

**Draft Scrutiny Inquiry Final Report
Leeds City Council's Decision Making
Process and Due Regard To Equality**

April 2014



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Summary

Introduction

1. The Council's Corporate Leadership Team (CLT) recently endorsed the equality impact assessment (EIA) process, concluding that it can be easily and effectively applied to decisions relating to existing and/or proposed functions, services, employment, policies, practices and strategies; facilitates full consideration and includes all protected equality characteristics; enables communities and interested groups to be involved appropriately in considering the impact of any proposals; and provides flexibility to apply the methodology to different types of decision at different scales, from Delegated decisions to the approval of the authorities budget. Indeed CLT requested that the process be strengthened to include other specific areas which align with the council's wider priorities, such as
 - Poverty, inequality and deprivation
 - Locality working
 - new communities and changing demographics
2. Notwithstanding the above, the Leader of Council requested that Scrutiny Board (Resources and Council Services) undertake its own assessment of the EIA process, using particularly scrutiny's ability to enable the voice and concerns of the public to be heard by inviting the views of the wider community.
3. We do not intend in this report to restate the provisions within the Equality Act 2010, suffice to acknowledge that the Act introduced the public sector equality duty. This requires that public sector bodies subject to the general equality duty must, in the exercise of their functions, have 'due regard' to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.; and
 - Foster good relations between people who share a protected characteristic and those who do not.
4. It is important to note that the general equality duty does not set out a particular process for assessing impact on equality that public authorities are expected to follow. Having due regard to the aims of the general equality duty is about informed decision-making, not about carrying out particular processes or producing particular documents.
5. Notwithstanding the moral duty to have due regard to equality when taking decision, Local Authority decisions may be challenged through the Judicial Review court procedure. With reductions to public funding, we are going to have to make increasingly difficult decisions about entitlements and the provision of services which will impact on individuals and groups. Our priority must be to protect those most at risk and vulnerable, typically those who are in the minority. This will mean making



Summary

tough choices and in so doing we *must* consider the potential for challenge. If we ensure the application of our decision making procedures is robust, we will be able to manage the risk.

6. It should be remembered that Judicial Reviews provide a route to challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached, therefore they focus on process rather than outcome. Even when a Local Authority has made a decision with 'all good intentions' it still has to demonstrate clearly that it has followed robust decision making procedures and considered equality implications and opportunities. Anyone who rushes through a decision on the basis that 'we know best' is putting the Council at risk.
7. We are of the view that the council has a well-established and effective EIA process both in its design and application. It is our view that the process is both compliant with the legal requirement to show 'due regard' to equality and that it lives up to the council's own ambitions to contribute to achieving equality. We do however offer a number of recommendations which we feel if implemented will improve the current process.
8. In making the above assessment we considered the following areas;
 - Whether the current EIA process provides the quality assurance of decision making demanded by the council
 - Whether the current EIA process enables communities and interested groups to be involved appropriately in considering the impact of any proposals or whether other mechanisms should be adopted.
 - Whether there is sufficient support within the council to help promote and develop the equality agenda and to act as the champions for the nine 'equality characteristics' (Equality Areas); Race, Disability, Gender, Transgender, Age, Sexual orientation, Religion or Belief, Pregnancy and Maternity and Carers.
 - Whether the current process for 'due regard' and approaches to wider involvement and engagement specifically meet the needs of disabled people in Leeds. This is a particular issue that has been raised through the council's Equalities Assembly Disability Hub as a barrier to inclusion.
9. The full list of those we discussed the above with is shown in Appendix 1. In summary these included, officers, members of the Member Champions Equality Working Group and representatives from the Council's Equalities Assembly. We are very grateful for all their contributions.



Conclusions and Recommendations

Does the current Equality Impact Assessment process provide the quality assurance of decision making demanded by the council?

10. We believe it does, as do other Core Cities and partners who adopt similar processes. In our view it is the most effective means to be able to demonstrate due regard to equality and to ensure that a proportionate level of equality monitoring can be recorded with a clear audit trail which can easily be available for public scrutiny. Our view is also supported by the fact that the Council has been externally recognised as excellent for its equality approach.
11. From a practitioners' point of view we were told that the process is adaptable and can easily be applied across a wide range of decision making. We also believe the flexibility to apply the methodology to different decisions at different scales of impact ensures that the appropriate communities and interested groups are properly involved rather than those who "shout the loudest" or sit on established equality forums.
12. We believe this is an important point to make. As valuable as it is, the Equalities Assembly is not, nor in our view, should be, the only forum or body that is consulted on decisions. Different decisions will require different participation. We sensed during our discussion with the Equalities Assembly that this may be a source of tension with some Equality Hubs. We got the impression that for some Hubs the expectation levels were such that they considered that they should be consulted on all decisions. We are not of that view but do acknowledge that this is very difficult to manage.
13. During our discussions with the Equalities Assembly a number of Hubs raised concerns about how planning and highways considered equality in the decision making process and highlighted examples of where (particularly) disability issues were not considered effectively. An overview of the process used was given which helped to clarify the issues that had been raised. However, given that this was a particular issue raised we feel that it would be appropriate for the Equality Team to discuss with the Directorate the issues raised and report back to Scrutiny.

Recommendation:

That the Equalities Team to discuss with City Development the issues raised by the Disability Hub and report back to this Scrutiny Board



Conclusions and Recommendations

14. A theme that has emerged during our discussions is the importance of monitoring. The Equalities Assembly talked in terms of monitoring the quality of equality impact assessments *and* of decisions post implementation particularly with regard to 'unintended consequences'.
15. On the first point we were reassured by the Equalities team of the existence of a robust monitoring process, wrapped around performance indicators within the Best Council Plan. We were impressed with the level of pre-decision checking and discussions held between Directorates and the Equalities Team to ensure 'we get it right first time'. Accompanying support from colleagues in Corporate Performance, Corporate Risk and Legal Services was also evident.
16. However whilst we noted that poor performance figures were reported to management teams, we want to ensure that the Equalities Team have the confidence and corporate support to escalate to Executive Member level any significant areas of poor performance and consequential risk. To this end we recommend that the Equalities Team, by exception, reports to Scrutiny those cases where an Executive Board Member has been advised that due regard has not been adequately considered or when the Equalities team has had to escalate non-compliance up to Directorate level during the decision making process.

Recommendation:

That the equalities Team reports, by exception, to Scrutiny Board those cases where an Executive Board Member has been advised that due regard has not been adequately considered during the decision making process.

17. On the point of monitoring decisions, post implementation, we think this is an unrealistic task for the Equalities Team from a logistical and resource point of view. We would expect such issues to be identified at a Directorate level. We would also expect the Equalities Assembly having a monitoring role where appropriate.



Conclusions and Recommendations

Does the current Equality Impact Assessment process enable communities and interested groups to be involved appropriately in considering the impact of any proposals or whether other mechanisms should be adopted?

18. As previously stated we believe the EIA process to be effective and proportionate. Whether it enables the appropriate groups to be involved is more a matter of thoughtful application. We are very grateful therefore for the views of the Equalities Assembly representatives in helping us address this question.
19. Our overall impression was that the respective Equality Hubs were positive in their experiences of the EIA process. A number of positive examples were given, for example, Kirkgate Market, cycle ways and street light switch off. The most negative feedback came from the Disability Hub and particularly those with visual impairment.
20. Their particular examples included the actions of the Highways and Planning departments.
21. What did become clear in our discussions were the blurred lines between EIAs and sustainable consultation, participation and co-production. A representative from the Disability Hub made the observation that the former is by its nature 'one off' and the later a reflection of the culture of the organisation.
22. We recognise that consultation and involvement is important to the Council and that this is sometimes different to that undertaken in the EIA process. We recommend therefore that this continues to be reinforced in the training sessions to key decision makers

Recommendation:

That the importance of consultation and involvement in the decision making process is reinforced to key decision makers as part of the training process.



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Is there is sufficient support within the council to help promote and develop the equality agenda and to act as the champions for the nine 'equality characteristics' (Equality Areas); Race, Disability, Gender, Transgender, Age, Sexual orientation, Religion or Belief, Pregnancy and Maternity and Carers?

23. When we asked this question of the Equalities Assembly representatives we were very pleased to hear the overwhelming support for the work undertaken and practical help provided by the Equalities Team. Clearly this is a well-respected service and one that is valued by the various Equality Areas. We would wish to add our own support for the Equality Team and would express our thanks for the work undertaken.
24. It is our view that the effective nature of the impact assessment process has played a large part in getting significant buy-in to the ethos of promoting and developing the equality agenda. This has been enhanced with the corporate training provided to both officers and Elected Members. Commitment to equalities is further demonstrated in the Best Council Plan which has an ambitious target of 100% of all Key and Executive Decisions having an EIA.
25. We are pleased to see strong political commitment to the equality agenda, particularly the role of the cross group Member Champions Working Group. We were particularly pleased to hear the views of Councillor David Blackburn in terms of the challenge this working group brings to officers and decision makers. We welcomed the recognition from this Group that some decisions, whilst might not necessarily be supported by a particular group were nevertheless taken with proper due regard. We think it is important to acknowledge that a disliked decision does not necessarily equate to a poorly made decision.
26. The Disability Hub stated that they should be invited to attend meetings of this Member Working Group. We do not think this appropriate. Firstly because it would be inappropriate to extend an invitation to one group only and secondly this is an internal group within which Elected Members can challenge officers. We are of the view that the Equalities Assembly is and should remain the forum for such wider participation.
27. We do however think it is timely to review the composition of the Equalities Assembly. Membership of the Equalities Assembly is open to anyone who identifies with, or who works and represents: Age; Black and Minority Ethnic (BME); Carers; Disability: Lesbian, Gay, Bisexual and Transgender (LGBT) and Religion or Belief.



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Members can be involved with more than one hub. Members can attend in their own personal capacity and do not have to be involved in any other voluntary, community or faith sector organisation. We were advised that the majority of Hub members choose to not attend Hub meetings and prefer to keep updated with their Hub's activities by receiving information by email or post and do not actively participate by attending meetings. There are approximately 265 Hub members, and many of these belong to more than one Hub. From the attending members at our working group it was clear that there was underrepresentation from a number of groups, for example younger people and newer communities. We would recommend that the Equalities Team look at ways to ensure active members of the Equalities Assembly reflects the changing demographics of Leeds.

Recommendation:

That the Equalities Team looks at ways to ensure active members of the Equalities Assembly reflects the changing demographics of Leeds.

28. We believe that the existence of the Equality and Diversity Board is important to ensure consistency of practice across all directorates and note that a review of this group is to take place in the near future. We are of the view that this forum should be used to address issues such as monitoring, risk management and unintended consequences. We would also see this forum driving issues around sustained consultation and participation beyond the EIA.

Does the current process for 'due regard' and approaches to wider involvement and engagement specifically meet the needs of disabled people in Leeds. This is a particular issue that has been raised through the council's Equalities Assembly Disability Hub as a barrier to inclusion?

29. It is fair to say that the views of the Disability Hub (or of those who attended our working group) are far less positive than the other Equality Hubs. They told us that in their view the Council's actions were "causing the exclusion and isolation of disabled people in Leeds".



Conclusions and Recommendations

30. The Disability Hub presented to us a written statement within which we were asked to consider three proposals. We have addressed these in turn.
31. **Proposal 1 – Joint case review of Equality and Diversity Impact Assessment Process**
32. We do not think a further review would add any value. The City Council's most senior management has conducted a review and this is now subject to Scrutiny from a cross party group of Elected Members with input from representatives of the Equalities Assembly.
33. **Proposal 2 – Work to define and adopt “City of Inclusion” as a core guiding principle to encompass all aspects of corporate and directorate strategic policy, process, practice, service, design, commissioning and deliver**
34. We agree with the core principle of being a “City of Inclusion”. We believe this principle is already firmly established within the City's Vision, the Council's Best Council Plan and in our Core Values. We see equality as embedded in all that we do and therefore consider that we are meeting this proposal.
35. **Proposal 3 - In view of the critical role of LCC Highways and Planning, establish a LCC Diversity Access and Inclusion Quality Group to partnership and support Highways and Planning Officers on related disability and diversity issues. (Examples access groups in Manchester, London Boroughs and Birmingham)**
36. We do not agree with this proposal. We believe the existing community forums (Equalities Assembly included) combined with corporate support from the Equalities Team, Corporate Performance, Corporate Risk and Legal Services together with the Member Champions Equality Working Group and the Equality and Diversity Board offers sufficient support to Highways and Planning Colleagues. However as previously stated we recognise the concerns raised by some Equality Hubs and have made appropriate recommendations on this.
37. Finally, reference was made to the fact that there is no longer user representation of the Health and Well-being and Adult Social Care Scrutiny Board. This decision was made by members of the Board in July 2013.
38. It is widely recognised that in some circumstances, co-opted members can significantly aid the work of Scrutiny Boards. In general terms, Scrutiny Boards can appoint:



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- Up to five non-voting co-opted members for a term of office that does not go beyond the next Annual Meeting of Council ; and/or,
 - Up to two non-voting co-opted members for a term of office that relates to the duration of a particular and specific scrutiny inquiry.
39. Currently, there is no overarching national guidance or criteria that should be considered when seeking to appoint co-opted members.
40. Despite the lack of any national guidance, what is clear is that any process for appointing co-opted members should be open, effective and carried out in a manner which seeks to strengthen the work of Scrutiny Boards and add additional skills across their membership.
41. Historically, Scrutiny Boards that have considered issues across health and adult social care have tended to operate with standing co-opted members. In 2011/12, the Scrutiny Board (Health and Wellbeing and Adult Social Care) formally appointed four non-voting co-opted members to their membership, as follows:
- Alliance of Service Users and Carers – 1 co-opted member;
 - Leeds Local Involvement Network – 2 co-opted members; and
 - Equality representative – 1 co-opted member
42. In 2012/13, the Scrutiny Board retained these arrangements, however under the new arrangements created by the Health and Social Care Act 2012, Local Involvement Networks ceased to exist on 31 March 2013, with HealthWatch Leeds forming the local organisation responsible for gathering and representing the patient and public voice across the health and social care sector from 1 April 2013.
43. In considering the appointment of co-opted members, it is perhaps important to recognise the changing local health and social care landscape brought about (in the main) by the Health and Social Care Act 2012. In particular, this has resulted in the forming of a Health and Wellbeing Board, which includes a mandatory requirement to include a local HealthWatch representative within its membership. In this context, members of the Scrutiny Board resolved that it would be inappropriate to appoint a HealthWatch Leeds representative as a co-opted member.
44. Members further resolved
- That the Scrutiny Board (Health and Wellbeing and Adult Social Care) would seek to continue to develop a close working relationship with HealthWatch Leeds, particularly in terms of gathering patient/ public views regarding specific work areas/ topics throughout the 2013/14 municipal year.



Conclusions and Recommendations

- That, as and when appropriate, the Scrutiny Board (Health and Wellbeing and Adult Social Care) would review the appointment of non-voting co-opted members in relation to any particular and specific scrutiny inquiry during the 2013/14 municipal year.



Appendix 1

Reports and Publications Submitted

- Report of the Assistant Chief Executive (Citizens and Communities) – Leeds City Council’s Decision Making Process and Due Regard to Equality
- Equality Impact Assessment – Better Lives for Older People

Witnesses Heard

- Councillor Peter Gruen, Executive Member, Neighbourhoods, Planning and Support Services
- Councillor David Blackburn - Leader of the Green Group (member of the Member Champions Equality Working Group)
- Dennis Holmes, Deputy Director, Adult Social Care
- Lelir Yeung – Head of Equalities
- Geoff Turnbull –Senior Policy and Performance Officer
- Pauline Ellis - Senior Policy and Performance Officer
- Alice Fox – Senior Policy and Performance Officer

Representatives from the Equalities Assembly

- Susan Chesters, John Welham – Age Hub
- Annette Morris, Tony Stanley – BME Hub
- Eileen Hallas – Carers Hub
- Alan Oldroyd, Tim McSharry, Victor Jackson, Phil Gleeson
- Patrick Hall – LGBT Hub
- Jocelyn Brook – Religion or Belief Hub
- Emma Stewart, Jill Jones - LMT



Appendix 1

Dates of Scrutiny

24th March 2014

28th March 2014

**Scrutiny Board (Resources and Council Services)
Leeds City Council's Decision Making Process and Due Regard To Equality
April 2014
Report author: Peter Marrington**



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