

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of meeting: 17 November 2010
Report of: Head of Internal Audit and Compliance
Title: Whistleblowing Protocol

1.0 Report Summary

- 1.1 The Council's Whistleblowing Protocol has been reviewed against the *Whistleblowing Arrangements Code of Practice Publicly Available Specification 1998:2008* in order to ensure that it remains current, relevant, and reflects best practice. This report highlights a number of proposed changes to the protocol which are presented to the Committee for comment.

2.0 Recommendation

- 2.1 That the Committee consider and endorse, in principle, the proposed changes to the Council's Whistleblowing Protocol and to note that (i) in view of its implications for staff, that there will need to be consultation with the unions before the proposed amendments can be finalised and (ii) final approval for amendments to the Protocol will be for full Council to approve, following reference to and recommendation from the Constitution Committee, because it forms part of the Constitution.

3.0 Reasons for Recommendation

- 3.1 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.
- 3.2 In order to mitigate this risk the Council introduced a whistleblowing protocol that is intended to encourage and enable all to raise serious concerns within the organisation rather than overlooking a problem.
- 3.3 The aim and scope of the protocol is to:

- provide avenues for staff and members of the public to raise concerns and receive feedback on any action taken
- inform whistleblowers how to take the matter further if they are dissatisfied with the response
- provide reassurance to whistleblowers that they will be protected from reprisals or victimisation for whistleblowing in good faith

Members are referred to the Protocol contained in Appendix A to this report.

- 3.4 The Public Interest Disclosure Act (PIDA) is known in the UK as the whistleblowing law. The Act 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.
- 3.5 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.
- 3.6 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.
- 3.7 It is, therefore, necessary to regularly review the Council's Protocol to ensure that it remains compliant with best practice. As such the Protocol has been reviewed against the Publicly Available Specification (PAS) which sets out good practice for the introduction, revision, operation and review of effective whistleblowing arrangements. This is because the recommendations and guidance in the PAS are of particular relevance to public bodies.
- 3.8 The findings of the review are contained within Appendix B and the Committee is asked to endorse the proposed amendments to the Protocol and to note that, in view of its implications for staff, there will need to be consultation with the unions before the contents of the draft can be finalised.

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 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 useful Guide on the Act.

8.3 The Council has introduced this Whistleblowing Code and procedure in line with 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.

For further information:

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Background Documents:

Whistleblowing Arrangements Code of Practice Publically Available Specification
1998:2008