

<b>Cabinet</b> 23 July 2014	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Louise Russell, Service Head – Corporate Strategy and Equality	<b>Classification:</b> Unrestricted
<b>Scrutiny Report on Tower Hamlets Council’s Approach to Support Staff with Specific Learning Difficulties</b>	

<b>Lead Member</b>	
<b>Originating Officer(s)</b>	Shamima Khatun
<b>Wards affected</b>	N/A
<b>Community Plan Theme</b>	Council as an Employer Workforce to Reflect the Community
<b>Key Decision?</b>	Yes

### Executive Summary

This report is a summary of the findings of a Scrutiny Challenge session held in December 2013 which explored how the council identifies staff with specific learning difficulties (SpLD) and what it can do as an employer, in terms of making reasonable adjustments, to support disabled staff and ensure they are able to reach their full potential at work. It sets out a number of recommendations to improve practice and performance in this area.

In the context of this Challenge Session, SpLDs was confined specifically to dyslexia, dyspraxia and working levels of autism.

### Recommendations:

1. The Mayor in Cabinet is recommended to consider this report of the scrutiny working group and agree the action plan in response to the review recommendations.

## 1. **REASONS FOR THE DECISIONS**

- 1.1 Disability (including specific learning difficulties) is a protected characteristic under the Equality Act and Public Sector Equality Duty. The Public Sector Equality Duty (PSED) came into force in April 2011, and was created under the Equality Act 2010 – a single legal framework created to protect the rights of individuals and promote equal opportunity for all.
- 1.2 The Equality Duty was designed to shift the onus from individual to communal responsibility, placing an obligation on public authorities to advance equality. It aims to embed equality considerations into the day-to-day business of public bodies and extend it across the protected characteristics.
- 1.3 Based on an understanding of this protected characteristic, the council as both a public facing organisation and employer needs to pay due regard to:
- Eliminating unlawful discrimination, harassment and victimisation notwithstanding other forms of conduct prohibited by the Act
  - Advance equality of opportunity amongst people who share a protected characteristic and those who do not
  - Foster good relations between different groups
- 1.4 To demonstrate this ‘due regard’, the council is expected to identify and remove/mitigate disadvantages suffered by individuals because of their disability, as well as take steps to meet the needs of this protected group. In addition to encouraging people from this protected group to engage in active citizenship where their participation is disproportionately low.<sup>1</sup>
- 1.5 Staff user profile in relation to disability reveals that in 2012/13, 4.18% of the workforce declared that they meet the Disability Discrimination Act definition of disability. The percentage of people with a disability within the council remains stable over the period 2011 to 2013, though below the target level with significant numbers of staff members – approximately 20% of the workforce not disclosing this information. The profile of disability amongst the council workforce, therefore, closely reflects the wider borough.<sup>2</sup> The relatively high proportion of staff that choose not to disclose their disability status suggests that there may be factors which prevent staff from declaring, such as fear of discrimination and lack of awareness of or confidence in the support available for staff.
- 1.6 The low level of disclosure of disabilities has been identified as a persistent area of concern by members of the council’s Disabled Staff Forum and services involved in communicating the assessment process and delivery of

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<sup>1</sup> Equality and Human Rights Commission. (2012). Equality Duty. [on-line]. <http://www.equalityhumanrights.com>.

<sup>2</sup> Please note that the council does not disaggregate the data collected on disability so there is no further breakdown available by category.

support – ICT/Agilisys and HR. The weight of this issue has been reinforced through feedback received via various channels which includes staff forum events hosted by HR and ongoing work carried out by the One Tower Hamlets team and HR in supporting the Disabled Staff Forum. The Scrutiny lead member for Resources wanted to review the current process used to identify/assess specific learning difficulties and the support provided to staff in the workplace, and highlight and address the impact of insufficient provision on the retention/promotion of people with hidden disabilities in the council's workforce. Therefore, these decisions have been based on the Review Group exploring what improvements could be made by the council to the present assessment process to make it easier for staff with learning difficulties to access support, and to develop its communications to raise awareness amongst line managers.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The alternative option is to:
- Continue with the current assessment process and provision of support to staff with specific learning difficulties

## **3. DETAILS OF REPORT**

- 3.1 Disability (including specific learning difficulties) is a protected characteristic under the Equality Act and Public Sector Equality Duty. The Public Sector Equality Duty (PSED) came into force in April 2011, and was created under the Equality Act 2010 – a single legal framework created to protect the rights of individuals and promote equal opportunity for all.
- 3.2 The Equality Duty was designed to shift the onus from individual to communal responsibility, placing an obligation on public authorities to advance equality. It aims to embed equality considerations into the day-to-day business of public bodies and extend it across the protected characteristics.
- 3.3 Based on an understanding of this protected characteristic, the council as both a public facing organisation and employer needs to pay due regard to:
- Eliminating unlawful discrimination, harassment and victimisation notwithstanding other forms of conduct prohibited by the Act
  - Advance equality of opportunity amongst people who share a protected characteristic and those who do not
  - Foster good relations between different groups
- 3.4 To demonstrate this 'due regard', the council is expected to identify and remove/mitigate disadvantages suffered by individuals because of their disability, as well as take steps to meet the needs of this protected group. In

addition to encouraging people from this protected group to engage in active citizenship where their participation is disproportionately low.<sup>3</sup>

- 3.5 Staff user profile in relation to disability reveals that in 2012/13, 4.18% of the workforce declared that they meet the Disability Discrimination Act definition of disability. The percentage of people with a disability within the council remains stable over the period 2011 to 2013, though below the target level with significant numbers of staff members – approximately 20% of the workforce not disclosing this information. The profile of disability amongst the council workforce, therefore, closely reflects the wider borough.<sup>4</sup> The relatively high proportion of staff that choose not to disclose their disability status suggests that there may be factors which prevent staff from declaring, such as fear of discrimination and lack of awareness of or confidence in the support available for staff.
- 3.6 The low level of disclosure of disabilities has been identified as a persistent area of concern by members of the council's Disabled Staff Forum and services involved in communicating the assessment process and delivery of support – ICT/Agilisys and HR. The weight of this issue has been reinforced through feedback received via various channels which includes staff forum events hosted by HR and ongoing work carried out by the One Tower Hamlets team and HR in supporting the Disabled Staff Forum. The Scrutiny lead member for Resources wanted to review the current process used to identify/assess specific learning difficulties and the support provided to staff in the workplace, and highlight and address the impact of insufficient provision on the retention/promotion of people with hidden disabilities in the council's workforce. In addition the Challenge Session explored what improvements could be made by the council to the present assessment process to make it easier for staff with learning difficulties to access support, and to develop its communications to raise awareness amongst line managers.
- 3.7 The aim of the challenge session was to explore how the council identifies staff with specific learning difficulties (SpLD) and what it can do as an employer, in terms of making reasonable adjustments, to support disabled staff and ensure they are able to reach their full potential at work.
- 3.8 The Challenge Session took as its starting point the low declaration rates amongst staff regarding disclosing hidden disabilities and drew on external expertise to assess the performance of the council in supporting staff with learning difficulties.
- 3.9 The objectives of the Challenge Session were to investigate the issues that staff with dyslexia, dyspraxia and working levels of autism face in relation to the workplace and career progression. The session also sought to explore whether the current support in place for staff with learning difficulties is equal to that given to staff with physical disabilities. In the process, potential

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solutions were identified to raise awareness of learning difficulties, increase declaration rates and testing amongst staff and find aids/resources that can support staff members in the workplace.

3.10 Core questions asked during the Challenge Session were:

- What processes are in place to identify staff with learning difficulties?
- Which service(s) are involved in the assessment process?
- What support is currently available for staff with dyslexia, dyspraxia and autism? Is there enough support?
- Could any improvements be made to the assessment process to make it easier for staff with learning difficulties to access support?
- Does the process take into account the impact of insufficient provision on the retention/promotion of disabled staff in the council's workforce?
- What guidelines/resources are available for managers to follow in providing support for their staff members?
- How are assessing staff trained to ensure that they are fully aware of the support required for staff with (hidden) learning difficulties?

3.11 The report of the Challenge Session is attached as Appendix A. It sets out the findings of the Review Group and makes seven recommendations to improve performance in this area:

1. That an internal communications action plan be developed to increase the proportion of staff who declare whether or not they have a disability.
2. That the current assessment process for accessing support for staff with learning difficulties be streamlined through the development of a defined/structured flowchart which clearly outlines the process and roles of HR, Agilisys and Occupational Health and that this information be available on the intranet for staff and managers.
3. That managers are up-skilled through training to raise awareness of hidden disabilities and that progress in this area is monitored at performance reviews.
4. That an accessible catalogue of software available for staff with learning difficulties which is compatible with the council's new ICT system/platform and adaptable for different working environments be developed.
5. That a centralised budget be agreed to pay towards reasonable adjustments for staff with learning difficulties.
6. That the stigma associated with learning difficulties be tackled through training and appointment of Disability Champions within service areas in order to build awareness of hidden disabilities across the organisation.
7. That the current training package on disability for managers is reviewed by HR, eliminating unconscious bias towards physical disabilities and enabling staff with learning difficulties to articulate their experiences

through a range of methods such as theatre workshops and Q&A sessions.

- 3.12 Officers involved in this review felt that the recommendations were useful but the Talent Strategy Manager for HR advised that there were concerns over the recommendation for a centralised budget. However, it was worth looking into putting resources into the assessment process, providing a support tool for managers and the internal communications plan for increasing declarations. A report would be taken to the People Board for consideration.

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

- 4.1 The report makes seven recommendations, detailed in section 3.11 above, all aimed at improving Tower Hamlets Council's approach to supporting staff with specific learning difficulties.
- 4.2 A number of these recommendations are likely to involve strengthening and improving current provision in this cause and thus can be funded out of existing HR and training budgets.
- 4.3 However, there is currently no specific corporate provision to pay for reasonable adjustments for staff with learning disabilities and these are generally paid for out of directorate budgets. If this is to be a Corporate Led Initiative, funding will need to be set aside for this purpose and further assessments will need to be undertaken to identify the sum required.

#### **5. LEGALCOMMENTS**

- 5.1 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 which ensure the committee has specified powers. Consistent with that 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, as appropriate, in connection with the discharge of any functions. It is consistent with the Constitution and the statutory framework that this scrutiny review be submitted to Cabinet for its consideration of the report and recommendations of the Overview and Scrutiny Committee.
- 5.2 The recommendations in the report appear capable of being carried out within the Council's statutory functions and attention is drawn to the following –
- Section 39 of the Equality Act 2010 places an obligation on the Council not to discriminate, either directly or indirectly, in the following: offering employment; the terms of employment; opportunities for promotion,

transfer or training or for receiving any other benefit, facility or service; dismissal; or by subjecting a person to any other detriment.

- Under the same section, the Council has an obligation to make reasonable adjustments.
- The above duties apply to the protected characteristic of disability, which may apply to staff with learning difficulties.
- Under section 149 of the Equality Act 2010, the Council must when carrying out its functions 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 do not.

5.3 The Council needs to recognise that discrimination can be indirect as well as direct and that policies and procedures which are applied equally to all staff may have a disproportionate impact on certain staff with protected characteristics such as staff with disabilities. An example of this would be requiring all staff to submit written application forms or undergo written interview tests which may disproportionately disadvantage staff with problems such as dyslexia. As well as carrying out the exercise of identifying obvious “direct” issues which may adversely impact staff with the described disabilities and putting into place programmes and sourcing equipment to assist such staff, the Council should also look at employment processes and procedures which may have a disproportionate effect on these staff and consider ways in which these can be adjusted to ameliorate this effect. The Council will also need to have regard to any changes in legislation which might alter the duties and obligations that exist in regard to staff with disabilities.

5.4 When considering its response to the report and action plan, Cabinet must consider whether the proposals would be consistent with its arrangements to deliver best value in accordance with its duty under section 3 of the Local Government Act 1999.

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

6.1. The recommendations contained in the report will advance equality of opportunity for council employees with specific learning difficulties (hidden disabilities). In line with the Equality Act 2010 and the Public Sector Equality Duty, embedding recommendations will also ensure that staff members are shown due regard and their needs are considered in professional/personal development plans and workforce strategy planning.

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

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

## **8. RISK MANAGEMENT IMPLICATIONS**

- 8.1. There is a risk that if the assessment process is deemed not to evidence due regard, the council may be vulnerable to legal challenge by employees (employment tribunals) as there may be an associated risk based on non-compliance with the Public Sector Equality Duty that was imposed in April 2011, and was created under the Equality Act 2010.

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

- 9.1 There are direct disorder implications arising from this report as disabled staff are currently over-represented in grievances, harassment and discrimination complaints, raising approximately 10 per cent of complaints.

## **10. EFFICIENCY STATEMENT**

- 10.1 There are no direct efficiency implications arising from this report or its recommendations.

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

#### **Linked Report**

NONE

#### **Appendices**

- Appendix 1: Tower Hamlets Council's Approach to Support Staff with Specific Learning Difficulties Scrutiny Challenge Session Report
- Appendix 2: Research on Specific Learning Difficulties (SpLDs)
- Appendix 3: Presentations from experts in the field of learning difficulties
- Appendix 4: Scrutiny Review Action Plan – Tower Hamlets Council's Approach to Support Staff with Specific Learning Difficulties

#### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

NONE