

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of meeting: 28th March 2013
Report of: Interim Borough Solicitor
Title: Whistleblowing Policy
Portfolio Holder: Councillor J P Findlow

1.0 Report Summary

- 1.1 To provide the Committee with an update on the effectiveness of the Council's Whistleblowing Policy and a breakdown of the number of reports received during 2012/13.

2.0 Recommendation

- 2.1 That the Committee note the report and endorse the proposed actions for the ongoing review of the Council's whistleblowing arrangements.

3.0 Reasons for Recommendation

- 3.1 In June 2011 this Committee received and endorsed an updated Whistleblowing Policy following a review of the document against the *Whistleblowing Arrangements Code of Practice Publicly Available Specification 1998:2008*. This Policy was formally approved by Council in July 2011.
- 3.2 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. This is the second such update following a report to the 27 March 2012 meeting of this Committee.

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 (Authorised by the Director of Finance and Business Services)

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 Public Interest Disclosure Act 1998 protects employees against detrimental treatment or dismissal as a result of any disclosure of normally confidential information in the interests of the public. The Act only covers protected disclosures under six categories, namely; crime, illegality, miscarriage of justice, damage to health and safety, damage to the environment, and 'cover-ups' about these issues.

8.2 To obtain protection, employees must first disclose the information to the employer or to a body prescribed by the Secretary of State for the purposes of receiving such information. A list of the prescribed bodies is available on the Government's website, along with a Guide on the Act.

8.3 The Council introduced its Whistleblowing Policy in line with the requirements of the Act.

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 and Options

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 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.
- 10.7 In reviewing the effectiveness of the Council’s whistleblowing arrangements, it is important to consider both the volume and substance of reports that have been received. The difficult question that arises is whether a low number of reports is a good or bad thing. There is no easy answer to this, as much depends upon the size of the organisation, the risks faced by it, the robustness of the control environment in place to mitigate these risks, and the awareness of and confidence that staff have in the arrangements.
- 10.8 No matter how robust these arrangements are, it is impossible to know to what extent staff concerns go unreported, but the existence of some reports is evidence that the policy is understood and used.
- 10.9 During 2012/13, a total of 6 whistleblowing reports were received by Internal Audit, which can be broken down as follows:
 - 2 did not fall under the scope of the policy and were therefore referred to the appropriate service/organisation for action;
 - 1 was unsubstantiated following investigation, although the concern was found to have been raised in good faith; and

- 3 which were investigated and resulted in remedial action being taken within the service in question. This included one case where disciplinary action was taken against a member of staff.

10.10 This represents a 50% reduction in the total number of reports when compared to those received in 2011/12, but there was also a corresponding reduction in incorrect referrals from 6 in the previous year to 2 for 2012/13, and a reduction in the number of unsubstantiated reports from 4 to 1.

10.11 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

10.12 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.

10.13 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.

10.14 During February 2012, Internal Audit attended an event organised by CIPFA and the National Fraud Authority entitled 'What's New in Fraud?' Whistleblowing was discussed during one of the learning sessions and it was stated that best practice in this area is currently provided by the *Whistleblowing Arrangements Code of Practice Publicly Available Specification 1998:2008* which was produced by the British Standards Institute in conjunction with Public Concern at Work.

10.15 This document aims to ensure that organisations have in place Whistleblowing arrangements which:

- enable staff to distinguish whistleblowing from grievances;
- enable staff to raise a concern outside of line management;
- signpost staff to an independent helpline offering confidential advice;
- offer staff the right to confidentiality when raising a concern;
- explain when and how a concern may safely be raised outside the organisation (e.g. with a regulator); and
- provide that it is a disciplinary matter to;
 - a) victimise a bona fide whistleblower, and
 - b) maliciously make a false allegation.

10.16 Authorities were advised to review their policy against this document to ensure that they have effective arrangements in place, which is an

exercise that Internal Audit carried out during 2010/11. This provided assurance that the current policy was developed in line with best practice prior to its adoption by Members and inclusion as part of the Council's constitution in July 2011.

- 10.17 In summary, there is clear evidence that the Council's Whistleblowing arrangements remain in line with best practice and, as such, no changes are proposed at this time. It is, however, acknowledged that, in order to ensure that the arrangements remain effective, further review work should be carried out during 2013/14. This should include a survey of staff awareness of and views on the arrangements.

11.0 Access to Information

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

Name: Mike Rowan

Designation: Interim Borough Solicitor

Tel No: 01270 685882

Email: mike.rowan@cheshireeast.gov.uk