

# Governance, Risk and Best Value Committee

10am, Tuesday, 4 June 2024

## Review of Structural Assurance

Executive/routine  
Wards

### 1. Recommendations

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1.1 To note the report.

**Dr Deborah Smart**

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# Report

## Review of Structural Assurance

### 2. Executive Summary

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- 2.1 This report outlines the arrangements, including the relevant reporting processes, for matters relating to misconduct, whistleblowing and maladministration.

### 3. Background

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- 3.1 On 14 December 2023 the Full Council considered a report on the Tram Inquiry and agreed the following recommendation:
- 3.2 *“Recognising that the Council appointed the Monitoring Officer and had overall responsibility for resolving issues of malpractice within the Council, a review would be undertaken within six months, reporting to the Governance, Risk and Best Value and Policy and Sustainability Committees as appropriate, covering the structures and processes for the various reporting mechanisms relating to misconduct, whistleblowing and maladministration, given the numerous recommendations from differing external inquiries in recent years, to ensure these were fit for purpose, provided adequate independence and to ensure public confidence”.*

### 4. Main report

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- 4.1 The following is an outline of the reporting structures and processes relating to misconduct, whistleblowing and maladministration within the City of Edinburgh Council.

#### **Misconduct**

- 4.2 The reporting structures in relation to officer misconduct is contained within four main documents:
- 4.2.1 Employee Code of Conduct (revised March 2024)
  - 4.2.2 Local Government Employees Disciplinary Policy (revised August 2022)
  - 4.2.3 Teacher Disciplinary (revised August 2022)
  - 4.2.4 Chief Officer Disciplinary Policy (revised March 2024)

- 4.3 In response to the findings from the Independent Inquiry and Whistleblowing Culture Review in 2021 (“Inquiry and Review”), several employment policy recommendations were made including a review of all conduct related employment policies and, where appropriate, to revise them. In addition to this overarching expectation, there were also a number of specific recommendations requiring the Council to put in place policies or practices to manage personal relationships between employees which could result in a potential conflict of interest.
- 4.4 As a result the Local Government Employees Disciplinary and Teachers Disciplinary Policy’s were revised and approved by Policy and Sustainability Committee in August 2022.
- 4.5 As the key guide to employee behaviour and standards within the Council as well as existing practices on Conflicts of Interest, the Employee Code of Conduct (“Code”) was reviewed and refreshed taking into considerations the recommendations of the Inquiry and Review. The Code was approved by Policy and Sustainability in January 2023, and launched in May 2023.
- 4.6 Following publication of the Edinburgh Tram Inquiry Report in September 2023, a response to the report was considered by Full Council on 14 December 2023. One of the recommendations from the response was to review the Employee Code of Conduct to ensure it was clear on the expectations from colleagues with respect to honesty. A further addendum requested that the review focus on strengthening and clarifying the aspects related to officer candour with the benchmarking to specifically include the Civil Service Code with a particular focus on the section entitled “Honesty”.
- 4.7 This was updated and approved by Policy and Sustainability Committee in March 2024.

#### Chief Officer Disciplinary Policy

- 4.8 The new Chief Officer Disciplinary Policy was approved at the Policy and Sustainability Committee on 12 March 2024 and entirely replaces the Disciplinary Procedure for Heads of Department (from 1997) and those interim provisions under the Chief Executive and Chief Officer Disciplinary Procedure which were implemented in 2022. It was also considered through the Trade Union engagement process.
- 4.9 The new policy Chief Officer Disciplinary Policy was implemented on 1 May 2024.
- 4.10 This new policy updates the former procedure to cover Chief Officers including the Chief Executive whilst following the national conditions contained within the Scottish

Joint Negotiating Committee (SJNC) for Chief Officials Scheme of Salaries and Conditions of Service for Chief Officials (also known as the Gold Book).

## **Whistleblowing**

- 4.11 A whistleblowing policy was formally introduced in May 2014, which coincided with the launch of the Council's whistleblowing hotline. The policy has been periodically reviewed since 2014 and most recently was agreed by the Finance and Resources Committee in January 2024. The latest review of the policy incorporated recommendations made as part of the Independent Inquiry and Review led by Susanne Tanner KC.
- 4.12 The aim of the Whistleblowing Policy and the accompanying Toolkit is to uphold the highest standards of conduct and ethics in all areas of the Council's work.
- 4.13 The Monitoring Officer (Nick Smith - Service Director: Legal and Assurance) has overall responsibility for whistleblowing matters within the Council.
- 4.14 The Policy applies to all to all workers within the meaning of the Public Interest Disclosure Act 1998 and the Employment Rights Act 1996, including employees and workers, persons contracted to personally provide services to the Council, persons undergoing training or work experience as part of a training course, and agency workers (referred to as "colleagues").
- 4.15 The Policy also applies to elected members should they wish to raise a Whistleblowing disclosure. If a disclosure is received about an elected member, it would ordinarily be passed to the Ethical Standards Commissioner to consider and investigate as appropriate.
- 4.16 People can whistleblow either by raising a concern with a manager, with human resources, with the Monitoring Officer's team or through the external whistleblowing hotline which is maintained by Safecall which is an external and independent organisation.
- 4.17 All Disclosures received will be assessed amongst the Council's Investigation Team, the Monitoring Officer's Team and/or Service Provider (Safecall) or other relevant party for assessment as to the action required. Whilst Council officers and Safecall work collaboratively together, for all matters relating to whistleblowing, Safecall have primacy as to the decision-making process.
- 4.18 Personal employment issues such as bullying, harassment or discrimination, should normally be raised via HR using the relevant Council procedures, e.g., the Grievance Procedure, rather than under this Policy.
- 4.19 Disclosures will be assessed by Safecall as to whether an external party should carry out the investigation (e.g. Safecall or an independent law firm) or it should be investigated internally by the Investigations Team or another Council officer with subject matter expertise.

- 4.20 If there is a disclosure regarding a chief officer there are set processes in place to ensure there is no conflict of interest. For disclosures involving the Monitoring Officer they will be passed to the Chief Executive. For the Chief Executive it will be the Council Leader in consultation with the Monitoring Officer and for executive directors and service directors it will be the Monitoring Officer and the Chief Executive. These disclosures are investigated by a non-panel law firm or appropriate Counsel and reported to Safecall and the relevant Council officer outlined above.
- 4.21 All whistleblowing disclosures are reported to the Governance, Risk and Best Value Committee and there is now a Whistleblowing Sub-Committee to ensure that there is sufficient time and capacity for whistleblowing matters.
- 4.22 The Tanner Inquiry and Review recommendations also require that there must be a formal system in place at the CEC for recording disclosures by employees, service users or others relating to allegations of sexual or physical violence, harassment, or stalking by CEC employees (whether occurring during the course of work hours or on CEC premises or not). This is reported to the Monitoring Officer to ensure that any further necessary action which requires to be taken is taken timeously, eg in consultation with relevant Executive Directors and/or the Chief Social Work Officer.

### **Maladministration**

- 4.23 The Local Government and Housing Act 1989 sets out the role of the Monitoring Officer. It states that each local authority must designate one of its officers to this role and it may not be the Head of Paid Service (Chief Executive) or the S95 officer (Service Director: Finance and Procurement).
- 4.24 The Council have appointed Nick Smith (Service Director: Legal and Assurance) as the Monitoring Officer. The role is personal to the Monitoring Officer, but where the Monitoring Officer is not available to undertake the duties then the Deputy Monitoring Officer (Kevin McKee (Head of Legal)) undertakes the full duties of the Monitoring Officer.
- 4.25 The role of the Monitoring Officer is outlined in the Act and states that:
- 4.25.1 it shall be the duty of a relevant authority's monitoring officer, if it at any time appears to him that any proposal, decision or omission by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to:*
- 4.25.1.1 a contravention by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any such joint committee of any enactment or rule of law or of any code of practice made or approved by or under any enactment; or*

*(a) any such maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974 (Local Commissioners), or*

*4.25.1.2 any such maladministration or injustice as is mentioned in Part II of the Local Government (Scotland) Act 1975*

*4.25.2 to prepare a report to the authority with respect to that proposal, decision or omission.*

- 4.26 In preparing the report the Monitoring Officer should consult with the head of paid service and the Section 95 officer as appropriate. The Council must consider any report within 21 days of the report being sent to members. If the Monitoring Officer's report expresses serious concern about a proposed action, that action is, by law, effectively suspended until the Council has considered the Monitoring Officer's report.
- 4.27 The role of the Monitoring Officer is independent and not subject to direction by the Council. The Council cannot instruct the Monitoring Officer either to prepare a report in respect of a particular matter, or not to prepare a report.
- 4.28 What requires to be reported is a matter for each Monitoring Officer to decide at their discretion. Monitoring Officers have generally adopted the position that they prepare reports in situations where contraventions of the law or occurrences of maladministration are high profile, serious, have material consequences and/or are systemic in nature. As detailed in the Tanner Review, it appears that very few, if any, Section 5 reports have been presented to other Councils by their Monitoring Officers in the last 10-15 years. The current Monitoring Officer has presented a number of reports to full Council for consideration over the last few years.
- 4.29 All Section 5 Local Government and Housing Act 1989 reports by the Monitoring Officer are considered by the Council.
- 4.30 The Monitoring Officer also takes the lead in being the liaison with the Council and the Ethical Standards Commissioner and the Standards Commission regarding the conduct of councillors.

## **5. Next Steps**

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- 5.1 Not applicable.

## **6. Financial impact**

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- 6.1 Costs in relation to external and independent advice will be contained within existing budgets.

## **7. Equality and Poverty Impact**

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- 7.1 There are equality or poverty impacts as a result of this report.
- 7.2 Integrated Impact Assessments were carried out on the policies referred to in the report.

## **8. Climate and Nature Emergency Implications**

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- 8.1 There are no climate or nature emergency implications as a result of this report.

## **9. Risk, policy, compliance, governance and community impact**

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- 9.1 Extensive consultation was carried out on the policies referred to in the report.

## **10. Background reading/external references**

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- 10.1 Policy and Sustainability Committee 9 January 2024 – [Whistleblowing Policy and Toolkit](#).
- 10.2 [Committee Terms of Reference and Delegated Functions](#)
- 10.3 [Employee Code of Conduct](#)
- 10.4 [LGE Disciplinary Policy and Teacher Disciplinary](#)
- 10.5 [Chief Officer Disciplinary Policy](#)

## **11. Appendices**

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None.