

# Accessible Version - Review of the Whistleblowing and Organisational Culture of the City of Edinburgh Council

## City of Edinburgh Council

10.00 am Thursday, 16th December, 2021

Virtual Meeting - via Microsoft Teams

### Accessible Version - Review of the Whistleblowing and Organisational Culture of the City of Edinburgh Council

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## City of Edinburgh Council

Please note that the version circulated with the original papers for 16 December 2021 Committee now reflects a change which removes Paragraph 5.26 to the newer version of the now appended (namely the:- *“Report into the Review of the Whistleblowing and Organisational Culture of the City of Edinburgh Council as originally dated 10 December 2021 (and as amended on 16 December 2021).”*

To ensure that the Council maintains a correct record of what was circulated for consideration by Council, the following paragraph was within the report:

“5.26 By way of example, during the course of the Review, Councillors alleged in newspaper columns that CEC had made a substantial payment to a witness in a criminal trial in an attempt to “gag” or “silence” the witness. This claim was made despite assurances on three separate occasions by the Chief Executive to Councillors that it was untrue. The Review Team has examined this particular claim and is satisfied that there is no evidential basis to support the assertion that an improper payment was made. The claim made in the press was not justified and it served to suggest that CEC had sought to suppress a complainer from giving evidence in a criminal trial involving a CEC employee when that was not the case.”

The paragraph was verbally withdrawn by Susanne Tanner QC at the Council meeting.

**REPORT INTO THE REVIEW OF THE WHISTLEBLOWING AND  
ORGANISATIONAL CULTURE OF THE CITY OF EDINBURGH COUNCIL**

**10 DECEMBER 2021**

**(AS AMENDED ON 16 DECEMBER 2021)**

**Susanne Tanner QC**



**AMPERSAND**  
ADVOCATES

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## **Personal Statement from Susanne Tanner QC**

Whistleblowing is a procedure that enables serious concerns over malpractice or wrongdoing in an organisation to be raised and responded to. A positive, open, safe and supportive whistleblowing culture is one in which people in the organisation feel empowered to speak up and raise their concerns without fear of victimisation, discrimination or harassment and in which those concerns are appropriately acted upon.

Our Review of the whistleblowing and organisational culture at City of Edinburgh Council (“**CEC**”) has only been possible because people have been willing to give their time to speak to us, to share their experiences and views. We are extremely grateful for all the contributions we have received from CEC Colleagues, Councillors, trade union representatives, Edinburgh residents, the external whistleblowing service provider and others who have reached out to shine a light on the current whistleblowing and organisational culture at CEC. We understand that the process of sharing was difficult and upsetting for some, due to the personal nature of the experiences which were brought to our attention and the way in which some people felt about how they had been treated.

We have listened carefully to everything that we have been told. We have heard many positive views about the current culture and the improvements that have been made since 2014, when a new way of dealing with whistleblowing disclosures was introduced by CEC. However, we have also been told about practical and cultural issues which have prevented the process from working as well as it should, leaving some of those who have raised concerns feeling dissatisfied with the process, the outcome, or both; and without a guarantee of rigorous scrutiny by those charged with the governance of the process.

Because our Review is thematic in nature, we have not been able to feature the majority of contributors by name, or to write in detail about their individual experiences in this Report. However, I hope that all who have made a

contribution feel that they have been heard by the Review Team. I recognise that some current and former Colleagues and service users may feel disappointed that their individual cases do not feature by name. I have endeavoured to capture their experiences in the themes identified and I very much hope that they can see that their individual experiences have been carefully considered and reflected in this Report.

I consider that CEC Councillors were right to commission the Review. The catalyst for this wider review were the concerns about the way in which historical complaints about abusive conduct of the late Sean Bell had been dealt with, which were the subject of the Inquiry, which reported in October 2021. The fact that Sean Bell's abusive conduct was known about within CEC and was not acted upon has, in fact, been borne out in the findings of the Inquiry. The Councillors were concerned that there were wider issues with CEC's culture, beyond those which were being considered by the Inquiry, in relation to the way in which CEC responded to alleged wrongdoing. The Review is different from the Inquiry, in that we were asked to focus on the present culture and to look forward. We have, of course, had to look back to help to inform our views. A number of Councillors told us about historical concerns which pre-date the current administration and leadership team, some of which continue to take up time, effort and public resources to this day and, for that reason, they form part of the current culture which we were asked to consider. I hope this Report helps assuage some of the Councillors' more serious concerns while providing a route map for cultural improvements going-forward.

The purpose of the recommendations we are making is to inform cultural change in the way that complaints of wrongdoing are dealt with by CEC, to ensure that CEC is as transparent and accountable as it can be in its actions, and that it engenders a feeling of safety in those who wish to raise concerns, by removing any actual or perceived barriers to disclosures. We hope that in doing so, the culture will be better for its workforce, its elected members, and ultimately those whom they all serve, the residents of the city of Edinburgh.

**Susanne Tanner QC  
Independent Chair  
December 2021**

## 1. DEFINITIONS

Definition	Meaning
<b>ABH Policy</b>	Avoidance of Bullying and Harassment Policy
<b>Call for Evidence</b>	The invitation issued by the Review Team on 13 November 2020, inviting any current or former Colleagues, Councillors, or service users to contribute to the Review
<b>CEC</b>	The City of Edinburgh Council
<b>CLT</b>	Corporate Leadership Team which comprises the Chief Executive, other Executive Directors and some Service Directors
<b>Colleagues</b>	A reference to all employees of CEC excluding Councillors, also referred to as officers
<b>Colleague Survey</b>	The survey issued by the Review Team to all Colleagues in January 2021 – see <b>Appendix 2</b>
<b>Councillors</b>	The 63 elected members of CEC
<b>Directorates</b>	<p>The four CEC Directorates under which CEC’s services are provided:</p> <ul style="list-style-type: none"> <li>• Corporate Services;</li> </ul>

	<ul style="list-style-type: none"> <li>• Edinburgh Health and Social Care Partnership;</li> <li>• Place; and</li> <li>• Education and Children's Services<sup>1</sup></li> </ul>
<b>Executive Directors</b>	The Chief Executive and the heads of CEC's four Directorates
<b>GRBV</b>	The Governance Risk and Best Value Committee (of Councillors) whose role is to monitor the financial performance of CEC and its subsidiary undertakings, the effectiveness of CEC's audit and inspection, risk management and governance arrangements and of the control environment of CEC and associated fraud and anti-corruption arrangements
<b>Group Leaders</b>	The head of each respective political group of Councillors
<b>the Inquiry</b>	The independent inquiry which reported in October 2021 into the conduct of a former CEC social worker and the way in which historical complaints regarding him had been dealt with by CEC

<sup>1</sup> The Directorates were re-organised and re-named in July 2021, during the course of the Review and where appropriate, reference will be made in this Report to the Directorates' previous names.

<b>Investigating Officers</b>	Those tasked with undertaking investigations on behalf of CEC
<b>Service Directors</b>	The respective heads of CEC's various service areas which sit within CEC's 4 Directorates
<b>Member-Officer Protocol</b>	The protocol which sets out the roles and responsibilities of Councillors and CEC officers to ensure clarity when carrying out their respective duties
<b>Monitoring Officer</b>	The CEC officer appointed to carry out the duties of Monitoring Officer under Section 5(1) of the <b><i>Local Government and Housing Act 1989 Act</i></b>
<b>Nominated Officer</b>	The Colleague responsible for setting the terms of reference for any internal investigation and appointing the Investigating Officer. They have the decision-making authority on the steps that should be taken following the investigation
<b>The Report</b>	This report into the review of the whistleblowing and organisational culture of CEC
<b>The Review</b>	This independent review of CEC's whistleblowing and organisational culture relevant to the raising of and responding to concerns of

	wrongdoing involving CEC, its elected members and Colleagues
<b>The Review Team</b>	Susanne Tanner QC and lawyers from the law firm Pinsent Masons LLP (also referred to as “the Reviewer” in the Terms of Reference)
<b>Safecall</b>	CEC’s independent whistleblowing service provider
<b>SPSO</b>	Scottish Public Service Ombudsman
<b>Terms of Reference</b>	A document setting out the scope, parameters and limitations of the Review

## 2. INTRODUCTION

- 2.1 On 15 October 2020, CEC commissioned an independent review of its whistleblowing and organisational culture relevant to the raising of and responding to concerns of wrongdoing involving CEC, its elected members, officers and Colleagues.
- 2.2 The Review began following a motion made at a full Council meeting on 15 October 2020 that an independent review should be commenced. The Review was commissioned following the commissioning of the Inquiry.
- 2.3 On 6 November 2020, following an interview by the Group Leaders on 5 November 2020, I was instructed by CEC as the Independent Chair of the Inquiry and to conduct the Review. In this Report I am reporting to CEC as a whole.
- 2.4 The Review has been carried out by me with support from the law firm Pinsent Masons LLP.
- 2.5 I was asked to answer the following questions:
- 2.5.1 Is there a positive, open, safe and supportive whistleblowing and organisational culture for the raising of and responding to concerns of wrongdoing within the Council, its elected members, officers and colleagues? If not, why not?
- 2.5.2 Do the Council's whistleblowing processes and practices, in particular the Council's 'Whistleblowing Policy' (introduced in May 2014) and the appointment of Safecall as a whistleblowing service provider, embody good practice and provide an effective vehicle for raising and responding to concerns of wrongdoing?
- 2.5.3 Do the Council's elected members, officers, colleagues and former colleagues feel empowered to raise concerns of wrongdoing? Are there any barriers or other reasons, actual or

perceived, which inhibit the reporting of wrongdoing within the Council?

2.5.4 Do the Council's elected members, officers and colleagues in management roles feel empowered to respond to concerns of wrongdoing which are raised by elected members, officers, colleagues, former colleagues or members of the public? Are there any barriers or other reasons, actual or perceived, which inhibit the response to concerns of wrongdoing within the Council?

2.5.5 Are whistleblowing reports and other reports of wrongdoing involving the Council, its elected members, officers and colleagues properly investigated and acted upon, including by taking steps to prevent recurrence? If not, why not?

2.5.6 Is the avoidance of reputational damage or legal liability a contributory factor in any failure by the Council to respond to or to address concerns of wrongdoing?

2.6 The Terms of Reference are at **Appendix 1**.

2.7 As the Inquiry was required to examine a specific issue which had the potential to lead to disciplinary action for certain CEC Colleagues and the findings of the Inquiry were likely to inform the Review, it was determined that the Inquiry should be concluded in advance of the Review. The Inquiry Report was published on 22 October 2021 and presented at the full Council meeting on 28 October 2021. In this Report, with a few exceptions, I do not repeat the findings set out in the Inquiry Report. Those findings were made in a particular context, and in relation to past conduct, whereas this Report focusses on the current whistleblowing and organisational culture of CEC. However, where thematic issues were identified within the Inquiry, which are within the

Terms of Reference of the Review, these have been considered by the Review Team and, where relevant, included in this Report.

### 3. **SCOPE AND METHODOLOGY**

- 3.1 This Report addresses CEC's approach to whistleblowing and the organisational culture from May 2014 onwards, when CEC's current Whistleblowing Policy was introduced.
- 3.2 This Report is thematic in nature and, while consideration of past and current whistleblowing and other relevant cases were informative, the Review has not determined the merits of individual reports, complaints, or concerns of wrongdoing relating to CEC.
- 3.3 In the main, the Review Team spoke with people on a confidential basis. All contributors were informed that the Review was thematic in nature and was not a substitute for CEC's whistleblowing or other complaints processes.
- 3.4 With three exceptions, and in keeping with the Terms of Reference, I have determined not to comment on individual cases. The three exceptions are the case studies set out in **Appendices 3, 4 and 5** of this Report which are used as thematic examples due to the case studies displaying a number of the themes identified by the Review Team. Two of the case studies pre-date the current Whistleblowing Policy (which was first introduced in 2014) and I am confident the cases would be handled differently were they to arise today. While the first two case studies concern historical issues, a number of Councillors asked me to review these cases and it is clear to me that the legacy of how these cases were handled feeds a current perception that the Council does not approach whistleblowing in an open and transparent manner. I wish to address that perception through commenting on these two case studies. The third case study is more recent and although the allegations reported were investigated and not upheld, the allegations

were serious and important, and the case study highlights challenging issues which arise in handling difficult whistleblowing disclosures. The case studies do not include the names of the whistleblowers. I have also commented on press reports which alleged that inappropriate payments were made to a witness in connection with the prosecution of a former teacher. Other partly or fully anonymised cases are used by way of examples throughout the Report to emphasise thematic points.

- 3.5 Throughout the course of the Review, the Review Team has acted independently of CEC. We received an exceptional level of co-operation from CEC. All our requests for information and documents were met, including being afforded access to legally privileged documents on the basis of a limited waiver of privilege, the terms of which enabled us access to legally privileged materials while maintaining the privileged status of those documents.
- 3.6 The Review Team was reliant on CEC for its support in collating and providing relevant materials, facilitating internal communications and helping with arrangements for the Review Team to speak with relevant Colleagues and groups of Colleagues. CEC appointed Craig Russell, a Principal Solicitor within CEC's Legal Team to act as the point of contact for the Review Team, who in turn was assisted by Iain Wallace, a solicitor within CEC's Legal Team. Messrs Russell and Wallace's primary role was to locate and provide documents requested by the Review Team and to take forward other essential project management tasks such as arranging the communication of the Call for Evidence, the roll-out of an organisation-wide survey, arranging workshops with Colleagues, and bringing to the Review Team's attention any significant developments in on-going whistleblowing and disciplinary matters. In addition, Nick Smith, CEC's Service Director for Legal and Assurance and Monitoring Officer, informed the Review Team of any new and material developments and provided the Review Team with all information and documents requested of him.

- 3.7 Messrs Russell, Wallace and Smith co-operated fully with the Review, respected the Review Team's independence throughout and worked extremely hard to respond in a timely and thorough manner to the Review Team's requests for documents and information.
- 3.8 The Review Team also requested and received documents and information directly from Safecall, CEC's whistleblowing service provider.
- 3.9 The Review Team has reviewed 2,748 documents, including 38 whistleblowing disclosures and 30 completed whistleblowing investigation reports.
- 3.10 To promote the Review to Colleagues, former Colleagues and service users, CEC set up a designated webpage on its website for the Review and made public statements about the Review. As of 6 December 2021, this webpage had been viewed 4,489 times.
- 3.11 On 13 November 2020, the Review Team issued the Call for Evidence, via CEC, inviting any current or former CEC Colleagues, Councillors, and service users to contribute to the Review.
- 3.12 Current Colleagues were sent emails from Andrew Kerr, CEC Chief Executive, encouraging them to participate in the Review. However, there are a significant minority of Colleagues who have no access to a CEC email address or personal access to CEC's intranet, the Orb. Efforts were made to inform these Colleagues of the Review by way of written communications sent out with their payslips.
- 3.13 The Review was also the subject of press reports in the Edinburgh Evening News and the Scotsman.
- 3.14 The response to the Call for Evidence and the subsequent communications issued by CEC resulted in 233 people contacting the Review Team to provide information.

- 3.15 The Review Team held 158 telephone or Microsoft Teams calls with people who wished to discuss their experiences with the Review Team. Of the 158 people who spoke to the Review Team, 114 were current Colleagues, 17 were former Colleagues who had left CEC within the last 5 years, 11 were former Colleagues who had left CEC more than 5 years ago, and 16 were from outside CEC.
- 3.16 The Call for Evidence formally closed on 31 March 2021. However, after that date several people who had already contributed to the Review contacted the Review Team either to provide new information or to make enquiries about the progress of the Review. In addition, a number of new contributors contacted the Review Team throughout the months from 31 March 2021 until the publication of the Report, notwithstanding the closure of the Call for Evidence. In relation to all late contributions, the Review Team considered whether the information fell within the Terms of Reference and then applied an “exceptional circumstances” test to decide whether it was possible to consider the matters further.
- 3.17 In addition to the Call for Evidence, the Review Team issued the Colleague Survey in January 2021. 1,447 Colleagues out of a total workforce of 19,943<sup>2</sup> responded to the Colleague Survey. This means the Colleague Survey was responded to by approximately 7.3% of Colleagues. While I would have hoped for a higher response level to provide greater data for the Review to analyse and consider, and I recognise that a response rate of 7.3% means that the Colleague Survey results should be approached with a degree of caution, the 1,447 responses provide the best available insight into the whistleblowing and organisational culture of CEC from those who currently work within the organisation. The full results of the Colleague Survey are contained at **Appendix 2**.

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<sup>2</sup> Number correct as of December 2021

- 3.18 Following the preliminary evidence gathering stage by the Review Team, the Review Team conducted 30 detailed interviews with contributors.
- 3.19 The Review Team also held 24 workshops over Microsoft Teams with Colleagues, Councillors, and trade union representatives, and I visited the Bankhead Waste Depot with a member of the Review Team for face-to-face meetings with front line Colleagues. There were 101 participants across these workshops from the following parts of CEC: Councillors from across the political spectrum; Service Directors from all of CEC's Directorates; Colleagues within CEC's HR function; Colleagues responsible for the functioning of the whistleblowing process (including Safecall); Colleagues with responsibility for conducting investigations; Colleagues working in education; front-line Colleagues; and trade union representatives. Some of those who participated in the workshops also spoke to the Review Team in follow up interviews.
- 3.20 Each contributor to whom the Review Team spoke had the opportunity to speak on a confidential basis if they chose to do so. I wish to reassure all contributors who spoke with us on a confidential basis that we have not shared their details, or any information about them or their experiences with CEC. In fact, the Review has not shared any documents, information, or statements with CEC. The only exceptions to this approach were: (i) matters brought to our attention, where no confidentiality issues arose, which the Review Team considered required operational input by CEC, in relation to which a recommendation was made to CEC that the cases should be reviewed from an operational perspective and that interested parties should be updated, if applicable; (ii) cases where contributors requested that we speak with CEC about their particular issue or concern, if the Review Team considered that this was justified, in relation to which a recommendation was made to CEC that the cases should be reviewed

from an operational perspective and that interested parties should be updated, if applicable; (iii) one instance where the Review Team needed to make enquiries about a child safety issue that was raised (see Case Study 3 in **Appendix 5**); and (iv) I also made one formal interim recommendation in respect of a case (see Case Study 1 in **Appendix 3**). CEC was receptive to such information being provided by the Review Team and updated the Review Team in respect of steps taken in response to such matters. In addition, the Review Team directed contributors with ongoing concerns to report them to Safecall.

3.21 My conclusions are based on the evidence collated. While 1,477 Colleagues responded to the Colleague Survey and we spoke with 289 people through calls, workshops and interviews, CEC has 19,943 employees, the vast majority of whom did not respond to the Colleague Survey or the Call for Evidence. I am also conscious that a person with a grievance is more likely to have contacted the Review than a person who is happy with the culture of CEC. Despite these caveats, I am satisfied that the Review was thorough. We worked hard to reach people but if there are people whom the Review has failed to reach, I apologise. There will inevitably be some people that the Review Team was unable to speak with and others may have wished for the Review Team to speak with them for longer or to follow up in more detail about their specific experiences. The Review Team endeavoured to listen to and take on board the experiences of those who contacted the Review. I hope those who contributed will understand that in order to deliver this Report within a reasonable timeframe and cost it was necessary that choices were taken as to the extent to which individual experiences were looked into to inform our thematic findings and recommendations.

#### 4. **ACKNOWLEDGMENTS**

4.1 I wish to acknowledge my personal gratitude, and the gratitude of the Review Team, to those people who came forward and contributed to the Review. Many of the experiences shared with us were upsetting for

the individuals to relive and we are extremely grateful for the courage shown by those people who spoke with us.

- 4.2 The hard work, professionalism, proactivity and dedication of CEC lawyers, Craig Russell and Iain Wallace, is deserving of special mention. I recognise that they have demanding jobs and this Review added to the burden they and their Colleagues in CEC Legal Team faced. I therefore extend my thanks to the entire CEC Legal Team which helped Craig Russell and Iain Wallace with other work commitments during the Review.
- 4.3 I also wish to acknowledge the co-operation and proactive support of CLT in helping to progress this Review. The Review was instigated by the Councillors; not by Andrew Kerr (Chief Executive) or CLT. The Review was proactively supported by Mr Kerr, CLT, and the Service Directors through the allocation of CEC resources, internal communications promoting the Review, and by providing access to CEC's records and people, as requested by the Review Team. Nick Smith, in his role as CEC's Monitoring Officer and Service Director for Legal and Assurance, was responsive to our requests for information and explanations, and the Review Team are grateful to him for his proactivity in keeping the Review informed of important developments which were relevant to the Review.
- 4.4 I would also like to thank the Councillors who commissioned this Review and contributed their own views about the organisational culture and their desires for improvement in the organisation.
- 4.5 I add my personal thanks to the Review Team - Tom Stocker, Alistair Wood, Kathryn O'Brien and James Cran from Pinsent Masons LLP, for their hard work, dedication and support throughout the Review.

5. **QUESTION 1: IS THERE A POSITIVE, OPEN, SAFE AND SUPPORTIVE WHISTLEBLOWING AND ORGANISATIONAL CULTURE FOR THE RAISING OF AND RESPONDING TO CONCERNS OF WRONGDOING WITHIN THE COUNCIL, ITS ELECTED MEMBERS, OFFICERS AND COLLEAGUES? IF NOT, WHY NOT?**

**Overarching findings**

- 5.1 My overall conclusion is that despite considerable steps taken to improve organisational culture since 2014, there is not a universally positive, open, safe and supportive whistleblowing and organisational culture for the raising of and responding to concerns of wrongdoing within CEC.
- 5.2 I should note that CEC has taken considerable strides since Andrew Kerr's appointment as Chief Executive and Nick Smith's appointment as Monitoring Officer to improve its whistleblowing and organisational culture, which evidence shows was historically extremely problematic. Many of the issues which were brought to our attention originated when CEC was under different leadership and a previous administration and to an extent the current Executive Directors and the Monitoring Officer are grappling with the legacy and cultural impact of historical cases that still hang over CEC, some of which have required, and continue to require, the expenditure of significant time and public resources. I also wish to state that, while there is more work to be done, the Whistleblowing Policy and processes that have been in place since May 2014 have given whistleblowers increased confidence to report concerns and have served to improve the culture of CEC to one that is more open and safer for whistleblowers than was previously the case.
- 5.3 683 of those Colleagues who responded to the Colleague Survey said they had not seen an improvement since 2015 in CEC's culture for encouraging Colleagues to report and address serious concerns;

whereas 405 Colleagues said the culture had improved. Although the 683 Colleagues who had not seen any improvement in CEC's culture only embody 3.5% of CEC's workforce, the figure represented 47% of those who responded to the Colleague Survey. This suggests that the steps taken by CEC to improve its culture have not had a wide and deep enough impact to reassure its workforce.

- 5.4 While CEC is moving in the right direction, there is a need to demonstrate transformational changes. My recommendations are designed to assist with that objective.

### **Positive findings**

- 5.5 CEC's Executive Directors and Councillors share a common desire to have a positive, open, safe and supportive culture. It is clear to me that serious cases of alleged wrongdoing, in particular reports concerning wrongdoing directed towards service users, are nowadays handled more appropriately<sup>3</sup>, albeit often too slowly, if the report is made via the independent whistleblowing provider, Safecall.
- 5.6 Having conducted an extensive review, I have not identified any evidence that any "*major/significant*"<sup>4</sup> whistleblowing disclosures are being covered up by CEC. Where a whistleblowing disclosure comes to the attention of the Whistleblowing Team and Safecall it will be investigated. Whistleblowers may not always be satisfied with the outcome, investigations tend to take too much time to conclude, and the investigations conducted are of mixed quality, but CEC does endeavour to investigate all whistleblowing disclosures.
- 5.7 In the course of the Review, some significant and challenging whistleblowing disclosures were received by CEC. Although those whistleblowing disclosures would have benefitted from being

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<sup>3</sup> That was not always the case – see the case studies at Appendices 3 and 4

<sup>4</sup> A term used by CEC's whistleblowing team and Safecall to describe cases which are investigated by Safecall as opposed to by CEC itself.

investigated more quickly, I am content that the matters have been investigated.

- 5.8 Considerable steps have been taken since May 2014 to improve CEC's processes for addressing wrongdoing. While there is room for improvement, CEC's whistleblowing process, and the use of an independent whistleblowing provider, set a positive tone and CEC's Whistleblowing Team, Safecall and GRBV work hard to deliver and oversee an effective programme for the reporting and investigating of wrongdoing. Those involved in the whistleblowing process struck me as hard-working and well-intended in their approach. In a review such as this, recommended improvements are inevitable, but I do not doubt the dedication of CEC's Whistleblowing Team, Safecall and GRBV. I hope that the findings and recommendations enable them to build on the strong foundations of the Whistleblowing Policy, existing processes, and the experience that they have developed over the last seven years in dealing with concerns that are raised.
- 5.9 Efforts are being made by CEC's HR Department to understand and reflect on CEC's culture. While the Review was underway, the HR Department engaged an external consultant to assist with a cultural review. That cultural review has completed and its findings, combined with those in this Report, will help to drive positive cultural change, which includes a positive, open, safe and supportive whistleblowing culture.
- 5.10 Andrew Kerr has also set about improving organisational culture through initiatives such as the "*Future Engage Deliver Programme*"<sup>5</sup> and the "*Inspiring Talent Programme*"<sup>6</sup>, which were well received by participants. Although not a universally held view, many of the people

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<sup>5</sup> A programme CEC runs to assist managers, and those with aspirations of being a manager, to become more confident and capable leaders. The programme operates on a hybrid of e-learning and support groups which work together to complete the programme over 12 months.

<sup>6</sup> A programme CEC runs to: (i) identify and develop future senior leaders; (ii) anticipate and address workforce planning priorities; and (iii) promote diversity and inclusion, in particular to encourage more women into senior roles.

we spoke with acknowledged that under Mr Kerr's leadership, the organisational culture has improved.

5.11 Many Colleagues to whom we spoke were proud of working within CEC, despite issues which they wished to bring to our attention and had decided to contribute to the Review with a view to informing improvements, not just for them, but for the organisation and the city of Edinburgh as a whole.

### Mixed perceptions

5.12 Nevertheless, concerns about the current culture were repeatedly raised by contributors and the response to the Colleague Survey demonstrates that there is a mixed picture. The answer to question 3 of the Colleague Survey demonstrates the position, which includes the fact that 35% of those responding to the question (504 Colleagues) were of the view that the CEC has a weak culture which discourages speaking up and addressing concerns of wrongdoing, with a further 49% (707 Colleagues) providing a neutral response. A much smaller minority of 16% (229 Colleagues) reported a strong culture in this regard.

3. Please rate the culture of the Council with respect to encouraging speaking up and addressing concerns?



5.13 What was evident from the contributions to the Review is that CEC does not have one universal culture. Instead, it has many different cultures depending on which department Colleagues work in, their level of

seniority within the organisation, and the location of their place of work. The term “*siloed*” was used frequently by contributors to the Review to describe different Directorates / departments within CEC. The culture within parts of the Children’s Services department (as detailed in the Inquiry report) and a small number of schools within the Education and Children’s Services Directorate (formally known as Communities and Families Directorate and prior to that Children and Families) has been raised with us as problematic but I am hopeful that recent personnel changes, including the appointment of an Interim Executive Director of Education and Children’s Services in May 2021 and a permanent successor in November 2021, and the implementation of the recommendations of this Report will lead to positive cultural change, in which the organisation as a whole encourages speaking up and addressing of concerns.

- 5.14 A challenge faced by CEC is that reduced budgets and restructuring has caused capacity issues for CEC. Budget cuts have impacted negatively on CEC’s culture because Colleagues are having to do more for less and are feeling under strain and undervalued. I do not have a magic wand to address this issue. It is the reality of CEC’s financial position. However, there are steps that can be taken to improve the culture with limited need for additional resource to be allocated. In addition, there is a need for CEC to recognise false economies, such as overloading its Colleagues with duties over and above their day jobs, for example tasking them with investigations into complaints of wrongdoing, which inevitably leads to delays in investigations and in some cases poor investigation processes and outcomes, as well as having an impact on employee wellbeing and morale. Some of my recommended steps will necessitate budget to be allocated and I would encourage CEC to find the budget because it will, in the medium to longer term, save time, expense, and reduce staff absence due to stress or other wellbeing issues.

5.15 Specific areas for improvement are addressed below.

### **Councillors**

5.16 Councillors are the face of CEC and the conduct of Councillors has a significant influence on the culture of the organisation, in particular the approach of CEC officers and Colleagues to dealing with issues of potential wrongdoing.

5.17 A number of Councillors contributed to the Review through a variety of means, including individual interviews, participation in group workshops (21 Councillors attended workshops) and by assisting contributors to engage with the Review. Some Councillors to whom we spoke have held elected office with CEC for many years, through different administrations and leadership teams, and others were elected at the most recent election in 2017. We spoke to Councillors in the administration, including the Leader<sup>7</sup> and Deputy Leader<sup>8</sup> and those in opposition. Generally, while some Councillors were more critical of the current whistleblowing and organisational culture than others, all the Councillors to whom we spoke wished to see improvements in the culture of the organisation.

5.18 For the organisation to operate effectively, it is important that officers have confidence that confidential information provided to Councillors will remain confidential, that Councillors will accept the factual accuracy of information provided to them unless there is a good reason not to, and that Councillors will not unnecessarily embark on seeking to apportion blame to individuals charged with operational duties. Unfortunately, it is clear to me that some officers have become guarded and defensive in the information provided to Councillors due to concerns about information being leaked or the possibility of the officer or the department being unfairly criticised by Councillors.

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<sup>7</sup> Adam McVey, SNP

<sup>8</sup> Cammy Day, Labour

- 5.19 In course of the Review, leaks of confidential information and sensationalised press statements have arisen. There will be times where a Councillor considers there to be a strong public interest in confidential information being made public. However, in some of the cases I observed, the public interest element was not apparent to me and there were occasions where the reporting of the information was sensationalised or inaccurate, which is not conducive to a positive organisational culture.
- 5.20 All Councillors are subject to the *Code of Conduct for Councillors* which is produced by the Scottish Government and outlines the standards of conduct expected of Councillors under the ***Ethical Standards in Public Life etc. (Scotland) Act 2000***. At the time the Review began, the *Code of Conduct for Councillors* had been in force since July 2018; and an amended *Code of Conduct for Councillors* was issued by the Scottish Ministers in September 2021 following consultation, and with the approval of the Scottish Parliament. The new *Code of Conduct for Councillors* came into force on 7 December 2021, shortly before the publication of this Report. Where references are made to the Code in this Report, it is to the 2021 Code. The Standards Commission for Scotland, an independent body whose purposes include encouraging high ethical standards in public life through the promotion and enforcement of the *Code of Conduct for Councillors*, has produced guidance for Councillors on the *Code of Conduct for Councillors*, which has been revised in line with the new Code, and contains illustrations and examples of factors that Councillors should consider when interpreting the Code.
- 5.21 The CEC full council and the committees are responsible for strategy and policy decisions, whereas the CEC officers are responsible for operational decisions. The role of Councillors is to determine policy aims and objectives. The *Code of Conduct for Councillors* states at paragraph 3.7 that “*I will not become involved in operational*

*management of my council's services as I acknowledge and understand that is the responsibility of its employees".*

- 5.22 One of the key principles of the *Code of Conduct for Councillors* (at paragraph 2.2) is that Councillors must *"respect all other councillors and all council employees and the role they play, treating them with courtesy at all times"*. The majority of Councillors conduct themselves professionally, comply with the *Code of Conduct for Councillors*, and treat their fellow members and CEC's officers with courtesy and respect. However, occasional slips in behaviour and conduct of a minority of Councillors has had a negative impact on the organisational culture of CEC. Concerns about the conduct of some Councillors towards officers, and each other, in the course of committee meetings was raised with the Review Team by both Councillors and officers.
- 5.23 The Accounts Commission's Best Value Assurance Report dated 26 November 2020 (the **"Best Value Report"**) noted that there were *"tensions between elected members which manifest in inappropriate language and tone being used in council debate, in the lack of involvement of some members in decision-making, and in media reports on member disagreements"*. The Best Value Report further notes that the steps taken to address these issues have made little difference with relationships remaining strained leading to an environment which is *"challenging for members and officers"*.
- 5.24 Among the 21 Councillors who participated in the Review workshops, there was cross party consensus that little had changed since the Best Value Report was published and that no steps had been taken to improve the situation. Indeed, one Councillor observed that *"in some respects relationships are getting worse"* and another that *"in the last year or so it has become toxic"*. I would invite CEC to reflect on the findings of the Best Value Report and consider any necessary changes to aid communications intra Councillors and between Councillors and officers. I understand that prior to the issuing of the Best Value Report,

attempts had been made by officers to improve relations with Councillors, which included inviting them to participate in the “*Future Engage Deliver*” programme, described above, but the uptake by Councillors was mixed.

5.25 Furthermore, there have been incidents where the use of newspaper columns and opinion pieces in local Edinburgh and national newspapers have on occasion been used to leak confidential information or to comment inappropriately or erroneously on whistleblowing cases. The leaking of confidential information or inaccurate commentary undermines the integrity of CEC and the role of GRBV in providing an oversight function, and it heightens the feelings of mistrust between Councillors and officers.

5.26 [PARAGRAPH WITHDRAWN]

5.27 While incidents like the example given are uncommon, there are officers who perceive that *some* Councillors cannot be trusted with sensitive and confidential information. It seems to be accepted as a given by those officers that if such information is provided to Councillors it will be leaked. As a result, this view affects the approach of officers to sharing information with Councillors. Many Councillors share the same perception as officers about the conduct of other Councillors and, whether or not the perceptions are borne out, all Councillors are directly

impacted by the resulting culture which has had the effect of discouraging openness between officers and Councillors.

- 5.28 The Review Team understands that, apart from some particular training courses to enable Councillors to sit on specific committees, such as the Planning Committee (due to legal requirements), Councillor training is not compulsory. Non-attendance at Councillor training is an issue that may impact on Councillor behaviour and ultimately the culture of CEC.
- 5.29 Complaints of breaches of the *Code of Conduct for Councillors* are investigated by the Commissioner for Ethical Standards and adjudicated by The Standards Commission for Scotland. However, some CLT members and Councillors informed the Review Team that reporting an alleged breach of the *Code of Conduct for Councillors* was rarely done because it was seen as harmful to relationships and was described as a “*nuclear option*” and potentially “*career ending*”.
- 5.30 **Recommendation 1: All political groups should take steps, if they do not already do so, to ensure that all their members attend training, particularly training in relation to the Member-Officer Protocol and Councillor conduct, including the 2021 Code of Conduct for Councillors.**
- 5.31 **Recommendation 2: Whistleblowing training should be delivered to and attended by all Councillors.**
- 5.32 **Recommendation 3: CEC officers and Councillors should take steps to implement any necessary changes following the findings of the Best Value Report.** The Chief Executive and Group Leaders may also wish to consider whether there is a means, short of a report to the Commissioner for Ethical Standards, to address instances of discourteous conduct by Councillors towards Colleagues and other Councillors.

## Limiting information provision to councillors

- 5.33 The flip side of the concern expressed by officers and Councillors about leaks of confidential information and inaccurate statements to the press is that some Councillors informed the Review that officers do not share enough information with them and there is a lack of trust on the part of some Councillors in relation to the completeness of information with which they are provided by certain officers.
- 5.34 It is important to note that the provision of information to Councillors is based on a legal framework.
- 5.35 Councillors have a right to access information to allow them to discharge their duties. According to CEC's Member-Officer Protocol, the key principle is in favour of disclosure in accordance with the relevant sections of the ***Local Government (Scotland) Act 1973*** (the "**1973 Act**").
- 5.36 Section 50 of the 1973 Act gives Councillors a statutory right to inspect various documents related to business to be transacted by CEC unless the documents disclose certain types of "*Exempt Information*" (the 1973 Act outlines descriptions of the kind of information which is to be considered Exempt Information).
- 5.37 The effect of information being Exempt Information is that it need not be disclosed by CEC to Councillors who are not directly involved in decisions relating to that Exempt Information.
- 5.38 The *Code of Conduct for Councillors* at paragraphs 3.21 to 3.23 provides that Councillors must always respect and comply with the requirements to keep information, which is not intended to be public, confidential:
- 5.38.1 *"I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or*

*private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I will assume it is not given.*

5.38.2 *I accept that confidential information can include discussions, documents, information which is not yet public or never intended to be public, and information deemed confidential by statute.*

5.38.3 *I will only use confidential information to undertake my duties as a councillor. I will not use it in any way for personal or party-political advantage or to discredit my council (even if my personal view is that the information should be publicly available)".*

5.39 Despite the above framework, a small number of Councillors perceive that they do not have sufficient access to information to enable them to fulfil their role in representing their constituents. It was explained by one Councillor that *"one of the issues about information is that sometimes it's sensitive information you are after and there is a feeling that there is information that we should have access to that is kept from us, for two reasons: we might leak it; or people hide behind legal privilege"*. There is also a perception amongst some Councillors that officers are even more reluctant to share information with Councillors when that information relates to a failing on the part of a senior officer. These Councillors consider that not providing this information inhibits their ability to effectively scrutinise.

5.40 In the main, the Review Team observed that Councillors do get access to information requested, albeit subject to controls such as accessing the information via an online data room or being invited to read reports in a meeting room rather than being sent a copy of a report. I consider

such controls to be reasonable, provided that appropriate measures are put in place to address any accessibility issues Councillors may have.

- 5.41 The Review Team was advised of one example in the Education and Children's Services Directorate where a process had been put in place in relation to sharing information with Councillors. This is not a matter that the Review looked into further. If this has proven to be an effective method, other parts of CEC could consider adopting this process or something similar.
- 5.42 The Review Team is aware of one situation where, because of reliance on legal professional privilege, officers have provided Group Leaders with a summary report in place of the full investigation report (for further discussion on this point see paragraph 10.9).

### **CEC leadership**

- 5.43 As noted above, many of the people to whom the Review Team spoke acknowledged that under Andrew Kerr's leadership the organisational culture of CEC has improved. In particular a number of people who contributed to the Review explained that under Mr Kerr's leadership significant strides had been made to break down the pre-existing culture of siloed thinking within CEC. Nevertheless, there remain issues relating the tone set by the top of the organisation and in particular by the Executive Directors.
- 5.44 There is currently no disciplinary policy formally adopted in relation to the Chief Executive, although there is a national policy applicable to chief executives which could be applied if required. In addition, the policy applicable to all other Executive Directors and Service Directors has not been updated since 1997, does not cover all potential circumstances and is therefore not fully fit for purpose. This position risks creating a perception that the Executive Directors and Service Directors can act with impunity and is a major barrier to responding to

issues of wrongdoing concerning these officers, as the framework for doing so is unclear. At the time of writing this Report, steps were being taken within CEC to put in place a revised disciplinary policy applicable to all Executive Directors and Service Directors. I would wish to see this process accelerated.

- 5.45 Five contributors to the Review commented on the gender balance of CLT and the fact that it is quite male dominated. These comments were likely made with reference to the former make up of CLT, as the gender balance in 2019, when the CLT comprised 7 members, was 6 males to 1 female. However, CLT has, since November 2020, expanded to 14 members and the gender balance is currently, as at December 2021, 7 males to 7 females.
- 5.46 While a number of contributors to the Review have commented on a positive and inclusive atmosphere at CLT meetings, a smaller number have commented that CLT can be an intimidating environment to those who perceive themselves to be outsiders. This could, therefore, unintentionally exclude those who do not feel comfortable in the current environment. Executive Directors and those on CLT should reflect on the atmosphere they create at meetings and should take steps to ensure that there is a welcoming and inclusive environment for all. More general efforts towards diversity and inclusion are to be welcomed, and for more on this topic see paragraphs 5.105 to 5.112.
- 5.47 There was a perception among a small number of contributors that managers, at varying levels across CEC, will look out for each other rather than seeking to take forward concerns. The Review Team has not been provided with any evidence of this occurring currently. However, there were examples of historical cases where this was an issue, including Case Studies 1 and 2 (**Appendices 3 and 4**). The Inquiry also considered how this situation arose in the former Children and Families Directorate with a group of employees, with negative effects when it came to dealing with complaints of abuse and other

wrongdoing involving a senior social worker. Given the fact that long service by managers across CEC is very common, there is a risk of cliques forming among managers who have spent many years working together. While there are many positive aspects to Colleagues and managers having strong, constructive and long-standing relationships, from the perspective of encouraging suspected wrongdoing to be reported, it is of paramount importance that, as part of building on a more open and transparent culture within CEC, whistleblowers have confidence that the whistleblowing channels are independent and that investigations will be conducted by Investigating Officers who are not part of any perceived management clique.

- 5.48 **Recommendation 4: CEC should put in place a revised disciplinary policy applicable to the Chief Executive, Executive Directors and Service Directors as a matter of priority.**

#### **Culture across Directorates and departments**

- 5.49 As noted at the outset, CEC does not have one culture. The culture of CEC varies across CEC's different Directorates and departments, with some appearing to have a more open culture compared to others. With an organisation the size of CEC it is impossible to attempt to homogenise individuals' experiences, however some parts of CEC have been discussed with the Review Team more than others. This indicates that a positive culture within these areas is less pronounced than in others.
- 5.50 It is evident to the Review Team that there are some parts of CEC that appear to have more cultural issues than others. It is important to note that there was a substantive restructuring of CEC's Directorate structure during the summer of 2021 while the Review was ongoing. A

breakdown of those who responded to the Call for Evidence and provided details of where they worked within CEC<sup>9</sup> is set out below<sup>10</sup>:

DIRECTORATE	NUMBER OF WITNESSES
Communities and Families <sup>11</sup>	97
Resources <sup>12</sup>	13
Place	13
Health and Social Care Partnership	14

5.51 The HR Department's statistics on active cases currently being dealt with by the HR Case Team (ABH, disciplinary, grievance, and suspensions) from 30 November 2021 also paint a similar picture:

DIRECTORATE	NUMBER OF CASES
Education and Children's Services	ABH: 4  Disciplinary: 36  Grievance: 6  Suspensions: 6  <b><u>Total: 52</u></b>

<sup>9</sup> Others may have told the Review Team where they worked but it was not clear to the Review Team which Directorate these roles sat in. They have therefore not been included in this table.

<sup>10</sup> This table uses the names of the Directorates prior to the re-organisation in 2021 as the Call for Evidence was open when these particular Directorates were in place.

<sup>11</sup> Now known as Education and Children's Services

<sup>12</sup> In July 2021, following re-organisation, the Resources Directorate ceased to exist, and the Corporate Services Directorate was formed. Corporate Services brings together some of the professional teams from the former Resources Directorate, along with the teams in the former Chief Executive's Service. The Property and Facilities Management Department of the former Resources Directorate was transferred into the Place Directorate, moving a substantial proportion of staff from the former Resources Directorate.

Corporate Services	ABH: 0  Disciplinary: 1  Grievance: 0 <sup>13</sup>  Suspensions: 0  <b><u>Total: 1</u></b>
Place	ABH: 3  Disciplinary: 19  Grievance: 3  Suspensions: 8  <b><u>Total: 33</u></b>
Health and Social Care Partnership	ABH: 4  Disciplinary: 32  Grievance: 1  Suspensions: 1  <b><u>Total: 38</u></b>

5.52 As can be seen from the data above, the Education and Children’s Services Directorate (previously known as Communities and Families, and prior to that Children and Families) appears to be the source of a greater proportion of issues within CEC compared to other Directorates. It is important to caveat that general statement with the fact that

<sup>13</sup> The Review Team is aware of a collective grievance in this Directorate which is currently the subject of an appeal and is therefore not included in the HR Case Team’s statistics.

Education and Children's Services is the largest Directorate (it is more than double the size of the next largest Directorate), but the number of Colleagues who approached the Review Team from this Directorate far outstrips those from other Directorates. Two areas of the Education and Children's Services Directorate that have been of particular concern to the Review Team from a cultural perspective are the Schools and Lifelong Learning Department (in particular schools) and the Children's Services and Criminal Justice Services (commonly referred to by Colleagues as the Social Work Department). The Review Team identified two matters of particular concern during the Review and flagged them to CEC. In parallel, CEC has identified an issue with one of the matters and these matters are now being dealt with by CEC. An Interim Executive Director of Education and Children's Services was appointed in May 2021, with a permanent successor being appointed in November 2021. In addition, during the course of the Review, recommendations from the Inquiry, which related to matters in the Social Work Department, were made in October 2021 and were accepted by CEC in full. A plan is being developed in respect of implementation of those recommendations.

- 5.53 Of those who responded to the Call for Evidence, 26 worked in schools. For context I note that the CEC employs 5,120 teachers, plus others such as teaching assistants, education officers and support staff. Themes identified which are relevant to this Review included: preferential treatment with respect to promotions and new hires (see more below); unreasonable behaviour towards more junior teachers, including alleged incidents of bullying and harassment by head teachers or heads of departments; management closing ranks and protecting one another; and a general lack of encouragement to speak up. Senior education officers and head teachers to whom the Review Team spoke as part of the Review did not consider there to be a widespread culture of bullying and harassment within schools. However, 12 teachers raised

concerns about the behaviours of more senior teachers towards staff within their schools.

- 5.54 Of those who responded to the Call for Evidence, 21 worked in the Social Work Department. The issues discussed in the Inquiry Report relate to the Social Work Department and will not be discussed further here. However, there are also other concerns that have been raised with the Review Team in relation to parts of the Social Work Department. Five Colleagues working within one team within the Social Work Department and a Councillor raised concerns with the Review Team about a “*toxic culture in the team and a culture of systemic bullying*” within that team. The majority of the concerns raised related to actions of the management team. The individual complaints have been investigated but without consideration being given to the pattern of behaviours reported.
- 5.55 As noted in relation to schools, there is a perception more generally of preferential treatment (including cronyism, nepotism and favouritism) among some Colleagues in relation to the award of jobs to internal candidates. Of the 115 whistleblowing disclosures made between 2018 and 2021, 12 of them related to allegations of nepotism or cronyism. However, the Review Team has reviewed several instances of jobs being awarded where preferential treatment and other exclusionary behaviour has been raised as a concern and we have not identified any evidence to substantiate the perception. On the face of the documents reviewed by us, the processes leading to the job awards appear reasonable and fair. Nevertheless, there remains a perception of preferential treatment and other exclusionary behaviour in the course of job awards which is unhelpful to the overall organisational culture.
- 5.56 **Recommendation 5: Refresh avoidance of bullying and harassment training for all Colleagues, with schools and those involved in social work being part of the initial roll-out.**

- 5.57 **Recommendation 6: Those involved in recruitment and selection of candidates for new positions should complete a short form declaration to disclose any personal or professional relationship with a prospective candidate.**

### Communications and training

7. Are you aware of the Council's Whistleblowing Policy?



- 5.58 While it appears that the majority of Colleagues have some awareness of CEC's Whistleblowing Policy (albeit over a quarter of those who responded to the Colleague Survey who were aware of the Whistleblowing Policy, stated that they became aware of it as a result of the Review), what is apparent from the Review is that there is a varied level of understanding amongst Colleagues as to what constitutes whistleblowing, the avenues by which people can report concerns, and how instances of whistleblowing will be investigated and dealt with. One of the main reasons for this mixed understanding is the manner in which CEC's whistleblowing processes have been communicated.
- 5.59 When the Whistleblowing Policy was first rolled out in 2014, under the previous administration and Executive Team, there were serious failings with regard to the communications strategy. At the time of the roll out, a communications plan had been prepared, which consisted of the use of electronic communications, articles in internal magazines, workplace posters and wallet cards to provide details on the service being offered. However, before the posters and wallet cards could be disseminated to

Colleagues, the (then) Chief Executive paused all communications in relation to the Whistleblowing Policy. Following this suspension of communications, the available hours for the service changed, thus rendering the wallet cards prepared inaccurate.

- 5.60 In 2015, a new promotion campaign took place which involved posters being put up on staff notice boards across all CEC buildings, articles in newsletters, and the wallet cards were issued (albeit with the incorrect working hours on them). I understand that these posters and wallet cards have not been refreshed in the following six years and there has been no audit to check whether the original posters remain in place.
- 5.61 While impromptu reminders have been given to Colleagues via management briefings and communications from the Chief Executive in the years following the 2015 promotion campaign, the Review is not aware of any subsequent promotion campaign. Failing to refresh posters and wallet cards has a particular impact on those frontline Colleagues who do not have personal access to CEC's intranet or a CEC email address (for more on these Colleagues see paragraphs 7.26 to 7.36) and presents a barrier to them being able to raise concerns.
- 5.62 Despite the Whistleblowing Policy forming part of the "*Essential Learning*" for all Colleagues, the majority of Colleagues have not received any formal training on whistleblowing. This is evidenced by the answer to Colleague Survey question 10. I understand that "*Essential Learning*" means that Colleagues are required to read the policy, as opposed to there being formal training offered on the Whistleblowing Policy. Indeed, I understand that there is no formal programme of training in relation to the Whistleblowing Policy. Instead, some Colleagues have received training on whistleblowing but there is no planned programme.

10. Have you received any training on the Whistleblowing Policy?



5.63 CEC is in the process of producing a new whistleblowing e-learning module which will be made available to all Colleagues through CEC's e-learning platform on its intranet. The Review Team has reviewed an early draft of this e-learning module and provided feedback to the designers on its content.

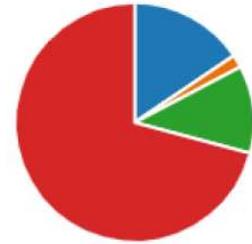
5.64 In addition to a lack of formal training, not all managers are taking the time to speak with Colleagues about whistleblowing. However, when they do, the tone of the discussion is generally positive or neutral. Formal training cannot be the only method by which Colleagues are informed of the means by which they can raise concerns. Regular promotion of whistleblowing by managers and through other communications is essential.

11. Has your manager spoken with you about the Whistleblowing Policy?



12. Has your manager spoken about Whistleblowing in a manner which is:

Positive	224
Negative	25
Neutral	170
They haven't spoken to me about Whistleblowing	1019



5.65 *UK Government – Whistleblowing: Guidance for Employers and Code of Practice (BEIS)* is the UK government guidance for employers in relation to whistleblowing. The guidance contains several useful pointers which can help an employer to create an environment where workers feel able to speak up. It emphasises that organisations must ensure that employees know how to make a disclosure. This can be done via their intranet, through a staff newsletter or through trade unions. It is a good idea for organisations to share the information with all staff regularly to make sure that they are all reminded of the policy and procedures and to inform new staff. Written policies are not enough. Training should be provided to all staff on the key arrangements of the policy. Additional training should be provided to those with whistleblowing responsibilities, such as managers or designated contacts, so that they are able to provide guidance confidently to workers. It is also a good idea to include handling whistleblowing disclosures as part of discipline and grievance training for managers and staff. Training should be offered at regular points to make sure it stays fresh in managers' minds.

5.66 **Recommendation 7: A new whistleblowing communications and training strategy should be put in place and rolled out across CEC.** This could involve a regular series of “town hall” type talks by senior managers, including periodic attendance by CLT members. In addition to an e-learning course which is currently available, face-to-face training

which is supported by promotional posters and videos being shown in canteens and via CEC vlogs / CEC social media should be prioritised. Training should be visibly supported by senior managers and Whistleblowing Champions (see Recommendation 23) by their attendance at sites and depots to help to deliver the training and engage with Colleagues on its aims.

### **Overly formal approach and lack of early resolution**

- 5.67 CEC can adopt an overly formal approach to addressing concerns of wrongdoing, whether via whistleblowing disclosures or matters addressed under CEC's disciplinary, grievance, or ABH policies.
- 5.68 Linked to an overly formal approach is that early resolution is not provided for in the Whistleblowing Policy and under some other CEC policies which relate to concerns about wrongdoing. The Review Team is aware of very few cases where steps have been taken to resolve the issues when they are raised, where early resolution may have been a more constructive approach. Whilst, obviously, unnecessarily re-directing time and resource to investigations that are not required, this approach can also lead to less serious matters that could be addressed via a conversation or a form of facilitated discussion becoming blown out of all proportion to the issues which have been raised. There are a number of cases involving allegations of bullying and harassment of which the Review Team is aware which would have benefitted from early resolution and de-escalation. For example, the Review Team is aware of two cases in separate departments in CEC's Education and Children's Services Directorate (at the time known as Communities and Families) where allegations of bullying on the part of managers to more junior Colleagues have been determined by the managers to be examples of employees not responding to management techniques or forms of performance management as opposed to bullying. In both these cases there appears to have been little effort made to have a facilitated discussion in order to resolve the issues. Instead, in both

these cases, formal processes were instigated with some Colleagues involved taking extended leaves of absence purportedly due to the stress involved.

- 5.69 There is a perception that in some cases Trade Unions have insisted on the formal application of a policy (and the Review Team has seen one example of this happening in practice) rather than seeking to resolve matters or take matters down another, more pragmatic, route. This does not happen in all cases, and a number of Trade Union representatives who spoke with the Review expressed their willingness to engage with CEC on ways in which matters can be dealt with less formally and resolved earlier in the process.
- 5.70 In addition to resolving issues between the parties, greater emphasis could be placed on conducting a paper-based review at the point of a concern being raised and before the subject of the disclosure or complaint is informed that they are under investigation. An example of where an early document-based review would have been beneficial is in relation to a teacher who was the subject of a whistleblowing report which alleged that they had abused their position to get their partner a job in their school. This resulted in a prolonged investigation lasting several months which caused the teacher stress and anxiety. The outcome of the investigation was that it was found that the teacher had not abused their position. However, had the investigator reviewed the relevant paperwork at the outset they would have seen that the teacher had recused themselves from the recruitment process and had informed their managers of the fact that their partner was applying for a job in their school. There was therefore no need for the investigation to take place at all. The issues identified in this observation could be addressed by way of Investigating Officer training (see Recommendation 9).
- 5.71 **Recommendation 8: CEC should revise its Whistleblowing Policy to put a greater emphasis on consensual early resolution (see**

**Recommendation 32)** I would encourage the relevant Trade Unions to support this recommendation. In reviewing its policy suite more generally, CEC should consider embedding a consistent focus on early resolution.

## **Investigations**

- 5.72 The majority of whistleblowing investigations which arise from disclosures to Safecall are referred back into CEC by Safecall for investigation. CEC also undertakes a number of different investigations internally such as, disciplinary investigations, complaints investigations, ABH investigations and grievance investigations.
- 5.73 In September 2021, CLT approved a business case to recruit two dedicated Investigating Officers to help drive CEC's disciplinary, grievance, and ABH cases going forward. This is to be welcomed. Apart from this proposed team, CEC does not have a dedicated internal investigations team. Instead, investigations are handled by managers within CEC who are tasked with conducting these investigations on top of their day jobs. The typical approach to investigations conducted within CEC is for a Nominated Officer, who is normally a senior manager or Service Director within the service area in question, and an Investigating Officer, who is normally a more junior manager within the service area in question, to be appointed. The Nominated Officer is responsible for setting the terms of reference for any investigation, appointing the Investigating Officer, and has the decision-making authority on the steps that should be taken following the investigation. The Investigating Officer is responsible for conducting the fact-finding investigation and reporting their findings to the Nominated Officer.
- 5.74 The quality and robustness of the internal investigations examined by the Review Team is mixed. There are examples of investigations that have been conducted thoroughly and effectively. However, there are also examples of investigations where the depth and timeliness of the

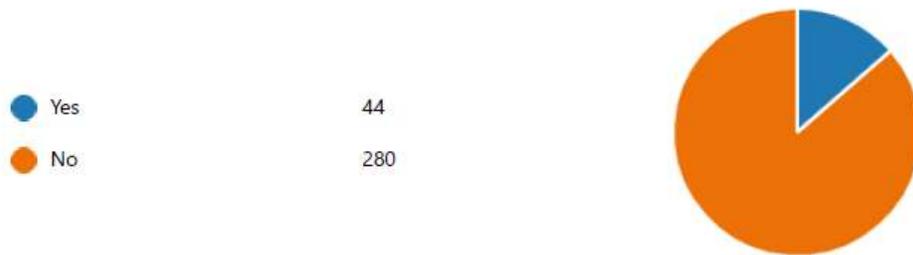
investigations could have been improved. There are a variety of reasons for this: Investigating Officers may be undertaking the investigation on top of their other responsibilities and are under time pressure; Investigating Officers do not receive sufficient training; there is a lack of support for Investigating Officers; and there is a general lack of resource made available to Investigating Officers.

- 5.75 Some of those tasked with conducting internal investigations explained to the Review Team that while they enjoy undertaking investigations and find them stimulating, they are time consuming, can be stressful, and impact on their ability to perform their day job. Investigating Officers can find themselves working on investigations late at night and in their own time as there is insufficient time during ordinary work hours to take forward investigative work (or vice versa, they may have to work on their own duties and responsibilities outside of work hours). Investigating Officers are generally expected to undertake investigations in addition to their own work and, with one exception, the Review Team saw little evidence of workloads being managed to enable Investigating Officers to prioritise taking forward an investigation. A case study which exemplifies the issue in practice is the Chief Internal Auditor's Phase 1 report on the issues raised by a service user, which is discussed more fully in Case Study 1 at **Appendix 3**. When conducting their investigation, the Chief Internal Auditor spent circa 292 hours on this matter, while still performing their role as Chief Internal Auditor.
- 5.76 A result of this approach to conducting investigations, on top of the day job, is that investigations can take longer than they should. The Whistleblowing Policy provides that most investigations should be completed within three months of a report being received. As noted below investigations are often not concluded in this timeframe.
- 5.77 In the last year, CEC's HR Department have started to create a pool of experienced Investigating Officers who will be tasked in the first instance to undertake internal investigations. This is to be welcomed but

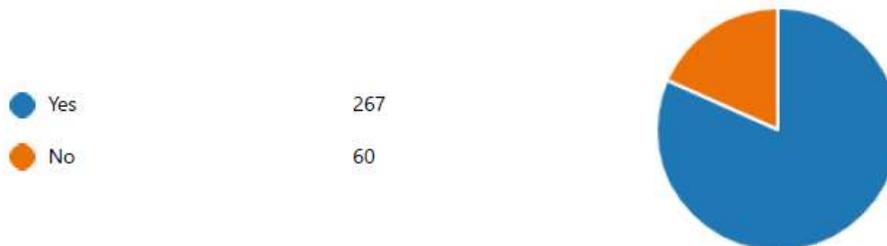
it also necessitates the reallocation of work so that Investigating Officers are not overburdened.

5.78 The quality and frequency of investigations training offered by CEC to its managers is an area of major concern. As can be seen from the answer to Colleague Survey question 45, of the 324 managers who responded to the Colleague Survey only 13.5% of them have received training on how to investigate whistleblowing complaints.

45. Have you had training on how to investigate whistleblowing complaints?



46. Would you like more training on how to deal with whistleblowing complaints?



5.79 A number of Investigating Officers who spoke with the Review explained that they received no training before conducting their first investigation and were expected to learn “*on the job*”. Some training on investigations has been provided by CEC which is to be welcomed and encouraged but there is currently no planned programme of investigator training. The Review Team has examined the investigations training offered by CEC to some of its Investigating Officers and I consider it could be improved by the inclusion of scenario-based training which should cover steps from the outset of a case, including early case

assessment based on a review of documents, consideration of early resolution, planning and scope of investigations, and conducting effective interviews.

- 5.80 Some of the Investigating Officers to whom the Review Team spoke explained that they often receive little support when conducting investigations. This observation was made in the context of whistleblowing and other relevant investigations. Investigating Officers are provided with template reports and witness statements, but these documents only provide details of the structure expected through the use of headings as opposed to providing any detailed guidance on how to produce an effective report or witness statement.
- 5.81 A lack of minute takers for interviews was identified as an issue. Investigating Officers explained that prior to a re-organisation some years ago the HR Department used to assist Investigating Officers by providing someone to take notes of interviews. Investigating Officers are now left, generally, to take the notes of interview themselves whilst conducting the interview at the same time. Some Investigating Officers stated that they are sometimes able to source note taking support from within their own service area, but that this does not always happen. The lack of a separate note taker will inevitably impact on the effectiveness of the questions asked and the quality of interview notes.
- 5.82 Some of the Investigating Officers to whom the Review Team spoke also explained that they felt that there was a lack of emotional support for Investigating Officers, particularly for those who have been tasked with conducting investigations into potentially distressing subject matters and/or matters that might have a criminal aspect. While support might be available, it could be better highlighted to those tasked with the investigative role. Some Investigating Officers who contributed to the Review said that it was not clear to them who they could approach for support. Of those who did avail themselves of support, there were

some Investigating Officers who said that the available support was not consistent and that the quality of support was varied.

- 5.83 The issues highlighted above are, by and large, the result of inadequate resource being allocated to the conduct of internal investigations. The current approach of tasking Investigating Officers with the conduct of investigations in addition to their day jobs, particularly those who lack skill and experience in investigations, is a false economy because it can affect the wellbeing and morale of Investigating Officers. Delays or poorly conducted investigations also impact negatively on a whistleblower and those subject to investigations. This approach results in an inconsistent output, with investigations taking longer than they should, and dissatisfaction with the process.
- 5.84 I welcome the recruitment of two dedicated Investigating Officers. This could be developed to build on the recommendation from the Inquiry that the organisation should consider the implementation of an independent investigation unit to investigate all allegations in relation to CEC employees of a sexual nature, domestic abuse, physical violence, harassment or stalking. This recommendation in the Inquiry has been accepted by CEC and consideration is being given to how it can be implemented.
- 5.85 **Recommendation 9: A programme of training for Investigating Officers should be developed and delivered, preferably by an external body skilled in effective investigation processes and techniques. Such training should be a precondition to being appointed as an Investigating Officer for the first time.** This training could be delivered as part of CEC's contract with Safecall. It could also involve some form of shadowing of experienced investigators by prospective Investigating Officers and should ideally involve some form of scenario-based training.

- 5.86 **Recommendation 10: CEC should consider the implementation of an independent investigation unit of appropriately experienced and properly trained Investigating Officers to work with Safecall on the conduct of “major/significant” (external) investigations; to support any other whistleblowing investigations where the 3-month target date for completion is not met; and to conduct other investigations, including disciplinary, bullying and harassment and complaints investigations which are complex or sensitive.**
- 5.87 **Recommendation 11: CEC should resource the use of note takers for investigative interviews.** This resource could either be found from the Directorate in which the investigation is being conducted or from a central business pool. Alternatively, those training as Investigating Officers could participate in interviews and take notes as part of their investigations training.
- 5.88 For further findings in relation to investigations see the answer to Question 5.

### **Delays in conclusion of investigations**

- 5.89 CEC’s Whistleblowing Policy provides that “*ordinarily a whistleblowing disclosure will be acted upon and concluded in good time. Good time will normally mean no more than three months.*” Of the 103 qualifying whistleblowing disclosures made since 1 October 2017, in only 23 cases was the investigation concluded and signed off by Safecall within this timeframe.
- 5.90 The length of time taken to conclude investigations, both those conducted by CEC internally and those conducted by Safecall, is a significant issue. Of the 103 qualifying whistleblowing disclosures made since 1 October 2017, 12 took longer than a year to conclude and be signed off by Safecall. The Review Team is also aware of long running disciplinary, grievance, and ABH investigations.

- 5.91 These delays and long running cases have a detrimental impact on the culture of CEC. Some of those who had made complaints/allegations discussed with the Review Team the delays associated with investigations and explained that the length of time taken to investigate their matter caused them stress and frustration and ultimately led to them losing faith in the process. Furthermore, some contributors who had been the subject of an investigation explained that the prolonged nature of investigations caused them stress and anxiety, and in some cases, this led to them taking time off work on sickness absence, which ultimately prolonged the investigation further. One Investigating Officer told us that *“Often staff will go off sick when they are being investigated, this can drag things out. Our normal workload suffers because we are trying to prioritise the investigation”*.
- 5.92 The principal reason for the time that investigations are taking, in the view of the Review Team, is that those conducting internal investigations are doing them on top of their day job and *“off the side of their desk”*. As noted above, the result of this approach to investigations is that timescales are rarely set or adhered to and investigations take longer than expected both by those making complaints and those being investigated. Although senior CEC personnel recognise that investigations take longer than specified in policies and that delays occur for a variety of reasons, the Review Team did not see any concerted efforts across the organisation to improve the timescales for investigations.
- 5.93 Another reason for investigations being delayed or prolonged is that investigations may be paused pending the outcome of another process. A recent example of this issue in practice is in relation to an ongoing case where two Colleagues who have made whistleblowing disclosures are also the subject of ongoing disciplinary investigations. In this case the two Colleagues have refused to participate in the disciplinary process until the whistleblowing disclosures have been fully

investigated. The original whistleblowing disclosures were made in late 2018 / early 2019 and are complex, containing numerous allegations. The disciplinary investigations commenced around the same time. The two Colleagues began sickness absence in 2019 and have remained on full pay to date. CEC agreed to investigate the whistleblowing disclosures before continuing with the disciplinary investigations. However, for a number of reasons the progress of the whistleblowing investigations has been delayed and as of the date of this Report, is still ongoing. Accordingly, the disciplinary investigations have not progressed in the intervening period. The result of this approach is that two Colleagues have been absent from work on sickness absence for a significant period of time on full pay and the disciplinary investigations have not progressed during that time. Even had the whistleblowing investigations hit the target time of a report no later than three months from initial disclosure, that would still have been a significant period over which to “pause” a disciplinary investigation with Colleagues on leave of absence and the resulting impact on both the provision of CEC services and the wellbeing of Colleagues, including the whistleblowers. CEC should reflect on the impact such an approach has had before taking a similar one in future and any such “pausing” of processes to allow others to continue should only be done in exceptional circumstances, the reasons for which should be properly documented. For further detail on the impact of multiple processes see paragraphs 9.17 to 9.20 below.

- 5.94 I make recommendations in the answer to Question 2 to ensure greater adherence to the three month target for completing whistleblowing investigations.

### **Pattern recognition**

- 5.95 Several cases highlighted to the Review Team have demonstrated a lack of pattern recognition or trend spotting when concerns are investigated by CEC. This issue has been particularly evident in some

cases involving ABH allegations which the Review Team has examined but the issues are also present in relation to some whistleblowing cases.

- 5.96 By way of example, the Review Team has spoken to four witnesses who raised separate concerns regarding alleged bullying and harassment of staff by a teacher at the school in which they worked. The concerns were all raised separately under a variety of CEC Policies including grievance, ABH, and whistleblowing. The nature of these complaints was very similar, but based on our review of the papers, each appears to have been investigated in isolation and without consideration of the other complaints that had been raised. None of these individual complaints were upheld due to an insufficiency of evidence to support the claims made. The ability to take account of other allegations of bullying relating to the same person when conducting a bullying investigation might enable CEC to investigate more widely and reach conclusions based on a consideration of all the evidence.
- 5.97 There are three key reasons for patterns of alleged misbehaviour not being identified: firstly, although the whistleblowing and HR teams do liaise, there is no formalised liaison regime to enable worrying trends to be identified and discussed; secondly, some investigations being conducted can focus narrowly on the issue at hand rather than seeking to speak to other people in the department to ascertain if they are aware of any wider issues; and thirdly, Safecall does not keep any data to help identify patterns in certain areas.
- 5.98 CEC formed a Strategic Complaints Group in April 2021. The purpose of this group is to better coordinate across Directorates on the nature of complaints or the responses to specific complaints. A similar approach could be taken to pattern recognition in whistleblowing, ABH and grievance reports.

5.99 **Recommendation 12: The Whistleblowing Team and the HR Department should have regular liaison meetings, in a similar manner to the Strategic Complaints Group, with the specific objective of identifying any concerning patterns of behaviour in an area.**

5.100 **Recommendation 13: In order to assist CEC in identifying concerning patterns of behaviour across multiple cases, the independent whistleblowing provider should keep a record of service areas and locations of disclosures, together with a general description of the nature of the disclosures, so that this can be shared with CEC's Whistleblowing Team.** I have in mind that the data held will not be specific to an individual and will be more thematic in nature. This data could then be used to help inform the scope of investigations and whether a location or department might benefit from more management support, including extra training and HR involvement.

### **Exit interviews**

5.101 An effective system of conducting exit interviews with Colleagues who are leaving the organisation would help to identify poor behaviours and other issues that would benefit from being addressed. Exit interviews are an effective means of identifying potential issues as people who are leaving the organisation should feel more comfortable raising concerns when they know that they no longer have to work with those about whom they are raising concerns. I understand that until recently, exit interviews were conducted by some line managers and that some people leaving the organisation received a questionnaire analogous to an exit interview. I do not consider this to be an appropriate means of CEC identifying as many concerns as it could. I understand that work is currently ongoing to imbed a more robust exit interview process within CEC.

- 5.102 **Recommendation 14: All Colleagues leaving CEC should be offered the opportunity to take part in an exit interview with a member of the HR Department.** This exit interview should take place after any reference has been given as this will help to ensure the Colleague feels able to speak more openly.

### **Performance management**

- 5.103 There is currently no formal means for Colleagues to provide anonymous feedback on the performance of their managers and those above them. I understand that in some annual review conversations with managers there are conversations between Colleagues and managers about their manager's performance as part of the "looking back" and "looking forward" conversations. The Chief Executive has also taken part in a "360" review process where there was upwards feedback. This "360" review process started in 2019/20 but has been interrupted by the Covid-19 pandemic. The result of there being no formal anonymised feedback process throughout the organisation is that, unless a significant issue arises that leads to a grievance or whistleblowing report, poor behaviours can be hidden and left unchecked. In addition, managers may be unaware that they are conducting themselves in a manner that may cause offence or upset to Colleagues, particularly behaviours which may fall short of matters that Colleagues feel require to be reported under a formal procedure such as ABH or grievance. Anonymous feedback reviews can be a useful tool in alerting managers to behaviours that they exhibit that might be of concern to more junior Colleagues.
- 5.104 **Recommendation 15: CEC should consider putting in place a system for Colleagues to provide anonymous feedback on the conduct and behaviours of managers as part of their annual performance reviews.** The feedback process could initially be started at Service Director level and above and be cascaded down as resources permit. Such a system may be offered as part of the HR

software suite used by CEC or could be requested in any future tender process.

## **Diversity and Inclusion**

- 5.105 There is a perception amongst some Colleagues that there is prejudicial treatment of Colleagues based on protected characteristics, such as race, gender and disability. A small number of people to whom the Review Team spoke raised concerns about such prejudice and some others raised a concern about a general lack of diversity at the top of CEC.
- 5.106 Since 1 October 2019, CEC has had in place a Diversity and Inclusion Strategy and Action Plan (“**Strategy and Action Plan**”). The Strategy and Action Plan was developed by a focus group which contained representatives from Councillors, Trade Unions and CEC’s colleague networks. The focus group continues to oversee the direction of the work in relation to diversity and inclusion and provides guidance on ongoing priorities for CEC. On 5 October 2021, a progress update on the Strategy and Action Plan was presented to CEC’s Policy and Sustainability Committee. A number of key achievements were noted, which covered progress and benchmarking; the collation of equalities data; equalities pay gap reporting; diversity and inclusion training; and CEC’s Violence at Work Policy.
- 5.107 The progress update also noted some areas of focus going forward. These included: activities to ensure Colleagues are aware of prejudice-incident reporting; developing bespoke e-learning; and examining CEC’s recruitment processes from a diversity and inclusion perspective.
- 5.108 In addition to the Strategy and Action Plan, CEC has been offering training in relation to diversity and inclusion. Training modules include “*What Equality and Diversity is and why it matters*” (completed by 4,039 Colleagues), “*Unconscious Bias*” (completed by 3,033 Colleagues),

*“Achieving Equality and Diversity”* (completed by 2,069 Colleagues), *“Equality and Diversity”* (completed by 2,888 Colleagues), and *“Direct and Indirect Discrimination”* (completed by 2,250 Colleagues).

- 5.109 CEC also has a number of colleague networks which aim to support Colleagues in order to create a more inclusive working environment and to tackle barriers to progression. Colleague networks include Stride (CEC’s LGBT+ colleague network), the Black, Asian and Minority Ethnic Network, the Network Engagement for Women’s Support, the Black and Minority Ethnic Equality Workers forum, and the SPARC Network, which is a network for Colleagues with disabilities and long-term health conditions.
- 5.110 I understand that as part of CEC’s Diversity and Inclusion Strategy a *“reverse mentoring”* scheme will commence in early 2022. This scheme will involve CLT and Colleagues from CEC’s Black, Asian and Minority Ethnic colleague network participating in discussion workshops facilitated by an external organisation.
- 5.111 CEC’s HR Department operates a system of Prejudice Based Incident Reporting to enable them to build a picture of the extent of prejudice-based incidents in CEC. Colleagues are encouraged to report all prejudice-based incidents to their line manager, who is then responsible for recording the incident with ASK HR, using a *“Report a Prejudice-Based Incident Form”*, and for investigating the matter. Colleagues are also able to report such incidents directly to ASK HR, who will then refer the matter to an appropriate manager to investigate. The manager responsible for investigating the matter is required to contact the colleague reporting the concern within 10 working days of being appointed to investigate. However, the Review did not identify any cross-logging between whistleblowing reports which raised discrimination issues and the Prejudice Based Incident Reporting Log and therefore there is a risk that data relating to prejudice-based incidents may be incomplete.

5.112 **Recommendation 16: Whistleblowing disclosures containing any issue of alleged discrimination based on a protected characteristic should be logged with the HR Department in the same manner as the Prejudice Based Incident Reporting used by the HR Department.** The cross-logging can be done with the subjects of the reporting being anonymised to minimise data privacy concerns.

6. **QUESTION 2: DO THE COUNCIL'S WHISTLEBLOWING PROCESSES AND PRACTICES, IN PARTICULAR THE COUNCIL'S 'WHISTLEBLOWING POLICY' (INTRODUCED IN MAY 2014) AND THE APPOINTMENT OF SAFECALL AS A WHISTLEBLOWING SERVICE PROVIDER, EMBODY GOOD PRACTICE AND PROVIDE AN EFFECTIVE VEHICLE FOR RAISING AND RESPONDING TO CONCERNS OF WRONGDOING?**

**Overarching findings**

- 6.1 The Whistleblowing Policy (implemented in May 2014 with the current version dated 23 May 2019) and the appointment of an independent hotline provider embody good practice and provide an effective vehicle for raising and responding to concerns of wrongdoing.
- 6.2 Having a whistleblowing system whereby all calls are logged and recorded is a crucial safeguard against matters not being addressed. The simple fact that all calls are logged via the independent provider adds robustness to CEC's whistleblowing processes as, once logged, there is a record of the disclosure. I understand that there may be only one other Scottish local authority that has an independent whistleblowing hotline similar to that operated by CEC. I commend CEC for its approach.
- 6.3 The fact that Safecall provides a triaging and investigations service is, as I understand it, unique to CEC amongst Scottish local authorities. This approach is an important and positive aspect of CEC's whistleblowing process that helps to give Colleagues confidence that there is an independent, confidential and safe means by which wrongdoing can be disclosed and investigated.
- 6.4 I also consider two positive features of the current process to be that Safecall, the independent whistleblowing provider, and other

independent investigators, investigate the most serious disclosures, and that Safecall provides oversight of all whistleblowing investigations.

- 6.5 The fact that GRBV receive a quarterly report on whistleblowing disclosures and the progress of whistleblowing investigations, provides the opportunity for oversight and governance of whistleblowing matters.
- 6.6 While overall I consider CEC's whistleblowing processes and practices embody good practice, there are areas in respect of which the whistleblowing processes and practices can be made more effective.

### **Whistleblowing – the legal definition**

- 6.7 "*Whistleblowing*" is a colloquial description for the making of a "*protected disclosure*" which was introduced into UK law by the **Public Interest Disclosure Act 1998** (the "**1998 Act**"). Under the 1998 Act, an employee or a worker who made a protected disclosure to his/her employer or to a "*prescribed body*" had a right not to suffer detriment for having done so. Any detrimental treatment gave rise to the right to complain to an employment tribunal. The 1998 Act has been incorporated into the **Employment Rights Act 1996** (as amended by the **Enterprise and Regulatory Reform Act 2013**) (the "**1996 Act**").
- 6.8 Under the 1996 Act, a disclosure qualifying for protection is a disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show that:
  - 6.8.1 a criminal offence has been committed, is being committed or is likely to be committed;
  - 6.8.2 a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (for example, this may include an obligation under a contract or a delictual duty to take reasonable care);

- 6.8.3 a miscarriage of justice has occurred, is occurring or is likely to occur;
  - 6.8.4 the health and safety of any individual has been, is being or is likely to be endangered;
  - 6.8.5 the environment has been, is being or is likely to be damaged;  
or
  - 6.8.6 information tending to show any matter falling within any one of the preceding points has been, is being or is likely to be deliberately concealed.
- 6.9 The key limitation is that the person making the disclosure must have a reasonable belief that the disclosure is in the “*public interest*” (my emphasis). The broad intent of the legislation is that enhanced statutory protection accorded to whistleblowers is not aimed at purely private workplace disputes.

**Whistleblowing – CEC’s definition**

- 6.10 CEC’s definition of whistleblowing is wider than the one set out in the 1996 Act. CEC’s Whistleblowing Policy defines whistleblowing in accordance with the 1996 Act, but it also states that these grounds “*does not represent an exhaustive list of areas covered by this Policy*” and notes that “*you should also raise any serious concerns that you may have about any aspects of Council business or the conduct of officers or members of the Council or other acting on behalf of the Council under this Policy*”. Under the Whistleblowing Policy, the independent whistleblowing provider is required to consider the public interest test in determining whether the concern reported is a whistleblowing matter. However, we have seen few cases diverted to be dealt with under other policies on the basis that the public interest element was considered not to be present.

- 6.11 We have also seen that many contributors had an expansive view of what amounted to whistleblowing and the term was generally used to describe any disclosure of misconduct, including conduct more appropriately characterised as a grievance or ABH matter.
- 6.12 There are disclosures which are clearly whistleblowing disclosures because they concern issues such as fraud, health and safety breaches, environmental damage or other criminal matters. However, whistleblowing is not intended to capture purely personnel issues, grievances or even isolated instances of behaviour which may be considered tantamount to bullying. There are disclosures which fall into a grey area between being a whistleblowing disclosure and a grievance or a personnel issue. As a general principle, disclosures which relate purely to personnel matters which do not concern a breach of the law are not whistleblowing disclosures. If, however, a disclosure concerns a criminal breach or a concealment of wrongdoing or a significant allegation of bullying, harassment or abusive conduct, particularly if it is directed at more than one colleague, it meets the test for whistleblowing.
- 6.13 Between May 2014, when the Whistleblowing Policy was put in place, and 30 June 2021, there were 137 whistleblowing disclosures, an average of almost 20 a year. Of those who responded to the Call for Evidence and spoke to the Review Team, only 15 of the 158 contributors wished to discuss a case which was reported under the Whistleblowing Policy (only 11 of these contributors spoke about a disclosure that they had made themselves). The remaining contributors wished to discuss wider cultural issues, primarily concerns about ABH and grievances.
- 6.14 For further detail on the number of reports made to Safecall see **Appendix 6**.

## Confidence in CEC's whistleblowing process

6.15 Almost 48% of Colleagues who responded to the Colleague Survey do not have confidence that a whistleblowing report to their line manager would be dealt with properly, whereas over 70% of those surveyed have confidence that Safecall will properly investigate any concerns raised with them by a whistleblowing report.

30. Do you have confidence that a whistleblowing report to your line manager would be properly investigated?



32. Do you have confidence that Safecall will properly investigate any concerns raised with them by a whistleblowing report?



## The role of the independent whistleblowing provider / Safecall

6.16 Safecall is CEC's current whistleblowing hotline provider. Safecall is a separate independent organisation and is not part of CEC. The Whistleblowing Policy states that the use of Safecall's whistleblowing hotline is the main way to make a whistleblowing disclosure.

6.17 As can be seen from the response to Colleague Survey question 32, above, having an independent whistleblowing hotline provider gives

Colleagues increased confidence that any concerns raised with them will be properly investigated, as opposed to whistleblowing disclosures made to CEC managers. CEC should continue to engage an external whistleblowing hotline provider.

- 6.18 The fact that Safecall also investigates reports categorised by them as “*major/significant*” (rather than CEC investigating them internally) is also commendable. It goes beyond what many other local authorities and public bodies do, and it demonstrates a commitment by CEC to identify and address wrongdoing. Safecall and the investigators they appoint are by and large former senior police officers with experience of handling police complaints.
- 6.19 The Whistleblowing Policy provides that when a disclosure is made, the independent whistleblowing provider will determine (after application of the public interest test referred to above) whether the disclosure is a “*minor/operational*” disclosure, or a “*major/significant*” disclosure, in consultation with the Monitoring Officer and the Whistleblowing Team. In most cases, those categorised as “*minor/operational*” disclosures are referred back into CEC for internal investigation, with the details of the investigation conducted and the findings being reported back to Safecall for oversight purposes. “*Major/significant*” disclosures are investigated by Safecall or by Safecall in conjunction with a CEC Investigating Officer. While the Policy does not explicitly provide for this, “*major/significant*” and “*minor/operational*” investigations are also on occasion outsourced to external investigators (usually an external firm of solicitors) for investigation.
- 6.20 There is, however, no formal framework for determining which matters should be constituted as “*major/significant*” matters and what should be considered “*minor/operational*” and therefore investigated within CEC. This therefore leaves this decision up to the discretion of the independent whistleblowing provider, with input from the Monitoring Officer and the Whistleblowing Team. The rationale for determining

whether or not a matter is “*major/significant*” or “*minor/operational*” is not currently formally documented and there is therefore no audit trail as to the categorisation of a matter as one or the other. The terminology itself may also downplay the seriousness of a reported issue if it is categorised as falling into the “*minor/operational*” category.

- 6.21 Since 2018, 94 of 115 whistleblowing disclosures received have been classified as “*minor/operational*” and eight as “*major/significant*” (12 were classed as non-qualifying and one was still to be categorised at the time of writing this Report). Given the legal definition of what amounts to a whistleblowing disclosure, I would anticipate that more disclosures would be categorised as “*major/significant*”. Given that it appears from the Colleague Survey and some individual contributors that Colleagues have a higher confidence in investigations conducted by Safecall (or other independent providers) rather than CEC, it would be helpful to the perception of the whistleblowing process if more investigations went down that investigative channel or another route that provides a similar level of independence.
- 6.22 The classification of a matter as “*minor/operational*” does not remove it entirely from the oversight of Safecall, because Safecall still review the investigation and findings of any internal whistleblowing investigation. However, Safecall does not conduct the investigation and is far less involved in overseeing the investigation than when the investigation is classified as “*major/significant*”. There was a perception amongst a small number of people to whom the Review Team spoke that the designation of a matter as “*minor/operational*”, and it therefore being investigated by CEC, is an attempt, in some cases, for CEC to cover up matters. The Review Team did not see any evidence to back up this perception. However, a clearly documented framework that sets out the considerations to be taken into account when classifying a matter as either “*major/significant*” or “*minor/operational*”, and then a clearly

documented assessment and decision as to the rationale for the classification would be beneficial in seeking to tackle this perception.

- 6.23 The Whistleblowing Policy also provides that, upon receiving a disclosure, the independent whistleblowing provider may direct the whistleblower to another CEC policy where the issue that has been raised might be more appropriately addressed. Safecall have informed us that they occasionally direct people to other avenues of recourse under other CEC policies. However, they noted that “*there is an argument for greater use of this avenue in certain cases*”.
- 6.24 I note that truly “*minor/operational*” matters might not meet the public interest requirement for a disclosure to be treated as a public interest / whistleblowing disclosure and it may be more appropriate for the matter to be handled through an early resolution process (see Recommendation 32) or under an alternative CEC policy. Cost savings could be achieved from more rigorous triaging at the outset and progressing “*minor/operational*” matters under early resolution processes or alternative CEC policies.
- 6.25 In addition to its role as hotline provider and its triaging and investigatory role, Safecall also assists CEC by acting as a “*critical friend*” in relation to investigations conducted by CEC. If a case is categorised by Safecall as “*minor/operational*”, the process requires the investigation to be conducted within CEC. However, Safecall will review the investigation report prepared to check the scope of the investigation conducted that the findings are evidenced based and reasonable and that the recommendations are commensurate with the findings. If Safecall is dissatisfied with any of these aspects, then the report is referred back to the Investigating Officer via the Whistleblowing Team to ask for additional work to be carried out or clarification to be provided. This is an important safeguard but this aspect of Safecall’s role is not well known or understood by Colleagues.

- 6.26 Safecall's role as a critical friend provides a safeguard in cases where investigations conducted in-house by CEC Investigating Officers fall short of the investigative standard expected. One example of this relates to an Initial Case Review conducted by CEC in 2017, which was the result of three whistleblowing disclosures received by Safecall. A first version of the Initial Case Review report prepared by a member of CEC's Quality Assurance Team contained eight recommendations. At a meeting to check for any factual errors and to discuss and finalise the recommendations, changes to the recommendations were requested and made which reduced the number of adverse findings and recommendations. After the conclusion of the Initial Case Review, and following a review by the Monitoring Officer, the Monitoring Officer asked Safecall to conduct a desktop review of both versions of the Initial Case Review Report. As a result of this review, Safecall and CEC agreed that the second, and final, version of the Initial Case Review report did not fully and sufficiently address the concerns raised. An independent investigation by Safecall was then commissioned to re-examine the initial whistleblowing disclosures. Following Safecall's investigation, they concluded that, although there were some amendments necessary in relation to the first version of the Initial Case Review report, this did not merit the reduction of the eight detailed recommendations to one all-encompassing "*vanilla*" recommendation.
- 6.27 The case discussed in Case Study 3 in **Appendix 5** also demonstrates how having an independent whistleblowing provider supports CEC with responding to concerns of child or public safety. The independent oversight offered by Safecall in that case study is to be welcomed. However, I note in the case study that there is a need to maintain documentation, from the very outset, which evidences the steps taken to interrogate the safety concerns raised.
- 6.28 I consider the key performance indicators ("**KPIs**") that Safecall is contractually obliged to report against would benefit from being refined.

Under Safecall's contract with CEC Safecall currently has to report on the following KPIs:

- 6.28.1 95% of calls to the whistleblowing hotline answered within 4 rings;
  - 6.28.2 95% of complaints acknowledged within 2 working days of receipt;
  - 6.28.3 95% achievement on reporting requirements;
  - 6.28.4 95% achievement on referrals to external agencies requirement; and
  - 6.28.5 that the assessment of all disclosures as to whether they are "*major/significant*" or "*minor/operational*" is assessed and a course of action agreed within 5 working days of a disclosure.
- 6.29 I consider these metrics do not address the most important factors that Safecall should be measured against to ensure that the process is working effectively. I make recommendations below in this regard.
- 6.30 **Recommendation 17: A documented triaging process should be put in place with a framework that sets out the considerations to be taken into account for disclosure classification.**
- 6.31 **Recommendation 18: The nomenclature currently used for classifying reports as "*major/significant*" or "*minor/operational*" should be revised to address a perception that "*minor/operational*" cases are not treated as seriously. Wording such as "*External*" and "*Internal*" would be preferable.**
- 6.32 **Recommendation 19: Consideration should be given to more cases being categorised as "*major/significant*" (external) and therefore investigated by Safecall or another independent provider; or, alternatively, having a third, middle, tier of case where**

**Safecall provide greater oversight as the “critical friend” of an internal Investigating Officer.**

- 6.33 **Recommendation 20: For more serious whistleblowing matters that are investigated internally, Safecall (or another provider) should provide “critical friend” monitoring from the outset of an investigation rather than waiting until the investigation report is submitted for review. The role of the “critical friend” should be set out in the Whistleblowing Policy.**
- 6.34 **Recommendation 21: Safecall, or any other independent whistleblowing provider, should report on the following KPIs:**
- 6.34.1 **Number of disclosures categorised as “major/significant” or “minor/operational” (or any new naming convention);**
- 6.34.2 **Number of disclosures diverted to be dealt with under another policy;**
- 6.34.3 **Number of disclosures categorised as not qualifying as a whistleblowing disclosure;**
- 6.34.4 **Number of disclosures dealt with by way of early resolution (see Recommendation 32); and**
- 6.34.5 **Number of disclosures investigated within 3 months / not investigated in this time frame with reasons given.**
- 6.35 **Recommendation 22: Immediate and ongoing steps taken to address any public safety issue should be recorded in a document maintained by the independent whistleblowing provider which sets out the steps taken, and to be taken, to check on the safety concerns reported by a whistleblower. This should be shared with GRBV at the first quarterly meeting following the disclosure.**

## The Whistleblowing Team

- 6.36 CEC has a centralised Whistleblowing Team that sits within CEC's Legal and Assurance service and reports directly to Nick Smith in his role as CEC's Monitoring Officer. The Whistleblowing Team has three team members, plus Mr Smith. The role of the Whistleblowing Team is to manage the operation of CEC's whistleblowing processes by assisting with case management, co-ordinating and supporting Investigating Officers, and co-ordinating and supporting the contact with Safecall.
- 6.37 The Whistleblowing Team has responsibility for preparing the whistleblowing oversight reports provided to GRBV and for following up on any actions or recommendations arising out of a whistleblowing investigation report. Please see paragraphs 6.59 to 6.69 for further discussion on the reporting of whistleblowing cases to GRBV.
- 6.38 The Whistleblowing Team is also able to provide advice to Colleagues on the operation of the Whistleblowing Policy and the processes involved. However, given the centralised role and the size of the Whistleblowing Team, it is not ideally placed to provide consistent support on demand to those who are considering blowing the whistle or those who have blown the whistle. As I observe at paragraph 6.70 to 6.73 the support provided to whistleblowers needs to be improved, this could be achieved by the creation of a new "*Whistleblowing Champion*" role. The Whistleblowing Champion's role would be to provide impartial and confidential advice to those who want more information or support in relation to the whistleblowing process. These Champions can, in turn, approach the Whistleblowing Team for support and guidance should they need it. These Whistleblowing Champions should be given time in addition to other work responsibilities to perform this role. By imbedding a Whistleblowing Champion within each service area this should increase the awareness of whistleblowing within the Council and make support more accessible for those who need it. They can also assist in

promoting Whistleblowing training and the roll out of communications strategies to Colleagues.

- 6.39 **Recommendation 23: A senior colleague in every service area should be appointed as a Whistleblowing Champion.**

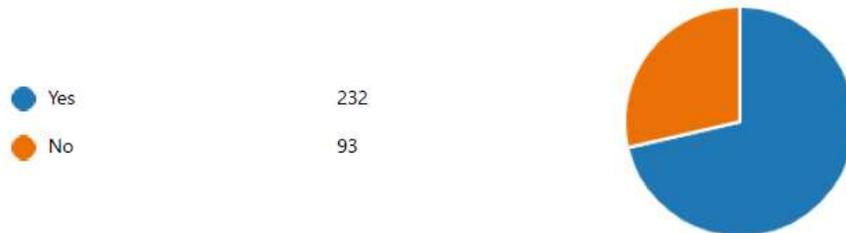
### **The role of HR**

- 6.40 CEC's HR Department is a centralised department, and no HR consultants sit within the separate Directorates and departments of CEC. Instead, there are relationship teams within the HR Department which align with the various Directorates. The role of these relationship leads is to work with the senior management teams within these Directorates to help them deliver their service plans.
- 6.41 The HR Department operates a function called ASK HR. It acts as the front-line HR service of CEC for Colleagues and managers to raise HR related queries and consists of a team of around 12 HR professionals. ASK HR operates via a customer relationship management system and a phone line. The role of ASK HR is to be the first port of call for HR related queries who can then escalate any issues if required. I understand that ASK HR currently fields around 3,000 telephone calls every month.
- 6.42 The satisfaction levels with ASK HR consistently remained above 80% in the period from October 2018 to March 2021. However, some of those to whom the Review Team spoke raised concerns about how this approach has removed the ability for Colleagues and managers to have a conversation with an individual in the HR Department in order to talk through an issue. It was explained to us that one of the reasons ASK HR was put in place was to ensure that there was a centralised record of conversations with the HR Department and to help drive a more consistent approach to HR queries.

- 6.43 The HR Department has a Case Management Team whose role is to support and guide managers who are dealing with more complex HR related issues, whether that be grievances, disciplinary matters or long-term absences. The Review Team understands that the Case Management Team is involved in assisting managers in most of CEC's ongoing disciplinary cases. As at November 2021, the HR Case Management Team was managing 163 active cases, with 88 of those being disciplinary cases. The attendees at the Investigating Officers' Review workshop agreed that the HR case officers were generally helpful and provided useful support for investigations when required. However, one Investigating Officer noted their concern that the HR case officer they dealt with was "*completely swamped*" with around 45 active cases. The Investigating Officer suggested that this has led to delays with some cases due to a lack of bandwidth.
- 6.44 There was a perception among a small number of those to whom the Review Team spoke that the HR Department are on the side of management and are there to help CEC defend its position as opposed to being an impartial conduit between all Colleagues, including those in management roles. We were told that as a centralised function, the HR Department is not as visible or approachable to most Colleagues as it was previously. Given the financial constraints of CEC, a return to locating HR Colleagues within Directorates may not be feasible. Instead, CEC should reflect on how it can make its HR Department accessible to Colleagues, including how it can provide effective and helpful guidance and advice to all Colleagues, not just those in management roles.

## Manager reports

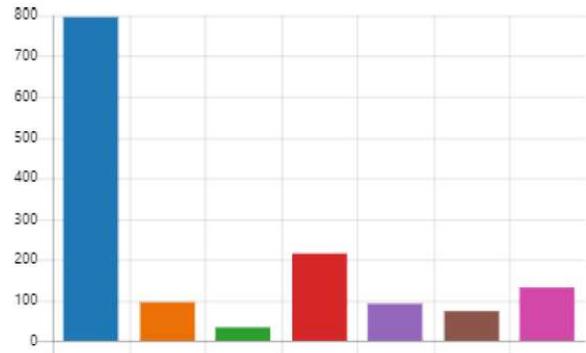
43. Do you know how to respond if an employee blows the whistle or raises a concern with you?



- 6.45 Under the Whistleblowing Policy managers are required to report to Safecall all whistleblowing reports they receive. While, based on the answer to Colleague Survey question 43, some managers who responded appear to know what to do if an employee raises a concern with them, there is little evidence of managers reporting whistleblowing disclosures to Safecall. Of the 137 whistleblowing disclosures between the start of the current whistleblowing process in May 2014 and June 2021 there have only been 22 manager referrals to Safecall (see **Appendix 6**). In the period May 2014 to 31 December 2018 there were only two manager referrals. While the number of manager referrals in recent years has improved, the Review Team anticipates there is under reporting and considers that more needs to be done to encourage managers to make reports to Safecall.
- 6.46 The Review Team has received anecdotal evidence that some managers are unclear as to what sort of concerns constitute a whistleblowing disclosure and are therefore not passing on concerns to Safecall which maybe should be referred.
- 6.47 The lack of management referrals to Safecall is a serious issue because, as seen in the answer to Colleague Survey questions 5 and 29, most people would report a serious concern to a manager in the first instance.

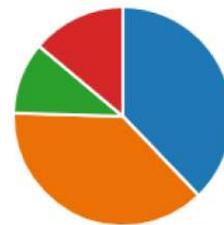
5. If you did have a serious concern, what would you do?

● I would raise it with my manager	798
● I would raise it with a more senior manager	94
● I would raise it with HR	32
● I would raise it with my Union rep	214
● I would consult the Whistleblowing Policy	90
● I would do nothing	74
● Other	132



29. If you had to make a whistleblowing report, who would you make a whistleblowing report to?

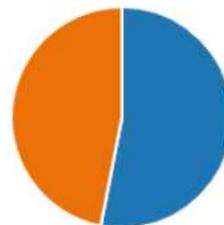
● Safecall	596
● Your line manager	593
● Senior management	167
● Other	219



6.48 The failure of managers to then report concerns to Safecall could go some way to explaining the perception that whistleblowing reports are not actioned when reports are made to a manager.

14. If you made a report to your manager, would you have confidence that they would deal with it properly?

● Yes	755
● No	667



30. Do you have confidence that a whistleblowing report to your line manager would be properly investigated?



6.49 The above responses show a lack of confidence by 661 current Colleagues that a whistleblowing concern reported to their line manager would be properly investigated.

6.50 In respect of managers' perceptions, some managers who spoke to the Review Team explained that there was a perception that the Whistleblowing Policy was being "*weaponised*" as a means of "*getting at managers*" by disgruntled staff. The Review Team has seen little evidence of this perception being played out in practice. Indeed, the relatively low number of whistleblowing disclosures each year compared to the size of the organisation suggests that the Whistleblowing Policy is not in fact being used frequently as a tool to attack managers. The Review Team is aware of one case where, on the face of it, the whistleblower used the whistleblowing line to make potentially malicious claims, but the Review Team does not consider this to be a widespread issue on the basis of the evidence of the whistleblowing disclosures which have been made. However, it is a concern that this perception exists amongst some managers as they are the same individuals tasked with cascading down information to more junior staff about the Whistleblowing Policy, which may result in insufficient or inaccurate information being provided to those Colleagues. It should be noted that within the current Whistleblowing Policy there is a provision for dealing with malicious disclosures. In addition, more rigorous triaging by Safecall when a disclosure is received, so that non-qualifying

disclosures are not treated as amounting to whistleblowing, should help to address this perception.

- 6.51 **Recommendation 24: CEC should take steps to train managers on how to identify a whistleblowing disclosure.** CEC should emphasise to managers that if they are ever in doubt, they should make a report to Safecall or speak to a Whistleblowing Champion for their service area. The training should extoll the benefits of whistleblowing and seek to dispel any perception that whistleblowing is routinely being misused by those making disclosures.
- 6.52 **Recommendation 25: All whistleblowing disclosures made to CEC managers and Councillors should be referred to the independent whistleblowing provider, so that they are recorded as whistleblowing disclosures and dealt with under the whistleblowing process, at least initially.**

### **Anonymity**

- 6.53 Those making a report to Safecall can do so anonymously if they wish. Persons reporting to Safecall can do so with: (i) full anonymity, where neither Safecall nor CEC are aware of the whistleblower's identity; (ii) partial anonymity, where Safecall are aware of the whistleblower's identity but CEC are not made aware of their identity; and (iii) no anonymity, where the whistleblower's identity is made known to CEC. It is the choice of the whistleblower as to whether they wish to have anonymity.
- 6.54 The reports to GRBV show that 55% of the disclosures made between 2018 and 2021 were made anonymously<sup>14</sup>. This may indicate that those reporting issues are concerned about potential detrimental treatment should their identity be known.

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<sup>14</sup> In 16% of the disclosures, the whistleblower's name was known to Safecall but not CEC. In 29% of cases the whistleblower's name was disclosed to CEC.

6.55 In cases of full anonymity, the whistleblower is provided with confidential log in details to access Safecall's portal so that they can be contacted about their disclosure. I consider this to be an effective mechanism for protecting the anonymity of the whistleblower, whilst still enabling them to be contacted and kept up to date if needed. I am satisfied that under the current procedure, when a whistleblower makes a disclosure on an anonymised basis, the anonymity of the whistleblower is protected insofar as it can be. However, the reality is that any investigation process may lead to the subjects and witnesses working out who made a disclosure. Steps are taken by Safecall or the Investigating Officers to guard against this, but it cannot be completely avoided if matters are to be investigated.

6.56 While the provision of anonymised whistleblowing is helpful in giving people the confidence to make a disclosure, the Whistleblowing Policy explains that anonymised disclosures are more difficult to progress, but they will be investigated. The reality is that anonymised disclosures may be more difficult to prove because the credibility and reliability of the person making the disclosure and the weight of their evidence cannot be assessed. However, more could be done by CEC to interview anonymous whistleblowers and to explain to them that the investigation may be constrained by the fact the disclosure is made anonymously, and that therefore the credibility and reliability of the evidence provided, and its weight, is more difficult to assess. For more on this see paragraphs 9.7 to 9.11.

### **Interaction with other policies**

6.57 At present there are misalignments between the Whistleblowing Policy and other CEC policies and procedures, such as the Grievance Procedure and the Disciplinary Procedure. This issue was identified in a review in 2015 and it was recommended that steps be taken to review CEC's policies to ensure that they aligned with the Whistleblowing Policy. Little progress has been made to align the related policies. In

July 2020, CEC's Chief Internal Auditor published a report on CEC's Policy Management Framework which assessed the adequacy of the framework and its operating effectiveness. One of the agreed management actions in the report was that a full review and refresh of the CEC's Policy Register be carried out to ensure that all of the out of date and draft policies in the register were identified. It was also agreed that prior to inclusion in the Policy Register, a check should be performed to confirm that policies had been prepared using the CEC's policy template.

- 6.58 Many individuals to whom the Review Team spoke, in particular managers, explained that they were often unsure which policy was applicable to a particular situation as a result of this confused policy landscape. This confusion is not conducive to having in place effective arrangements for dealing with reports of wrongdoing.

### **Whistleblowing governance arrangements**

- 6.59 Under the Whistleblowing Policy, Safecall is required to produce quarterly and annual summary reports regarding whistleblowing disclosures for GRBV's consideration. These reports are intended to provide a narrative covering the whistleblowing activity for the preceding quarter / year.

- 6.60 GRBV is also provided with two reports prepared by CEC's Whistleblowing Team:

6.60.1 An "A Agenda" Report – which is a publicly available document that provides a high-level overview of the operation of CEC's whistleblowing service, detailing the number of whistleblowing disclosures in the period and the cost of the service to CEC; and

6.60.2 A "B Agenda" Report – which is a confidential document that provides a more detailed overview of the operation of CEC's

whistleblowing service through the inclusion of two status tables which cover:

- (a) Table 1 – an overview of all live whistleblowing investigations at that time. This table is reviewed and approved by Safecall; and
- (b) Table 2 – a summary of each whistleblowing investigation that is being considered for closure. These summaries include a summary of the original disclosure, the findings of the investigation, and any action being taken.

6.61 With regard to the overview provided in Table 1 of the B Agenda Report, the descriptions provided can be high level and vague. Some of the descriptions would not allow GRBV to know what the disclosure related to and whether greater scrutiny of the matter should be considered. An example of this issue can be seen in Case Study 3 at **Appendix 5**. CEC's Whistleblowing Team should consider the level of detail provided to GRBV in these reports and ensure that the short descriptions of whistleblowing disclosures provide sufficient information to inform GRBV what the disclosure concerns.

6.62 In contrast to the level of detail provided in these reports, the document packs that the GRBV committee members receive in advance of meetings are often hundreds of pages in length, with some packs being over 500 pages long covering internal audit reports and detailed financial statements. This volume of information, combined with the limited detail in the whistleblowing summary reports, risks inhibiting GRBV's ability to effectively scrutinise CEC's whistleblowing processes and individual reports.

- 6.63 An audit by the Chartered Institute of Internal Auditors on the effectiveness of GRBV dated 2 August 2021<sup>15</sup> concluded that it fulfilled its core remit but the current design of the arrangements for GRBV limit the effectiveness of the scrutiny it undertakes. The audit observed that CEC's governance's structures will be revised post the May 2022 elections and recommended that consideration should be given as to whether CEC would benefit from an audit and risk committee. It also observed that GRBV had a busy agenda, that the papers provided to it should be more concise, and that GRBV may wish to revisit the balance of focus on strategic and operational matters and its scrutiny activities focused on the outcomes/impact of CEC policies. As noted above, the GRBV meeting packs are generally hundreds of pages in length. The information provided can be voluminous and the time to consider the papers in advance of Committee meetings can be short. The Review Team has watched a number of the recordings of GRBV committee meetings, and we see that committee members work hard to review the papers and to provide effective oversight. However, the Review Team understand that due to the length of the papers needing to be reviewed, GRBV requested that shortened summaries of whistleblowing reports be provided. I am concerned that scrutiny of whistleblowing reports and the progress of investigations risks being somewhat lost amongst the competing priorities of GRBV. I am informed that the Monitoring Officer has recently sought to address this concern by providing time for additional confidential questions regarding whistleblowing reports to be raised as part of GRBV agenda planning meetings which take place in advance of committee meetings.
- 6.64 Under the Whistleblowing Policy, the Monitoring Officer and / or the Executive Director of the relevant service area and / or the Chief Executive and / or Council Leader initially receive details of disclosures in advance of them being presented to GRBV. In addition, they also

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<sup>15</sup> Chartered Institute of Internal Auditors for the City of Edinburgh Council, Review of the Effectiveness of Scrutiny of Governance, Risk and Best Value Committee – 2 August 2021

receive all investigation reports from Safecall in advance of these being presented to GRBV. These investigation reports are provided for information and comment only. However, the Review Team is aware of a small number of instances where the detail of a whistleblowing disclosure has not been formally reported to GRBV in accordance with the quarterly reporting schedule, due to competing policy considerations and other factors. In these cases, the existence of the disclosures has been made known to the Group Leaders and the GRBV convener but, in my view, the formal quarterly reporting to GRBV should take place without exception.

6.65 As noted in relation to Case Study 3 in **Appendix 5** there can be significant delays between the original whistleblowing disclosure being received by Safecall and the case first being notified to GRBV and also between the investigation concluding and the final report to GRBV. Based on a review of disclosures reported to GRBV between January 2018 and September 2021 there was a gap of six or more months between the disclosure being received and the first report being made to Safecall in 65 cases out of 115 cases. GRBV meets quarterly, therefore if a meeting is missed it will be another three months before the disclosure can be reported on again to GRBV. Ensuring disclosures and the outcomes of investigations are reported to GRBV timeously is an important aspect of good governance.

6.66 **Recommendation 26: CEC's Whistleblowing Team should report all whistleblowing disclosures and reports to GRBV in accordance with the quarterly reporting cycle, without any exceptions.**

6.67 **Recommendation 27: As part of any review of CEC's committee structure, consideration should be given to setting up a sub-committee to scrutinise whistleblowing disclosures and reports.**  
This sub-committee's remit would be to oversee whether whistleblowing investigations are being fully reported and progressed in a timely manner and that any recommended actions following investigation are

implemented. Separate, non-voting, experts could sit on the sub-committee. I recommend that the sub-committee has the possibility of meeting on an *ad hoc* basis so that the in-built delays of the current system do not prevent whistleblowing reports from being reported to the sub-committee for months, in the way that currently occurs with reports to GRBV. I consider that these meetings should be in private to ensure effective scrutiny of confidential materials.

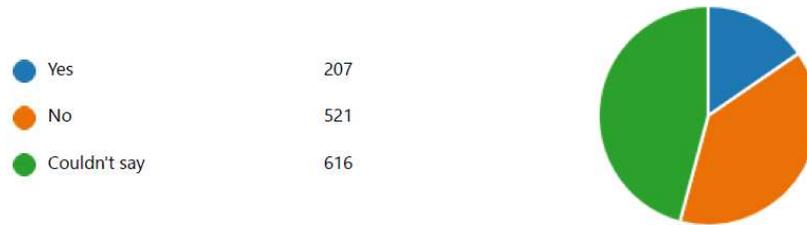
6.68 I observe that the whistleblowing policy was the subject of a legal review in 2015 which led to some improvements. This Review has been very thorough and my recommendations, if implemented, should serve to greatly improve CEC's whistleblowing processes and culture. To help sustain these improvements, it will be important that the actions taken are audited and, more generally, the effectiveness of the whistleblowing process should be periodically reviewed (albeit not the same extent as this Review).

6.69 **Recommendation 28: The whistleblowing process should be periodically audited by internal audit and, perhaps once every five years, reviewed by an external provider.**

#### **Support for whistleblowers and those about whom disclosures are made**

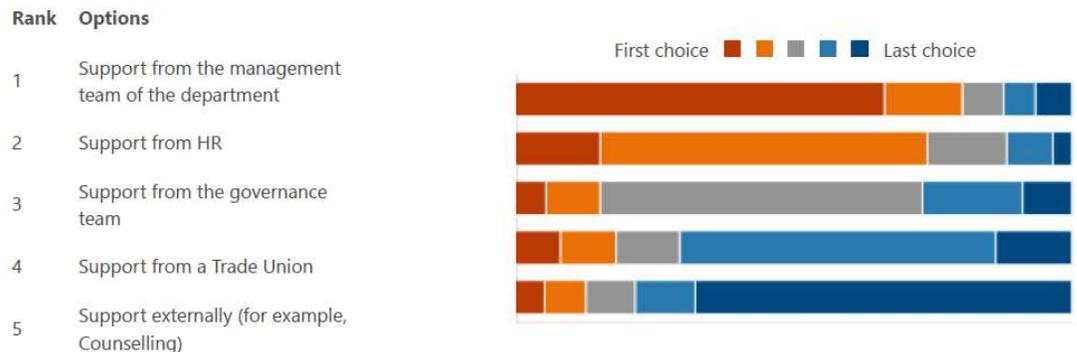
6.70 Apart from allowing for anonymous reporting and confirming that anyone who blows the whistle will be protected from any form of victimisation as a result of making a disclosure, the Whistleblowing Policy does not set out how the whistleblower, or anyone who is the subject of a whistleblowing disclosure, will be supported. In practice, we have seen a mixed picture in terms of the support provided to whistleblowers and those subject to whistleblowing investigations, with support generally being *ad hoc* and dependent on the department in which the whistleblower and / or the subject are based.

36. Do you consider that those who raise concerns are properly supported?



6.71 The majority of those responding to the Colleague Survey indicated that either those who raise concerns are not properly supported or could not say whether they were supported. This lack of formal support, or a perception that there is a lack of formal support, is a barrier to the reporting of concerns. If Colleagues feel that they will not be supported following the making of a disclosure, or if they have seen other Colleagues who have not been so supported, then they will be less likely to make a whistleblowing disclosure.

37. What further support could be given to those who raise concerns or blow the whistle?



6.72 As can be seen from the responses to question 37 of the Colleague Survey, Colleagues expect managers to be able to provide support that is needed. As noted above, managers are the main port of call for those who wish to raise concerns. They are therefore ideally positioned to provide any support whistleblowers might require or to signpost relevant support. Managers should be effectively trained on how to treat those

reporting concerns with empathy and how to create a work environment that encourages the raising of concerns.

6.73 **Recommendation 29: CEC should take steps to ensure that anyone who receives a whistleblowing disclosure asks the person raising the matter what support they may need and how this can be provided. This support, where relevant, should also be offered to those who are the subject of a whistleblowing investigation.** The support may include:

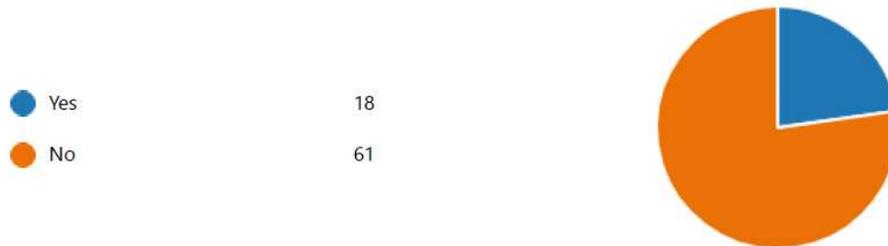
- 6.73.1 access to a confidential contact who can provide information and advice on the procedure for raising concerns and support during the process, for example the proposed Whistleblowing Champions;
- 6.73.2 counselling or psychological support;
- 6.73.3 occupational health support; and
- 6.73.4 considering, with the person who has raised a concern, a range of actions to reduce any consequences they are facing as a result of raising the concern, including making adjustments at work.

#### **Keeping the whistleblower informed and managing expectations**

6.74 The Whistleblowing Policy does not set out how the whistleblower will be kept informed as to the progress of the investigation. A failure to be kept informed is a theme that has been highlighted by those who contributed to the Review, with eight of the eleven contributors who considered that they had made a whistleblowing disclosure expressing their disappointment that they were not informed of the progress of what they perceived to be “their case”. The answer to Colleague Survey question number 26 also demonstrates that this is an issue (although

the survey answers are likely to relate to investigations more broadly, see my comments at paragraph 7.4).

26. If yes, were you kept informed of the progress of the investigation into your investigation and the outcome?



6.75 It is considered best practice to keep whistleblowers informed as to the progress of the case. In the European Union, there is a legal obligation on organisations to inform whistleblowers within a reasonable timeframe about the action envisaged or taken as follow-up to their whistleblowing report and the grounds for the choice of that follow-up<sup>16</sup>. In all cases, the whistleblower should be informed of the investigation's progress and outcome with a reasonable timeframe for informing a reporting person being three months. If after three months the appropriate follow-up is still being determined, the whistleblower should be informed about this and about any further feedback to expect.

6.76 Furthermore, the Whistleblowing Commission Code of Practice<sup>17</sup> states that as part of whistleblowing arrangements, there should be written procedures covering the raising and handling of concerns. The written procedures should require that a worker raising a concern (i) be given an estimate of how long the investigation will take; and (ii) be told, where appropriate (subject to the **Data Protection Act 2018**, ongoing investigations or the rights of third parties), the outcome of the investigation.

<sup>16</sup> EU Whistleblowing Directive 2019/1937 – preamble, paras 57 and 58

<sup>17</sup> The Whistleblowing Commission – The Code of Practice

- 6.77 I understand from speaking with the Whistleblowing Team that, since 2019, there has been an increased focus on the provision of feedback to whistleblowers at the conclusion of investigations. However, they noted that due to capacity issues (the Whistleblowing Team being relatively small and the members of the Whistleblowing Team having other responsibilities on top of whistleblowing) and the fact that the process of providing feedback is not systemised, the provision of feedback is not as regular as it should be. To improve the whistleblowing process and to improve feedback to both whistleblower and the investigation subjects, the Whistleblowing Team has recently moved to a case officer model, whereby when a disclosure comes in it is allocated to a case officer who is allocated to follow the disclosure through the whole process.
- 6.78 In addition to keeping the whistleblower informed as to the progress of the case, managing the whistleblower's expectations at the outset of the case is equally important. The UK Government advises that it is good practice for managers, when dealing with disclosures, to manage the expectations of the whistleblower in terms of what action and/or feedback they can expect as well as timescales for providing updates.<sup>18</sup> While I understand from Safecall that some effort is made to manage the expectations of a whistleblower and to let them know what to expect in terms of feedback and timescales at the outset of a matter, there is no formal approach to managing the expectations of whistleblowers.
- 6.79 Some of those to whom the Review Team spoke were unaware that "*minor/operational*" investigations are referred back into CEC for investigation. As part of the communications and training for all Colleagues in relation to the Whistleblowing Policy and again during the managing expectations process for whistleblowers, this should be

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<sup>18</sup> UK Government – Whistleblowing: Guidance for Employers and Code of Practice (BEIS)

included so that they are aware of the process by which their concerns will be investigated.

- 6.80 An issue that is exemplified by Case Study 2 (see **Appendix 4**), is that a whistleblower may have a recollection of being told at the start or during a whistleblowing investigation that they would be given more information than they are actually given at the end of the investigation. This may arise from informal conversations between the whistleblower and the Investigating Officer or other CEC personnel, or as a result of differing recollections of discussions where a contemporaneous note of the discussion with the whistleblower is not kept.
- 6.81 **Recommendation 30: CEC, in conjunction with Safecall, should develop an agreed protocol for setting a whistleblower’s expectations at the point of commencing an investigation. A Draft Expectation Management Protocol for managing expectations of whistleblowers is at Appendix 7.**
- 6.82 **Recommendation 31: Accurate and contemporaneous minutes should be taken by CEC at all meetings and during all conversations with whistleblowers and other interested parties.**

### **Model Early Resolution Process**

- 6.83 As I note in the answer to Question 1, the lack of facilitated early resolution of whistleblowing reports and the time taken to conclude whistleblowing investigations is a recognised issue which serves to undermine the whistleblowing culture of CEC.
- 6.84 The ***Scottish Public Services Ombudsman (Healthcare Whistleblowing) Order 2020*** (the “**2020 Order**”) amended the ***Scottish Public Services Ombudsman Act 2002*** (the “**2002 Act**”) to create an obligation on the SPSO to publish a model complaint handling procedure for the handling of whistleblowing reports by health service

organisations<sup>19</sup>. Prescribed health service bodies are legally required to have in place a whistleblowing complaints procedure that complies with the model procedure. The model procedure encourages early resolution by way of internal action to resolve a concern within five working days. An investigation only takes place if the whistleblower is not satisfied with the proposed resolution or action is not taken within five working days. An investigation is commenced with the aim of completing the investigation and responding to the whistleblower with a proposed internal resolution within 20 working days. If the whistleblower remains dissatisfied, they can bring their concerns to the SPSO for an independent external review.

6.85 **Recommendation 32: CEC should instigate an early resolution process and stricter timelines for the conduct of whistleblowing investigations. A Draft Model Early Resolution Process is set out in Appendix 8.** This approach may also be suitable for other CEC policies and processes.

6.86 **Recommendation 33: CEC should include the Draft Whistleblowing Principles set out in Appendix 9 in the Whistleblowing Policy and apply them to all whistleblowing matters.**

### **Monitoring Officer Reports**

6.87 Section 5(1) of the *Local Government and Housing Act 1989 Act* (the “1989 Act”) requires CEC to designate one of its officers to carry out the duties of the Monitoring Officer. In Scotland, the Monitoring Officer cannot be the chief financial officer of the local authority.

6.88 The primary role of CEC’s Monitoring Officer is to report to CEC on any action, proposed action or failure to take action which they believe has already or might in the future give rise to either:

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<sup>19</sup> Section 16B, 2002 Act

- 6.88.1 a contravention of legislation, law or statutory code of practice;
- 6.88.2 maladministration or injustice as that is defined in the legislation dealing with the role of the SPSO.
- 6.89 A Monitoring Officer's report is concerned with contravention of the law or maladministration only in relation to the actions or omissions of CEC, committees or sub-committees, or officers or employees of CEC.
- 6.90 Before preparing a Monitoring Officer report, the Monitoring Officer has a duty to consult, as far as is practicable, with CEC's head of paid service and chief finance officer. The full Council must consider the Monitoring Officer's report within 21 days of copies of the report being sent to all Councillors of CEC. The consideration of this report cannot be delegated to any committee or sub-committee. In addition, if the Monitoring Officer's report expresses serious concern about a proposed action, that action is, by law, effectively suspended until CEC has considered the Monitoring Officer's report.
- 6.91 The role of the Monitoring Officer is independent and not subject to direction by CEC. CEC cannot instruct the Monitoring Officer either to prepare a report in respect of a particular matter, or not to prepare a report. The duties on the Monitoring Officer are to be performed by the Monitoring Officer personally or, where they are unable to act owing to absence or illness, the Monitoring Officer role may be carried out by a nominated deputy.
- 6.92 A plain reading of section 5 of the 1989 Act requires a Monitoring Officer to prepare a report in all instances where CEC or a CEC employee breaks the law. Customs and practice amongst Monitoring Officers, however, is to be more selective in the matters which are the subject of a Monitoring Officer report because otherwise the Monitoring Officer role would require considerably more resource. My understanding is that, in practice, Monitoring Officer reports across

councils are relatively rare and instead councils set up systems, such as whistleblowing processes and other specialist teams, for dealing with more routine alleged breaches.

- 6.93 The advantage of the Monitoring Officer producing a report in terms of a culture of openness and transparency is that it must, by law, be reported to the full Council. Whereas, in CEC's current processes, whistleblowing reports are, in contrast, shared with GRBV and only on request.
- 6.94 At CEC, Nick Smith, Service Director for Legal and Assurance, fulfils the role of Monitoring Officer. Having a solicitor, advocate, barrister, or legal executive represents good practice and the Law Society of England & Wales have called for legislative change to require that the Monitoring Officer is a member of the legal profession.
- 6.95 Mr Smith informed us that since he became Monitoring Officer in February 2016, he has produced five monitoring reports concluding that maladministration had occurred. Mr Smith keeps a log of matters reviewed by him in his capacity as Monitoring Officer whether or not those reviews lead to a Monitoring Officer's report.
- 6.96 I understand that very few local authorities in Scotland have received Monitoring Officer reports. Custom and practice appears to be that Monitoring Officer's reports are used sparingly across Scotland's local authorities. While that may be the case, I am not aware of any criteria which explain when a specific report by a Monitoring Officer should also be produced and it would be helpful if CEC's Monitoring Officer worked with other Monitoring Officers across Scotland to put such criteria in place.

**7. QUESTION 3: DO THE COUNCIL'S ELECTED MEMBERS, OFFICERS, COLLEAGUES AND FORMER COLLEAGUES FEEL EMPOWERED TO RAISE CONCERNS OF WRONGDOING? ARE THERE ANY BARRIERS OR OTHER REASONS, ACTUAL OR PERCEIVED, WHICH INHIBIT THE REPORTING OF WRONGDOING WITHIN THE COUNCIL?**

**Overarching findings**

7.1 Most of those who responded to the Colleague Survey indicated that they would more likely than not make a whistleblowing disclosure if the need arose. While this is a positive finding, there are Colleagues who would not, or are unlikely to make a whistleblowing disclosure. The reasons for this are a mixture of perceptions on how a whistleblowing disclosure would be handled and the impact of the lived experiences of others.

27. If the need arose, how likely would you be to make a whistleblowing report?

<span style="color: blue;">●</span> I would not report	67
<span style="color: orange;">●</span> I am unlikely to report	310
<span style="color: green;">●</span> I may report	587
<span style="color: red;">●</span> I am likely to report	428



7.2 In addition to the points already noted elsewhere in this Report, the following key barriers that inhibit the reporting of wrongdoing within CEC have been identified.

**Poor experiences of whistleblowing in practice**

7.3 I recognise that a dissatisfied whistleblower may have been more likely to respond to the Colleague Survey than a person who was satisfied with how the process worked but the Colleague Survey data is the data

available to the Review. As can be seen from the response to Colleague Survey question 24, of those who considered that they had made a whistleblowing disclosure, a majority were not satisfied with how it was dealt with.

7.4 In addition to this, eight of the eleven people who spoke with the Review Team about their whistleblowing disclosure expressed their disappointment at how their disclosure was dealt with. Again, I need to recognise that a dissatisfied person may have been more likely to contact the Review Team to share their experiences than someone who was satisfied with the process and/or the outcome. To put these figures in context, it should be noted that there have been a total of 137 whistleblowing disclosures since May 2014 when the current process was put in place. Based on the responses to the Colleague Survey it would seem that 67% of those who had made whistleblowing disclosures via Safecall responded to the Colleague Survey. I would be surprised if this was the case. Instead, the reasons for such a high number of people responding to the Colleague Survey stating that they had made a whistleblowing disclosure could include: misunderstanding on the part of the complainer of the type of disclosure which they had made; and/or misunderstanding by line managers to whom concerns were reported about what constitutes whistleblowing with a resultant failure of the manager to report the matter to Safecall.

24. If yes, how satisfied were you with how that report was dealt with?

Very satisfied	2
Satisfied	8
Not satisfied	63
I didn't know the outcome	20



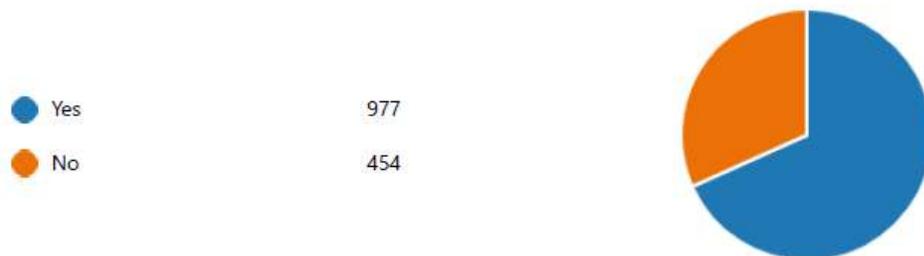
7.5 The negative experiences of others are bound to have an impact on the decision of people who might be considering making a whistleblowing disclosure. Indeed, five people to whom the Review Team spoke said that they had been dissuaded by Colleagues from making a whistleblowing disclosure due to a colleague's negative experiences of the process. Although five people being dissuaded from making a disclosure is a small number, given the overall colleague population of CEC, it is five people too many.

7.6 The Draft Model Early Resolution Process set out at **Appendix 8**, which includes stricter adherence to timescales, should serve to increase the number of whistleblowers who are satisfied with how their report is dealt with. Also, the inclusion of case studies and examples of positive outcomes from whistleblowing investigations in training delivered to Colleagues will help drive confidence in the whistleblowing processes.

### **Anonymity of whistleblowers**

7.7 As can be seen from the response to Colleague Survey question 17, most Colleagues who responded to the Colleague Survey are aware that they can make a whistleblowing report anonymously but there are Colleagues who are unaware that they can do so.

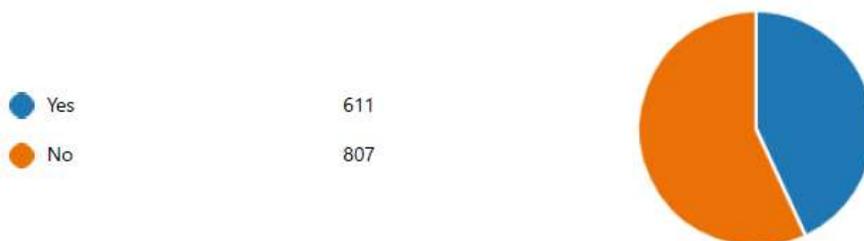
17. Do you know that whistleblowing reports can be made anonymously?



7.8 In addition, the answer to the Colleague Survey question 18 shows that 807 Colleagues who responded to the Colleague Survey did not believe that their anonymity would be protected in the event of them making a

disclosure. If these Colleagues think that they are unable to make a report anonymously, then it can be inferred that they are less likely to make a disclosure. Inevitably, other personnel will speculate or even know who the whistleblower is, especially where there is a small team where an incident occurred or with an employee who made a complaint to a manager initially, but it is important for me to note that from the documents reviewed by the Review Team and discussions we have had, I am confident that Safecall fully protect anonymity. I have also seen that CEC's Whistleblowing Team are careful to protect the anonymity of whistleblowers. In any communications strategy and training, CEC should make clear that whistleblowing reports can be made anonymously, as well as partly anonymously (from CEC).

18. If you made a report anonymously, do you believe your anonymity would be protected?



### **Fear of retribution or prejudicial treatment**

7.9 The answer to Colleague Survey question 20 shows that 550 people who responded to the Colleague Survey were unaware that those who make a whistleblowing disclosure are protected from detrimental treatment, with around two thirds of those who responded to the Colleague Survey stating that they believed that they would suffer negative consequences in the event of making a disclosure. If Colleagues think that they are likely to suffer as a result of making a whistleblowing disclosure, then they are less likely to make a disclosure. In any communications strategy and training CEC should make clear

that those who make a whistleblowing disclosure will be protected from detrimental treatment.

20. Do you know that, if you make a whistleblowing report, you are protected from "detrimental treatment" at work (in other words, suffering a disadvantage in the circumstances in which you have to work) for doing so?



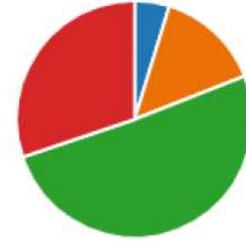
21. If you made a whistleblowing report, do you have confidence that you would not be subject to detrimental treatment at work?



7.10 Of those who responded to the Colleague Survey (i) who considered that they had made a whistleblowing disclosure; and (ii) were dissatisfied with the outcome, 32 were dissatisfied because they believed that they suffered negative consequences as a result of having made a whistleblowing disclosure.

25. If not satisfied, why not?

 I didn't know the outcome	3
 I didn't see any changes	9
 I suffered negative consequences	32
 Other	19



7.11 The Review Team has been pointed to situations where Colleagues who have raised concerns more generally have suffered negative consequences as a result. For example, the Review Team is aware of a case where a Colleague raised concerns about the conduct of another Colleague. Following the raising of this concern the complainer was called a “grass” by other Colleagues and the behaviour of the person complained about worsened. The complainer told the Review Team that they were offered no support by managers and that their colleague’s treatment of them went unchallenged.

7.12 A particular challenge is where whistleblowing disclosures are not upheld for evidential reasons. The whistleblower is likely to feel aggrieved. They may feel they have not been listened to or consider they have not been believed when the reality is, they may have simply misunderstood the factual position or there may have been insufficient supporting evidence to substantiate the allegation. Often whistleblowers will have to continue to work with the person complained about. We heard about a small number of cases where whistleblowers claimed:

7.12.1 they were told to physically relocate where they sat to avoid coming into contact with a person complained about;

7.12.2 they had to continue to work with the person complained of, including in circumstances where bullying and harassment was alleged, without adjustments being made;

7.12.3 the managers complained about later refused to interact with them and sought to have other Colleagues not speak to them;  
or

7.12.4 they were not allocated particular types of work after having complained about their line manager.

7.13 There have also been examples of Colleagues who say they were on short term, temporary or rolling contracts who informed the Review Team that following their raising of concerns, their contracts were not renewed. While, in line with our Terms of Reference, we have not conducted a merits-based review of these cases and cannot therefore make findings as to whether detrimental treatment has, in fact, been suffered by whistleblowers, they do represent a number of situations in which whistleblowers perceive that they have been subject to detrimental treatment as a result of their protected disclosures. Further, if such perceptions were to be discussed with other Colleagues it would be a disincentive to the making of such disclosures by others.

7.14 A worker has the right not to be subject to any detriment by any act, or any deliberate failure to act, by their employer or any other worker or agent of his employer on the ground that the worker has made a protected disclosure. The concept of detriment is broad and must be judged from the viewpoint of the worker. While there must be a material link (in the sense of being more than a trivial influence) between the protected disclosure and the act, or failure to act, which causes the detriment, a detriment exists if a reasonable worker would, or might, take the view that the treatment is in all the circumstances to their detriment. Detrimental treatment, includes:

7.14.1 suspensions, lay-off, dismissal or equivalent measures;

7.14.2 demotion or withholding promotion;

- 7.14.3 transfer of duties, change of location of place of work, reduction in wages, change in working hours;
  - 7.14.4 withholding of training;
  - 7.14.5 a negative performance assessment or employment reference;
  - 7.14.6 imposition or administering of any disciplinary measure or reprimand;
  - 7.14.7 coercion, intimidation, harassment or ostracism;
  - 7.14.8 discrimination, disadvantageous or unfair treatment;
  - 7.14.9 failure to convert a temporary employment contract into a permanent one, where the worker had legitimate expectations that he or she would be offered permanent employment;
  - 7.14.10 failure to renew, or early termination of, a temporary employment contract; and
  - 7.14.11 harm, including to the person's reputation particularly on social media, or financial loss, including loss of income;
- 7.15 It is extremely important that managers are trained in what amounts to detrimental treatment and that the Whistleblowing Team, HR Department and the proposed Whistleblowing Champions are vigilant in their efforts to guard against a whistleblower, whether or not a disclosure is upheld, being the subject of detrimental treatment.
- 7.16 **Recommendation 34: Any whistleblowing training and communications strategy rolled out by CEC should make it clear that whistleblowing disclosures can be made anonymously (with the two levels of anonymity being explained) and that those who make disclosures will be protected from detrimental treatment.**

**Training delivered to managers should explain what amounts to detrimental treatment.**

- 7.17 **Recommendation 35: CEC Whistleblowing Team and the HR Department should check-in with whistleblowers for a period of 12 months after a whistleblowing disclosure, to check that no detriment is being suffered; and that if allegations of detriment are made by the whistleblower the alleged detriment should be reviewed and addressed.**

**Independence of investigators**

- 7.18 Seventeen people who responded to the Call for Evidence raised concerns in relation to the perceived lack of independence of some Investigating Officers who had been appointed to conduct internal investigations across all policies, including whistleblowing, disciplinary, grievance and ABH, within CEC. This issue was also discussed in a number of workshops, in particular the workshop with Investigating Officers where one Investigating Officer explained that “*one of the weaknesses is that a directorate has to investigate its own Directorate. We are often asked to investigate previous colleagues. It’s quite a challenge to be part of that investigation whilst maintaining relationships. Investigating across Directorates would be good*”. Another Investigating Officer explained that they had to recuse themselves from conducting an investigation because they considered they had too close a working relationship with the subject of the investigation. That Investigating Officer was of the view that they would have been allowed to continue with the investigation had they not said anything. This suggests that a rigorous conflict checking process is not always undertaken by those appointing Investigating Officers.
- 7.19 The Review Team has seen examples of “*minor/operational*” whistleblowing cases being investigated by someone, who on the face of it, was perhaps too close to the subject matter at hand. For example,

one whistleblowing case relating to Waste and Fleet Services was investigated, albeit with Safecall's oversight, by an Operational Support Officer from Waste and Fleet Services. The investigation was conducted to a reasonable standard and I do not question the conclusions reached but, in my view, there was a risk of the Investigating Officer being perceived to be too close to the operating team. The Whistleblowing Team and the Monitoring Officer identified this risk at the time and queried the appointment with the relevant Directorate. When asked about this case, and others, Safecall stated that *"there is always a balance to be struck between the severity of the matters raised, having knowledge of the issue at hand, the requirement for independence and the effectiveness of an investigation"*. While I agree entirely with this statement, it is important for CEC to reflect on the effect that a perception of a lack of independence has on the integrity of any investigation conducted and the fact that there could be an actual conflict in some cases.

- 7.20 The investigation discussed in Case Study 1 at **Appendix 3** which was conducted into the allegation by a service user about the Chief Executive is another example of the perception a complainer may have in relation to a lack of independence in the appointment of an Investigating Officer.
- 7.21 The perceived lack of independence of Investigating Officers is a significant issue and brings into question the integrity of any investigation and the decisions taken as a result of it. It also undermines the trust of Colleagues in the investigatory system within CEC and is likely to dissuade Colleagues from raising concerns. This issue also feeds into the general perception, mentioned elsewhere, that some Colleagues consider that management are out to protect one another.
- 7.22 A related issue that has been identified during the course of the Review, and was also identified in the Inquiry, is that there are cases where those in relationships with one another have direct, or indirect, line

management responsibility for their partner. There is a general perception that those who are line managed by their partner receive a level of protection and that it would be pointless to raise a concern about those people, as it would not be taken seriously by management. As noted in the Inquiry Report, the current HR practices relating to relationships between Colleagues are inadequate and do not reflect the close working and personal relationships between many Colleagues, which may be undisclosed.

7.23 **Recommendation 36: Where an Investigating Officer is from the same service area as the subject of the disclosure, Safecall (or another independent provider) should perform a “critical friend” role to oversee the whistleblowing investigation more closely.**

7.24 **Recommendation 37: Both the Nominated Officer and Investigating Officer should be required to complete a written declaration of independence at the outset of any investigation.** Nominated Officers should be required to carefully consider any actual or perceived conflicts of interest with regard to themselves or the Investigating Officer before an investigation commences. Likewise, Investigating Officers should be required to carefully consider any actual or perceived conflicts of interest.

7.25 **Recommendation 38: CEC should establish a policy which stipulates that relationships between Colleagues must be disclosed if one person has line management responsibility for the other.**

### **Front-line colleagues**

7.26 There are 5,573 Colleagues who do not have their own CEC email address or regular personal access to CEC’s electronic systems, including the Orb. These Colleagues typically work in front line services

such as waste and cleansing, libraries, care at home, facilities, learning support and transport services.

7.27 These Colleagues have no access, or at least no regular personal access, to the Orb and do not receive emails distributed to the rest of CEC. This therefore limits the accessibility of important information. Many of these Colleagues to whom the Review Team spoke explained that they did not feel part of the wider CEC organisation. As a group, they have often been described as “*hard to reach*” Colleagues, which does not reflect particularly well on CEC, given that percentage-wise the group makes up more than a quarter of CEC’s workforce.

7.28 Most of CEC’s resources, including information on whistleblowing and other policies, are contained on the Orb. These frontline Colleagues are therefore excluded from or severely restricted in accessing this information and can become isolated as a result. The Review Team took steps to try and engage with this group for the purpose of the Review. Those who spoke to the Review gave the following examples of the effect of this lack of access to information:

7.28.1 an inability to access HR support;

7.28.2 a lack of awareness of where to go to with concerns;

7.28.3 an inability to access other forms of support such as PAM assist<sup>20</sup>;

7.28.4 being beholden to a manager about whom a complaint may have been made in order to get information; and

7.28.5 being unable to access training available to office-based staff.

7.29 Colleagues to whom we spoke also noted that this lack of access to information and communications can lead to a disconnect between

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<sup>20</sup> An employee assistance programme offered by CEC which is focussed on employee wellbeing

these Colleagues and higher management. Often these Colleagues only have contact with their immediate line manager and have no contact with senior management.

- 7.30 The main medium for the dissemination of information to these frontline Colleagues is through “toolbox talks” from managers and from updates through Trade Unions, for those who are members. This therefore relies on the effectiveness of these managers or Trade Union representatives in spreading information. Given the vast amount of information available on the Orb and regularly communicated via CEC’s email communications it is unsurprising that these front-line Colleagues miss out on valuable information about CEC. The information they receive may also be biased as a result of their line manager’s perceptions, such as the negative perception of some managers about the whistleblowing process and the way in which it might be used by employees.
- 7.31 As noted above, one of the results of this lack of access to information is that there is a risk of these Colleagues being unaware of the options available to them in relation to the reporting of concerns. Indeed, a number of these front-line Colleagues expressed their concern that if they did not trust their manager to listen to and address their concerns, then they had nowhere else to turn. This sentiment is evidenced by the fact that at a workshop with a group of these Colleagues none of the attendees had heard of Safecall and only one attendee was aware of an independent whistleblowing line.
- 7.32 The overwhelming sentiment from these Colleagues was that they feel that because they work at locations away from the main offices they are often forgotten about. There is a perception amongst these colleague that office-based Colleagues are provided with the support and tools they require to perform their jobs at the expense of more remote / “blue collar” workers.

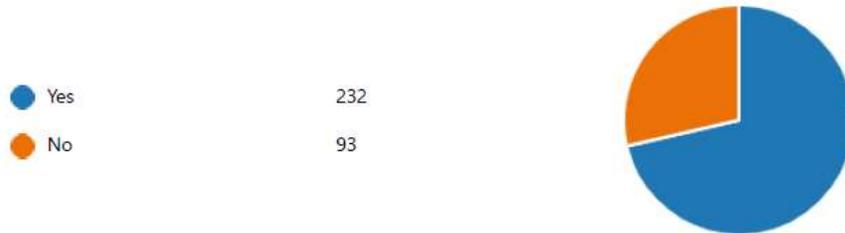
- 7.33 Like an increasing number of organisations there is a greater emphasis being placed by CEC on e-learning. CEC is in the process of rolling out a new whistleblowing e-learning training course. As this course is being delivered via e-learning 5,573 front-line Colleagues will not receive this training. Based on the Review Team's discussions with these Colleagues it appears that face-to-face training on certain issues is given to Colleagues but that the volume and quality of training varies greatly depending on where Colleagues are based, what role they perform and sometimes shift patterns.
- 7.34 CEC is aware of the isolation of these front-line Colleagues and has taken steps to try and address some of the main issues. CEC has put all its policies (including the Whistleblowing Policy) on the external website so that Colleagues can access them on their own devices. However, some supporting documents referred to within the policies are not made available in this way. Front-line Colleagues have also been invited to sign up for communications with their personal email addresses so that they can receive internal communications and e-payslips, however I understand that uptake of this has been relatively low with only 1,991 Colleagues signing up for this service.
- 7.35 HR Colleagues who spoke with the Review explained that, while this is acknowledged as an ongoing issue, there is no means of gauging the efficacy of these changes and that while work had been done to try and engage with these Colleagues, more needs to be done.
- 7.36 **Recommendation 39: CEC should develop an action plan to improve its approach to communicating with front-line Colleagues with identifiable KPIs.**

8. **QUESTION 4: DO THE COUNCIL'S ELECTED MEMBERS, OFFICERS AND COLLEAGUES IN MANAGEMENT ROLES FEEL EMPOWERED TO RESPOND TO CONCERNS OF WRONGDOING WHICH ARE RAISED BY ELECTED MEMBERS, OFFICERS, COLLEAGUES, FORMER COLLEAGUES OR MEMBERS OF THE PUBLIC? ARE THERE ANY BARRIERS OR OTHER REASONS, ACTUAL OR PERCEIVED, WHICH INHIBIT THE RESPONSE TO CONCERNS OF WRONGDOING WITHIN THE COUNCIL?**

### **Overarching findings**

- 8.1 I conclude from our workshops with Councillors and Service Directors, and my meetings with Executive Directors that both Councillors and the most senior CEC managers generally feel empowered to respond to allegations of wrongdoing and concerns raised with them. The Review Team has seen numerous examples of Councillors responding to matters of concern raised with them by Colleagues and constituents. This pro-activity on the part of Councillors is to be commended. However, it is unclear to the Review Team how often Councillors are reporting these concerns to Safecall. With regard to Executive Directors and Service Directors, it is clear from the workshops and interviews held with them that they share a common goal of ensuring that all allegations of wrongdoing are properly investigated and remedied where necessary.
- 8.2 As noted above, most Colleagues in management roles who responded to the Colleague Survey believe that they know what to do if an employee raises a concern with them. However, it appears that in practice that some managers do not know how to respond to an employee raising a concern with them and that others do not feel empowered to respond to concerns of wrongdoing.

43. Do you know how to respond if an employee blows the whistle or raises a concern with you?



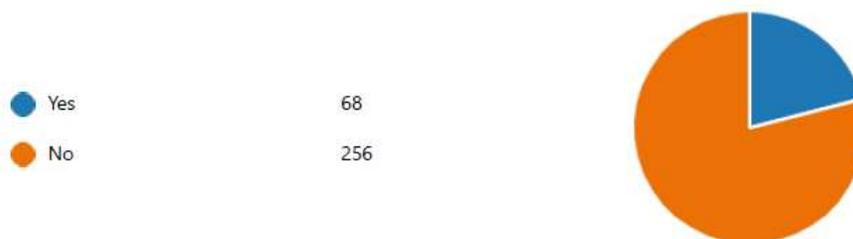
8.3 As I note earlier in this Report, there exist the following barriers to managers responding to concerns of wrongdoing.

**Difficulty in identifying whistleblowing cases**

8.4 As can be seen from the response to Colleague Survey question 44, most managers within CEC who responded to the Colleague Survey have not received formal training on how to recognise whistleblowing complaints. This finding resonates with the anecdotal evidence the Review Team has received. As noted at paragraph 6.46, a number of managers told the Review Team that they were unclear as to what sort of concerns constitute a whistleblowing complaint. At paragraph 6.12 I have provided an explanation as to the distinction between whistleblowing and other forms of complaints.

8.5 The low number of management referrals as a proportion of all the whistleblowing disclosures received in the last two years, also suggests that managers might not be spotting whistleblowing disclosures and appropriately escalating them. This may account for the views of some contributors to the Review who were of the opinion that they had made a whistleblowing disclosure where it appears that the disclosure had not in turn been notified to Safecall.

44. Have you had training on how to recognise whistleblowing complaints?



8.6 As noted at paragraph 5.63, CEC is the process of producing a new whistleblowing e-learning module which will include specific sections of training for managers.

### Capacity and resource

8.7 As noted in the answer to Question 1, the current practice of asking managers to conduct investigations in addition to their day job is a false economy, that ultimately impacts on the quality of investigations and service delivery. The Review Team has seen examples of CEC seeking to ease these capacity issues so that investigations can be undertaken expeditiously and to a higher standard. One example is a review that was launched following a whistleblowing report made in late 2020. CEC appointed a senior colleague from within the Quality, Governance and Regulation team to conduct a review into the matters raised by the whistleblower. This colleague was tasked with conducting the review on a full time basis and was relieved of their day-to-day duties. This enabled the Investigating Officer to conduct a thorough review without also having to find the time to perform their regular duties. This is a good example of how CEC can, when the need arises, dedicate appropriate resource to investigations to allow them to be completed in a focussed manner. While I commend this approach, I understand that the Investigating Officer in this case felt quite isolated at times as they had been taken out of their traditional line management structure.

8.8 Appropriate consideration should be given to supporting Colleagues performing the task of investigating matters, particularly if they are

dealing with allegations of a criminal nature or those concerning a distressing subject.

### **Executive Directors and Service Directors**

- 8.9 Managers may feel concerned about bringing complaints or whistleblowing reports against the Chief Executive and other Executive Directors because of the potentially unclear and/or out of date disciplinary policy position. Steps are being taken to clarify this policy position.
- 8.10 There was also a concern on the part of a small number of officers that because of management reorganisations their job situation could be affected as a result of making complaints or disclosures. It should be noted, however, that the Review Team received no evidence of this having happened to anyone.

### **Policy confusion**

- 8.11 As noted at paragraph 6.57, there are misalignments between the Whistleblowing Policy and other CEC policies and procedures, such as the Grievance Procedure, the ABH Procedure, and the Disciplinary Procedure. These misalignments, combined with a lack of manager training on how to recognise whistleblowing disclosures, may inhibit managers' ability to effectively identify whistleblowing disclosures and respond to them appropriately.

9. **QUESTION 5 ARE WHISTLEBLOWING REPORTS AND OTHER REPORTS OF WRONGDOING INVOLVING THE COUNCIL, ITS ELECTED MEMBERS, OFFICERS AND COLLEAGUES PROPERLY INVESTIGATED AND ACTED UPON, INCLUDING BY TAKING STEPS TO PREVENT RECURRENCE? IF NOT, WHY NOT?**

**Overarching findings**

- 9.1 A number of my findings in relation to investigations conducted by CEC are set out in the answer to Question 1. In short, I am satisfied that all whistleblowing disclosures notified to Safecall are investigated, although, as already noted, the timeliness of the investigations conducted in response to whistleblowing disclosures should be improved. Steps also need to be taken to monitor more closely the effectiveness of investigations conducted internally.
- 9.2 The Review Team has examined 30 whistleblowing investigation reports (both “*major/significant*” and “*minor/operational*” reports). We also reviewed other internal investigation reports and reports by external law firms and forensic accountants. Generally, the reports prepared are of a good standard and clearly set out the steps taken to investigate the matter and the findings. There are however areas that could be improved.
- 9.3 An area of concern is the steps taken to prevent recurrence, until recently there was insufficient rigour around the implementation of recommendations. However, since 2019 CEC has put in place processes to help address this concern.

**Investigation scope and terms of reference**

- 9.4 I understand that at the outset of whistleblowing investigations an investigation scope and terms of reference are set by CEC and Safecall, but we have only seen some examples of these scopes or terms of reference being recorded in whistleblowing investigation

reports. The lack of documented investigation scopes and terms of reference in these reports means that those reviewing these reports, such as GRBV, are not sighted on the scope and limitations of the investigation and therefore may be less able to scrutinise effectively the investigation conducted.

9.5 Furthermore, I understand that terms of reference are rarely, if ever, agreed with or shared with those making the whistleblowing disclosures. While it is ultimately a matter for CEC and Safecall to decide the scope of an investigation, not providing a whistleblower with details of the scope of the investigation creates a situation where the whistleblower might ultimately be dissatisfied with the outcome of an investigation and could feel that some matters have been missed. Early discussion with the whistleblower as to the scope of an investigation, or at least making them aware of the scope of an investigation, would help increase satisfaction and trust in the whistleblowing process.

9.6 **Recommendation 40: An investigation scope for a whistleblowing investigation should be prepared at the outset and, where appropriate, shared with the whistleblower with an invitation to provide comments. The investigation scope and any limitations on the investigation to be conducted should be included in the whistleblowing investigation report.**

### **Investigations involving anonymous whistleblowers**

9.7 Anonymous whistleblowers are not always interviewed in cases where the disclosure is considered to be “*minor/operational*” and is therefore investigated by a CEC Investigating Officer. In these cases, CEC is unaware of the identity of the whistleblower and is therefore unable to approach them directly to ask to interview them. This creates a tension, as it is difficult to effectively investigate a matter without being able to interview the whistleblower.

- 9.8 I understand that since 2019, CEC's Investigating Officers have been able to send messages to anonymous whistleblowers via Safecall's online portal (prior to this Investigating Officers had to contact Safecall to ask them to post messages to whistleblowers). However, I question how often this takes place as a number of whistleblowing reports we have seen refer to the whistleblower not being interviewed because they had chosen to be anonymous. We are aware that it is a matter for the Investigating Officer to decide whether to attempt to make any contact with the whistleblower in such circumstances.
- 9.9 I would encourage CEC Investigating Officers to be proactive in relation to contacting anonymous whistleblowers via the portal and to always seek to interview the whistleblower, regardless of their level of anonymity. Of course, I recognise that a whistleblower might not wish to be interviewed by a CEC Investigating Officer, but the managing expectations process referred to above should assist in aiding whistleblowers' understanding of the effect that this might have on an investigation.
- 9.10 In cases of complete anonymity, Safecall should make an offer to the whistleblower for them to be interviewed by Safecall and explain to them at the point of managing expectations how the inability to interview the whistleblower could hamper the progress of any investigation.
- 9.11 **Recommendation 41: CEC should be proactive in relation to attempts to contact anonymous whistleblowers (via a secure portal) and always seek to interview the whistleblower regardless of their level of anonymity. In cases where the whistleblower does not wish to be identified to CEC, Safecall (or another independent provider) should be tasked with undertaking an interview and then feeding back the findings to CEC (subject to any relevant redactions required to protect the whistleblower's identity).**

## Whistleblowing reports in relation to Executive Directors

- 9.12 The Whistleblowing Policy provides that in the case of “*major/significant*” whistleblowing disclosures, Safecall will immediately notify the Monitoring Officer and the Chief Executive of the disclosure. However, the Whistleblowing Policy provides that when a report is received about the Monitoring Officer the disclosure will be passed to the Chief Executive, and when a report is received about the Chief Executive it will be passed to the Council Leader or, in their absence, the Deputy Leader. Beyond this detail, the Whistleblowing Policy does not set out how such matters should be investigated or reported to GRBV. While the Whistleblowing Policy does not name these types of disclosures, where a disclosure is made about the Chief Executive or the Monitoring Officer Safecall refers to them as “*500 Reports*”.
- 9.13 There have only been three 500 Reports since the Whistleblowing Policy was introduced in 2014 but delays in investigating and reporting to GRBV can arise with 500 Reports because of sensitivities about the seniority of the people involved and the fact that such reports are not overseen by the Whistleblowing Team. However, the Whistleblowing Policy does not, and should not, provide for any difference from other whistleblowing reports in terms of rigour of investigation, timeliness and GRBV oversight.
- 9.14 With investigations into allegations against Executive Directors, independence of investigation is paramount but can be difficult to achieve if the investigation is conducted in-house, or even if conducted by Safecall, because ultimately, they routinely report to the Monitoring Officer and Chief Executive.
- 9.15 **Recommendation 42: The Whistleblowing Policy should be updated to specifically address “500 Reports” and all such reports should be taken forward with a target date of being completed within three months.**

- 9.16 **Recommendation 43: Where serious allegations are made against Executive Directors or the Monitoring Officer, CEC should outsource the investigation to a non-panel law firm or counsel with experience in the conduct of investigations.**

### **Multiple processes**

- 9.17 There have been cases where whistleblowing or other investigations have been paused pending the outcome of other processes. There are some situations where the pausing of an internal investigation to allow other processes to take place is appropriate, for example in the case of an investigation by the police where to continue with a parallel internal investigation might prejudice the police investigation. However, in most situations it would be appropriate to continue with the internal investigation, notwithstanding the other process(es). I am of the opinion that CEC is often too quick to pause internal investigations when another parallel process starts. Pausing an investigation may create more issues because it inevitably results in matters being investigated a significant time after the acts have occurred and possibly after key personnel have left the organisation. Pausing of investigations may also take place alongside suspension of Colleagues, or absence due to sickness, for lengthy periods of time, which is neither good for the organisation nor the wellbeing of those subject to investigation and on suspension or sickness absence.
- 9.18 Furthermore, one of the investigations discussed in Case Study 1 at **Appendix 3** was paused because CEC did not consider it appropriate to have a concurrent investigation while the Citizen in question had referred concerns to the General Teaching Council of Scotland. Except in exceptional cases, disciplinary investigations, employment tribunal proceedings and other processes should not delay the conduct of whistleblowing investigations, nor reporting to GRBV. If investigations are to be paused due to concurrent processes, the fact that such a

decision has been taken and the exceptional circumstances for the pausing should be properly documented in writing.

9.19 In addition to the pausing of concurrent investigations, CEC does not share information or evidence gathered as part of whistleblowing investigations for use in a disciplinary investigation. For example, I understand that witness statements gathered as part of a whistleblowing investigation are not used as part of the evidence in any subsequent disciplinary investigation. Indeed, the HR Department told us that there are occasionally cases that “*started as whistleblowing and then went to disciplinary and people were interviewed twice as part of both*”. The result of this approach is that efforts are duplicated, and interviews have to be repeated, which can be stressful and time consuming for those being interviewed. There is also a risk of inconsistent evidence being gathered due to the passage of time. This approach means that subsequent disciplinary investigations take longer because evidence has to be re-located, potentially many months after the reported incident, resulting in increased cost and reduced capacity for CEC and additional unnecessary strain for those who are the subject of the investigation. If proper and full witness statements are taken during the whistleblowing investigation there is no reason they cannot be reused in a disciplinary context so long as this is explained to the giver of the statement.

9.20 **Recommendation 44: CEC should streamline its disciplinary investigation process and rely more on the evidence (not the opinions of the Investigating Officer but rather the underlying evidence) collated in the course of whistleblowing investigations.** I would encourage Trade Unions to support aligning and streamlining of these processes.

## CEC criticism of complainers

- 9.21 The Review Team is aware of one case where, in investigation reports, the Investigating Officers have sought to criticise the conduct of the complainer, in particular in relation to perceptions on the part of those Investigating Officers that the complainer was trying to influence the investigation process. Except where a whistleblower or complainer acts unlawfully or presents falsified evidence, they should not be criticised for trying to persuade an Investigating Officer to side with their account.
- 9.22 As discussed in Case Study 1 (**Appendix 3**) CEC needs to be able to end communications with a service user or for that matter a whistleblower if they continue to pursue matters which have been investigated and addressed. This should only occur following a careful review to ensure that such a decision is made on solid and justified grounds.
- 9.23 **Recommendation 45: Those who write investigation reports should be cautious about criticising whistleblowers or complainers who have every right to try to persuade the investigator to side with their version of events, so long as they do so lawfully.**
- 9.24 **Recommendation 46: Any decisions to cease communication with a service user or a whistleblower from outwith CEC should reference and follow CEC's "*Managing Customer Contact in a Fair and Positive Way Policy*"; and any decision to cease communications with a service user or a whistleblower should be reported to GRBV in writing to ensure proper oversight.**

## Conclusion of investigations

- 9.25 Fifteen people to whom the Review Team spoke explained that following the conclusion of the process in which they were involved (principally ABH, disciplinary or grievance) either the person who had

made the complaint or the person complained about was moved department, location or role as a means of resolving the matter. This approach appears to be more common in situations where, following an investigation, it is concluded that there is insufficient evidence to uphold the complaint. Part of the outcome of any process must be a careful and thoughtful consideration as to how actions will affect those involved and the wider teams or departments in which they work. It is not a resolution to simply move Colleagues around the organisation if other, less disruptive steps, may resolve matters.

- 9.26 Linked to keeping whistleblowers informed, discussed at paragraphs 6.74 to 6.82, an issue that was raised by 21 contributors to the Review was the situation where a colleague had made a complaint about the conduct of another colleague, such as one of bullying or harassment, but they were not told the outcome of their complaint even though in some instances their complaint was upheld. 12 of these Colleagues found themselves having to continue working with the colleague they had complained about. In such cases we have seen examples where one, or both, of these Colleagues was eventually moved, or chose to move department or location in order to resolve the issue. Instead of moving Colleagues, or waiting until they move themselves, there needs to be a more constructive conclusion to these matters, involving both the complainer and the person complained about. In such circumstances, I would encourage CEC to share more information with the complainer as to the outcome of the investigation and the actions taken. To achieve true reconciliation and to allow people to move on, there should, in most cases, be some form of facilitated meeting where the outcome is shared and, depending on the circumstances, an apology given. It may be that at the end of this process, one person has to be thoughtfully asked to move, but this should not be the first option. I recognise that in some cases, in particular those involving allegations of abuse or sexual harassment which have not been upheld, there will not be an opportunity for reconciliation and there is no other option but to

consider whether one or other party should be moved to another location or role.

- 9.27 It has also become apparent to the Review Team that, on occasion, those who are the subject of disciplinary processes either leave or retire from CEC part way through the process and CEC will generally decide to end the disciplinary process at that point and not see it through to conclusion. One example of this was a senior social worker who resigned during the Inquiry while subject to disciplinary action, which then ended. The Review Team was also pointed to three other examples of this occurring by contributors to the Review. While it might seem unnecessary to continue with a disciplinary investigation when CEC is going to be unable to sanction the individual at the conclusion of the process, I do not consider this approach to be appropriate in all cases. Concluding an investigation when the subject leaves or retires from CEC sends the wrong message to others in CEC and fuels a perception that those who have committed some form of wrongdoing are able to walk away without consequence. I would encourage CEC to consider continuing whistleblowing and disciplinary investigations in serious cases even if the subject leaves or retires from CEC.

### **Taking forward recommendations and remediation**

- 9.28 A number of contributors expressed concerns about failures to implement or sustain recommendations following the conclusion of whistleblowing investigations, and other significant investigations, as well as recommendations resulting from SPSO and regulatory decisions.
- 9.29 This concern is shared by the Monitoring Officer and GRBV and, in the case of whistleblowing recommendations, in 2019 the Monitoring Officer put in place a central register of actions arising from all whistleblowing investigations since 2016. In addition to this, CLT agreed that they would check that all recommended actions had been implemented. The

aim of this register is to bring all management actions into one document to assist Directorates in checking that all actions reported to GRBV were completed. Each Executive Director has responsibility for ensuring that all management actions in their service area are implemented and must document the progress against recommendations in the register. The Whistleblowing Team also checks in intermittently with managers to ensure that recommendations are being progressed.

- 9.30 One case of particular note to the Review Team relates to the implementation of recommendations following a Significant Case Review concerning the safety of persons in the care of CEC. An action plan for implementation of the recommendations was produced, agreed to and assurances were given to the Chief Officers Group that the recommendations had been largely implemented. Following a later whistleblowing disclosure, the Investigating Officer in that whistleblowing investigation raised concerns that there was a lack of evidence that most of the recommendations from the Significant Case Review were in place. Once the issue was identified, CEC moved quickly to investigate this issue to identify which controls had not been implemented or had been implemented but not sustained.
- 9.31 The importance of maintaining an audit history in relation to the implementation of recommendations is demonstrated by the first whistleblowing disclosure received by Safecall, which involved a serious case of suspected criminality. This disclosure was received on the first day of the service being operational in May 2014. This disclosure was first reported to GRBV on 24 September 2014. Various updates were given to GRBV in the following years as police enquiries and other employment processes took place. In addition, on two occasions in 2015, CEC's Corporate Policy and Strategy Committee received updates on the management actions taken, or to be taken, to implement 13 recommendations made by Safecall to prevent recurrence. In March

2019, it was reported to GRBV that the matter had closed following the conclusion of related criminal and employment proceedings. With regard to the outcomes of the whistleblowing report, the summary provided to GRBV noted that there were no management actions required. It was noted that the relevant policies, procedures and processes in place at the time were considered adequate but had not been followed. In the March 2019 report to GRBV, no reference was made to the 13 recommendations made by Safecall in their investigation report or the status of the outstanding management actions from the 2015 reports to the Corporate Policy and Strategy Committee.

9.32 CEC has recently commissioned a review to check that recommendations raised in historical whistleblowing and closed child protection reviews and complaints (managed under CEC's Complaints Procedure) have been effectively implemented and sustained. This review will report in early 2022 and will include checking the status of the management actions in the case described at paragraph 9.31 above.

9.33 I am aware that CLT has recently approved the establishment of an Assurance Management Framework which will set out CEC's overarching approach to recording, monitoring and providing oversight of the implementation of assurance actions. Operational changes are also being made, with some Directorates appointing an Operations Manager and others appointing an additional first line assurance capacity, whose task is to ensure that agreed recommendations from whistleblowing reports, assurance reports and internal audit reports are actioned. Two members of internal audit have also been seconded to the Directorates to assist with an exercise to get on top of outstanding actions from internal audit reports. In addition, I observe that consideration should be given to any adverse regulatory or SPSO decisions also being subject to governance oversight by GRBV.

9.34 I commend CEC's recent efforts to address the problem of identified remediation not being fully actioned and I do not therefore need to make any recommendations in that regard.

10. **QUESTION 6 - IS THE AVOIDANCE OF REPUTATIONAL DAMAGE OR LEGAL LIABILITY A CONTRIBUTORY FACTOR IN ANY FAILURE BY THE COUNCIL TO RESPOND TO OR TO ADDRESS CONCERNS OF WRONGDOING?**

**Overarching findings**

- 10.1 I have not identified any current or recent failures by CEC to respond to or to address concerns of wrongdoing.
- 10.2 However, a concern about prejudicing other legal processes is a contributory factor in delays by CEC to conclude whistleblowing investigation reports.
- 10.3 The occasional application of legal professional privilege to investigations does create strains between the legal department and Councillors.

**Reputational damage**

- 10.4 Based on the review conducted by the Review Team, I do not consider that CEC fails to respond to or address concerns of wrongdoing due to a fear of reputational damage.

**Legal liability**

- 10.5 Based on the review conducted by the Review Team, I do not consider that CEC fails to respond to or address concerns of wrongdoing due to potential legal liability. However, potential legal liability and / or other legal processes being in train at the time of investigations and the concern of those proceedings being prejudiced is a contributory factor to investigations being paused and delayed unnecessarily. I accept that this occurs where there are genuine concerns about resulting prejudice.

- 10.6 The impact of other legal proceedings being ongoing at the time of whistleblowing reports and a fear by CEC of prejudicing those proceedings is evident in Case Study 3 at **Appendix 5**.

#### **Application of data protection law**

- 10.7 We have seen examples, in some cases, where Safecall and the Whistleblowing Team considered that they were unable to update whistleblowers as to the progress of a case due to data protection concerns. CEC's Information Governance Unit have responsibility for dealing with data protection issues within CEC. I understand that requests are made by the Whistleblowing Team for advice on the application of data protection principles to whistleblowing cases but there is no formal process for dealing with this. In each case, there should be a careful reflection on whether there is a need to restrict information on the basis of data protection law and whether instead of a complete refusal to provide information to a whistleblower, some useful information can be provided to assuage their concerns.

#### **Application of legal professional privilege**

- 10.8 There is a general lack of understanding among some relevant officers as to the extent and limits of legal professional privilege. There is also a lack of understanding on the part of some Councillors as to what privilege is and the reasons CEC might wish to rely on it. Some Councillors see it simply as a tool for officers to use to obstruct them. However, legal professional privilege is a legal protection that is fundamental to the giving and receipt of confidential legal advice and the preparation of litigation. There are often good reasons why officers may wish to rely on legal privilege to maintain confidentiality and limit the sharing of a document.

- 10.9 The Review Team has only seen one example where CEC has sought to rely on legal professional privilege where the reason for seeking to apply privilege was unclear.
- 10.10 Some Councillors with whom the Review Team spoke see privilege as a shield for officers to hide behind in order to withhold information from them (see the comment by the Councillor referenced at paragraph 5.39). This perception is not made out in my opinion. The Review Team is aware of examples where officers have agreed to allow Councillors to view information considered to be privileged when, on a strict reading of the Member-Officer Protocol, officers were under no obligation to do so.
- 10.11 The Review Team is aware of cases where instead of sharing information under a limited waiver of privilege (see more below), CEC has sought to prepare summary reports or documents for interested parties. Not only does this create more work for officers in having to prepare these reports, but these reports may lack sufficient detail to enable the reader to understand the conclusions drawn. The Review Team has also seen evidence of issues with naming conventions and version control which may arise from the preparation and disclosure of such summary reports, such as those referred to in relation to the different versions of the Phase II Report referenced in Case Study 1 at **Appendix 3**.
- 10.12 It should be noted that, even in cases where officers consider a matter to be legally privileged, they are still able to share relevant documents or information with third parties under a limited waiver of privilege, which entails the third party acknowledging the privileged status of the document and expressly agreeing to respect the privileged and confidential status of the document and the information contained therein. In cases where the sharing of privileged information would provide suitable assurance to Councillors or regulators, or would generally help in engendering a culture of openness and transparency,

greater thought should be given to sharing such information under a limited waiver of privilege.

- 10.13 **Recommendation 47: Legal professional privilege should be utilised sparingly in the context of whistleblowing or other fact-finding investigations outside of the preparation of actual or threatened litigation.**
- 10.14 **Recommendation 48: Any decisions to treat a matter as legally privileged should be clearly documented with appropriate analysis of the application of the legal tests to the facts at hand being set out.**
- 10.15 **Recommendation 49: In circumstances where assurance is sought by Councillors or regulators, and the provision of privileged information would aid in providing such assurance, consideration should be given to sharing this information under a limited waiver of privilege.**
- 10.16 **Recommendation 50: Training on legal professional privilege should be offered to Councillors and relevant Colleagues.**

## 11. **RECOMMENDATIONS**

- 11.1 **Recommendation 1:** All political groups should take steps, if they do not already do so, to ensure that all their members attend training, particularly training in relation to the Member-Officer Protocol and Councillor conduct, including the 2021 Code of Conduct for Councillors.
- 11.2 **Recommendation 2:** Whistleblowing training should be delivered to and attended by all Councillors.
- 11.3 **Recommendation 3:** CEC officers and Councillors should take steps to implement any necessary changes following the findings of the Best Value Report.
- 11.4 **Recommendation 4:** CEC should put in place a revised disciplinary policy applicable to the Chief Executive, Executive Directors and Service Directors as a matter of priority.
- 11.5 **Recommendation 5:** Refresh avoidance of bullying and harassment training for all Colleagues, with schools and those involved in social work being part of the initial roll-out.
- 11.6 **Recommendation 6:** Those involved in recruitment and selection of candidates for new positions should complete a short form declaration to disclose any personal or professional relationship with a prospective candidate.
- 11.7 **Recommendation 7:** A new whistleblowing communications and training strategy should be put in place and rolled out across CEC.
- 11.8 **Recommendation 8:** CEC should revise its Whistleblowing Policy to put a greater emphasis on consensual early resolution (see Recommendation 32).
- 11.9 **Recommendation 9:** A programme of training for Investigating Officers should be developed and delivered, preferably by an external body

skilled in effective investigation processes and techniques. Such training should be a precondition to being appointed as an Investigating Officer for the first time.

- 11.10 **Recommendation 10:** CEC should consider the implementation of an independent investigation unit of appropriately experienced and properly trained Investigating Officers to work with Safecall on the conduct of “*major/significant*” (external) investigations; to support any other whistleblowing investigations where the 3-month target date for completion is not met; and to conduct other investigations, including disciplinary, bullying and harassment and complaints investigations which are complex or sensitive.
- 11.11 **Recommendation 11:** CEC should resource the use of note takers for investigative interviews.
- 11.12 **Recommendation 12:** The Whistleblowing Team and the HR Department should have regular liaison meetings, in a similar manner to the Strategic Complaints Group, with the specific objective of identifying any concerning patterns of behaviour in an area.
- 11.13 **Recommendation 13:** In order to assist CEC in identifying concerning patterns of behaviour across multiple cases, the independent whistleblowing provider should keep a record of service areas and locations of disclosures, together with a general description of the nature of the disclosures, so that this can be shared with CEC’s Whistleblowing Team.
- 11.14 **Recommendation 14:** All Colleagues leaving CEC should be offered the opportunity to take part in an exit interview with a member of the HR Department.
- 11.15 **Recommendation 15:** CEC should consider putting in place a system for Colleagues to provide anonymous feedback on the conduct and behaviours of managers as part of their annual performance reviews.

- 11.16 **Recommendation 16:** Whistleblowing disclosures containing any issue of alleged discrimination based on a protected characteristic should be logged with the HR Department in the same manner as the Prejudice Based Incident Reporting used by the HR Department.
- 11.17 **Recommendation 17:** A documented triaging process should be put in place with a framework that sets out the considerations to be taken into account for disclosure classification.
- 11.18 **Recommendation 18:** The nomenclature currently used for classifying reports as “*major/significant*” or “*minor/operational*” should be revised to address a perception that “*minor/operational*” cases are not treated as seriously. Wording such as “*External*” and “*Internal*” would be preferable.
- 11.19 **Recommendation 19:** Consideration should be given to more cases being categorised as “*major/significant*” (external) and therefore investigated by Safecall or another independent provider; or, alternatively, having a third, middle, tier of case where Safecall provide greater oversight as the “*critical friend*” of an internal Investigating Officer.
- 11.20 **Recommendation 20:** For more serious whistleblowing matters that are investigated internally, Safecall (or another provider) should provide “*critical friend*” monitoring from the outset of an investigation rather than waiting until the investigation report is submitted for review. The role of the “*critical friend*” should be set out in the Whistleblowing Policy.
- 11.21 **Recommendation 21:** Safecall, or any other independent whistleblowing provider, should report on the following KPIs:
- 11.21.1 Number of disclosures categorised as “*major/significant*” or “*minor/operational*” (or any new naming convention);

- 11.21.2 Number of disclosures diverted to be dealt with under another policy;
- 11.21.3 Number of disclosures categorised as not qualifying as a whistleblowing disclosure;
- 11.21.4 Number of disclosures dealt with by way of early resolution (see Recommendation 32); and
- 11.21.5 Number of disclosures investigated within 3 months / not investigated in this time frame with reasons given.
- 11.22 **Recommendation 22:** Immediate and ongoing steps taken to address any public safety issue should be recorded in a document maintained by the independent whistleblowing provider which sets out the steps taken, and to be taken, to check on the safety concerns reported by a whistleblower. This should be shared with GRBV at the first quarterly meeting following the disclosure.
- 11.23 **Recommendation 23:** A senior colleague in every service area should be appointed as a Whistleblowing Champion.
- 11.24 **Recommendation 24:** CEC should take steps to train managers on how to identify a whistleblowing disclosure.
- 11.25 **Recommendation 25:** All whistleblowing disclosures made to CEC managers and Councillors should be referred to the independent whistleblowing provider, so that they are recorded as whistleblowing disclosures and dealt with under the whistleblowing process, at least initially.
- 11.26 **Recommendation 26:** CEC's Whistleblowing Team should report all whistleblowing disclosures and reports to GRBV in accordance with the quarterly reporting cycle, without any exceptions.

- 11.27 **Recommendation 27:** As part of any review of CEC's committee structure, consideration should be given to setting up a sub-committee to scrutinise whistleblowing disclosures and reports.
- 11.28 **Recommendation 28:** The whistleblowing process should be periodically audited by internal audit and, perhaps once every five years, reviewed by an external provider.
- 11.29 **Recommendation 29:** CEC should take steps to ensure that anyone who receives a whistleblowing disclosure asks the person raising the matter what support they may need and how this can be provided. This support, where relevant, should also be offered to those who are the subject of a whistleblowing investigation.
- 11.30 **Recommendation 30:** CEC, in conjunction with Safecall, should develop an agreed protocol for setting a whistleblower's expectations at the point of commencing an investigation. A Draft Expectation Management Protocol for managing expectations of whistleblowers is at **Appendix 7**.
- 11.31 **Recommendation 31:** Accurate and contemporaneous minutes should be taken by CEC at all meetings and during all conversations with whistleblowers and other interested parties.
- 11.32 **Recommendation 32:** CEC should instigate an early resolution process and stricter timelines for the conduct of whistleblowing investigations. A Draft Model Early Resolution Process is set out in **Appendix 8**.
- 11.33 **Recommendation 33:** CEC should include the Draft Whistleblowing Principles set out in Appendix 9 in the Whistleblowing Policy and apply them to all whistleblowing matters.
- 11.34 **Recommendation 34:** Any whistleblowing training and communications strategy rolled out by CEC should make it clear that whistleblowing

disclosures can be made anonymously (with the two levels of anonymity being explained) and that those who make disclosures will be protected from detrimental treatment. Training delivered to managers should explain what amounts to detrimental treatment.

- 11.35 **Recommendation 35:** CEC Whistleblowing Team and the HR Department should check-in with whistleblowers for a period of 12 months after a whistleblowing disclosure, to check that no detriment is being suffered; and that if allegations of detriment are made by the whistleblower the alleged detriment should be reviewed and addressed.
- 11.36 **Recommendation 36:** Where an Investigating Officer is from the same service area as the subject of the disclosure, Safecall (or another independent provider) should perform a “critical friend” role to oversee the whistleblowing investigation more closely.
- 11.37 **Recommendation 37:** Both the Nominated Officer and Investigating Officer should be required to complete a written declaration of independence at the outset of any investigation.
- 11.38 **Recommendation 38:** CEC should establish a policy which stipulates that relationships between Colleagues must be disclosed if one person has line management responsibility for the other.
- 11.39 **Recommendation 39:** CEC should develop an action plan to improve its approach to communicating with front-line Colleagues with identifiable KPIs.
- 11.40 **Recommendation 40:** An investigation scope for a whistleblowing investigation should be prepared at the outset and, where appropriate, shared with the whistleblower with an invitation to provide comments. The investigation scope and any limitations on the investigation to be conducted should be included in the whistleblowing investigation report.

- 11.41 **Recommendation 41:** CEC should be proactive in relation to attempts to contact anonymous whistleblowers (via a secure portal) and always seek to interview the whistleblower regardless of their level of anonymity. In cases where the whistleblower does not wish to be identified to CEC, Safecall (or another independent provider) should be tasked with undertaking an interview and then feeding back the findings to CEC (subject to any relevant redactions required to protect the whistleblower’s identity).
- 11.42 **Recommendation 42:** The Whistleblowing Policy should be updated to specifically address “500 Reports” and all such reports should be taken forward with a target date of being completed within three months.
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- 11.44 **Recommendation 44:** CEC should streamline its disciplinary investigation process and rely more on the evidence (not the opinions of the Investigating Officer but rather the underlying evidence) collated in the course of whistleblowing investigations.
- 11.45 **Recommendation 45:** Those who write investigation reports should be cautious about criticising whistleblowers or complainers who have every right to try to persuade the investigator to side with their version of events, so long as they do so lawfully.
- 11.46 **Recommendation 46:** Any decisions to cease communication with a service user or a whistleblower from outwith CEC should reference and follow CEC’s “*Managing Customer Contact in a Fair and Positive Way Policy*”; and any decision to cease communications with a service user or a whistleblower should be reported to GRBV in writing to ensure proper oversight.

- 11.47 **Recommendation 47:** Legal professional privilege should be utilised sparingly in the context of whistleblowing or other fact-finding investigations outside of the preparation of actual or threatened litigation.
- 11.48 **Recommendation 48:** Any decisions to treat a matter as legally privileged should be clearly documented with appropriate analysis of the application of the legal tests to the facts at hand being set out.
- 11.49 **Recommendation 49:** In circumstances where assurance is sought by Councillors or regulators, and the provision of privileged information would aid in providing such assurance, consideration should be given to sharing this information under a limited waiver of privilege.
- 11.50 **Recommendation 50:** Training on legal professional privilege should be offered to Councillors and relevant Colleagues.

## APPENDIX 1

### TERMS OF REFERENCE

1. The City of Edinburgh Council (the "Council") has commissioned an independent review of whistleblowing and organisational culture relevant to the raising of and responding to concerns of wrongdoing involving the Council, its members, officers and colleagues (the "Review").
2. The Review is being carried out by Susanne Tanner QC (the "Independent Chair") with support from Pinsent Masons (collectively the "Reviewer").
3. The outcomes of the Review are:
  - 3.1 to determine whether or not a positive, open, safe and supportive whistleblowing and organisational culture for the raising of and responding to concerns of wrongdoing within the Council, its elected members, officers and colleagues ("employees") exists within the Council and, if not, why not;
  - 3.2 to determine whether or not the Council's whistleblowing processes and practices, in particular the Council's 'Whistleblowing Policy' (introduced in May 2014) and the appointment of Safecall as a whistleblowing service provider, embody good practice and provide an effective vehicle for raising and responding to concerns of wrongdoing;
  - 3.3 to determine whether Council elected members, officers, colleagues and former colleagues feel empowered to raise concerns of wrongdoing, or whether there are any barriers or other reasons, actual or perceived, which inhibit the reporting of wrongdoing within the Council;
  - 3.4 to determine whether Council elected members, officers and colleagues in management roles feel empowered to respond to concerns of

wrongdoing which are raised by elected members, officers, colleagues, former colleagues or members of the public, or whether there are any barriers or other reasons, actual or perceived, which inhibit the response to concerns of wrongdoing within the Council;

- 3.5 to determine if whistleblowing reports and other reports of wrongdoing involving the Council, its elected members, officers and colleagues are properly investigated and acted upon, including by taking steps to prevent recurrence, and, if not, why not;
  - 3.6 to determine whether the avoidance of reputational damage or legal liability is a contributory factor in any failure by the Council to respond to or to address concerns of wrongdoing; and
  - 3.7 to make recommendations to improve the organisational culture, processes and practices of the Council, to provide a positive, open, safe and supportive whistleblowing and organisational culture, to encourage and support the reporting, responding to and addressing of wrongdoing involving the Council, its elected members, officers and colleagues.
4. The Review will examine the organisational culture, processes and practices, relevant to whistleblowing and reporting of and responding to wrongdoing, of the Council as a whole, including amongst elected members, officers and colleagues.
  5. The Review's remit is to determine the organisational culture, processes and practices with a view to making recommendations to improve any shortcomings. The Review will necessarily entail looking at the approach to whistleblowing and other relevant processes, which may include reports and investigations both before and after the introduction of the Council's Whistleblowing Policy in May 2014, insofar as relevant to the assessment of the current position. Anyone within or outwith the Council will be able to raise issues they believe are relevant to the investigation and it will be within the discretion of the Reviewer as to

whether or not any past or current reports or investigations are relevant to an assessment of the current organisational culture, processes and practices. In addition, while consideration of past or current whistleblowing and 'speak-up' reports may be informative to the Reviewer, the Review shall not determine the merits of individual whistleblowing reports, complaints or concerns of wrongdoing by Council personnel, former Council personnel or service users.

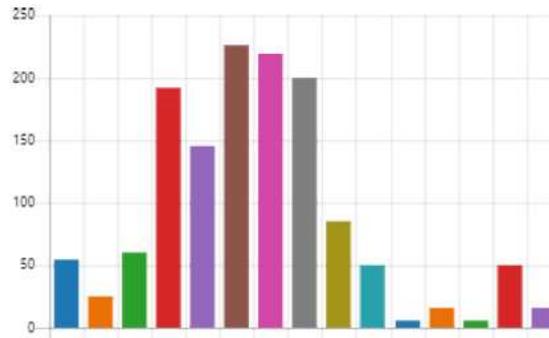
6. The Reviewer shall keep confidential all confidential information disclosed as a result of the Review and shall not use nor disclose the same save as provided in the Annex to the Terms of Reference or as required by law.
7. At the conclusion of the Review, the Reviewer shall produce a written report (the "Report") which shall be provided to the Council. The Independent Chair will report publicly on the Review's findings.

## APPENDIX 2

### RESULTS OF COLLEAGUE SURVEY

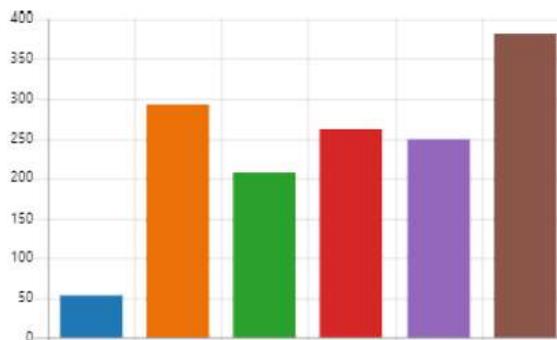
1. What Grade are you?

1	54
2	25
3	60
4	192
5	145
6	226
7	219
8	200
9	85
10	50
11	6
12	16
Chief Official	6
SNCT - Teacher	50
SNCT - other professional	16



2. How long have you worked for the Council?

Less than 1 year	53
1 year to 5 years	293
5 years to 9 years	207
10 years to 15 years	261
16 years to 20 years	250
21 years +	381



3. Please rate the culture of the Council with respect to encouraging speaking up and addressing concerns?

<span style="color: blue;">●</span> strong culture which encourages speaking up and addressing concerns	229
<span style="color: orange;">●</span> neutral - partial culture which encourages speaking up and addressing concerns but is not fully embedded	707
<span style="color: green;">●</span> weak culture which discourages speaking up an addressing concerns	504



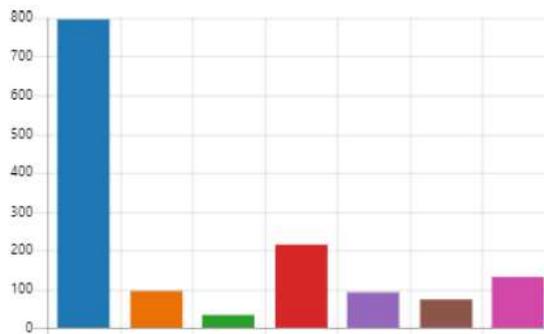
4. If you have worked for the Council for more than five years, has the culture for encouraging colleagues to report and address serious concerns improved since 2015?

<span style="color: blue;">●</span> Yes	405
<span style="color: orange;">●</span> No	683
<span style="color: green;">●</span> Not applicable - I have worked for the Council for less than five years	325



5. If you did have a serious concern, what would you do?

<span style="color: blue;">●</span> I would raise it with my manager	798
<span style="color: orange;">●</span> I would raise it with a more senior manager	94
<span style="color: green;">●</span> I would raise it with HR	32
<span style="color: red;">●</span> I would raise it with my Union rep	214
<span style="color: purple;">●</span> I would consult the Whistleblowing Policy	90
<span style="color: brown;">●</span> I would do nothing	74
<span style="color: pink;">●</span> Other	132



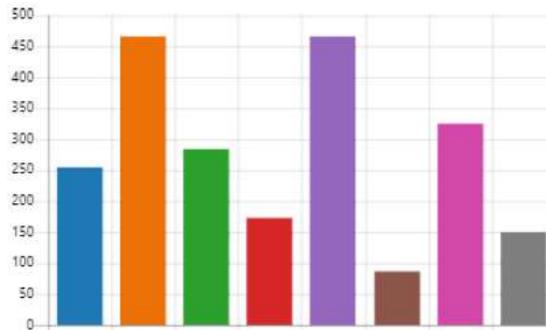
6. Do you know what Whistleblowing means at the Council?



7. Are you aware of the Council's Whistleblowing Policy?



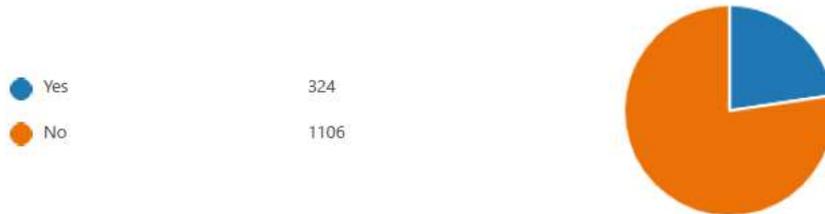
8. How did you find out about the Whistleblowing Policy? (please click all that apply)



9. Do you know where to find the Council's Whistleblowing Policy?



10. Have you received any training on the Whistleblowing Policy?



11. Has your manager spoken with you about the Whistleblowing Policy?

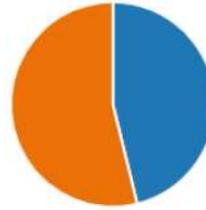


12. Has your manager spoken about Whistleblowing in a manner which is:



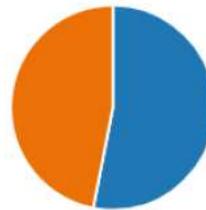
13. Are you aware that you can make a whistleblowing report to any manager at the Council?

● Yes	659
● No	768



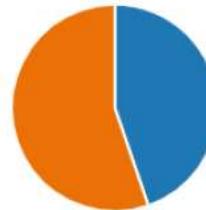
14. If you made a report to your manager, would you have confidence that they would deal with it properly?

● Yes	755
● No	667



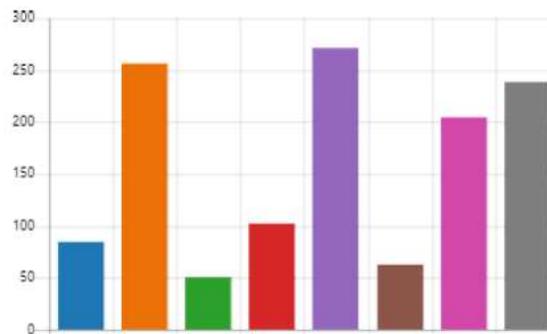
15. Are you aware of the Safecall whistleblowing hotline?

● Yes	644
● No	796



16. How did you find out about the hotline? (Please click all that apply)

● Line manager	84
● Intranet	256
● Induction	50
● Training	102
● Communications from central management	271
● A Poster/flyer	63
● From the Whistleblowing Policy	205
● Other	239



17. Do you know that whistleblowing reports can be made anonymously?



18. If you made a report anonymously, do you believe your anonymity would be protected?



19. If not, why not?



20. Do you know that, if you make a whistleblowing report, you are protected from “detrimental treatment” at work (in other words, suffering a disadvantage in the circumstances in which you have to work) for doing so?



21. If you made a whistleblowing report, do you have confidence that you would not be subject to detrimental treatment at work?

● Yes	467
● No	936



22. If not, why not?

● my line manager would know I had made a report	167
● my colleagues would know I had made a report	75
● more senior management would know I had made a report	372
● Other	291



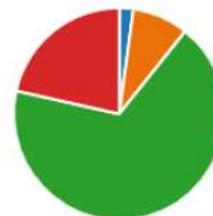
23. Have you ever made a whistleblowing report?

● Yes	94
● No	1305



24. If yes, how satisfied were you with how that report was dealt with?

● Very satisfied	2
● Satisfied	8
● Not satisfied	63
● I didn't know the outcome	20



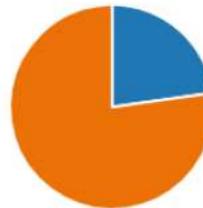
25. If not satisfied, why not?

● I didn't know the outcome	3
● I didn't see any changes	9
● I suffered negative consequences	32
● Other	19



26. If yes, were you kept informed of the progress of the investigation into your investigation and the outcome?

● Yes	18
● No	61



27. If the need arose, how likely would you be to make a whistleblowing report?

● I would not report	67
● I am unlikely to report	310
● I may report	587
● I am likely to report	428



28. If you would not report, or are unlikely to report, please tell us why by rating the following questions from 0 to 5

0 - does not apply    1 - a factor but very minor    2 - a factor but minor    3 - a factor  
 4 - a factor to which I give weight    5 - a key reason

0 - does not apply    1 - a factor but very minor    2 - a factor but minor    3 - a factor  
 4 - a factor to which I give weight    5 - a key reason

I do not know enough about the whistleblowing process

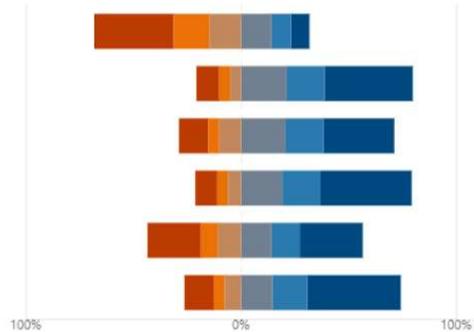
I do not think that confidentiality and anonymity will be maintained

I do not think that the process will be fair

I am concerned about adverse treatment

I do not consider my line manager will change anything

I do not consider senior management will change anything



29. If you had to make a whistleblowing report, who would you make a whistleblowing report to?

Safecall	596
Your line manager	593
Senior management	167
Other	219



30. Do you have confidence that a whistleblowing report to your line manager would be properly investigated?

Yes	721
No	661





33. If no, why do you not have confidence that a report to Safecall will be properly investigated?  
Please tell us your reasoning by rating the following questions from 0 to 5

0 - does not apply   1 - a factor but very minor   2 - a factor but minor   3 - a factor  
4 - a factor that I give weight to   5 (a key reason)

0 - does not apply   1 - a factor but very minor   2 - a factor but minor   3 - a factor  
4 - a factor that I give weight to   5 (a key reason)

I do not know enough about the whistleblowing process

I do not think that confidentiality and anonymity will be maintained

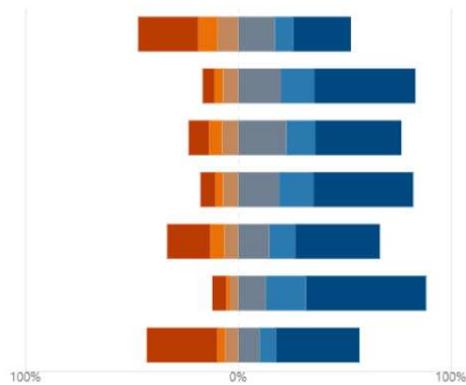
I do not think that the process will be fair

I am concerned about adverse treatment

I do not consider my line manager will change anything

I do not consider senior management will change anything

I have seen what happens to other people who make whistleblowing reports.



34. In general, do you believe that you can raise concerns?

Yes 835  
No 272  
Couldn't say 235



35. Do you believe that any concerns will be dealt with properly?

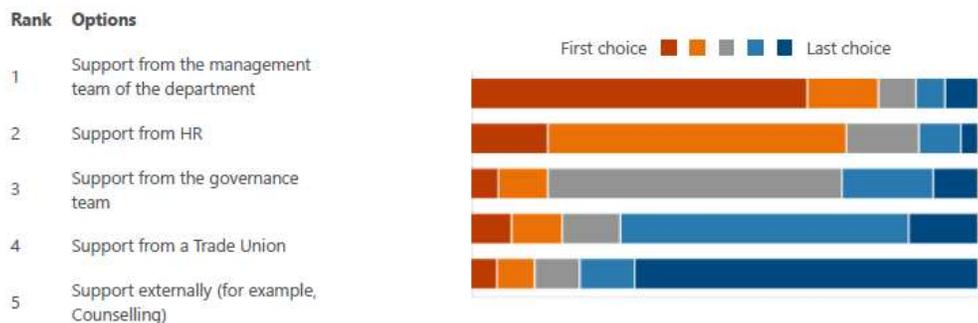
Yes 406  
No 475  
Couldn't say 461



36. Do you consider that those who raise concerns are properly supported?



37. What further support could be given to those who raise concerns or blow the whistle?



38. Have you contacted the independent review team?

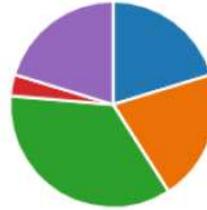


39. If not, why not?



40. If you were not satisfied, why did you decide not to share?

	I do not consider confidentiality and anonymity will be maintained	67
	I am concerned about adverse treatment	68
	I do not believe my participation will change anything	117
	no reason	11
	Other	67



41. Is there anything else you would like to tell the review team about the whistleblowing and organisational culture?

587  
Responses

Latest Responses

42. Are you are a manager, grade 7 and above?

	Yes	328
	No	949



43. Do you know how to respond if an employee blows the whistle or raises a concern with you?

	Yes	232
	No	93



44. Have you had training on how to recognise whistleblowing complaints?

Yes	68
No	256



45. Have you had training on how to investigate whistleblowing complaints?

Yes	44
No	280



46. Would you like more training on how to deal with whistleblowing complaints?

Yes	267
No	60



## **APPENDIX 3**

### **CASE STUDY 1**

#### **1. INTRODUCTION**

- 1.1 This case study concerns long running concerns and complaints by a service user of CEC, who is referred to as the “Citizen”. The initial complaints in this case meet the test for being considered as relevant to whistleblowing matters because they relate to serious failings in the education and care of the Citizen’s child. In addition, some of the Citizen’s later concerns and complaints are relevant to my consideration of the culture of CEC, in so far as it relates to the way in which concerns and complaints of wrongdoing are responded to by the organisation.
- 1.2 It is important for me to observe at the outset of this Case Study that the Citizen’s persistence from 2010 to 2015 in relation to seeking to have their concerns and complaints dealt with, by CEC and external regulators, has resulted in identification of serious past failures in the education and care of an autistic child and to steps being taken that are for the benefit of all children with additional support needs in Edinburgh schools.
- 1.3 I have decided to summarise aspects of the Citizen’s concerns, complaints and related investigations because it demonstrates the importance of addressing reported wrongdoing quickly and properly. I have reviewed aspects of the case for the purpose of making thematic recommendations. However, in line with the Review Terms of Reference, I have not considered the merits of the Citizen’s allegations.
- 1.4 The Review Team has been provided with a significant amount of information in connection with all aspects of this case. To piece together and present the whole history of this case would be a disproportionately lengthy and complex exercise. I make observations below about the key events and some of the decisions made to help to illustrate and inform

my broader recommendations. With the aim of keeping this Case Study to a reasonable length, there are details and events which I have decided not to include in this summary.

- 1.5 I have shown the Case Study to the Citizen and their family and current relevant CEC officers and invited representations from them, which I have considered and reflected, where appropriate and in line with the evidence, prior to publication. Neither the Citizen, nor the CEC officers who have participated in the representations process, agree fully with my summary of this complex and difficult case. The Citizen and their family feel that there are important aspects about their experiences that have been left out of the narrative and that my findings do not go far enough to fully address all of their concerns, both past and current. Despite this, the Citizen, in discussion with their family, has agreed to its publication. I wish to acknowledge that the process of engaging with this Review has taken courage on their part and I am sorry if any distress has been caused to the Citizen or their family as a result of their contribution to the Review. I am grateful for their permission to publish this Case Study, despite its inherent limitations from their perspective.
- 1.6 I also acknowledge that CEC officers may feel that decisions made in the past, some of which were made by people who are no longer with the organisation, are being assessed critically and with the benefit of hindsight. I agree that I am applying critical hindsight, but the purpose of the Review is to identify thematic learnings to help CEC to avoid repeating the mistakes of the past. I am also making observations and recommendations in Section 4 which, if accepted, should hopefully allow CEC and the Citizen to explore whether they can resolve the outstanding differences between them.
- 1.7 Councillors familiar with this case will recognise who it concerns but I have sought to anonymise the details with the objective of minimising the distress and anxiety to those involved in the history of the matter. I

do not mention people by name but with the aim of being transparent, where I have considered it appropriate, I have provided job titles or role descriptions.

## 2. **BACKGROUND**

2.1 The genesis of the complaints in this case was the mistreatment of the Citizen's child while at a mainstream primary school more than a decade ago and a subsequent downplaying of the school's failings, coupled with the challenges faced by the school due to the child's needs and behaviour being exaggerated by the school and those initially tasked with looking into the issue. The complaints at the heart of the case are serious because they involved inappropriate physical handling and the prevention of a child with additional support needs as a result of autism from accessing education.

2.2 Reviews have concluded that classroom teachers involved did not deliberately mistreat the Citizen's child and they wanted to do well by the child and the other children in their care, but they struggled due to a lack of training in how to respond to children with additional support needs as a result of autism. Unfortunately, a failure to initially investigate the Citizen's concerns and attempts to minimise the school's failings made matters worse and the Citizen lost trust in various personnel at the school and CEC. Further failings arose in 2013, which again resulted in the Citizen's child being effectively prevented from accessing education for a large part of the school year, which compounded the Citizen's mistrust in the ability of CEC to address the wrongs that had occurred.

2.3 The Citizen's persistence in seeking to get to the bottom of what occurred and to ensure that lessons were learned to prevent recurrence, which is for the benefit of children with additional support needs as a result of autism, or other additional support needs, has led to the Citizen's underlying complaints being the subject of significant

reviews by CEC in 2012 and 2015. The Citizen and the Citizen's family have received apologies from CEC, but the Citizen does not consider the apologies to have been sufficient, and from the Citizen's perspective, CEC wrongly blamed their vulnerable child and family, causing distress to the Citizen and their family. As a result of a deep sense of being wronged and not all issues raised being investigated, the Citizen has made complaints against CEC, directly to CEC, and to Councillors, Members of the Scottish Parliament, and other regulators and professional bodies including the Scottish Information Commissioner, the SPSO, Audit Scotland, and the General Teaching Council for Scotland ("**GTCS**").

2.4 CEC's position is that mistakes and inappropriate action in the care of the Citizen's child and deliberate wrongdoing in responding to the Citizen's complaints were investigated in a fulsome manner in 2012 and 2015, the wrongs of the past have been acknowledged by CEC and apologies have been given. They consider the Citizen's persistent and continuing complaints and information requests to be overly demanding and unreasonable in light of the extensive investigations conducted and the apologies given. CEC is concerned that the Citizen's persistent demands and complaints place disproportionate and unreasonable demands on CEC resource and have impacted on the well-being of some CEC employees who were not involved in the underlying misconduct.

2.5 I acknowledge both sides of this cycle of complaints and the response to them and the resulting impact on both CEC employees and the Citizen's family. I have been made aware of a number of CEC employees who were not involved in the underlying misconduct, who have been impacted as a result of being involved with the Citizen's concerns and complaints. I accept these accounts while noting that they have not been examined in detail by this Review. I have also been told about the number of hours spent by some CEC employees and external

appointees in dealing with these matters, which has ultimately cost the public purse. Again, there is evidence to support the number of hours spent. However, I also accept the account of the Citizen about the impact that these matters have had on them and their family over a period of more than a decade. The Citizen shows insight and recognises the amount of time, the number of CEC personnel and the resulting public expenditure which has been required in responding to their concerns and complaints. However, the Citizen considers that matters could have been fully resolved many years ago had CEC responded differently to their initial concerns and complaints, and thereafter, and the Citizen also considers that it is the duty of CEC as the employer to address any capacity issues that have arisen as a result of having to deal with these matters. I have made observations below about a number of things that could have been done differently by CEC and these would have saved time and expense, as well as restricting the impact on the wellbeing of both CEC staff and the Citizen's family.

### 3. **REVIEWS CONDUCTED**

3.1 In July 2011, approximately 15 months after the Citizen and their family first raised their concerns, a senior member of the CEC's Policy, Strategy and Performance team commenced an internal review to establish the facts around the complaints (the "**First Internal Review**"). This individual was independent of the (then) Children and Families Directorate (now known as the Education and Children's Services Directorate). The First Internal Review was extensive. It concluded in May 2012, with numerous critical findings against the school and the (then) Children and Families Directorate, including that:

3.1.1 Several staff members at the school physically handled the Citizen's child and that these interventions were inappropriate;

- 3.1.2 Back in 2010, the school did not keep adequate records of significant incidents that involved physical intervention or handling and the pupil record files did not appear to have been completed and may have had material removed from it. There were several weaknesses in the school's response to Data Protection Act requests. Suggestions at various points that all available information had been released were therefore wrong and some relevant information and emails appeared to have been ignored, withheld, altered or deleted. There was, however, no evidence of a systematic or organised 'cover-up'; and
- 3.1.3 The response of the (then) Children and Families Directorate to the Citizen's complaints had been on the whole defensive rather than open.
- 3.2 The full report of the First Internal Review was provided to the Citizen. In response to the findings, the (then) Director of the Children and Families Directorate emailed the Citizen to apologise for the failings identified and to reassure the Citizen that appropriate action would be taken, and a plan implemented to prevent recurrence. There were also discussions about a joint statement by the (then) Director of the (then) Children and Families Directorate and the Citizen's family which would have acknowledged the findings of the investigations and given a fulsome apology to the Citizen's family. However, the proposed joint statement was not issued and the (then) Director of Children and Families instead met with the school's staff and parent council representatives to inform them that the Citizen's complaints had been upheld and an apology issued directly to the Citizen. In addition, in September 2014, an apology was issued via the school's newsletter "*for various matters*" and "*mistakes made*" in relation to the schooling of the Citizen's child and for "*erroneous*" statements made at a previous meeting of parents.

- 3.3 In parallel to the First Internal Review, the Citizen submitted a number of complaints to CEC, which were dealt with by the (then) Head of Planning and Performance within the (then) Children and Families Directorate, under CEC's Complaints Procedure, with findings being provided to the Citizen and their family during 2012. The Citizen remained concerned with the remedial and other actions that followed the First Internal Review and they considered a commitment to conduct an external investigation was not lived up to.
- 3.4 I understand that the Citizen's complaint that CEC did not live up to a commitment to conduct an external investigation was considered by the SPSO and not upheld because they accepted that the First Internal Review was a thorough exercise. However, a number of other serious and adverse findings have been made by the SPSO and the Scottish Information Commissioner with respect to aspects of the Citizen's complaints about CEC's approach to dealing with their complaints.
- 3.5 One of the elements that the Citizen remains concerned about was that a child protection investigation had not been conducted when their concerns about their child's treatment were first reported or at any time thereafter. This complaint was the subject of a review by solicitors from CEC's legal team reporting CEC's (then) Monitoring Officer (the "**Second Internal Review**"). The Second Internal Review concluded that the (then) Director of the (then) Children and Families Directorate made a professional judgment call that a child protection investigation was unnecessary, a decision which they were entitled to make. In reaching this conclusion, the authors of the report took external legal advice. The full final report in the Second Internal Review dated April 2013 was shared with the Citizen. It subsequently transpired that there were earlier draft reports produced by another solicitor in CEC's legal team. The Citizen sought information about these earlier draft reports, and the Citizen was incorrectly told that the information did not exist.

This existence of the earlier draft reports was the subject of a review in 2019 and 2020 by CEC's Chief Internal Auditor.

- 3.6 After the First Internal Review, further problems arose and the Citizen's child was effectively prevented from accessing education from February 2013 until the end of the school year, albeit that attempts were made to bring the Citizen's child back to school during that period. In June 2013, the Citizen brought a disability discrimination claim against CEC through the (then) Additional Support Needs Tribunals for Scotland (ASNTS). A settlement was reached between CEC and the Citizen.
- 3.7 Due to the Citizen having on-going concerns about their child being prevented from accessing education, the question of whether effective remedial actions were taken following the First Internal Review and other issues of contention between the parties, CEC commissioned an investigation in 2015 by an external solicitor (the "**First External Review**"). The scope of the First External Review was determined by the external solicitor commissioned to conduct the review following discussions with personnel from CEC and the Citizen. The First External Review examined a number of issues, including the progress of the remedial steps since the First Internal Review and the prevention of the Citizen's child from accessing education during part of 2013. The review conducted was extensive, including interviews of 13 witnesses, and resulted in a report of 54 pages in length which contained well-reasoned findings, some of which were critical of past actions by CEC personnel. The report included a finding that there was a service failure at the school which effectively prevented the Citizen's child from accessing education and the service failure was neglectful and amounted to maladministration, and that the subsequent handling of a serious complaint by the Citizen against CEC fell below expected standards to the extent that it amounted to maladministration. The findings of this review were shared with the Citizen and it led to CEC giving a formal apology to the Citizen's family for the identified failings

which led to the Citizen's child being effectively prevented from accessing education from February 2013 until the end of the school year and which noted that this was partly as a result of not learning all appropriate lessons from a previous review. The apology also noted that a complaint made by the Citizen at the time was not dealt with appropriately and that the Citizen's concerns were both serious and legitimate. The apology concluded with the words "*The Council recognises the real hurt these have caused the [Citizen's] family and we apologise unreservedly to [family members listed]*". The Citizen and their family were also invited to give a deputation to the full Council to share their experiences.

3.8 Additional concerns and complaints by the Citizen, primarily concerning the former Director of the (then) Children and Families Directorate, were the subject of a second investigation by the external solicitor (the "**Second External Review**"). The Second External Review also appears to have been thorough and led to the production of a report of 52 pages in length which sought to answer the Citizen's concerns and complaints. The Second External Review did not uphold to any significant degree the substantive complaints against the former Director of the (then) Children and Families Directorate but there were some points, described as "minor criticisms", of decisions made by the former Director were highlighted. The Citizen was not provided with a copy of the Second External Review report and instead received a letter which set out which complaints had been "not upheld" and which complaints had been "upheld". Where a complaint was upheld, including partially, more information was provided. However, no further information or explanation was provided where the complaint was not upheld.

3.9 Following the conclusion of the First and Second External Reviews, the Citizen continued to correspond with CEC about their concerns and complaints. On 30 June 2016 (and followed up with a further letter on

26 April 2017), CEC's Chief Executive wrote to the Citizen to inform the Citizen that CEC would not engage with the Citizen any further in relation to historical issues because CEC considered that they had already been the subject of extensive scrutiny.

3.10 From 2013 to 2017, the Citizen pursued a complaint against a former senior employee in the former Children and Families Directorate through the GTCS. Following a review of documents provided to the GTCS, there was considered to be a case to answer, and the senior employee was referred to the Fitness to Teach Panel for an evidential hearing. In January 2015, CEC's (then) Monitoring Officer committed to the Citizen that if the GTCS did not resolve matters, CEC "*will investigate your complaint according to our procedures.*" The Fitness to Teach hearing began in March 2016 and three days of evidence were heard in the period to March 2017. As the hearing did not conclude, it was part heard and adjourned to future dates. However, the GTCS then decided to stop the hearing because of the time that had elapsed since the initial complaint. By this time, the former senior employee had been retired from CEC for a number of years. Despite the previous commitment given to the Citizen by CEC that the complaint would be investigated according to CEC procedures in the event that it was not so dealt with by GTCS, CEC also decided not to investigate the allegations because, by this time, a decision had been reached by CEC that the Citizen's complaints had already been the subject of extensive scrutiny and to commit further resource to this would not be reasonable and proportionate.

3.11 On 27 April 2017, CEC wrote to the Citizen about four complaints by the Citizen against CEC which had been upheld by the SPSO (the complaints concern the period prior to December 2015) including findings that CEC had "*unreasonably failed to properly investigate your concerns*" about a previous investigation conducted in 2013; had "*unreasonably said...that they had done everything they could*

*reasonably be expected to do to address your past concerns ‘and this view is supported by the Ombudsman’; had “unreasonably decided that political leaders’ officers should be contacted to request that your correspondence should not be responded to...”; and CEC had “unreasonably failed to investigate your complaints...in line with stage 2 of their complaints procedure”<sup>21</sup>. There was also a fifth complaint that was not upheld.*

- 3.12 For balance, I note that in February 2018, following a further complaint by the Citizen that CEC was refusing to investigate their complaints, the SPSO found against the Citizen, noting that CEC had already undertaken several investigations in relation to matters concerning the Citizen’s child’s treatment at school and the way in which subsequent investigations were dealt with. The SPSO considered that the CEC’s refusal to investigate the Citizen’s complaints further was reasonable<sup>22</sup>. However, the Citizen considers that some of the facts found in the SPSO decision are incorrect in that the Citizen’s view is that it proceeds on the basis that a CEC senior manager has been investigated when that was not the case. There was also a SPSO “provisional decision” in May 2020 which found that CEC did not fail to respond to a complaint by the Citizen which was submitted on 1 November 2017, but they did fail to respond appropriately to correspondence which asked about the wording used to describe an investigation report produced by CEC in December 2015. The SPSO considered CEC could not continue to maintain its position of not communicating with the Citizen and, noted that the Citizen had expressed a desire to resolve matters, the SPSO recommended that CEC offer to pay for independent and professional mediation with CEC<sup>23</sup>. I understand that CEC does not agree with the provisional decision and the decision has not been finalised.

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<sup>21</sup> The adverse findings are set out in a letter from CEC to the Citizen dated 29 April 2017

<sup>22</sup> SPSO Decision Report 201702982

<sup>23</sup> SPSO Decision Notice 201807835

- 3.13 On 18 October 2018, the Citizen submitted a complaint against CEC's Chief Executive which alleged that he had misled Group Leaders to secure support for CEC's refusal to communicate with the Citizen. The background to this complaint was that in explaining the reasoning for refusing to engage further with the Citizen, CEC's Chief Executive sought to rely on a text message from the Citizen. A Councillor was concerned that the text message was being wrongly characterised as showing the Citizen to be acting in a vindictive manner. The Citizen was also concerned that Councillors were told that the SPSO considered the Council's actions in stopping correspondence with the Citizen to be appropriate which the Citizen considered to be a misrepresentation of the position. CEC's Deputy Monitoring Officer, who was also a senior member of CEC's in-house legal team was appointed to investigate the Complaint under CEC's Complaints Policy. The Citizen expressed concerns that the Deputy Monitoring Officer was not independent because, in their role with CEC Legal Services, they were a subordinate to the Chief Executive and the Citizen questioned if the solicitor had had any involvement in their earlier complaints. The Deputy Monitoring Officer refused to recuse themselves from the investigation, noting that in this statutory role they were duty bound to act independently of CEC and the Chief Executive. In confirming this position, the Deputy Monitoring Officer sought independent external legal advice from a partner at an external law firm who is an expert on local authority law and governance. The Deputy Monitoring Officer investigated the complaints and did not uphold any of the Citizen's complaints.
- 3.14 During the period from 2016 to November 2018, the Citizen submitted freedom of information requests for all draft reports, emails and witness statements in relation to CEC's decision not to initiate a child protection investigation. Following searches, CEC initially responded that the information did not exist and noted in its response to subsequent requests for the same information that the Citizen's requests were

vexatious. In two decisions in January and February 2019<sup>24</sup>, the Office of the Scottish Information Commissioner disagreed with CEC's assessment that the requests were vexatious, and CEC was ordered to comply. Another Councillor received information from a CEC employee that there was a previous version of the Second Internal Review which may have reached different conclusions from the final Second Internal Review report provided to the Citizen. In February 2019, following further searches, information in relation to CEC's investigation of the decision not to initiate a child protection investigation and pertaining to the Second Internal Review report (see paragraph 3.5 above) was located. This included earlier versions of reports and related email correspondence.

- 3.15 CEC's Chief Internal Auditor was instructed by CEC's Chief Executive to review the facts concerning the discovery of the earlier draft reports and emails and the erroneous response to the freedom of information requests. CEC also agreed to review other complaints by the Citizen, including an allegation that earlier investigations had been misdescribed as "Monitoring Officer" reports. The review conducted was divided into two phases: the first phase looked at the discovering of the earlier draft of the Second Internal Review report dated 12 April 2013 (the "**Phase I Review**"); and the second phase reviewed the description and categorisation of the earlier reports as Monitoring Officer reports (the "**Phase II Review**").
- 3.16 The Phase I review commenced in March 2019 with a planned completion by May 2019. However, the Chief Internal Auditor spent approximately 285 hours on the Phase I review, the review was not completed until November 2019 and the Citizen was not informed of the outcome until 1 July 2020. A detailed timeline for the reviews and the completion of the reports has been included in both the Phase I and II reports together with supporting rationale for the time taken. In

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<sup>24</sup> Decisions 001/2019 and 023/2019

particular, the Chief Internal Auditor points to the impact of COVID-19, an increase in the scope of Phase I to address other areas raised by the Citizen, and the volume of evidence provided by the Citizen which needed to be reviewed and necessitated follow up enquiries.

- 3.17 Three versions of the Phase I report were distributed to others (not including the Citizen):
- 3.17.1 A “Final Report” dated 18 November 2019 – CEC’s Chief Executive received this report;
  - 3.17.2 A “summary report” dated 16 December 2019 - it is understood that this summary report was shared with Group Leaders, Audit Scotland, the Scottish Information Commissioner, the SPSO and CEC’s external auditors; and
  - 3.17.3 A “summary report” dated 24 June 2020 – it is understood this summary report was provided to CEC’s Chief Executive and elected members.
- 3.18 I understand that an audit trail for the different versions of the Phase I report was maintained by the Chief Internal Auditor.
- 3.19 The Citizen was not provided with the Final Report or either of the summary reports on the basis that legal privilege was asserted by CEC as applying to these reports. The Citizen instead received, on 1 July 2020, a document entitled “*Outcomes of the Chief Internal Auditor’s Investigation of the April 2013 Monitoring Officer Complaint.*”
- 3.20 Phase II concerned the description of the two earlier reviews as “Monitoring Officer” reports. Again, an extensive investigation was undertaken. The Chief Internal Auditor spent approximately 325 hours on the second phase review. The Citizen was informed on 12 November 2019 that an investigation would be conducted into the description of two reports as Monitoring Officer reports. The

investigation concluded 17 months later at the end of March 2021. The Citizen was provided with a copy of the full Phase II report on 7 June 2021.

- 3.21 Since receiving the Phase II Report, the Citizen has sent fifteen emails to CEC's Chief Executive entitled "*scrutiny #*". The emails essentially seek to challenge the Chief Internal Auditor's findings by pointing out potential factual errors, setting out alleged facts which the Citizen considered to be missing from the Phase II report and to information of which the Citizen is aware, which in the Citizen's opinion undermines the findings. The Citizen has sought the disclosure of the evidence reviewed and for statements and findings to be amended or withdrawn. As a response to these scrutiny emails, CEC's Chief Executive has asked the Convener of GRBV to review both the Phase I and Phase II reports and the underlying materials and to assess whether they are satisfied that the conclusions reached are appropriately based on the evidence reviewed. Given my terms of reference and in light of the review by the Convener of the GRBV, I have not commented on the factual findings of the Phase I and Phase II reviews. However, I do make observations on the approach taken to those reviews.

#### 4. **MY OBSERVATIONS AND RECOMMENDATIONS**

- 4.1 **Mediation:** The Citizen has previously expressed a desire to mediate their remaining concerns and the SPSO has recommend that outstanding matters be addressed by way of mediation. **On 11 May 2021, I made an interim recommendation to CEC's Chief Executive that CEC take forward mediation with the Citizen to attempt to reach a mutually agreeable resolution.** This is a case where, having considered the extensive material available to the Review Team in relation to these matters, while not being required to determine the merits, I can understand and empathise with the respective positions and interests of both parties. I understand the Citizen's position that CEC has not done right by the Citizen and the Citizen's family. I also

understand the Chief Executive's position about the extensive investigations and engagement that has taken place over the last decade and which have continued after the failings concerning child safety were acknowledged by CEC in 2012 and 2015. Parties need to come together to try and find a path through the outstanding issues and the Citizen and the Chief Executive have both committed to engage constructively in this process. Since my interim recommendation was made, steps have been taken to identify a mediator but agreement on the mediator and the approach to mediation has not yet been reached. **I would urge the Citizen and CEC's Chief Executive to proceed to mediate as soon as possible.**

- 4.2 **Complaints handling and early resolution:** There is the possibility that effective complaints handling processes could have prevented the Citizen's complaints from escalating. It is clear from the papers I have read that personnel dealing with the initial complaints were ill-equipped to do so and were, at times, overwhelmed with the volume of information, correspondence and issues. It is important that CEC has in place and maintains effective complaints handling processes which seek to resolve concerns consensually and without unnecessary delay. I am aware that CEC's Complaints Handling procedure was revised in February 2013; on 31 October 2017, it was reported to GRBV that a strategic complaints function had been established as part of CEC's Information Governance Unit to provide a more coherent and strategic approach to the management of complaints throughout CEC; in 2018, CEC's Complaints Handling Procedure was updated; and an updated Corporate Complaints Policy was approved on 23 February 2021 by the Policy and Sustainability Committee. It is therefore unnecessary for me to make any specific recommendations about CEC's complaints handling processes and I would simply observe that it is important that the improvements in complaints handling are sustained and subject to regular testing and auditing.

- 4.3 **Apologies:** Following the First Internal Review, the former Director of the former Children and Families Directorate and the Citizen's family came close to agreeing a joint statement about what had occurred which would have embodied a fulsome apology to the Citizen's family, but the joint statement was not issued. That was a missed opportunity for CEC to have shown proper contrition and to learn from past mistakes. There was an apology in September 2014 which apologised for past mistakes and the subsequent apology in 2015 was fulsome and it was stated to be an unreserved apology to the Citizen's family, but the Citizen's view is the apology concerned only the events of 2013. The Citizen does not consider that their family has received a complete apology. This may well be an issue that can be discussed through the conduit of mediation.
- 4.4 **Remediation:** The initial attempts in 2010/2011 to blame the school's failings on the Citizen's child and the delay of 15 months to investigate the failings which ultimately entirely vindicated the concerns of the Citizen and their family were deeply regretful. Following the incidents in 2010 and the failures to properly address the Citizen's complaints until 2012, the Citizen's child was negatively affected by an additional neglectful service failure in 2013. Since 2019, CEC has implemented a process to check that the recommendations made in whistleblowing investigations are actioned. However, a recurring theme of internal audit reports and from the witnesses to whom the Review Team has spoken is that CEC struggles to implement and maintain remedial actions which arise from complaints, grievances, SPSO and regulatory decisions, and other assurance exercises. It is imperative that the recommendations coming out of complaints, internal audits, assurance exercise and external reviews (including, in particular, adverse findings by the SPSO or a regulatory body) are carefully considered and, where the recommendations are accepted, there needs to be a process to ensure remedial actions are followed through. CEC acknowledges this point and CLT has approved the establishment of an Assurance

Management Framework. Operations Managers, and other staff are also being appointed by each Directorate specifically to provide and seek assurance that remedial actions and recommendations are implemented and that those improvements are sustained. In addition, I observe that consideration should be given to any adverse regulatory or ombudsman decisions also being subject to governance oversight by the GRBV.

4.5 **Completing investigations in a reasonable timeframe:** Part of the reason the former senior employee in the (then) Children and Families Directorate was not investigated by CEC was because the Citizen had referred their concerns to the GTCS and CEC did not consider it appropriate to have a concurrent investigation. Although that decision was made back in 2013, I am concerned that it could be repeated. CEC should not pause or defer internal investigations and disciplinary processes, except in exceptional cases where the police or an external regulator require them to stop investigating concurrently. In addition, and as noted below, I am also concerned about the time taken to conclude the Phase I and Phase II reviews by the Chief Internal Auditor and a greater focus on concluding investigations in a reasonable timeframe is needed. For balance, I note that the First and Second External Reviews were thorough and delivered in a reasonable time frame.

4.6 **Independent investigators:** The decision to appoint an external solicitor for the First and Second External Review is commendable. However, the decision to appoint the Deputy Monitoring Officer to investigate the serious allegations made against the Chief Executive in October 2018 opened CEC to criticism by the Citizen because the Deputy Monitoring Officer was also a member of the in-house legal team. On the information available to the Review Team and subject to the caveat that I have not investigated the underlying facts or merits of the respective positions, it appears that the Deputy Monitoring Officer is

a highly able, hard-working and robust professional. I note that the Deputy Monitoring Officer proceeded with the investigation having first checked the independence consideration with an external solicitor. I therefore do not have reason to doubt their integrity and I am content that the Deputy Monitoring Officer proceeded in accordance with the legal advice received but they were put in a position of investigating the actions of the person to whom they ultimately reported and the Citizen's perception that they could not act independently and objectively was understandable. **Where serious allegations are made against the Chief Executive or other Executive Directors, I would recommend that CEC outsources the investigation to a non-panel law firm or counsel with experience in the conduct of investigations.** I appreciate that the Monitoring Officer has statutory and personal duties under section 5 of the 1989 Act to investigate and report on matters amounting to illegality or maladministration but there is not a bar to the Monitoring Officer engaging an independent law firm or counsel to conduct the underlying investigation and advising the Monitoring Officer on the conclusions that should be reached. For completeness, I should note that I am not calling for any issues in this case to be re-investigated as I am strongly of the view that the material issues have been investigated and mediation is the only viable way forward. I am also not making any criticism, express or implied, of the investigation conducted or of the Deputy Monitoring Officer.

- 4.7 **Chief Internal Auditor Phase I and Phase II reports:** It is clear to me that the Chief Internal Auditor is an experienced internal auditor and, again subject to the caveat that I have not reviewed the underlying factual basis for the conclusions reached in the Phase I and Phase II reports, I have no reason to doubt their integrity, independence and professionalism. I observe that the Chief Internal Auditor conducts numerous internal audits every year some of which are highly critical of CEC processes, departments and service failures. However, the

following process points concerning the Phase I and Phase II reviews are relevant from a thematic perspective:

- 4.7.1 **The decision to conduct the review internally:** While the rationale for the time taken is set out in the Phase I and Phase II reports, both reviews took a long time to conclude. Given the Chief Internal Auditor's extensive internal audit programme, it would have been preferable for the reviews to be conducted by an external professional working to set timescales for the delivery of the findings.
- 4.7.2 **Statement to the Citizen that they sought to influence the review's outcome:** There are statements in the Phase I and Phase II reports that the Citizen sought to influence the outcome of the investigation. I understand statements concerning any influence perceived to have been asserted are a common feature of internal audit practice and to accord with Public Sector Internal Audit Standards. I also understand that CEC officers need to set boundaries and express professional concerns in a reasoned manner when appropriate. However, in this context the statements have served to antagonise the Citizen and it has reduced their trust in the credibility of the reviews conducted. Going forward, I encourage those who write investigation reports to be cautious about criticising complainers who have every right to try and persuade the investigator to side with their version of the events as long as they do so lawfully.
- 4.7.3 **The different versions of the Phase I report:** Although I understand an audit trail was maintained, the production of different versions of reports for distribution to various audiences carries with it a risk of confusion and for persons to question why there are multiple versions of a report which appear to be in final form. Where a summary report is produced it should

make clear that it is a summary of a longer form report. Version control is also important. If a document is a draft it should be clearly marked as a draft to avoid any confusion that it may be the final report.

4.8 **The decision to stop corresponding with the Citizen:** CEC needs to be able to end communications when a citizen continues to pursue matters which have been investigated and addressed. The problem with the decision in this particular case was that CEC had not followed through on a commitment given to investigate the former senior employee should the GTCS not reach conclusions (I appreciate that the decision was upheld by the SPSO but it still amounted to a reversal of a previous commitment); and CEC had given incorrect responses to freedom of information requests concerning the Second Internal Review. While the Citizen is persistent and demanding in seeking responses to their concerns and complaints, the Scottish Information Commissioner did not consider the Citizen's freedom of information requests to be vexatious and the SPSO observed in May 2020 that the decision to stop corresponding with the Citizen was not working as intended and it had led to the Citizen making several submissions to the SPSO and other regulatory bodies. Any decision to cease communications with a complainer must be on solid grounds, it should reference and follow CEC's *"Managing Customer Contact in a Fair and Positive Way Policy"* and it should be kept under review. **Going forward, I recommend that any decision to cease communication with a complainer or an external whistleblower follows and references that guidance document and that any decision is notified to GRBV in writing to ensure proper oversight.** I recognise that freedom of information laws can operate to mean that CEC are unable to desist completely from responding to communications by a complainer.

4.9 I reiterate that I am not calling for any aspects of this matter to be reinvestigated. I am convinced that mediation is the only viable way forward for both the Citizen and CEC.

## APPENDIX 4

### CASE STUDY 2

#### 1. INTRODUCTION

1.1 This Case Study concerns a historical whistleblowing disclosure, which was made by an employee of CEC, who is referred to as the “**Whistleblower**”. The whistleblowing disclosure made by the Whistleblower pre-dates CEC’s current Whistleblowing Policy, but I have decided to refer to the case because it demonstrates the importance of responding to whistleblowing reports in a proper and robust manner. I also wish to reassure Councillors who have on-going concerns about this case that it has been reviewed by me for the purpose of making thematic recommendations. However, in line with the Review Terms of Reference I have not considered the merits of the allegations which form the subject of the disclosure.

1.2 I have shown the Case Study to the Whistleblower, their spouse and current relevant CEC officers. Councillors familiar with this case will recognise who it concerns but I have sought to anonymise the details with the objective of minimising the anxiety to those involved in the history of the matter. I do not mention people by name but with the aim of being transparent, where I have considered it appropriate, I have provided job titles or role descriptions.

1.3 I also do not comment on all aspects of this case because to do so would be a lengthy and convoluted exercise and would go beyond the scope of the Review’s Terms of Reference. I am also aware that there is the potential for further litigation between the Whistleblower / their spouse and CEC.

1.4 The issues associated with this case started after the Whistleblower made a whistleblowing disclosure in 2002 (the “**Disclosure**”). The Disclosure concerned allegations of misuse of public funds,

misappropriation of intellectual property rights and employees working for their own company in breach of their contracts of employment with CEC. No attempt was made to investigate the allegations contained in the Disclosure at the time it was made. Instead, the CEC officer tasked with investigating the matter undertook enquiries to establish who the whistleblower was.

1.5 Once the CEC officer established the identity of the whistleblower, disciplinary proceedings were taken against the Whistleblower. In 2004, following a disciplinary investigation and hearing, the Whistleblower was given a written warning for making the Disclosure.

1.6 The Whistleblower appealed the outcome of the disciplinary matter internally and, following delays to the appeal, instigated an Employment Tribunal claim against CEC. In December 2005, the Whistleblower was successful with the Employment Tribunal claim.

## **2. DETRIMENT SUFFERED BY THE WHISTLEBLOWER, THEIR FAMILY AND OTHERS**

2.1 Whilst the various proceedings referred to above were ongoing, and afterwards, the Whistleblower, their family and various others suffered several forms of harassment, which are believed by the Whistleblower and their spouse to have been perpetrated by CEC employees (although later investigations failed to identify the perpetrators). For example: the Whistleblower's emails were spoofed; the Whistleblower's email address was made public online; and the Tribunal findings were posted online and sent to the Whistleblower's colleagues. Furthermore, derogatory comments were posted on Councillors' blogs, various websites and on Edinburgh Evening News forums about the Whistleblower and the Whistleblower's family. Personal, family, and medical records were also disclosed to the public. It was not only the Whistleblower who suffered this harassment – their spouse, their family and various others were also subject to sustained harassment during the period.

- 2.2 In 2006, while the harassment was ongoing, the Whistleblower made a further application to the Employment Tribunal on the basis that CEC or its employees had subjected them to detrimental treatment because of the protected disclosures that the Whistleblower had made. The matter was ultimately settled by the parties and as part of the settlement agreement, the Whistleblower was transferred to work in a different division within CEC.
- 2.3 The Whistleblower's spouse is also an employee of CEC. Some of their line managers were connected to those who were the subject of the Disclosure. As a result of this connection, the Whistleblower's spouse was disadvantaged in the type of work that they were given to do and they were the victim of repeated incidents of harassment. This included being sent pornography to their work computer, from a CEC IP address, although it should be noted that PwC later confirmed that they did not consider that this was sent from within the CEC network but rather was likely to be a network breach by perpetrators unknown. PwC could not however determine the exact origin of the email.
- 2.4 In addition, there were significant issues in relation to the construction and maintenance of the CEC premises at which the Whistleblower's spouse worked, including allegations of misconduct on the part of the CEC officers involved in the commission and build of the premises and the various defects. The Whistleblower and their spouse made various connections between the Disclosure and the issues at the premises, although this direct link has never been evidenced or proven.
- 2.5 In 2015, two reports were produced in relation to the premises. One report was conducted by an external firm and related to the various maintenance issues. The other report was conducted by CEC's (then) Chief Internal Auditor and related to the conduct of officers involved in the construction of the premises. The latter report was commissioned by CEC's (then) Monitoring Officer. That latter report acknowledged that there was a perception amongst CEC staff that there was a link

between the Disclosure and the issues at the premises, however, as noted above, this was not proven. The Whistleblower and their family remain of the view that there was a link.

- 2.6 The outcomes of the two reports referred to above were reported to GRBV in 2015. Neither the Whistleblower nor their spouse were provided with copies of the reports produced. The Management Committee of the premises was provided with a redacted copy of the second report and later a full version of the first report. The Whistleblower's spouse, in their capacity as a health and safety officer of the premises, with the legal responsibilities that involves, requested a copy of the external report from CEC but this was refused. In November 2015, the Whistleblower's spouse attended a meeting with the (then) Monitoring Officer, the (then) Head of Legal, a Councillor and the Chairperson of the Management Committee of the premises to discuss the second report. The Monitoring Officer agreed that further investigation was required and following this meeting an action plan was produced. One of the action points was "*Whistleblowing matter – further investigation: Remit to be agreed between whistleblower, [a Councillor], Deputy Chief Executive and Head of Legal as soon as possible*".

### 3. THE PWC INVESTIGATION AND REPORT

- 3.1 In November 2015, CEC engaged PwC to undertake an independent review into the unresolved issues between CEC, the Whistleblower and their spouse. Following completion of the review, PwC produced a report of their findings (the "**PwC Report**") and CEC issued an apology to the Whistleblower. However, the Whistleblower does not consider CEC's apology to be accurate, due to a qualification. Although the apology stated "*The report confirmed that PwC are of the view that maladministration by the Council and its officers has occurred, specifically with regard to the failure to treat you properly and appropriately in response to the allegations made by you. In light of this*

*finding, on behalf of the Council please accept my unreserved apologies.”*, it was qualified in that it further stated, *“The Council recognises that the behaviour of some of its former employees is completely unacceptable and the Council has already taken positive steps to address the shortcomings identified. ...”*. The Whistleblower contends that it was not the case that all those who had engaged in the harassment of the Whistleblower were former employees at the time that the apology was issued and that there were a number of current employees (at the time the apology was issued) who had engaged in the harassment but who had had no action taken against them.

3.2 The Whistleblower and their spouse also received redacted extracts from the PwC Report, which CEC considered was the most it could do consistent with its obligations under data protection legislation. CEC informed the Whistleblower and their spouse that they were not entitled to be provided with a copy of the full PwC Report. The position of the Whistleblower and their spouse is that they had only agreed with a CEC officer to participate in the review and to provide information to PwC on the basis that they would obtain a copy of the full unredacted PwC Report on completion. However, when the PwC Report was completed, CEC refused to provide it to the Whistleblower and their spouse. There was a dispute over this matter, in which CEC did not accept that there was evidence of an agreement to this effect and, in any event, considered that data protection law prevented them from providing a full and unredacted copy of the PwC Report to the Whistleblower and their spouse, no matter whether that had been previously agreed.

3.3 As a result, the Whistleblower and their spouse raised legal proceedings against CEC to obtain a copy of the PwC Report. The Sheriff determined, on the balance of probabilities, that a CEC officer had agreed to give the Whistleblower and their spouse a copy of the final unredacted PwC report. Separately, the Sheriff was not persuaded that data protection laws served to prohibit the supply of the PwC

Report to the Whistleblower and their spouse, largely due to the lack of detailed submissions made by the parties in relation to the data protection issues. CEC was therefore ordered to provide the Whistleblower and their spouse with a full, unredacted copy of the PwC Report. As a consequence, the full unredacted PwC Report has now been provided to the Whistleblower and their spouse.

#### 4. **MY OBSERVATIONS**

4.1 **CEC's decision to withhold the PwC Report:** I am aware that some Councillors do not accept that CEC acted properly in withholding the PwC Report from the Whistleblower and their spouse. On the basis of a limited waiver of privilege, I have reviewed external legal advice provided to CEC on whether the PwC Report could be voluntarily disclosed, and I am satisfied that CEC acted in accordance with the legal advice received and therefore acted properly and reasonably in withholding the PwC Report.

4.2 **Preventing recurrence:** There are important lessons to be taken on board to prevent recurrence of the issues that arose in this case. These are as follows:

4.2.1 **Ensuring whistleblowers are protected from prejudicial treatment and that whistleblowing investigations are conducted properly and robustly.** I do not consider that the issues which arose in this case are likely to be repeated, given that CEC now operates an independent whistleblowing reporting service, and that oversight is exercised by the independent whistleblowing provider, CEC's Whistleblowing Team, and GRBV. However, the case demonstrates the important of vigilance and why a robust process and governance of that process is of paramount importance;

4.2.2 **managing expectations of whistleblowers at the outset in relation to what can and cannot be shared with them;**

- 4.2.3 **accurate and contemporaneous minuting of meetings with whistleblowers and other interested parties to avoid subsequent disagreement about what was said;**
  - 4.2.4 **the need to carefully consider CEC’s approach to withholding documents and information based on data protection principles; and**
  - 4.2.5 **CEC should, where possible, resist signing up to any external third parties’ terms and conditions which seek to restrict the provision of commissioned external reports to third parties. This is considered to be contrary to a transparent culture, in which employees, service users, Councillors or others may have a legitimate interest in having sight of such reports or excerpts from them.**
- 4.3 **Apologies given by CEC:** as noted above, the Whistleblower received an apology from CEC following the conclusion of PwC’s investigation which the Whistleblower does not consider to be accurate, due to a qualification. While the Review has not investigated the merits of whether all the actors involved in these matters had in fact left CEC by the time the apology was issued (i.e. whether the apology was “accurate” or not), CEC should carefully consider the wording of apologies issued to whistleblowers and any qualifications which are included in them. I have been advised that CEC are re-considering the question of the apology issued to the Whistleblower. Furthermore, relating to apologies issued by CEC in relation to this case, I have not seen any evidence that CEC ever formally apologised to the Whistleblower’s spouse. I am aware that this is a matter that CEC is currently considering.

## APPENDIX 5

### CASE STUDY 3

#### 1. INTRODUCTION

- 1.1 On 4 February 2019, a CEC Social Worker (“**SW**”) made a disclosure, firstly to the CEC Governance Team and then to Safecall, the external whistleblowing provider for CEC. The central concern of the SW was an allegation of failure to protect children under the supervision of CEC. The SW later made allegations (initially through a CEC Councillor, who then contacted Police Scotland) that another child was not being protected. This involved contact with Police Scotland and the (then) Head of Children’s Services in the period February to September 2020, both in relation to the children mentioned in February 2019 and the other child.
- 1.2 The SW was also the subject of a disciplinary process, which resulted in the SW’s dismissal from CEC. The SW has made a claim to an Employment Tribunal (“**ET**”) alleging that their dismissal is connected with the making of a disclosure. This is denied by CEC. In this Case Study, I do not comment on any matters relevant to the disciplinary process or the ET proceedings because those are matters which are subject to judicial consideration. It is the whistleblowing process and the approach to the public safety issues that are of relevance to this Review.
- 1.3 I have shown this Case Study to the SW, the relevant CEC officers and Safecall and invited representations from them, which I have considered and reflected, where appropriate and in line with the evidence, prior to publication.

## 2. **BACKGROUND**

- 2.1 On 4 February 2019, the SW made a disclosure to the CEC Governance Team. The Governance Team met the SW the same day. They advised the SW to contact Safecall and the SW did so on 4 February 2019.
- 2.2 On 4 February 2019, members of both the CEC's Governance Team and Legal Team took action to check the position of the children about whom the SW had made the disclosure. CEC's Monitoring Officer was also kept informed and there was a discussion with him about the appropriate steps to be taken to check the children's safety. The Review Team has seen documentation which provides evidence that those steps were taken.
- 2.3 Following the disclosure being made, the (then) Head of Children's Services was asked by the Monitoring Officer to look into this matter as there were allegations of there being a serious safeguarding concern.
- 2.4 Further disclosures were made by the SW to Safecall on 5 and 25 February and 26 June 2019. The Review Team has seen evidence that the (then) Head of Children's Services reviewed the disclosures relevant to the child protection issues raised in February 2019.
- 2.5 A member of Safecall interviewed the SW on 21 February 2019 and the SW provided a bundle of documents related to the disclosures raised. The case was categorised by Safecall as "*major*" (which determined the investigation process to be followed) and an investigation methodology was agreed between CEC and Safecall. It was agreed between Safecall and CEC that the (then) Head of Children's Services would investigate all the matters raised in the disclosures (both child protection and otherwise), subject to oversight by Safecall.
- 2.6 The first draft of the outcome of the review by the (then) Head of Children's Services was dated 16 May 2019. It was updated on 23

August 2019 and again in December 2019. They considered the allegations by the SW relating to the social work practice concerning the relevant children and found that there was no case to answer. This included checking the relevant information with the assistance of the Legal Team and input from professionals with relevant experience. Both Safecall and the (then) Head of Children's Services were further reassured that the children had been involved in the independent Children's Hearing system (which was ongoing until September 2019). Various Supervision Orders that formed part of the Children's Hearing process were reviewed by Safecall. However, the SW has expressed concern about the information given to the Children's Hearing Panel.

2.7 On 19 June 2019, the quarterly whistleblowing report to GRBV included a statement that this "*major*" disclosure had been made. The disclosure was described in the GRBV Reporting Tables with the title "*Social Worker Practice/Conduct*". The Review Team has been advised that, despite this title, CEC officers provided reassurance to GRBV (during a discussion on a CEC 'B agenda', which was not public) that immediate checks had been made upon receipt of the disclosure and that the children were, and remained, safe during this period.

2.8 Separately, the SW raised their concerns with a Councillor. In February 2020, the Councillor reported their concerns to Police Scotland. Police Scotland carried out a review of the case and provided reassurance to the Councillor on 5 March 2020. The SW remains concerned about the depth of the review conducted. In about February 2020, the SW raised further concerns with Police Scotland about another child. The child was not clearly identified by the SW, although the SW does not accept this. The Review Team has been advised that, given the lack of information, it took from July to September 2020 for the (then) Head of Children's Services and Police Scotland, working together, to identify the child referred to by the SW. The Review Team has been advised that the (then) Head of Children's Services confirmed to the Councillor

that the concerns about all the children had been investigated and that their wellbeing had been assured.

- 2.9 In May 2020, the investigation by Safecall had been concluded and a final Safecall investigation report had been prepared. However, the Safecall investigation report was not formally proposed for reporting to GRBV because, by this point, an ET claim had been raised by the SW and a decision was taken by CEC and Safecall to pause the formal reporting of the outcome of the whistleblowing investigation. I have been advised that this was one of the first times that CEC had to consider the issue of cross-over between whistleblowing and other formal processes. While the Whistleblowing Policy does not explicitly address the approach that should be taken in such circumstances, the Whistleblowing Policy is clear that a Safecall investigation report should be sent to GRBV once concluded by Safecall.
- 2.10 The Review Team has been advised that, on 30 June 2020, the GRBV Convener was updated by e-mail that reporting would be delayed due to the ongoing ET process and again advised that the children remained safe. The Review Team has been advised that there have been subsequent updates to GRBV, and that assurances have been provided throughout this period that the children are, and remain, safe. The case has continued to appear in the quarterly reporting tables for GRBV.
- 2.11 It was proposed that the matter would report to GRBV in December 2020. I have been advised that this was on the basis that it was originally expected that the ET proceedings would have concluded by then. Initially, a decision was taken by CEC and Safecall (apparently in consultation with the GRBV Convener) to delay reporting to GRBV because there were pending ET proceedings. Reporting has been further delayed because additional information was provided and the view was taken that further issues required to be investigated (in July/August 2020, in May 2021 and September 2021) based on further

allegations received from the SW. It is also noted that the ET timeline has been extended and, in addition, the ET case did not conclude on the originally scheduled dates which has meant that the ET diet has been split, with the final part now being heard in December 2021. The Review Team has been advised that, as the updated Safecall investigation report was finalised on 8 October 2021, following the standard reporting cycle, it will now be sent to GRBV in March 2022. Both the GRBV Convener and (I understand) the interested Councillor were updated to this effect by email on 8 October 2021. CEC has assured the Review Team that the delay in reporting to GRBV has had no impact on child welfare issues. At the time of writing of this case study, the SW informs us that they remain unaware of the outcome of the whistleblowing investigation.

### 3. **MY OBSERVATIONS**

3.1 **Public Safety:** the whistleblowing process can serve no greater purpose than ensuring public safety and, in particular, the safety of children under CEC's care and supervision. As the disclosure concerned child safety, I wished to be reassured that, when the disclosure was submitted in February 2019, timely steps were taken to check the safety of the children. Based on the steps set out above, I am satisfied that the safety of the children that the SW raised concerns in relation to in 2019 was immediately checked by CEC, through early review by the Legal and Governance Teams and through the subsequent review by the (then) Head of Children's Services. The Review Team has seen communications from the Monitoring Officer dated 4 February 2019 (the same day as the original disclosure) which stated that the child protection aspect of this matter should be prioritised. This involved the Legal and Governance Teams of CEC, as well as Safecall. This appears to have been the appropriate process to follow. However, I am surprised about the length of time taken to formally report the public safety concerns through the appropriate

channels, namely (i) the report from the (then) Head of Children's Services (first draft prepared in May 2019 and final version in December 2019); and (ii) the outcome of the investigation into the disclosures (as set out in the Safecall investigation report) to GRBV (which will be reported to GRBV in March 2022).

3.2 The Review Team has also had to make enquiries to check what had been done to ensure that the safety of the children had been ascertained to the satisfaction of Children's Services and therefore CEC. It would have been preferable for the detail of the public safety checks taken to have been documented in a record maintained by Safecall that could have been immediately provided to the Review Team, when requested. Although reassurance can be taken from the investigation into the allegations raised by the SW by the (then) Head of Children's Services before the draft report of May 2019, the steps taken to check the safety of the children were not clearly explained in the initial quarterly reported provided to GRBV. I understand that such reassurance was provided verbally but this was not clearly documented in a way that could have provided immediate reassurance to anyone questioning the steps taken. **The immediate and ongoing steps taken to address any public safety issue raised through the whistleblowing process should be recorded in a document maintained by Safecall and the first quarterly report to GRBV after a disclosure of this nature should set out the steps taken, and to be taken, to check on the safety concerns reported by the whistleblower.**

3.3 **Communication with the SW and Councillor:** I have been advised by the CEC Governance Team that the SW accepted the reassurances from the CEC Governance Team when they contacted CEC throughout this process. However, the SW does not accept this. Notwithstanding any reassurances they may have received, the SW remains concerned about the safety of the children and has not accepted any reassurances

that may have been provided to them and which have been provided to the Councillor by CEC and Police Scotland. We have been advised that there were periodic telephone calls between the SW and the CEC Governance Team, but the SW says that no information was provided about the investigation other than it was ongoing. The SW does not appear to have been provided with any documentation setting out the steps taken and the reasons why the Children's Services and therefore CEC were satisfied that the children were safe. **Going forward, the steps taken by CEC to respond to disclosures concerning public safety should be more formally documented and, if appropriate, those documents (or appropriately redacted versions thereof) shared with a whistleblower and any interested Councillor to help to provide reassurance that the safety concerns have been / are being addressed. Data protection issues and protecting the rights and interests of any relevant children or other members of the public will have to be carefully considered in this process but they should not prevent this reporting. There should also be clear documentation showing how, and when, any whistleblower has been kept up to date with the progress of the matter following the initial disclosure (if applicable).**

- 3.4 **Time taken to finalise the Safecall investigation report and to report to GRBV:** Nearly three years have passed since the initial disclosure in this case and the final Safecall investigation report has still not been sent to GRBV for scrutiny. As noted above, the Review Team has been advised that it will be sent to GRBV in March 2022. While I note that this combination of processes (internal and external) was novel for CEC and that further information was received from the SW during the whistleblowing process, such delays are too long. The Review Team has been advised that updates were given to the GRBV Convenor (often verbally) during this period. There was also a delay to the completion of the Safecall investigation pending CEC's disciplinary process. If something comes out of the disciplinary process and/or an

ET which necessitates the whistleblowing findings being revisited, the Safecall investigation report can be reopened. A similar approach can be taken if further information is received from a whistleblower. The problem with delaying the conclusion of a Safecall investigation and the provision of a Safecall investigation report to GRBV in a case like this is that it hinders effective scrutiny of the whistleblowing case. Although I am satisfied that, in this case, the child safety concerns were taken seriously, the delays have hindered giving this reassurance. GRBV having earlier sight of the Safecall investigation report would have provided further documented reassurance. **Except in exceptional cases, ET proceedings should not delay reporting by the Whistleblowing Team/Safecall to GRBV. If there is to be such a delay to the whistleblowing process, the fact that such a decision has been taken and the exceptional circumstances for the delay should be properly documented in writing and the relevant policy should be updated to detail this. Similarly, except in exceptional cases, an ongoing CEC disciplinary investigation should not delay completion of a Safecall (or any other whistleblowing) investigation. If there is to be such a delay to the whistleblowing process, the fact that such a decision has been taken and the exceptional circumstances for the delay should be properly documented in writing.**

## APPENDIX 6

### NUMBER OF FORMAL WHISTLEBLOWING DISCLOSURES TO SAFECALL

Date of report	Date period covered in report	Number of "minor" reports	Number of "major" reports	Total number of "minor"/"major" reports (not including non-qualifying disclosures or those disclosures still to be categorised)	Number of management referrals
24.09.2014	12.05.2014 – 31.07.2014	6	5	11	0
23.04.2015	01.08.2014 – 16.02.2015	7	2	9	0
19.10.2015	01.05.2015 – 31.08.2015	5	1	6	0
28.01.2016	01.09.2015 – 30.11.2015	5	0	5	1
21.04.2016	01.12.2015 – 29.02.2016	1	1	2	0
26.09.2016	01.03.2016 – 30.06.2016	2	0	2	0
22.12.2016	01.07.2016 – 30.09.2016	2	0	2	0
09.03.2017	01.10.2016 – 31.12.2016	1	1	2	0
29.08.2017	01.01.2017 – 30.06.2017	2	5	7	0
28.11.2017	01.07.2017 – 30.09.2017	0	0	0	0
20.03.2018	01.10.2017 - 31.12.2017	6	0	6	0
05.06.2018	01.01.2018 – 31.03.2018	4	0	4	0
28.08.2018	01.04.2018 – 30.06.2018	11	0	11	0

<b>Date of report</b>	<b>Date period covered in report</b>	<b>Number of “minor” reports</b>	<b>Number of “major” reports</b>	<b>Total number of “minor”/”major” reports (not including non-qualifying disclosures or those disclosures still to be categorised)</b>	<b>Number of management referrals</b>
27.11.2018	01.07.2018 – 30.09.2018	1	0	1	0
19.03.2019	01.10.2018 – 31.12.2018	3	0	3	1
04.06.2019	01.01.2019 – 31.03.2019	9	1	10	4
17.09.2019	01.04.2019 – 30.06.2019	3	0	3	0
03.12.2019	01.07.2019 – 30.09.2019	2	0	2	1
09.06.2020	01.10.2019 – 31.12.2019 01.01.2020 – 31.03.2020	5	2	7	4
29.09.2020	01.04.2020 – 30.06.2020	1	0	1	0
08.12.2020	01.07.2020 – 30.09.2020	5	1	6	2
23.03.2021	01.10.2020 – 31.12.2020	19	3	22	3
08.06.2021	01.01.2021 – 31.03.2021	9	0	9	2
21.09.2021	01.04.2021 – 30.06.2021	6	0	6	1
<b>Total 2021 cases to date</b>	<b>01.01.2021 – 30.06.2021</b>	15	0	15	3
<b>TOTAL:</b>		115	22	137	22

## APPENDIX 7

### DRAFT EXPECTATION MANAGEMENT PROTOCOL

These are suggested approaches. The key recommendation is that documents are created that will assist CEC and Safecall in keeping a record of what has been done and when, to ensure Colleagues are properly informed of how the whistleblowing process works in practice.

#### **Expectation Management Meeting**

This is a suggested form of wording to be used at beginning of whistleblowing processes by Safecall. The wording could also be put into an email or communicated via the whistleblowing portal.

##### **1. Introduction**

Firstly, thank you for contacting Safecall. It can sometimes be difficult to do so but it is only if colleagues speak up that we can try and resolve any issues fairly.

Do you have a copy of the Whistleblowing Policy?

If not, I will send you a copy for your information.

##### **2. Anonymity**

There are different ways that you can provide information to us:

(1) You can speak with us on an open basis. This means that you are happy for anything you tell us to be “on the record” and attributed to you; or

(2) You can speak with us on a fully anonymous basis, where not even Safecall knows your details; or

(3) You can tell Safecall who you are, but we will not pass your name or details to CEC – this is called partially anonymous.

If you proceed anonymously, fully or partially, please be aware this may limit what we can do to respond to your concern and the weight that can be given to what we are told by you.

There are also some possible limitations on anonymity, even if you select to be anonymous, for example a court could order disclosure of information you tell me about yourself.

If your disclosure raises a criminal issue or public safety concern, we may need to tell the authorities.

### **3. Protecting you from harm**

CEC is determined to protect whistleblowers from any detrimental or harmful treatment. It is vital for a healthy culture that colleagues feel comfortable about raising concerns. If you feel you have suffered harm as a result of whistleblowing after making this disclosure, please report that immediately to Safecall.

### **4. Early-resolution and triage**

CEC wishes to explore whether complaints and concerns are capable of being resolved by dialogue between parties. We will consider whether some sort of facilitated discussion may help to resolve matters. Is this something you would be willing to explore?

If matters cannot be resolved or you do not wish to explore early-resolution, we will also consider who is most appropriate to look into your concerns. The process by which Safecall assesses whether your disclosure is a whistleblowing report or a matter that should be dealt with under another CEC process is sometimes called triage.

Your concern may be investigated by Safecall, or another third party, such as a law firm, but most cases are investigated by an Investigating Officer from CEC.

## **5. Fact-finding**

It is very important that we have a clear picture of what happened, when it happened and who was involved. Simple first steps like a timeline and a “who’s who?” are very useful.

Trying to get as full an understanding as we reasonably can is a vital part of the process and allows us to determine what should happen next.

The results of the fact-finding exercise could be used in a number of ways, including to help address your concerns and to prevent recurrence. There could also be a further process such as an internal disciplinary investigation, for example, where the evidence gathered here might be relevant.

CEC do not want to talk to the same people about the same things more than once if this can be avoided so the results of the fact-finding will generally be used for any related processes.

If the matter is serious and you are willing, you might be asked to contribute further (possibly by giving a witness statement that could be used in a disciplinary process). You will understand that without evidence that can be used, things like disciplinary processes may not be possible.

If you have any concerns that anyone is unsafe or that criminality is occurring, please tell us.

It would be helpful to understand if there is an outcome you wish to achieve from making your disclosure.

## **6. Independence**

If a fact-finding investigation is conducted by an investigating officer from CEC, Safecall will oversee the investigation and check that it is conducted independently and fairly. If you have any concerns about independence or fairness you can raise your concern with Safecall.

## **7. Timing**

There is a balance to be struck between making sure that the investigation is thorough, while not taking too long. Delay can mean that memories fade and can result in strain or upset. We want to avoid unnecessary delays, but we have to be realistic as things can sometimes take longer for good reason.

The next step is for us to consider if the matter disclosed is suitable for an early resolution process and to consider how best to approach matters. [ ] will be in touch with you about this within 5 days.

If the matter proceeds to a fact-finding investigation, our aim is to have any investigation completed with 3 months, ideally sooner, although if the matter is complicated it may take longer.

We will keep you updated but, if you want an update at any time in between our updates, you can use [the Safecall portal [ ] or contact [ ]] who will give you more information.

## **8. Confidentiality and transparency**

Our aim is to have a good working environment for all. This means that, while processes are ongoing, we might not be able to tell you everything that is happening. We appreciate that this can be frustrating.

To be fair to everyone, we might not be able to tell you everything that has happened at the end of a process and the reasons for that. It might be that there is another process (such as a disciplinary investigation) and we may not tell you if that is the outcome, as it would be unfair to the person going through that process. If we can reasonably tell you more, we will, but you should be aware that there are a number of factors that might mean that we cannot do that (such as confidentiality and data protection issues).

Once again, thank you for coming forward to share your experiences.

## 9. Support

Do you feel that you need any support at this time?

If you are finding things difficult, there is help for you.

These are some examples of the sort of support you might find helpful. You do not need to make any decision just now, but it is good to be aware of them.

- access to a confidential contact (such as the Whistleblowing Champion) who can provide information and advice on the procedure for raising concerns and support during the process;
- counselling or psychological support;
- occupational health support; and
- any changes you might need at work to make things easier.

The [Employee Assistance etc] can be found at [ ] and [ ] will be available to answer general questions.

## 10. Questions?

Do you have any questions?

Can I confirm your preferred means of future communication? By phone, by email or via the portal?

As I said I will be in touch again within 5 days and I look forward to speaking to you then.

## APPENDIX 8

### DRAFT MODEL EARLY RESOLUTION PROCESS

1. The early resolution process is intended for simple and straightforward concerns that can be responded to within 5 working days, or less, and which will involve little or no investigation. These concerns may be better handled by facilitated dialogue between parties, or by the Whistleblowing Team speaking with the subject(s) of the report to see if the issue can be addressed informally, without the need for an investigation.
2. The early resolution process will be suitable where:
  - 2.1 The matter being reported is capable of being quickly and consensually remedied;
  - 2.2 The matter being reported may not meet the legal test for being a whistleblowing report and, but for the early resolution process applying, may be handled under a different CEC policy;
  - 2.3 The matter being reported is unlikely to trigger a disciplinary investigation; or
  - 2.4 The person making the report wishes for the matter to be handled, at least initially, by way of a more low-key, consensual, approach aimed at maintaining relationships, while also addressing the concern.
3. The following timeline will apply after a concern is raised:
  - 3.1 Within 1 working day of receiving a report, Safecall will assess whether any immediate action needs to be taken to prevent any criminality and to ensure colleague or service user safety;
  - 3.2 Within 4 working days of receiving a report and as part of its triaging process, Safecall will liaise with the Whistleblowing Team and, as

appropriate, the Directorate's Whistleblowing Champion and the HR Department, to consider if the report is capable of being handled through an early resolution process as an alternative to a whistleblowing investigation being commenced or diversion to other CEC policies. The following will be considered:

- 3.2.1 What outcomes the person reporting the concerns is hoping to achieve, and whether these are possible;
  - 3.2.2 What action CEC needs to take to put things right, and appropriate timescales for this;
  - 3.2.3 Whether all the issues are appropriate for consensual resolution or whether it would be appropriate to handle some of the concerns under a different process;
  - 3.2.4 Whether the person who raised the concern needs any occupational health or well-being support and how to provide that support; and
  - 3.2.5 Whether the report raises any patterns of behaviour known to Safecall, the Whistleblowing Team, the Whistleblowing Champion and/or the HR Department.
- 3.3 As part of the triaging process, Safecall will have a discussion with the reporter to establish:
- 3.3.1 What exactly the reporter is concerned about;
  - 3.3.2 Who else is involved;
  - 3.3.3 The best way to maintain the reporter's confidentiality (if applicable); and
  - 3.3.4 Whether the concern can be responded to in 5 working days (or less), or whether it should be referred for investigation.

4. If Safecall considers, having triaged matters within 5 working days, as per the steps in paragraph 3, that the report cannot be handled through the early resolution process, the report will be considered by Safecall and the Whistleblowing Team for further triaging and potential investigation or diversion to other CEC policies. Where a whistleblowing investigation is required, the target for completing the investigation and providing the reporter with a response should be within 3 months of the initial report being received. Updates should be provided to the reporter during this period.
5. If Safecall considers that the report can be handled through the early resolution process, the reporter will receive, within 5 working days of the report being made, a response which must:
  - 5.1.1 Respond to all the issues raised;
  - 5.1.2 Explain the proposed next steps to deal with the concern(s) raised; and
  - 5.1.3 Be in writing (unless it has been agreed with the reporter that this is not needed).
- 5.2 The proposed next steps may include:
  - 5.2.1 A member of the Whistleblowing Team, the HR Department or another team speaking to a relevant manager about the concerns raised, ascertaining the manager's position and establishing whether steps can be taken by the manager and/or other colleagues to address the concerns;
  - 5.2.2 A member of the Whistleblowing or HR Department helping to facilitate a discussion between the reporter and the colleague(s) about whom they have a concern; or
  - 5.2.3 Another team, such as the Health and Safety Team, offering to provide further support to the manager/department in question.

6. If Safecall or the Whistleblowing Team are unable to provide the reporter with a response within 5 working days, they must tell the reporter why they are not able to meet the 5-day timescale and when the reporter can expect a response.
7. The proposed next steps will only be taken with the agreement of the reporter and subject to a discussion about the best way to maintain the reporter's confidentiality, should they wish to remain confidential.
8. The proposed next steps will be taken within 20 working days of the initial report being submitted and the steps taken must be recorded in a log maintained by the Whistleblowing Team and shared with Safecall for reporting purposes.
9. After 30 working days, Safecall (for anonymous reports) or the Whistleblowing Team (for reports where the reporter's identity is known) will speak to the reporter to ascertain if the reporter is content that their concern(s) have been addressed.
10. If the reporter is not content that the concern(s) have been addressed, the report will go back to Safecall and the Whistleblowing Team for further triaging and potential investigation or diversion to other CEC policies. Where an investigation is required, the target for completing the investigation and providing the reporter with a response should be within 3 months of the initial report being received.

## TIMETABLE – DRAFT MODEL EARLY RESOLUTION PROCESS ROUTE

All references to days are working days from Initial Report (IR); and months are calendar months.

<b>Time from IR</b>	<b>Action</b>	<b>Paragraph</b>
Day 0	Initial Report by whistleblower	
Day 1	Safecall will assess whether any immediate action needs to be taken to prevent any criminality and to ensure colleague or service user safety	3.1
Day 5	<p>Triaging process to consider if the report is capable of being handled through an early resolution process.</p> <ul style="list-style-type: none"> <li>- If matter is capable of early resolution, response to reporter responding to all concerns and outlining proposed next steps; or</li> <li>- If matter not capable of early resolution, return to triaging process to consider investigation / diversion to other CEC policies; or</li> <li>- If Safecall are unable to provide a response within 5 days, they must tell the reporter why they are not able to meet the 5-day timescale and when the reporter can expect a response;</li> </ul>	3.2 5 4 6
Day 20	Next steps to be taken and logged	7 and 8

Day 30	<p>Ascertain whether the reporter is content that their concern(s) have been addressed.</p> <ul style="list-style-type: none"> <li>- If not, report to go back to Safecall for triaging and further investigation</li> </ul>	9 and 10
3 months	Any whistleblowing investigation commenced to be concluded and reporter provided with a response	10

## APPENDIX 9

### DRAFT WHISTLEBLOWING PRINCIPLES

1. All reports will be handled openly and transparently while also recognising and respecting that everyone involved has the right to confidentiality and for their personal data to be protected;
2. We encourage early resolution where appropriate and, where early resolutions are not appropriate for investigations and proposed resolutions to be completed within 3 months in the majority of cases;
3. We treat all concerns seriously and will conduct thorough but proportionate investigations using a consistent investigation methodology;
4. We respect the confidentiality of any person who raises a concern as far as the law allows, unless the reporting person agrees that we do not have to;
5. We offer support and protection to all staff, volunteers and service users who raise a concern or who are directly involved in a concern;
6. Staff investigating concerns will be impartial, independent and accountable. They must not be involved in investigations where they have a conflict of interest, or may be seen to have a conflict of interest;
7. The people who conduct investigations will have appropriate skills, experience and knowledge;
8. We will publish timescales and meet them whenever possible. If timescales are not met for a good reason, the person who raised the concern will be informed of the revised timescale;
9. The outcomes of investigations will set out what actions will be taken, or have been taken, to put things right or improve practice;

10. Following an investigation, we will ensure that any lessons learned are shared locally and more widely across the organisation; and
11. We will identify trends and highlight problems, with the overall purpose of continuously improving the way services are provided and concerns are handled.

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