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**Report of the Assistant Chief Executive**

**Scrutiny Board (central and corporate functions)**

**Date: 1 November 2010**

**Subject: Approach to new Equality and Diversity Scheme 2011 - 2014**

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**Electoral Wards Affected:**

All

**Specific Implications For:**

Ethnic minorities

Women

Disabled people

Narrowing the Gap

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**1.0 Purpose of this Report**

- 1.1 This report outlines proposals for the approach to developing the council's equality priorities and meeting new legislative requirements. It considers how we will measure progress and how we can continue to improve and further embed the equality agenda
- 1.2 In addition it provides an overview of the Equality Framework for Local Government which provides a tool and performance management framework for embedding equality in all aspects of service delivery, employment, working with partners and making decisions.
- 1.3 It proposes that the equality priorities, our organizational approach to embedding equality and its performance management are articulated within the new Equality and Diversity Scheme 2011 – 2014.

**2.0 Background Information**

- 2.1 Leeds City Council has a leading role in the city to promote equality and value diversity. We currently have a legal duty to produce an Equality and Diversity Scheme which outlines our commitment to, and how we promote equality, and to produce an annual report on progress. The council also has a clear and agreed way forward to use the Equality Framework which is an equality performance improvement and benchmarking tool with a challenging target of achieving "Excellent" by April 2011.

- 2.2 The council's Equality and Diversity Scheme 2008 – 2011 needs to be reviewed and refreshed as the current version reaches the end of its timeframe in April 2011. This timescale ties in with the current work that is taking place on the refresh of the Vision for Leeds and supporting strategies and delivery plans.
- 2.3 We need to continue to put equality into practice whilst taking into account new legislative requirements, contained within the Equality Act 2010, the changing landscape in which we now work and the current and future financial challenges that local authorities face. We need to:
- Set the vision for equality
  - Consider our legal obligations and what we have to do
  - Look at the impact of what we do and how we measure it
  - Further improve and embed the equality agenda
- 2.4 The current Equality and Diversity Scheme 2008 – 2011, whilst legally compliant, is not sufficiently aligned to the strategic outcomes and priorities in the Vision and Strategic Plan. As a result there have been significant challenges in recognising and measuring equality outcomes for the council and the city. In addition the current approach to measuring equality has been based on separating this from other performance management areas and has focused on the distinct and separate mechanisms of the Equality Scheme, the Equality Framework and Impact Assessments

### **3.0 Legislation**

- 3.1 The Equality Act 2010 provides a new cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all; to update, simplify and strengthen the previous legislation; and to deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.
- 3.2 The provisions in the Equality Act 2010 will come into force at different times to allow time for the people and organisations affected by the new laws to prepare for them. The vast majority of the Act's provisions come into force on 1<sup>st</sup> October 2010. (see Appendix A).
- 3.3 Consultation is currently taking place on the statutory regulations of the new public sector duty, which comes into force on 1 April 2011. This duty will include the requirements for understanding equality priorities and the necessary provisions to be considered/included.
- 3.4 These new duties will be incorporated into the Equality and Diversity Scheme 2011 – 2014. Consideration will also be given to the role of the new socio economic duty within the Equality and Diversity Scheme. This duty is still under consideration and if enacted will also come into force on 1 April 2011

### **4.0 Decision Making**

- 4.1 There is considerable work that has taken place to embed equality and diversity in the decision making process but there are still gaps that need to be addressed.
- 4.2 The use of equality impact assessments ensures legal compliance and is a key process we use to help embed equality and inform decisions. They help us

understand the impact of our work on equality groups who might be disadvantaged by the way we deliver services or make decisions.

- 4.3 The current and future financial challenges that local authorities face are likely to have a disproportionate impact on equality groups. Work has started in order to try and understand the impact at a local level, to identify any legal or community risks and to minimise the impact in the future. This will involve an analysis of the proposed budget reductions and budget action plans and their impact on equality related issues.
- 4.4 Corporate Governance is currently reviewing the report writing guidance and templates for decision making reports. This will strengthen equality considerations in all the decision making processes.
- 4.5 Understanding priorities and embedding equality in decision making is key to taking forward the equality agenda and will be reflected within the new Equality and Diversity Scheme.
- 4.6 It should be noted that there have been successful legal challenges around due consideration of equality and diversity in the decision making process where at least two local authorities have been subject to a judicial review as a result of not effectively embedding equality in the decision making process (see Appendix B)

## **5.0 Proposed Approach**

- 5.1 The Equality Act 2010 specifies the requirement to understand local equality data and use this to establish equality objectives and outcomes.
- 5.2 In order to move the equality agenda in the organisation to the next level it is proposed that a new Equality and Diversity Scheme is developed in conjunction with the new Vision. The Scheme can then act as a vehicle to fully understand and coordinate equality data, objectives and outcomes.
- 5.3 There is currently a proposal to ensure the strategic outcomes and priorities for the city in the Vision for Leeds reflect high level ambitions including that 'Leeds is fair, open and welcoming.' It is appropriate to have this broader approach which recognises and reconfirms the strategic commitment to equality which will also be reflected and further enhanced within the new Equality and Diversity Scheme.
- 5.4 In developing the new Vision, supporting strategies and plans, work is taking place to understand, challenge and integrate equality objectives, outcomes and measures. As a result this would support further the council's approach to mainstreaming equality as equality performance would be integrated into the new partnership performance management framework that is being developed
- 5.5 Considerable consultation and involvement is taking place with stakeholders to develop the Vision for Leeds priorities. This has included the Equalities Assembly, which is the corporate consultation forum for equality communities, at both the stakeholder engagement stage and also at the current consultation stage. In addition further work has taken place with other and additional equality groups to ensure wider representation.
- 5.6 Further involvement will take place with equality communities around the development of the new Equality and Diversity Scheme. This will ensure

compliance with the specific duties once they have been agreed and finalised and will focus on:

- Equality data related to service delivery and employment which will enable and encourage challenge
- Maintaining open channels for consultation and involvement, which will take place in a non bureaucratic and flexible way

5.7 A proposed outline for the new Equality and Diversity Scheme is at Appendix C

## **6.0 Conclusion**

6.1 The proposed approach will demonstrate improved strategic alignment between the Vision, supporting strategies and plans and the performance management framework. It will encourage improved integration of stronger equality objectives, outcomes and measures

6.2 In addition it will enable the Council to demonstrate specific equality priorities, and will ensure compliance with the new Equality Act 2010

## **7.0 Recommendations**

7.1 Scrutiny Board members are asked to:

- Discuss the contents of the report
- Endorse the proposed approach to the development of the new Equality and Diversity Scheme

### Equality Act 2010

The Act applies to all organisations that provide a service to the public or a section of the public (service providers). It also applies to anyone who sells goods or provides facilities. It applies to all services, whether or not a charge is made for them.

#### Equality Act 2010 Provisions coming into force on 1 October 2010

- The basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations, and transport.
- Changing the definition of gender reassignment, by removing the requirement for medical supervision.
- Leveling up protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic, so providing new protection for people like carers.
- Clearer protection for breastfeeding mothers;
- Applying the European definition of indirect discrimination to all protected characteristics.
- Extending protection from indirect discrimination to disability.
- Introducing a new concept of “discrimination arising from disability”, to replace protection under previous legislation lost as a result of a legal judgment.
- Aligning victimisation protection with the approach in employment law.
- Harmonising the thresholds for the duty to make reasonable adjustments for disabled people.
- Extending protection from 3rd party harassment to all protected characteristics.
- Making it more difficult for disabled people to be unfairly screened out when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability or health.
- Allowing hypothetical comparators for direct gender pay discrimination.
- Making pay secrecy clauses unenforceable.
- Extending protection in private clubs to sex, religion or belief, pregnancy and maternity, and gender reassignment.
- Introducing new powers for employment tribunals to make recommendations which benefit the wider workforce.
- Harmonising provisions allowing voluntary positive action.

#### Equality Act 2010 Provisions coming into force on 1 April 2011

**April 2011:** The integrated public sector Equality Duty, the Socio-economic Duty and dual discrimination protection.

**2012:** The ban on age discrimination in provision of goods, facilities, services and public functions.

**2013:** Private and voluntary sector gender pay transparency regulations (if required) and political parties publishing diversity data.

## Legal Challenges

- 1. Southall Black Sisters is a voluntary organisation, partly funded by Ealing Borough Council, providing services to Asian and Afro-Caribbean women who experience domestic abuse. In 2007 the council decided it would only fund borough-wide services provided to all individuals experiencing domestic violence irrespective of gender, sexual orientation, race, faith, age, or disability. The ruling concluded that: 'Where race equality is relevant to a decision (e.g. there are concerns that a particular racial group may be adversely affected by the decision) then the decision will be unlawful if a full race equality impact assessment was not undertaken before the decision was taken.**
2. Claims for judicial reviews were allowed on the decisions by Portsmouth CC and Barnet LBC to cease to provide residential warden services in their sheltered housing schemes. In the Portsmouth case the change was not considered relevant to equality and this was held to be an unreasonable conclusion. A further key area highlighted in both these cases was the importance of the decision maker (Cabinet) being provided with sufficient information in relation to the obligations relating to the DDA.
3. To make savings in the light of budget deficits, the London Borough of Harrow proposed to restrict the provision of adult care services to people with critical needs only. In the response to the challenge by service users the court held that elected members could not come to a balanced decision without being aware of what their responsibilities were under the Disability Equality Duty. The decision to restrict adult care services was therefore held to be unlawful.
4. Planning permission for Wards Court development to replace Seven Sisters Market in Haringey was revoked when a legal challenge based on Haringey's failure to discharge its statutory duty to have due regard to the need to promote equality of opportunity and good relations between different racial groups was won
- 5.. The Fawcett Society has filed a legal challenge, arguing that the government has failed in its legal duty to assess whether spending cuts would hit women unfairly. Figures from the Commons library show the cuts will hit women hardest. They show over 70% of the revenue raised from direct tax and benefit changes is to come from female taxpayers, with nearly £6bn coming from women and just over £2bn from men
6. A coalition of ethnic minority groups (the 1990 Trust) is planning a separate legal challenge to the current budget

## Proposed Outline of Equality and Diversity Scheme 2011- 2014

	<b>Section</b>	<b>Comments</b>
1	General introduction including demographics of Leeds	
2	Overview of purpose of Equality Scheme	To include how it has been developed
3	Equality and Diversity Policy	This will also be provided as a stand alone document
4	Storyboard around each of the Equality Framework main areas: <ul style="list-style-type: none"> <li>• Knowing your community and equality mapping</li> <li>• Place shaping, leadership, partnership and organisational commitment</li> <li>• Community engagement and satisfaction</li> <li>• Responsive services and customer care</li> <li>• A modern and diverse workforce</li> </ul>	Provides contextual information about how the council works. Will include references to the decision making process and work undertaken to strengthen this. Also include consultation and involvement process used to develop the Vision and the Equality and Diversity Scheme
5	Separate sections reflecting the equality dimension of the Vision and each of the supporting strategies/plans.	This will include provision of clear equality data and targets/outcomes, in line with the Statutory Code of Practice and Guidance on the Equality Duty (still being developed)
6	Performance management arrangements	
7.	Next Steps	Will include opportunities for challenge and further involvement