

EXECUTIVE SUMMARY

UNISON concerns are twofold.

1. Potential failures of the Executive Board process
 2. Failure to properly equality impact assess the proposals to decommission the Crisis Centre and two mental health day centres
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1. Potential failures of the Executive Board process.

Our concerns are focused on the Council's own constitution and specifically section 4 (Rules and Procedure), the relevant points being as follows:-

4.1 "The council will make copies of the agenda and reports open to the public available for inspection at least 5 clear days before the meeting"

4.3 "where copies of the agenda and reports are not available for inspection in this way, an item will not be considered"

The report available on the Council's website in the week prior to the Executive Board was not the report debated on 11 February 2011, this being an amended version. To debate the amended document would appear therefore to be in breach of rule.

2. Failure to properly equality impact assess the proposals to decommission the Crisis Centre and two mental health day centres

Equality and Human Rights Commission public sector guidance Equality Impact Assessment

A.

"Have those likely to be affected by the proposal been consulted and involved? Involvement and consultation are crucial to the EIA Process"

"No-one gives you a better insight into how proposed changes will affect, for example, disabled people, than disabled people themselves"

UNISON COMMENT – The report submitted to the Executive Board in December was not accepted due to insufficient consultation. Since that date, existing Day Centre users have had the opportunity to attend one meeting and consultation with the current and previous service users at the Crisis Centre has been sporadic.

Appendix 3 of the Mental Health EIA outlines some of the concerns raised at the January meeting – the responses do not mitigate the concerns raised they are at best vague in terms of what, if any, building based provision will be available and focus mainly on community centred alternatives.

The report cites the I3 Project as having a consultative value yet it would surely be fair to state that I3 considered the general direction of travel of mental health services and could not be put forward as a substitute for specific consultation with key stakeholders over the proposals to decommission the centres. The report itself recognised the need for more consultation – as the report states "the demand for changes for stakeholders was limited" "this inevitably meant that change has to be gradual" "looking to the future there is a

need to build both approaches ie build wider and deeper stakeholder demand” (Section 6 I3 report)

The I3 Report concluded that implementation could only be rolled out when the concerns listed above had been addressed, there is no supportive evidence to suggest they have.

The EIAS does not reflect a satisfactory consultation process, in spite of this the decision to decommission the centres has been taken.

B.

“By law an assessment must:

- **Contain sufficient information to enable a public authority to show it has paid due regard to equalities duties in its decision**
- **Identify methods for mitigating or avoiding any adverse impact”**

UNISON COMMENT – with respect to the Crisis Centre it is critical to understand that current NHS provision is not staffed to full capacity and of the factors which explains referrals to the Crisis Centre from the IAP Teams. Whilst the NHS asserts it can cope with a small increase in capacity there is no evidence that current staffing structures can do this. Neither the Executive Board nor the EIA specify how, when and where the services provided by the Crisis Centre will be delivered.

With respect to day centres, the service users have been promised individual conversations as regards alternative support. No specifics have yet been identified nor have individual risks been assessed. The discussions will focus on how not whether change will be implemented.

There is nothing within the EIA which sheds more light on any of these issues.

“When should assessment be carried out?

An assessment of impact must be carried out at a formative stage so that the assessment is an integral part of the development of a policy, not a later justification of a policy that has already been adopted”.

The earlier Executive Board report stated that an EIA was being prepared. Therefore the Council was asked by its officers in December to make a decision in direct contravention to the Commission’s advice! This being the case the two EIA since provided (in some haste) could hardly be cited as an integral part of the proposed policy.

Attached to this summary are comments submitted from UNISON stewards which supplement and inform the broad concerns outlined in this summary. These are with regard to the Mental Health day services EIA.

Introduction

In agreeing the report, the Executive Board agreed to the following:

- 1) Closure of two day centres
- 2) An enlarged CAT team pending the implementation of the policy of an outsourced community day service.
- 3) A community day service outsourced through competitive tendering.
- 4) The outsourcing through competitive tendering of all the services known in this report as the accommodation services

The question therefore becomes whether the EIA presented with the report was adequate for elected members to make these decisions.

Analysis using *Equality Impact Assessment Guidance*

This guidance is published by the Equality and Human Rights Commission. Page references refer to this document.

The following points are only some indicators of the inadequacy of the EIA.

- **It is essential that a genuine assessment is carried out at a formative stage (p5). The assessment should be started prior to policy development or at the design stage of the review and continue throughout the policy development/review (p18).** The report presented in December states that that an equality screening assessment for the day service is being undertaken to see whether a full assessment is necessary. In fact, the EHRC guidance clearly indicates that a full assessment for this type of proposal would be necessary. Importantly, the timing of the comments in the December report would also indicate that no EIA was conducted at a formative stage. The EHRC guidance notes includes the following: *Warning. A number of public authorities have carried out EIAs at the very end of the policy development or review process. This can lead to significant problems. The EIA may be a paper exercise, with equality problems ignored and the policy given a clean bill of health. This is a particular risk where key decisions have already been made or political representatives have given public statements, making it extremely difficult to change the policy sufficiently. Carrying out EIAs at the end of the process can lead to several problems and leaves the authority open to compliance action by the Commission or legal challenges by others.* (p22)
- **Positive involvement and consultation are seen as key ways of ensuring that an effective EIA takes place (p15).** The consultation process has clearly been flawed in a number of ways: a) there is a heavy reliance on the i3 project which did not in itself include adequate consultation - some considerable time has elapsed since the project, and many individual service users have come and gone; b) the number of meetings with staff and service users is inadequate bearing in mind the scope of the proposed changes p5; c) in terms of the authority's general duties on race, disability and gender, it is unlikely that the generalised meetings would be considered adequate; d) the timing of the consultation did not allow it to inform the formulation of policy
- **An EIA should outline the relevance of the policy, service, function etc is to the general equality duties and equality groups (remembering to consider each of the general duties and not only the duty to eliminate discrimination) p18.** This is important because it means that the authority has to do more than show that its policy is not discriminatory, it actually has to show how the policy helps the authority fulfil its general duties on race, disability and gender. The EIA makes no reference to the general duties (cf Appendix 1 of *Equality Impact Assessment Guidance*). It is important to remember that EIAs are not just about addressing discrimination or adverse impact; they should actively promote equal opportunities (p5).

- **The EIA should include policy aims; available evidence; involvement and consultation; the impact (including questions like “who benefits?”, “who doesn’t benefit and why not?” “who should be expected to benefit and why don’t they?” – and much more (p19)** The guidance notes clearly indicate that an EIA needs to be far more complex and sophisticated than that which has been carried out by the authority in this case.
- **It is important to have as much up-to-date and reliable data and information as possible about the different groups the proposed policy is likely to affect (p28).** The data presented in 4.1.4 of EIA was conducted over one week. It did not include all service users as some service users use the service fortnightly or monthly; those with physical health problems are more likely not to be using the service at any one time and are therefore more likely to be excluded from the data. Furthermore, the use of the term “registered disabled” will have excluded some service users from making an affirmative response being intimidated by the word “registered”.
- **Proportionality is a key principle. EIA of a major new policy or strategy will need significantly more efforts and resources dedicated to ensuring effective consultation and involvement than a simple EIA of a regular policy (p30).** Clearly, in passing this report, elected members have agreed to a policy of major importance as it affects all mental health services delivered by Leeds City Council (except the Crisis Centre which is covered in a separate report).
- **It is never acceptable to simply state that a policy will universally benefit all service users, and therefore the equality groups will automatically benefit. The analysis must be more sophisticated than this, demonstrating consideration of all the available evidence and addressing any gaps and disparities revealed (p31).** The EIA report does not properly analyse the needs of the equality groups. The level of sophistication required is indicated by the broad questions listed in the guidance notes (p33). Clearly the report falls far short of this level of sophistication.
- **Failure to properly monitor the impact of a policy may leave a public authority open to legal challenge, as well as enforcement action from the Commission (p40). Systems to enable monitoring of the actual impact of the policy therefore form a vital part of an EIA and should be set out in the final section (p38).** The EIA contains nothing about how the policy will be monitored post implementation to assess whether the authority is meeting its general duties.
- **EIA is an ongoing process that does not end once a document has been produced (p39).** The EIA report makes it sound as though the EIA is a paper exercise to be completed and refers to a further assessment being done as part of the recommissioning process (section 3); this approach is not in line with the advice given in the guidance notes.

Process

From the above, it is clear that the EIA report can be criticised in terms of process on a number of points. It would therefore, presumably, be open to a legal challenge and/or compliance action by the Commission.

Content

The EIA is startlingly unsophisticated in terms of content. It is therefore impossible to indicate all of the shortcomings of the EIA. The following are some of the unexplored issues:

Re: Closing day centres and enlarging community team. There is no impact assessment of the following factors:

- i. More community bases would be needed to accommodate the enlarged community service. There is no survey of potential bases; no analysis of their geographical location and how

that might affect different groups of service users; and no costing analysis of the use of these additional bases.

- ii. Some community based activities may include service users in "hidden" costs buying coffee, alcoholic drinks, meals, admission costs etc.
- iii. An access issue arises for people with problems with alcohol when the community venue is licensed.
- iv. Community venues increasingly have disabled access and toilets. However, the day centre buildings provide specialist equipment e.g. kiln and other art and craft equipment. There is also a specialist kitchen for teaching catering skills, as well as other areas with a specialist function. There has been no survey of community bases which can offer both disabled facilities and these specialist facilities. There is no survey of mainstream educational facilities which can offer instructors with a background and expertise in working with people with mental health problems.
- v. The potential experience of service users who are particularly susceptible to bullying when accessing community based services either because of disability, gender or race.
- vi. The change process as the service moves from three buildings to one. A particular issue, amongst others, to be impact assessed, would be what would happen to people referred to the service between now and the day on which the day centres close their doors for the final time.
- vii. The accommodation needs of Dosti, an Asian women's support group based at Stocks Hill Day Centre. Although not run by the Council it has close links with the authority. The EIA does not even mention Dosti.

Re: Competitive outsourcing. There is no impact assessment of the following factors:

- i. The proposed change in eligibility criteria.
- ii. The record of potential employers (e.g. voluntary sector agencies in Leeds) regarding their employment of disabled staff as compared with LCC's record.
- iii. The main report states that competitive tendering will produce a service which is cheaper and better. It provides no evidence. The EIA not only need to provide the general evidence, but it would also need to show how the proposed change is congruent with the general duties of the authority regarding equality.

Re: Accommodation services.

- i. This service is omitted in its entirety from the EIA.

Additional Points for Consideration

- EIAs should be carried out alongside other assessments including risk assessments, and health and human rights impact assessments (p9).
- The weight the authority gives to equality should be proportionate to its relevance to a particular function. Equality is clearly highly relevant to a service for people with mental health problems.
- Thought must be given to particular equality groups. *It is never acceptable to simply state that a policy will universally benefit all service users, and therefore the equality groups will automatically benefit* (p31). In the main report, there seems to be a sense that it is intrinsically always better for people with mental health needs to be accessing a mainstream service; that somehow equality is fostered by treating everyone the same. *Equality will sometimes require specific steps in order to address an existing advantage, meet different needs or accommodate difference and diversity* (p31).

- Presumably the Equality Act's extension of public duties which comes into force 6/4/11 is relevant. This extends an authority's duties to include all protected groups e.g. age, gender reassignment and sexual orientation etc. It also uses a broader term of "engagement" for involving relevant parties/people. I would have thought that once the legislation comes into force, an EIA would need to be more far reaching.