

AUDIT COMMITTEE

17 DECEMBER 2009

WHISTLEBLOWING POLICY AND REPORT ON INSTANCES APRIL 2008 – APRIL 2009

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Summary

This report is to advise Members about the nature of concerns raised under the Whistleblowing policy between April 2008 and April 2009. The report also presents a draft policy for Members consideration.

1. Budget and Policy Framework

1.1 It is within the Audit Committee's terms of reference to receive reports in line with the Council's Whistleblowing policy.

2. Background

2.1 On 25 June 2009 the committee considered a report setting out the number, nature and status of whistleblowing events since 1 April 2007 until 1 April 2008. This related to whistleblowing issues relating to fraud and corruption issues.

2.2 Further to the report in June 2009, and in line with advice from the Monitoring Officer, the Committee agreed that the whistleblowing procedure should be reviewed and that all whistleblowing cases be reported to the committee, rather than just concerns raised on fraud and corruption issues. The Council's Whistleblowing policy covers acts of fraud, corruption, unethical conduct and malpractice.

2.3 For clarity Council on 30 July 2009 agreed to amend the committee's terms of reference to clarify that the committee would consider all whistleblowing in line with the whistleblowing policy when it is revised.

3. Revised Whistleblowing Policy

- 3.1 The Council's existing Whistleblowing Policy has been reviewed and a revised draft is set out at Appendix 1 for Members consideration.
- 3.2 The draft builds on the council's existing policy, with the following revisions:
 - 3.2.1 Emphasises the importance of raising concerns internally in accordance with the Council's Whistleblowing Policy
 - 3.2.2 Identifies the forms of conduct which will be investigated under the Whistleblowing Policy
 - 3.2.3 Identifies the individuals protected under the Whistleblowing Policy
 - 3.2.4 Identifies specialist teams and nominated Whistleblowing Officers to investigate concerns
 - 3.2.5 Identifies the conditions necessary for raising a concern direct to the Media and emphasises that premature contact with the Media may be a disciplinary matter under the Council's Disciplinary Procedure
 - 3.2.6 Informs individuals that all whistleblowing cases (anonymised information) shall be reported to the Audit committee annually
- 3.3 The policy will be the subject of consultation and will be considered by the Employment Matters Committee. To safeguard against discrimination or unfair/unfavourable treatment it is also necessary for the policy to be assessed via the council's Diversity Impact Assessment (DIA) process.
- 3.4 Following the process outlined above it is proposed that the policy be referred to Council for approval and inclusion within the Council's Constitution.

4. Concerns raised from 1 April 2008 to 1 April 2009

- 4.1 The following table summarises the position of concerns raised under the Whistleblowing policy from 1 April 2008 to 1 April 2009. Concerns raised on fraud and corruption issues for this period were reported to the Audit Committee on 25 June 2009.

Nature	Raised by	Outcome
Issues regarding management style of a head teacher and the impact on whistleblower and colleagues.	Employee	This issue was originally raised in 07/08 but further contact was received in 08/09. School Workforce Development Team originally provided support to the school team as a whole.. However the support offered this time, via the HR (Schools) team was not pursued.

Nature	Raised by	Outcome
Data security breach – Files removed from secure cabinet in Council offices	Employee	Guidance and advice provided by Legal and the Data Protection Officer to minimise the risk from the potential security breach
Former employee's use of Council data to set up a client base for their business	Employee	Guidance and advice provided by Legal and the Data Protection Officer to minimise the risk from the potential security breach

4.2 In future the Committee will consider a report on the number, nature and status of all whistleblowing events on an annual basis in June.

5. Risk management

5.1 The current Whistleblowing Policy sets out the Council's commitment to tackling unlawful acts including fraud, corruption, unethical conduct and malpractice. The Whistleblowing policy encourages all individuals to raise serious concerns about practices by the Council.

6. Financial and legal implications

6.1 The Public Interest Disclosure Act 1998 protects a worker from victimisation/detriment following a disclosure made in accordance with the provisions of the act. This policy has been developed in line with the provisions of the Public Interest Disclosure Act 1998. A written policy is indicative of good corporate governance practice. The policy also gives the council an opportunity to give prominence to the issue and to express its commitment to the legal protection afforded to whistle-blowers.

6.2 There are no direct financial implications arising from this report.

8. Recommendations

8.1 Members are recommended to note the contents of this report and provide comments on the draft Whistleblowing Policy as set out in Appendix 1.

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Background papers

Medway Council's Whistleblowing Policy
Medway Council's Constitution

Medway Council Whistleblowing Policy

1. Introduction

The Council is committed to tackling unlawful acts including fraud, corruption, unethical conduct and malpractice regardless of who commits them, or where in the Council they are committed. In this way the Council ensures that its services are used in the best interests of the local community.

The Council aims to ensure that anyone wishing to raise a concern feels confident in the process under this Policy. This policy is designed to allow you to raise a concern without fear of reprisals or victimisation, if your disclosure is made in good faith.

To encourage and enable you to do this the Council will ensure that anyone who uses this policy to raise a concern will be protected from any form of detriment, harassment or victimisation regardless of :

- a) The content of the concern you raise
- b) With whom you raise the concern and
- c) Whatever the outcome of raising the concern.

The Whistleblowing Policy provides an opportunity for your concern to be dealt with internally, after all that is where the solutions will be found, or through an agreed external body.

There is always a temptation to take a concern directly to the media, but this does not necessarily mean that the issues raised are appropriately addressed and often fails to protect innocent parties. You should remember that you have a duty of confidence to your employer and that unauthorised disclosure of information maybe a disciplinary offence. Please refer to paragraph 15 below.

The best advice before you decide on what action to take is to seek the advice of one of the specialist Whistleblowing teams.

2. What is covered by Whistleblowing?

A concern can relate to any unethical or unprofessional conduct within the Council, including malpractice, and abuse. The policy not only covers acts that have actually occurred but also potentially unethical or unprofessional conduct.

The person making the disclosure must do so in the reasonable belief that it shows one or more of the following:

- 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 she/he is subject;
- A miscarriage of justice has occurred, is occurring, or is likely to occur;

- Acts or potential acts of fraud and corruption or the misuse of public funds
- The health & safety of any individual (employee or member of the public) has been, is being, or is likely to be endangered;
- The environment has been, is being or is likely to be damaged
- Actual or potential acts of all forms of discrimination or possible abuse (sexual or physical) of clients in the Council's care
- Actual or potential acts of harassment or bullying of, or by, someone working for the Council,
- Any unethical conduct that causes concern or brings the reputation of the Council into disrepute or,
- The deliberate concealment of information that would indicate any of the above.
- Information tending to show any matter falling within any one of these points has been, is being, or is likely to be concealed;

If you are in any doubt as to whether or not to raise a concern then confidential advice can be sought from HR Services or your trade union representative.

Note:- If, when disclosing a concern you commit a criminal offence, you may lose your rights to protection from detriment. Further advice can be sought from one of the specialist teams.

3. Who Is Covered By the Whistleblowing Procedure?

The Public Interest Disclosure Act 1998 will protect workers who disclose information in the correct manner from dismissal or penalisation. "Workers" include individuals who are;

- Employees employed under a contract of employment;
- Employed under any other contract, under which they perform personally any work or services;
- Agency workers; or
- Undertaking work experience as part of a training course.

4. How am I Protected?

Under the Public Interest Disclosure Act, to qualify for protection for disclosure the Worker must:

- Be acting in good faith;
- Have reasonable grounds for believing that the information disclosed indicates the existence of one of the problems itemised in section 2 above

5. Confidentiality

The Council accepts that wherever possible the confidentiality of anyone wishing to raise a concern will be protected. There might however be occasions where your confidentiality cannot be protected, for example, where there is the involvement of the police.

If there is any possibility that your confidentiality cannot be protected you will be told of the reasons and offered appropriate advice and support.

6. Raising a concern

You are encouraged to raise a concern provided that:

- You have reasonable belief that the information you hold, or the allegation is accurate; and
- You make the disclosure in good faith

7. Anonymously raised concerns

Concerns expressed anonymously will be investigated on the basis of their merits. However, an investigation may be hampered by the inability to gain further information and the Council would encourage you to provide some method of contacting you to assist in the investigation.

8. Misuse of the whistleblowing policy

Raising a concern unreasonably, with malicious intent or for personal gain or the gain of others is not acceptable and may lead to disciplinary action under the Council's Disciplinary Policy.

9. Who can concerns be raised about?

You can raise a concern about the practice of anyone who undertakes work for, or on behalf of, the Council, including:

- Employees of the Council;
- Contractors;
- Councillors;
- Volunteers; and
- School Based staff.

In a school you would normally raise a concern with your direct line manager. If this was inappropriate then your headteacher or Chair of Governors should be contacted, who may involve the nominated whistleblowing officer. Medway Council has a legal responsibility to deal with any issues raised under the Whistleblowing Policy, regardless of the type of school you work in, be it controlled, aided or foundation.

10. How to raise a concern

No matter with whom you raise your concern it will be dealt with under this procedure. If the person with whom you raise the concern feels it necessary they may want to refer your concern on to either a specialist team or a more senior Council officer, whichever is appropriate. If this is the case you will be contacted first and have the opportunity to discuss any issues this may raise.

As a First Point of Contact

A concern would normally be raised initially with your line manager or supervisor. However this may not always be possible, dependent on the nature of the concern and who is involved.

Alternatively

If you feel unable to raise the matter with your line manager or supervisor you may wish to contact your Director of service or the Director of the service to which your concerns relate (if different).

Or

You may wish to refer your concern directly to one of the Council's specialist teams as listed below:-

Specialist Team & Nominated person	Area of speciality
Financial / Audit team	Concerns regarding fraud, corruption or misappropriation of Council assets or resources.
Richard Humphrey	Audit Services Manager 01634 (33)2355
Ann Ward	Principal Visiting Officer 01634 (33)2360
Community Services	Issues about the care and welfare of adults and community issues e.g. issues concerning the conduct of care staff, housing etc.
Ashley Davis	Visitor Information Centre Manager 01634 (33) 8105
Genette Laws	Social Care Commissioning and Voluntary Sector Manager 01634 (33)1345
Children's Services	Issues relating to the care and welfare of children e.g. the use of school funds (may overlap with the Financial / Audit team) If it is suspected a child is being neglected or abused by a member of staff, the Local Authority Designated Officer should be contacted.
Ralph Edwards,	Head of HR Services (Schools) 01634 (33)1090
Maureen Panting	Customer Services Manager 01634 (33)2227

If you suspect a child is being neglected or abused please contact the local authority designated Officer Harry Harrison (33) 1429

Human Resources	Concerns relating to the conduct of employees in general and specific issues of discrimination, harassment etc.
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Lizzie Hunt HR Advisor 01634 (33)2337

Information Technology Concerns relating to the misuse of information technology such as e-mail and the internet.

Moira Bragg Corporate Projects Manager 01634 (33)2087

Regeneration and Development

Concerns relating to environmental issues, eg building control, planning etc

Joy Kirby Business Quality Assurance Manager
01634 (33)1422

Sam Irvine Director's Assistant
01634 (33)1323

Monitoring Officer Concerns relating to all matters affecting the Council

Deborah Upton Monitoring Officer 01634 332133

All the units and service directors have received specialist training in dealing with concerns and will follow the procedure as laid out in this policy.

11. What to consider when expressing a concern

To enable your concerns to be dealt with in a proper and effective manner here are some guidelines for you to consider:-

- Be as clear as possible about what the concern is and to whom and what it relates. You may also want to discuss the concern with others to see if it is shared.
- Be as clear as possible about who maybe involved, when and where actions may have taken place. Please ensure the facts are recorded i.e. record the dates and times in a diary. This way you can be clear about what has actually been heard or seen and when, rather than rely on memory or hearsay.
- Ensure you ask for your concerns to be dealt with under this procedure.

12. The procedure to be followed

To ensure that all concerns raised are taken seriously and are fully investigated the Council has agreed a procedure to be followed in all cases.

If, at any stage of the procedure, you are asked or wish to meet with someone addressing the concerns you have raised you have the option to be

accompanied by a work place colleague, trade union representative or representative from a professional body.

When you first raise a concern:

However you wish to express your concern, by telephone or in person, you will:

- Receive an acknowledgement of your concerns within five working days of notifying the investigating person whom you have expressed the concern (this can be sent to your home address);
- The investigating person will then decide how to progress your concern. This may mean undertaking an investigation. This does not mean that the concern is either true or untrue, but will help to assess the gravity of the complaint and establish the facts. It could be possible that concerns raised may be the result of a misunderstanding or an authorised change in practice.

Within ten working days of making your concerns known you will either:-

- i) Have a confidential meeting with the investigating person to further discuss your concerns or
- ii) Have received, in writing, an outline of how the investigating person intends to deal with the concerns raised.

Dependent on the nature of the concerns you may have subsequent meetings with the relevant investigating persons. These can be held “off-site” if preferred.

13. The outcome of your concern

Having raised the concern, the Council recognises that you will need to be assured that the issues have been dealt with correctly. You will be kept informed on a regular basis of what actions are being taken and the final results of any investigations.

In some situations, such as referrals to external bodies, it may not be appropriate (or legally possible) to supply you with the full information discovered. However the reasons for this will be explained at that time.

14. Taking your concern further

If you have exhausted all these channels and you still have concerns, or feel that the issues have not been fully or appropriately addressed, you can contact the Chief Executive, or have him contacted on your behalf, to discuss your concern in confidence.

However you should not refer the matter outside the organisation without first ensuring that all other possible avenues have been exhausted.

15. Contacting the media

If a Worker is considering contacting the Press, they are strongly advised to seek guidance from professional or other representative bodies and to discuss

the matter where possible with line and professional managers. If you decide to proceed with contacting the media, you must inform the Chief Executive of the action they have taken or are proposing to take.

Disclosures to the media can be made under the law, and will be protected if the following circumstances are met:

- The disclosure is made in good faith
- The employee reasonably believes the information and any allegations are substantially true
- The employee does not act for personal gain

Additionally, one or more of the following conditions must be met:

- The Worker reasonably believes they would be subjected to a detriment if disclosure were made to the employer or prescribed person
- In the absence of an appropriate prescribed person, the Worker reasonably believes a disclosure to their employer would result in the destruction or concealment of information about the wrongdoing
- The Worker has previously disclosed substantially the same information to their employer or prescribed person
- It must be reasonable to make the disclosure

Please be aware that premature contact with the media, where none of the conditions above are met, may result in disciplinary action under the Council's Disciplinary Policy.

16. Responsible Officer

The Internal Audit Manager is responsible for reviewing fraudulent matters. A report of instances of use of this Policy shall be provided to the Audit Committee. This report will not identify any parties using this Policy, but is intended to monitor Whistleblowing procedures.