

**EDUCATION, CHILDREN & FAMILIES
BUDGET AND PERFORMANCE MONITORING SUB-COMMITTEE
18th July 2018**

QUESTIONS TO THE CHAIRMAN OF THE EDUCATION, CHILDREN AND FAMILIES SELECT COMMITTEE

Questions received from Mr Julian Grainger:

Noting that:

A) In November 2011, the then Director and Assistant Direction of Education were:

- i) aware of the recently applied Y12 to Y13 academic exclusions**
- ii) stated that it was (in terms) “school policy” i.e. no query about lawfulness [#emails 16Nov11 (raised “lawfulness”, 17Nov11 & 18Nov11]**

B) On subsequent occasions, Education Officers were made aware of Regulation breaches by the School and in 2014 made aware of alleged bullying of staff, Officers were asked to “investigate” and on each occasion the informer was told (in terms) nothing can be done other than the “nuclear” option of an Interim Executive Board.

C) It emerged in Autumn 2017 that:

- i) academic exclusion was unlawful,**
- ii) powers existed under Education Act 2005 s 51 and Education & Inspections Act 2006 s60, to launch an investigation,**

a) Would the Chairman agree that legal knowledge about academic exclusions displayed in 2011 by the then senior officers was less than it should have been ?

Reply

Yes

Supplementary Question 1

In addition to those senior officers, an Appeals Panel clerked by a Member of the Council and with access to additional expertise missed this point. Will you ask what legal advice the Council gave to that Panel in 2011.

Reply

The Chairman stated that he saw no useful purpose in trying to investigate something that happened 7 years ago. Clearly there had been bad legal advice in the past from not just from the Council but from a number of other agencies including the Office of the Schools Adjudicator and the DfE when the local MP

raised an issue. The Chairman also highlighted that the Governing Body would also have had the power to seek its own legal advice and had chosen not to do this. The chairman stated that it was a sad fact that it had taken a Judicial Review for the matter to come forward.

b) Can the Chairman suggest why, when presented with Regulation breaches and alleged bullying of staff, the relevant officers failed to mention the additional, less “nuclear” powers [including the one cited at the front of this Agenda Item (s51)].

Reply

The investigation report conveys a shift in focus within the Council towards the reconstitution of the governing body. The report points out that the LA could not challenge the instrument of government which complied with regulations. The procedural errors and, ultimately, the formation of companies which would have warranted investigation triggered the use of section 51 which is limited to gathering information. The section 1 power which supported it was only exercisable with positive engagement from the school and did not give rights to require co-operation.

Supplementary Question 2

Given the number of breaches of regulations that had occurred by 2015 and had been drawn to the attention of the Council (the questioner cited examples of the breaches) it is a mystery why no investigation was commissioned.

Reply

The Chairman replied that he did not feel it was right to speculate on such matters.

c) What steps can be taken to ensure that, when Members query a piece of advice, the relevant Officer actually goes and ensures that his information is complete or up to date ?

Reply

Trust and confidence between officers and Members of the Council underpin the operation of the Council. At its best, this is built on respectful challenge on both sides . Members can ask for formal advice and if not satisfied escalate to an officer’s manager or within the their Group hierarchy. There are also rights for Members to request matters are placed on the agenda of scrutiny and other committees. We continue to strive to improve our practice and to maintain a shared ambition for the education and welfare of Bromley children.

Supplementary Question 3

The questioner stated that he was making the point that when poor advice is given Members of the Council need to have the confidence to question and challenge.

Reply

The Chairman stated that as the questioner would know from his time as a distinguished councillor and scrutiniser of council decisions, he as Chairman of the Constitution Improvement Working Group and of the Agenda format working Group had been instrumental in improving our scrutiny process and ensuring that Members had better advice before taking decisions. For instance requiring Agenda Sheets to show the Statutory requirements for any decision under the Legal heading and distinguishing between matters where the Government had merely issued 'Guidance' and the law

QUESTIONS TO THE CHILDREN, EDUCATION & FAMILIES PORTFOLIO HOLDER

Questions received from Mr Tony Wright-Jones:

The Recent St Olaves report states that in 2011 the LA lawyer knew the year 12/13 progression policy existed.

6. The role of the local Authority.

6.1.1

The Director's response to being told about this was "this is a continuation of St Olave's having prevented students continuing from Year 12 to 13". So the LA was aware of the practice as early as 2011

6.1.2 Conclusions

The lawyer confirmed that he did know but he had not told the school because he would never have direct contact with a school and would go through the officers in Children's Services but no one had asked him.

1. Why did the Lawyer not inform the Director of Education and Portfolio Holder on a formal basis, such as an email, as a duty of care? The Lawyer and LA officers will of course know that 'Ignorance of the law is no excuse'

Reply

This is dealt with extensively in the independent investigation report.

Supplementary Question 1

As is stated in the report ignorance of the law is no excuse.

Reply

The Portfolio Holder stated this was accepted.

2. If they did, Why did they not take any action or any further advice?

Reply

The Portfolio Holder stressed that the events under consideration were historical events. The Lawyer to whom the report referred had now left the Council and it was therefore not possible to ask the person concerned directly. However, as the report explained in detail; as the lead education Lawyer the individual had no direct contact with the school.

Supplementary Question 2

The questioner stated that one would expect officers within the Local Authority to have a knowledge of the law. Extensive information was widely available via Google concerning the illegality of Year 12 to 13 exclusions on the basis of

academic performance and the officers should not have needed advice from a lawyer to know the practice was illegal.

Reply

The Portfolio Holder agreed with the questioner and stated that many people that had been involved should have known. The question that had been asked however was why had the Lawyer not informed the school it was illegal and this was set out in the report.

3. Why did it take the threat of legal action before the LA did anything?

Reply

The Portfolio Holder stated that he did not accept the basic premise of the question. The action taken by the Local Authority to commission an independent investigation of practice at St Olave's was triggered by an accumulation of factors, reflected in the independent investigation terms of reference (transition between Years 12 and 13; safeguarding policy and practice; reports of threats and intimidation of pupils, parents and staff; formation of companies, operation of governance arrangements). This provided a reasonable basis for intervention by the Local Authority, had such intervention been based on a single factor it may have been open to challenge by the governing body. The Portfolio Holder stated however that reading the devastating report highlighted that something should have happened sooner.