



EMPLOYMENT MATTERS COMMITTEE

5 DECEMBER 2018

WHISTLEBLOWING, ANTI-BRIBERY AND ANTI-MONEY LAUNDERING POLICIES: REPORT ON INSTANCES SEPTEMBER 2017 – SEPTEMBER 2018

Report from: Perry Holmes, Chief Legal Officer

Summary

This report advises Members about the nature of concerns raised under the Council's Whistleblowing, Anti-Bribery and Anti-Money Laundering Policies between September 2017 and September 2018.

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. The Anti-Fraud and Corruption Policy states that regular reports will be made to the Audit Committee on the number, nature and status of all whistleblowing events. The Council's Whistleblowing Policy states that all instances of uses of that Policy must be reported to the Audit Committee and also to this Committee. For the sake of completeness, any concerns reported under the Anti-Bribery or Anti-Money Laundering policies are also reported to this 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.

3. Whistleblowing concerns raised between September 2017 and September 2018

3.1 The following table summarises the three concerns raised under the Whistleblowing policy in the period September 2017 to September 2018:

Nature	Raised by	Outcome
Concerns raised about a council employee conducting personal business during contracted hours that also represented a conflict of interest with his substantive duties. In addition his personal clients were aware of his employment with the council and in some cases thought that he was acting as a council employee.	Member of the public.	The employee resigned when presented with the evidence from a disciplinary investigation.
Allegations of discrimination.	Council employee.	Under investigation.
Securing employment through the submission of a falsified reference.	Member of the public.	Not investigated. Employee's contract had already been terminated.

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	2016/17	2017/18
5	1	3	4	4	4	1	3

3.3 Members will note that there are a small number of examples each year where whistleblowing concerns are raised. This year, two of the concerns were raised by people outside the Council. There does not exist any national evidence of what comparative numbers are for other similar sized Councils.

4. Anti-Bribery and Anti-Money Laundering concerns raised from September 2017 to September 2018

- 4.1 Members are advised there was one instance to report under the Anti-Money Laundering policy, compared to no instances the previous year. There were no instances raised under the Anti-Bribery policy.

Nature	Raised by	Outcome
Concerns raised about a right to buy application and the source of funds being used for the purchase.	Council employee.	Appropriate forms were supplied to the National Crime Agency. Authorisation received for transaction to proceed.

5. Audit Committee – 27 September 2018

- 5.1 This report was discussed at the meeting of the Audit Committee held on 27 September 2018 and the discussion from that meeting is set out below:

Discussion:

Members considered a report which set out the nature of concerns raised, between September 2017 and September 2018, under the Council's Whistleblowing, Anti-Bribery and Anti-Money Laundering Policies.

In response to a query, the Monitoring Officer advised that the Anti-Bribery Policy would also apply to Members and it was agreed this could be covered in the Member induction programme following the next elections.

With regard to the first whistleblowing concern reported in paragraph 3.1, officers advised that the investigation had not revealed any criminal offences.

A Member suggested that future reports should include concerns raised under the whistleblowing, anti-bribery and anti-money laundering policies applicable to Medway Norse, Medway Commercial Group and Medway Development Company. The Monitoring Officer undertook to pursue that suggestion.

Decision:

The Committee agreed to note the report.

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	Promote awareness of the Whistleblowing Policy and encourage staff to raise concerns through the confidential process.

	potentially increase the reputational risk to the Council.	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 Under section 43F of the Employment Rights Act 1996, whistle-blowers may qualify for employment protections if they disclose information to a "prescribed person". Prescribed persons are mainly regulators and professional bodies but include other persons and bodies such as MPs. The relevant prescribed person depends on the subject matter of the disclosure. The list of prescribed persons is set out in the Public Interest Disclosure (Prescribed Persons) Order 2014. Under these Regulations prescribed persons are required to report annually on disclosures of information that they receive from workers, but without identifying the workers or employers concerned.

8. Recommendation

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

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Appendices

None

Background papers

None