

Report considered by Audit Committee – 6 November 2012

**WHISTLEBLOWING AND ANTI FRAUD POLICIES**

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**Purpose:**

To provide the Committee an opportunity to comment on the current Whistleblowing (Annex A) and Anti Fraud (Annex B) Policies and the protections these policies provide.

**Background:**

Both policies are reviewed annually. The application of both policies is regularly reported to the Audit Committee through the Internal Audit periodic reports that summarise key investigations and their outcomes.

**1 Recommendation(s)**

1.1 That the revised Whistleblowing and Anti-Fraud policies be submitted for approval.

**2 Issues****2.1 Whistleblowing Policy**

2.1.1 The Whistleblowing policy was revised last year and re-launched throughout the Council. In addition to the publication on the Council's website and intranet, the policy was also circulated to contractors / partners. A tailored version is also prepared for schools. The policy provisions did not vary for schools but the document for schools includes guidance notes for the policy's application within a school environment.

2.1.2 A review of cases referred for investigation (quoting the policy or not) is set out below.

2.1.3 As this report is prepared an Employment Tribunal is taking place in Bedford. Part of that case is the allegation that a contractor victimised a member of staff for blowing the whistle. The outcome is not yet known. The contractor denies the allegation.

2.1.4 The review highlighted that the only material change considered necessary (in addition to the contact details for the Council's new external auditor) is section 4.1.5 as shown at Annex A.

- 2.1.5 It is important to highlight that the Council's policy is not restricted to staff. The current policy is open to anyone. This sought to address the issue that staff are not the only stakeholders who would:
- (a) be best placed to experience issues the Council may need to address
  - (b) need to highlight concerns
  - (c) need a process that provides some protection to them from reprisals
- 2.1.6 The policy does highlight employees as a specific stakeholder group to which the policy is aimed but also seeks to 'provide a process that gives anyone with a concern about the Council the confidence to bring that concern to our attention'.
- 2.1.7 The policy also stresses that 'it is not designed to replace existing processes where this would be more relevant' for example service complaints, grievances etc.
- 2.1.8 In 2012 a survey was undertaken of whistleblowers to assess their view of the policy. This survey applied the questions as set out in the existing policy Annex B.
- 2.1.9 It is obviously not possible to survey anonymous whistleblowers however key responses are summarised below.
- 1) Respondents scored the arrangements 6, 10 and 2 (10 being perfect, 1 very poor).
  - 2) Areas to improve were highlighted as:
    - Providing better protection
    - Ensuring the relevant dept cannot unduly influence or access the information and outcome
  - 3) 2 respondents had highlighted their concerns to relevant service managers and felt their concerns had not been taken seriously. 1 respondent had not raised concerns with service management as their concern was regarding the dishonesty of that manager.
  - 4) In relation to whether they felt victimised:
    - 1 respondent did not (identity was not released) feel victimised
    - 1 respondent (identity was not released) did feel 'negative consequences resulted from the behaviour of a Council manager in interfering with the activities of an outside body and in attempting to discredit personnel of same'.

- 1 respondent (identity was released with respondents permission) did feel victimised. This case is the employment tribunal case mentioned above.

5) Asked whether they would blow the whistle in future; 1 did not answer, 1 confirmed they would and 1 said they would not.

2.1.10 The Committee is reminded that the primary ability to protect whistleblowers is to ensure their identity is never disclosed (or at least never without their permission). It is often difficult to prove someone has suffered harm directly because they have blown the whistle however the change is proposed to the policy at 4.1.5 to both ensure formal reporting and ensure the issue is highlighted at the highest level if a whistleblower alleges they have suffered harm due to Whistleblowing.

## 2.2 Anti Fraud Policy (including the Zero Tolerance commitment)

2.2.1 A review of this policy and caseloads has not identified any issue requiring any significant change to the policy. A small number of minor changes have been included to bring the policy up to date, eg the updated details in respect of the Chair of the Audit Committee. The proposed policy at attached at Annex B.

2.2.2 The zero tolerance policy continues to highlight tensions between providing confidence to the public that fraud against the tax payer by persons paid by the tax payer is taken seriously and the consideration of each case on its merits.

2.2.3 Therefore it is proposed that the policy remain unchanged. A summary of caseloads is set out below.

2.2.4 The below figures refer to all fraud, consultancy and special investigations other than Benefit Fraud cases and include investigations against officers, contractors, 3rd parties etc. Referrals for 2011/12 and to 30 September 2012 were:

Cases brought forward as at 31 March 2011	32
Referrals received during 2011/12	<u>45</u>
	77
Completed Investigations	<u>58</u>
Cases carried forwards as at 1 April 2012	19
Referrals received up to 30 September 2012	<u>36</u>
	55
Completed Investigations	<u>34</u>
Cases carried forwards as at 1 October 2012	21

2.2.5 Of the completed cases in the year 2011/12 and 2012/13 to date the following sanctions were applied to those working for the Council:

Dismissal	10 personnel
Resignations	6 personnel
Final written Warnings	5 personnel
Written Warnings	3 personnel
Contract Termination	2 personnel (agency worker and a consultant)
Contract voided	1 personnel (Illegal Immigrant)

2.2.6 During the year 1 members of the public was successfully prosecuted and 1 was successfully challenged in court proceedings

2.2.7 There have also been dismissals for benefits fraud for those employed in partner organisations, 1 from within Mouchel and 1 from within a Community Council.

2.2.8 No malicious referrals were identified as a result of the corporate fraud work undertaken during 2011/12 or 2012/13.

### **3 Implications**

#### **3.1 Policy**

3.1.1 The revision and adoption of the policies is part of the Council's improvement agenda to demonstrate that corporate governance arrangements are kept under regular review, and are fit for purpose in the current economic climate (ie an expected increase in attempted frauds against the Council).

#### **3.2 Resources and Risks**

3.2.1 The policies overlap given that whistleblowing referrals often involve, although not exclusively, concerns that fraud is taking place. The key Opportunity arising is considered to be that the policies will provide a framework that is trusted by staff and stakeholders so that concerns are raised in the appropriate way for the Council to take appropriate action as soon as possible.

3.2.2 A demonstrable zero tolerance policy in relation to Fraud, robustly applied, will enhance public confidence and trust in the Council's administration of public funds.

3.2.3 There are no additional resource implications.

3.2.4 There are two key risks:

- (1) Nationally and internationally the treatment of whistleblowers is reported as poor. This, and some concerns expressed during some recent MKC processes, creates a high likelihood that potential whistleblowers do not trust the Council to receive their concerns seriously and / or that they will not be protected for raising proper concerns the Council. The behaviours of senior officers and members to adopt and apply the policy are essential to maintaining the ongoing trust and confidence of potential whistleblowers. Whilst the Council’s track record for tackling issues raised by whistleblowers is, on the whole, considered good the risk that those with a concern may not trust the process or the Council’s commitment to protecting whistleblowers may prevent concerns being raised.
- (2) Issues highlighted under a whistleblowing policy are often sensitive. There needs to be a balance between the confidential examination of the concerns and the transparency of such processes (that provide assurance to other potential whistleblowers and stakeholders). This creates a tension between demonstrating to the public that robust arrangements are in place whilst also ensuring a whistleblower’s identity is not directly nor indirectly released. The behaviours of senior management and members provides the opportunity to maintain appropriate confidences where it can be seen that robust examination of concerns is taking place through an appropriate process whilst ensuring that such sources are known to a few key officers only.

N	Capital	Y	Revenue	N	Accommodation
N	IT	Y	Medium Term Plan	N	Asset Management

3.3 Carbon and Energy Management

None

3.4 Legal

These policies seek to provide the process by which the Council delivers the duties as prescribed by the Public Interest Disclosures Act as set out below:

43B Disclosures qualifying for protection.

- (1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—
  - (a) that a criminal offence has been committed, is being committed or is likely to be committed,
  - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
  - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
  - (e) that the environment has been, is being or is likely to be damaged, or
  - (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
- (2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.
- (3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.
- (4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.
- (5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

47B Protected disclosures.

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

3.5 Other Implications

As set out above

Y	Equalities/Diversity	N	Sustainability	Y	Human Rights
N	E-Government	Y	Stakeholders	Y	Crime and Disorder
N	Carbon and Energy Policy				

Background Papers: