

SUMMARY REPORT FOR THE JOHN MUIR TRUST

June 2024

Summary

This report provides a summary of the lessons learned around the suspension of the Chief Executive Officer (CEO) of the John Muir Trust (The Trust) from 14 June 2023 until 31 October 2023, and the investigation that followed the suspension, and recommends ways in which a similar situation might be avoided in the future.

The suspension occurred after three separate grievances were received from now former members of staff that concerned allegations about the CEO. The decision was taken to suspend the CEO after receipt of the third grievance.

The same investigator was appointed to investigate all three grievances. There was overlap between the content of the first and third grievances. It had been expected that the investigation would be completed in 2-3 weeks. The length of time that the investigation took to conclude (over two months), appears to have been caused in part because of the investigator's difficulties encountered with some Trust staff, and the influence of some now former Trustees on them.

In handling grievances and suspensions, staff have to feel confident that a grievance will be investigated fairly and impartially and any person "accused" in a grievance is entitled to a fair process. Until an investigation is concluded however, the merits of and the rights and wrongs of a grievance cannot be fully assessed.

The investigator's reports into all three grievances were sent to the employment lawyer who was assisting the Trust in the process on 7 September 2023. The advice received from the employment lawyer on 14 September 2023 by the Chair and the Trust's external HR Advisor was that the suspension of the CEO should be lifted, and it was shortly thereafter.

Following completion of the investigation further information was required before outcomes could be fully determined. This process was concluded in October 2023, and outcomes were notified to the complainants in respect of all three grievances on 30 October 2023. None of the grievances were upheld. A reinstatement letter was sent to the CEO on 31 October 2023. Thereafter the CEO returned to work on a phased return, with full reinstatement of his authority as CEO having been confirmed at a Board Meeting on 14 December 2023.

In examining the lessons learned, it has to be borne in mind that complaints or grievances made about an organisation's most senior employee will always be complicated by the fact that the person reports to the Board and there is no other employee more senior to them. Personalities involved, individual motivations and agenda, and personal relationships between staff members can complicate and extend the time it takes to investigate and resolve grievances. Although there are valuable lessons to be learned for the future, it is unlikely that any steps taken will avoid all of the complications that can arise when complaints are made against Chief Executives or other senior staff of any organisation.

In preparing this report I spoke with the CEO and Chair, and reviewed a considerable amount of information collated for me by the Chair. I was impressed by the way in which both wished to move forward in the best interests of the Trust despite the personal impact the events had for both in the months prior. For the CEO he faced months of uncertainty and press speculation, and returning to a workplace after a long period of suspension will have taken a substantial degree of commitment and courage. The Chair took on a role as a point of contact for the CEO during the suspension, liaison with the investigator and HR and employment law advisers as well as picking up much of the day-to-day work, that would otherwise have been done by the CEO, in a voluntary capacity. The Chair was supported by the Vice Chair in some of the operations business of the Trust.

Before coming onto the lessons learned and suggested action points some analysis of what happened is required.

The Trust acted quickly in seeking to deal with the three grievances received in a relatively short period of time. None of the written grievances contained allegations, that, in my view, would necessarily have warranted the suspension of the CEO. Prior to receipt of the third written grievance, an email that contained additional allegations not in the written grievances was provided to the Chair, Vice Chair, the Trustee who chaired the Board's Health Safety and Wellbeing and Human Resources (HSW &HR) Committee, and an external HR Advisor. The content of this email clearly influenced the decision to suspend.

From my review of the reports prepared by the investigator, there is no evidence about those additional matters. I agree with the advice of the employment lawyer, that the CEO's suspension should have been lifted on receipt of the investigation reports.

Recommendations

- When faced with a decision as to whether to suspend an employee, it is strongly recommended that the Trust take legal advice on all possible options and alternatives before doing so. An employer must always be careful not to give the impression that a matter has been pre-judged. In sensitive situations it can be possible to reach agreement with a person accused that they step back for a period to allow matters to be investigated rather than suspend them. The ACAS Guidance issued in September 2022 should be followed when considering suspending an employee.

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- The Trust's current Disciplinary and Grievance Procedure in the Employee Handbook could be enhanced by expansion and reference to the ACAS Guidance on suspensions.
 - All staff communications that reveal that a member of staff has been suspended should only be issued after very careful consideration of the impact on the individuals affected. The ACAS guidance states: *"It's important that everyone involved keeps the suspension confidential wherever possible."* Legal advice is again strongly recommended in this type of situation. Any communication issued must not give the impression that a matter has been prejudged or involve too wide a group of people when matters under investigation are at an early stage. Once such a communication is issued, it is to be anticipated that the information will be made known outwith an organisation and appropriate steps should be put in place to deal with press and third party enquiries. The initial communications are very important, as an open mind is critical for a fair process and the longer term ability of all concerned to be able to work without ongoing speculation as to what may have happened. Whilst the majority of grievances will be raised in good faith, an open mind includes consideration of the possibility that a grievance may not be. In cases where a grievance is unfounded, the impact that widespread knowledge of the allegations has on an individual and the organisation as a whole, is why ACAS have issued detailed guidance on suspensions and the need for confidentiality. Confidentiality is equally important for those involved where grievances are well founded.
 - It has been identified as beneficial to have guidelines in place to assist Board members in their interactions with Trust staff and for dealing with confidential grievances and investigations. In this connection it is recommended that the Trustee Code of Conduct is updated at the same time as guidelines are provided.
 - It is recommended that the Grievance, Bullying and Harassment and Whistleblowing Policies be revised to provide further clarity on how an employee should proceed if the complaint is about their line manager and at the same time include standard wording where false or malicious allegations have been made.
 - Included in the materials provided to me were copies of Exit interviews. It is undoubtedly good practice to conduct these. It would be prudent to review processes for conducting these, the content of the form currently in use and what happens to the information once collected. It is important that the confidentiality of this process is maintained for all parties.

Further Information

I am advised that the Trust is putting in place a review of its Health and Safety processes and procedures, that the annual staff engagement survey has been undertaken and will be supplemented by a pulse survey during 2024.

Drafts of the following have been provided for consideration by the Board and relevant committee:

- Grievance Procedure & Suspension section for the Employee Handbook
- Anti-harassment and Bullying Policy for the Employee Handbook
- Whistleblowing Policy for the Employee Handbook
- Relationships at Work Policy for the Employee Handbook
- Guidance Note for Trustees
- Revised Trustee Code of Conduct.

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