

**Report of Chief Officer, Audit and Investment**

**Report to Corporate Governance and Audit Committee**

**Date: 09 April 2014**

**Subject: Update of the Whistleblowing Policy and Raising Concerns Policy**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. To ensure that the Council can be responsive to any suspected instances of wrongdoing in its work, a Whistleblowing Policy and a Raising Concerns Policy exist to set out the means by which serious concerns can be brought to the attention of Internal Audit. These two policies exist separately to enable the former to set out the correct channels through which serious issues can be appropriately escalated from within the organisation, while the latter provides guidance and direction to the wider public.
2. Changes to Public Interest Disclosure legislation have prompted the need to review and update the Council's existing Whistleblowing Policy to ensure it remains fit for purpose and offers clear and relevant guidance on how and when concerns should be raised around any aspects of the Council's work.
3. Effective whistleblowing procedures are a key component of good governance, establishing a culture of openness, probity and accountability across all aspects of the Council's work. To ensure consistency in approach across all whistleblowing channels, the Raising Concerns Policy has been reviewed and updated alongside the Whistleblowing Policy.
4. The existing Whistleblowing Policy is available on the intranet and encourages Council employees and Members, who have serious concerns about any aspect of the Council's work, to come forward and voice those concerns without fear of reprisal.

5. The Raising Concerns Policy is published on the Council website and offers guidance to members of the public that may have concerns around aspects of the Council's work.
6. The promotion and accessibility of these policies helps the Council to be responsive to emerging risks that are identified.
7. Following advice and guidance provided by Legal Services, the policies have been reviewed and updated to reflect recent changes to Public Interest Disclosure legislation which particularly impact upon the Whistleblowing Policy. The Enterprise and Regulatory Reform Act 2013 has resulted in amendments to the whistleblowing provisions contained within the Employment Rights Act 1996. As such, Public Interest Disclosure legislation now restricts the definition of a protected disclosure to disclosures which, in the reasonable belief of the worker, are made in the public interest. The legislation also provides specific protection if an employee is subjected to detrimental treatment by colleagues as a result of making a protected disclosure. The policies have been updated to reflect these changes and to provide clear, consistent guidance and direction in accordance with best practice.
8. The revised Whistleblowing Policy and Raising Concerns Policy are attached with this report at Appendix A and B respectively.

## **Recommendations**

9. Members are requested to note the contents of this report, and provide comment on the proposed Whistleblowing Policy and Raising Concerns Policy. Having taken into account Corporate Governance and Audit Committee and Executive Member comments, and following consultation with the Corporate Joint Consultative Committee, the Chief Officer (Audit and Investment) will take a delegated decision to approve the revised policies prior to publication.

## **1 Purpose of this report**

- 1.1 To consult with Corporate Governance and Audit Committee upon a review that is taking place of the Council's Whistleblowing Policy and Raising Concerns Policy.
- 1.2 To inform Corporate Governance and Audit Committee of the revisions in accordance with the changes to Public Interest Disclosure legislation, and to provide an opportunity to comment on the current proposals.

## **2 Background information**

- 2.1 The Public Interest Disclosure Act 1998 is intended to promote internal and regulatory disclosures and encourage workplace accountability and self-regulation. The Act seeks to safeguard the public interest by providing protection for individuals who fear workplace reprisal when raising a genuine concern.
- 2.2 Effective whistleblowing procedures are a key part of good governance, establishing a culture of openness, probity and accountability across all aspects of the Council's work. Ensuring that employees, workers, Members and the wider public feel empowered to raise concerns through the correct channels allows the Council to address any risks as early as possible.
- 2.3 The Council's Whistleblowing and Raising Concerns Policies are published on the intranet and internet respectively, and aim to provide reassurance around the probity of the procedures in place, offering clear guidance on how and when concerns may be brought to the attention of Internal Audit.
- 2.4 The Terms of Reference of the Corporate Governance and Audit Committee establish the authority of the committee to:
  - Review the adequacy of policies and practices to ensure compliance with statutory and other guidance
  - Review the adequacy of the Council's Corporate Governance arrangements (including matters such as internal control and risk management)

## **3 Main issues**

- 3.1 To ensure that the Council can be responsive to any suspected instances of wrongdoing in its work, a Whistleblowing Policy and a Raising Concerns Policy exist to set out the means by which serious concerns can be brought to the attention of Internal Audit. These two policies exist separately to enable the former to set out the correct channels through which serious issues can be appropriately escalated from within the organisation, while the latter provides guidance and direction to the wider public.
- 3.2 Internal Audit has reviewed the Whistleblowing Policy with assistance from Legal Services and updates have been proposed in line with recent changes to Public Interest Disclosure legislation. The Enterprise and Regulatory Reform Act 2013 has resulted in amendments to the whistleblowing provisions contained within the

Employment Rights Act 1996. Taking these amendments into account, alongside advice and guidance provided by Legal Service, the Whistleblowing Policy has been revised and is attached with this report at Appendix A.

- 3.3 The revised version of the policy now clearly includes workers, alongside employees and Members, as those that are able to make protected disclosures under the scope of this policy. Workers can be defined as those who work under a contract to personally provide services, and are not in business on their own account, for example some casual staff may be workers but are not employees. This follows an update to Public Interest Disclosure legislation.
- 3.4 Concerns to be reported under this policy have now been clearly defined as “*something which involves an issue in the public interest and which you have reasonable belief to be true.*” The addition of this explanation removes any ambiguity surrounding the basis of a potentially malicious or vexatious allegation, and serves to underpin an open and accountable culture whilst safeguarding the public interest at the heart of the policy.
- 3.5 The revised policy provides clearer direction on what constitutes a concern. This seeks to guide employees and workers when distinguishing whether their particular concerns will fall under the scope of the Whistleblowing Policy, offering more comprehensive direction under the following headings:
- A criminal offence has been committed, is being committed or is likely to be committed;
  - A person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
  - Something is against the Council’s Contract Procedure Rules, Financial Procedure Rules or other policies;
  - Something falls below established standards or practice;
  - Something amounts to improper conduct, including serious misuse or abuse of authority;
  - A miscarriage of justice has occurred, is occurring or is likely to occur;
  - The health and safety of any individual had been, is being or is likely to be endangered;
  - The environment has been, is being or is likely to be damaged;
  - Gross waste or mismanagement of funds has occurred, is occurring or is likely to occur; or
  - The information tending to show any of the above is being or is likely to be concealed.
- 3.6 The section on Protection from Reprisals now reads; “*The Council will not tolerate harassment or victimisation and will take action to protect you when you raise a concern which you have reasonable belief to be true and to be in the public interest. This will include disciplinary action against those that subject an individual to detriment as a result of the whistleblowing.*” The incorporation of the public interest clearly restricts the definition of protected disclosures to those made for the wider public benefit rather than merely personal gain. The reference to disciplinary action against those that may be involved in subjecting a

whistleblower to detriment offers clearer safeguards against potentially obstructive behaviour, thus strengthening the overall ethos of the policy.

- 3.7 The reinforcement of safeguards against detrimental or obstructive behaviour follows advice contained within the Whistleblowing Commission Report on the effectiveness of whistleblowing arrangements in the UK, published in November 2013 by the whistleblowing charity; Public Concern at Work. This report was commissioned to review all aspects of whistleblowing and is representative of a best practice approach, incorporating the views and considerations of a range of industry and academic experts.
- 3.8 The reference alluding to a requirement for a disclosure to be made in “good faith” has now been removed following specific advice from Legal Services. This seeks to clarify that no disciplinary action will be taken against whistleblowers that raise genuine concerns in the public interest, irrespective of any additional underlying motives.
- 3.9 The previous reference to the potential for “appropriate action” against those making malicious or vexatious untrue allegations has been replaced with a clear reference to “disciplinary action.” This amendment follows advice from the Legal Services as a means of removing ambiguity around the potential repercussions of making untrue allegations. This is seen as a way of discouraging the raising of concerns that do not fit the overarching scope and aim of the policy to protect the public interest.
- 3.10 Minor wording alterations have been made throughout the document aimed at providing stronger guidance and direction to those that have legitimate concerns under the policy. This ensures that the final version is clear and relevant in its purpose to encourage a culture of openness, probity and accountability across all aspects of the Council’s work.
- 3.11 Whilst the changes to Public Interest Disclosure legislation do not impact directly upon the Raising Concerns Policy (which offers guidance to members of the public that may have concerns that something is seriously wrong with the Council), the opportunity has also been taken to review this policy alongside the Whistleblowing Policy. This has resulted in minor changes to wording to ensure consistency and relevance, including the removal of any requirement for concerns to be raised in good faith. However there have been no material alterations to the overall coverage or direction of the policy. The revised Raising Concerns Policy is attached at Appendix B.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The updates to the policies do not raise any issues requiring consultation or engagement with the public, Ward Members or Councillors. Consultation with the Corporate Joint Consultative Committee on the Whistleblowing Policy will take place prior to approval and publication.
- 4.1.2 There are plans to provide training across directorates, including training on the recognition of fraud risks and the publication of the current policy coverage in order to promote whistleblowing arrangements.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 An Equality, Diversity, Cohesion and Integration Screening has been undertaken and is attached with this report at Appendix C.

### **4.3 Council policies and City Priorities**

- 4.3.1 The Council takes a zero tolerance approach to fraud and corruption and the Whistleblowing and Raising Concerns Policies are a key driver of this culture.

### **4.4 Resources and value for money**

- 4.4.1 There are no implications upon resources or value for money.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 Updates to the policies take account of advice provided by Legal Services. The report does not require a key decision and is therefore not subject to call in.

### **4.6 Risk Management**

- 4.6.1 There are no risk management implications

## **5 Conclusions**

- 5.1 Revisions have been made to the Council's Whistleblowing Policy to ensure that the policy is compliant with recent updates to Public Interest Disclosure legislation. The review of the overall content of both the Whistleblowing Policy and Raising Concerns Policy has been undertaken to ensure that the policies are up to date and fit for purpose in accordance with best practice, offering clear, consistent and relevant guidance upon how and when concerns should be raised around any aspects of the Council's work.
- 5.2 Once approved, the Whistleblowing and Raising Concerns policies will be published on the intranet and internet respectively, and effective communication is to be strengthened through the provision of training across directorates. Assurances that the policies are routinely complied with will continue to be gained

through regular reporting of the policy outcomes delivered through the quarterly update reports provided to Corporate Governance and Audit Committee. This, in turn, will drive periodic monitoring and review of the policy content to ensure that they continue to underpin the principles of good governance throughout the organisation.

## **6 Recommendations**

- 6.1 Members are requested to note the contents of this report, and provide comment on the proposed Whistleblowing Policy and Raising Concerns Policy. Having taken into account Corporate Governance and Audit Committee and Executive Member comments, and following consultation with the Corporate Joint Consultative Committee, the Chief Officer (Audit and Investment) will take a delegated decision to approve the revised policies prior to publication.

## **7 Background documents<sup>1</sup>**

- 7.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.