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# **APPOINTMENT OF INDEPENDENT INVESTIGATOR IN CONNECTION WITH THE COUNCIL'S HANDLING OF SCHOOL ASSAULT ALLEGATIONS**

**Report by Chief Executive**

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## **SCOTTISH BORDERS COUNCIL**

**17 June 2021**

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### **1 PURPOSE AND SUMMARY**

- 1.1 This report follows the conviction on 13 May 2021 of a former Scottish Borders Council employee on five charges of assaulting children and a further charge of abusive behaviour at a school in the Scottish Borders. The offences took place between 2016 and 2017, whilst the individual was employed by the Council.**
- 1.2 As Head of Paid Service, the Chief Executive, announced on 27 May 2021 the intention to commission an independent inquiry into the Council's handling of the concerns that were raised.**
- 1.3. This report outlines the scope of that inquiry, the process of identifying an investigator, and notes the timescale for the completion of the investigative report.**

### **2 RECOMMENDATIONS**

#### **2.1 I recommend that the Council agrees:-**

- (a) to note the appointment of an independent investigator (the name of whom shall be confirmed by the Chief Executive in due course once known) to conduct an inquiry into the Council's response to concerns raised covering the period 2016 to 2017;**
- (b) to note the scope of the independent inquiry to be commissioned, as summarised in this report;**
- (c) to note that the Chief Executive will request that the said inquiry and associated work be completed by September 2021.**

### **3 BACKGROUND**

- 3.1 On 13 May 2021 a former employee of Scottish Borders Council was found guilty of five charges of assaulting children and one charge of carrying out threatening behaviour. The offences took place in a Complex Needs Provision located within a primary school in the Scottish Borders between 2016 and 2017, whilst the individual was employed by the Council. Prior to the bringing of criminal charges, concerns were raised internally about the behaviour of this individual and these concerns were investigated at that time.
- 3.2 As announced at Council on 27 May 2021, an independent inquiry into the Council's handling of the abovementioned is to be commissioned.

### **4 THE PURPOSE OF THE INQUIRY**

- 4.1 An inquiry is required because children have come to harm whilst in the care of the Council. It is important that similar events do not recur, and that concerns regarding the treatment of children, residents, and service users are always robustly investigated. Most importantly, we want to ensure that if there were any errors or omissions in the actions previously taken by the Council, then we want to have these clearly identified so that suitable learning can be put in place and changes made to our systems, processes and policies as required.
- 4.2 It is not the aim of the inquiry to re-examine the conduct of the former employee as that is within the jurisdiction of the criminal court. In addition, the individual is now a *former* employee, and therefore there are no further sanctions available to us as an employer.
- 4.3 We understand that the former employee will now be sentenced by the Sheriff. Subject to any appeal, this will conclude the proceedings from a criminal perspective.

### **5 THE SCOPE OF THE INQUIRY**

- 5.1 As stated above, the factual circumstances around the charges which resulted in conviction are known and have been proven in court. It is not necessary or appropriate for the Council to investigate these facts, as they are facts in law.
- 5.2 It is important that the Independent Investigator, once appointed, is able to consider matters which may come to light during their work. Therefore, the inquiry will consider, but not be limited to, the following matters:
- the adequacy of the Council's investigation carried out in response to concerns raised about the individual. This should consider concerns raised by the original complainant, and by parents;
  - the extent to which the carrying out of the said investigation adhered to Council policies;

- the adequacy of the policies in place concerning child safeguarding and accusations against staff;
- the extent to which any such policies were followed in investigating the concerns raised;
- the adequacy of coordination between relevant departments within the Council in dealing with the investigation into the concerns raised;
- the involvement of any other individuals in the investigation of the complaints, and whether this was appropriate and timely. This should include consideration of Parents, Staff and Officers of SBC, Elected Members, MSPs, and any others as deemed appropriate by the Investigator;
- any conflict of interest in respect of those involved in the investigation;
- the extent to which there was engagement with third party agencies, such as the General Teaching Council and Police Scotland, and appropriateness of this engagement;
- what information was known to the Council and when this information came into the possession of the Council;
- the adequacy of communication with, and involvement of, the complainants, in respect to the investigation;
- the determination of the investigation, including the appropriateness of the outcomes and the following up of actions or recommendations;
- the time taken to conclude the investigation.

5.3 It will be for the investigator to determine how to conduct the inquiry, and there may be themes beyond those listed above, which the investigator wishes to explore. It is anticipated that, in order to fully examine all issues, the investigation will involve at least consideration of the policies and practices of Social Work, Education and Human Resources.

5.4 The investigator will be given full access to all Council staff, and all relevant documentation. Any investigative or administrative support required by the investigator will be provided only by Council officers who are entirely independent of the investigation into the complaints, or, where resources require, by external solicitors. The investigator will be required to produce a report containing findings of fact, conclusions, and recommendations. This report will be published and made public by the Council in its entirety.

5.5 The inquiry will not examine whether the actions of individual staff members should result in further HR action. Should the investigation conclude that there are matters which give rise to the need for separate consideration, such issues will be addressed in accordance with the appropriate HR policies and procedures.

- 5.6 Given the serious nature of this inquiry, the Investigator will report to the Chief Executive regularly during this inquiry, and will go through the Chief Executive should there be any queries or points of clarification.
- 5.7 This inquiry will not constitute a formal public inquiry and the investigator will only be engaging with parents, staff and individuals who were connected to the original concerns raised.
- 5.8 Therefore it is extremely important to state that, as is always the case, if a parent, member of staff, or member of the public has any concern regarding the safety or wellbeing of any child in the Scottish Borders (whether in a school or in any other setting) this concern should be raised with the Council's Child Protection team, or with that child's head-teacher so that these matters can be fully considered. It should also be noted that all of our staff in Education settings are trained (updated annually) to remind them of their own duties regarding the reporting of child protection matters.

## **6 THE INVESTIGATOR**

- 6.1 Careful consideration has been given to the appointment of an appropriate investigator. The Chief Executive will appoint a professional with demonstrable experience of investigating public bodies, ensuring that it is someone who is able to make fair and reasoned judgement of the Council's response to the matters raised.
- 6.2 In order to identify such a person, the Chief Executive has taken advice from SOLACE Scotland (Scottish Society of Local Authority Chief Executives and Senior Managers), and from the Faculty of Advocates. At the time of publishing this report, the appointment has yet to be confirmed. However, the Chief Executive will provide an update at the Council meeting.

## **7 NEXT STEPS**

- 7.1 The Chief Executive wishes that the inquiry be completed timeously and ideally by September 2021. However, it is recognised that the investigator may require further time, and in that event, an update will be provided on the timeline when known.
- 7.2 On conclusion of the inquiry, the Chief Executive will bring a further report to Council in respect of the outcome of the investigation, and thereafter, the investigative report shall be published in full and made public to ensure complete transparency.

## **8 REVIEW OF PROVISION OF SERVICES AT COMPLEX NEEDS SETTINGS**

- 8.1 On 27 May 2021 the Chief Executive announced that, in addition to commissioning an inquiry into the Council's handling of the concerns, she would instigate an independent review of the provision of Education at, and the practices followed by, the Council's Complex Needs settings.

- 8.2 Education Scotland have welcomed the request and have confirmed that they will engage with a review and invited the Chief Executive to make a formal request.
- 8.3 Further to that announcement, the Chief Executive has formally sought the engagement of Education Scotland in order to assist with the review. A meeting is taking place with Education Scotland on 22<sup>nd</sup> June to discuss this work further and to agree next steps.

## **9 IMPLICATIONS**

### **9.1 Financial**

At the time of writing this report the cost of engaging with an Independent Investigator is not known. This information will be shared with Council once known.

### **9.2 Risk and Mitigations**

The Council has both statutory duties and common law duties of care to pupils in its schools, and to its own staff. If a thorough inquiry is not carried out, in order to identify any failings in good practice, the Council could be at risk of breaching these duties. The best way to mitigate this risk is to conduct a full inquiry into the Council's handling of this matter, and to then act appropriately on receipt of the investigative findings. It is the strong desire of the Chief Executive to ensure the Council learns from any errors or omissions in the way the Council works.

### **9.3 Equalities**

No adverse equality implications are anticipated as a result of the inquiry.

### **9.4 Acting Sustainably**

There are no economic, social or environmental effects of carrying out the proposed inquiry.

### **9.5 Carbon Management**

There will be no impact on the Council's carbon emissions from commissioning an inquiry into this matter.

### **9.6 Rural Proofing**

A rural proofing check is not required for this matter.

### **9.7 Changes to Scheme of Administration or Scheme of Delegation**

No changes are required to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

## **10 CONSULTATION**

- 10.1 None

Netta Meadows  
**Chief Executive**

**Approved by**  
**Signature .....**

**Author(s)**

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**Background Papers:**

**Previous Minute Reference:** N/A

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Hannah MacLeod can also give information on other language translations as well as providing additional copies.

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