

Edinburgh Lifelong Learning Partnership Ltd

City of Edinburgh Council

1 February 2007

1 Purpose of report

This report provides an assessment of the management, procedural and Human Resources (HR) issues arising for the Council from a detailed consideration of the Council's involvement with the independent organisation, the Edinburgh Lifelong Learning Partnership Ltd (ELLP). The actions already taken and those now required to address these issues are also outlined.

2 Summary

- 2.2 Following allegations of breaches of Council procedure with respect to the relationship between ELLP and the City of Edinburgh Council (CEC), both the Monitoring Officer and the Director of Finance undertook separate assessments of any potential financial, HR and management issues which were may have occurred.
- 2.3 The Director of Finance reported his findings to Council in June 2006. My own investigation as Monitoring Officer resulted in the Director of Children and Families commissioning an independent assessment of the conduct of Council employees in relation to ELLP.
- 2.4 On the basis of this assessment and my own prior examinations, it is concluded that there are insufficient grounds to justify initiating any disciplinary proceedings against any Council employee. Council policies and procedures were not adhered to fully and there are clear lessons for the Council to act upon. However, there is insufficient evidence to substantiate the allegations of misconduct on the part of any individual employees.

3 Main report

Background

- 3.1 The Edinburgh Lifelong Learning Partnership was incorporated in 1998 as a company limited by guarantee and as such was a separate and discrete body from the City of Edinburgh Council. The Council entered into a three year funding arrangement with ELLP from 1998. The then Education Department undertook liaison and development roles with ELLP in pursuit of the City's lifelong learning objectives. In 2002 allegations of financial impropriety and conflicts of interest were made against Council staff. These resulted in a complex series of management, HR, financial and ICT examinations.
- 3.2 An internal audit review of ELLP was reported to Council on 1 June 2006. A further report to Council on 29 June 2006 advised at the time of a necessary delay in reporting on ongoing personnel matters, but confirmed that a comprehensive overview and response would be reported to Council in due course.
- 3.3 Recent related reports on Grant Aid to Third Parties (Council Executive, 14 March 2006), the Council's Public Interest Disclosure Policy (Council, 4 May 2006), the Code of Guidance regarding Council Companies (Council, 29 June 2006) and the ICT Acceptable User Policy (Executive, 23 January 2007) provide further background to these issues.

HR Issues

- 3.4 In view of the internal audit review and the Monitoring Officer examination, the Director of Children and Families commissioned an independent assessment of the conduct of Council employees involved with ELLP. Having considered this assessment, both the Director and myself are of the view that, while there has been a failure within the Department to adhere fully to Council policies and procedures, there are insufficient grounds to justify initiating disciplinary procedures against any current Council employee.
- 3.5 The following section provides further details on the assessment of potential breaches of Council policies and procedures in relation to financial and human resource matters, and my findings and recommendations.

Conflict of Interest

- 3.6 There is evidence of conflict of interest, although there is no evidence of financial gain to any employee as a result. This conflict occurred due to a lack of clarity within the Department over Council employee roles within partnership arrangements. This exposed both the Council and employees to the risk of perceived or potential conflict of interest. The evolving nature of ELLP, the Council's lack of experience of engagement in the lifelong learning partnership framework and the advancing pace of IT developments all contributed to this situation.

3.7 The Council's Code of Conduct guides staff on matters relating to any potential conflict of interest. Since 1999, all contracts issued to staff make reference to the code. While the Code of Conduct is sufficiently robust with respect to conflicts of interest, three actions are proposed to raise awareness of its guidance and to protect both staff and the Council. These are as follows:

- It is recommended that, in areas within the Council at particular risk of potential or perceived conflict of interest, Departmental management should ensure clarity over Departmental procedures for protecting against any such conflict;
- Departments should remind employees of the Code of Conduct, specifically the personal responsibility of each employee to ensure adherence to the Code; and
- Employees should be reminded to discuss any potential or perceived conflict of interest with line management and HR advisors, to avoid any risk of uncertainty. This is particularly important in new areas of Council activity, where there is less familiarity with the issues and fewer precedents to guide action.

Financial Impropriety and Governance of Partnerships / Arms Length Companies

3.8 As previously reported to Council on 1 June 2006 in the report concerning the internal audit review of ELLP, there is no evidence of misappropriation of Council funds. While a number of Council policies and procedures were not followed, there is no evidence to suggest that they were deliberately breached.

3.9 The way in which ELLP and the relations between ELLP and the Council evolved in subsequent years contributed to the problems. This was a period when the Department had considerably less experience of partnership work with arms length companies and external bodies than at present. The change of Council committee structures and responsibilities in June 2000 and the change of Directorship may also have contributed to the breach of these procedures. Specific issues included:

- The failure to appoint a reporting officer within the Council for ELLP;
- The lack of formal performance reports to Council; and
- The failure to seek approval for further Council funds beyond the initial funding approved in 1997.

3.10 The Council's Code of Guidance on Council Companies, revised in a report to Council on 29 June 2006, already addresses the issue of roles and responsibilities between the Council and all companies in which the Council is a major shareholder and/or to which it grants significant funding.

- 3.11 Relationships with third sector organisations in the grant aid and contracting environment also continue to be further developed in the Council. The Executive agreed a report on 14 March 2006 which endorsed further work inside the COMPACT partnership structure to review contract arrangements where services are purchased for social benefit purposes. This involves streamlining and formalising current ad hoc arrangements to ensure the clarity needed for audit purposes.
- 3.12 Given the wide and complex range of relations with external organisations that the Council has developed over recent years, it is now recommended that the existing and evolving guidance described in 3.10 above should take account of *all* formalised partnership arrangements in which the Council is engaged. Further, a new programme of training on officer obligations within such arrangements, both to the Council and any partnership structure, should be offered by Finance and Legal Services. Such training should be compulsory for officers involved in any such partnerships.
- 3.13 It is also recommended that Departments ensure that such formalised partnership arrangements are properly defined, categorised and recorded. Departments should maintain a list of those officers who have been nominated to represent the Department within these arrangements and ensure that they are appropriately trained and briefed.
- 3.14 On 1 June 2006, Council approved a motion to consider the establishment of an independent compliance unit within the Council, separate from the Companies Team in City Development. This will be taken forward by Corporate Services.
- 3.15 The internal audit review reported on 1 June 2006 found evidence of breaches of Council financial procedures in relation to ELLP. These relate to tendering procedures and payment in advance for the delivery of goods and services.
- 3.16 CEC took responsibility for the Edinburgh portal in October 2004. Both the site and staff transferred to the Council without undertaking an appropriate level of risk appraisal. Formal assignation procedures have since been followed.
- 3.17 The actions recommended above, and in particular the review of contracting arrangements where services are purchased for social benefit purposes, will reinforce the need for compliance in tendering and financial procedures, no matter how complex the partnership setting.

Public Interest Disclosure

- 3.18 The case also highlighted issues related to the Council's Public Interest Disclosure Policy. This policy has been in place since 2000. Not every potential Public Interest Disclosure is described as such by the disclosing party. The terms of the policy are such that there remains an element of judgement by management when deciding whether an allegation should be considered as a potential Public Interest Disclosure. In order for the policy to be effective in protecting the public interest, it is neither feasible nor desirable for the policy to be any more specific or detailed than at present. Given the nature of such allegations and the context in which they may be made, it is inevitable that an element of judgement will sometimes be required.
- 3.19 There was a lack of management clarity regarding whether or not a potential disclosure was being handled. If a Department decides that it is dealing with a potential disclosure, it is management's responsibility to keep the employee concerned briefed regarding the handling of their disclosure and protected from any form of victimization that might result. Collectively, management did not adhere to these procedural steps since it was unclear whether a matter of disclosure was being addressed. The member of staff responsible for managing disclosure procedures at the time has now left the Council.
- 3.20 While no further action will be taken against any individual, it is recommended that Departmental management teams, with support from HR, reconsider their arrangements for addressing potential disclosures. In addition, Departments should record any occasions when an issue has been *considered* as a potential disclosure, even if it is subsequently deemed by the Department not to be so.

Handling of Disciplinary Procedures

- 3.21 The case has highlighted the need for clearer identification of the overall responsibility of managers with respect to the implementation of disciplinary procedures. It is recommended that the role of Departmental management in taking decisions on the implementation of the Council's Disciplinary Code is reinforced. Strategic changes within HR and the programme of management and leadership development currently being offered to all managers will provide further support for this.

ICT Security within CEC

- 3.22 The case exposed a number of issues relating to ICT security, both within and external to the Council. There is a clear need for management to understand the Council's procedures and limitations in terms of ICT and security.

3.23 A new ICT Acceptable User Policy (AUP) was approved by the Executive on 23 January 2007 and supplements the Council's existing Code on the Use of Electronic Communications. It provides the Council with a policy, governance structures and defined processes for the management of Information Security within the Council. In addition, the Executive has approved the development of a Security Awareness Programme which will highlight key security issues and promote good practice to staff. New guidelines will also be issued for managers on the application of the AUP. The Information Security Manager and HR will work together to ensure that new staff receive appropriate information security advice as part of their induction into the Council.

4 Conclusions

- 4.1 I am satisfied that the assessment of alleged and potential breaches of Council policies and procedures has concluded that there is insufficient evidence of misconduct and therefore no need for disciplinary action against any employees.
- 4.2 However, where a lack of clarity or understanding has led to failure to follow any policies or procedures, employees must in future be made fully aware of appropriate procedures and their responsibilities. To ensure that lessons are learned from this investigation, this report recommends a series of actions to ensure future compliance with Council policies and procedures.

5 Recommendations

- 5.1 It is recommended that Council:
- (i) note that while there has been a failure within the Children and Families Department to adhere to Council policies and procedures, there are insufficient grounds to justify initiating disciplinary procedures against any current Council employee;
 - (ii) note that where a lack of clarity or understanding has led to potential breaches of Council policies or procedures, employees will be made fully aware of appropriate procedures and their responsibilities;
 - (iii) instruct Departments to consider the extent of the risk of potential or perceived conflict of interest within their operations and issue a reminder to relevant staff of the existence of the Code of Conduct and specifically of the personal responsibility of each staff member to ensure adherence with the Code;
 - (iv) instruct Departments to ensure that all officers within all formalised partnership arrangements receive appropriate guidance and training from Legal Services and Finance, with governance guidance updated accordingly;
 - (v) instruct Departments to maintain a record of all formalised partnership arrangements and the Council's nominated representatives;

- (vi) establish an independent Compliance Unit within the Department of Corporate Services;
- (vii) instruct departmental management teams, with support from HR, to reconsider arrangements for addressing potential disclosures of public interest;
- (viii) instruct Departments to record any issue which has been considered by management as a potential disclosure, even if it is subsequently deemed by the Department not to be such;
- (ix) instruct Departments that the full terms of the council's policy on public interest disclosures must be followed for every disclosure made;
- (x) instruct Departments to ensure that departmental management teams have a clear understanding of the distinct roles of management and HR advisors in the implementation of the council's disciplinary code;
- (xi) note the support offered to departments via the ongoing strategic changes in HR and the current programme of management and leadership development; and
- (xii) note that new measures to enhance electronic information security, through the ICT Acceptable Use Policy have recently been implemented.


Jim Inch
 Council Monitoring Officer
 25/01/07

Appendices	None
Contact/tel	
Wards affected	All
Background Papers	Edinburgh Lifelong Learning Partnership, Reports to the City of Edinburgh Council, 1 June and 29 June 2006