

AUDIT COMMITTEE

24 SEPTEMBER 2020

WHISTLEBLOWING, ANTI-BRIBERY AND ANTI-MONEY LAUNDERING POLICIES: REPORT ON INSTANCES SEPTEMBER 2019 – SEPTEMBER 2020

Report from/Author: Perry Holmes, Chief Legal Officer

Summary

This report advises Members about the nature of concerns raised, between September 2019 and September 2020, 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. This report is also 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. A proposed updated version of this policy will be brought to the next Audit Committee for comments.
 - 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 this 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.

3. Whistleblowing concerns raised between September 2019 and September 2020

- 3.1. The following table summarises the three concerns raised under the Whistleblowing policy in the period September 2019 to September 2020:

| Nature | Raised by | Outcome |
|--|----------------------|---|
| Institutional racism | Employee | Investigated. No case to answer found at initial stage. |
| Concern of employee having an undisclosed conviction | Member of the public | On-going investigation. |

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

| Year | Instances |
|---------|-----------|
| 2010/11 | 5 |
| 2011/12 | 1 |
| 2012/13 | 3 |
| 2013/14 | 4 |
| 2014/15 | 4 |
| 2015/16 | 4 |
| 2016/17 | 1 |
| 2017/18 | 3 |
| 2018/19 | 2 |
| 2019/20 | 2 |

- 3.3 Members will note that there are a small number of examples each year where whistleblowing concerns are raised. This year the concerns was raised by someone outside the Council and an employee. There does not exist any national evidence of what comparative numbers are for other similar sized Councils, so it is difficult to fully analyse the figures presented. Officers have been assessing policies in other organisations and taking account of best practice information on Whistleblowing. It is proposed that this work will

enable an updated policy to be presented to the next Audit Committee. This will coincide with consultation with the Trade Unions and consideration by Employment Matters Committee. It should be pointed out that the numbers although low indicate that the policy is working and that where an employee, member of the public contractor etc. has a concern, they can and do raise them. The numbers do not include concerns referred to a line manager, which are informally resolved. They do not refer to grievances which are also dealt with under a separate policy. Approval of an updated Whistleblowing Policy will be a matter for Full Council as the Policy forms part of the Constitution.

- 3.4 Members asked, starting last year (2018/19) for consideration to be given to reporting Medway Norse, Medway Commercial Group and Medway Development Company whistleblowing information to Audit Committee. Officers have liaised with the relevant Council side representatives (for Medway Norse, the Chief Finance Officer, for Medway Commercial Group and for Medway Development Company, the Chief Legal Officer).
- 3.5 Medway Development Company reported no cases again this year. Medway Norse reported two cases of concerns about unfair or unfavourable treatment. One employee has since left with the other investigation on-going. Medway Commercial Group also reported no cases again this year.
4. Anti-Bribery and Anti-Money Laundering concerns raised from September 2019 to September 2020

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

5. Risk management

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|--|--|--|-------------|
| Staff members or contractors, or the public with concerns may not know what to do. | Failing to promote the Whistleblowing policy | Promote awareness of the Whistleblowing Policy and encourage staff to raise concerns through the confidential process. A review is on-going with an updated Policy due at the next Audit Committee | C2 |
| Reputational, legal and financial | Money laundering or bribery offences are committed by members of staff | The agreed Anti-Money Laundering Policy and the Bribery Policy, | C2 |

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|--|---|---|-------------|
| | or supplier or customer leading to liability for the council | 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. | C2 |
| 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 | C2 |

6. Financial and legal implications

- 6.1. 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.
- 6.2. 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.

- 6.3. 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.
- 6.4. 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.
- 6.5. 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.
- 6.6. 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.

7. Recommendation

- 7.1. Members are recommended to note the contents of this report.

Lead officer contact

Perry Holmes, Chief Legal Officer, Gun Wharf,
Tel: 01634 33 21 33,
Email: perry.holmes@medway.gov.uk

Appendices

None

Background papers

None