

Meeting	Cabinet
Date	24 September 2013
Subject	Reference from Council – Same Sex Marriage Bill
Report of	Leader of the Council
Summary	<p>The Council on 16 July 2013 received a Non-Executive Business Item in the name of Councillor Brian Coleman on the 'Same Sex Marriage Bill' (the Marriage (Same Sex Couples) Bill). The Business Item requested the acting Chief Executive to write to the Secretary of State at the DCMS calling for the Bill to be amended to include protection for Council staff who for reasons of conscience do not wish to conduct "same sex marriage ceremonies". This motion was subsequently followed by an amendment in the name of Councillor Arjun Mitra. This report outlines the position and seeks Cabinet's decision on whether any action is required.</p>
Officer Contributors	<p>Mark Rimmer, Head of Registration and Nationality Service</p> <p>Kirstin Lambert, Team Leader Business Governance</p>
Status (public or exempt)	Public
Wards Affected	Not Applicable
Key Decision	No
Reason for urgency / exemption from call-in	Not applicable
Function of	Executive
Enclosures	<p>Appendix A – Copy of full text of the original motion</p> <p>Appendix B – Copy of amendment to the motion</p>
Contact for Further Information:	<p>Mark Rimmer, Head of Registration and Nationality Service</p> <p>mark.rimmer@barnet.gov.uk</p>

1. RECOMMENDATIONS

- 1.1 That Cabinet notes it has been referred from Council a motion in the name of Councillor Brian Coleman (see Appendix A) and subsequent amendment in the name of Councillor Arjun Mittra (see Appendix B).**
- 1.2 That Cabinet notes the current legislative situation with regard to the passage of the Marriage (Same Sex Couples) Bill as set out in the report below.**
- 1.3 That Cabinet determines whether to take any action with regard to the motion.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Council, 16 July 2013, Decision Item 13, Non-Executive Business Item in the name of Councillor Brian Coleman. In accordance with Council Procedure Rule 23.5 the Non-Executive Business item in the name of Councillor Brian Coleman and the amendment in the name of Councillor Arjun Mittra were referred directly to Cabinet for consideration and any necessary action.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Council's 2012-13 Corporate Plan published a Strategic Equalities Objective which reflects what is enshrined in the Council's Constitution and embedded across the culture of the organisation. The Council's commitment is that citizens will be treated equally, with understanding and respect; have equal opportunity with other citizens; and receive quality services provided to Best Value principles.
- 3.2 The Council's Constitution, Officer Code of Conduct states: "All staff should ensure that policies relating to equality issues as agreed by the authority are complied with in addition to the requirements of the law. All members of the local community, customers and other employees and workers have a right to be treated with fairness and equity."

4. RISK MANAGEMENT ISSUES

- 4.1 The issues involved in this motion are unlikely to raise significant levels of public concern, and have not been concerns raised to date by staff within the Council. Further, during debate on the Bill there was consideration of a consciousness clause to enable Registrars to opt out of conducting same sex weddings. The National Registration Panel and the Local Registration Services Association opposed such a clause on the basis that staff allocation would become far more

problematic. There was also no evidence put forward that such a clause was required by registration officers.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Pursuant to section 149 of the Equality Act, 2010, the Council has a public sector to have due regard to eliminating unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advancing equality of opportunity between those with a protected characteristic and those without; promoting good relations between those with a protected characteristic and those without. The, relevant, 'protected characteristics' are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to elimination discrimination.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 Any resource issues are dealt with in the Legal Issues section of this report.

7. LEGAL ISSUES

- 7.1 The Marriage (Same Sex Couples) Act 2013 allows same sex couples to marry in civil ceremonies. The European Court of Human Rights (ECHR) recently considered the case of Ladele, an Islington registrar of births deaths and marriages who refused to perform civil partnership ceremonies on religious grounds. Islington had a policy of providing a non-discriminatory service. The Court of Appeal had held this to be a legitimate aim, and the Council was entitled to require all registrars to perform the full range of services. The ECHR recognising that this was a case of balancing competing Convention rights and took the view that the United Kingdom had been within the margin of appreciation available to it in fixing the balance in the manner in which it had.
- 7.2 In light of Barnet's stated equality policies, the public sector equality duty and the Ladele judgment, the Council would be at risk of a legal challenge for discrimination on the grounds of sexual orientation if it allows registrars to refuse to carry out same sex marriages

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 Council's Constitution, Responsibility for Executive Functions – Section 4.2 details the responsibilities of individual Cabinet Members.
- 8.2 Council's Constitution, Council Procedure Rules – rule 23.5 states that "If the Member's Business Item is not dealt with by the end of the meeting, it will be referred to the Cabinet or an appropriate Council Committee or sub-Committee for consideration and any necessary action."

9. BACKGROUND INFORMATION

- 9.1 The Marriage (Same Sex Couples) Bill was introduced in January 2013. It subsequently passed into law in July 2013 and is expected to be brought into force by mid-2014.
- 9.2 During debate on the Bill there was consideration of a consciousness clause to enable Registrars to opt out of conducting same sex weddings. The National Registration Panel and the Local Registration Services Association opposed such a clause on the basis that staff allocation would become far more problematic. There was also no evidence put forward that such a clause was required by registration officers.
- 9.3 The Bill has now been enacted so the exact terms of the original motion and amendment could not be applied. The Cabinet could if it wished resolve to lobby for the provisions in the motion to be included in subsequent legislation (for example a Statutory Instrument, or Government guidance). However, given the previous consultation which has been undertaken on this matter (see 9.2 above) it would appear unlikely that this action would result in a change of approach by the Government.
- 9.4 Cabinet are requested to consider the Council's equalities policies and the current legislative position and determine whether any further action is required.

10. LIST OF BACKGROUND PAPERS

- 10.1 The Marriage (Same Sex Couples) Act 2013.
- 10.2 Any person wishing to inspect the background papers listed above should contact Mark Rimmer, Head of Registration and Nationality Service on 0208 8359 5728.

Cleared by Finance (Officer's initials)	AD
Cleared by Legal (Officer's initials)	LC