

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of Meeting:	27 th March 2012
Report of:	Director of Finance and Business Services
Subject/Title:	Whistleblowing Policy
Portfolio Holder:	Councillor Michael Jones, Resources

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 2011/12.

2.0 Recommendations

- 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 regular 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 (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 the Whistleblowing Policy 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.

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.
- 10.2 In order to mitigate this risk the Council has a Whistleblowing Policy that is intended to encourage and enable all to raise serious concerns within the organisation rather than overlooking a problem.
- 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.
- 10.6 It is, therefore, necessary to regularly review the effectiveness of the Council's Policy to ensure that it remains compliant with best practice.
- 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. Unfortunately there is no quick 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 and confidence that staff have in the arrangements.
- 10.8 During 2011/12 a total of 12 whistleblowing reports have been received by Internal Audit 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
 - 4 unsubstantiated following investigation
 - 2 ongoing investigations neither of which would be viewed as significant issues
- 10.9 Managers receive information about poor practice on a regular basis through their normal day to day activities and the majority of these matters will be dealt with without the need for a formal whistleblowing report to be raised. For this reason it is possible that the relatively low number of formal reports received is indicative that strong relationships exist between managers and staff.
- 10.10 However, to mitigate the risk that it is actually an indicator of a worrying culture of silence, Internal Audit is planning to consult with managers to identify whether they feel that their staff are reporting concerns to them

and if they have experienced any issues that they would have expected to have been raised with them at an earlier stage.

- 10.11 A more important consideration than simply the volume of reports received is the substance of those reports as one single well founded concern received over a number of years can more than justify the modest cost of maintaining the whistleblowing arrangements.
- 10.12 It is clear from the breakdown of concerns received during 2011/12 that no serious matters were raised and that in the main the reports were either misdirected or unsubstantiated.
- 10.13 For this reason additional assurance as to the effectiveness of the arrangements will be obtained by Internal Audit upon the completion of an exercise to raise staff awareness of the Whistleblowing Policy and consultation with Heads of Service and senior managers as to their perception of the effectiveness of the arrangements.
- 10.14 The outcome of this additional work will be reported to a later meeting of the Audit and Governance Committee.
- 10.15 In addition, best practice guidance recommends that the following questions are considered in reviewing the effectiveness of whistleblowing arrangements:

Is there evidence that the Committee regularly considers whistleblowing procedures as part of its review of the system of internal control?	<p>A full review of the Whistleblowing Policy was carried out against the <i>Whistleblowing Arrangements Code of Practice Publicly Available Specification 1998:2008</i> which resulted in a revised policy being presented to Audit and Governance Committee in June 2011.</p> <p>The revised policy was subsequently endorsed by Constitution Committee and formally adopted by Council on 21 July 2011.</p>
Are there issues or incidents which have subsequently come to light which would have been expected to have been raised earlier under the Council's whistleblowing arrangements?	<p>Internal Audit is not aware of any such instances, however, it is recommended that this is investigated further by consulting with Heads of Service as part of a wider awareness raising exercise.</p>

Where appropriate, has the internal audit function performed any work that provides additional assurance on the effectiveness of the whistleblowing procedures?	<p>Internal Audit carried out the review of the previous policy against best practice and amended it accordingly.</p> <p>Internal Audit is also responsible for receiving all online reports along with those made to the dedicated whistleblowing email address.</p>
Are there adequate procedures to track the actions taken in relation to concerns made and to ensure appropriate follow up action has been taken to investigate and, if necessary, resolve problems indicated by whistleblowing?	<p>Where an allegation results in an investigation a secure folder is set up on a restricted network drive. This folder contains working papers and correspondence relating to the investigation along with the subsequent report and actions.</p> <p>It is acknowledged that a formal process for recording decisions to not investigate should be developed as currently this is simply a record of emails.</p>
Are there adequate procedures for retaining evidence in relation to each concern?	<p>As previously stated, Internal Audit investigation files are held in a secure folder. Investigations are carried out in conjunction with HR who apply agreed protocols for investigations and subsequent disciplinary action.</p> <p>In retaining information about identifiable individuals it is important to ensure that this is done in line with the requirements of the Data Protection Act. To this end, Internal Audit are in conversation with the Data Protection Officer to ensure that the current arrangements remain compliant.</p>
Have confidentiality issues been handled effectively?	<p>There have been no issues around confidentiality and the policy clearly sets out the safeguards that are in place along with the potential difficulties in retaining confidentiality.</p>

Is there evidence of timely and constructive feedback?	Records of all correspondence are retained in line with Data Protection requirements. Regular feedback is provided to Members via reports to Audit and Governance Committee and meetings of the Fraud Sub Group.
Have any events come to the Committee's attention that might indicate that a staff member has not been fairly treated as a result of their raising concerns?	Whilst there is no evidence to suggest that this is the case it should be acknowledged that no significant concerns have been raised by staff members.
Is a review of staff awareness of the procedures needed?	It is recommended that an exercise is carried out to raise awareness of the Whistleblowing Policy via mediums such as Team Talk and team briefings.

11.0 Access to Information

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

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