

# CHESHIRE EAST COUNCIL

## REPORT TO: Audit and Governance Committee

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<b>Date of Meeting:</b>	26th June 2014
<b>Report of:</b>	Head of Legal Services
<b>Title:</b>	Whistleblowing Arrangements
<b>Portfolio Holder:</b>	Councillor P 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 2013/14.

### **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.
- 2.2 That the Committee accept and approve the proposed amendments to the Whistleblowing Policy.

### **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 (Authorised by the Chief Operating Officer)**

- 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 (Authorised by the Head of Legal Services)**

- 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 2013/14, a total of 8 whistleblowing reports were received by Internal Audit, which can be broken down as follows:
- 5 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; and
  - 1 is currently under investigation and appropriate remedial action will be taken to address any control weaknesses identified during this process.
- 10.10 This represents a 33% increase in the total number of reports when compared to those received in 2012/13.
- 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 In February 2013, Public Concern at Work launched a Commission to review the effectiveness of whistleblowing in UK workplaces to make recommendations for change. The Commission, which is an independent body made up of industry and academic experts, has made 25 recommendations for improving whistleblowing across UK workplaces.
- 10.15 The primary recommendation is for the Secretary of State to adopt a Code of Practice that could be taken into account in whistleblowing cases before courts and tribunals. The Commission has published a draft Code which sets out clear standards for organisations across all sectors to enable them to have clear whistleblowing arrangements.
- 10.16 Although the code has yet to be adopted, it was considered appropriate to review the existing Cheshire East policy against the standards set down in it. This was completed in the form of a self assessment carried out by Internal Audit with the results presented to the Monitoring Officer for consideration.
- 10.17 The outcome was a confirmation that the existing policy remained valid and that only a small number of minor amendments were required to bring the wording used in line with the latest guidance.
- 10.18 As such the policy has been amended and is presented to Members as **Appendix A** to this report for approval and adoption in accordance with the terms of reference of this Committee.
- 10.19 A list of changes is attached as **Appendix B** to this report. However, in summary, the changes that have been made are as follows:
- References to 'harassment', 'victimisation' and 'reprisals' have been removed and replaced with the word 'detriment' to reflect the recommended wording contained in the code. In addition, a definition of detriment has been included along with examples of what this may constitute.
  - A paragraph has been added that informs staff to report any perceived detriment to the Chief Executive, Monitoring Officer or Audit Manager.
  - The requirement for disclosures to be made 'in good faith' is now a requirement for the person making a disclosure to believe that it is true and in the public interest.

- References to sanctions potentially being taken against employees making malicious or vexatious reports have been removed and replaced with sanctions may be taken against employees who make reports that are knowingly false.
- Out of date job titles and contact details have been updated.
- Additional information relating to feedback to whistleblowers has been included which clarifies that outcomes from disciplinary hearings will not be disclosed.
- Wording advising employees to take further advice prior to making a disclosure outside of the Council has been strengthened to state that they should do so.

10.20 In addition to updating the policy to reflect best practice, it is important to ensure that staff are aware of the policy and feel able to utilise it should the need arise. To this end, a survey to gauge staff awareness of the whistleblowing policy has been devised and will be issued with an accompanying Team Talk article following the adoption of the updated policy document.

10.21 Results and findings from this survey will be reported to Members and used to inform the requirement for publicity to further increase the effectiveness of Cheshire East's whistleblowing arrangements.

## **11.0 Access to Information**

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

Name: Anita Bradley

Designation: Head of Legal Services and Monitoring Officer

Tel No: 01270 685850

Email: [anita.bradley@cheshireeast.gov.uk](mailto:anita.bradley@cheshireeast.gov.uk)