


Non-Executive Report of the:  <b>Overview and Scrutiny Committee</b>  30 <sup>th</sup> November 2015	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Melanie Clay, Corporate Director for Law, Probity and Governance	<b>Classification:</b> Unrestricted
<b>Overview and Scrutiny Transparency Commission Final Report</b>	

<b>Originating Officer(s)</b>	Mark Cairns, Senior Strategy, Policy & Performance Officer
<b>Wards affected</b>	All wards

### Summary

The Final Report at Appendix 1 sets out the evidence, findings and recommendations of the Overview and Scrutiny Committee's Transparency Commission, which ran over the course of three Committee meetings in July, September and October 2015.

### Recommendations:

The Overview and Scrutiny Committee is recommended to:

1. Agree the report and recommendations included in Appendix 1, for submission to the Mayor in Cabinet.

## **1. DETAILS OF REPORT**

- 1.1 In Tower Hamlets, a lack of transparency was an issue identified in the Best Value inspection of the council in 2014, particularly in relation to decision-making on grants. While the specific problems highlighted in the inspection are being addressed through the council's Best Value Action Plan, transparency was also a key theme of the recent local mayoral election, and it remains a matter of real interest and concern to local people.

At its first meeting of the 2015-16 municipal year, the Overview and Scrutiny Committee decided its next three meetings would be focused primarily on a review of the council's transparency, with the full committee sitting as the Overview and Scrutiny Transparency Commission. This was seen as an opportunity for members from all political parties to work together to identify actions to help the council become more transparent. In addressing this, members considered different aspects of the issue, such as:

- how residents could be better informed about council activity, processes and decisions;
- How members could be supported to make more transparent decisions; and
- How decision-makers could be held to account transparently.

- 1.2 The Commission's evidence-gathering sessions took place at the Overview and Scrutiny Committee meetings on 27<sup>th</sup> July, 7<sup>th</sup> September and 5<sup>th</sup> October 2015, where it heard from the Mayor, officers, local journalists and bloggers, trade unions, and professional experts involved in improving transparency in other authorities and organisations. It also consulted other sources, and held a public consultation to gauge perceptions of council transparency, the results of which are also included as an appendix to the report.

- 1.3 The Commission's Final Report sets out the following key goals for the council:

- Make the council a beacon for openness, accountability and transparency by the end of 2017-18
- Enhance the role of Overview and Scrutiny to enable greater openness, accountability and transparency in 2016-17
- Publish all data by default wherever possible by the end of 2016-17.

- 1.4 In order to achieve these goals, the Final Report makes sixteen recommendations, as below.

- 1.5 To make the council a beacon for openness, accountability and transparency by the end of 2017-18, the Commission recommends that:

1. The Mayor considers additions to his Transparency Protocol to include actions to create an organisational culture, led by senior management,

which values and presumes openness. This should include explicit support for whistleblowing where it is appropriate.

2. The Mayor extends his Transparency Protocol to include required conditions for the use of individual mayoral decisions.
3. The Council implements a protocol governing the use of planning pre-committee briefings with applicants present, and includes materials used and any outcomes in reports to the development committees.
4. The new process for deciding on the spending of planning contributions is open and transparent, and includes some resident involvement.
5. Information on spending of planning contributions is publicly and easily available delineated by ward, and sent to members, with regular progress reports to the Overview and Scrutiny Committee.
6. The Council increases opportunities for community engagement in democratic processes, including by:
  - Exploring holding committee meetings in a variety of venues more amenable to the public in different parts of the borough;
  - Providing plain English summaries of items on upcoming committee agendas via the Council's existing communications channels, and reporting these afterwards;
  - Making Council and Cabinet webcasts viewable from the Council's main social media accounts and on popular video hosting sites such as YouTube;
  - Exploring options for remote and electronic participation in committee meetings, such as offering live streaming and tweeting, and allowing questions via social media;
  - Enabling e-petitions on the council's website; and
  - Allowing the public to propose items for Overview and Scrutiny workplans.
7. The new Community Engagement Strategy, and changes planned under the Mayor's Transparency Protocol to the consultation process for policy development and service change, takes account of the findings of the Commission's consultation.

8. New localised consultation forums allow a key role for ward councillors.
  9. Licensing and Planning Teams explore the feasibility of enabling the public to sign up to receive weekly email bulletins detailing applications received, consultation arrangements, and the status of existing applications, at ward level. They should also:
    - Explore utilising social media and text alerts in relation to consultations; and
    - Use plain English as far as possible in communications, and include guides to technical language that cannot be avoided.
- 1.6 To enhance the role of Overview and Scrutiny to enable greater openness, accountability and transparency in 2016-17, the Commission recommends that:
10. The council undertakes a full review of its Overview and Scrutiny arrangements, and amends these as necessary.
- 1.7 To publish all data by default wherever possible by the end of 2016-17, the Commission recommends that:
11. Officers undertake a full review of compliance with the requirements of the Local Government Transparency Code, and take any action required to secure this compliance on a regular basis.
  12. Officers explore approaches to achieving three-star status for all relevant information required to be published by the Local Government Transparency Code (as applicable) within six to nine months; and assess the feasibility of achieving five-star status for different categories of data published by the council on an ongoing basis, in the longer term.
  13. The Mayor's Transparency Protocol is extended to include exploring the feasibility of publishing all of the information recommended in part 3 of the Local Government Transparency Code.
  14. In the short term, the council develops a frequently-updated online hub of information accessible from the Council homepage, including all information required by the Local Government Transparency Code, as well as additional categories of information suggested in the body of the Commission's report.

15. In the longer term, the Council explores the costs and benefits of regularly publishing all of its data, with exceptions, as recommended in the Local Government Transparency Code.
16. Officers explore options to allow the public to access data published by the council via user-friendly, visually appealing and easily-navigated interfaces, using Redbridge DataShare and Bath:Hacked as benchmarks.

## **2. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 2.1 The report recommends a number of changes to Council procedures and processes in order to improve transparency within the Council. The Overview and Scrutiny committee are asked to agree that these be put forward for Cabinet approval. This alone does not have any financial implications.
- 2.2 However, should cabinet agree to implement the above recommendations, it is expected that the changes can be implemented through existing resources. In the case that additional resources may be required, approval will need to be sought through the Councils budget approval process.

## **3. LEGAL COMMENTS**

- 3.1 The Council is required by section 9F of the Local Government Act 2000 to have an Overview and Scrutiny Committee and to have executive arrangements that ensure the committee has specified powers. Consistent with this obligation, Article 6 of the Council's Constitution provides that the Overview and Scrutiny Committee may consider any matter affecting the area or its inhabitants and may make reports and recommendations to the Full Council or the Executive in connection with the discharge of any functions. It is consistent with the Constitution and the statutory framework that the Scrutiny Challenge Session Report and recommendations in it be submitted to the Mayor's Advisory Board and then to Cabinet for consideration.
- 3.2 The Overview and Scrutiny Committee's Transparency Commission ran over the course of three Committee meetings in July, September and October 2015. The core question for the Transparency Commission was "How can the Council be more transparent?" The desired outcome was "Recommendations to improve transparency within the Council." At Appendix 1 is the Final Report titled "Overview & Scrutiny Transparency Commission Final Report" and which sets out the evidence, findings and recommendations of the Transparency Commission. There are sixteen (16) recommendations and which are also set out in paragraphs 3.5 to 3.7 of the cover Report.
- 3.3 With regard to transparency, Local authorities are encouraged to be transparent and open in their decision making and business dealings generally. Legislation provides a minimum level of publication through the

Local Government Acts 1972 and 2000, the Localism Act 2011 and a variety of attendance regulations.

3.4 The Council has discretion to go beyond the statutory minimum in the interests of developing its transparency and openness and the recommendations in this report and the accompanying protocol are all matters within their discretion.

3.5 With regard to the specific recommendations, the following should be noted.

3.6 **Recommendation 1**

3.7 At Cabinet on 3<sup>rd</sup> November 2015, the principles and action plan contained in the Transparency Protocol were agreed. Additions to the Transparency Protocol would have to be agreed at Cabinet and a revised action plan agreed.

3.8 With regard to whistleblowing, an important aspect of accountability and transparency is a mechanism to enable Members, employees, contractors, suppliers and partners to voice concerns in a responsible and effective manner. It is a fundamental term of every contract of employment that an employee will faithfully serve his or her employer and not disclose confidential information about the employer's affairs. Nevertheless, where an individual discovers information which they believe shows serious malpractice or wrongdoing within the Council then this information should be disclosed internally without fear of reprisal, and there should be arrangements to enable this to be done independently of line management (although in certain circumstances the line manager would be the appropriate person to be told).

3.9 It should be emphasised that any whistleblowing policy is intended to assist individuals who believe they have discovered malpractice or impropriety. It is not designed to question operational decisions taken by the Council nor should it be used to reconsider any matters which have already been addressed through the Council's existing procedures (e.g. The Grievance Procedure). Further, this Policy is a supplement for and not a substitute for the usual channels of complaint. In that regard, it is important to note that the Whistleblowing Policy is not intended to replace any of the complaint/concern mechanisms already in place at Tower Hamlets.

3.10 Any policy should aim to:

- encourage employees etc. to feel confident in raising serious concerns and to question and act upon concerns;
- provide avenues for employees etc. to raise those concerns and receive feedback on any action taken;
- ensure that employees etc. receive a response to their concerns and that they are aware of how to pursue them if they are not satisfied;
- reassure employees etc. that they will be protected from possible reprisals or victimisation if they have a reasonable belief that they have raised any concern in good faith.

3.11 The Council should treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation should be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required. Of course, the disclosure can be raised through the employee's trade union or professional association representative.

3.12 As to anonymous allegations, any policy should encourage individuals to put their name to any disclosures they make as concerns expressed anonymously are much less powerful. Nevertheless, anonymous allegations can be considered at the discretion of the Council but in exercising this discretion, factors to be taken into account will include:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegation from attributable sources, and obtaining information provided.

### 3.13 **Recommendation 7**

3.14 "Consultation" is the process by which a decision-maker seeks the views of the public, or a section of the public, on a proposal that may have a general impact, before a decision is made whether to implement that proposal. There is no general duty that requires decision-makers to consult prior to taking a decision as otherwise the business of both central and local government would likely grind to a halt.

3.15 There are essentially three (3) types of consultation:

- (a) Statutory – This is where the exact nature of the consultation is prescribed by statute (or common law).
- (b) Statutory but with in-built discretion – This is where the consultation is prescribed by statute but there is discretion as to the nature of the consultation (e.g. who to consult with).
- (c) Voluntary – This is where there is no statutory requirement to consult but due to a promise, established past practice or where a failure to consult would lead to conspicuous unfairness.

3.16 If there is no statutory (or common law) duty to consult then the Council may still choose to consult. This would arise where there has been a promise to consult on a proposal; past practice has been to consult on the proposal; or where, in exceptional cases, a failure to consult would lead to conspicuous unfairness.

3.17 In deciding to consult, the Council should bear in mind that effective consultation is based upon the principles of openness, transparency, integrity and mutual respect and that by consulting we are entering into two-way

communications and meaningful dialogue with residents and other stakeholders. Further, open and effective communication can enhance the reputation of the Council.

3.18 It is important not to undertake consultation for consultation's sake however as the flip side is that consultation can slow down the decision making process when a faster response would have been beneficial. It is therefore not necessary to consult on every operational decision. Further consultation can also be used as an excuse for not making a decision.

3.19 Community consultation is most effective when it contributes to the decision making process and consider whether stakeholders can help inform the proposal. Alternatively, could the proposal have an adverse impact on stakeholders?

3.20 When voluntary consultation does take place then the Council must comply with the common law principles set out in *R v Brent London Borough Council, ex p Gunning*, (1985) and recently approved by the Supreme Court in *R(Mosely) v LB Haringey 2014* . These are:

- *Firstly consultation must be at a time when the proposals are still at a formative stage.*
- *Secondly, that the proposer must give sufficient reasons for any proposal to permit intelligent consideration and response.*
- *Thirdly that adequate time must be given for the consideration and response.*
- *Fourthly that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.*

### 3.21 **Recommendation 9**

3.22 Where there are statutory consultation requirements, then these are mandatory and the Council is obliged to consult in both the prescribed manner; with the prescribed persons; and with prescribed time limits, if any. Failure to comply with any part of the consultation leaves the decision open to legal challenge and the decision being overturned. That being said, the Council can look at ways in which it provides information to a wider group of people. There is a fine line however and the Council must not do so in such a way that it can be seen to be canvassing for objections to applications.

### 3.23 **Public Sector Equality Duty**

3.24 In carrying out its functions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). The Council will have to comply with this duty in bringing forward and taking decisions on any proposed changes and appropriate screenings or equalities assessments will need to be undertaken. There is



some information in the report relevant to these considerations in paragraph 6 below.

#### **4. ONE TOWER HAMLETS CONSIDERATIONS**

- 4.1 The Commission's focus on transparency and openness, manifested in the Final Report's recommendations, are in keeping with the One Tower Hamlets emphasis on the empowerment and resilience of communities. As noted in the report, greater information fosters democratic accountability and helps them to shape services. Fully-realised open data, made available in useable and consumable formats by third parties for public consumption, can help people make decisions not just about services, but also about other matters in their everyday lives, from where to send their children to school, to where to park their car for the afternoon.

#### **5. BEST VALUE (BV) IMPLICATIONS**

- 5.1 The Commission's Final Report supports the Best Value duty by setting out a number of recommendations which aim to secure improvement in the council's transparency, informed by consideration of economy, efficiency and effectiveness. These are factors both in how the recommendations can be implemented, and in the effect they can have once implemented.

#### **6. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 6.1 There are no direct environmental implications arising from the report or recommendations.

#### **7. RISK MANAGEMENT IMPLICATIONS**

- 7.1 The recommendations in the Final Report aim to mitigate any risks associated with the council potentially failing to meet its obligations under the current Local Government Transparency Code.

#### **8. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 8.1 There are no direct crime and disorder reduction implications arising from the report or recommendations.

---

**Linked Reports, Appendices and Background Documents**

### **Linked Report**

- Transparency Protocol: A Transparent Mayor, and Open Council – Cabinet, 3<sup>rd</sup> November 2015

### **Appendices**

- Appendix 1 – Overview and Scrutiny Transparency Commission Final Report

### **Local Government Act, 1972 Section 100D (As amended)**

#### **List of “Background Papers” used in the preparation of this report**

- The terms of reference of the council’s Freedom of Information Board
- A written submission from Kelly Powell, Acting Deputy Head of Communications and Marketing, on how the Corporate Communications function can support transparency
- A written submission from Children’s Social Care officers in response to views expressed by UNISON in its presentation to the Commission.

### **Officer contact details for documents:**

- Mark Cairns, Senior Strategy, Policy and Performance Officer - 020 7364 2260, [mark.cairns@towerhamlets.gov.uk](mailto:mark.cairns@towerhamlets.gov.uk)