

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: Whistleblowing Policy, Guidance and Concerns Received
Meeting/Date: Corporate Governance Panel – 3 June 2015
Executive Portfolio: Resources: Councillor J A Gray
Report by: Internal Audit & Risk Manager
Ward(s) affected: All Wards

Executive Summary

The whistleblowing policy and guidance is reviewed annually. It was last reviewed in November 2014. The Corporate Management Team have requested that reporting on whistleblowing allegations received be reported on a financial year basis and it is considered appropriate for the Panel to review the whistleblowing policy and guidance at the same time.

The purpose of whistleblowing law is to protect individuals who make disclosures of wrongdoings in the public interest without fear of reprisals from their employer.

The review of the policy and guidance has been completed by the Internal Audit & Risk Manager. Both documents have also been reviewed by the Culture and Compliance Governance Group and the Staff Council.

Arising from the 2014 review, the Panel recommended to Council, that it become a signatory to the Public Concern at Work (PCaW), 'The First 100 Campaign'. The campaign was established to allow organisations make a public commitment to support the PCaW whistleblower code of practice.

A number of changes are being proposed to both the policy and guidance to reflect the PCaW whistleblower code of practice and a recent Employment Appeal Tribunal decision, which has given the first 'in the public interest' definition. There have been no changes made to the whistleblowing policy or guidance notes arising from the 27 whistleblowing allegations that have been received during the year.

The policy and guidance are attached as Appendix 1 and 2.

There are no direct financial implications arising from this report.

Recommendations:

It is recommended that the Panel

1. approve the revised whistleblowing policy and guidance
2. note the whistleblowing concerns received.

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1. WHAT IS THIS REPORT ABOUT/PURPOSE?

- 1.1 This report deals with the review of the whistleblowing policy and guidance and contains details of the total number of whistleblowing allegations received during the year ending March 2015.

2. WHY IS THIS REPORT NECESSARY/BACKGROUND

- 2.1 The whistleblowing policy and guidance was introduced in 2000 in response to the Public Interest Disclosure Act 1998 (PIDA). Both documents are reviewed annually to ensure they continue to be fit for purpose. Consequently both documents mirror best practice requirements. This year's review has been conducted by the Internal Audit & Risk Manager.

3. OPTIONS CONSIDERED/ANALYSIS

- 3.1 Panel last reviewed the policy and guidance in November 2014. A number of minor changes were made to reflect the management restructure. The December 2014 Council accepted the Panel's recommendation that it should aim to achieve compliance with the Public Concern at Work (PCaW) Code of Practice on whistleblowing (PCaW are the leading independent supporter of whistleblowers).

- 3.2 The PCaW code of practice provides practical guidance on the raising, handling, training and reviewing of workplace whistleblowing procedures and practices. It has been compared to our own policy and guidance.

- 3.3 The policy previously allowed any employee, contractor or member of the public the opportunity to report, without fear or victimisation, a serious or sensitive concern. (e.g. a potential fraud or corrupt act, any danger to health and safety or the mistreatment or abuse of any customers, particularly children).

Adopting the PCaW Code of Practice requires the scope of the policy to be narrowed so that it is made clear that it applies only to those who work for or provide services directly to the Council. Concerns will still be able to be raised by members of the public, but they will not be recorded, or reported to the Panel, as whistleblowing concerns. This is likely to lead to a fall in the number of concerns reported in the future as the majority of concerns received are from members of the public.

- 3.4 An April 2015 Employment Appeal Tribunal (EAT) decision (case: UKEAT/0335/14/DM) has provided the first legal interpretation of the 'public interest' test. The EAT has set a relatively low threshold for whistleblowers to satisfy in order to bring public interest claims if they are subsequently dismissed.

- 3.5 The public interest test was inserted into the Employment Rights Act 1996 in 2013 but no definition of public interest is provided in that Act. Introducing the public interest test was intended to reverse the effect of a 2012 EAT that held that employees could bring whistleblowing claims from breaches arising from their own contract of employment. The recent EAT decision appears to allow employees to raise concerns about their own employment conditions if the concern affects a group of employees and the employee raising the concern reasonably believes that it was in the public interest to disclose the matter.

- 3.5 Concerns raised by employees about their own circumstances will generally be considered and reviewed in accordance with the grievance or dignity at work

policy. If the concern affects a significantly large number of employees (and every case would need to be decided on its own merits), then it may be that the public interest criteria has been met (e.g. non-payment of overtime, contracts of employment changed for some but not all employees). In which case the concern would be required to be investigated in accordance with the whistleblowing policy and the employee would enjoy the protections offered by the policy. A footnote has been included within the policy to refer to this matter.

- 3.6 The presentation of the policy and guidance note has been changed to make it easier to read and understand. Unlike previous reports, the changes made have not been highlighted as it was considered that this would only cause confusion rather than clarification.

The main changes that have been made are:

Policy	<p>New definition covering the scope of the policy. Clear explanation of the term 'protected disclosure'. New section explaining how concerns that will no longer be regarded as whistleblowing should be raised and dealt with. New section on Raising a Concern, emphasising that the Council's right not to investigate anonymous concerns. Clarity on the action that will be taken if an untrue concern is raised and on the safeguards afforded to those who raise a concern. Referencing the annual review of the policy in the annual governance statement</p>
Guidance	<p>Emphasis that concerns should be raised openly, not anonymously. Added examples as to who a whistleblower may invite to any meeting to discuss their concern. Clarifying how an investigation will be undertaken and the information that shall be provided to the whistleblower to inform them of the action taken. Explaining where information on the list of prescribed persons can be found.</p>

WHISTLEBLOWING CONCERNS RECEIVED

Employees' and customers have a number of ways to raise whistleblowing concerns. These include an internet form, a specific email address and a dedicated 24 hour telephone. 27 allegations have been received through the whistleblowing channels in the year ending March 2015. There were 11 allegations received in the year ending March 2014.

The allegations fall into the following categories:

- housing and council tax benefit (16)
- employee related (4)
- tenancy fraud (2)
- houses in multiple occupation (1)
- business rates (1)
- insurance (1)
- referred to other agencies (2)

19 of the concerns were made anonymously; none were considered to be malicious or vindictive. The concerns have been appropriately investigated.

4. COMMENTS OF OVERVIEW & SCRUTINY PANEL

- 4.1 Not applicable. The Panel is responsible for reviewing and monitoring the policy, procedure and arrangements for investigating disclosures under the Public Interests Disclosure Act 1998.

5. KEY IMPACTS/RISKS? HOW WILL THEY BE ADDRESSED?

- 5.1 The Council is not required by statute to have a whistleblowing policy in place although it is considered to be best practice.
- 5.2 It is important that employees and contractors have the ability to report, in confidence, issues of concern to the Council. The whistleblowing policy introduces a framework in which this can be done and importantly, sets out the protection that will be afforded to a whistleblower. Dealing effectively with a whistleblowing allegation is important to protect the Council from potentially significant reputation, commercial and financial risks.
- 5.3 Not having a reporting mechanism in place, may lead people to report matters outside of the Council with consequential impacts upon the reputation of the Council.
- 5.4 Having a policy and guidance in place is of limited use if it is not publicised or made known. Raising the profile of whistleblowing internally has been done through the use of posters, the intranet and notes on employee bulletins etc. The employee code of conduct also contains clear statements as to the standards of behaviour expected and how an employee can use the whistleblowing policy to raise a concern.

6. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

- 6.1 The revised policy and guidance note will be publicised to employees via the Council's usual communication channels (newsletter, team briefings and intranet). A new series of whistleblowing posters will also be designed and displayed across the main offices and the five leisure centres.

7. LINK TO THE CORPORATE PLAN

- 7.1 The whistleblowing policy ensures that employees and contractors are able to raise concerns in the knowledge that they will be taken seriously, investigated appropriately and confidences maintained. Adoption of the policy will ensure that the Council maintains good standards of governance. Good governance underpins the delivery of all of the Corporate Plan objectives.

8. CONSULTATION

- 8.1 Consultation on the policy and guidance has been undertaken with the Culture and Compliance Governance group and Staff Council.

9. LEGAL IMPLICATIONS

(Comments from the Head of Legal & Democratic Services)

- 9.1 There are no legal implications arising from this report.

10. RESOURCE IMPLICATIONS

(Comments from the Assistant Director, Finance & Resources)

10.1 There are no resource implications arising from this report.

11. OTHER IMPLICATIONS

(Equalities, environment, ICT, etc)

11.1 There are no direct equalities implications arising from this report.

12. REASONS FOR THE RECOMMENDED DECISIONS

12.1 Changes are required to the whistleblowing policy and guidance to reflect the PCaW Code of Practice.

13. LIST OF APPENDICES INCLUDED

Appendix 1 – Whistleblowing Policy
Appendix 2 – Whistleblowing Guidance

BACKGROUND PAPERS

Public Concern at Work code of practice

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