

JOINT STAFF CONSULTATIVE COMMITTEE
26 March 2014

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

5

TITLE OF REPORT: CONFIDENTIAL REPORTING CODE (WHISTLEBLOWING) REVIEW
REPORT OF THE MONITORING OFFICER

1. SUMMARY

- 1.1 A report to consider a review of the Confidential Reporting Code in line with changes to the law that took effect last year.

2. RECOMMENDATIONS

- 2.1 That JSCC provide feedback on the minor amendments to the Confidential Reporting Policy prior to consideration by Cabinet.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure good governance within the Council.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 The Monitoring Officer has received feedback from SMT colleagues, and the comments are reflected in the updated draft Policy.
- 5.2 Finance Audit and Risk Committee will have received the proposed policy on 19th March 2014. A verbal update will be given at the meeting.
- 5.3 The Trade Union representatives have been provided with the draft amended Policy and feedback is awaited.
- 5.4 Standards Committee considered the draft Policy on 25 February 2014 and resolved as follows:

RESOLVED: That the minor amendments to the Confidential Reporting Code, as set out in Appendix A to the report be endorsed, and that it be noted that the Code is to be considered by the Joint Staff Consultative Committee and Finance, Audit and Risk Committee, prior to its submission to Cabinet for approval.

6. FORWARD PLAN

6.1 This report does not contain matters referred to in the Forward Plan.

7. BACKGROUND

7.1 Confidential Reporting (Whistleblowing) is a phrase used to describe circumstances where a person believes that there is something so seriously wrong that he, or she, must disclose information in a manner which will draw attention to it in the public interest. The Public Interest Disclosure Act 1998 gave workers certain protection if they make what are termed “qualified disclosures” . A qualified disclosure is made if the information disclosed relates to one of the following matters;

- A criminal offence
- A breach of legal obligation
- A miscarriage of justice
- A danger to the health and safety of any person
- Damage to the environment

7.2 The Policy sets out the arrangements adopted by the Council aimed at ensuring that workers are able to raise concerns in the public interest about a danger, risk, malpractice or wrongdoing within the Council without fear of adverse consequences. The policy is intended to encourage and enable workers to raise serious concerns within the Council rather than overlooking a problem or blowing the whistle outside.

7.3 The Council’s Confidential Reporting Code plays an important part in meeting the Council’s commitment to openness, honesty and ethical propriety as set out in the Anti-Fraud and Corruption Policy.

7.4 The policy was last reviewed in 2011 and was considered by the Joint Staff Consultative Committee, Audit and Risk Committee and Standards Committee at that time.

8. ISSUES

8.1 The updates to the Policy are to reflect the legislative changes outlined in paragraph 9.2 below.

9. LEGAL IMPLICATIONS

9.1 The Public Interest Disclosure Act 1998 was introduced to offer employment protection to any worker who raised concerns about the employers means of operation. It provides for protection against victimisation and particularly offers more ready protection for those employees go outside of the authority where there are no or ineffective whistleblowing arrangements within the authority. This alone is reason for a suitable policy.

- 9.2 The Public Interest Disclosure Act 1998 ('PIDA') has recently been amended by the Enterprise and Regulatory Reform Act 2013 ('the ERRA'). The key relevant changes which require amendments to be made to the Council's Confidential Reporting Code (Whistleblowing) Policy are as follows:
- 9.2.1 A public interest test has been inserted, so now only disclosures made 'in the public interest' are protected. Workers will now need to show that they 'reasonably believe' the disclosure they are making is in the public interest. The ERRA does not define what is deemed to be in the public interest so it will be for the courts and tribunals to lead the way in how this is to be interpreted;
 - 9.2.2 A consequence of the new "public interest" requirement is that employees will generally be precluded from being able to blow the whistle about breaches of their own employment contract
 - 9.2.3 The requirement for disclosures to be made 'in good faith' has been removed, so this is no longer necessary for a disclosure to be protected. However, good faith remains relevant to the remedy available to the worker, that is, any compensation granted may be reduced by 25% if the disclosure is found to be made in bad faith;
 - 9.2.4 Employers are made liable for any acts of their employees which cause a detriment (disadvantage) to a worker as a result of their blowing the whistle.
 - 9.2.5 Whistleblowers will be protected from suffering a detriment, bullying or harassment from another employee .
- 9.3 The Council has a commitment in its Anti-Fraud policy to confidential reporting.
- 9.4 The terms of reference for JSCC state that they will have the role and function of regular consultation between the Council and its employees. This policy is therefore before JSCC for comment.
- 9.5 Cabinet are tasked under the constitution with preparing and agreeing to implement policies and strategies other than those reserved to Council.

10. FINANCIAL IMPLICATIONS

- 10.1 None

11. RISK IMPLICATIONS

- 11.1 Appropriate policy frameworks help to ensure good governance of the Council and therefore reduce risk of poor practice or unsafe decision making.

12. EQUALITIES IMPLICATIONS

- 12.1 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. We also recognise that in our society, groups and individuals continue to be unfairly discriminated against and we acknowledge our responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

12.2 During the development and consideration of the protocols the impact of equality of access should be considered, for example ensuring that all officers are able to submit a concern.

13. SOCIAL VALUE IMPLICATIONS

13.1 None.

14. HUMAN RESOURCE IMPLICATIONS

14.1 This work already falls within the remit of the Monitoring Officer and requires no further resource to implement.

14.2 The Human Resources team will support the application of this policy with advice to staff where required.

15. APPENDICES

15.1 Appendix A –The Confidential Reporting Code for employees showing proposed amendments as tracked changes.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

17.1 None.