

City of Edinburgh Council

10.00am, Thursday 15 October 2020

Response to Council Motion on Whistleblowing Culture – referral from the Policy and Sustainability Committee

Executive/routine
Wards
Council Commitments

1. For Decision/Action

The Policy and Sustainability Committee has referred a report on the Response to Council Motion on Whistleblowing Culture to the City of Edinburgh Council for decision.

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Referral Report

Response to Council Motion on Whistleblowing Culture

2. Terms of Referral

- 2.1 On 17 September 2020, the City of Edinburgh Council considered an emergency motion by Councillor Whyte on Whistleblowing Culture. This motion was referred onto the Policy and Sustainability Committee of 6 October 2020 to allow any relevant information relating to the process and timeline of investigations to be presented by officers to the contents of the motion and then brought back to Council on 15 October 2020 for a full discussion.
- 2.2 On 6 October 2020, the Policy and Sustainability Committee considered a report which provided a response to Councillor Whyte's motion and which also set out some details in relation to the current confidential ongoing investigation. Recommendations were made in relation to a proposed further review of Council culture and associated processes. This report was considered alongside the referred motion.
- 2.3 The Policy and Sustainability Committee agreed:
- 2.3.1 To note that a fully independent review into certain specific matters was underway and was currently expected to complete its work in the Spring next year.
- 2.3.2 Building on the decision made at Council on 17 September 2020, to agree that a further independent assessment of Council culture and relevant processes would be undertaken.
- 2.3.3 To refer this report to full Council on 15 October for decision.

3. Background Reading/ External References

Minute of the Policy and Sustainability Committee of 6 October 2020.

Minute of the City of Edinburgh Council of 17 September 2020.

4. Appendices

Appendix 1 – report by the Chief Executive

Policy and Sustainability Committee

10.00am, Tuesday, 6 October 2020

Response to Council Motion on Whistleblowing Culture

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1. Recommendations

- 1.1 To note that a fully independent review into certain specific matters is underway and is currently expected to complete its work in the Spring next year.
- 1.2 Building on the decision made at Council on 17 September 2020, agree that a further independent assessment of Council culture and relevant processes will be undertaken.
- 1.3 Refer this report to full Council on 15 October for decision.

Andrew Kerr

Chief Executive

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Report

Response to Council Motion on Whistleblowing Culture

2. Executive Summary

- 2.1 This report provides a response for Committee in relation to the Motion and Amendment discussed at Council on 17 September 2020.
- 2.2 This report also sets out some details in relation to the current confidential ongoing investigation and makes recommendations in relation to a proposed further review of council culture and associated processes.

3. Background

- 3.1 On 17 September 2020, following presentation of a Motion in the terms set out in Appendix 1, Council unanimously agreed to note the Motion and agree the actions as further set out in Appendix 2.
- 3.2 The Council and the Police presently have ongoing investigations relating to the sudden death of a former staff member, which potentially involves examination of certain Council activities and staff knowledge over the past 20 years.
- 3.3 Officers have been requested to report to this Committee to bring forward potential plans and timescales in relation to the review noted within Appendix 2.

4. Main report

- 4.1 The Council Leadership Team (CLT) have made a sustained effort over recent years to embed an open and transparent culture, where colleagues feel both empowered to make decisions but also to make available a number of channels for individuals to report any concerns. This has been progressed through a widespread culture programme (Future, Engage, Deliver) in place (with over 1000 employees having been through different aspects of the programme, including 120 wider leadership team members), the development of best practice employee policies and an independently run whistleblowing service being established and embedded.
- 4.2 CLT also recognises that there is always more to do and, building on the agreed Motion, is proposing a two-strand investigative approach as set out in this report.

Information

- 4.3 It is recognised that the vast majority of staff are conscientious in the performance of their duties. Employees are therefore being encouraged to bring forward any information which they consider may assist the investigations set out in this report or indeed in relation to any other concerns, with confidentiality being assured through a referral through Safecall should that be the preferred route. This also applies to anyone else who considers that they may have relevant information.

Current Investigation

- 4.4 Members will appreciate that not much detail can currently be provided publicly in relation to the existing investigation in order to ensure that it, and any associated Police investigations, are not prejudiced in any way.
- 4.5 However, the Chief Executive has already taken a number of steps (following engagement with Police Scotland when the concerns initially came to light) to ensure that due processes were followed, colleagues were fully supported, and a full investigation could be carried out as quickly and robustly as possible.
- 4.6 An independent legal firm, Pinsent Masons, has been appointed to carry out an investigation, utilising their UK investigation team who have considerable experience in this type of investigation, into all relevant matters requiring to be examined and Group Leaders have been, and will be, fully kept up to date on progress.
- 4.7 The process is being developed at pace, with the scope of the Inquiry in the process of being finalised and agreed with the investigation team and in consultation with the Group Leaders.
- 4.8 In addition, an independent Chair of the investigation is in the process of being appointed in consultation with the Group Leaders, to absolutely guarantee independence and full scrutiny of and by the investigation.
- 4.9 Any instruction to appoint the Chair will require relevant independence checks to be undertaken as part of the appointment process.
- 4.10 Victims, others affected by the investigation and those who work in impacted service areas, are being offered full support through this difficult process and the Council will be following a victim centric and sensitive approach to these matters.

Further review of Council culture

- 4.11 The Council has made sustained progress with regard to improving our culture in recent years. The Council has implemented an exemplar whistleblowing service. With independent oversight from Safecall and Governance, Risk and Best Value Committee ("GRBV"), which has been chaired by an elected member from an opposition group since the service was introduced in 2014, a significant number of issues have been reported, investigated and dealt with appropriately. Since its inception in 2014, individuals have reported matters which have led to over 130 cases being investigated and, once concluded, reported to GRBV.

- 4.12 Per the employee survey in 2018, approximately 81% of employees who responded (representing approximately 26% of the workforce) were aware of the whistleblowing service being in place, with the majority of individuals responding also indicating a willingness to use the service.

Effectiveness

- 4.13 One of the challenges facing the Council is that it can only effectively deal with the issues reported to it or which otherwise come to the attention of management. To be effective and credible, investigations must also be proportionate, robust and evidence-led.
- 4.14 The Motion references a number of matters, many of which are historic and it is acknowledged that some of these matters noted have, unfortunately, indicated or included poor or unacceptable practice and/or gaps in governance. It is imperative that the Council learns from these matters to ensure that issues are addressed and people are supported to come forward with any information to highlight issues and improve services. However it is noted in this regard that the Council has robustly investigated matters brought to its attention, often utilising independent investigations.
- 4.15 The Council is keen to demonstrate a willingness for transparency, honesty, uncovering wrong-doing and resolving issues.

Follow-up

- 4.16 With regard to whistleblowing outcome actions, in October 2019 the Directors were asked to confirm that all actions from whistleblowing report recommendations had been implemented and sustained or were in progress. This was part of a process to ensure that relevant actions were being followed up on. To confirm the position, Internal Audit will progress their dip sample review of whistleblowing follow-up as part of the 21/22 Annual Plan.

Proposed further cultural review

- 4.17 Like any large organisation, there are always improvements that can be made. Accordingly, it is proposed that following the first phase of the investigation noted above (or earlier if advised by the Chair as being practicable), the Council have a further review and assessment of culture and practices carried out under the same independent Chair.
- 4.18 The exact terms of such further review will be determined by the independent Chair following their appointment, in consultation with the Group Leaders and the Chief Executive. Whilst this review will no doubt look at how the Council has dealt with matters, it is intended that this review be diagnostic in nature with learning and progressive outcomes.
- 4.19 The Council will need to work with the Chair to ensure that such review does not unnecessarily prejudice the Council's (or other third party's) position or interfere with other ongoing processes which may need to conclude first - i.e. due process still needs to be adhered to.

- 4.20 Both officers and elected members have respective duties of care and responsibilities relating to the strategic and operational delivery of matters of public protection, safeguarding, corporate parenting and acting as the employer. This relationship and conjoining of responsibilities is critical to delivering an effective, positive and high-performing culture.
- 4.21 Once fully scoped, this review will provide us with an independent view of what cultural issues and aspects we may need to turn our attention to and address and where we have good practice we can build upon. The investigation will be open to elected members, staff, former staff, whistleblowers and members of the public with the independent Chair deciding how to progress with any information shared with them within the context of their remit.
- 4.22 The independent Chair will report publicly on their findings and will provide advice on how issues such as data protection and other legal and practical issues can be addressed in this regard.

5. Next Steps

- 5.1 The current investigation will be continued to conclusion as a priority. Group Leaders will be kept regularly up to date on progress, not less than monthly.
- 5.2 A wider review will thereafter take place (or commence earlier if considered practicable by the Chair), based on a remit to be agreed as set out above.

6. Financial impact

- 6.1 The funding for any such a future review in light of the current financial situation of the Council and future challenges will require to be considered once the scope has been agreed.
- 6.2 The potential consequential financial impact of any such review will also require to be considered. Any diagnostic review is likely to lead to issues being identified and any such issues will then need to be responded to, most likely through training or improved practices, and may need significant investment and time resource to support.

7. Stakeholder/Community Impact

- 7.1 Consultation with colleagues, Trades Unions and elected members will be required as part of any review.
- 7.2 The Council depends daily upon the hard work and commitment of its workforce, many of whom put in much discretionary effort in the face of adversity. The impact of Covid has evidenced this, with staff pulling together to deliver services under the most difficult of circumstances. However, it is critical that the Council investigate these matters fully and the impact of both the Motion and the commentary at

Council will be taken into account to ensure that any further review is viewed positively and openly and does not have an overly adverse impact on staff morale and wellbeing, as well as the Council's ability to attract and retain staff.

- 7.3 It is recognised that staff will need to be supported and protected as appropriate whilst the Council looks at difficult issues. Trade Union assistance with regard to ensuring welfare of staff will also be of assistance in this regard.

8. Background reading/external references

- 8.1 [Motion and Amendment at City of Edinburgh Council meeting 17 September 2020](#)

9. Appendices

Appendix 1 – Motion

Appendix 2 – Amendment

Appendix 1 - Motion

City of Edinburgh Council 17 September 2020 Whistleblowing Culture

- 1) Council notes with concern the recent media reports about the sudden death of a Council employee who had been suspended and was under investigation by the Council and Police over serious criminal allegations.
- 2) Council further notes that media reports allege that complaints about the employee's behaviour date back over a number of years and that this behaviour was raised with the Council in the past. It is not clear to the public whether, or how, these matters were addressed.
- 3) Council notes that, since its introduction in 2014 the current whistleblowing process has improved matters with independent oversight from Safecall and the Governance, Risk and Best Value Committee being key contributors, but that there have been concerns raised historically in relation to pre-2014 whistleblowing and conduct inquiries into matters such as the statutory notices scandal, the matters examined by the Edinburgh Tram Inquiry, various investigations resulting in reports to Council detailing historic maladministration and the circumstances which led to the dismissal of the head teacher at Castlebrae High School. Many of these matters are still subject to Public Inquiry or Court proceedings.
- 4) Council expresses concern that current circumstances are potentially an indication of a negative culture which it was hoped was wholly historic in nature.
- 5) Council notes that an investigation has been commissioned by Council officers into the matters relating to the activities of the Council's former staff member and related activities, working with the Police as appropriate, potentially involving independent input, and that this will report back to the Chief Executive in due course.
- 6) Council recognises the confidentiality and sensitivity of the investigation and requests the Chief Executive to report back to Council on the outcome and any recommendations in due course and in the meantime to keep the Group Leaders updated on progress.
- 7) Council agrees the prime importance of ensuring confidence in its approach to whistleblowing, corruption and criminal wrongdoing, and notes that addressing the culture contributing to any such failings is crucial.
- 8) Council therefore agrees to instruct an independent Inquiry into the culture that developed that allowed this situation to exist within, to determine whether it continues to persist today and to report on any recommendations for change. The Inquiry will be led by a senior person with appropriate experience such as a QC or former senior Police officer.
- 9) The Inquiry should proceed at the earliest appropriate opportunity, taking account of internal processes, legal proceedings and Police investigations and recognising that some of these may have to conclude before this wider cultural inquiry begins. The remit will be decided independently of the staffing structure of the Council and agreed by Group Leaders in consultation with the independent person identified to lead the Inquiry. It should specifically include the Council's approach to the "avoidance of reputational damage" and whether this or any other aspects of culture within the Council has been a contributory factor in not fully identifying or addressing any potential wrongdoing.

Appendix 2 – Agreed Amendment (as adjusted)

Notes the motion

1. Council notes that the Chief Executive has already instructed a wide-ranging external independent investigation into matters relating to some of the issues highlighted in the motion and that the Council will continue to work with the Police as appropriate in this regard.
2. Council takes these matters very seriously and reiterates its resolve to root out any wrongdoing and to protect citizens, staff and service users from harm.
3. Council agrees that this independent investigation needs to begin without prejudicing ongoing Council and/or Police investigations should not be hindered and that anyone with information pertaining to the investigation are encouraged to come forward, including elected members.
4. Council notes that since 2014 Safecall has provided a robust, independent and supportive whistle blowing service for staff backed up by robust elected member scrutiny in the form of reporting to Governance, Risk and Best value.
5. Council further recognises the seriousness, confidentiality and sensitivity of the investigation and requests the Chief Executive to report back to Council, Governance Risk and Best Value Committee and Policy and Sustainability Committee as appropriate on the outcome and any recommendations in due course and in the meantime to keep the Group Leaders updated on progress. Council agrees the need for this investigation and subsequent report to be thorough, including the exploration of any connected historical issues, and make any recommendations for improvements as required.
6. Refers the Conservative motion onto Policy and Sustainability committee for further discussion on October 6th, 2020 to allow any relevant information relating to the process and timeline of investigations to be presented by officers to the contents of the motion and then brought back to Council on October 15th 2020 for a full discussion.