
REVIEW GROUP UPDATE IN CONNECTION WITH INDEPENDENT INQUIRY ACTION PLAN

Report by Chief Executive

SCOTTISH BORDERS COUNCIL

30 March 2023

1 PURPOSE AND SUMMARY

- 1.1 This report provides the fourth formal update from the Inquiry Review Group which was established to progress the work identified following the independent investigation into the Council's handling of concerns raised about a former Scottish Borders Council employee.
- 1.2 The report brings forward 6 remaining reporting templates relating to a number of actions and seeks Council approval to consider these actions as complete.
- 1.3 The report also seeks approval that the action plan be considered complete, with any ongoing actions being required to progress as continuous improvement with delegated authority for the monitoring and approval of such actions being granted to the Chief Executive.
- 1.4 A communications plan which outlines how the conclusion of actions and next steps will be communicated to stakeholders is presented at appendix 2 for approval.
- 1.5 Given the progress that has been made it is proposed that this is the final formal update that is provided to Council and that consequently the action group which has overseen delivery of the action plan to date will cease to meet.

2 RECOMMENDATIONS

- 2.1 **It is recommended that the Committee:-**
 - (a) **Approves the action templates contained in Appendix 1 as being complete.**
 - (b) **Approves the proposed plan in appendix 2 for communication with stakeholders (Action 3c).**
 - (c) **Agrees that the Inquiry Action Plan Group ceases to meet and that any ongoing actions contained in the plan progress as continuous improvement.**

- (d) Agrees that the Chief Executive assumes delegated authority to monitor and approve any actions deemed to be ongoing.**

3 BACKGROUND

- 3.1 An Inquiry Review Group was established to progress the work identified following the independent investigation into the Council's handling of concerns raised about a former Scottish Borders Council employee.
- 3.2 On 25 February 2022, Council accepted the recommendations contained within the Inquiry Report produced by Andrew Webster KC and tasked the former Chief Executive with preparing an action plan to address the matters contained within those recommendations.
- 3.3 On 10 March 2022 Council approved that Action Plan, and the establishment of a Review Group to steer the progress of work required. It was agreed that reports regarding progress of the Action Plan would be brought to Council for consideration and, as appropriate, to seek Council approval of any actions considered by the Review Group to be complete.
- 3.4 Following significant progress with actions, Scottish Borders Council agreed that the review group would move from meeting on a fortnightly basis to meeting monthly to receive progress updates on each action from the responsible directors.
- 3.5 On 23 June, 27 October and 15 December 2022, Council approved reports from the Chief Executive outlining completed actions from the overarching Action Plan. Progress has now been made on a further tranche of actions from the Action Plan and the Review Group has deemed these as complete and ready to be submitted for approval today as highlighted in this paper and contained in Appendix 1.
- 3.6 There are 54 individual actions contained in the action plan; to date Council has approved 36 of these as complete and 4 are considered to be ongoing. This report now brings forward a further 6 actions for approval as complete leaving 8 actions still to be completed. The status of each action as at 30.3.2023 is shown in Appendix 3.
- 3.7 Given the significant progress that has been made it is proposed that this be the last formal update submitted to Council by the Chief Executive and the remaining actions be delivered under delegated Authority. Consequently it is recommended that the group established to oversee the Action Plan will also cease to meet.

4 RECOMMENDATIONS NOW SUBMITTED FOR APPROVAL

4.1 Outcome 11a

Develop clear information sharing protocols for staff regarding any communications with parents concerning allegations involving their children.

- 4.1.1 The protocol sets out expectations for communication with parents and requires that where allegations of potential harm against a child is made in school or relating to a staff member. The importance of parents being made aware in good time with clear messaging that any allegation will be thoroughly investigated is

highlighted as is the importance of protecting the confidentiality of any staff member subject to such allegation.

- 4.1.2 The protocol ensures that the importance of recording the information shared in a follow up letter to parents and of maintaining regular contact with parents to reassure them of progress and the eventual outcome.

4.2 **Outcome 11b**

Obtain legal advice/advice from insurers regarding the interplay between the proposed protocol and the Council's obligations as employer in respect of maintaining confidentiality, ensuring fair and impartial investigations and data protection implications.

- 4.2.1 This action requires the Chief Legal Officer to obtain independent advice on the content of the protocol described above. Now that the protocol at 11.a is complete this action can be implemented. The Chief Legal Officer is therefore contacting an external solicitor who is an expert in Data Protection and who will have access to employment law expertise within their firm. Advice will be sought to confirm that the protocol will enable the Council to comply with its obligations as an employer.

4.3 **Outcomes 11c**

Create an implementation plan for the new protocol, to include, training, briefing sessions and communication strategy.

- 4.3.1 The plan makes provision for School Child Protection Co-ordinators to have familiarisation and implementation of the protocol to be covered in regular training activity and for headteachers to be briefed directly on expectations and responsibilities.
- 4.3.2 Key groups who will be directly affected by the implementation of the protocol, for example HR colleagues and Trade Union Representatives will be briefed on the implementation and the communications plan which will update parents and wider stakeholders on this and other relevant protocols.

4.4 **Outcome 12c**

Undertake a review of data retention protocols in relation to HR records whilst ensuring alignment to other policies and protocols, including ACAS guidance.

- 4.4.1 The Chief Legal Officer, as Senior Information Risk Owner (SIRO), has examined the retention policies operated by the Council's HR department as detailed in the Information Asset Register. She has focused her consideration on retention policies in relation to disciplinary and grievance matters. It is noteworthy that SBC Policies do cross refer to the ACAS Code of Practice when necessary.

- 4.4.2 Importantly, She has compared these with the relevant suggested retention policies contained within the Scottish Council on Archives Record Retention Schedules (SCARRS). SBC's retention policies are identical to those in this key national guidance for local authorities. Of significance, SCARRS confirms that where a disciplinary investigation has resulted in no action being taken, then the record must be destroyed immediately.

4.5 **Outcome 12d**

Consider an approach to record, store and retain professional advice given between areas of the Council when relating to children or HR matters, being clear of the status of the advice.

- 4.5.1 A procedure has been introduced in response to action 12b, whereby a Commissioning Manager must record in writing the reasons for their decisions. It is considered that action 12d will be best met by ensuring that any professional advice given during the process is recorded by the Manager in that written note. The officer who provided that professional advice must be given the opportunity to review the statement to ensure that the advice is accurately recorded.
- 4.5.2 It has to be noted that, where the result of an investigation is that no action is taken, in accordance with the retention policy above, there will be no record retained. This is considered to be entirely appropriate and consistent with the GDPR and the employer's duty of trust and confidence to its employees.

5 COMMUNICATIONS PLAN

- 5.1 Action 3c) requires the creation of a Communications Plan that aligns to the Review Group and the work it delivers. Engagement with all stakeholders including parents and young people must be central to this.
- 5.2 The communication plan is included at appendix 2. This identifies key stakeholders, including particularly:- parent and young people bodies, staff groups, partners and governing bodies with whom communication of actions taken and learning implemented be shared.
- 5.3 The plan provides a timeline for communications to be distributed and indicates key documentation, policies or processes to be shared and disseminated for information or action by determined groups.

6 ACTIONS TO BE CONSIDERED AS ONGOING, UNDER CONTINUOUS IMPROVEMENT OR FOR REVIEW

- 6.1 A number of actions (2c, 3d, 3e and 14b) have already been approved as being ongoing. There are a further 8 actions as outlined below which are now recommended to be considered in the same manner.
- 6.2 Recommendation 2 (5b, 5c, 5d) which requires that Scottish Borders Child Protection Procedures be reviewed to include the learning from the Inquiry.

In addition to this it is noteworthy that there have also been changes to the National Child Protection Guidance, but unfortunately the Inquiry Report did not recognise this at the time. It is now proposed that the learning from the Inquiry and the update to local procedures predicated on the changes to National Child Protection Guidance take place at the same time to minimise any confusion to staff. It is further proposed that as per the Inquiry action plan, these changes will be put to the Critical Services Oversight Group (CSOG) for ratification and sign off as soon as practicable.

- 6.3 The timeline for implementation of this action was extended with Council approval to March 2023, however the implementation date for the new National Guidance deadline is now understood to be September 2023 and it is important that our timeline is consequently aligned to this later date to prevent any confusion.
- 6.4 The Public Protection Committee (PPC) has overall governance responsibilities for the Child Protection procedures. The Child Protection Delivery Group, which reports to the PPC, has multi agency representation with responsibility for the planned roll-out, associated training, communication and ongoing monitoring of these procedures.

6.5 **Outcome 4c**

This outcomes require the development of assessment tools to demonstrate learning in child protection training. As outlined in paragraphs 6.2 to 6.4, the implementation of the new child protection procedures is scheduled for later this calendar year and while assessment processes have been mapped out to respond to different levels of training complexity, it has been agreed by the inquiry group that the current arrangements are sufficient to assess learning until any changes to content reflecting the new procedures are made. The Public Protection Committee has responsibility for oversight of training and through the Training and Delivery sub group, all monitoring of this training will be delivered.

6.6 **Outcome 4e**

Outcome 4e relates to the requirement for ongoing monitoring of staff compliance with the requirement to complete mandatory training appropriate to their role and as set out in the training matrix. This is the responsibility of CMT and regular reporting of completions data is discussed under performance monitoring arrangements with appropriate follow up action instructed where required by Directors.

6.7 **Outcome 4f**

This outcome sets out the action to explore options for independent inspection. While some opportunities exist to assess this using feedback from external scrutiny such as the safeguarding measure in HMIe Inspections of schools and the Inspection of Children at Risk of Harm Inspection which is ongoing, the requirement to undertake an external inspection of training assessment will be assessed once training has been updated to reflect the new child protection procedures.

6.8 **Outcome 14c**

Requires an assurance that Elected Members are sufficiently trained in matters of Child protection. Members have a dedicated section in SB Learn which includes the Child Protection training module. It should be noted that completion is not mandatory but is strongly encouraged.

6.9 **Outcome 14d**

The findings and recommendations arising from the Internal Audit review of the sufficiency of Council's Whistleblowing Policy will be considered by Council Management Team in advance of their presentation to the Audit Committee in May 2023.

6.10 **Recommendation 2**

It has been observed that through interpretation of this recommendation, an important stage of reporting concerns through normal channels such as to the child protection co-ordinator in a school where that professional can make an informed judgement about an appropriate and proportionate next course of action, is now being missed. As a result there has been a significant increase in the number of referrals being made to the Child Protection Unit that are subsequently deemed not to meet the threshold for a child protection concern. This has resulted in excessive workload within the IRD process since the inquiry report was first approved and as a result there is a risk that urgent or significant concerns of harm may not be addressed with the priority required. It is therefore proposed that clarification on the expectation of this is shared with staff through normal training, updates and documentation, to ensure that all staff are aware of what constitutes reporting a concern and that everyone understands the difference between this and a formal child protection referral being made.

6.11 **Recommendation 3**

This recommendation infers a significant move from the purpose of the disciplinary procedures which should ensure a focus on improvement in performance and support to staff; to an often disproportionate amount of focus on sanctions for even minor concerns about practice. This approach needs to be reviewed to ensure a more appropriate balance of support and trust is achieved and it is therefore intended that in line with delegated authority, the Director of People, Performance and Change, will revisit the wording and amendments to the procedures and make any minor amendments as appropriate.

6.12 It is recommended that as well as being reviewed where appropriate through existing governance structures such as the Public Protection Committee, delegated authority to ensure appropriate progress, amendment, implementation or monitoring of these actions, ensuring appropriate reporting to relevant committees where appropriate, be passed to the Chief Executive.

6.13 As all actions contained within the action plan have now been presented to Council, it is recommended that this is now an appropriate juncture to cease the Inquiry Action Plan and end the periodic formal reporting to Council.

6.14 A public record of all actions taken, including any necessary amendments to implementation or timescales will be published. This will comprise a record of implemented action plan, all reports and evidence being published.

7 IMPLICATIONS

7.1 Financial

There are no costs attached to any of the recommendations contained in this report.

7.2 Risk and Mitigations

The Council has both statutory duties and common law duties of care to pupils in its schools, young people in our care and to its own staff. The best way to mitigate the risk of breaching these duties, is to implement the recommendations resulting from the inquiry, through the Review Group, so that the Council can determine how best to learn from any errors or omissions in the way the Council operates.

7.3 Integrated Impact Assessment

No adverse equality implications are anticipated as a result of this report.

7.4 Sustainable Development Goals

This report does not impact specifically on any of the UN Sustainable Development Goals.

7.5 Climate Change

There is no direct impact on the Climate Change agenda as a result of the recommendations in this report.

7.6 Rural Proofing

A rural proofing check is not required for this report.

7.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

7.8 Changes to Scheme of Administration or Scheme of Delegation

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

8 CONSULTATION

- 8.1 The Acting Chief Financial Officer, Monitoring Officer/Chief Legal Officer, Chief Officer Audit and Risk, Director (People Performance & Change), Clerk to the Council and Corporate Communications have been consulted and any comments received have been incorporated into the final report.

Approved by

David Robertson
Chief Executive, Scottish Borders Council

Author(s)

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Background Papers: [insert list of background papers used in compiling report]

Previous Minute Reference: [insert last Minute reference (if any)]

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