

**JOINT TRADE UNIONS**

**17<sup>TH</sup> APRIL 2019**

**CLASSIFICATION:**

**Open**

**“The Joint Trade Unions wish to raise our continuing concern regarding how the issues of discrimination and bullying have been and are continuing to be dealt with by the Council. The Joint Trade Unions also wish to make a number of recommendations”**

## 1. INTRODUCTION

- 1.1. On 26<sup>th</sup> February 2019 the Joint Trade unions UNISON, UNITE and GMB (the TU's) withdrew their support from an independent investigation into bullying and harassment in the Councils housing call centres.
- 1.2. On withdrawing their support, the TU gave assurances to its respective memberships (and those who perceived that they too had been victims of bullying and harassment) that they would instead be launching their own investigation based on the information that they had contributed to the investigation and evidence they had compiled following complaints from their membership and beyond.
- 1.3. The publicity of the independent investigation empowered staff from across the Council to discuss their various grievances around bullying and harassment with the TU's. It is now clear that the issue of bullying and harassment and discrimination isn't isolated to the housing call centres, rather it is a shared experience from staff across the Council.
- 1.4. The Council have now acknowledged that there are indeed issues of bullying, harassment and discrimination in a "*a large organisation such as Hackney*" and that newer managers may be more prone to this; the Council has undertaken to embark on diversity training for its managers and have recently launched an inclusive leadership programme that should see the recruitment of corporate equality champions. However while the TU's welcome the steps management have taken to address the concerns of staff they also believe that these do not go far enough.

## 2. RECOMMENDATION(S)

The TU's recommend that:

### ***Workforce Statistics***

- 2.1.1. That the Council immediately re commit to centrally recording detailed statistical data on the grievances, disciplinarians, capability and suspensions including but not limited to the protected characteristics of the effected staff in all processes under these policies both formal and informal
- 2.1.2. That the Council immediately commit to centrally recording detailed statistics in relation to staff secondments, promotions and training.

### ***Agency Workers***

- 2.1.3. That the Council's workforce profile is updated to include the information on agency workers.
- 2.1.4. That the model agency/casual worker items presented to the Council Joint Committee on 3<sup>rd</sup> October are adopted (Appendix E)
- 2.1.5. That the Council adopts a policy for agency workers, including but not limited to a mechanism to report grievances to the Council

(acknowledging that agency workers are not employees of the Council) but with a commitment to ensuring that the matters complained of are made known to the Council, with a commitment that appropriate actions are taken against any staff found to be at fault as well as steps to be taken as a result of their experiences.

- 2.1.6. That the Council commit to reviewing their internal recharge arrangements for the recruitment of permanent staff (in some cases costing over £5000 per role), to ensure it is not more lucrative *for budget holders to recruit temporary workers as against permanent staff.*

### **Corporate Policies and Procedures**

- 2.1.7. That the Council review their policies taking into consideration the positive work they did into the early 00's and in addition to the diversity training announced for all managers, the Council actively take step to:
- 2.1.8. Immediately re-establish the Equalities Sub Committee to look into the statistics forming an updated workforce profile.
- 2.1.9. Extend the reach and scope of their inclusion champions to form an executive board made up of the champions, trade union representatives and corporate representatives that feed into the scrutiny group
- 2.1.10. Empower members to take an active role in all appeals, and that the policies and procedures are amended to allow members to "call in" matters of concern.
- 2.1.11. Ensure that all policies with a route of appeal have a final route of appeal to members.
- 2.1.12. That the Council re-establish the independent referral unit.
- 2.1.13. That the Council re-establishes the Employment Tribunal Panel and records details of the protected characteristics of claimants.
- 2.1.14. That information in respect of employment tribunals (and the protected characteristics of those involved) are shared with the TU's as part of the LJC process or are released annually as part of the workforce profile.

## **3. JOINT TRADE UNIONS INVESTIGATION INTO BULLYING AND HARASSMENT IN THE COUNCIL**

- 3.1. The TU campaign to lobby the Council into launching an independent investigation into bullying and harassment in the Council call centre resulted from complaints by members in that service. The TU's were also aware of one employee of staff from that area going to the tribunal (there have now been two employees from this team seeking recourse in the employment tribunal).

- 3.2.** As a result of the TU withdrawing their support from the independent investigation the TU put the Council and its TU members on notice of its intention to launch its own investigation, the joint trade unions have interviewed its stewards, compiled a number of witness testimonies and are surveying TU members as well as the wider workforce in relation to their experiences. It is expected that the final report will be released at the end of April 2019. A provisional summary of the investigation findings is set out below:
- 3.3.** The unions were aware and continue to be aware of the over reliance of agency workers in this team (the scrutiny committee itself having probed the number of agency staff in the neighbourhoods and housing directive). However the numbers of agency staff working across the organisation as a whole are a concern for the TU and our members (See Appendix A).
- 3.4.** Stewards in the respective TU's reported instances of bullying and harassment and summary terminations in the call centre. TU Members reported a culture of fear where staff were scared to speak up for fear that their employment would be immediately terminated and any opportunities to join the organisation on a permanent basis thwarted.
- 3.5.** Stewards have reported that even where permanent opportunities are made available many staff who apply are often unsuccessful despite being in post (albeit on locum basis) sometimes for years. Some members have recounted seeing staff escorted out of the call centre or being summarily suspended from workplaces.
- 3.6.** These fears were not limited to the experiences of staff in the call centre alone; agency workers across the organisation expressed dismay about being in post for extended periods then ultimately being unsuccessful in securing the role when subsequently advertised.
- 3.7.** Some former staff have reported that where they have lodged grievances with their employers (their recruitment agency) these don't appear to have been investigated by either their employer or by the Council notwithstanding that the matters complained of have implications for permanent staff and the organisation as a whole.
- 3.8.** Where matters are reported to recruitment agencies temporary contracts are terminated. It has been acknowledged by the Council that where agency staff roles are terminated there is a corporate policy not to re-engage the terminated member of staff, in effect blacklisting members of staff who in some instances have genuine complaints.
- 3.9.** Since the launch of the campaign staff from across the Council in all directorates have approached the TU about their concerns about bullying and harassment in the organisation.
- 3.10.** Some staff have advised the TU that they have experienced both direct and indirect racism, other staff report being verbally harassed and bullied over sustained periods of time with little or no action taken by management.

- 3.11. Black and visibly ethnic staff despite years of scrutiny continue to be over represented in the lower pay scales. TU members believe that there are more black and visibly ethnic agency staff and that they are more likely not to be able to secure permanent posts.
- 3.12. The TU's recognise that the majority of disciplinary action taken against its membership are against black and visibly ethnic staff and that the majority of its membership on suspension are black or visibly ethnic.
- 3.13. The Council's corporate equality workshops, its local government peer review and the testimony of TU members and the wider workforce show that there is a genuine perception that visibly ethnic minority staff are more likely to face disciplinary action and or redundancy. Ultimately there is a perception that the Council are gentrifying its workforce and as a result visibly ethnic staff are being marginalised in place of younger white staff.
- 3.14. The TU are also concerned about the number of suspensions in the Council as well as the length of time in which staff are suspended. Some members have reported being on suspension for over a year. The TU's are aware of instances where staff have been suspended for elongated periods with no case to answer.
- 3.15. Member have consistently complained about the length of time it takes for grievances and disciplinary investigations to be completed.
- 3.16. The TU are actively assisting its members in taking up grievances both individual and collective specifically focused on bullying and harassment.

## **4. BACKGROUND**

### **4.1. Independent Investigation**

- 4.1.1. This report has been prepared in consequence of the TU's withdrawing their support for the Council's investigation into the housing call centres. The background below was first set out in our letter of 26<sup>th</sup> February 2019 to the Council's Senior Management Team (Appendix B)
- 4.1.2. In April 2018, following meetings with a senior HR officer the TUs, formally approached senior managers requesting that the Council launch an independent investigation into the current working practices in the Call Centre.
- 4.1.3. The TU's were aware of complaints from a number of staff in the Call Centre (both members and non-members) who allege that they had been victims of bullying, harassment and discrimination from management (the allegations) (The highest profile being that of Ms Natasha Johnson).
- 4.1.4. Several examples of the serious allegations were provided to the senior management team. However, despite briefing officers in advance and the serious nature of the concerns, no response was received from either addressee of the letter sent in April 18. When the

TU's eventually got to sit down with the Council in June 2018, our concerns had been passed down to a less senior officer,

- 4.1.5. Despite the numerous serious allegations, initial calls for the investigation to be independent were resisted. Dismissing the allegations the TU's were advised that *if* there were issues of bullying and harassment it was the Council's preference that these be investigated internally.
- 4.1.6. From the outset it was it appeared that because of the successive failures of management to recruit permanent staff (culminating in an over reliance on temporary staff without job security); as well as the experiences of both former and current staff, some staff affected were fearful of management; many staff have approached all TU's advising that they perceive themselves vulnerable as a direct result of the management culture operating within the Call Centre.
- 4.1.7. After a joint dispute was lodged with the Council in July 2018 and a joint TU public protest on the Town Hall steps in September (where the TU's concerns were brought to the attention of Councillors), matters were then brought to the Councils Directorate (Local Joint Committee) and Corporate (Council Joint Committee).
- 4.1.8. In early October 2018 some 6 months after the TU's original request (and against mounting pressure from the TU's) the Council agreed to an independent investigation into the working practices in the Call Centre. However, because of the publicity the TU's had attracted through protest and discussions amongst our members staff from across the Council began to speak out about their experiences.
- 4.1.9. The TU's were advised unilaterally that a former employee at Lambeth Council (the Investigator) (a post held by the investigator for almost 7 years) was to be instructed to undertake the investigation, notwithstanding that Lambeth Council had itself been caught up in its own discrimination, bullying and harassment row.
- 4.1.10. In November 2018 after extensive coverage of the TUs concerns in the local media the Council called in the Investigator to discuss terms of reference with the TUs. From the outset the TUs identified that there were some issues that could potentially preclude staff from contributing to the investigation. It was fundamental to the TU's that all staff who sought to contribute to the investigation could do so in confidence and impartially as it was recognised that around 70% of staff in the call centre were agency workers.
- 4.1.11. Terms of reference were agreed between the Council, the TU and the investigator in November 2018. Following a meeting with Cabinet Members the participants in the investigation was enhanced to include former employees of the Call Centre and a letter was sent to all staff confirming what had been agreed in anticipation of staff briefings lead by the Senior Officers of the Council and the TU's.
- 4.1.12. Despite the TU's drawing the Council's attention to the serious allegations and working with both management and the investigator to

agree terms of reference that took into account the sensitivities and perceived vulnerabilities of some of those who may considered making contributions, the TU's were concerned that:

- The contact in the letter to staff referred to a named officer, appointments were to be made by email only, the named officer was away for some time, no arrangements were made to inform staff of alternative arrangements for contact.
- Staff reported to the TU's that they were advised that they were unable to book a session with the investigator as all slots had been allotted and there was no assurances given to staff of additional slots up and until the TU's made representations
- There was an unacceptable delay in setting up the external investigator email address; the email address that was set up identified the external investigator as the Head of Building Maintenance, an internal Senior Management position.
- The investigator was not made aware of several statements passed to management by the TU's until the TU's met with the investigator despite the Councils assurances to do the same and other staff being caught up in directly related disciplinary processes

4.1.13. The TU's were advised of serious allegations in connection to a member of the management team in the Call Centre cautioning staff about how they contribute to the investigation

4.1.14. These concerns were immediately reported to the Council, despite assurances given by senior officers at staff briefings that all contributions to the investigation would be treated confidentially and impartially the TU's concerns were again passed to management to look into the concerns reported to the TU's.

4.1.15. The investigating managers confirm that they carried out an impromptu visit to the Call Centre whereupon they were advised by a senior member of the Call Centre management team of officers in the team of the manager who is alleged to have interfered with the investigation. Only those staff identified by the senior manager were spoken to, the majority of staff were not spoken to. Alarming this appears to have taken place on the floor of the Call Centre.

4.1.16. The investigation managers subsequently adjudged that no formal action needed to be taken and closed their investigation. Following concerns raised with the council senior management team about the decision to close the investigation it appears that the investigation was reopened, although the investigation again did not extend to the original complainants, the TU's.

4.1.17. Despite both UNISON and UNITE both independently raising their concerns in relation to interference in the investigation neither TU was asked to take part in either investigation or asked to provide further

information about the allegations that had been reported to the respective TU's by staff in the Call Centre.

4.1.18. The TU's have no faith in the exercise the Council carried out in response to the TU concerns nor does it appear that the Council are taking the investigation into the alleged interference with witnesses seriously. Regrettably, to staff working in the Call Centre and to the TU's, the Council's failure to launch a proper investigation has done nothing but serve to confirm the growing unrest amongst staff and lack of confidence in the Council's ability to investigate themselves impartially.

4.1.19. In mid-February, in the midst of the 1<sup>st</sup> stage of the 4 staged investigation with agreed terms of reference to determine "*if among other things there is evidence of bullying, harassment, intimidation or discriminatory behaviour by managers or staff, whether there is evidence that staff concerns were not being appropriately dealt with by managers and whether there is evidence of inappropriate management practice within the Contact Centre*"; the Council confirmed the internal appointment of a manager in the Call Centre to a senior management role.

4.1.20. Notwithstanding the terms of reference the Council continued to recruit to the senior management post internally from the current management team in the Call Centre. No notice was given to the TU's of the appointment and no justification was given to the TU's to explain the timing of the recruitment and or why (given the agreed terms of reference) the appointment has been made from the pool of senior managers in the Call Centre prior to the investigation being concluded.

4.1.21. These concerns were immediately brought to the attention of the Council's Senior Leadership Team and relevant Cabinet Officers. Alarming despite the investigation being far from concluded and in the face of various assurances from the Council that contributions to the investigation are confidential a senior member of the Council's management team at a recent meeting about TU concerns openly disclosed to the TU's that there were no issues relating to the internal recruit. The TU withdrew their support from the investigation on 26<sup>th</sup> February 2019

## **4.2. Hackney Workforce Profile**

4.2.1. The 2017/18 work force profile (Appendix C) identifies that the Council employed some 4355 staff on 31<sup>st</sup> March 2018. The Council has confirmed that the workforce profile does not include agency workers.

4.2.2. In the last quarter of the 2018/19 financial year there were some 835 agency workers working for the Council that are not accounted for in the workforce profile, as such it is difficult to ascertain this group's protected characteristics. The TU's encounter with agency staff give an overwhelming indication that the majority of these agency workers are black. Directors are also able to recruit consultants that may not be

reflected in the Councils total agency figures, as a result the true work force is not reflected in the workforce profile.

- 4.2.3. The Council does not centrally record statistics in relation to grievances (i.e. how many are lodged, how many are upheld, how many are rejected and the grades of the officers/work places making the complaints), nor do the Council centrally record the number of disciplinarys taken against staff.
- 4.2.4. There is some data held within group directorates in relation to grievances and disciplinarys where HR have been involved in the process but the true number of matters adjudged to have been dealt with informally under both processes is unknown.
- 4.2.5. The Council keep data in relation to suspensions these are sporadically shared at some Local Joint Committees.
- 4.2.6. Of all the workforce statistics held by the Council only the workforce profile identifies employees protected characteristics, the information about protected characteristics in as much as they relate to grievances, disciplinarys and suspensions is unknown.
- 4.2.7. No information appears to be held about the protected characteristics of staff placed on capability, promoted or undertaking secondments or of staff that have taken the Council to the Employment Tribunal.

#### **4.3. Hackneys History and Staff Experiences of Bullying, Harassment and Discrimination.**

4.3.1. The Council has acknowledged and accepts that there were serious issues of discrimination in the past, it was acknowledged that these issues were both direct through actions of its staff and senior officers and indirect through the application of its policies, procedures and processes. The Lincoln Crawford report was published in autumn 1997, relevant excerpts have been set out below:

4.3.2. The Council commissioned Lincoln Crawford to:

*“investigate racial discrimination at the Council in response to factual and statistical information which suggested that racial discrimination could be widespread within the Council and had been experienced by some staff over many years.*

*The sources of the information which led to this view were the Council's own workforce statistics relating in particular to discipline; the number of complaints to the industrial tribunal of race discrimination, and the concerns of the Commission for Racial Equality (CRE) which had itself received many complaints of racial discrimination from black and Asian staff employed by the Council.*

*In 1983 the CRE's found race discrimination in housing allocations as a result the Council set up a Race Relations Unit, and mounted a huge publicity campaign to recruit visible minority staff. This initiative was*

*underpinned by procedures for recruitment which sought to eliminate discriminatory practices in recruitment.*

*Accordingly, Race Relations Advisers were required to approve personnel specifications and to sit in on every interview, to ensure that visible minority applicants were given an equal opportunity to obtain employment by ensuring that irrelevant matters were not taken into account, that decisions were not based on subjective judgement, that questions to candidates were along similar lines irrespective of race, and that the interview was based on what skills were required for the job.*

*The creation of the Race Equality Unit coupled with a huge and very successful campaign to recruit visible minority staff, ensured that the Council did not just pay lip service to equal opportunities in recruitment.*

*A review of the existing procedures was carried out and in December, 1994 a new recruitment handbook was published which made certain amendments. Amongst them, it was no longer necessary for the equality advisers to approve the personnel specification and no longer necessary for them to sit on selection panels.*

*In the past the Council shared the names of 600 mainly African employees with the then Immigration and Nationality Department (IND) of the Home Office on the ground that they were illegal immigrants. The allegation was unfounded, but the cloud of suspicion remained.*

*However, none of those responsible for disclosing the names of the employees to the Home Office unsolicited were ever dismissed or disciplined, whereas visible minority staff, including Africans, continued to be severely disciplined for the slightest mistake.*

*The attitude of some managers towards visible minority staff was that they were not good at anything but should be blamed for everything. As a result a culture developed, "the blame culture", whereby their work was more carefully scrutinised and every mistake seized upon. Where they were senior enough to give advice, their advice was regularly challenged and if anything went wrong, it was their fault not the manager's. No individual should be expected to work under such pressure.*

*But above all, no disciplinary action was taken against those managers responsible for discriminating against visible minority staff in the way they disciplined them. **I therefore recommend that regular monitoring of disciplinary action against all staff should take place and, whenever there appears to be a high level of action taken against a particular group or individual, this fact should be immediately drawn to the attention of the relevant Executive Director, whose responsibility it would be to bring it to the attention of the Chief Executive.***

*However despite the procedure, grievances from visible minority staff remained outstanding for many months. Some grievances were not investigated at all, and if the complainant was alleging race discrimination against a manager, it was very likely that some form of disciplinary proceedings would be issued against the complainant, whether or not there was a basis for it.*

*In order to deal with any problem there must be a recognition that the problem exists. I am satisfied that in Hackney race discrimination towards the visible minority workforce existed. This was clearly evident by the fact that **visible minority employees were the last to be promoted, were often located at the lowest point in their grades, had more disciplinary action taken against them than white staff and almost all the complaints to industrial tribunals came from them.** The Council was often found guilty of race discrimination and criticised by industrial tribunals. Yet, nothing was learnt from such findings and nothing was done to rid itself of this awful disease. **A mentality developed that managers were to be supported at all cost, even when they were in breach of Council's policy.***

*Visible minority staff who went to a tribunal for redress were seen as trying it on, with money as their motive. When the tribunal found the Council guilty of race discrimination, the tribunal was biased. Decisions against the Council were to be fought on any technical ground, however flimsy. **And where the Council was ordered to pay compensation - sometimes very substantial - the Hackney residents picked up the bill (it is not clear from the evidence whether members were aware of this).** So it went, on and on, no heeding of advice, no one accepting responsibility, no clear line of accountability, no overall legal strategy to ensure that the Council avoided such a terrible charge and bad public image.*

#### **4.4. Action for Racial Equality: Our Commitment to you**

- 4.4.1. As a result of the Lincoln Crawford report the Council adopted a number of initiatives that recognised the importance of analysing its work force and scrutinising its decisions. The Council sought to put in place arrangements that would rebuild staff confidence in the Councils working practices, policies and procedures.
- 4.4.2. Importantly the Council also acknowledged that role that Council members could play in helping the organisation meet its commitment to staff following the Lincoln Crawford Report.
- 4.4.3. The 1999 pamphlet for staff detailed the Councils 5 year plan (1998 – 2003) (Appendix D) it recognised:
  - *“to eliminate discrimination, we need good managers who are competent to manage within a multi-racial organisation. To kick start the process, we’re commissioning a management development programme which will ensure our 600 managers and supervisors have the skills and the right attitude for the job”*

- *“The local unions and black and visible minority staff groups will have direct access to the scrutiny group to ensure their voices are heard. We are committed to involving staff and their representatives as widely as possible in tackling racism in the organisation.”*
- *“to stop equalities being marginalised, the equality action plans will be monitored by the main Council committees as well as by the equalities subcommittee. Councillors will also be given the chance to develop their awareness of equal opportunities.”*
- ***“Monitoring is essential if we are to know whether we are succeeding or failing to make the difference. So we are putting in place effective monitoring systems which will be reported to the scrutiny group and executive board”***

## 5. OBSERVATIONS

- 5.1. It is disappointing to all that the TU’s were forced to withdraw their support for the independent investigation however what is clear is that issues highlighted back in 1996 ring true some 23 years later. The TU’s outlined their concerns in connection to the Council appearing to protect management in the call centre
- 5.2. The initial findings of the TU investigation demonstrate that as was the case 23 years ago staff do not have confidence in the grievance process. Their remains a perception that managers are treated differently to staff.
- 5.3. Without the Council allowing an objective mechanism for reviewing complaints made by staff against managers (seeking to address the genuine concern of prejudice in managers investigating managers) staff and managers are unable to have faith in the Council’s processes.
- 5.4. What is clear is that the Council has shown a commitment to tackling issues of discrimination, bullying and harassment. This was the case in 1983 with the establishment of the Race Equality Unit and in 1999 with the commitments set out in the Action for Racial Equality pamphlet. However what is also clear is that in abandoning the frameworks that are put in place to remedy discrimination, bullying and harassment, the issues return; this was the case in 1996 having abandoned the measures put in place in 1983 and appears to the TU’s to be the case in 2019 having abandoned the commitments to staff pledged in 1999 and forming the basis of the Councils 5 year action plan.
- 5.5. The Lincoln Crawford report and the positive steps taken by the Council to address its findings were in part a consequence of the Councils statistical data in recording protected characteristics in relation to grievance and disciplinary. In not recording protected characteristics the Council is in effect silencing any probe into how its processes and procedures affect different layers of its workforce.

<b>Report Author</b>	Joint Trade UNIONS 17 <sup>th</sup> April 2019
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