

COUNCIL

13 OCTOBER 2016

WHISTLEBLOWING POLICY

Report from: Carrie Mckenzie, Head of HR and Organisational Change

Author: Tim Silver, Employee Relations Manager

Summary

To seek agreement to the proposed revisions to the council's Whistleblowing Policy, following initial consideration by the Employment Matters Committee on 7 September 2016 and the Audit Committee on 29 September 2016.

1. Budget and Policy Framework

1.1 The Council's Whistleblowing Policy forms part of the Constitution, therefore, final approval of the Policy is a matter for Full Council.

2. Background

2.1 The current version of the Council Whistleblowing Policy now requires revising to reflect a change to the overarching legislation.

2.2 Further changes of an administrative nature have been made to reflect current post titles, e-mail addresses and contact numbers and the revised Policy is at Appendix 1 to this report.

3. Advice and analysis

3.1 These changes ensure continued compliance with legislation and further reflect the Council's current administrative arrangements.

4. Consultation

4.1 Consultation on these changes has taken place involving the Trade Unions and the employee forums using the agreed consultation protocol, within the period 4 July 2016 and 3 August 2016.

4.2 No comments were received.

4.3 The Employment Matters Committee considered this report on 7 September 2016. The Committee agreed to recommend the revised

policy to Council, noting that the proposed changes will also be considered by the Audit Committee on 29 September 2016.

- 4.4 The Audit Committee considered a report on 29 September 2016 about the nature of concerns raised, between September 2015 and September 2016, under the Council's Whistleblowing, Anti-Bribery and Anti-Money Laundering Policies and which also proposed some revisions to the Whistleblowing Policy.
- 4.5 In response to a question about how the changes to the policy would be drawn to employees' attention, the Chief Legal Officer advised that a largely digital approach would be taken with the changes highlighted when staff logged on to their computers, via the staff newsletter and also published on the intranet.
- 4.6 A Member asked what arrangements Medway Commercial Group and Medway Norse had in place for whistleblowing. Officers advised that both organisations adhered to the Council's policy.
- 4.7 The Committee agreed to note the report and recommend the revised Whistleblowing Policy to Council.

5. Financial and legal implications

- 5.1 The legislative framework for whistleblowing is set out Public Interest Disclosure Act 1998, which amended the Employment Rights Act 1996.
- 5.2 A number of changes to whistleblowing law were introduced through the Enterprise and Regulatory Reform Bill 2013 (ERRA 2013) on 25 June 2013 and in March 2015, the Department for Business, Innovation & Skills published Whistleblowing: Guidance for Employers and Code of Practice. The guidance explains an employer's responsibilities with regard to employees who blow the whistle and recommends that employers use whistleblowing policies and ensure that they are promoted and accessible.
- 5.3 Section 148 of the Small Business, Enterprise and Employment Act 2015 has inserted a new section 43FA into the Employment Rights Act 1996 (ERA 1996), giving the Secretary of State powers to issue new regulations that require prescribed persons for the purposes of whistleblowing legislation to produce annual reports of the disclosures of information made to them by whistleblowers, but without identifying the workers or employers concerned. This new section 43FA came into force on 1 January 2016.
- 5.4 Draft Prescribed Persons (Report on Disclosures of Information) Regulations 2015, were published by the Department for Business, Innovation & Skills with the response to the consultation on new regulations. However, the draft Regulations were not passed before the dissolution of Parliament on 30 March 2015. Officers will need to monitor any further announcements from the Department for Business, Innovation & Skills in this area.

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

6. Risk Management

6.1 As detailed below:

Risk	Description	Action to avoid or mitigate risk	Risk rating
Failure to comply with the statutory whistleblowing legislation could bring the Council into legal breach, and cause loss of confidence in the use of whistleblowing as a confidential way of raising concerns of a serious nature.	Concerns that are raised under the scope of the policy are not managed appropriately and the whistle-blower may not be protected as allowed for under the statutory legislation.	Whistleblowing Officers have received appropriate training, and a current list of Officers is maintained on the Council Self-Serve 4 You system. All other documents that refer to Whistleblowing Officers have a link directing the reader to the correct page.	E4

7. Diversity Impact Assessment (DIA)

7.1 A Diversity Impact Assessment is attached at Appendix 2 to the report.

8. Financial and legal implications

8.1 It is not envisaged that there will be any additional financial implications with the implementation of this Policy.

8.2 Implementation of this Policy enables the Council to comply with its various statutory obligations and is within the Council's powers. It is essential that a fair and consistent approach is to be applied to all staff in order to minimise successful legal challenges.

9. Recommendation

9.1 The Council is asked to agree the revised Whistleblowing Policy, as set out in Appendix 1 to the report.

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Appendices:

Appendix 1 - Proposed revised Whistleblowing Policy
Appendix 2 – Diversity Impact Assessment

Background papers

There are no background papers.



Medway Council Whistleblowing Policy

September 2016



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Medway Council Whistleblowing Policy

1. Introduction

- 1.1 Medway Council is committed to tackling all types of unlawful acts including fraud, bribery, 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.
- 1.2 The council has agreed a constitution, which sets out how the council operates, how decisions are made, and the procedures to follow to ensure that these are efficient, transparent and accountable to local people. While some of these processes are required by law, others are a matter for the council to choose. The constitution also has a number of codified rules and regulations to make sure that financial, working and organisational procedures are properly controlled. These are an important part of the internal control processes, and it is important that all members and staff know about them. The most notable are:
 - 1.2.1 Financial rules (Chapter 4, part 6);
 - 1.2.2 Contracts rules (Chapter 4, part 7);
 - 1.2.3 Employment rules (Chapter 4, part 8);
 - 1.2.4 Members code of conduct (Chapter 5, part 1);
 - 1.2.5 Employee code of conduct (Chapter 5, part 3); and
 - 1.2.6 Code of corporate governance (Chapter 5, part 6).
- 1.3 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.
- 1.4 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:
 - The content or severity of the concern you raise;
 - With whom you raise the concern; and
 - Whatever the outcome of raising the concern.
- 1.5 The 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.
- 1.6 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 may be a disciplinary offence. Please refer to section 16 below.
- 1.7 Staff should consider the repercussions of making disclosures to parties other than a specialist Whistleblowing Officer. Where concerns are of a serious/severe nature, it is possible that an inadvertent or deliberate disclosure to a third party

could result in prejudicing a criminal investigation, if such a criminal investigation is warranted.

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

A list of specialist Whistleblowing Officers can be found via this link:

<http://just4you.medway.gov.uk/hr/hra-zofinformation/whistleblowingofficers.aspx>

2. What is covered by Whistleblowing?

- 2.1 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.
- 2.2 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, bribery or the misuse of public funds;
 - Failure to prevent acts of fraud and corruption or bribery under the council's Anti-Fraud and Corruption Policy;
 - 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;
 - The actual 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;
 - The deliberate concealment of information that would indicate any of the above; or information tending to show any matter falling within any one of these points has been, is being, or is likely to be concealed.
- 2.3 Other relevant documents to consider when considering raising a concern are:
- 2.3.1 The council's Anti-Fraud and Corruption Policy;
- 2.3.2 The Employee Code of Conduct; and
- 2.3.3 The Members' Code of Conduct.
- 2.4 If you are in any doubt as to whether or not to raise a concern then confidential advice can be sought from one of the specialist Whistleblowing Officers, HR Services (contact employeerelationshradvice@medway.gov.uk) or your trade union representative (contact details are available on the Just4you intranet).

Note: If, when disclosing a concern you commit a criminal offence, for example accepting a bribe and or acts of corruption, you may lose your rights to protection from detriment. Further advice can be sought from one of the specialist Whistleblowing Officers. ~~teams~~.

3. Who Is Covered By the Whistleblowing Procedure?

3.1 The Public Interest Disclosure Act 1998 (as amended by The Enterprise and Regulatory Reform Act 2013 (ERRA)) 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?

4.1 Under ERRA, to qualify for protection for disclosure the Worker must:

- Be acting in good faith;
- Believe that the disclosure is made in the public interest, and have reasonable grounds for believing that the information disclosed indicates the existence of one of the problems itemised in section 2 above.

5. Confidentiality

5.1 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.

5.2 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

6.1 You are encouraged to raise a concern provided that you believe that you satisfy the requirements detailed at 4.1.

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

6.2 Under no circumstances should you investigate a concern yourself. This ~~shall~~ avoids any risk of prejudicing any investigation (including a criminal investigation) if it is warranted. Further, this will protect you from any repercussions.

7. Anonymously raised concerns

7.1 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. Who can concerns be raised about?

8.1 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 (not Academies).

8.2 **School based staff** - In a school you would normally raise a concern with your direct Line Manager. If this is inappropriate then your Head Teacher or Chair of Governors should be contacted, who may involve the nominated Whistleblowing Officer.

8.3 The 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. If it is not appropriate for a School based Whistleblower to raise a concern with the Head Teacher or Chair of Governors then they should, in the first instance, contact the Head of HR and Organisational Change

8.4 This Whistleblowing Policy does not relate to Academies.

9. How to raise a concern

9.1 No matter with whom you raise your concern it will be dealt with under this Policy. If the person with whom you raise the concern feels it necessary, they may 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.

9.2 Staff should be aware that raising a concern by email might result in third parties identifying a Whistleblower. Staff should therefore consider arranging a meeting with the relevant Whistleblowing Officer/~~Specialist Team~~ if they are concerned about third parties accessing emails.

~~As a First Point of Contact~~

9.3 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.

~~As an alternative~~

9.4 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).

9.5 You may wish to refer your concern directly to one of the council's specialist teams ~~as listed in Appendix one.~~ Whistleblowing Officers.

9.6 All the Whistleblowing Officers have received specialist training in dealing with concerns and will follow the procedure as laid out in this Policy.

10. Misuse of the Whistleblowing Policy

10.1 Raising a concern 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. If in any doubt, employees should contact the relevant Whistleblowing Officer.

11. Responsible Officer

11.1 Frauds are often discovered as a result of whistleblowing and the council has arrangements in place to enable such information to be properly dealt with, and to keep the Whistleblower protected.

11.2 Referrals to ~~particular Specialist teams~~ a Whistleblowing Officer may be forwarded to the Internal Audit and Counter Fraud Team /~~Finance team~~ if there is a financial aspect to a complaint. In particular, all whistleblowing cases related to fraud and financial irregularity will be subject to initial enquiries by the Audit and Counter Fraud Manager ~~Services Manager~~ to confirm or repudiate suspicions raised, and if the concerns are substantiated a full investigation will be undertaken.

11.3 The Chief Finance Officer ~~needs to~~ will be informed of all fraudulent matters and will decide on the appropriate action following the results of the investigation.

11.4 A report of instances of all uses of this Policy shall be provided to the Audit Committee and the Employment Matters Committee. This report will not identify any parties using this Policy, but is intended to monitor whistleblowing procedures.

12. The Procedure

12.1 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.

13. The procedure to be followed

13.1 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.

- 13.2 Staff should be aware that raising a concern by email might result in third parties identifying a Whistleblower. Staff should therefore consider arranging a meeting with the relevant Whistleblowing Officer/~~Specialist team~~ if they are concerned about third parties accessing emails.
- 13.3 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.
- 13.4 Upon raising a concern:
- 13.4.1 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 to whom you have expressed the concern (this can be sent to your home address);
 - This ~~e-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.
- 13.4.2 Within ten working days of making your concerns known you will either:
- Have a confidential meeting ~~with the investigating person~~ to discuss further your concerns; or
 - Have received, in writing, an outline of how ~~the investigating person intends to deal with the concerns raised.~~ Your concerns will be dealt with.
- 13.4.3 ~~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.~~

14. The outcome of your concern

- 14.1 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.
- 14.2 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 the appropriate time.
- ~~14.3 All uses of this Policy will be formally recorded and a register maintained.~~

15. Taking your concern further

- 15.1 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. At this point, you may also raise your concerns with elected members.

- 15.2 However you should not refer the matter outside the organisation without first ensuring that all other possible avenues have been exhausted.
- 15.3 Additional information and details of regulatory bodies can be found in Appendix One.

16. Contacting the media

- 16.1 If a Worker is considering contacting the media 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. Please be aware that contacting the media before allowing the Whistleblowing team to investigate could result in prejudicing any investigation.
- 16.2 If you decide to proceed with contacting the media, you must inform the Chief Executive of the action you have taken or are proposing to take and the Chief Executive will brief Group Leaders on the matter.
- 16.3 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 and is made in the belief that it is in the public interest;
 - The employee reasonably believes the information and any allegations are substantially true;
 - The employee does not act for personal gain.
- 16.4 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; and
 - It must be reasonable to make the disclosure.
- 16.5 Please be aware that ~~premature~~ any contact with the media, where ~~none~~ of these ~~conditions above are~~ conditions have not been met, may result in disciplinary action under the council's Disciplinary Policy.

The current list of Whistleblowing Officers can be found via the link below

<http://just4you.medway.gov.uk/hr/hra-zofinformation/whistleblowingofficers.aspx>

Additional Information

Trade Unions

Contact details for the trade unions are available on the Just4you intranet at:

<http://just4you.medway.gov.uk/hr/a-zofhrinformation/tradeunions.aspx>

Employee Forums - (Black Workers Forum (BWF), Disabled Workers Forum (DWF) and Lesbian, Gay, Bisexual, Trans and Questioning (LGBTQ) Forum).

Contact details for the forums are available on the Just4you intranet at the following link:

<http://just4you.medway.gov.uk/support/staffforums.aspx>

Regulatory and professional bodies

Health & Safety Executive www.hse.gov.uk
Tel. 0845 345 0055

Care Quality Commission www.cqc.org.uk
Tel. 03000 616161

Health Professions Council (HPC) www.hpc-uk.org
Tel 0800 328 4218

General Social Care Council www.gsccl.org.uk/
Tel 01788 532405

Nursing and Midwifery Council (NMC) www.nmc-uk.org
Tel 0207 333 9333

General Medical Council (GMC) www.gmc-uk.org
Tel 0161 923 6602

Audit Commission www.audit-commission.gov.uk
Tel. 0844 7983131

Local Government Ombudsman www.lgo.org.uk
Tel. 0300 061 0614

Information Commissioner's Office www.ico.gov.uk
Tel. 0303 123 1113

Equality and Human Rights Commission www.equalityhumanrights.com
Tel. 0845 604 6610

Ofsted www.ofsted.gov.uk
Tel. 0300 123 4666

Institution of Civil Engineers <http://www.ice.org.uk/homepage/index.asp>
Tel. 020 7222 7722

Diversity impact assessment

TITLE <i>Name/description of the issue being assessed</i>	Proposal to revise the Whistleblowing Policy
DATE <i>Date the DIA is completed</i>	10 August 2016
LEAD OFFICER <i>Name of person responsible for carrying out the DIA.</i>	Tim Silver Employee Relations Manager
1 Summary description of the proposed change <ul style="list-style-type: none"> • <i>What is the change to policy/service/new project that is being proposed?</i> • <i>How does it compare with the current situation?</i> 	
<p>The proposed changes relate to a change to the overarching statutory legislation and clarification as to under what circumstance concerns can be raised and to whom those concerns can be directed.</p> <p>Changes been made to reflect current contact details and other council administrative arrangements.</p>	
2 Summary of evidence used to support this assessment <ul style="list-style-type: none"> • <i>Eg: Feedback from consultation, performance information, service user records etc.</i> • <i>Eg: Comparison of service user profile with Medway Community Profile</i> 	
<p>Trade Unions and Employee Forums were formally consulted on the proposed changes between the period 4 July 2016 to 3 August 2016.</p> <p>The report was shared with both Legal and Finance and there was no comment from either.</p>	

Diversity impact assessment

3 What is the likely impact of the proposed change?

Is it likely to :

- Adversely impact on one or more of the protected characteristic groups?
- Advance equality of opportunity for one or more of the protected characteristic groups?
- Foster good relations between people who share a protected characteristic and those who don't?

(insert ✓ in one or more boxes)

Protected characteristic groups	Adverse impact	Advance equality	Foster good relations
Age			X
Disability			X
Gender reassignment			X
Marriage/civil partnership			X
Pregnancy/maternity			X
Race			X
Religion/belief			X
Sex			X
Sexual orientation			X
Other (e.g. low income groups)			X

4 Summary of the likely impacts

- Who will be affected?
- How will they be affected?

There is no impact on any of the protected characteristic groups.

Diversity impact assessment

5 What actions can be taken to mitigate likely adverse impacts, improve equality of opportunity or foster good relations?

- *Are there alternative providers?*
- *What alternative ways can the Council provide the service?*
- *Can demand for services be managed differently?*

Not applicable

6 Action plan

- *Actions to mitigate adverse impact, improve equality of opportunity or foster good relations and/or obtain new evidence*

Action	Lead	Deadline or review date
Not applicable		

7 Recommendation

The recommendation by the lead officer should be stated below. This may be:

- *to proceed with the change implementing action plan if appropriate*
- *consider alternatives*
- *gather further evidence*

If the recommendation is to proceed with the change and there are no actions that can be taken to mitigate likely adverse impact, it is important to state why.

Not applicable

Diversity impact assessment

8 Authorisation

The authorising officer is consenting that:

- *the recommendation can be implemented*
- *sufficient evidence has been obtained and appropriate mitigation is planned*
- *the Action Plan will be incorporated into service plan and monitored*

**Head of HR and
Organisational
Change**

Carrie McKenzie

Date

10 August 2016

Contact your Performance and Intelligence hub for advice on completing this assessment

RCC: phone 2443

email: annamarie.lawrence@medway.gov.uk

C&A: phone 1031

email: paul.clarke@medway.gov.uk

BSD: phone 2472 or 1490

email: corppi@medway.gov.uk

PH: phone 2636

email: david.whiting@medway.gov.uk

Send completed assessment to the Corporate Performance & Intelligence Hub (CPI) for web publication