

# Governance, Risk and Best Value Committee

10am, Tuesday, 17 September 2024

## Investigation into Potential Governance Breaches

Executive/routine  
Wards

### 1. Recommendations

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1.1 To note the investigation and that no further action is recommended.

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## Investigation into Potential Governance Breaches

### 2. Executive Summary

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- 2.1 This report provides the outcome of an investigation into potential governance breaches when appointing a consultant in November 2022 and extending the contract in May/June 2023. There were two breaches of the urgency process outlined in the Terms of Reference and Delegated Functions. There were no other breaches of governance in the decision making.

### 3. Background

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- 3.1 The Finance and Resources Committee on 20 June 2023 agreed that the Monitoring Officer and the Head of Democracy, Governance and Resilience should investigate the process whereupon a consultant was appointed to lead the transformation process in the Health and Social Care Partnership. This investigation was to identify all breaches of the Scheme of Delegation to Officers and any other breaches of Council governance. In particular this investigation focused on the urgency provisions in the Committee Terms of Reference and Delegated Functions (TORs)
- 3.2 Due to workload pressures and staff sickness the investigation was delayed until spring 2024. However, immediate steps were taken to address the obvious breaches of Council governance.
- 3.3 A number of the officers involved in the original decision in November 2022 had left the organisation by June 2023 when the request for the investigation was made. In regard to this investigation this meant the intent of those officers could not be confirmed outside that contained in the written records available.

### 4. Main report

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- 4.1 This report seeks to outline a brief timeline in regard to the process undertaken to appoint a consultant to the Health and Social Care Partnership and to identify any breaches of governance and the steps taken to avoid similar occurrences in the future.

- 4.2 There are two main decisions within the timeline (appendix one):
- 4.2.1 The decision to make the original appointment of a consultant in November 2022 under urgency provisions.
  - 4.2.2 The decision to extend the contract of the appointed consultant between 2 June and 20 June 2023 under urgency provisions in May 2023.

### **November 2022**

- 4.3 The first issue for consideration is whether the Chief Officer of the EIJB had the power to appoint a consultant to work on the medium term financial plan. The Chief Officer of the EIJB is also a Council Executive Director and had the power under delegated authority to explore the appointment of a consultant to deliver the savings and transformation programme for the Health and Social Care Partnership. On 8 September 2022 the Finance and Resources Committee had noted a report that outlined the details of an urgent decision taken to extend the contract for Gatenby Sanderson to provide capability to lead work on the medium term financial plan. However, as identified at the time by the Chief Officer if the cost of a consultant is £50,000 or over then the Finance and Resources Committee is required to agree the appointment. Thus the Chief Officer of the EIJB did have the power to explore the use of a consultant, could use Gatenby Sanderson for this purpose but could not make the decision to appoint such a consultant.
- 4.4 To appoint a consultant over the cost of £50,000 required a decision of the Finance and Resources Committee or a decision taken under urgency provisions outlined in the Committee Terms of Reference. (the cost of the appointment was reported in June 2023 to be £104,650 for the first (and each subsequent) six month period). A decision was taken at the time that due to time pressures this could not wait to go to committee and an urgent decision was necessary. Before the matter of the urgent decision is addressed, it is unclear why a report was not submitted to the Finance and Resources Committee of 10 November 2022. The Chief Officer of the EIJB had indicated on 1 November 2022 that an individual had been identified and 'appointed', as a result it would seem logical to assume that a report could have been prepared for the publication of papers on 4 November 2022. The time would have been tight and there may be reasons why this was not possible, but the individuals involved in the decision are no longer with the City of Edinburgh Council and therefore not available to ask as to why this did not happen.
- 4.5 However, an urgent decision was sought, and a meeting took place to discuss this with the relevant committee convener. The officers present on 10 November 2022 have left the Council and the elected members present do not recall the detail of the meeting but it appears safe to assume that a decision was subsequently taken to agree the appointment of the consultant with an email confirming this 8 days after the meeting.
- 4.6 The urgency process in the Committee Terms of Reference and Delegated Functions requires any decision under urgency to be reported to the next meeting of

the relevant committee. In this case, that would have been the Finance and Resources Committee of 26 January 2023. A report should have been submitted to this committee and this did not take place.

4.7 It has not been possible to confirm with any certainty as to why no report was submitted to the Finance and Resources Committee informing them of the decision to appoint a consultant at a cost of over £50,000 but it does appear to be an oversight. Responsibility for this report lay with the Chief Officer of the EIJB. That individual is no longer in post, and we have been unable to establish why this was not sent to committee. However, there do seem to be a number of factors that may explain this oversight:

4.7.1 Lack of familiarity of the Chief Officer with Council processes due to predominantly reporting to the EIJB;

4.7.2 Key officers not being involved throughout the process;

4.7.3 Confusion whether it was an EIJB decision and was simply being presented to Finance and Resources members for information; and

4.7.4 Considerable time period between the urgent decision and the next committee meeting, with the Christmas period in between.

4.8 Despite these potential reasons for the failure to report, the fact remains that there was a breach of the Council's governance.

### **May 2023**

4.9 In April 2023 it was identified that the contract of the consultant appointed in November 2022 was expiring in early June 2023 and that a decision was required to extend the contract further. The next meeting was on 20 June 2023 and that meant there would be a period of time (2-20 June 2023) where the contract would have expired before a decision could be taken. Health and Social Care Partnership officers took advice from colleagues in Human Resources and Finance within the Council to establish what steps should be taken and how to avoid breaching the Council's governance rules. It was subsequently decided to take a decision under urgency provisions for the extension of the contract between 2-20 June 2023.

4.10 When taking this forward, officers had highlighted the matter to the Convener of the Finance and Resources Committee in May 2023 and in line with the requirements laid out in the TORs but had not realised that the Council's governance rules had very recently been changed to add group leaders to the elected members who needed consulted with in relation to such a decision.

4.11 Officers believed they were acting in accordance with the governance rules of the Council and had consulted widely. This was strengthened by the Convener of the Finance and Resources Committee consulting on the decision with the group spokespeople for that committee. This was in line with a commitment that the Convener had made at the committee and was not connected to the consultation requirements laid out in TORs.

- 4.12 The Executive Director of Corporate Services, having taken advice, identified that the decision had been taken incorrectly and subsequently informed the Chief Financial Officer of the EIJB. Action was then taken to inform group leaders of the decision (in accordance with the Committee Terms of Reference) but this was 10 days after the decision had to have been taken and the breach of the urgency provisions remained.
- 4.13 In interviews with those involved it seemed clear that the breach of the urgency provisions was due to an error and officers not realising that there had been a change in the consultees required. In conclusion there was a willingness from officers to ensure consultation was carried out but ultimately the councillors consulted with was not in compliance with the updated rules.

### **Improvements to Process**

- 4.14 In order to improve transparency and record keeping around decisions which have to be taken outside of the normal process, a register has been created to hold a formal record of all urgent decisions which are taken between meetings of the Council or relevant Committee.
- 4.15 All officers intending to take urgent decisions now require prior to consultation with officers, to inform the Service Director, Legal and Assurance and the Head of Democracy, Governance and Resilience and a process has been created which means all decisions must flow through the Chief Executive's or Executive Director's offices.
- 4.16 The new process has been communicated to colleagues and aims to outline a clear process that is easily understandable and ensures that corporately the Council is monitoring the use of urgency provisions.

## **5. Next Steps**

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- 5.1 No further action is recommended but the improvements to the process will be reviewed to see if there are good levels of compliance.

## **6. Financial impact**

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- 6.1 There are no financial impacts as a result of this report.

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

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- 7.1 There are no equality or poverty impacts as a result of this 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 This investigation included examining the governance documentation supporting decision making at the Council.

9.2 Clear governance issues were identified in the report and steps have been taken to improve compliance from officers and to build in more robust controls.

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

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10.1 [Scheme of Delegation to Officers](#)

10.2 [Committee Terms of Reference and Delegated Functions](#)

## **11. Appendices**

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11.1 Appendix 1 - Timeline

## Appendix 1 - Timeline

### November 2022 Decision

- 1.1. **1 November 2022** – The Chief Officer of the EIJB writes to the Interim Executive Director of Corporate Services to inform him that the Health and Social Care Partnership had been working with the Service Director for HR on securing a consultant to lead the savings and recovery programme for the Partnership. An individual had been identified but the Chief Officer was aware that the appointment would have to be agreed by the Finance and Resources Committee and sought help from the Interim Executive Director of Corporate Services to approach the convener to take forward the appointment under urgency provisions.
- 1.2. The Interim Executive Director of Corporate Services confirmed his willingness to help and requested further information.
- 1.3. **7 November 2022** – The Interim Executive Director of Corporate Services emailed confirming that the Convener of Finance and Resources Committee wished to meet to discuss the appointment.
- 1.4. **10 November 2022** – Meeting held with the Convener of Finance and Resources Committee, Convener of the EIJB, Chief Officer of the EIJB and the Interim Executive Director of Corporate Services.
- 1.5. **18 November 2022** – Email sent from Chief Officer EIJB to the Health and Social Care Partnership Wider Leadership team confirming the appointment.

### May 2023 Decision

- 1.6. **24 April 2023** – email from Chief Financial Officer EIJB to Interim Chief Officer EIJB stating that the appointment of the consultant was due to expire on 2 June 2023 and following advice from the Council's HR and Finance teams the Partnership needed to take a report to Finance and Resources Committee on 20 June 2023 to request an extension and to approach the Convener of the Finance and Resources Committee to agree a waiver for the period 2-20 June 2023.
- 1.7. **26 May 2023** – email sent from the Service Policy Advisor for Finance and Resources to the group spokespeople for Finance and Resources seeking their agreement to extend the contract for the consultant for the period 2 -20 June 2023.
- 1.8. Emails were received from Group Spokespeople agreeing to the extension although there were some questions on why urgency provisions were being used and that the report should include further information.
- 1.9. **8 June 2023** – Email sent from the Executive Director of Corporate Services to the Chief Financial Officer EIJB and the Council's Head of Democracy,

Governance and Resilience pointing out that the draft report for the Committee appears to indicate that the urgent decision to extend the contract of the consultant was not taken in accordance with the new urgency process, namely that group leaders were not consulted with.

- 1.10. The Head of Democracy, Governance and Resilience agreed with the position identified by the Executive Director of Corporate Services.
- 1.11. The Chief Finance Officer EIJB replied that the Finance and Resources spokespeople had been consulted and apologised if an error had been made and they had inadvertently got the process wrong.
- 1.12. **12 June 2023** – email sent from the Operation Manager Heath and Social Care Partnership to group leaders informing them of the decision and the need to extend.
- 1.13. **19 June 2023** – email sent from Interim Chief Officer EIJB to group leaders providing further information and apologising for the breaches of governance.