

MAYOR & CABINET			
Report Title	2015/16 Revenue Budget Savings Update		
Key Decision	Yes	Item No.	
Ward	All		
Contributors	Executive Director for Resources & Regeneration		
Class	Part 1	Date: 18 February 2015	

REASONS FOR URGENCY AND LATENESS

Urgency: Given the significance of the financial constraints that the Council will face over the coming years, it is essential that the Mayor and his Cabinet make decisions on all the savings proposals presented to them. This report follows on from the savings report presented to Mayor and Cabinet on the 11 February. The reason for lateness is to ensure that any decisions not taken by the Mayor & Cabinet on 11 February 2015 could be appropriately considered within this report.

1 SUMMARY

1.1 This report presents the Mayor with an update on the restructuring of enforcement and regulatory services saving proposal (H1) to include additional information, as instructed by the Mayor at the meeting held on 11 February 2015.

2 PURPOSE

2.1 The purpose of this report is to seek approval for the restructuring of enforcement and regulatory services savings proposal (H1) presented to Mayor and Cabinet on the 12 November 2014 and again on the 11 February 2015.

3 RECOMMENDATION

3.1 That, subject to proper process and consultation where appropriate and if required, the Mayor agrees the following saving proposal:

- H1 Restructuring of enforcement and regulatory services £800k .

4. BACKGROUND

4.1 This proposal was originally presented to Mayor and Cabinet on the 12 November 2014 and again on the 11 February along with other saving proposals that will help the Council produce a balanced budget for 2015/16.

4.2 At the 11 February meeting a full report was provided to the Mayor following consultation with staff. The Mayor requested that this proposal be brought back to Mayor & Cabinet for reconsideration.

4.3 Officers are meeting with the Unison representative on the 17th February to further discuss the points raised at Mayor and Cabinet on the 11 February. Following this meeting, an updated savings report with additional information will be tabled at the Mayor and Cabinet meeting on the 18 February.

5. FINANCIAL IMPLICATIONS

5.1 This report is concerned with the saving proposal of £800,000 it presents to enable the Council to set a balanced budget in 2015/16 and address the future financial challenges it faces. There are direct financial implications from the level of savings agreed in terms of the ability to agree a balanced budget for 2015/16.

5.2 Any savings not agreed or for which only a part year effect can be achieved following completion of due process and the decision to implement will require other resources to be used to balance the budget. This risk was considered in the separate budget report on 11 February 2015.

6. HUMAN RESOURCES IMPLICATIONS

6.1 The proposed restructure will see 64.3 FTE deleted and 39.0 FTE new posts created in the proposed new structure. The number of FTE therefore which are proposed to be deleted are 25.3 FTE's (of which eight are currently vacant). An initial equalities analysis assessment suggests that there will be low/nil impact as a result of the restructure across gender, ethnicity, age and disability characteristics.

7. LEGAL IMPLICATIONS

General Legal Implications

Statutory duties

7.1 The Council has a variety of statutory duties which it must fulfil by law. The Council cannot lawfully decide not to carry out those duties. Even where there is a statutory duty there is often a discretion about the level of service provision. Where there is an impact on statutory duty, that is identified in the report. In other instances, the Council provides services in pursuit of a statutory power, rather than a duty, and though not bound to carry out those activities, decisions about them must be taken in accordance with the decision making requirements of administrative law.

Reasonableness and proper process

- 7.2 Decisions must be made reasonably taking into account all relevant considerations and disregarding all irrelevant matters. These are particular to the service reductions proposed and are set out in the body of the report. It is also imperative that decisions are taken following proper process. Depending on the particular service concerned, this may be set down in statute, though not all legal requirements are set down in legislation. For example, depending on the service, there may be a need to consult with service users and/or others and where this is the case, any proposals in this report must remain proposals unless and until that consultation is carried out and the responses brought back in a further report for consideration with an open mind before any decision is made. Whether or not consultation is required, any decision to discontinue a service would require appropriate notice. If the Council has published a procedure for handling service reductions, there would be a legitimate expectation that such procedure will be followed.

Staffing reductions

- 7.3 Depending on the number of any redundancies, the Council would have to comply with the requirements for collective consultation under Section 188 Trade Union and Labour Relations (Consolidation) Act 1992. This consultation is in addition to consultation with individuals affected by redundancy and/or reorganisation under the Council's own employment procedures.

Crime and Disorder

- 7.4 Section 17 of the Crime and Disorder Act 1998 requires the Council to have regard to the likely effect on crime and disorder when it exercises its functions, and the need to do all that it reasonably can to prevent crime and disorder in its area.

Best value

- 7.5 The Council remains under a duty under Section 3 Local Government Act 1999 to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. It must have regard to this duty in making decisions in respect of this report.

Environmental implications

- 7.6 Section 40 Natural Environment and Rural Communities Act 2006 states that "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions to the purpose of conserving biodiversity". No such implications have been identified in this report.

8. EQUALITIES

- 8.1 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 8.3 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 8.4 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 8.5 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty
- 8.6 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key

areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

- 8.7 The EHRC has also issued Guidance entitled “Making Fair Financial Decisions”. It appears at Appendix 1 and attention is drawn to its contents.
- 8.8 The equalities implications pertaining to the specific service reductions are particular to the specific reduction.

The Human Rights Act

- 8.9 Since the introduction of the Human Rights Act 1998 (HRA) the rights set out in the European Convention on Human Rights (ECHR) have been incorporated into UK law and can be enforced in the UK courts without recourse to the European courts.
- 8.10 Those articles which are particularly relevant in to public services are as follows:-
- Article 2 - the right to life
 - Article 3 - the right not to be subject to inhuman or degrading treatment
 - Article 5 - the right to security of the person
 - Article 6 - the right to a fair trial
 - Article 8 - the right to a private and family life, home and correspondence
 - Article 9 - the right to freedom of thought ,conscience and religion
 - Article 10 - the right to freedom of expression
 - Article 11 - the right to peaceful assembly
 - Article 14 - the right not to be discriminated against on any ground

The first protocol to the ECHR added

- Article 1 - the right to peaceful enjoyment of property
- Article 2 - the right to education

- 8.11 Some of these rights are unconditional, such as the right not to be tortured or subject to degrading treatment. Others may be limited in finite and well defined circumstances (such as the right to liberty. Others are qualified and must be balanced against the need of the wider community – such as the right to a private and family life. Where there are human rights implications associated with the proposals in this report regard must be had to them before making any decision.

9. CONCLUSION

- 9.1 The Council expects to need to make savings of around £85m between 2015/16 and 2017/18. This figure is subject to change as financing

estimates are refined and government resourcing proposals confirmed. Of this total the gap for 2015/16 is £39m to enable the Council to set a balanced budget, as it is required to do in law.

- 9.2 This saving proposal in the Enforcement and Regulation area of £800,000 forms part of the Council's effort to close the gap.

10. BACKGROUND DOCUMENTS AND FURTHER INFORMATION

Short Title of Report	Date	Contact
Lewisham Future Programme 2015/16 Revenue Budget Savings Report	11 February 2015	David Austin
Lewisham Future Programme 2015/16 Revenue Budget Savings Report	12 November 2014	David Austin

For further information on this report, please contact:

David Austin, Head of Corporate Resources on 020 8314 9114 or at david.austin@lewisham.gov.uk

APPENDIX 1 - Making Fair Financial Decisions



This guidance has been updated to reflect the new equality duty which came into force on 5 April 2011. It provides advice about the general equality duty.

0 Introduction

With major reductions in public spending, public authorities in Britain are being required to make difficult financial decisions. This guide sets out what is expected of you as a decision-maker or leader of a public authority responsible for delivering key services at a national, regional and/or local level, in order to make such decisions as fair as possible.

The new public sector equality duty (the equality duty) does not prevent you from making difficult decisions such as reorganisations and relocations, redundancies, and service reductions, nor does it stop you from making decisions which may affect one group more than another group. The equality duty enables you to demonstrate that you are making financial decisions in a fair, transparent and accountable way, considering the needs and the rights of different members of your community. This is achieved through assessing the impact that changes to policies, procedures and practices could have on different protected groups (or protected characteristics under the Equality Act 2010).

Assessing the impact on equality of proposed changes to policies, procedures and practices is not just something that the law requires, it is a positive opportunity for you as a public authority leader to ensure you make better decisions based on robust evidence.

1 What the law requires

Under the equality duty (set out in the Equality Act 2010), public authorities must have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.

The protected groups covered by the equality duty are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships, but only in respect of eliminating unlawful discrimination.

The law requires that public authorities demonstrate that they have had 'due regard' to the aims of the equality duty in their decision-making. Assessing the

potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had 'due regard'.

It is also important to note that public authorities subject to the equality duty are also likely to be subject to the Human Rights Act. We would therefore recommend that public authorities consider the potential impact their decisions could have on human rights.

2 Aim of this guide

This guide aims to assist decision-makers in ensuring that:

- The process they follow to assess the impact on equality of financial proposals is robust, and
- The impact that financial proposals could have on protected groups is thoroughly considered before any decisions are arrived at.

We have also produced detailed guidance for those responsible for assessing the impact on equality of their policies, which is available on our website:

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/equality_analysis_guidance.pdf

3 The benefits of assessing the impact on equality

By law, your assessments of impact on equality must:

- Contain enough information to enable a public authority to demonstrate it has had 'due regard' to the aims of the equality duty in its decision-making
- Consider ways of mitigating or avoiding any adverse impacts.

Such assessments do not have to take the form of a document called an equality impact assessment. If you choose not to develop a document of this type, then some alternative approach which systematically assesses any adverse impacts of a change in policy, procedure or practice will be required. Assessing impact on equality is not an end in itself and it should be tailored to, and be proportionate to, the decision that is being made.

Whether it is proportionate for an authority to conduct an assessment of the impact on equality of a financial decision or not depends on its relevance to the authority's particular function and its likely impact on people from the protected groups.

We recommend that you document your assessment of the impact on equality when developing financial proposals. This will help you to:

- **Ensure you have a written record of the equality considerations** you have taken into account.
- **Ensure that your decision includes a consideration of the actions that would help to avoid or mitigate any impacts on particular protected groups.** Individual decisions should also be informed by the wider context of decisions in your own and other relevant public

authorities, so that particular groups are not unduly affected by the cumulative effects of different decisions.

- **Make your decisions based on evidence:** a decision which is informed by relevant local and national information about equality is a better quality decision. Assessments of impact on equality provide a clear and systematic way to collect, assess and put forward relevant evidence.
- **Make the decision-making process more transparent:** a process which involves those likely to be affected by the policy, and which is based on evidence, is much more open and transparent. This should also help you secure better public understanding of the difficult decisions you will be making in the coming months.
- **Comply with the law:** a written record can be used to demonstrate that due regard has been had. Failure to meet the equality duty may result in authorities being exposed to costly, time-consuming and reputation-damaging legal challenges.

4 When should your assessments be carried out?

Assessments of the impact on equality must be carried out at a **formative stage** so that the assessment is an integral part of the development of a proposed policy, not a later justification of a policy that has already been adopted. Financial proposals which are relevant to equality, such as those likely to impact on equality in your workforce and/or for your community, should always be subject to a thorough assessment. This includes proposals to outsource or procure any of the functions of your organisation. The assessment should form part of the proposal, and you should consider it carefully **before** making your decision.

If you are presented with a proposal that has not been assessed for its impact on equality, you should question whether this enables you to consider fully the proposed changes and its likely impact. Decisions not to assess the impact on equality should be fully documented, along with the reasons and the evidence used to come to this conclusion. This is important as authorities may need to rely on this documentation if the decision is challenged. It is also important to remember that the potential impact is not just about numbers. Evidence of a serious impact on a small number of individuals is just as important as something that will impact on many people.

5 What should I be looking for in my assessments?

Assessments of impact on equality need to be based on relevant information and enable the decision-maker to understand the equality implications of a decision and any alternative options or proposals.

As with everything, proportionality is a key principle. Assessing the impact on equality of a major financial proposal is likely to need significantly more effort and resources dedicated to ensuring effective engagement, than a simple assessment of a proposal to save money by changing staff travel arrangements.

There is no prescribed format for assessing the impact on equality, but the following questions and answers provide guidance to assist you in determining whether you consider that an assessment is robust enough to rely on:

- **Is the purpose of the financial proposal clearly set out?**

A robust assessment will set out the reasons for the change; how this change can impact on protected groups, as well as whom it is intended to benefit; and the intended outcome. You should also think about how individual financial proposals might relate to one another. This is because a series of changes to different policies or services could have a severe impact on particular protected groups.

Joint working with your public authority partners will also help you to consider thoroughly the impact of your joint decisions on the people you collectively serve.

Example: A local authority takes separate decisions to limit the eligibility criteria for community care services; increase charges for respite services; scale back its accessible housing programme; and cut concessionary travel. Each separate decision may have a significant effect on the lives of disabled residents, and the cumulative impact of these decisions may be considerable.

This combined impact would not be apparent if the decisions were considered in isolation.

- **Has the assessment considered available evidence?**

Public authorities should consider the information and research already available locally and nationally. The assessment of impact on equality should be underpinned by up-to-date and reliable information about the different protected groups that the proposal is likely to have an impact on. A lack of information is not a sufficient reason to conclude that there is no impact.

- **Have those likely to be affected by the proposal been engaged?**

Engagement is crucial to assessing the impact on equality. There is no explicit requirement to engage people under the equality duty, but it will help you to improve the equality information that you use to understand the possible impact on your policy on different protected groups. No-one can give you a better insight into how proposed changes will have an impact on, for example, disabled people, than disabled people themselves.

- **Have potential positive and negative impacts been identified?**

It is not enough to state simply that a policy will impact on everyone equally; there should be a more in-depth consideration of available evidence to see if particular protected groups are more likely to be affected than others. Equal treatment does not always produce equal outcomes; sometimes authorities will have to take particular steps for certain groups to address an existing disadvantage or to meet differing needs.

- **What course of action does the assessment suggest that I take? Is it justifiable?**

The assessment should clearly identify the option(s) chosen, and their potential impacts, and document the reasons for this decision. There are four possible outcomes of an assessment of the impact on equality, and more than one may apply to a single proposal:

Outcome 1: No major change required when the assessment has not identified any potential for discrimination or adverse impact and all opportunities to advance equality have been taken.

Outcome 2: Adjustments to remove barriers identified by the assessment or to better advance equality. Are you satisfied that the proposed adjustments will remove the barriers identified?

Outcome 3: Continue despite having identified some potential for adverse impacts or missed opportunities to advance equality. In this case, the justification should be included in the assessment and should be in line with the duty to have 'due regard'. For the most important relevant policies, compelling reasons will be needed. You should consider whether there are sufficient plans to reduce the negative impact and/or plans to monitor the actual impact, as discussed below.

Outcome 4: Stop and rethink when an assessment shows actual or potential unlawful discrimination.

- **Are there plans to alleviate any negative impacts?**

Where the assessment indicates a potential negative impact, consideration should be given to means of reducing or mitigating this impact. This will in practice be supported by the development of an action plan to reduce impacts. This should identify the responsibility for delivering each action and the associated timescales for implementation. Considering what action you could take to avoid any negative impact is crucial, to reduce the likelihood that the difficult decisions you will have to take in the near future do not create or perpetuate inequality.

Example: A University decides to close down its childcare facility to save money, particularly given that it is currently being under-used. It identifies that doing so will have a negative impact on women and individuals from different racial groups, both staff and students.

In order to mitigate such impacts, the University designs an action plan to ensure relevant information on childcare facilities in the area is disseminated to staff and students in a timely manner. This will help to improve partnership working with the local authority and to ensure that sufficient and affordable childcare remains accessible to its students and staff.

- **Are there plans to monitor the actual impact of the proposal?**

Although assessments of impact on equality will help to anticipate a proposal's likely effect on different communities and groups, in reality the full impact of a decision will only be known once it is introduced. It is therefore important to set out arrangements for reviewing the actual impact of the proposals once they have been implemented.

6 What happens if you don't properly assess the impact on equality of relevant decisions?

If you have not carried out an assessment of impact on equality of the proposal, or have not done so thoroughly, you risk leaving yourself open to legal challenges, which are both costly and time-consuming. Recent legal cases have shown what can happen when authorities do not consider their equality duties when making decisions.

Example: A court recently overturned a decision by Haringey Council to consent to a large-scale building redevelopment in Wards Corner in Tottenham, on the basis that the council had not considered the impact of the proposal on different racial groups before granting planning permission. However, the result can often be far more fundamental than a legal challenge. If people feel that an authority is acting high-handedly or without properly involving its service users or employees, or listening to their concerns, they are likely to become disillusioned with you.

Above all, authorities which fail to carry out robust assessments of the impact on equality risk making poor and unfair decisions that could discriminate against particular protected groups and perpetuate or worsen inequality.

As part of its regulatory role to ensure compliance with the equality duty, the Commission will monitor financial decisions with a view to ensuring that these have been taken in compliance with the equality duty and have taken into account the need to mitigate negative impacts where possible.
www.equality.humanrights.com