

## INDEPENDENT REVIEW OF WHISTLEBLOWING AND ORGANISATIONAL CULTURE

### TERMS OF REFERENCE

1. The City of Edinburgh Council (the "Council") has commissioned an independent review of whistleblowing and organisational culture relevant to the raising of and responding to concerns of wrongdoing involving the Council, its members, officers and colleagues (the "Review").
2. The Review is being carried out by Susanne Tanner QC (the "Independent Chair") with support from Pinsent Masons (collectively the "Reviewer").
3. The outcomes of the Review are:
  - 3.1 to determine whether or not a positive, open, safe and supportive whistleblowing and organisational culture for the raising of and responding to concerns of wrongdoing within the Council, its elected members, officers and colleagues ("employees") exists within the Council and, if not, why not;
  - 3.2 to determine whether or not the Council's whistleblowing processes and practices, in particular the Council's 'Whistleblowing Policy' (introduced in May 2014) and the appointment of Safecall as a whistleblowing service provider, embody good practice and provide an effective vehicle for raising and responding to concerns of wrongdoing;
  - 3.3 to determine whether Council elected members, officers, colleagues and former colleagues feel empowered to raise concerns of wrongdoing, or whether there are any barriers or other reasons, actual or perceived, which inhibit the reporting of wrongdoing within the Council;
  - 3.4 to determine whether Council elected members, officers and colleagues in management roles feel empowered to respond to concerns of wrongdoing which are raised by elected members, officers, colleagues, former colleagues or members of the public, or whether there are any barriers or other reasons, actual or perceived, which inhibit the response to concerns of wrongdoing within the Council;
  - 3.5 to determine if whistleblowing reports and other reports of wrongdoing involving the Council, its elected members, officers and colleagues are properly investigated and acted upon, including by taking steps to prevent recurrence, and, if not, why not;
  - 3.6 to determine whether the avoidance of reputational damage or legal liability is a contributory factor in any failure by the Council to respond to or to address concerns of wrongdoing; and
  - 3.7 to make recommendations to improve the organisational culture, processes and practices of the Council, to provide a positive, open, safe and supportive whistleblowing and organisational culture, to encourage and support the reporting, responding to and addressing of wrongdoing involving the Council, its elected members, officers and colleagues.
4. The Review will examine the organisational culture, processes and practices, relevant to whistleblowing and reporting of and responding to wrongdoing, of the Council as a whole, including amongst elected members, officers and colleagues.
5. The Review's remit is to determine the organisational culture, processes and practices with a view to making recommendations to improve any shortcomings. The Review will necessarily entail looking at the approach to whistleblowing and other relevant processes, which may include reports and investigations both before and after the introduction of the Council's Whistleblowing Policy in May 2014, insofar as relevant to the assessment of the current position. Anyone within or outwith the Council will be able to raise issues they believe are relevant to the investigation and it will be within

the discretion of the Reviewer as to whether or not any past or current reports or investigations are relevant to an assessment of the current organisational culture, processes and practices. In addition, while consideration of past or current whistleblowing and 'speak-up' reports may be informative to the Reviewer, the Review shall not determine the merits of individual whistleblowing reports, complaints or concerns of wrongdoing by Council personnel, former Council personnel or service users.

6. The Reviewer shall keep confidential all confidential information disclosed as a result of the Review and shall not use nor disclose the same save as provided in the Annex to the Terms of Reference or as required by law.
7. At the conclusion of the Review, the Reviewer shall produce a written report (the "Report") which shall be provided to the Council. The Independent Chair will report publically on the Review's findings.

## **Annex to the Terms of Reference – Confidentiality, Privacy and Privilege**

1. The findings of the Review are to be made public subject to any relevant legal considerations.
2. Personal data (i.e. data from which a person may be identified) will not be included in any published report without the express consent of the person in question.
3. Persons providing information to the Reviewer for the purposes of the Review are encouraged to do so in an open and "on the record" basis. This will help the Reviewer to reach fully informed conclusions by enabling the Reviewer to put information and concerns to other persons for their consideration and comment. Without that openness and transparency, the reliability of the information provided is difficult to assess and the Reviewer's ability to further investigate and consider any concerns raised in the context of the Inquiry may be hindered.
4. Should a person who wishes to provide information request to speak with the Reviewer in confidence, the Reviewer will proceed on a confidential basis but subject to the following limitations:
  - 4.1 In the event that civil proceedings concerning any matter that was the subject of the Review are raised against the Council or the Reviewer, the Reviewer may be ordered by a court or tribunal to disclose documentation and information in relation to the Review;
  - 4.2 In the event that a person discloses information which raises a concern regarding the safety or wellbeing of an individual, the Reviewer may decide to disclose this information to the Council and/or a regulatory body for the purpose of ensuring health and safety;
  - 4.3 In the event that a person discloses information which raises a concern regarding a potential criminal offence, the Reviewer may decide to report the matter to the Council and/or to the police; and
  - 4.4 In the event that a person disclose information which is determined by the Reviewer to be relevant to the separate and concurrent investigation launched by the Council into allegations of abuse by a former and deceased employee of the Council ("the Independent Investigation"), said information may be disclosed by the Reviewer to the Investigation Team on the Independent Investigation for the purposes of that investigation.
5. In the event that information is disclosed to the Council, a regulatory body or to the police, the Reviewer will use reasonable efforts to avoid disclosing the identity of any person who has requested anonymity but this is not guaranteed. If it becomes necessary to disclose the identity of the person who has provided the information this will be discussed with that person in advance except where there is an immediate risk to health or safety.
6. In the event that a person discloses information which gives rise to a need to launch a disciplinary investigation, or the information is relevant to an ongoing disciplinary process against one or more current employees of the Council, the Reviewer will seek the permission of the person who provided the information to disclose the information and their identity. The information provided will not be used without the person's permission unless a court or tribunal orders disclosure. Please note that if permission is not given by the provider of the information to use the information and to disclose their identity for the purpose of disciplinary proceedings, it may hinder the ability of the Council to take disciplinary action.
7. All documents requested by the Reviewer from the Council will be disclosed to the Reviewer by the Council.