

The Culture that made the Trams Fiasco Possible

Many aspects of your life will, at some stage, have been mentioned in a council report. Whether it's the library you use, the shops and eateries that nourish you, the building you live in, the roads and pavements you travel upon, the school your kids attend, or the crematorium or graveyard you end up in – everything will, at some time, have been subject to a local government decision.

So who shapes change in the world you occupy? You may think it's the politicians you elect. But how do politicians know what to do? The council officers tell them. That is how local government works, mostly. Occasionally a party will change the city due to a manifesto commitment, but any final decision is invariably based on an officer's report. It is in this context of policy and operations that government functions.

But what about when government goes wrong? When, for example in Edinburgh, we get a tram system that costs twice as much (£1bn) for half the distance? When the head of the department overseeing property conservation tells councillors that matters are in hand, but has to resign a year later when it's clear they aren't? Sometimes politicians are in the dark for years and years.

It was only due to a change of management in the council's environmental services department that parents in May 2011 started getting their babies' ashes at Mortonhall Crematorium. It took a further year before it became apparent to the charity SANDS that for the previous 44 years parents had been getting told there were no ashes when there were. But politicians could never have uncovered the scandal because they depend on the officers to inform them of operational matters.

Oversight of operations that go wrong in the capital falls to the council's Governance, Risk and Best value Committee. We have Audit Scotland to thank for telling the council last year that this committee must be chaired by a member of the opposition. We are fortunate to have the indefatigable Cllr Balfour in this role, and he has a keen eye for justice and a great nose for risk. The committee deals with the city's scandals. When governance goes wrong, government gets the blame.

But more often than not, when a matter is brought before it, that committee will observe that some other committee had taken an earlier decision to act based on an officer's report. Indeed, every officer's report ends in a recommendation which councillors would be ill-advised to ignore. But why do bad decisions get made? Who votes them through and why?

It is only occasionally that the council sees unanimous support for a decision. Most often, voting on a recommendation falls along party lines. Whilst the public sees a committee meeting and some debate, you can bet your bottom dollar that the decision will have been made the night before, at a political party group meeting. That is where the party leader will take counsel and set a path. The views of the majority will prevail. But it is undeniable that officers will have been politicking behind the scenes.

The recent decision to reverse the closure of Castlebrae Secondary School in Craigmillar is a good example. The matter was going to a full council committee on 14 March and education officers had recommended closure. But councillors were being lobbied by parents who thought their kids would get bullied if they were moved to the alternative Portobello High School.

Education officers duly sought to assure elected members that these fears were groundless. They, along with the chair of the education committee, arranged for the Portobello headteacher to brief first the Labour group, then the SNP, to say that the parents' fears were misplaced. She told them that her school would protect and nurture these less wealthy incomers.

No-one could have predicted that the ex-head boy from Portobello would speak on behalf of the Castlebrae parents just three days later when he told a full council meeting the exact opposite. He said that Castlebrae kids who had moved to Portobello in the past had been bullied and found it hard to be accepted into their new school. He thought that Portobello High was not resourced to support them and the Craigmillar kids would therefore receive a better education at Castlebrae. Councillors were confused. Who was right? Who was wrong? They chose to believe the ex-head boy rather than the headteacher and voted to keep the school open, until a new one is built in 2020.

It was serendipity that led that young man to be in the city chambers that day. There was a motion about Portobello High's relocation on the agenda and he had come to support that. But when he saw the Castlebrae parents protesting at the council chambers, he approached them and they invited

him to join their deputation. Education officers were predictably embarrassed to be so publicly contradicted.

In fact, recommendations that look risky are regularly backed up by phenomenal politicking behind the scenes, as council senior management seek to convince councillors that their constituents' fears are groundless and that their reports, conclusions and recommendations are not wrong. Backed by the council's resources, they are considerably better placed than campaigners to influence thinking. The local media becomes an important tool. Castlebrae was branded by officers as a failing school, but it was no worse than other schools in deprived areas and was in fact recently ranked ninth-best out of the city's 23 schools in getting school leavers into positive destinations.

But officers were keen to see it closed. Councillors needed persuading and the press were employed to help them do that. The Evening News published a story on 11 September 2012 about Castlebrae: 'City education officials – school is failing pupils and should be closed down'. Officers said: 'We need to lance the boil. If we kept it [Castlebrae] open, it would be failing a whole future cohort of children'.

It took six months of hard campaigning by over 1,200 supporters to convince the Labour/SNP coalition administration that closing the smallest school in the poorest part of the city might go against the mantra of 'education, education, education'. Right until the very last moment it seemed that the school was doomed. On the day of the closure debate, it took six hours of deliberation by 58 councillors, with three recesses (each time they all scooted back to their party rooms to revise their respective stances) before a decision to reject closure was made.

Over the past few months there have been some notable defeats for council management when their recommendations were overturned at committee – Castlebrae was one, Leith Waterworld another. (Sadly, the officers got their way recently with Waterworld when a buyer was found and Edinburgh councillors reneged on their commitment to help Splashback set up the pool as a community business. Now Edinburgh, Scotland's capital city, has lost its chance to resurrect its family-friendly fun pool. Citizens must travel to Perth or further afield if they want a fun day out in the water with their kids.)

However, Edinburgh's citizens can argue that we are blessed right now with many politicians who are prepared to listen to campaign groups, even

if they ultimately go along with the officers' plans. But is it enough? Bad decisions are where government loses the confidence of the people.

Politicians are elected on a five-year term, but most senior officers are there for life. So we go to the polls, thinking that this party or that party can make a difference, but the truth is that most of the matters that occupy the council business agenda are there because senior officers have tabled them. And the senior officers do not change when the parties in control change. Every time officers table a report, they tell politicians of a problem or opportunity and why they believe that their solution or idea is the best one. Our councillors must accept the statements made in the report as verbatim. For who in the world knows more about the matter than those whom they employ?

When a report is biased or misleading, there is a very good chance that at least one officer, somewhere in the council's vast 18,000 workforce, will be well aware of it. If an officer is concerned about a bad report, mismanagement or the unintended consequences of a council decision, they have but two choices. They can keep quiet or go to a manager. There is no doubt which course most bosses would prefer: nobody likes a trouble-maker.

Edinburgh, like most councils, has a 'policy on public interest disclosure' which is meant to allow staff concerns to be addressed. But two whistleblowers in recent years have been disciplined or sacked. So staff have little confidence in the existing procedure. General feelings of cynicism are reflected in the 2012 council staff survey: the Ipsos MORI poll showed that only 67% felt their line manager was open and honest, only 41% thought their senior management team had a clear vision for the future of the council and only 39% had confidence in the decisions made by the senior management team for their service area. There is some evidence that other local Scottish local authorities are also being challenged by whistleblowers at tribunals.

As a result of the "Kids not Suits" campaign, a new system is being proposed by Edinburgh's corporate management team. On 11 June they called upon councillors to support the introduction of a whistleblower helpline for council staff, reporting to...corporate management. But would the existence of such a helpline three years ago have made any difference to the property conservation whistleblower? Arguably not because the council's audit committee heard back in 2010 that there were problems, yet the departmental head assured them matters were in hand. They were not.

The whistleblower was rooted out and sacked, as reported in the Evening News on 21 July 2012. His case is yet to go before an employment tribunal. The proposed helpline would have suggested to him that he raise his concerns with his line manager. He did that. Nothing changed. Then the helpline would have taken it up with a more senior officer. But the deafness went all the way up to the head of department, so even that wouldn't have helped.

In 2006 a similar thing happened. Council officer John Travers disclosed anonymously (by email) to the council leader that almost half a million pounds of council cash had gone missing from the Edinburgh Lifelong Learning Project (ELLP), a council scheme to teach computing skills in poor areas of the city.

The leader passed the disclosure onto the education department, which was in charge of ELLP. The education departmental head then tasked the ELLP company secretary, himself a senior council manager, with the role of investigating officer in the matter. He chose to hunt down the whistleblower. Mr Travers was tracked to his PC with the help of the council computer systems provider, BT, and disciplined for the leak. (Council staff are not allowed to disclose to councillors.) He took the case to an employment tribunal at his own expense (Unison had chosen not to support him, because he had broken the rules) and won, with a £5,000 compensation award ordered from the council.

The council leader at the time, Donald Anderson, declared to full council on 29 June 2006 that: 'The council has been found at fault in a very serious finding – at that employment tribunal – for the impact of its actions on an individual and we have to do what we can to put that right and make sure we do take the right decisions, for the right reasons, on all of these issues, in future'.

Sadly, no-one was listening. As the property conservation whistleblower found more recently, to his cost. So why should council staff now have any real confidence in the corporate management team to do the right thing and deal with their concern, rather than indulge in seeking out the mole, or stage a cover-up? In the case of ELLP, the whistleblower might as well not have bothered getting himself into trouble. There was, eventually, an investigation into the missing cash, but the conclusion was that no council officer was at fault.

When mismanagement can be traced right the way to the top of a bureaucracy, the public get angry, but ultimately they can only express their fury at the ballot box. So the politicians get the blame for bad decisions or poor oversight, yet in nine times out of 10, they'll have acted on the basis of an officer's report.

If politicians are to have any real control over local government, they must embrace the operational as well as the policy-making aspect of government. When Edinburgh Council leader Andrew Burns was executive member for transport 10 years ago, he was warned about the tram plans. Deputations to committee before the tram bills were lodged, focussed on the financial shortfall which already existed and the impact on Lothian Buses, to which Cllr Burns replied that councillors must rely on the advice of officials and officials were saying that the fears were unfounded.

But much more was going on behind the scenes. Transport engineering staff were expressing concerns about technical, financial and procedural issues to their managers. They pointed out that the risks of proceeding in the absence of resolving these issues could have major consequences. Their predictions have proved accurate. The problem was that, despite what the staff were saying, the reports to councillors only ever up-played the benefits of the scheme and downplayed (hugely) the risks.

We know what has transpired since: the plan was flawed. Predictions of the number of passengers the trams will carry have been consistently downgraded. The risks of undertaking the work were not adequately measured. The cost-benefit ratio was wrong. The city will have the biggest trams in the world, but there is no evidence there will be enough passengers to fill them. On the advice of senior managers, Cllr Burns chose to press on. Those staff members who had flagged up problems, however, were now marked men and many chose to preserve their professional integrity by securing employment outwith the council.

So we need a safer system – a system that puts knowledge in the hands of politicians who have no vested interests. The only safe scheme is a whistleblower hotline that takes senior managers out of the frame and reports mismanagement or poor advice to senior politicians both within and without the ruling group.

The lobby group Kids not Suits (KNS) has outlined how such a scheme would operate. Every council has an audit committee. Edinburgh Council's aforementioned governance, risk and best value (GRBV) committee is also

well-placed to oversee a whistleblower's hotline. Councillors from all the parties serve on it. KNS thinks a representative from each political party should form a sub-committee that considers disclosures to the hotline. If all agree that a risk is worthy of public concern, it should go on the council risk register and become public. The committee would then ask the monitoring officer for a report on the risk which would subsequently be made public, too.

But here is the juicy bit. Before that report gets to committee, the whistleblower would have the right to comment on it and highlight glaring mistruths. The chairperson would check these and the councillors would need to decide at committee who to believe.

Clearly many disclosures will be human resources matters with no reputational risk. The summit of councillors would, without recourse to the risk register, refer such staff reports onto the monitoring officer for action, as per the existing disclosures policy. If they can't agree about whether a report represents a risk or not, any one councillor would be free to cascade the information to their own group members, and choose to subsequently table a motion to the GRBV committee for debate. If it's passed, it would then follow the risk register procedure.

To ensure whistleblowers aren't victimised, a chief risk officer needs to be appointed, whose job would be to train staff on disclosure arrangements, protect them and ensure investigations don't turn into witchhunts. The union knows staff are victimised. In early May, Edinburgh Unison passed a motion calling for better whistleblower protection for council workers, which would include allowing staff to report malpractice to councillors. As noted above, present policies forbid this.

It is not such a radical idea. It appears that big finance companies don't let hotlines report to senior management but to board members. Obviously managing risk is their business and if it's good enough for them, it should be good enough for the public sector too. The Institute of Business Ethics noted in their 'Speak Up Procedures' of 2007 the company practice whereby important whistleblower reports are escalated to corporate audit and risk committees.

Kids not Suits has been making the case for a hotline such as the above to Edinburgh's council leader and the other 57 councillors since January 2013, when it lodged the petition 'A Safer Way to Report Edinburgh Council Mismanagement'. The petition gained 515 signatures, was heard at the

petitions committee on 18 April and, as a result, councillors instructed council bosses to reflect upon the request. But the bosses rejected it – turkeys don't vote for Christmas.

The whistleblowing policy recently mooted by Edinburgh Council falls way short of any of the above provisions. The 11th June report to councillors proposed a scheme which not only reported to management, but was a "helpline" (not a "hotline")- using the same much-derided approach that has been employed for the NHS. (as the Scotsman reported on the 27 May). A helpline advises workers of their rights and tells them to disclose to their line manager. A hotline takes reports without question and feeds them to an agreed place. It is a different beast entirely. (The difference between the two is spelt out in the British Standards Whistleblowing Arrangements Code of Practice)

Kids not Suits (KNS) immediately galvanised many Edinburgh citizens to write to councillors pointing out the weaknesses of the Policy, both moral and legal. Citing legal fears, the council leader pulled the report and explained that the revised whistleblowing report would now be considered on 19 September at the finance and budget committee.

If changes are not forthcoming, councillors may only be increasing the risk to the city of more scandals by accepting the officers' recommendations. One colleague remarked last week that ringing a hotline that reports only to bosses would be akin to 'making a phone call to Dignitas'. KNS call on council leader Andrew Burns to make good on his commitment to open governance and support their scheme. Journalist of the year, Gina Davidson, supported this approach in the Evening News recently, in her call for greater transparency in dealing with Edinburgh's malpractice reports.

KNS have also been making representation to and are in communication with Jo Swinson MP, the employment minister, about her ongoing review of the 1998 Public Interest Disclosure Act. The aim is to persuade her to incorporate said approach into every publicly-funded body with 100-plus staff. At the very least, every such body should be required by law to have a hotline for confidential staff reports. But beyond that, it should be mandatory for the governing group to be involved, whether it comprise board members or a summit of senior elected members.

For local councils, politicians need much greater oversight of operational matters. The adversarial nature of party politics, where no one party will allow the truth to be buried if they can use it to their electoral advantage, will ensure that whistleblowers' disclosures can never be swept under the carpet.

By using this very natural curiosity of politicians to get to the bottom of things, risks to every city on the operational front can be significantly reduced. And not just the risk to the city, but the risk to staff from witchhunts too. The KNS approach gives politicians the opportunity to properly helm dangerous operations. Policy is one thing. Good government is another.

If we elect politicians who can't oversee operational matters effectively, they might as well not be there at all. If they have no real function, let's abolish all local councils, save lots of money, and leave the rubber-stamping of officers' recommendations to national government: most policy is derived from there, anyway. If local councillors' prime function is to pass officers' recommendations, wouldn't it be cheaper just to have a mayor and run the show from Holyrood or Westminster? Too often our councillors end up being voting fodder as the whips enforce party discipline on support for both good and bad recommendations. Here's a chance for local politicians to seize a bit of real power and take proper control of our cities.

To stop government from going wrong, each publicly-funded body should put in place mechanisms to protect both staff and managing committees from risk in dealing with mismanagement disclosures. In defending the existing way of doing things, politicians bleat on about the split in responsibilities – they do the policy, the officers do the operations. But in agreeing policy, the committee system depends on the knowledge the officers provide for debate, and it takes a wily councillor to raise a sound objection. Investigations into mismanagement are invariably coloured by the need to protect officers' reputations. Every politician's ability to take good decisions can be thus compromised.

'Governance' and 'politics' are the two wings of power and the old-fashioned split of policy and operations is increasingly out of date. Scottish councillors opposed to change hide behind the 2010 Councillors' Code of Conduct, which tells them 'not to engage in direct operational management of the council's services; that is the responsibility of the council's employees'.

KNS has written to the minister for local government seeking that the guidance be clarified in regard to politicians dealing with whistleblower reports. KNS has also lodged a petition to the Scottish Parliament's public petitions committee, raising the matter with MSPs as an issue of national concern, calling for legislation seeking our local authorities to put in place whistleblowing hotlines reporting to elected members.

At the end of the day, it's all about power. If politicians are too fearful to take responsibility to implement strong whistleblowing measures, then their failure to hold bureaucrats to account will continue to poison our confidence in democracy.

Pete Gregson represents "Kids not Suits", which campaigns to stop council waste and raise spending on children and their education.