

Councillor Alan Hall
Chair of Overview & Scrutiny

6 February 2017

Dear Alan

Advice

Having thought about this deeply and having received advice on the issue I'm sorry to say that I cannot arrange for the Council to engage external legal advice for you and your committee. I know this will disappoint you, Alan. I'm afraid it flows directly from the nature of constitutional arrangements in local government. Try as I have, I cannot find a way around this. I put this point to James Goudie QC myself late last Friday and unfortunately his response was exactly what I had expected.

As in all other Councils that do not operate the committee system of decision making, we have an executive-scrutiny split. But as you know well, we remain as one legal entity and so we cannot engage in pursuing separate lines of legal advice so as to arrive at positions where potentially we could ultimately arrive at the nonsensical position of trying legally to challenge ourselves. Competing legal opinions supporting competing perspectives within the same organisation is simply untenable. This is not a feature of the mayoral model as such, it applies to all Councils. Even in Councils that have returned to the committee system of decision making there remains the need for one source of legal advice, as say, the housing committee could decide one thing and the planning committee another. This is why "policy & resources" committees (or some such) are needed to give singular corporate direction.

That noted, I do recall that you said that you "wanted to be convinced" about the legal advice we had received from James Goudie QC. To this end, we have sought further detailed advice and Kath Nicholson will be making that available to the Cabinet, yourself and other Members. This means that you will have access to the Council's external legal advice. You did raise a point that, on some issues, external advisors merely respond to the way that the questions are posed to them and that while their advice may be correct in its own terms, different questions might have generated different advice. I realise that this general statement may contain elements of truth in some situations. But applied to questions about the particular way to respond to a specific legal question, I feel that it does not apply whatsoever to James Goudie QC's advice to us. He is the Head of the Chambers at 11 Kings Bench Walk; he sits as a Judge, and his advice is of the very highest order. I simply reject the idea, as I did in our meeting, that he is guided or misdirected in some way in his consideration of these issues and thereby in the Opinions he provides.

I am aware that you would have preferred a different response from me; I did try to use the art of the possible but even my facilitative default position didn't enable me to answer you in the way you would have liked.

Finally, the reason why Cllrs Smith and Best attended the consultation and not yourself was because (as I said in our meeting) they were, as Cabinet Members, partaking in the decision. Whereas you were not. You were named in the Instructions simply because your letter to me, along with the Mayor's, referred to the allegations contained in the Guardian, which triggered the Inquiry.

kind regards

Barry