

# Brighton & Hove City Council

## Strategy, Finance and City Regeneration Committee

## Agenda Item 90

**Subject:** City Clean Independent Inquiry

**Date of meeting:** 25<sup>th</sup> January 2024

**Report of:** Chief Executive Officer

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**Ward(s) affected:** All

**For general release**

### **1. Purpose of the report and policy context**

- 1.1 In July 2023 the Council launched an independent inquiry into serious whistleblowing complaints about behaviours and activity within the Council's waste service (City Clean). The complaints contained multiple allegations of sexual harassment, discrimination based on disability, bullying and intimidation.
- 1.2 The outcome report was received on 13<sup>th</sup> November 2023 and describes numerous accounts of appalling behaviour faced by staff and managers at City Clean. This report presents the findings of the inquiry and seeks formal approval for the recommendations of the report and the subsequent action plan that has been developed to ensure the serious and devastating findings of the report are addressed.

### **2. Recommendations**

That the Strategy, Finance & City Regeneration Committee:

- 2.1 Notes the findings of the independent inquiry report, as detailed in Appendix 1.
- 2.2 Notes and reinforces the apology issued by the Council's leadership to every staff member who has been affected by these behaviours, past and present, and to residents whose service has been affected by the dysfunction that has resulted.

- 2.3 Approves all recommendations of the independent inquiry report, as detailed on pages 18-19 of Appendix 1, and the action plan in Appendix 2.
- 2.4 Gives delegated authority to the Director of HR&OD to issue and serve the necessary notice on or after 26<sup>th</sup> January 2024 to terminate the council's existing disciplinary and disputes procedures.
- 2.5 Authorises the Director of HR&OD to take all steps necessary or incidental to preparations for the implementation of arrangements that will replace the role of Personnel Appeal Panels in those procedures, and therefore cease any involvement of members in employment procedures from 26<sup>th</sup> July 2024 (aside from statutory responsibilities associated with disciplinary action against Statutory Chief Officers under the law or against other Chief Officers under the JNC terms and conditions).
- 2.6 Notes that a further report with the proposed new disciplinary and disputes procedure and necessary amendments to the Council's Constitution to remove reference to the Personnel Appeals Panel will be brought to Council or the Strategy, Finance & City Regeneration Committee for approval.

### **3. Context and background information**

- 3.1 On 4<sup>th</sup> July 2023 the Council announced the start of an independent inquiry into whistleblowing complaints about behaviour and working culture at City clean, following receipt of 19 statements disclosing harrowing accounts of sexual harassment, racism, disability discrimination, bullying and intimidation taking place at Hollingdean Depot.
- 3.2 The council is committed to providing a safe, fair, and inclusive working environment for all its staff, and the statements received outlined horrendous details of an allegedly toxic culture. The situation outlined in the complaints contravened all expectations of the council's stated aim to be an exemplar employer where all staff feel a sense of belonging in a safe workplace that enables them to best serve the city.
- 3.3 Given the scale of the complaints received, and the potentially devastating impact on so many council staff and the quality of service received by residents, it was decided that an entirely independent inquiry was needed. This inquiry would require complete transparency and permission to publish the outcome in the public interest. It was for this reason that Aileen McColgan, Kings Counsel (KC) was appointed.
- 3.4 The launch of the inquiry was publicly announced, and anyone who worked at City Clean or was in a role that had significant involvement with the service, was able to meet with the KC, including ex-employees.
- 3.5 During the inquiry, which took place over eight weeks, over 70 witnesses provided evidence with complete anonymity and under conditions of secrecy due to the fear of retaliation as expressed by witnesses; a fear that the KC deemed to be well-founded. In addition, the KC was provided with extensive documentary evidence from several sources, both unsolicited and at her

request.

- 3.6 The findings of the report are harrowing to read and describe a working environment at City Clean that can only be described as toxic. Given the nature of the allegations, much of the report relates to the behaviour of individuals, many of whom are either GMB representatives or a group of people who were described to the KC as being 'protected' by the GMB. It is important to note that the KC inquiry did not involve an investigation of specific allegations made, and individuals accused, most of whom did not come forward to speak to the KC, had not at the time of publication been given the opportunity to answer the allegations.
- 3.7 There were a number of recommendations of formal disciplinary action, and this is the process through which individuals identified in the report are being given the opportunity to answer the allegations against them.
- 3.8 With regard to the local management team, the report identifies that managers have been significantly impacted by the bullying behaviours, and that where they have made efforts to manage the behaviours, they have been unable to appropriately respond by reason of the threat of industrial action and a (reasonably) anticipated absence of political support.
- 3.9 The findings of the report were discussed at the last meeting of full Council and received broad support from all groups and members.
- 3.10 The report's recommendations, outlined in full on pages 18-19 of Appendix 1, provide the basis for an action plan to address the extremely serious issues identified. The recommendations focus on:
- Removing member appeal panels (see para 3.11 to 3.14 below);
  - A review of alleged agreements that are said to apply in the City Clean service, but which are not written or agreed;
  - A review of all consultation arrangements, and the conduct of industrial relations, including a review of previous agreements which are deemed to be unworkable;
  - A review of the disciplinary and grievance procedures to ensure that timescales are adhered to;
  - A review of recruitment practices at City Clean;
  - A requirement that all staff, including trade union representatives, comply with the Council's behaviour framework;
  - Ensuring equal treatment of both the council's recognised trade unions (GMB and UNISON) at City Clean, and that the workers forums are supported in their role at City Clean;
  - The removal of the GMB union office and parking space at City Clean.
- 3.11 Significant action has been taken already in response to report recommendations. This includes a refresh of behavioural standards across all City Clean services and the implementation of a zero tolerance approach to poor behaviour with disciplinary processes to address the issues

identified.

- 3.12 Following the publication of the independent KC report in November, the City Clean refuse and recycling service improved. Missed kerbside refuse collections reported via the council's website went from 2552 instances in the first two weeks of August, to 205 in the first two weeks of December. A reduction of over 90% in four months. Missed kerbside recycling collections dropped by 68%.
- 3.13 To ensure the changes already implemented are maintained, an action plan has been written which provides for a transformative programme of work over the next 12-18 months. The action plan includes a full culture change programme, as well as many initiatives that will create a healthy workplace and improvements in the service provided by City Clean. The culture change programme embeds the immediate actions taken and will be co-created with staff, Trade Unions and workers forums.
- 3.14 The first recommendation of the report is to remove Member Personnel Appeal Panels. The report notes that witnesses described 'a high degree of interference from politicians in disciplinary processes at City Clean' and concerns about 'individuals dismissed for gross misconduct having been reinstated by Member Appeal Panels'. The evidence considered by the independent KC led her to conclude that the Council should cease to operate Member Appeal Panels.
- 3.15 Personnel Appeal Panels have been in place since the formation of Brighton & Hove City council in 1998 and hear all appeals against dismissal, or the second stage of a collective dispute registered by any recognised Trade Union. Most local authorities have removed member panels from all employment processes.
- 3.16 The removal of elected members from decision making in the disciplinary and dispute procedure provides for greater clarity of roles between members and officers of the council. It is the role of members to set the strategic direction and policy framework for the council, and this will include ensuring the right policy framework is in place to manage employment issues. Any changes to the main employment procedures are approved by the Strategy, Finance & City Regeneration Committee.
- 3.17 The Head of Paid service is a statutory role and is responsible for ensuring the council's functions are properly coordinated. This includes ensuring the right staff are in place, how staff are organised, led, managed and developed. The involvement of members in disciplinary and dispute processes (aside from specific statutory responsibilities related to some chief officers) blurs the clarity of responsibilities derived from respective roles.
- 3.18 The removal of Personnel Appeal Panels will require changes to the disciplinary and dispute procedures, and consultation with GMB and UNISON. A revised arrangement will replace the panels and ensure a robust arrangement for appeals, without the involvement of elected

members. It is therefore recommended that the required 6 months' notice is given on the disciplinary and dispute procedure, and the necessary consultation with trade unions takes place to implement new procedures by 26<sup>th</sup> July 2024.

#### **4. Analysis and consideration of alternative options**

- 4.1 The KC report outlines serious and harrowing issues experienced by staff and managers within City Clean and full acceptance of the recommendations is required to ensure issues are addressed effectively and the necessary changes are made to provide assurance to staff and managers that they will be supported in a fair and inclusive workplace.

#### **5. Community engagement and consultation**

- 5.1 Immediate actions have been discussed with trade unions, in particular the removal of Personnel Appeal Panels was discussed at a meeting with trade unions on 22<sup>nd</sup> November 2023, and at Joint Staff Consultation Forum on 5<sup>th</sup> December 2023. Further consultation will take place over the next 6 months to make the necessary changes to the Disciplinary and Dispute procedures.
- 5.2 The culture change programme has been discussed with small groups of staff and will be subject to discussion with the workers forums and the trade unions.
- 5.3 The workers forums have run surgeries at the depot and will continue with these into the future.
- 5.4 The action plan will be published, and updates will be provided on a regular basis, ensuring transparency and accountability for implementation.

#### **6. Conclusion**

- 6.1 Given the harrowing nature of the situation described in the report, and the evidence of a toxic culture at City Clean, it is recommended that the full report is endorsed and the recommendations are implemented at pace.

#### **7. Financial implications**

- 7.1 The cost of the King's Counsel's very extensive investigation and report is £226,253.90. Exceptional legal or investigatory costs can arise from year to year for many reasons including responding to Judicial Reviews, Planning Appeals, group pay claims, health & safety (HSE) investigations, or other non-standard legal matters or investigations. These are normally dealt with using either the Corporate Contingency budget, available risk reserves, or the Working Balance depending on the availability of resources or provisions. Where these are insufficient or unavailable, costs are managed as part of the overall General Fund Targeted Budget Management process whereby financial recovery measures are applied in order to mitigate the impact of exceptional costs.

- 7.2 Beyond the independent investigation costs, there are no other direct financial implications arising from the report apart from a minor saving of member expenses related to attending Personnel Appeal Panels. However, a robust and effective disciplinary and disputes procedure that is not undermined by a toxic culture, is free from any opportunity to lever political bias, and enables effective management of organisational performance has potentially significant beneficial financial implications for the Council through enabling more efficient and better value for money services.

Finance officer consulted: Nigel Manvell      Date consulted: 9/1/24

## **8. Legal implications**

- 8.1 As set out in the body of the report, the Council must follow its agreed policies in relation to all staffing matters. The changes proposed to the disciplinary and disputes procedures require a 6 month notice of termination to be issued. The proposed new procedure will need to comply with the ACAS statutory Code of Practice on disciplinary and grievance procedures which includes principles for handling disciplinary and grievance situations in the workplace. The abolition of a Sub-Committee such as the Personnel Appeals Panel can be approved by the Strategy, Finance & City Regeneration Committee, as set out at Article 13.03 of the Council's Constitution.

Name of lawyer consulted: Elizabeth Culbert      Date consulted 04.01.24

## **9. Equalities implications**

- 9.1 The Independent Inquiry was commissioned following whistleblowing allegations that contained multiple allegations of sexual harassment, discrimination based on disability, bullying and intimidation. The council has a Fair & Inclusive Action plan which outlines the actions being taken to ensure the organisation is a place where all employees feel a sense of belonging and are able to work in an environment that is free from discrimination, harassment and intimidation. The actions outlined in this report seek to address the inequality that has existed at City clean, and will involve close collaboration with our workers forums to ensure the culture and environment at City clean is as fair and inclusive as other parts of the council.

## **Supporting Documentation**

### **Appendices**

1. Report by Aileen McColgan KC for Brighton & Hove Council, 13<sup>th</sup> November 2023
2. Action plan