

# Finance and Resources Committee

10.00am, Thursday, 27 August 2015

## Review of whistleblowing arrangements

Item number	7.13
Report number	
Executive/routine	
Wards	All

### Executive summary

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This report summarises the findings of an external review into the Council's pilot whistleblowing arrangements, carried out by employment law specialists from Morton Fraser LLP, and recommends approval of an action plan to continue to develop and improve the service.

### Links

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Coalition pledges	
Council outcomes	CO25 & CO27
Single Outcome Agreement	

## Review of whistleblowing arrangements

### Recommendations

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- 1.1 To note the findings of the review;
- 1.2 To consider the review's recommendation to revise the whistleblowing policy and adjust the role of the external provider outlined in paragraph 3.3 of this report;
- 1.3 To agree the action plan outlined in Appendix 2; and
- 1.4 To approve the extension of the pilot contract arrangements with the current external provider until 11 May 2016.

### Background

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- 2.1 On 19 September 2013 the Finance and Resources Committee agreed to support a one-year pilot of a whistleblowing service, with a review at six months to determine whether the arrangements increased the reported frequency of protected disclosures and if the service represents value for money.
- 2.2 The Council's Corporate Leadership Group agreed terms of reference for the review in February 2015 and Morton Fraser LLP were commissioned to carry out the review.
- 2.3 The review commenced in March 2015 with a desktop review of relevant documentation including council policies, contractual documentation, disclosure reports, investigation outcome reports and committee reports. This was followed by qualitative engagement through face to face interviews with elected members, senior officers, staff and trades unions.
- 2.4 The detail of whistleblowing disclosures was not considered under the terms of the review. The interviews focussed on the whistleblowing process and the views of interviewees based on their involvement in the process.
- 2.5 Morton Fraser submitted their final report to the Council in August 2015. An executive summary covering their conclusions and recommendations is attached as Appendix 1.

### **Scope of the review**

- 3.1 Morton Fraser (the review team) was asked to consider:
  - 3.1.1 the role of the current third party provider;
  - 3.1.2 the terms and effectiveness of the whistleblowing policy, and
  - 3.1.3 additional related matters.
- 3.2 The following provides an outline of the key areas identified to further develop and improve the ongoing service provision.

### **Whistleblowing and HR policies**

- 3.3 The whistleblowing policy should be updated to reflect the role and responsibilities of the whistleblowing team, liaison arrangements between all of the parties involved and to remove the external provider's sole discretion to determine if investigations are conducted externally or internally.
- 3.4 The current suite of HR policies should be reviewed to ensure they align with whistleblowing investigations and are adequately cross referenced.
- 3.5 An appropriate mechanism should be introduced for managers to notify the external service provider of internally reported disclosures to meet the requirements of the whistleblowing policy.
- 3.6 Guidance and procedures need to be developed on confidentiality and the sharing of information, the assessment of disclosures to determine the appropriate process to be followed and the settling of any differences of opinion that might arise between the external service provider and the Council.

### **Staff engagement and reporting**

- 3.7 The whistleblowing service should be re-launched with a sustained messaging programme emphasising the collective responsibilities of the Council and its employees to seek to identify and resolve perceived problems internally.
- 3.8 Some employee groups will have more direct involvement in the process than others and the Council should develop the knowledge and understanding of these groups in the whistleblowing policy and the investigation process.
- 3.9 The whistleblowing team should explore with the external service provider development of the initial report template to collect valuable management information e.g. reasons for not reporting matters internally.
- 3.10 The service needs to develop a consistent and robust approach to dealing with anonymous disclosures and communicate this to employees.
- 3.11 The service should formalise arrangements for providing appropriate and timeous feedback to whistleblowers, service users and managers.

- 3.12 The Council could utilise the Employee Survey to gauge employee awareness, understanding and engagement with the process.

#### **Value for money**

- 3.13 The cost of provision of the whistleblowing hotline itself is minimal and fixed at £5,898.75 per quarter. Additional costs are incurred when the external service provider investigates major/significant disclosures which are charged at an hourly rate agreed during the procurement process.
- 3.14 The appointment of an external service provider is considered to add value primarily because of their independence and all interviewees agreed that such an arrangement should continue.
- 3.15 Regular review and audit of the whistleblowing policy and service should be instituted to ensure continued assessment of value for money.

### **Measures of success**

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- 4.1 Employees feel able to report suspected wrongdoing as early as possible in the knowledge that:
- 4.1.1 their concerns will be taken seriously and investigated appropriately;
  - 4.1.2 they will be protected from victimisation; and
  - 4.1.3 the provisions of the whistleblowing policy ensure all matters at the Council are fully transparent and officers are accountable.
- 4.2 Implementation of improvement actions contained in the action plan attached as Appendix 2.

### **Financial impact**

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- 5.1 Fees for the review total £13,831.60.

### **Risk, policy, compliance and governance impact**

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- 6.1 The whistleblowing policy was developed and agreed to complement existing management reporting arrangements and to ensure employees have the right to raise concerns in the knowledge that they will be taken seriously, that matters will be investigated appropriately and confidentiality will be maintained.

### **Equalities impact**

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- 7.1 There are no direct equalities implications arising from this report.

## Sustainability impact

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8.1 There are no sustainability implications arising from this report.

## Consultation and engagement

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- 9.1 Consultation was undertaken with the trades unions to secure a local agreement.
- 9.2 A range of stakeholders including officers, elected members, the external provider, a whistleblower and trade union were interviewed during the course of the review.

## Background reading/external references

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[Finance and Resources Committee 19 September 2013: item 7.2 - Revised Whistleblowing Policy](#)

### Alastair Maclean

Chief Operating Officer

Deputy Chief Executive

Kirsty-Louise Campbell, Strategy and Governance Manager

E-mail: [kirstylouise.campbell@edinburgh.gov.uk](mailto:kirstylouise.campbell@edinburgh.gov.uk) | Tel: 0131 529 3654

## Links

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### Coalition pledges

#### Council outcomes

CO25 - The Council has efficient and effective services that deliver on objectives.

CO27 - The Council supports, invests in and develops our people.

#### Single Outcome Agreement

#### Appendices

Appendix 1 – Review of Whistleblowing Arrangements – Executive Summary

Appendix 2 – Development of Whistleblowing Arrangements - Action Plan

## **Review of Hotline Provider and Whistleblowing Policy for the City of Edinburgh Council**

### **Executive Summary**

This report was commissioned for Morton Fraser LLP to review the pilot whistleblowing arrangement for the City of Edinburgh Council (the "Council"). The methodology adopted involved qualitative engagement with numerous key stakeholders, as well as a desktop review exercise.

#### Conclusions

1. The Council has a whistleblowing system in place which differs significantly from other organisations. The key difference is that the external provider can determine the nature of any investigations to be carried out and, indeed, may be involved in carrying them out.
2. All of those interviewed considered that there was value in having an external whistleblowing service and that such an arrangement should continue.
3. A significant feature of the interviews was the strong sense that the value of having an external whistleblowing service should not be at the expense of greater responsibility being taken within the Council in identifying and tackling perceived concerns. Whilst the value of an external whistleblowing service was recognised, the majority view was that this should be a last resort and that the culture should be that matters are dealt with internally, where possible.
4. Whilst there was consensus that the concept of an external provider was sound, there was a strong view expressed by many that the practicalities of the pilot arrangement had not worked quite in the way anticipated. Areas focused upon included the lack of informed understanding of the process at many levels within the Council, the lack of training of those who might be impacted upon by the policy and the question of the skill base and extent of resource available to assist with investigations internally.
5. A number of interviewees expressed substantial criticism of the current external provider's methodology in relation to one major investigation in particular. There has been no criticism of the Whistleblowing Hotline, and indeed, a general sense that this has worked well. The concerns expressed related mainly to the investigation process and report. Setting this aside, there was a strong feeling amongst many interviewees that, if not for the involvement of an external body, certain matters may not have come to light.

#### Recommendations

- 1 The Council should continue with the provision of an external Whistleblowing Helpline.
- 2 The Council should not continue with a policy in terms of which an external provider has the discretion to determine if investigations are conducted externally or internally, albeit there should be an ability to use external investigators where appropriate.
- 3 The whistleblowing service should be re-launched with a sustained messaging programme.
- 4 Employees should be upskilled in the Whistleblowing Policy and in investigation processes.
- 5 The Council's current suite of HR policies should be reviewed, with a view to ensuring that they align with any whistleblowing investigation to allow these to be utilised going forward in terms of other internal investigations and to ensure that the policies are adequately cross referenced.
- 6 A greater emphasis should be placed upon the collective responsibilities of both the Council and its employees to seek to identify and resolve perceived problems internally, with a view to a corresponding cultural shift.
- 7 A regular review and audit of the Whistleblowing Policy and service should be instituted.

## Whistleblowing Review Action Plan – August 2015

## Appendix 2

No	Recommendation/improvement area	Management Action	Responsible Officer(s)	Target Date
01	Extend pilot contract arrangements with current external provider	Extend pilot contract to 11 May 2016	Kirsty-Louise Campbell Legal Services	30.09.2015
02	Continue service beyond pilot	Procure external provider from 12 May 2016	Kirsty-Louise Campbell Martin Glover	31.03.2016
<b>Whistleblowing and Council policies</b>				
03	Roles and responsibilities	Update whistleblowing policy to reflect current roles and responsibilities of the whistleblowing team	Kirsty-Louise Campbell Martin Glover	31.12.2015
04	Liaison	Update section 4.5.6 to 4.5.8 of the whistleblowing policy to reflect the liaison required between Council managers, the external provider and the whistleblowing team	Kirsty-Louise Campbell Martin Glover	31.12.2015
05	Amend whistleblowing policy to remove external providers sole discretion to determine if investigations are conducted externally or internally	Amend whistleblowing policy	Martin Glover	31.12.2015
		Amend pilot contract to reflect change	Kirsty-Louise Campbell	31.12.2015
		Develop protocol to determine categorisation of disclosure and decide whether an internal or external investigation should take place	Kirsty-Louise Campbell	31.12.2015
06	Review current suite of HR policies ensuring they align with whistleblowing investigations and are adequately cross referenced	Review current suite of HR policies (and procedures) and submit where appropriate to committee	Martin Glover	31.03.2016
07	Notification of internally reported disclosures to external provider	Develop guidance for managers and a robust process for ensuring this policy requirement is met	Kirsty-Louise Campbell Martin Glover	31.03.2016
08	Internal and external investigation alignment	Develop an investigative framework that meets the requirements of council policies, procedures and legislation	Kirsty-Louise Campbell Martin Glover	31.03.2016
		Resource and develop an experienced and skilled internal pool of investigating managers	Executive Directors Kirsty-Louise Campbell Martin Glover	30.04.2016
09	Guidance on confidentiality requirements and the sharing of information	Develop guidance and procedures on confidentiality and the appropriate sharing of information within the legislative framework	Kirsty-Louise Campbell	31.03.2016
10	Guidance on disclosure assessment	Develop a robust process to ensure that each disclosure is carefully considered before determining the	Kirsty-Louise Campbell Martin Glover	30.09.2015

		appropriate process to be followed		
11	Differences of opinion	Develop a procedure for settling differences of opinion between the external service provider and the Council	Kirsty-Louise Campbell Legal Services	31.03.2016
12	Child Protection policy and procedures	Consider the policies and ensure appropriate alignment making any necessary changes.	Kirsty-Louise Campbell Children and Families	31.03.2016
<b>Staff engagement and reporting</b>				
12	Re-launch whistleblowing service with a sustained messaging programme	Re-launch service , update communications plan, distribute publicity materials, update Orb guidance, etc	Kirsty-Louise Campbell Lesley McPherson	31.10.2015
		Develop sustained messaging approach to coincide with launch of permanent service from 12 May 2016	Kirsty-Louise Campbell Lesley McPherson	31.03.2016
13	Emphasise the collective responsibilities of the Council and its employees to seek to identify and resolve perceived problems internally	Emphasise through management and employee engagement and training activity in relation to recommendations 3 and 4	Martin Glover Kirsty-Louise Campbell Lesley McPherson	31.03.2016
14	Up-skill relevant employee groups (senior management, directorate liaison officers, investigating managers) in the whistleblowing policy and the investigation process	Develop communications and appropriate training for each employee group	Martin Glover Kirsty-Louise Campbell Lesley McPherson	31.12.2015
15	Improved management information	Develop improved initial report template with external provider, to facilitate the collection of valuable management information, eg. whether the matter has been raised internally and, if not, why that is the case	Kirsty-Louise Campbell	30.09.2015
16	Anonymous disclosures	Develop a consistent and robust approach to dealing with anonymous disclosures and communicate this to employees	Kirsty-Louise Campbell Martin Glover Lesley McPherson	31.12.2015
17	Feedback to whistleblowers, service users, managers, etc	Develop a procedure for providing appropriate feedback on conclusion of investigations or where an investigation is protracted	Kirsty-Louise Campbell	31.12.2015
18	Employee understanding and engagement	Incorporate whistleblowing questions into the 2016 Employee Survey to establish employees awareness, understanding of the policy/process and their views/confidence in using it	Kirsty-Louise Campbell	28.02.2016
<b>Value for money</b>				
19	Regular review and audit of the whistleblowing policy and service	Policy review annually (default for all policies)	Martin Glover	31.03.2016
		Audit of whistleblowing service at key milestones eg.	Kirsty-Louise Campbell	31.03.2016

		towards end of contract period (frequency to be determined)		
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