

██████████
Helpline Advisor
Equality and Human Rights Commission

By email to englandhelpline@equalityhumanrights.com

Wednesday, 19 September 2012

Dear ██████████

TOWER HAMLETS LONDON BOROUGH COUNCIL

Thank you for your email of 10 September.

First, I attach the three documents (listed below) which you will need in order to deal with our complaint about Tower Hamlets Council.

I want to take the opportunity of correcting certain statements made in previous correspondence (having also added some pages to one of the attached documents), and accordingly I request you to accept this letter as our formal complaint, superseding my previous letters dated 22 August and 2 September 2012.

Introduction

UK Lawyers for Israel combats attempts to delegitimise Israel.

We submit that the Council of the London Borough of Tower Hamlets has failed to comply with a public sector duty, and we request the Commission to serve a compliance notice on the Council.

In support of our submission we attach three documents comprising respectively -

- (1) the Council's resolution on 2 February 2011;
- (2) relevant correspondence with the Council; and
- (3) the Council's Race Equality Scheme 2009-2012.

Page numbers given below refer to documents (1), (2) and (3), as indicated. For document (3) there is no PDF footer and the page numbers are those printed in the original document.

The Council's resolution of 2 February 2011

On 2 February 2011 the Council passed the resolution highlighted in document (1) at pages 28 and 29. So far as this submission is concerned, we focus on paragraph (3) of the substantive part of the resolution (page 29), which reads:

This Council should do everything in its power to support the Boycott, Divestment and Sanctions campaign against the *pariah* state of Israel.

The emphasis on the word "pariah" is ours. We disagree strongly with almost everything in the resolution and its preamble, but that is not what we are complaining about. Our complaint is that the Council of the London Borough of Tower Hamlets has labelled Israel, the state of the Jewish people, as a pariah state.

**Patrons: Baroness Deech DBE | Lord Trimble PC | Lord Pannick QC | Lord Carlile CBE QC
Sir Gavin Lightman | Professor Sir Elihu Lauterpacht CBE QC | Sir Ivan Lawrence QC**

37 The Grove, Finchley, London, N3 1QT
Tel: 020 8346 ██████████ | Mobile: ██████████ | Fax: 020 8346 0745
Email: ██████████ | Website: www.uklfi.com

Breaches of the former general statutory duty and of the public sector equality duty

In our letter to the Council's Chief Executive - document (2), pages 5 to 8 - we set out, at pages 6 and 7, our reasons why we considered the expression "the pariah state of Israel" to be in breach of the public sector equality duty in section 149 of the Equality Act 2010. That reference is partially incorrect, because section 149 did not come into force until 5 April 2011, i.e. after the offending resolution was passed.

At the time when the resolution was passed, the relevant provision was the general statutory duty in section 71 of the Race Relations Act 1976, which required the Council, in carrying out its functions, to have due regard to the need to promote good relations between persons of different racial groups. We would submit that this requirement is not materially different, so far as our complaint is concerned, to the public sector equality duty in section 149 of the Equality Act 2010, and that the Council was in breach of it when it passed the resolution.

In short, the Council, when passing the resolution, failed to have due regard to the need to promote good relations between Jews and non-Jews. We say more about this below, under "Effect on relations between Jews and non-Jews".

We submit that the Council was in breach of the general statutory duty between 2 February 2011 and 4 April 2011, and has been in breach of the public sector equality duty since 5 April 2011.

We further submit that since 5 April 2011 the Council, by failing to rescind the resolution, and in particular that part of it which refers to Israel as a pariah state, has been in breach of section 149 of the Equality Act 2010 and continues to be in breach of it, in that it has failed and is failing to have due regard to the need to foster good relations between Jews and non-Jews.

The basis for our submission of continuing breach is that, having formally declared the state of the Jewish people to be a pariah state, the Council cannot, when exercising any of its functions and in particular those relating to procurement, have due regard to the need to promote good relations between Jews and non-Jews. While the resolution remains in force, the damage which the Council has caused to those relations remains unrepaid.

Moreover, the resolution – in all its aspects but especially in its reference to Israel as a pariah state – actively fosters bad relations between Jews and non-Jews.

"In carrying out its functions"

The Council may argue that, when passing the resolution, it was not carrying out any of its functions, so that the general statutory duty did not apply.

This argument seems to have been previewed by the Council's Information Governance Manager, Tim Rodgers, who wrote to me on 14 September 2011: "A motion at Full Council does not involve the input of officers in preparing advance material, *nor oblige the local authority to act upon the agreed motion* [emphasis added]." See document (2) at page 1.

This in essence is an argument that certain resolutions are intended not to have executive consequences but to function as political theatre, and that they therefore exist outside the ambit of normal local government law.

This is a difficult argument for the Council to maintain because the resolution purports at least to influence the exercise of the Council's contract procurement function. It is even more difficult to maintain in the light of the case brought against Bideford Town Council by the National Secular Society and a local councillor in 2011, in which the claimants successfully argued that the holding of prayers at the start of a council meeting was not lawful because there is no statutory power permitting it, i.e. because it was not a proper local authority function (nor "calculated to facilitate, or [...] conducive or incidental to the discharge of" such a function).

The Bideford case is interesting and relevant to this complaint, because previously it might have been thought that not everything done officially at a Council meeting needed to be authorised by statute as a local authority function. Now it appears that all business at a Council meeting must

be within the authority's powers or duties. No doubt the rule might be relaxed in a *de minimis* case, such as a resolution eulogising a deceased councillor; but if it applies to the regular holding of prayers then it almost certainly applies to the passing of a resolution purporting to influence or determine an authority's procurement policy. (It is accepted that the introduction of the local authority's general power of competence in section 1 of the Localism Act 2011, which came into force on 18 February 2012, is likely to cover many activities for which statutory authority might otherwise be difficult to identify.)

The consequence of all this is that, if the Council were to argue that the resolution was passed otherwise than in carrying out a function, it would in effect be arguing that its own resolution was unlawful. The Chief Executive or monitoring officer would then be obliged to report this to the Council, which would be duty-bound to rescind its unlawful resolution.

Effect on relations between Jews and non-Jews

We may need to satisfy you, or you may need to satisfy yourselves, that the public labelling of Israel as a pariah state is essentially antisemitic: otherwise why should it affect the relations between Jews and non-Jews?

Webster's New Collegiate Dictionary (1981) defines "pariah" as "a member of a low caste of southern India and Burma" and as an "outcast". The Concise Oxford Dictionary (Tenth Edition 1999) defines it similarly, but also refers to a member of no caste. Chambers 20th Century Dictionary (1983) refers to "a social outcast". The expression thus verges on being racist, with a strong element of social ostracism. In reference to the State of Israel it evinces a desire to condemn and punish Israel for her alleged wrongdoings by excluding her from the family of nations.

In case it is necessary for me to satisfy you that Israel is the state of the Jewish people, I begin by referring you to the League of Nations Mandate for Palestine (24 July 1922), which recognised Palestine as the Jewish national home (preamble and article 2). The United Nations General Assembly resolution of 29 November 1947 proposed the establishment of a Jewish state. The Proclamation of Independence of the State of Israel on 14 May 1948 established Israel as the Jewish State in Palestine. Since (as you will no doubt have noticed) there is only one Jewish state, any reference to that state as a pariah is bound to offend Jewish supporters of Israel. In this connection it should be noted that these supporters constitute the overwhelming majority of Jews in the United Kingdom and in every country with a substantial Jewish population, notwithstanding the existence everywhere (including Israel herself) of a vociferous minority of anti-Zionist Jews.

My researches suggest that there are about 2,000 Jews living in Tower Hamlets. However, that is not strictly speaking relevant, because the resolution would be in breach of the public sector equality duty even if there were no Jews in the Borough: the duty is not limited to the area of the public authority subject to it.

Furthermore, my letter to the Chief Executive explains, in document (2) at page 7, why calling Israel a pariah state is tantamount to denying the Jewish people their right of self-determination, and is thereby antisemitic according to the EU Working Definition of Antisemitism.

Other matters and conclusion

Please treat the entire contents of my letter of the Chief Executive (document (2), pages 5 to 8) as forming part of this submission, subject to the corrections made in this letter. I can confirm that the Chief Executive did not respond to it, except to acknowledge receipt and promise a response: see document (2) at page 9. One can only speculate as to why the Chief Executive did not keep her promise, despite the reminder I sent her (document (2), page 10), and I have come to my own conclusions about that, based on my past experience as a local government solicitor.

The Council's Race Equality Scheme - document (3) - does not add much. It helpfully tabulates many ways in which the Council should comply with the public sector equality duty: see document (3) at pages 35 to 48. Naturally the Scheme does not commit the Council to refrain from fostering bad relations, as those drafting it no doubt assumed that no responsible local authority would dream of doing so.

In our view the Council continues to be in breach of the public sector equality duty for so long as the offending resolution stands; and the minimum step which the Council must take to ensure compliance is to delete the word "pariah" in paragraph (3) of the substantive part of the resolution.

However, the Commission is under wide public duties whose scope is not limited by any request contained in this letter, and we hope and trust that you will take such other steps as you may think fit in order to ensure the Council's compliance with its duties under the Equality Act 2010.

Yours sincerely

[Redacted signature]

[Redacted name]

[Redacted title]

[REDACTED]

From: [REDACTED]
Sent: 22 April 2013 15:02
To: [REDACTED]
Subject: RE: Tower Hamlets LBC - EHRC reference number [REDACTED]

Follow Up Flag: Printed x2 (for Clacks)
Flag Status: Flagged

Dear [REDACTED]

You have asked the Commission to consider serving a compliance notice on Tower Hamlets Borough Council in relation to the resolution passed on 2 February 2011 resolving that " the Council should do everything in its power to support the boycott, divestment and sanctions campaign against the pariah State of Israel."

As you have already pointed out in correspondence with the council, it is obliged to pay due regard to the need to eliminate discrimination and the need to foster good relations in the exercise of any of its public functions.

In considering your request, the Commission has noted the fact that it is now over two years since the resolution was passed. We also note the advice of the Council's information governance manager in his e-mail to you dated 14 September 2011 that the resolution did not involve the input of officers in preparing advance material nor oblige the council to act upon the motion.

Whilst we understand UKLFI's concerns about the wording of the resolution we do not believe it is proportionate for the Commission to enter into correspondence with the Council on the matter. This is primarily because of the length of time that has since elapsed but also because the motion did not, so far as we can see, have any effect on council policy. Under the circumstances, it would be difficult to justify the Commission's involvement in this matter.

We are sorry that we are unable to take any further action. Thank you for bringing it to our attention and we apologise that your initial inquiry to our Helpline in September 2012 did not receive a substantive response.

Best wishes

[REDACTED]

[REDACTED]
Senior Lawyer (Solicitor)

Equality and Human Rights Commission
Fifth Floor Arndale House
Arndale Centre
Manchester M4 3AQ
Tel 0161 829 [REDACTED]
Fax 0161 829 [REDACTED]

From: [REDACTED] (UKLFI) [mailto:[REDACTED]]
Sent: 11 April 2013 11:43
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Tower Hamlets LBC - EHRC reference number [REDACTED]

Dear [REDACTED]

That timescale is fine with me. Thank you for keeping me updated.

Kind regards.

[REDACTED]
[REDACTED]
[REDACTED]

UK Lawyers for Israel (UKLFI Limited)

Company no. 07396781

A: 37 The Grove, Finchley, London, N3 1QT (registered office)

T: 020 [REDACTED] **F:** 020 8346 0745 **M:** [REDACTED]

E: [REDACTED] **W:** www.uklfi.com

Patrons

The Rt Hon Lord Carlile CBE QC | The Rt Hon Lady Cosgrove CBE QC

Baroness Deech DBE | Professor Sir Elihu Lauterpacht CBE QC

Sir Ivan Lawrence QC | Sir Gavin Lightman QC | Lord Pannick QC

The Rt Hon Lord Trimble PC

To remove your name and email address from our distribution lists, please contact info@uklfi.com with "Unsubscribe" in the subject line.

From: [REDACTED] [mailto:[REDACTED]]
Sent: 11 April 2013 11:03
To: [REDACTED]
[REDACTED]
Subject: RE: Tower Hamlets LBC - EHRC reference number [REDACTED]

Dear [REDACTED]

I am sorry that this is taking slightly longer than anticipated. I expect to be able to respond substantively to you by the middle to end of next week.

Best wishes

[REDACTED]