

Item No.	Classification: Open	Date: December 2009	Meeting Name: Councillor Adele Morris, Executive Member for Citizenship, Equalities & Communities
Report title:		Future delivery of equalities and human rights functions (Southwark Human Rights, Race & Equalities Bureau) for 2010/11	
Ward(s) or groups affected:		All Wards	
From:		Strategic Director of Communities, Law & Governance	

RECOMMENDATIONS

That the Executive Member for Citizenship, Equalities & Communities:

1. Approves the withdrawal of funding to Southwark Human Rights, Race & Equalities Bureau (SHRREB) from the 1st January 2010.
2. Requests officers to bring forward a further Individual Decision Making report that makes recommendations on options for the future delivery of equalities and human rights functions in Southwark. This report will also consider whether to pay winding down costs to SHRREB subject to submission of a detailed financial position statement by the organisation and subject to budgetary capacity.

BACKGROUND INFORMATION

3. This report sets out the Council's approach for the future delivery of equalities and human rights functions in Southwark from 2010/11. The Council has funded SHRREB in its various forms (see paragraph 5) to deliver equalities and human rights functions since 1996. The Council is committed to the ongoing provision of equalities and human rights functions by a key strategic partner. However due to the organisational problems faced by SHRREB, it is necessary to take forward plans to ensure that the communities of Southwark are better served by alternative arrangements for the effective delivery of these functions.
4. SHRREB has not delivered services effectively in the last year and its track record has caused serious concern over many years resulting in additional support being provided repeatedly over the last 10 years (paragraph 10).
5. Southwark Council has funded SHRREB, formerly known as Southwark Council for Community Relations (1996), and subsequently Southwark Race & Equalities Council (SREC, 2002), since it was first established in 1996. It was set up to work towards the elimination of racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. Its purpose has been to deliver services that address these objectives.
6. Race Equality Councils (RECs) were formally established in the early 1970s,

following the introduction of the 1976 Race Relations Act when racial discrimination was made illegal. They were funded jointly by the Commission for Racial Equality (CRE) and local authorities.

7. The CRE has now evolved into the new Equality and Human Rights Commission (EHRC), established through the Equality Act 2006. RECs are able to apply for funding to the EHRC but are no longer guaranteed funding as under the CRE applicants now need to evidence that they are able to assist people for all equality strands. A small number of local authorities continue to support RECs as a key strategic partner in ensuring local race equality. The strategic direction of moving to a single equalities body has led to the closure of a number of RECs.
8. At the same time SHRREB has been charged with the delivery of services across each of the equality strands since November 2007, following consultation with the Council on an agreed broadened remit, moving from a solely race equalities function. The equality strands cover age, religion or belief, disability, gender, race and sexual orientation.
9. Grant aid funding to SHRREB of £95,000 for the current year was approved on 11th March 2009 by the Executive Member for Citizenship, Equalities and Communities. The Legal Services Commission (LSC) is SHRREB's only other funder. The CRE last funded SREC in 2006, and other funding applications, including to the EHRC have not been successful. SHRREB has also not applied to the Council's Community Support Programme which is openly advertised.
10. Despite the closure of other RECs and because the Council is committed to the delivery of equalities and human rights functions, additional support provided over a number of years has included the following:
 - In 1999 consultants were commissioned to carry out a strategic review of what was then the Southwark Council for Community Relations.
 - In early 2001 another consultancy firm were approached to advance the recommendations of the above review. This resulted in the formation of the Southwark Race & Equalities Council in 2002 and a refocusing of its work.
 - In 2003 an Internal Audit report from Price Waterhouse Cooper that looked at the adequacy and effectiveness of systems and controls over the grant related expenditure provided within our conditions of grant aid.
 - In 2005 Rhema management training Consultants Ltd were commissioned to produce a report on behalf of SREC on the Racial Incidents Forum.
 - In July 2005 the Council supported SREC to commission Akronym Consultancy Ltd to re-structure the organisation and develop a new Business Plan and provided additional resources to cover these costs.
 - In addition to our core funding we provided extra financial support of £35,000 per annum between 2006 and 2008.
 - In April 2007 a consultant undertook a full review of all functions and systems and the organisation re-launched later in the same year as SHRREB.
 - In 2008 the Council provided funding to commission a further consultant to support it with resolving the problems.

KEY ISSUES FOR CONSIDERATION

11. The decision to approve funding in March 2009 was made on the basis that SHRREB would be able to deliver the agreed work programme in line with the Business Plan, and subject to compliance with conditions of grant aid (COGA). Despite the ongoing support this has not been delivered as agreed and there have been a number of breaches of COGA. These include:

- **Condition 2.3** - "You must have a management committee and hold open elections to elect committee members." **Breach** - Failure to hold an AGM within charity law time limits of 15 months. Until a recent AGM on the 2nd November 2009 the most recent AGM was held on 14th November 2007.
- **Condition 2.7** - "You must carry out your business in a way that avoids 'conflict of interest'. This means that management committee members and staff must not use their position or influence within the organisation to gain advantage for themselves or others." **Breach** - A conflict of interest in relation to a former board member was not properly managed and resulted in serious conflict, reputational damage and allegations of financial impropriety.
- **Condition 1.3** - "If you accept a grant from us, this will involve you in certain responsibilities. We will expect you to: have good management and financial practices, promote equal opportunities and show that you can effectively deliver your service or carry out your activity. **Breach** – There have been excessive delays in updating bank signatories to ensure proper separation of function between staff and trustees. There has been a failure to deliver services effectively, resulting in a formal complaint from a partner organisation (January 2009) on behalf of a client, and failure to notify service users, the Council or partners of a period of service closure or of access arrangements during the closure.

12. The five strands of the agreed work programme for 2009/10 are:

- Taking on a challenge and policy role in relation to each of the discrimination strands – age, religion or belief, disability, gender, race or sexual orientation, compliance with the Race Relations (Amendment) Act 2000, Disability Discrimination Act 2005, The Equality Act 2006 for the local authority and other public bodies, including active involvement in the Council's Equalities and Diversity Panel.
- Active participation in strategic partnerships including the Stronger Communities Partnership, Southwark Alliance, Southwark Voluntary Sector Forum as well as taking a key role in Southwark Infrastructure Group.
- Providing information briefings, community events and consultation.
- Organising and facilitating forums – Human Rights and Equalities Policy Forum and Racial Incidents Forum.
- Delivery of legal services in immigration, employment and human rights.

13. The only clear evidence of consistent service delivery provided in work programme reports, relates to the provision of legal services in immigration which is funded by the Legal Services Commission and not by the Council. There has been very limited attendance and active participation in the strategic partnerships, and partners have commented on non-attendance. Quarterly work progress reports for the first quarter April-June did not evidence any significant outputs relating to the four work strands above funded by the Council. The following progress report covering July–December and provided in September, also failed to evidence

outputs relating to the above work streams other than the LSC funded contract.

14. During the previous year 2008, a new chief executive and the former Chair had both resigned within a short space of time. This sudden upheaval followed on from previous prolonged periods of instability and gave rise to further serious concerns about the viability of the organisation. During the summer of 2008 an independent review was commissioned to address these.
15. The Council accepted review recommendations which were:
 - To reconfirm support for SHRREB and for its work programme.
 - To continue to work with the organisation on the development of different aspects of this.
16. However, in spite of accepting the review recommendations the organisation continued to experience problems with delivering the services the Council funded it to provide and there were continuing breaches of the COGA.
17. In addition to the breaches of COGA the organisation has undergone a number of more recent problems:
 - The board has had too few members to be able to govern effectively.
 - Until the recent AGM it has been unable to govern without the direct permission of the Charity Commission and has had only 2 legally recognised trustees.
 - The board was unable to agree the investigation report carried out into alleged financial impropriety.
18. These governance issues have had a direct impact on the organisation's ability to manage, to plan, to develop its capacity and to deliver core services. The Council deemed it appropriate to request deferral of the recruitment of a chief executive due to these problems.
19. The Council in exercising its monitoring role in relation to funding of the Voluntary and Community Sector must ensure that public funding delivers value for money, whilst also allowing time to resolve difficulties. Despite the plethora of problems and the additional support provided, SHRREB continues to be not fit for purpose, hence the recommendation to withdraw funding. Whilst SHRREB is an independent organisation and it is not for the Council to determine its future, one implication of withdrawal of funding could be that it does not continue. Subject to the latest budgetary position, the Council will consider possible winding down costs.
20. Officers have continued to monitor the organisation. Payment of funding for the third quarter of 2009/2010 has been withheld. An officer again attended a trustee board meeting in July, restated key concerns, confirming these formally by letter in September and making it clear that release of funding for the third quarter would be subject to receiving a detailed and satisfactory response to these concerns.
21. Two separate responses were received provided by different people within the organisation. One was after the deadline for responding and was accompanied by a request for the earlier response to be withdrawn. This further evidence of conflict within the organisation has continued, with a recent communication from the Chair stating that the board had not agreed to the appointment of a consultant to the post

of associate chief executive for three days a week. Both responses highlighted delivery of services under the LSC contract, with very limited reference to delivery of Council funded services. The continued absence of a senior member of staff responsible for the management of the legal services contract has further impacted on delivery of Council funded services.

22. The organisation did not provide sufficient evidence of an effective recovery plan and following discussions officers are proposing that funding to the organisation be discontinued. As an interim measure and until such time as officers are able to establish the financial position it is proposed that funding for the third quarter should be released. This affords the organisation the time to establish that position should it take the decision to wind down.
23. The recent AGM on the 2nd November 2009 was only able to take place due to a Charity Commission order providing permission. Out of its 30 member organisations, only 7 were represented at the AGM. Out of 8 nominations to the trustee board received from members, only 4 representatives were in attendance. There has been inadequate compliance with procedural requirements with a further nomination notified to the Council after the AGM had taken place. When voting to accept the nominations, no instruction was provided that only members were authorised to vote. Even though SHRREB had made it clear to members in advance of the AGM that the funding relationship with its core funder was under threat, there was a low level of member attendance, and inadequate compliance with procedural requirements.
24. Officers understand that SHRREB has approximately £65k in unrestricted funds carried forward that would enable it to meet any existing liabilities should it continue to operate for a time limited period. It is carrying vacancies, and funds, with the release of third quarter funding are understood to be adequate to meet any wind down costs, including those potentially arising from staff redundancies. The Council's COGA allows for consideration of wind down costs.

Proposals for the future

25. The Council is committed to the delivery of equality and human rights functions. Southwark's own Equalities and Human Rights Scheme runs from 2008/11 and covers all current statutory duties (gender, disability & race) but also gives equal weight to the other equality strands (age, sexual orientation, faith, belief & no faith). Promoting these remains a key challenge within the borough. We recognise the need for strategic partner activity in taking forward a progressive equality and human rights agenda.
26. The Council funds 4 of SHRREB's 5 main areas of work (see paragraph 14) and approval of the recommendation would lead to the development of proposals for taking forward these activities. Any alternative service models or delivery proposals will be informed by consultation with Southwark Infrastructure Group, whose purpose is to consider strategic developments affecting the sector and partnership arrangements with statutory bodies.
27. There are a number of partner agencies within Southwark with the potential to take on work streams that take forward the equalities and human rights agenda locally. These include infrastructure organisations with established governance and management systems and a track record of delivery, engagement and involvement in representative networks. It would not be necessary to establish a new

organisation to take on these functions as officers' view is that there is currently capacity within the Voluntary & Community Sector to deliver these work streams to a satisfactory standard.

Legal services

28. The other main area of work relates to current funding from the LSC who contract with SHRREB for the supply of specialist immigration and asylum law services. The Council has ensured that the LSC has had timely updates on our funding relationship with SHRREB, and will continue to liaise fully to ensure that there is no potential adverse impact on clients with live cases. If the recommendation is approved, the Council will work with the LSC to ensure that adequate local referral arrangements are put in place, should this be necessary.
29. Other services to Southwark residents include those provided by Southwark and Cambridge House Law Centres who prioritise cases involving a discrimination or human rights element, and have been funded by the EHRC to provide legal casework and representation services covering each of the equality discrimination strands.

Policy implications

30. Section 2 of the Local Government Act 2000 enables the Council to do anything, which it considers, is likely:
- to promote or improve the economic well-being of its area or
 - to promote or improve the social well-being of its area or
 - to promote or improve the environmental well-being of its area.
31. In addition to exercising its statutory duties through the Equalities Scheme, the Council has provided grant aid to SHRREB for the purpose of supporting the furtherance of these duties. Many other local authorities do not provide this.
32. The Local Government & Public Involvement in Health Act 2007 places local authorities under a duty to inform, consult and involve representatives of local residents, as appropriate, in the exercise of local authority functions.

Community Impact Statement

33. The Council has supported SHRREB and its predecessors to play a lead role in promoting the diversity and equalities agenda within Southwark. Since 2007 this role has covered each of the equality strands (paragraph 10) and there is agreement that there is a need to take this approach across the strands. The failure of the organisation to deliver this remit makes it necessary to consider alternative arrangements that will deliver outcomes for the community and will aid the Council in fulfilling its equality duties.
34. The most recent review of SHRREB in 2008 concluded that there was general agreement amongst a range of stakeholders that there was a need for independent equalities and human rights functions to be provided in Southwark, alongside the Council's statutory duties. Officers have also consulted SHRREB and the Southwark Infrastructure Group in making these recommendations.
35. The Council needs active and committed partners to promote equality and human

rights, and where necessary for these partners to provide an advice and challenge role to statutory bodies in how they exercise duties under the Race Relations Amendment Act 2000, Disability Discrimination Act 2005 and the Equality Act 2006. In addition through active participation in local networks including the Stronger Communities Partnership, Southwark Infrastructure Group and Southwark Legal Advice Network this will contribute to local efforts to build stronger communities, to promote good relations between and within different groups, and build community cohesion. The failure of SHRREB to fulfill this role means it is necessary to make this recommendation and put in place alternative arrangements for delivery of these functions.

36. The recommendations in this report are therefore assessed as having a positive impact on the community as their intention is to aid the Council in fulfilling its Equalities duties.

Resource implications

37. The recommendation does not give rise to any additional resource implications. Any funding made available for future delivery of these services would be met within existing budgets and would not pre-empt the Council's budget setting process.

Consultation

38. Officers have met with the organisation a number of times to consult them on the Council's concerns and the proposed way forward. Officers have consulted the Southwark Infrastructure Group.
39. In accordance with the terms of the COGA, SHRREB were sent a draft of this report and were invited to make a response to it. This response is attached as Appendix 9.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

40. The report recommends the withdrawal of funding to SHRREB from 1 January 2010 and to authorise officers to bring forward recommendations on the future delivery of equalities and human rights functions in Southwark
41. The report explains that despite receiving funding from the council to promote Equalities and Human Rights services to the communities of Southwark, SHRREB have not been delivering these services effectively over the last year.
42. The council has a statutory duty to promote equalities and human rights under the Race Relations Amendment Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006.
43. When considering whether to withdraw funding from SHRREB, the Executive Member must have "due regard" to the council's equalities duties. A recent case in the Court of Appeal R(Domb)vHammersmith and Fulham LBC (2009) summarised the principals of the need to have "due regard" as;

- the regard which is appropriate in all the circumstances
- that there is no statutory duty to carry out a formal equalities impact assessment
- due regard is a test of substance and not a tick box exercise
- the duty must be performed with vigour and an open mind
- it is not possible to delegate the duty

44. The report provides detailed reasons for the withdrawal of funding to SHRREB, the support and assistance received from the council over the last 10 years and the impact on the community of the withdrawal of funding. SHRREB have been failing for sometime to provide equalities and human rights services to the communities of Southwark, the council have a statutory obligation to ensure that this service is provided; accordingly the decision to withdraw funding from SHRREB is in accordance with the councils equalities duties.

Finance Director

45. There is a funding programme of £95,000 in place for 2009/10 to support the delivery of equalities and human rights functions. The release of the third quarter grant of £23,750 is part of this scheduled grant programme and as such presents no budgetary issues for the service area.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Council Equalities Scheme 2008/11	Tooley Street, Second Floor, Hub 4	Claire Webb, 020 7525 7136

APPENDICES

No.	Title
1	Recommendation for grant funding to Southwark Human Rights, Race & Equalities Bureau (SHRREB) for 2009/2010 under a one year Funding Agreement
2	Officer correspondence to SHRREB formally stating concerns 18/9/09
3	Response from SHRREB 5/10/09
4	Proposed SHRREB Work Programme
5	Officer reply to response 7/10/09
6	Officer letter advising of right to make representations 17/11/09
7	Southwark Human Rights, Race and Equalities Bureau (SHRREB) – Grant Funding Agreement for 2009-10
8	2008 Independent Review of SHRREB
9	SHRREB response to this report
10	Officer Comments on SHRREB response to this report

AUDIT TRAIL

Lead Officer	Stephen Douglass, Head of Community Engagement	
Report Author	Andrew Matheson, Partnership & Policy Manager	
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CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
List other officers here		
Executive Member	Yes	No
Date final report sent to Constitutional Team	14 December 2009	