

COUNCIL
22 February 2011

COUNCILLORS' QUESTIONS

QUESTION FROM COUNCILLOR RUSSELL HAWKER
WESTBURY WEST DIVISION

TO COUNCILLOR JANE SCOTT OBE, LEADER OF THE COUNCIL AND
COUNCILLOR JOHN THOMSON, CABINET MEMBER FOR ADULT CARE,
COMMUNITIES AND LIBRARIES

Question 1

I refer to the Confidential "Complaint Investigation Report" dated 31st August 2010 which was circulated to members by email on 11 February this year and which purports to exercise power to judge whether an alleged racist comment is actually racist.

Exactly what Law (specifying, please, the precise legislation and/or regulations and/or statutory guidance, including clause numbers and quoting the parts that apply in this matter, or common law, including citation and basic decision summaries and principles that apply) applied or applies to the council in relation to racial equality in public meetings of the council and / or partners?

Where exactly in any of the Law does it say that a comment is racist just because someone asserts that it is - or any basis looking anything like this? What does it say?

Where exactly in any of the Law does it say that the usual common law test of "reasonableness" cannot be used at the discretion of any tribunal or judge in assessing the meaning of words in Law and whether a comment reasonably means what the complainant thinks and alleges?

What powers and authority did the "Investigator" have to carry out an investigation and also judge what is relevant and choose what is fact or not and then also decide and state a determination of the allegations in the report (ie. one person acting as in-house investigator, jury and judge), stating exactly who gave the investigator these powers and why?

What tribunal or judicial decisions exist that show that the phrase "jungle drums" is racist?

Why does the Investigation report not bother to explain any relevant law (ie. no reference to legislation or caselaw)?

Why does the report not bother to explain how the comment is believed to breach the law.

Why does the report not bother to explain the powers of the investigator or where any powers come from.

Why would anyone receiving such a report be expected to think it actually has any status in law or be legitimate or be part of any competent activity of the council or deserves to be treated with anything but concern for its obvious and astonishing shortcomings?

Which members of the cabinet were involved in this matter? At what stage did they know the contents of the report and were they required by the constitution of the council or Law to decide on how to proceed with the matter (please specify who, dates and what was decided)? Did any cabinet member approve the report (who and when)? Which staff were involved in approving the report and actions that followed?

What legal advice was given by any properly qualified legal staff in this matter at any stage (why and to who and when, by whom, stating the qualifications of the staff)?

Do you accept that there should be a better way of handling trivial complaints and have you identified what legal possibilities exist? When will a lawful but common sense approach to trivial complaints be implemented, and how?

Response

The Chief Executive has instigated a review of the process followed in connection with the investigation of the complaint to which you refer. The outcome of the review will be reported to Cabinet at the earliest opportunity.