

Response to general query regarding use of Youth Funding to deliver s507b duties (February 2023)

1. Duty to provide (Section 507B(1))

Wiltshire Council, as a local authority, has a legal duty to secure sufficient access and facilities to educational and recreational leisure time activities which are for the improvement of wellbeing to people between the ages of 13 to 20. This duty is also extended to persons who are between the ages of 20 and 25 and having a learning difficulty to disability. In respect of the educational activities, they must also improve personal and social development. Sufficient means sufficient in respect of the quantity of activities offered. The legislation does not specify what these activities are or how this duty must be fulfilled. It goes onto include a list of how a local authority may interpret the duty. This list is set out below:

(5) a local authority may—

(a) provide facilities for positive leisure-time activities;

(b) assist others in the provision of such facilities;

(c) make arrangements for facilitating access for qualifying young persons to such facilities;

(d) organise positive leisure-time activities;

(e) assist others in the organisation of such activities;

(f) make arrangements for facilitating access for qualifying young persons to such activities;

(g) enter into agreements or make arrangements with any person in connection with anything done or proposed to be done under any of paragraphs (a) to (f);

(h) take any other action which the authority think appropriate.

(6) For the purposes of subsection (5)—

(a) the provision mentioned in paragraph (a) may include establishing, maintaining and managing places at which facilities for positive leisure-time activities are provided;

(b) the assistance mentioned in paragraphs (b) and (e) may include the provision of financial assistance;

(c) the arrangements mentioned in paragraphs (c) and (f) may include the provision of transport, of financial assistance or of information to any person.

2. Duty to consult (Section 507B(9))

In exercising functions under s507B, the Council must:

(a) take steps to ascertain the views of qualifying young persons in the authority's area about—

(i) positive leisure-time activities, and facilities for such activities, in the authority's area;

(ii) the need for any additional such activities and facilities; and

(iii) access to such activities and facilities; and

(b) secure that the views of qualifying young persons in the authority's area are taken into account.

A change/ reduction in funding could be viewed as the authority exercising a function as outlined in s507B(1) as it has a direct impact on the sufficiency of the positive leisure activities and facilities for qualifying young people. This is the stance that was taken in the case of *R (Aaron Hunt) v North Somerset Council* (Hunt). Hunt's case was that, as the Council was exercising a s 507B(1) function, it had first to carry out a proper consultation exercise under subsection 9 and ensure that the results were taken into account when making its budget cut decision. I have described the details more fully in paragraph 4 below.

However, the duty to consult under s507B(9) as above can also be interpreted in a wider sense, in that it could be considered as a duty to take steps and obtain views of qualifying young people as to what activities and facilities are to provided generally. This, in essence, would be getting an idea for demand. If this is done properly, then there is arguably no need to obtain views afresh every time a new decision is made, including the closure of a youth centre because their views will already be known as to the ss9 matters and can be taken into account. These comments were made in the judgment of the Hunt case also.

3. Equality duty

The public sector equality duty is found in s149 Equality Act and will need to be considered by the Council in the exercise of its functions. To discharge this duty, the Council will need to have due regard to statutory equality needs of those involved. This could be the completion and provision to members of an equality impact assessment (EIA) when putting forward the proposal.

Any EIA will need to address the obligations to pay due regard to the statutory needs to advance equality of opportunity and to foster good relations between persons of different groups defined by reference to protected characteristics.

4. Risk of non-compliance

There is a risk of challenge to the council's decision making if it does not properly comply with its legal duties. There is some case law which is relevant to these issues and helps us interpret how a court may assess a claim if one was made. I have summarised this below.

R (Aaron Hunt) v North Somerset Council

In this case, the council made cuts of 72% to youth services in their budget. There was concern that in making this decision, the council had failed to comply with their obligations under S507B Education Act, and s149 Equality Act.

The Council argued that the s507B duty was not engaged because the proposal concerned a remodelling of the services (who should provide them) and that the closure of centres would be a last resort if community providers did not take them over.

In respect of the S507B duty, the Judge found that the proposal had a direct impact on the sufficiency of the positive leisure-time activities and facilities for qualifying young people. There was also a duty to consult under s507B(9) and this was not met as the council had not sought the views of qualifying young people about its proposed budget reduction; they had only brought the "remodelling" to their attention.

In respect of the equality duty, when the proposal was given to council members at the budget meeting, they were provided with a set of materials for that meeting which included a summary of the EIA. In court, it was found that there had been no requirement for the members to have read the EIA, therefore, the duty had not been discharged.

In this case, a fair amount of time had passed since the budget decision was made and it was not considered appropriate to grant remedy as it was too late to unwind what had been done. However, it is worth noting that the usual remedies for judicial review would usually apply, this may include having to redo an appropriate consultation and retake the decision.

5. Proposed changes to guidance

As we discussed, from the information that I have seen, there is no proposed change to the Education Act or the legal duties. There are some proposed changes to the the statutory guidance that runs alongside it. This means that the obligations within the Act will remain the same as to provide the activities and the duty to consult in the event that the budget is reduced and services are cut, as these obligations are firmly rooted in the Act itself - [Education Act 1996 \(legislation.gov.uk\)](#). Authorities must, however, have regard to any guidance which is published by the secretary of state, which of course, is set to be changing. The council will need to have regard to the version of the statutory guidance that is in place at the time the decision is made. This means it may need to be regularly reviewed and materials updated, as required.

6. Other considerations

It is worth noting that there is provision for the local authority to charge for any activities provided to any qualifying young person under subsection 11. This could be something to look into.

It will be important to ensure there are clear reasons for decision making including that they are necessary and proportionate and those decisions must be backed up with evidence. This will assist the council in defending any future claim.

Response to query regarding extending Youth funding to 11 & 12 year olds (February 2023)

1. Consultation

In respect of extending the funding to 11 and 12 year olds, this age group would fall outside the scope of s507B of the Education Act. This means that they would not need to be consulted as the duties under the Act only apply to those qualifying young persons affected by a change in the leisure time activities. It could be seen that the extension to include 11 and 12 year olds is exercising a function under s507B in that it affects those qualifying persons that already use the service. Therefore those that already use the service may need to be consulted with. Would extending the scope of the activities to include 11 and 12 year olds mean that there are less places for qualifying persons, and would the inclusion of pre-teens affect the experience of those qualifying persons already using the service?

2. EIA

An EIA should be completed as this duty stands separately to the s507B duty. This will consider the impact of all those individuals that the decision affects.

3. Charging

As the duty to provide under s507B does not extend to 11 and 12 year olds, the provision for charging will also need to be looked at separately.

The Council has charging powers under Section 93 of the Local Government Act 2003 and Section 3 of the Localism Act 2011.

In summary, under these provisions a Council can charge for discretionary services only (i.e. the Council has a choice whether to provide that service). In doing so, the Council is required to ensure that income from such charging “does not exceed cost of provision”.

The reference to costs is often determined by reference to the CIPFA Best Value Accounting Code of Practice. This states that there are two methods for assessing costs:

- (i) total cost – this includes employee costs, expenditure relating to premises and transport, supplies and services, third-party payments, support services and capital charges but not central establishment costs.
- (ii) total cost plus a contribution for corporate and democratic core costs – as above but includes a share in central establishment charges.