

Non-Executive Report of the:  <b>General Purposes Committee</b>  16 March 2016	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Debbie Jones, Interim Corporate Director (Children's Services)	<b>Classification:</b> [Unrestricted]
<b>Application for membership on the Standing Advisory Council for Education</b>	

<b>Originating Officer</b>	Hania Franek
<b>Wards affected</b>	All

### Summary

This report sets out for Members the details of an application from Zelda Bailey, on behalf of the British Humanist Association (BHA), for the BHA to be given full membership of the London Borough of Tower Hamlets SACRE (Standing Advisory Council for Religious Education).

### Recommendation:

The General Purposes Committee is recommended to:

1. Consider the application from the BHA for full membership of the SACRE.
2. To agree that the BHA should continue to be a co-opted member of SACRE and consulted fully by the Agreed Syllabus Conference (ASC).

## **1. BACKGROUND**

- 1.1 The Tower Hamlets SACRE was established under section 390 of the Education Act 1996. The membership of SACRE is a matter for the local authority and is set out in the SACRE Constitution and Procedures document.
- 1.2 In summary, there are four committees on SACRE, with each having one vote and in the event of a tie the Chair of SACRE has the casting vote.
- Committee A: Religious denominations that reflect the principal religious traditions in the area (16 members)
  - Committee B: the Church of England (6 members)
  - Committee C: Teacher Associations (7 members)
  - Committee D: the Local Authority (3 elected members and 2 officers)
- 1.3 SACRE has a role in relation to the religious education syllabus within Tower Hamlets schools. In the case of community or voluntary schools that do not have a designated religious character, religious education (RE) lessons must be provided in accordance with an agreed syllabus that reflects that “the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain” (section 375(3) 1996 Education Act).
- 1.3 The agreed syllabus is drawn up by the Agreed Syllabus Conference (ASC), which reflects the committee membership of SACRE. The syllabus was last agreed in 2012 is due to be reviewed in 2017.
- 1.4 The constitution allows SACRE to co-opt members, who attend meetings but do not have voting rights. The British Humanist Association has been a co-opted member since October 2011. In April 2015, the BHA representative, Ms Zelda Bailey, requested full membership for Humanists.
- 1.5 As the decision on membership is a matter for the council, advice has been sought from Legal Services.

## **2. THE APPLICATION FROM THE BRITISH HUMANIST ASSOCIATION**

- 2.1 Ms Zelda Bailey set out the reasons for requesting full membership of SACRE in a letter dated 17 October 2015, which is provided at Appendix A. The BHA is concerned to be fully involved in the revision of the Agreed Syllabus and seeks membership of SACRE to have membership of the ASC.
- 2.2 In accordance with Section 35, Schedule 31 of the Education Act 1996, Tower Hamlets will establish an Agreed Syllabus Conference to produce and recommend to the LA an agreed Religious Education Syllabus for Tower Hamlets. An Agreed Syllabus Conference is a separate legal entity

from SACRE but common membership is permitted and usual. The ASC has four committees just like SACRE and each committee has one vote when deciding to recommend the syllabus for adoption by the LA. In order to recommend the syllabus, there must be four votes in favour, i.e. each committee must vote in favour. That is why it is called an “agreed” syllabus. The votes within each committee do not need to be unanimous of course.

- 2.3 There is no provision for an Agreed Syllabus Conference to include co-opted members. However, it is usual for an Agreed Syllabus Conference to seek particular advice or comment from the co-opted members on SACRE. This would continue to be the practice in Tower Hamlets. At the last ASC, the BHA member spoke strongly against the adoption of the proposed syllabus whilst the vote by each committee was unanimously in favour.
- 2.4 The BHA website advises that throughout the country, most humanist representatives are co-opted and whilst they do not have a vote, they can influence discussions and decisions. It also states that: “A few SACREs have ignored circulars from government and have allowed humanist representatives full membership of Group A.” It is possible, of course, that representatives for groups C and D to be humanists through their membership of other groups.
- 2.5 Advice on membership is contained in the Legal Comments.
- 2.6 The 2011 Census Data on Religion (Appendix B) showed that there were 48 Humanists in total in Tower Hamlets. If it is argued that the law requires the LA to establish a Committee A which appropriately reflects the religious communities in the area, the current membership can be seen to fulfil that requirement.

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

- 4.1 There are no direct financial implications arising from the recommendations in this report.

#### **5. LEGAL COMMENTS**

- 5.1 The SACRE is established and regulated by sections 390-392 of the Education Act 1996 Act. Section 390 provides:

(1) A local authority shall constitute a standing advisory council on religious education [SACRE] for the purposes mentioned in section 391(1).

(2) The [SACRE] shall consist of such groups of persons appointed by the authority as representative members (“representative groups”) as are required by subsection (4).

(3) The SACRE may also include co-opted members (that is, persons co-opted as members of the council by members of the council who have not themselves been so co-opted).

- (4) The representative groups required by this subsection are:-
- (a) a group of persons to represent such Christian denominations and other religions and denominations of such religions as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area;
  - (b) ..... a group of persons to represent the Church of England;
  - (c) a group of persons to represent such associations representing teachers as, in the opinion of the authority, ought to be represented, having regard to the circumstances of the area; and
  - (d) a group of persons to represent the authority

- 5.2 The four representative groups are confirmed at paragraph 1.2 of the Reports
- 5.3 The ordinary meaning of section 390 of the 1996 Act does not permit a representative of the BHA to be selected as a member of the SACRE and the wording used of "*religion*" is not compatible with humanism.
- 5.4 The Equality Act 2010 does not alter the above conclusion. Although the non-appointment of an individual because they hold humanist views would ordinarily be an act of direct discrimination on grounds of religion or belief in the exercise of a public function contrary to sections 10, 13 and 29(6) of the 2010 Act, the Council is acting pursuant to a statutory requirement and so has the statutory defence prescribed in paragraph 1 of Schedule 22 of the Equality Act 2010. The Council must comply with section 149 and have due regard to the equality duty in the exercise of all its functions, but that does not alter the effect of section 390 of the 1996 Act.
- 5.5 On the face of it section 390 of the 1996 Act may interfere with the BHA's Article 14 ECHR rights, taken with Article 9 ECHR, and the proportionality of that interference is very finely balanced. That is only a matter that a Court could provide a definitive decision. Taking into account the co-option of a BHA representative, and the duties on the Council's own representatives to secure a pluralistic syllabus, section 390 can be interpreted as a proportionate interference. There is no breach of Articles 9, 10 or 2 of Protocol 1 rights in and of themselves. Were a claim brought for breach of Convention rights, a court would be able to read section 390 compatibly with Article 14 taken with Article 9 rights by interpreting religion to include a lack of religion.
- 5.6 There is no outright requirement for the BHA to have full membership. It is a matter for Council whether it takes the view that the proportionality balance favours a construction which favours full BHA representation within the SACRE, or is satisfied by continued co-opted membership.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 The membership of SACRE broadly reflects the faith groups in Tower Hamlets reflects and aims to work collaboratively to produce the syllabus for religious education in local schools. There is a co-option mechanism in place to allow other non-faith groups, such as the British Humanist Association, to

participate in SACRE meetings and have a voice in the development of the Agreed Syllabus. This inclusive practice is followed by most other SACREs.

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

7.1 There are no best value implications arising from the report.

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

8.1 There are no SAGE implications in the report.

## **9. RISK MANAGEMENT IMPLICATIONS**

9.1 The local authority is responsible for the membership of SACRE and has taken counsel on this question. The recommendations in the report take account of the advice in relation to possible legal challenge. The current arrangement of co-opting the BHA to SACRE has not been legally challenged to date.

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

10.1 The proposals in the report do not have an impact in relation to the reduction of crime and disorder.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- None.

#### **Appendices**

- Appendix 1 Letter from Ms Z Bailey BHA, 17 October 2015
- Appendix 2 2011 Census Data on Religion (London)

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

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

- SACRE Constitution and Procedures.

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

- Hania Franek