

# CHESHIRE EAST COUNCIL

## REPORT TO: Audit and Governance Committee

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<b>Date of Meeting:</b>	30th June 2016
<b>Report of:</b>	Director of Legal Services
<b>Title:</b>	Whistleblowing Update
<b>Portfolio Holder:</b>	Councillor Paul Findlow

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### **1.0 Report Summary**

- 1.1 To provide the Committee with an update on the effectiveness of the Council's whistleblowing arrangements and a breakdown of the number of reports received during 2015/16.

### **2.0 Recommendations**

- 2.1 That the Committee note the report and endorse the ongoing 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 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 2015/16, a total of 16 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;
  - 3 were unsubstantiated following investigation; and
  - 11 were treated as tip offs and included within an ongoing audit. Appropriate remedial action will be taken to address any control weaknesses identified during this process.
- 10.10 This represents a 129% increase in the total number of referrals when compared to those received in 2014/15. The increase is due to receiving several referrals from, what appear to be, different sources relating to high profile procurement issues. These were included within the scope of an ongoing procurement audit that is currently paused pending the outcome of a police investigation.
- 10.11 The number of referrals not relating to the procurement issues is consistent with the 7 received during 2014/15 and 8 in 2013/14.
- 10.12 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

- 10.13 It is clear from the nature of the referrals received during 2015/16 that serious concerns have been raised, and, this in itself suggests that staff have confidence in the arrangements.
- 10.14 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.
- 10.15 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.
- 10.16 As previously reported to this Committee, the Whistleblowing Policy was last updated in June 2014 to reflect best practice guidance issued by Public Concern at Work. No further guidance has been issued and as such the policy is considered to still be in line with best practice. It has however, been updated to reflect operational changes such as contact details and job titles.
- 10.17 During 2015/16, the Whistleblowing Policy was promoted via a Team Talk article in order to raise awareness of the policy amongst staff, and to ensure that they know how to refer any concerns that they may have.
- 10.18 The forthcoming Staff Survey includes a question asking staff if they feel confident to raise sensitive issues that concern them and this will give an indication as to the level of confidence in the whistleblowing arrangements across the whole staff group. Depending upon the responses to this question it may be necessary to follow up the Staff Survey with more specific questions.

## **11.0 Access to Information**

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

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