

AUDIT & GOVERNANCE COMMITTEE - 17 NOVEMBER 2021

REVIEW OF WHISTLEBLOWING POLICY

REPORT BY DIRECTOR OF LAW & GOVERNANCE AND MONITORING OFFICER

RECOMMENDATION

The Committee is **RECOMMENDED** to:

- a) endorse the Whistleblowing Policy proposed by the Monitoring Officer; and in so doing
- b) suggest any additional changes to the Monitoring Officer for her consideration.

Introduction

1. A review of the Council's approach to whistleblowing has not occurred for some time. Up to now, the Council has had two whistleblowing policies, one internal, aimed at encouraging whistleblowing from employees, councillors and contractors; and a second policy, for members of the public.
2. In reviewing the Council's approach, it has been important to take stock of best practice guidance and of other authorities' recent approaches. The draft prepared by the Monitoring Officer accords with such best practice. It has also had the benefit of prior consideration by this Committee's Audit Working Group.
3. The fundamental change being recommended at this time, is to create a single whistleblowing policy and to refocus this primarily on employees, councillors, contractors. The main thrust of whistleblowing guidance and policies is on encouraging *internal* persons to blow the whistle on a situation in the public interest, that the public might otherwise lack the internal knowledge to raise. That said, the draft Policy recognises that the public may sometimes also wish to raise a whistleblowing concern. The overall emphasis is on encouraging legitimate concerns rather than being unduly prescriptive on who can make them.
4. Without clear arrangements for employees to raise whistleblowing concerns safely, it is difficult for an organisation effectively to manage the risks it faces. The Policy is intended to encourage, and enable, the raising of serious concerns, rather than ignoring or failing to act on something that could be a significant problem or risk.
5. The revised Policy is therefore consistent with the Whistleblowing Commission's '[Code of Practice](#)'. The draft Whistleblowing Policy is annexed to this report. Paragraph 5 of Policy lists the kinds of concerns it is intended to cover.

6. Under the Council's Scheme of Delegation (Part 7.1 Paragraph 6.4(j)) , the Monitoring Officer has authority to agree and adopt the governance policies for the Council following consultation with the Leader, Deputy Leader and Director of Finance. The Committee's view is expressly being sought by the Monitoring Officer ahead of that Consultation.

What is whistleblowing?

7. The guidance from the Chartered Institute of Public Finance and Accountancy notes that:

"Whistleblowing, or raising a concern, should be welcomed by public bodies as an important source of information that may highlight serious risks, potential fraud or corruption. Workers are often best placed to identify deficiencies and problems before any damage is done, so the importance of their role as the 'eyes and ears' of organisations cannot be overstated."

(Source: 'Whistleblowing in the Public Sector: a good practice guide for workers and employees')

8. Some other definitions include:

Oxford English Dictionary: "Bringing an activity to a sharp conclusion as if by the blast of a whistle. (Oxford English Dictionary)"

Committee on Standards in Public Life: "Raising concerns about misconduct within an organisation or within an independent structure associated with it."

Protect (formerly *Public Concern at Work*): " Sometimes whistleblowing is called speaking up or raising a concern. It is all about ensuring that if someone sees something wrong in the workplace, they are able to raise this within their organisation, to a regulator, or wider. Whistleblowing ultimately protects customers, staff, beneficiaries, and the organisation itself by identifying harm before it's too late."

9. If one emphasis of whistleblowing is on enabling **internal persons** to blow the whistle, the second emphasis is on the **public interest**. Whistleblowing is therefore different from a complaint or a grievance, which is largely personal to the person raising it.

10. The CIPFA guidance says:

"A simple way to establish whether an individual raising a concern is a 'whistleblower' or a 'complainant' is to consider the nature of the concern:

- i) Does the concern refer to 'others' e.g. the organisation, other staff, clients, the wider public? If so, this is a whistleblow.
- ii) Does the concern refer to the individual e.g. a personal grievance about terms of employment, pay, unfair treatment? If so this will be a complaint or grievance"

The Council's revised Whistleblowing Policy

11. The main change to the revised draft is to refocus the Policy *mainly* although not exclusively on internal whistleblowing. As such, the Policy gives transparency to the public about the Council's commitment to being open to the receipt of whistleblowing, to the protections afforded to those who make them, and how such concerns will be dealt with by the Council.
12. This is consistent with the above best practice guidance and with other authorities' approaches, where they have recently revised their policies.
13. Section C (Who can use this policy) and paragraph 8, set out that the Policy is designed to encourage whistleblowing from:
 - A Council employee (current or past)
 - A Council Contractor, agency worker or consultant
 - A Volunteer with the Council
 - A Councillor
 - Supplier (or someone working for the supplier, employed or self-employed)
 - If necessary, a member of the public
14. It notes that the public may raise concerns about the Council through the Council's Complaints Procedures, the Local Government and Social Care Ombudsman, the External Auditors. However, given that the Council wishes to hear about reasonably based concerns, in the public interest, the Policy notes that "while the Whistleblowing Policy is intended mainly for concerns raised by employees, and for those working with or for the Council, any concerns from the public raised through this Policy will be reviewed." It recognises that whistleblowers may wish to speak to external organisations too and these are annexed in the Policy
15. A single point of confidential contact is proposed at whistleblowing@oxfordshire.gov.uk overseen the Chief Internal Auditor and the Monitoring Officer, with a telephone line and postal address. Annexes to the Policy give the contact details of senior managers and external organisations, in case a person wishes to raise matters in these ways in the first instance. However it is important that there should be a single point of contact which explicitly invites whistleblowing.
16. This single point of reference will also be useful in enabling the Council to channel the concerns confidentially and swiftly, and to learn lessons from them. It will also enable a more co-ordinated approach to reporting to the Audit Working Group and to the Audit & Governance Committee.
17. The remainder of the content has been updated but remains largely the same in terms of:
 - a. Process: a four-step approach

- b. Protection of whistleblowers
- c. Untrue allegations
- d. Role of trade unions and professional associations in supporting employees in making or pursuing a whistleblow
- e. Refreshed contact details

The four step process

18. A simple four-step process (also outlined in a flowchart in the Policy) is:
- i) Step 1: raising the concern
 - ii) Step 2: initial response within 10 days (e.g. acknowledging, allocating, seeking further information if needed)
 - iii) Step 3: fuller investigation
 - iv) Step 4: outcome

Training and raising awareness

19. In essence, effective arrangements for whistleblowing depend on the right culture. As such, the Policy is consistent with the Whistleblowing Commission's 'Code of Practice' and will be complemented by comprehensive awareness raising and training: for example through online manager and member briefings and through discussion at the Council's Extended Leadership Team. This will help communicate the importance of whistleblowing and of the procedures for raising concerns. Website and intranet articles will also ensure that staff are fully aware of their opportunities to blow the whistle and how to do so.

20. Awareness raising for councillors will also be important.

Councillors and whistleblowing

21. The Policy expects that Councillors may themselves be whistleblowers, given their status as members of the authority who could feasibly, during their tenure, become aware of issues of malpractice or fraud, and wish to raise such concerns. Staff or contractors might also approach Councillors with such concerns, and members should feel able to relay such concerns under the Policy.

22. Clearly, Councillors may receive expressions of concern about the Council's operations from constituents and from clients of the Council. Here it will be important for Councillors to determine whether the concern being raised is a personal one (to the constituent) and so should be raised as a complaint; or a matter with clear public interest related to malpractice, abuse, irregularity or other wrongdoing which the Councillor may wish to raise as a whistleblow on behalf of a constituent. If a Councillor wishes to raise a concern on behalf of a whistleblower, this should be made directly to the Monitoring Officer in the first instance.

Annual Review

23. It is intended that an annual review of the Policy be brought to the Audit Working Group and to the Audit & Governance Committee, with an appropriate overview of any cases reported and/or concluded within the year in question. It will be important to ensure that any lessons learned are acted upon.

Audit Working Group

24. The Audit Working Group gave initial consideration to the draft Policy on behalf of the Committee. The Group welcomed the draft Policy and the Group's comments have been reflected in the revised draft. Comments included:

- a) Clarity as to the primary aim of the Policy (paragraph 1)
- b) Clarity that the public (not just internal persons) should be able to raise whistleblowing concerns (Section C)
- c) Clarity on the protections afforded to whistleblowers (Section E)
- d) Emphasis that making untrue allegations is a serious matter (Section F)
- e) Contact details should include a postal address and reference to external advice and support (Section H and Annex 2 to the Policy)

Legal implications

25. The Public Interest Disclosure Act 1998 sets out a framework for a worker to make disclosure (whistleblowing, effectively) about categories of wrongdoing, if there is a public interest in doing so. A person raising such a concern has a right under the Act not to suffer detriment. The proposed Policy annexed to this report is consistent with the expected framework, and other best practice guidance, and sets out the expected protections.

Financial implications

26. There are no financial implications arising from this report.

Equalities implications

27. The Whistleblowing Policy is intended to give confidence to all who wish to raise an allegation of wrongdoing and not to disadvantage any individual that has one or more protected characteristics. Publicity about the Policy will ensure accessibility to it. Training for staff, and councillors, in dealing with whistleblowing concerns will also focus on the equality implications..

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