

Key Decision	No
Listed on Forward Plan	Yes
Within Policy	Yes
Policy Document	

WHISTLEBLOWING POLICY PROTECTION

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1. Purpose

- 1.1. To provide a report to Members on how they can derive the appropriate assurance from the Council's Whistleblowing Policy.

2. Recommendations

- 2.1. That the Audit Committee agree the clarification of protection afforded by the Council's Whistleblowing Policy as outlined in the report
- 2.2. That the Audit Committee provide comment on the two options proposed of
 - 2.2.1. Anonymous testimony
 - 2.2.2. Proactive temporary and / or permanent redeployment

3. Issues and Choices

- 3.1. The Audit Committee at its meeting on 8th April resolved that :
 - With regard to Whistleblowing and assurance provided by Officers, the Committee receive a further report on the matter including scenarios for the Committee to consider (see also Investigative Assurances report).
- 3.2. This resolution arose from consideration of Gatehouse findings and reports where Members were seeking guidance on the methods available to provide appropriate assurance that identified failings had been corrected rather than solely placing reliance on officers assurances. Part of this assurance must be that the Whistleblowing Policy is operating as it should.
- 3.3. Put simply people who report wrongdoing in good faith under the Whistleblowing policy need to know that they will be afforded protection from harassment or victimisation. This

being the case Members will then have assurance that the policy is effective and be better placed to take action should the policy not be adhered to.

3.4. The Council's Whistleblowing Policy at Annex A provides a framework for consideration.

3.5. The Public Interest Disclosure Act 1998 (PIDA) outlines under what circumstances people can disclose (whistleblow) information and be protected as a result.

3.5.1. Disclosures about malpractice that qualify for protection are as follows:

- Criminal offences
- failure to comply with a legal obligation
- miscarriages of justice
- threats to an individual's health and safety
- damage to the environment
- a deliberate attempt to cover up any of the above

However, there are some disclosures that do not afford the whistleblower protection, which are:

- you break the law when making a disclosure (for example if you signed the Official Secrets Act as part of your employment contract)
- the information is protected under legal professional privilege (eg if the information was disclosed to you when someone wanted legal advice)

3.5.2. For the discloser to be protected by law the disclosure must be made to the right person and in the right way, namely:

- make the disclosure in good faith (which means with honest intent and without malice)
- reasonably believe that the information is substantially true
- reasonably believe you are making the disclosure to the right 'prescribed person'

3.6. If you make a qualifying disclosure in good faith to your employer, or through a process that your employer has agreed, then you are protected. In practice the principles of PIDA apply where anyone makes a referral in accordance with the Council's Whistleblowing policy. The policy is the Council's formal commitment to apply the provisions of PIDA and the Council's policy to not tolerate any whistleblower subject to victimisation or harassment.

3.7. The Role of Elected Members in this process is to ensure that, through feedback from Internal Audit, the governance arrangements are sound and that whistleblowers feel that they are receiving protection as appropriate. NB this should not include an analysis of individual allegations, as this may destroy the confidence of whistleblowers to remain protected, but through the analysis of, for instance, completed anonymous whistleblower questionnaires as per the latest revised Whistleblowing Policy.

3.8. The role of Internal Audit is to provide a professional assurance service that when dealing with whistleblowing investigations the necessary statutory obligations and

internal policy arrangements have been followed and to reflect upon the adequacy of the protection afforded in such cases.

3.9. Assurance that the policy is effective or not is difficult in the absence of a whistleblower formally complaining they have suffered harassment. This is because mostly whistleblowers do not wish wider identification so any process that seeks positive assurance regarding their treatment requires additional contact that the whistleblower may not wish.

3.10. In order to raise awareness throughout the Council of the Whistleblowing Policy it is intended to publicise the arrangements in conjunction with the Council's policy unit and to improve the Corporate Fraud team's website on the intranet to provide easier access to the policy (contractors already receive a copy of the policy within their contract documentation). Education of the policy and its implications is seen as an important way of helping to provide assurance to members that the Council is seeking to comply not only with the practicalities of the Public Interest Disclosure Act but also the spirit of the legislation.

3.11. Protection for Whistleblowers

3.11.1. It is difficult to guarantee complete protection for whistleblowers but the legal framework (Public Disclosure Interest Act) does afford some protection, in that should whistleblowers be victimised or forced to leave their job because of a legitimate referral then they can take legal action against their employer. Of course it would be preferable to avoid such a costly and reputationally damaging event occurring.

3.11.2. The unfortunate reality of whistleblowing is that the Council cannot guarantee that a whistleblower will not suffer victimisation or harassment because such actions are not those of the Council but of an individual who feels disadvantaged by the concern raised. The Council's actions are effectively limited to 2 approaches :

(1) ensure the identity of a whistleblower is kept confidential as far as possible. NB this is not always possible as the nature of investigating the concern may unavoidably identify the source. Currently this reality is discussed honestly with the whistleblower prior to them raising their concern.

It is also possible that aggrieved persons think they know who blew the whistle even when they don't and are incorrect.

(2) Take robust action against anyone suspected of harassing or victimising a whistleblower. Again sometimes this is difficult as it may identify / confirm the identity of the whistleblower. Again this is discussed with the person if the need arises.

In the light of the above the various additional means that could protect Whistleblowers in reality do not add benefit in addition to the Council's legal responsibilities and often create greater difficulties in implementation than the risks they seek to address. This report therefore has not set out the range of options explored only those areas where the Committee's views are invited.

3.12. One consideration to enhance whistleblowers protection could be that whistleblowers could provide anonymous evidence to internal disciplinary hearings should this be necessary and wanted by the whistleblower. This would need to be agreed by HR

professionals and of course would need to be carefully controlled in order to avoid abuse of process and to ensure compliance with other Council policies and statutory obligations. However it is proposed that with the Audit Committee's support the implementation of this option be pursued with HR colleagues.

- 3.13. A range of incentives and protections for Whistleblowers were considered. Generally studies have shown that whistleblowers main considerations when wanting to raise a referral are that they have access to and knowledge of the organisation's policy, that they will not necessarily have to face their manager and that they will not be victimised or lose their job. That said it is worth considering whether an incentive would encourage more people to report malpractice. In a recent UK Fraud Prevention Service newsletter it was reported that across all sectors only 2% of fraud cases are reported through whistleblowing procedures. The reasons for this are not documented but incentivisation may play a part as would undoubtedly adequate protection.
- 3.14. The most obvious form of incentivisation would be a cash reward similar to a "Crimestoppers" reward. In order for such an award to be given a referral should have identified some malpractice which exposed the Council to financial or reputational loss, but not necessarily secured a criminal conviction or even a disciplinary sanction. However, this type of award may encourage spurious referrals
- 3.15. There are, however, some pitfalls with a cash incentive scheme. In order for cash to be enough of an incentive to tempt a whistleblower the amount would need to be attractive. In other countries where cash incentives are operated for whistleblowing, they are generally administered by central government such as the Qui Tam lawsuit in the US which allows whistleblowers to bring cases on behalf of the Government and receive between 15 and 30% of any damages paid out. The UK government is currently looking at whether a similar incentive could work here. In the meantime any cash payment made at a local level may not be sufficient to encourage referrals. There may also be an image problem as to how the general public would perceive their local Council awarding cash to staff or contractors to uncover an abuse of public funds that were not being controlled adequately by the Council.
- 3.16. It should also be considered whether cash rewards would introduce more scope for malicious or petty referrals. This may have the disadvantage of distracting scarce investigator resources away from more nefarious activity and the genuinely public spirited referrals.
- 3.17. It may be worth considering non cash incentives. One such incentive that would also help the whistleblower to feel protected could be that the Council would undertake to redeploy staff who feel that as a result of their referral their present position has or would become untenable. If this could provide a whistleblower with some element of choice it is likely to be considered attractive. This could particularly be the case if the whistleblowing allegation featured the referrers line manager and/or the referrer worked in a small team. This of course would need to be invoked with HR co-operation and be subject to suitable posts being available.
- 3.18. The Council is a large enough employer to have a range of opportunities arising regularly. A whistleblower from a school could be redeployed at another school as most schools carry very similar roles and posts.
- 3.19. Another further scenario might be that if a contractor working on a Council project became a whistleblower then the Council could offer that person a similar job within the Council as a form of encouragement and protection. For this to be effective the Council employment would have to be completed confidentially which may prompt HR

difficulties. In order for this to work successfully the Council's recruitment processes would need to be more flexible and be subject to full HR consultation.

3.20. Other non cash incentives could include such ideas as

- One off additional leave entitlement
- Free parking concessions for a specified period of time
- Shopping vouchers or other non cash 'gifts' eg free bicycle to encourage the carbon agenda, free MKC gym membership, public transport concessions

3.21. The advantage with non cash incentives are that the costs are more easily absorbed by the Council and much less likely to present a negative image, particularly if the reward is aligned to the Council's objectives and priorities. If the whistleblower could choose from a varied list such as above there may be something for everyone. Once again the downside would be whether the reward would be sufficient to tempt a whistleblower to come forward. Whilst also minimising the growth of malicious allegation.

3.22. On balance the incentive schemes are not considered viable and probably create greater risks than those they are attempting to manage. However the ability for a whistleblower to give anonymous evidence (ie only the investigator and any hearing panel would know their identity – the alleged would not) and the ability to offer redeployment / employment in appropriate cases do appear options that would address concerns expressed by some recent whistleblowers.

3.23. The answer to increasing the number of whistleblowing referrals undoubtedly lies in a rounded approach rather than concentrating on individual aspects such as incentives. For the Council to have assurance that it is doing everything possible to minimise fraud and abuse there needs to be well publicised policy that staff and contractors have confidence in, and that their concerns will be listened to and acted upon. Additionally whistleblowers and potential whistleblowers must feel confident that the Council as well as the law will protect them and that the Council will adopt a flexible approach to their employment should it be necessary. A sensible and cost effective incentive scheme in conjunction with the issues outlined above can only then enhance the prospect of providing that greater assurance to Members.

4. Implications

4.1. Policy

4.1.1. The Whistleblowing Policy was reviewed earlier in the year and is attached to this report. The above proposals do not recommend the policy be changed

4.2. Resources & Risk

4.2.1. The risks associated with some options were assessed to be greater than the issue they attempted to manage. The use of Cash Incentives was considered to represent a HIGH likelihood of HIGH adverse reputational damage and increased malicious allegation.

4.2.2. The two recommended options for further development are considered to have a MEDIUM Likelihood of a HIGH increased assurance to whistleblowers. They are however not easily implemented and further HR consideration is necessary.

	Capital
	IT

	Revenue
	Medium Term Plan

	Accommodation
	Asset Management

4.3. Legal

4.3.1. The Council must comply with the Public Interest Disclosure Act 1998.

4.4. Other Implications

4.4.1. None

	Equalities / Diversity
	E-Government

	Sustainability
	Stakeholders

	Human Rights
	Crime & Disorder

Background Papers : None