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years



COMMISSION FOR
RACIAL EQUALITY

ST DUNSTAN'S HOUSE
201-211 BOROUGH HIGH STREET
LONDON SE1 1GZ

10 July 2007

Mr. Gareth Daniel
Chief Executive Officer
Brent Council
Town Hall
Forty Lane
Wembley HA9 9HD

☎ 020 7939 0000
fax 020 7939 0001
minicom 020 7939 0100
website www.cre.gov.uk

Dear Gareth Daniel

Re: Complaint of a breach of the Race Equality Duty: Section 71(1) Race Relations Act 1976, as amended (the Act) and the Race Relations Act 1976 (Statutory Duties) Order 2001(the Order)

I write with regards to concerns, which have been raised with the Commission for Racial Equality (the Commission) by the members of the Brent NUT. These complaints touch and concern alleged breaches of the Race Relations Act 1976 (as amended) (the Act) and non-compliance with the provisions contained in articles 2(2) and 2(3) of the Race Relations Act 1976 (Statutory Duties) Order 2001(the Order) by Brent Council (The Council). This case relates to a possible failure on the part of the Council to pay sufficient regard to their General Statutory Duty under the Act.

Such insufficient regard would apply to the Council's alleged failure to carry out a Race Equality Impact Assessment (REIA) on a proposed strategy for the development of secondary school places (non-denominational) that was approved by the Council Executive in January 2007, to assess its likely impact on students from different racial groups. The situation also includes a failure, on the part of the Council to make arrangements for assessing, and consulting on the likely impact of their proposed policies on race equality, which according to the complainants have led to decisions which have affected students from the black communities disproportionately and detrimentally, in South Brent (predominantly black) as against their North Brent counterparts (predominantly Asian), with the result South Brent has no non-denominational school.

The complainants also take issue, in particular, with the fact that the Council has not conducted an REIA on what they believe is "a substantial imbalance in secondary mixed non-denominational school provision" has a more detrimental effect on the predominantly black secondary school-age residents living in parts of South Brent, (particularly Harlesden and Stonebridge), than on their Asian counterparts in North Brent.

According to the complainants, there appears to be no evidence that the requisite REIA was carried out prior to the decision of the previous Labour-controlled Council to approve the acquisition of the Wembley Park Sports ground from Transport for London (TfL) for a proposed Academy. neither, they continue, is there any evidence of an REIA for the rebuilding of Wembley Manor Primary School (North Brent) and the Stonebridge Primary School (South Brent)

They question the alacrity with which the "supposed" REIA was conducted and dated 5 January for a 15 January Executive meeting and only after the Teachers' Panel had questioned the legality of the proposal without an REIA at a meeting on 13 November.

They conjecture that if a "proper" REIA had been carried out at the time, it is likely;

- That more priority and effort would have been given to finding a suitable site in the south of Brent;
- That the required REIA consultation would have investigated why the nearest non-denominational secondary school to Wembley Park-Preston Manor has only 13% of its intake from South Brent wards;
- That it would have elicited why Preston Manor is more accessible to the predominantly Asian North Brent population than the predominantly Black population in South Brent;
- That any REIA that was conducted, erroneously examined the racial impact in comparison between black and other ethnic minorities on the one hand and the white population on the other rather than a comparison between black African/Caribbean and Asian groups. This they claimed did not adequately address the issues raised by the Teacher's Panel at a November 13, 2006 meeting;
- That the Council did not consult with all affected groups about the location of the proposed, particularly with the parents or guardians of the 3,976 Brent school-age residents who do not attend Brent schools or the residents in the South who travel over 3 miles to get to North Brent schools
- That the Council failed to monitor the ethnicity of the Brent secondary-age resident "exports" to ascertain if some ethnic groups will be affected more than others;
- That the proposed expansion of secondary school place provision is more likely to widen the current imbalance between North and South Brent.

The complainants went on to cite additional failures of the REIA that was undertaken but that failed to take into account, the above considerations, rendering the whole exercise potentially non-compliant.

We have in our possession, various documents and data that purports to support their claim and which we will be studying in detail.

It is important that the role of the Commission in this matter is clearly understood. The Commission as outlined under section 43 of the Act (as amended) is responsible for the monitoring of the application of the provisions of the Act by those organizations and individuals to which the provisions apply. In our regulatory capacity, we receive several complaints either from individuals or from organizations and in accordance with our duties we are mandated to make relevant enquiries, to inform the applicable complainant and ourselves. As part of this enquiry process, we request information from the organization making the complaint and from the organization against which the complaint has been made. In this regard, it must be understood that at this stage, the Commission is in the process of requesting and analyzing information and as such has not yet formed a final view.

As evidenced by the fact that the Council has a race equality scheme (RES), it is apparent that the Council is aware of its general statutory duty as outlined in section 71(1) of the Act. In real terms, the effect of the general duty is that the Council is mandated to ensure that in the conduct of its functions, it should consider the need to (a) eliminate unlawful racial discrimination and (b) promote equality of opportunity and good relations between persons of different racial backgrounds. Of equal importance in the context of this particular complaint is the fact that in accordance with section 71(2) and in an effort to secure the better performance of the general duty, a statutory order, (the Order) which imposes specific duties on the Council. Amongst these specific duties, is that of the obligation to publish a race equality scheme. However, it is our view that the mere existence of a RES without the implementation of the arrangements contained, at the time of proposing a new policy would consequently defeat the objectives of the general statutory order and may subsequently render your policy non-compliant.

In addition Article 2(2) and 2(3) of the Race Relations Act 1976 (Statutory Duties) order 2001 places the Council under a duty not only to assess and consult on the likely impact of its proposed policies before they are adopted but also to monitor those policies for any adverse impact on the people from the different racial backgrounds in their community.

In relation to the duty specified in Article 2(2), it is the view of the complainants that this duty has not been fulfilled. This view was arrived at by the complainants by the Council's alleged failure to consult with people who are likely to have been affected by the proposed policy, failure on the part of the Council to assess the likely impact on race equality, failure to consider other ways of achieving the same policy goals and making arrangements to monitor and review your policy and its impact.

A second point of concern, in this area, highlighted by the complainants, was the fact that Brent Council is not known to have followed the requirements for conducting the requisite race equality impact assessment for any of the proposed

unlawful and should be rejected. A directly discriminatory policy cannot be justified and you should therefore find other ways of achieving your goals.

If, on the other hand, the REIA shows that the policy could be indirectly discriminatory, you may also need to reject it, unless you are satisfied that you can justify the policy under the Act. This means you will probably have to show in court that;

- the policy was necessary to allow you to carry out your functions; and
- you were unable to find another way of achieving the policy's aims that had less discriminatory effect.

In short, if, as the complainants are alleging, this was not done, then your REIA may not have fulfilled this element of the Duty.

It is therefore the case that the alleged failure on the part of the Council to fulfill the requirements for conducting REIAs and the seeming absence of any robust structures in place to deal with barriers identified with assessments, coupled with the alleged failure to undertake an all-involving and comprehensive consultation to include those most likely to be affected by the proposal and the failure to consider other options when the complainants made their misgivings known to you, may have rendered your REIA non-compliant.

In the circumstances, we will also need you to submit a current race equality scheme with an Action Plan with timelines, and persons responsible for fulfilling the various elements of the duty, since your arrangements to fulfill the Race Equality Duty has been called into question.

Once the requested information is received within the next 21 days, it will be assessed and our conclusion will be communicated to you. I trust your officers will have a clear understanding of what is been requested and why it has been requested. However, if you require further clarification please feel free to contact me us.

In the meantime, however, it might be prudent and, indeed, fair if in the light of the seriousness of the allegation, the proposed strategy for the development of secondary school places is put on hold until such time that we can determine that there has been no breach of the General Duty.

We shall be writing to the Department for Education and Skills, who have overall conduct of Academies, once we have received your response.

We look forward to hearing from you with the requested documents within the time stipulated. Failure to provide the information requested, or the provision of inadequate information, could lead the CRE to believe that the Council has not taken the necessary steps to comply with the Race Equality Duty or that the allegations made are found. Should the Council wish to see the data supplied by

policies in question. This issue is one, in the light of what has been said above on the inter-play between the general and specific duties, which must be addressed directly. In this regard, it would be helpful for you to submit evidence of the race impact assessments, which have been conducted prior to the decision to build the proposed Academy. We will be also interested in the evidence to show who was consulted, what consultation methods were used, what were the views expressed by the consultees, where were these views published and what effect did these views have on the decision to proceed with the proposal..

As you may be aware, one way of identifying actual and potential inequalities in outcomes and increase public confidence in the fairness of your policies is by carrying out an impact assessment, which is a systemic way of finding out whether a policy or a proposed policy affects different racial groups differently and this, the law requires should be part of a normal policy-making process. This should be followed by the need to check if any differences found amount to adverse impact or unlawful racial discrimination. Adverse impact means significant differences in patterns of representation or outcomes between racial groups. Adverse impact may not in itself be proof of racial discrimination, one way or the other. What it means is that you need to investigate the processes that have resulted in adverse impact and tackle any barriers or failings you find.

The CRE is naturally concerned (if the allegations are found) about the apparent lack of clarity, openness and accountability that seems to surround the decision to build the Academy. We are aware that though the Academy structure is a Government-based programme, the building of the Academy appears to be the result of the Council's review of secondary schools in the area, so the Council should be responsible for any issues arising out of that decision. We will be interested in knowing the reasons behind having the Academy located in North Brent in the face of the already existing "imbalance" in favour of students from that quarter, as alleged by the complainants.

Looking at the documents in our possession, it seems there may be some unanswered questions, such as; Has the Council been ever aware of such "imbalances"? Has the Council been aware of the low intake of South Brent residents into North Brent schools and if yes, what has been done about it? What arrangements did the Council put in place to mitigate any potential adverse impact on some racial groups?

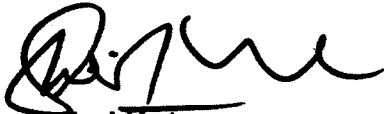
In essence, the crux of the complaint seems to be that the REIA conducted by the Council has not been robust or involving enough to have been fully effective in eliciting information about the potential disproportionalities between black African-Caribbean residents of school-going age and their Asian counterparts.

According to the legal position, if your REIA shows that a policy could be directly discriminatory in any of the areas covered by the Act, the policy would be

the complainants to support their claims, I am certain the complainants will agree for me to copy you in.

We hope that this letter can act as an inquiry into your practices and we encourage you to respond with details of your actions in this context. Detailed guidance concerning the General Duty can be found at:<http://www.cre.gov.uk/duty/grr/index.html>. You can also find information about the CRE's enforcement powers on our website at:<http://www.cre.gov.uk/duty/compliance.html>. Under the Act, the CRE has the power to bring judicial review, instigate formal investigations, and to utilize its own statutory enforcement powers.

Yours Sincerely,



Nikoi Kotey
Legal Officer
Enforcement & Public Duty Team (Legal Directorate)

Cc. President, Brent NUT