IN THE MATTER OF CHRISTCHURCH BOROUGH COUNCIL AND THE REORGANISATION OF DORSET COUNCILS

FURTHER OPINION

1. I am asked to provide a Further Opinion to Christchurch Borough Council to confirm in writing the advice I gave in conference. I have set out the background facts and issues in the main Opinion dated 2 March 2018, and will not repeat those matters. The conference was very useful in focusing on the issues which were of principle concern, and being able to consider the following specific matters;
    a. The consultation
    b. The issue of Council Tax harmonisation across the relevant authorities;
    c. The scope of the Secretary of State's powers under section 15 and statements made in Parliament.

2. The submissions that Christchurch has made to the SoS have strongly focused on the consultation and in particular on whether the consultation document "Reshaping Your Councils a better future for the community", was fair and balanced; and whether the product of the consultation was fairly considered.

3. The consultation closed in October 2016. I can see why Christchurch feels aggrieved about the document, as there is no doubt that it is nudging respondents towards a positive answer for change, and in particular towards Option 2B. However, in order to successfully challenge such a document it would be necessary to show absolutely clear factual errors, or plainly misleading statements. There are no such errors in the

document, merely a tendency to emphasise the benefits of change and probably be somewhat over optimistic about those benefits.

4. It is also the case that Christchurch have had a number of opportunities since the consultation, which they have appropriately taken up, of challenging the document and raising concerns over its content. It is therefore highly likely that the Court would say that all the issues had been taken into account by the SoS, and it was now too late to challenge the consultation.

5. Christchurch is also concerned about the consideration by the SoS of the product of the consultation. I will not set out the details, but the response to Option 2b was strongly positive across most of Dorset but much less so in Christchurch. The officers' report which was produced for all the Dorset Councils in January 2017 relied on the Household Survey, which was said to be more "representative" and showed a higher level of support in Christchurch. Christchurch then carried out its own survey in late 2017 which showed a very high level of opposition to the proposals.

6. Although the Christchurch survey is a useful political and campaigning tool, it is of very little benefit in any judicial review. Firstly, the decision is not a referendum, and so different levels of support or opposition although relevant are not determinative. Secondly, the fact that one Council opposes the proposed change is again not determinative, as I set out in the main Opinion the statute contemplates that not all councils will agree. Thirdly, the SoS was well aware that there was strong opposition in Christchurch. There was nothing unlawful in him still proceeding to make the decision. I am therefore of the clear view that there were nothing in the consultation process which gives rise to an arguable error of law.

7. The second issue we discussed in the conference at some length was that of Council Tax (CT) harmonisation. The consultation document assumes that CT will be harmonised across the new authorities within a certain period of time (20 years).

This has to be set against the need to retain the requisite total level of CT income and not breach the levels of increase of CT which are permitted under general local government provisions without triggering a local referendum.

8. The model set out in the consultation document for option 2b assumes harmonisation over a period of 20 years with CT rises limited to 3.99%. A final decision as to harmonisation of CT is not yet clear. No formal position has yet been adopted by the Bournemouth, Poole and Christchurch Joint Committee. The process is that the SoS will set out in secondary legislation the time over which harmonisation will take place although he may leave some flexibility in this. The SoS has stated that he will take into account the local preference, as well as the impact on CT bills and the financial implications for the Councils concerned. The SoS will doubtless wish to balance the desire not to impose large increases in bills, whilst also ensuring some areas are not making a significantly greater contribution over a long period than other areas. It is therefore too early to have a firm view on the implications of harmonisation.

9. However, it was suggested to me in the conference that the Joint Committee is envisaging a shorter period for harmonisation than was set out in the Consultation document. The balance between harmonisation and total CT yield to the new authority is not straightforward, but I am told that if harmonisation takes place over 7 years without an Alternative Notional Amount, then the total yield is likely to be materially less than was assumed, and thus the benefits of reorganisation less. However, these impacts can be varied by changes to the Alternative Notional Amount made by the SoS and by the length of the harmonisation period.

10. If a shorter harmonisation period is chosen, then it is probable that CT payers in Bournemouth and Poole will face larger CT bills than was assumed in the consultation, although how much larger is ultimately a political decision.

11. The overall effect of this is that it seems that the financial impacts of harmonisation will not be the same as those set out in the consultation document. However, I do not see how this can give rise to a ground of challenge. Firstly, the position is still wholly unclear as to precisely how harmonisation will work and who will be the winners and losers. Secondly, the consultation document did not suggest that there was one fixed solution, so it would be hard to argue that the consultation was significantly misleading. Thirdly, it appears likely that it is CT payers in Poole and Bournemouth who may have to pay more than they were anticipating in the first years if an Alternative Notional Amount is applied for a short harmonisation period. It would be very hard to explain why Christchurch was the area challenging in these circumstances. I appreciate this may appear somewhat simplistic, but that in practice is how the Court would approach it. Ultimately the Court is likely to consider that the process of harmonisation is one for the local authorities and the SoS, and not for a legal process.

12. The fundamental concern of Christchurch is that it is being forced into a merger, and therefore to give up its identity and independence, against the strong wishes both of the Council and the majority of local residents. However, as I explained in the main Opinion, that scenario is expressly contemplated by s.15 (5) of the 2016 Act. The very reason that clause was enacted, and made subject to a "sunset clause" was to allow the SoS to force Councils to reorganise so long as one consented to do so. Therefore in legal terms the use of the power by the SoS, subject to normal principles of rationality and fair process, cannot be challenged.

13. I was shown in the conference by Sir Christopher Chope MP, various passages from the Hansard debates where the Minister appeared to assure Sir Christopher and another concerned MP, Edward Leigh, that the power would be used to persuade Councils to have a conversation about merger rather than to force them to merge against their will. There is then a further statement in November 2017 from the

Junior Minister saying that the Government will not force district councils to merge. This appears to be contrary to the SoS's decision in the Dorset case.

14. Debates in Parliament are only admissible where the meaning of the statute is unclear and ambiguous. In this case s.15 is perfectly clear on its face, so what the Minister said is not admissible to seek to prevent him from acting under s.15. The correct forum for holding the Minister to account, for arguably giving an assurance that he is now reneging on, is in Parliament itself. The courts will not enforce an assurance given to Parliament, and will be clear that this is a matter which should be raised in Parliament. On the face of it there does seem to be an inconsistency between what the junior Minister was telling Parliament and the decision of the SoS in this case, but this is a matter for Sir Christopher to raise politically, rather than giving rise to a legal argument.

15. For these reasons it is my view that there is no arguable basis for a judicial review of the SoS's decision.

NATHALIE LIEVEN QC

BLACKSTONE CHAMBERS

6 APRIL 2018