

EMPLOYMENT MATTERS COMMITTEE

28 NOVEMBER 2017

WHISTLEBLOWING, ANTI-BRIBERY AND ANTI-MONEY LAUNDERING POLICIES: REPORT ON INSTANCES SEPTEMBER 2016 – SEPTEMBER 2017

Report from: Perry Holmes, Chief Legal Officer

Summary

This report advises Members about the nature of concerns raised, between September 2016 and September 2017, under the Council's Whistleblowing, Anti-Bribery and Anti-Money Laundering Policies.

1. Budget and Policy Framework

- 1.1 The Council's Whistleblowing Policy, Anti-Bribery Policy and Anti-Money Laundering Policy are set out within the Council's Constitution. These policies require annual reports on the number and nature of instances raised to be provided to the Audit Committee. In addition, the Whistleblowing Policy also states that a report setting out the instances of all uses of the Policy shall be submitted to the Employment Matters Committee.

2. Background

- 2.1 The Council has agreed a number of policies to tackle 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. These can be summarised as follows:

- Whistleblowing policy: This policy covers the procedure for anyone wishing to raise a concern relating to any unethical or unprofessional conduct within the council, including malpractice, and abuse and is designed to enable concerns to be raised without fear of reprisals or victimisation where disclosure is made in good faith.
- Anti-bribery policy: This policy sets out the Council's commitment to the prevention and detection of bribery and the arrangements in place to ensure compliance by Councillors and employees, including contractors, volunteers and consultants.
- Anti-money laundering policy: This policy sets out the Council's commitment to ensuring there are appropriate and proportionate anti-

money laundering safeguards to prevent, where ever possible, the organisation and its staff being exposed to money-laundering.

- 2.2 The Council’s Anti-Fraud and Corruption Policy states that regular reports will be made to the Audit Committee on the number, nature and status of whistleblowing events. The requirement to report to Members is repeated within the Council’s Whistleblowing Policy, Anti-Bribery Policy and Anti-Money Laundering Policy. For completeness, it is considered prudent that the Employment Matters Committees receives the same information as presented to the Audit Committee.

3. Whistleblowing concerns raised between September 2016 and September 2017

- 3.1 The following table summarises the concerns raised under the Whistleblowing policy in the period September 2016 to September 2017:

Nature	Raised by	Outcome
Concerns raised about officers failing to comply with statutory procedures, potentially putting the council at reputational and financial risk.	Council employee.	Under investigation.

- 3.2 For comparison purposes, the table below sets out the number of concerns raised under the Whistleblowing policy since 2010/11:

2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
5	1	3	4	4	4

4. Anti-Bribery and Anti-Money Laundering concerns raised from September 2016 to September 2017

- 4.1 Members are advised there are no instances to report.

5. Audit Committee – 28 September 2017

- 5.1 Members considered a report on the nature of concerns raised, between September 2016 and September 2017, under the Council’s whistleblowing, Anti- Bribery and Anti-Money Laundering Policies.
- 5.2 Referring to an earlier decision (minute no. 332) to request a briefing note on the approach to risk management by Medway Norse and Medway Commercial Group, it was further agreed that this should also include details of their whistleblowing policies.
- 5.3 The Committee agreed to note the report and request a briefing paper on the whistleblowing processes in place at Medway Norse and Medway Commercial Group.

5.4 Chief Legal Officer's comments

5.4.1 The briefing note, once finalised, will also be shared with members of the Employment Matters Committee.

6. Risk Management

Risk	Description	Action to avoid or mitigate risk
Staff members with concerns with Whistleblowing process may release information into the public domain	Failing to promote the Whistleblowing policy or inform staff of the protections under the Public Interest Disclosure Act 1998 potentially increase the reputational risk to the Council.	Promote awareness of the Whistleblowing Policy and encourage staff to raise concerns through the confidential process. Whistleblowing officers have been identified to assist staff when raising concerns.
Reputational, legal and financial	Money laundering or bribery offences are committed by members of staff or supplier or customer leading to liability for the council	The agreed Anti-Money Laundering Policy and the Bribery Policy, provide information to staff and Councillors via the internet and through training.
Reputational, legal and financial	Agency staff, suppliers and contractors are not aware of the policy	Include reference to preventing money laundering and preventing bribery in contracts and tender specifications.
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

7. Financial and Legal implications

- 7.1 The Public Interest Disclosure Act 1998 protects a worker from victimisation or detriment following a disclosure made in accordance with the provisions of this act. The Whistleblowing 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 issues and to express its commitment to the legal protection offered to whistleblowers.
- 7.2 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.
- 7.3 There are no direct financial implications arising from this report. However, a successful claim brought under the Public Interest Disclosure Act 1998, against the Council may result in a substantial financial award as compensation for a person who has suffered detriment under the Act.
- 7.4 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.
- 7.5 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.
- 7.6 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.
- 7.7 Section 7 of the Local Audit and Accountability Act 2014 (the Act) requires a relevant authority to appoint a local auditor to audit its accounts for a financial year not later than 31 December in the preceding year. Section 12 makes provision for the failure to appoint a local auditor: the authority must immediately inform the Secretary of State, who may direct the authority to appoint the auditor named in the direction or appoint a local auditor on behalf of the authority.
- 7.8 Section 17 gives the Secretary of State the power to make regulations in relation to an 'appointing person' specified by the Secretary of State. This power has been exercised in the Local Audit (Appointing Person) Regulations

2015 (SI 192) and this gives the Secretary of State the ability to enable a Sector Led Body (PSAA) to become the appointing person.

8. Recommendations

8.1 The Committee is recommended to note the contents of this report.

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Appendices

Nil.

Background papers

Nil.