowes | 32 | 237 | 05:00 | 05:09 | **00:09** |
| Fortune Green | 26 | 140 | 04:59 | 05:09 | **00:10** |
| Frognal and Fitzjohns | 14 | 189 | 05:08 | 05:36 | **00:28** |
| Gospel Oak | 38 | 161 | 05:27 | 06:11 | **00:44** |
| Hampstead Town | 32 | 450 | 05:07 | 06:46 | **01:39** |
| Haverstock | 35 | 286 | 05:15 | 06:16 | **01:01** |
| Highgate | 32 | 202 | 04:58 | 05:09 | **00:11** |
| Holborn and Covent Garden | 101 | 919 | 04:41 | 05:53 | **01:12** |
| Kentish Town | 45 | 249 | 04:07 | 04:21 | **00:14** |
| Kilburn | 30 | 324 | 06:15 | 06:38 | **00:23** |
| King's Cross | 47 | 342 | 04:44 | 05:38 | **00:54** |
| Regent's Park | 53 | 531 | 05:36 | 05:50 | **00:14** |
| St Pancras and Somers Town | 56 | 374 | 05:19 | 05:35 | **00:16** |
| Swiss Cottage | 21 | 177 | 05:19 | 06:45 | **01:26** |
| West Hampstead | 24 | 225 | 04:35 | 04:45 | **00:10** |

| 2nd Appliance response | | | | | |
|---|---|---|---|---|---|
| | 2011/12 Fire Incidents | 2011/12 All Incidents | Current Performance (3 year average) | Post LSP5 Performance | **Response Increase Time** |
| Belsize | 23 | 185 | 06:38 | 07:59 | **01:21** |
| Bloomsbury | 73 | 933 | 06:03 | 06:29 | **00:26** |
| Camden Town with Primrose Hill | 45 | 289 | 06:48 | 07:06 | **00:18** |
| Cantelowes | 32 | 237 | 05:39 | 05:47 | **00:08** |
| Fortune Green | 26 | 140 | 06:19 | 06:23 | **00:04** |
| Frognal and Fitzjohns | 14 | 189 | 06:34 | 06:57 | **00:23** |
| Gospel Oak | 38 | 161 | 06:30 | 07:11 | **00:41** |
| Hampstead Town | 32 | 450 | 06:26 | 06:48 | **00:22** |
| Haverstock | 35 | 286 | 05:57 | 06:29 | **00:32** |
| Highgate | 32 | 202 | 06:06 | 06:17 | **00:11** |
| Holborn and Covent Garden | 101 | 919 | 05:30 | 05:59 | **00:29** |
| Kentish Town | 45 | 249 | 05:18 | 05:34 | **00:16** |
| Kilburn | 30 | 324 | 06:29 | 06:41 | **00:12** |
| King's Cross | 47 | 342 | 06:13 | 07:25 | **01:12** |
| Regent's Park | 53 | 531 | 07:00 | 07:16 | **00:16** |
| St Pancras and Somers Town | 56 | 374 | 07:12 | 07:44 | **00:32** |
| Swiss Cottage | 21 | 177 | 06:23 | 06:52 | **00:29** |
| West Hampstead | 24 | 225 | 05:33 | 05:52 | **00:19** |

# APPENDIX 5

| Ward | 1st Appliance - Current Performance (3 Year Average) | Post LFP5 implementation | Change | 2nd Appliance - Current Performance (3 Year Average) | Post LFP5 implementation | Change |
|---|---|---|---|---|---|---|
| Bow East | 04:09 | 07:20 | +03:11 | 05:45 | 09:09 | +03:24 |
| Bow West | 04:41 | 06:39 | +01:58 | 05:32 | 08:38 | +03:06 |
| Bromley-by-Bow | 05:45 | 06:10 | +00:25 | 07:00 | 07:48 | +00:48 |
| Mile End East | 05:26 | 06:18 | +00:52 | 05:42 | 06:55 | +01:13 |

# APPENDIX 6

## Dwelling fires in London Boroughs[1]

| Borough Name | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 |
|---|---|---|---|---|---|---|---|
| Barking and Dagenham | 200 | 170 | 179 | 177 | 159 | 164 | 145 |
| Barnet | 276 | 253 | 232 | 281 | 236 | 235 | 244 |
| Bexley | 131 | 140 | 142 | 132 | 133 | 136 | 149 |
| Brent | 260 | 232 | 267 | 234 | 240 | 240 | 252 |
| Bromley | 178 | 151 | 160 | 176 | 176 | 169 | 168 |
| Camden | 256 | 224 | 225 | 248 | 209 | 212 | 218 |
| City of London | 4 | 7 | 5 | 6 | 8 | 4 | 6 |
| Croydon | 276 | 301 | 274 | 325 | 284 | 308 | 279 |
| Ealing | 299 | 265 | 262 | 275 | 237 | 237 | 203 |
| Enfield | 251 | 218 | 217 | 229 | 220 | 239 | 244 |
| Greenwich | 220 | 242 | 215 | 228 | 251 | 223 | 214 |
| Hackney | 322 | 285 | 320 | 308 | 289 | 296 | 274 |
| Hammersmith and Fulham | 231 | 211 | 180 | 186 | 203 | 183 | 166 |
| Haringey | 265 | 295 | 241 | 280 | 217 | 230 | 185 |
| Harrow | 118 | 120 | 134 | 135 | 124 | 136 | 136 |
| Havering | 113 | 97 | 104 | 127 | 113 | 110 | 118 |
| Hillingdon | 203 | 151 | 158 | 138 | 167 | 179 | 181 |
| Hounslow | 206 | 178 | 182 | 186 | 153 | 184 | 164 |
| Islington | 209 | 215 | 195 | 219 | 213 | 229 | 204 |
| Kensington and Chelsea | 156 | 172 | 161 | 161 | 167 | 150 | 149 |
| Kingston upon Thames | 97 | 99 | 91 | 97 | 100 | 104 | 93 |
| Lambeth | 378 | 367 | 365 | 365 | 343 | 349 | 373 |
| Lewisham | 286 | 288 | 285 | 316 | 282 | 260 | 254 |
| Merton | 122 | 138 | 130 | 133 | 160 | 120 | 113 |
| Newham | 258 | 291 | 266 | 279 | 270 | 256 | 250 |
| Redbridge | 153 | 170 | 171 | 180 | 188 | 167 | 169 |
| Richmond Upon Thames | 95 | 78 | 104 | 87 | 92 | 94 | 106 |
| Southwark | 329 | 299 | 334 | 323 | 355 | 319 | 342 |
| Sutton | 145 | 138 | 126 | 144 | 148 | 156 | 125 |
| Tower Hamlets | 325 | 284 | 304 | 309 | 338 | 310 | 240 |
| Waltham Forest | 211 | 200 | 202 | 193 | 196 | 213 | 196 |
| Wandsworth | 261 | 232 | 281 | 274 | 260 | 270 | 259 |
| Westminster | 260 | 232 | 258 | 256 | 256 | 261 | 263 |
| **Average for London** | **215** | **204** | **205** | **212** | **206** | **204** | **196** |

[1] Source: http://www.london-fire.gov.uk/Documents/2012_LFB_Borough_Stats_pack_PDF.pdf.

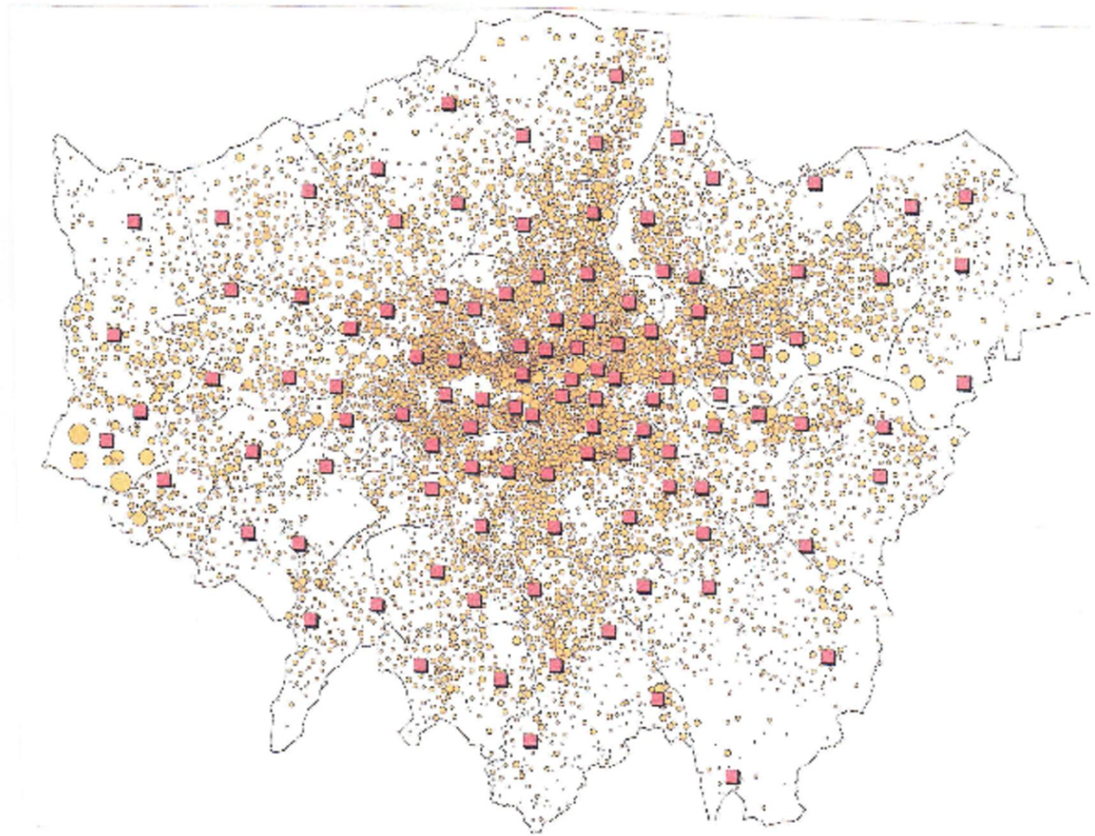
# APPENDIX 7

## Fire related fatalities in the London Boroughs[2]

| Borough Name | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 |
|---|---|---|---|---|---|---|---|
| Barking and Dagenham | 0 | 1 | 1 | 1 | 0 | 3 | 0 |
| Barnet | 2 | 1 | 0 | 3 | 3 | 1 | 4 |
| Bexley | 0 | 1 | 3 | 1 | 0 | 1 | 0 |
| Brent | 3 | 5 | 1 | 2 | 2 | 8 | 2 |
| Bromley | 1 | 4 | 1 | 0 | 4 | 2 | 2 |
| Camden | 3 | 0 | 1 | 4 | 0 | 1 | 1 |
| City of London | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Croydon | 1 | 3 | 0 | 2 | 3 | 2 | 1 |
| Ealing | 4 | 2 | 0 | 3 | 5 | 1 | 5 |
| Enfield | 2 | 3 | 2 | 1 | 1 | 0 | 3 |
| Greenwich | 3 | 2 | 0 | 1 | 6 | 0 | 1 |
| Hackney | 0 | 3 | 1 | 2 | 1 | 1 | 2 |
| Hammersmith and Fulham | 1 | 1 | 1 | 0 | 2 | 2 | 4 |
| Haringey | 2 | 2 | 1 | 3 | 3 | 1 | 1 |
| Harrow | 1 | 0 | 1 | 0 | 2 | 0 | 0 |
| Havering | 1 | 1 | 1 | 2 | 1 | 1 | 1 |
| Hillingdon | 0 | 1 | 1 | 0 | 0 | 1 | 1 |
| Hounslow | 4 | 1 | 2 | 2 | 1 | 2 | 1 |
| Islington | 0 | 4 | 2 | 1 | 3 | 1 | 1 |
| Kensington and Chelsea | 1 | 1 | 1 | 0 | 0 | 1 | 1 |
| Kingston upon Thames | 1 | 2 | 2 | 0 | 0 | 2 | 0 |
| Lambeth | 4 | 2 | 1 | 3 | 0 | 3 | 4 |
| Lewisham | 2 | 2 | 1 | 3 | 4 | 1 | 0 |
| Merton | 3 | 1 | 2 | 2 | 1 | 0 | 0 |
| Newham | 2 | 1 | 0 | 1 | 3 | 1 | 2 |
| Redbridge | 0 | 1 | 0 | 3 | 1 | 1 | 0 |
| Richmond Upon Thames | 1 | 0 | 1 | 0 | 0 | 0 | 2 |
| Southwark | 0 | 5 | 4 | 9 | 3 | 5 | 1 |
| Sutton | 1 | 0 | 0 | 0 | 2 | 0 | 0 |
| Tower Hamlets | 0 | 1 | 4 | 2 | 3 | 0 | 1 |
| Waltham Forest | 1 | 1 | 0 | 3 | 3 | 3 | 1 |
| Wandsworth | 2 | 2 | 1 | 6 | 1 | 1 | 1 |
| Westminster | 1 | 2 | 1 | 3 | 1 | 1 | 4 |
| **Average for London** | **1** | **2** | **1** | **2** | **2** | **1** | **1** |

2 Source: http://www.london-fire.gov.uk/Documents/2012_LFB_Borough_Stats_pack_PDF.pdf.

# APPENDIX 8



# APPENDIX 9

Distribution of Incidents - Type 2FX (Serious Incidents)
2007/08 to 2011/12