

# CHESHIRE EAST COUNCIL

## REPORT TO: Audit and Governance Committee

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| <b>Date of Meeting:</b>  | 28 <sup>th</sup> September 2017 |
| <b>Report of:</b>        | Director of Legal Services      |
| <b>Title:</b>            | Whistleblowing Arrangements     |
| <b>Portfolio Holder:</b> | Councillor Paul Findlow         |

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### **1.0 Report Summary**

- 1.1 To provide the Committee with a breakdown of the number of reports received during 2016/17, and an update on a forthcoming independent review of the Council's whistleblowing arrangements.

### **2.0 Recommendations**

- 2.1 That the Committee note the report and endorse the external review of the Council's whistleblowing arrangements.

### **3.0 Reasons for Recommendations**

- 3.1 The Audit and Governance Committee is responsible for overseeing the Council's Whistleblowing arrangements and, therefore, needs to be provided with periodic updates on the effectiveness of these arrangements.

### **4.0 Wards Affected**

- 4.1 All wards.

### **5.0 Local Wards Affected**

- 5.1 Not applicable.

### **6.0 Policy Implications**

- 6.1 Not applicable.

### **7.0 Financial Implications**

- 7.1 Unless employees have confidence in the Council's whistleblowing arrangements, they are likely to stay silent where there is a threat to the employer or the wider public interest. Such silence denies the organisation the opportunity to deal with a potentially serious problem before it causes real damage. The costs of such a missed opportunity

can be great in terms of fines, compensation or higher insurance premiums.

## **8.0 Legal Implications**

8.1 The legislative framework for whistleblowing in England is contained in the Employment Rights Act 1996, as amended the Public Interest Disclosure Act 1998 (PIDA), and the Enterprise and Regulatory Reform Act 2013 (ERRA). The purpose behind these Acts is to provide protection to those employees who raise concern, and ensure that they are not unfairly treated as a result of raising their concern.

8.2 The whistleblowing legislation does not impose any positive obligations on employers to encourage whistleblowing or to implement a whistleblowing policy. However, the Government expects all public bodies to have written policies and the whistleblowing arrangements in local authorities are assessed as part of their annual audit process.

## **9.0 Risk Assessment**

9.1 Without clear arrangements which offer employees safe ways to raise a whistleblowing concern, it is difficult for an organisation to effectively manage the risks it faces.

## **10.0 Background**

10.1 Employees are often the first to realise that there may be something seriously wrong within an organisation. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the organisation. They may also fear harassment or victimisation as a result of doing so.

10.2 In order to mitigate this risk, the Council has a Whistleblowing Policy that is intended to encourage and enable all staff to raise serious concerns within the organisation, rather than ignoring or failing to act on something that could be a significant problem or risk.

10.3 The Public Interest Disclosure Act (PIDA) provides that employers should not victimise any worker who “blows the whistle” in one of the ways set out in the legislation. Although there is no statutory requirement in the PIDA for organisations to have a whistleblowing policy, the Government expects public bodies to have a policy in place and the whistleblowing schemes in local authorities in England are assessed regularly as part of their external audit and review.

10.4 Furthermore, it should also be noted that, under PIDA, the adequacy of an organisation’s whistleblowing arrangements is one of the factors that tribunals and courts look at when they consider whether a wider public disclosure is protected under the legislation.

- 10.5 Finally, and importantly, regulators and the courts are increasingly looking at the adequacy of whistleblowing and other risk management arrangements, to determine whether an offence has been committed by an organisation under regulatory or criminal laws, and is also a factor when determining the level of fine or penalty for such an offence.
- 10.6 Following the last Whistleblowing Arrangements update report to this Committee in June 2016, the Audit and Governance Committee recommended to the Constitution Committee that the list contained in the Whistleblowing Policy of those people to whom a referral can be made, should be amended to include Members of the Audit and Governance Committee.
- 10.7 This recommendation was endorsed by the Constitution Committee on 15th July 2016 and all Members of the Committee received guidance to support them should they be approached under the Policy.

#### **Reports received during 2016/17**

- 10.8 During 2016/17, a total of 13 whistleblowing reports were received by the Council, which can be broken down as follows:
- 6 did not fall under the scope of the policy and were therefore referred to the appropriate service/organisation for action;
  - 2 were unsubstantiated following investigation;
  - 1 was referred to Environmental Health for further investigation;
  - 1 was upheld following investigation and appropriate remedial action taken;
  - 2 where it was not possible to conclude the investigation as the officer concerned left the Council; and
  - 1 referral is still subject to investigation.
- Appropriate remedial action will be taken to address any control weaknesses identified during this process.
- 10.9 This represents an 18.75% decrease in the total number of referrals when compared to those received in 2015/16. However, the previous figures were particularly high as they included 7 referrals relating to the same procurement issue, and, when these are discounted, the year on year figures are consistent.
- 10.10 A more important consideration than simply the volume of reports received is the substance of those reports, as even a single well founded concern received over a number of years can more than justify maintaining the whistleblowing arrangements.

- 10.11 It is pleasing to note that all of the concerns raised were as a result of what appears to be genuine unease on the part of our staff, and that sufficient information was provided to allow for an investigation to be carried out in each case. There is no evidence that staff failed to report concerns because of fear that it would be detrimental to them.

### **Review of Whistleblowing Arrangements**

- 10.12 In order to ensure that the Council's arrangements are effective, it is important to identify best practice and compare the arrangements in place against this.
- 10.13 It is, therefore, important to regularly review the effectiveness of the Council's Policy, to ensure that it remains compliant with best practice and is effective in meeting its purpose. To this end, the policy has been subject to regular review since it was first presented to Members for approval in October 2008.
- 10.14 Given recent concerns in the press and on social media around the potential effectiveness of the Council's whistleblowing arrangements and issues raised by members of the Audit and Governance Committee, the Council wishes to ensure that every effort is taken to improve confidence in our arrangements and that all staff feel able to voice any concerns that they may have.
- 10.15 Cheshire East Council is undertaking a review of its existing whistleblowing arrangements to ensure that the end to end process is fit for purpose and that there is adequate support in place for its staff. Further to a procurement exercise the Council has appointed Public Concern at Work (PCaW) to deliver additional whistleblowing support to complement its current arrangements and undertake a review of current arrangements.
- 10.16 Public Concern at Work is an independent whistleblowing charity and legal advice centre. Launched in 1993; they have worked extensively in a variety of ways with many commercial, financial, voluntary, and public sector organisations including: the John Lewis Partnership, ITV, Home Retail Group, Royal Berkshire NHS Trust, NHS Scotland, the General Medical Council, and the CIPD to provide a wide array of business support and professional services.
- 10.17 The level of support they will provide to Cheshire East Council is as follows:
- Provision of an independent Whistleblowing Advice Line ( email and Freephone number during the working hours of 09.00am - 6.00pm Monday to Friday, excluding bank holidays ) providing safe and confidential advice to our staff should they ever find

themselves in a dilemma about what to do if they witness wrongdoing in their workplace.

- A full desk based review of current policy, procedures and supporting documents, to be benchmarked against the Whistleblowing Commission's Code of Practice. PCaW will provide a RAG rated report with recommendations and an action plan for improvement.

This will be supported by a full communications plan, and is expected to go live during September 2017.

- 10.18 The Council's Audit and Governance Committee will receive regular updates on the implementation and progress of this independent whistleblowing support service along with the final review report, including recommendations and an action plan for improvement. The Committee will also receive an annual report on the volumes of calls to the advice line and Freephone number.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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