

Culture and Communities Committee

10.00am, Tuesday, 10 September 2019

Edinburgh Festivals Workers' Welfare Commitment - Update

Executive/routine	
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1. Recommendations

- 1.1 The Committee is asked to note the progress made in including the Edinburgh Festivals Workers' Welfare Commitment in the lease agreements for all Council estates hired for the Festivals.

Paul Lawrence

Executive Director of Place

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Report

Edinburgh Festivals Workers' Welfare Commitment - Update

2. Executive Summary

- 2.1 At the meeting of Council on [7 February 2019](#), Councillor Staniforth submitted a motion in relation to the implementation and enforcement of the Fair Hospitality Charter in Council venues.
- 2.2 This report provides an update on progress to implement the Edinburgh Festivals Workers' Welfare Commitment across Council estates. The report also provides details about the possibility of using the powers available to the Licensing Board and the Council as Licensing Authority as a method of securing compliance with the principles of the Commitment.

3. Background

- 3.1 The Fair Fringe campaign is an alliance of Fringe employees and Edinburgh-based campaign groups working to improve the pay and conditions of Fringe workers. The campaign is calling upon Festival employers to sign up to Unite's Fair Hospitality Charter.
- 3.2 The Fair Hospitality Charter contains ten practices to be implemented by Festival employers:
 - 3.2.1 Pay workers the real living wage;
 - 3.2.2 Give workers rest breaks;
 - 3.2.3 Equal pay for young workers;
 - 3.2.4 Minimum hour contracts for workers;
 - 3.2.5 Adopt clear policies which prevent sexual harassment;
 - 3.2.6 Paid transport after 12am;
 - 3.2.7 Consult workers on rota changes;

- 3.2.8 Ensure 100% of tips are paid to workers;
 - 3.2.9 No unpaid trial shifts; and
 - 3.2.10 Allow Trade Union access to represent and organise staff.
- 3.3 Two reports to the Housing and Economy Committee on [18 January 2018](#) and [22 March 2018](#) highlighted the work undertaken in identifying the impact on the Council of adopting the Fair Hospitality Charter. The report on 22 March 2018 requested further time to assess the impact of implementing the Charter on the Council as it would affect many different service areas.
- 3.4 In response to the Fair Fringe campaign, Officers developed an Edinburgh Festivals Workers' Welfare Commitment adopted by Council on [31 May 2018](#). A copy of the Commitment is contained at Appendix 1.

4. Main report

- 4.1 Since the production of the original Commitment in May 2018, work has been undertaken to ensure that organisations letting or using Council estates agree to abide by the terms of the Edinburgh Festivals Workers' Welfare Commitment. The Commitment was already contained within Lets for the Council's Cultural Venues and is now included on the [Culture Edinburgh](#) site.
- 4.2 This has included working with Officers in Estates to include the Commitment within any lease arrangements. As a result, all future lease or license agreements for any Festival activities will include the following clause "The Tenant/Licensee will implement and abide by the Edinburgh Festivals Workers' Welfare Commitment (<https://cultureedinburgh.com/workers-welfare>) throughout the duration of this agreement".
- 4.3 Where organisations are currently unable to comply with the Commitment, Officers will work with them to ensure future compliance. If an organisation is still unable to comply they will be refused permission to lease the premises in future.

Licensing

- 4.4 The motion approved by the Council also requests information about the possibility of using the powers available to the Licensing Board and the Council as Licensing Authority as a method of securing compliance with the principles of the Commitment.
- 4.5 Whilst the Civic Government (Scotland) Act 1982 and the Licensing (Scotland) Act 2005 each give the relevant licensing authority powers to attach conditions or to refuse licences, these powers can only be used in connection with the core purpose of the Acts. Regarding the 1982 Act this would be to prevent crime or to protect public safety. Neither the 1982 Act or the 2005 Act contain any powers to regulate the employment of staff by licence holders.

- 4.6 Therefore, should the Council or the Licensing Board seek to make decisions on granting licences based on employment issues, it is highly likely that the courts would consider that this is beyond the statutory powers available.
- 4.7 Several court decisions set out clearly why using licensing powers is not an option, however well-intended the reasons for refusal. There are two cases involving the Edinburgh Licensing Board and the former Edinburgh District Council. Applications were refused based on, respectively, concern about non-compliance with rules on fly posting, and a policy decision on animal welfare. In both cases the courts overturned the decisions to refuse the licence because the rules/policy went beyond the purpose of the relevant Act.
- 4.8 More recently, North Lanarkshire Council adopted a street trading policy under the 1982 Act which included restrictions on fast food sellers outside schools. A decision was made to refuse a licence application because the seller was too close to a school. This decision was overturned by the courts as the policy went beyond the purpose of the 1982 Act.
- 4.9 In the 'Brightcrew' case, the Glasgow Licensing Board was concerned about the working conditions within adult sexual entertainment venues, and adopted a detailed policy for these venues. The Board refused an application because of alleged non-compliance with that policy. This decision was appealed, and the Inner House of the Court of Session made clear that basing a decision to refuse a licence on a policy that went beyond the scope of the 2005 Act was not lawful.
- 4.10 Where any application is before the Licensing Sub-Committee or the Licensing Board and an employment issue is raised as a potential ground for refusal, officers would have to advise the Sub-Committee or Board that their respective powers do not extend to regulating matters of employment. Where the Sub-Committee or Board refuses such an application, it is highly unlikely that the decision could be successfully defended should there be an appeal.
- 4.11 Therefore, refusal of any licence because of non-compliance with the Edinburgh Festivals Workers' Welfare Commitment is not appropriate.

5. Next Steps

- 5.1 The Commitment has now been included in the terms and conditions for all Council estate lets. Any pre-existing leases that do not include the Commitment will be revised when the lease is renewed to include the Commitment.

6. Financial impact

- 6.1 None.

7. Stakeholder/Community Impact

- 7.1 The Council has engaged with the relevant partners, Trades Unions and Festivals bodies to deliver and implement the Commitment.

8. Background reading/external references

- 8.1 None.

9. Appendices

- 9.1 Appendix 1 – Edinburgh Festivals Workers' Welfare Commitment

Edinburgh Festivals Workers' Welfare Commitment

The City of Edinburgh Council

June 2018

Edinburgh Festivals Workers' Welfare Commitment

Our commitment

Our Commitment sets out what we as a Council expect for Festival workers and where we would like others to follow.

The Council has a clear vision for Festival workers in Edinburgh and we want to make sure that fair work practices are adopted and complied with.

We have a reputation as the world's leading festival city, it is a dynamic city which makes a vital contribution to the community and economy of Scotland and we want to set high standards for those Festival workers who support the city.

We, as a Council, promote high standards of performance, accountability, and a culture based on strong values. We ask others to do the same.

The objective of this Commitment is to promote a responsible and credible Festival worker environment for Edinburgh, while encouraging all festival organisations to work in partnership with trade union colleagues.

The Leader, Depute Leader, Councillors, Senior Management and all Staff commit to the provision of effective and sound governance at all levels and we call upon those engaging our Festival workers in Edinburgh to follow the worker commitments.

**Andrew Kerr, Chief Executive
June 2018**

Commitment 1

The Scottish local government living wage

The Council is committed to and pays its own employees no less than the Scottish Local Government Living Wage, a wage which is currently £8.51 per hour.

The Council expects those engaging festival workers to adopt pay policies which comply with fair work practices.

The Council expects engaging organisations to align to the same commitment where possible to ensure fair pay, to no less than the UK Government national living wage level for those aged 25+, irrespective of age (currently £7.83, per hour).

Fair pay is a positive factor and one of the clearest ways in which engaging organisations can demonstrate that they adopt fair work policies.

Engaging organisations can also demonstrate this through a variety of policies including, recruitment, remuneration, terms of engagement, skills utilisation, job support and worker representation.

Commitment 2

Rest breaks

The Council is committed to ensuring that all of our employees have appropriate rest.

The Council expects those engaging festival workers to adopt the following standards:-

For workers over the age of 18:

- when festival workers are working for more than 6 hours, 20 minutes rest;
- rest of 11 consecutive hours in each 24-hour period;
- uninterrupted rest of not less than 24 hours in each 7-day period.

For workers over age 16 but under 18:

- when festival workers are working for more than 4.5 hours, 30 minutes rest;
- rest of 12 consecutive hours in each 24-hour period;
- uninterrupted rest of not less than 48 hours in each 7-day period.

Engaging organisations should demonstrate their commitment to protecting and regulating workers' hours of work, rest breaks and holiday entitlements, the aim of which is to protect the health and safety of festival workers.

Commitment 3

No uncertainty of contracted hours

The Council sometimes engages individuals who are on a contract which does not guarantee a minimum number of hours work, however, there is no obligation on the individual to accept work that is offered.

While the Council is unlikely to be able to eliminate such arrangements entirely, we would encourage festival engaging organisations to provide a minimum of 24 hours' notice where work needs to be undertaken. This notice is reciprocal in that workers are also asked to provide 24 hours' notice if they are unable or unwilling to work.

Council contracts of this nature are typically used to provide short term supply staffing cover, such as theatre staff, to provide staff where hours cannot be guaranteed. The individual is free to work for different organisations and there is no obligation for them to accept work, if offered. These contracts do not include any obligations/restrictions around working for other employers. The Council ensure such individuals receive an employment contract for the relevant period of work and associated benefits such as service related annual leave, special leave and sickness allowance - such arrangements ensure that relevant employment benefits are conferred as rightly appropriate.

Engaging organisations should demonstrate their commitment to certainty for festival workers by agreeing to no less than those arrangements which the Council keep.

Commitment 4

Prevent harassment and discrimination

The Council is committed to protecting its staff from all forms of harassment and discrimination, including sexual harassment and discriminatory behaviour, whether it originates in the workplace or from the Council's clients, service partners or customers.

The Council will not tolerate or condone such behaviours and it is a breach of our open commitment to encourage and maintain an anti-discriminatory culture. The Council is committed to eliminating harassment or discriminatory behaviour on any of the following grounds:

- sex;
- sexual orientation;
- age;
- disability;
- gender reassignment;
- marriage or civil partnership;
- pregnancy and maternity;
- race; and
- religion or belief;
- Trade Union membership.

The Council expects festival engaging organisations to align to the same attitudes and behaviours, including a positive demonstration of this through policies which protect their workers.

Festival workers should have access to mechanisms to deal with any grievance concerning harassment or discrimination that they may have.

Commitment 5

Safety for journeys to and from work

Tackling violence, harassment and safeguarding the safety of Council and festival workers is critical.

We would encourage all Council and Festival workers who are travelling late:-

- to wait for a bus, tram or train in a well-lit place near other people;
- if threatened make as much noise as possible to attract the attention of the driver;
- know where you are going and when you need to get off and check departure times, especially last services;
- if travelling at night try to arrange for someone to meet you at your end destination;
- carry extra money in case you get stranded and need different transport;
- have your money ready so your purse or wallet is out of sight.

We also encourage employers to take into consideration, start and finish times, which take account of public transport available.

Commitment 6

Worker welfare & no unpaid trial shifts

The Council is committed to protecting its staff from unpaid trial shifts.

The Council will not tolerate such behaviours and expects festival engaging organisations to also protect their staff from unpaid trial shifts.

Organisations engaging workers should follow best practice recruitment and assessment guidance, which do not include unpaid trial shifts.

Commitment 7

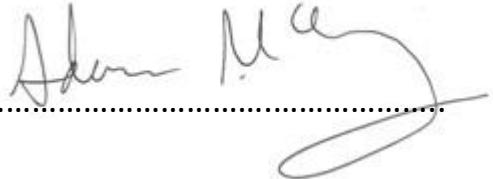
Worker Tips

The Council does not encourage or promote tipping within its venues. Where tips are given, the Council encourages Festival organisers to ensure that tips are distributed fairly and equally between all staff who have contributed to the provision of the service, including those who are 'back of house'.

Tips should not be used to replace or top up wages and will not count as wages for the purposes of paying the minimum government living wage.

For guidance, a [Code of Best Practice on Tips](#) has been produced by the Department for Business Innovation and Skills.

Council Leader, Councillor Adam McVey

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Council Depute Leader, Councillor Cammy Day

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Chief Executive, Andrew Kerr

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Director of Culture, Lynne Halfpenny

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