

EMPLOYMENT MATTERS COMMITTEE

2 DECEMBER 2020

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

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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. The Whistleblowing Policy states that all instances of uses of that Policy must be reported to this Committee and also the Audit Committee. 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. 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. A proposed updated version of this policy has been considered by the Audit Committee and is being reported also to this 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. An updated policy was considered by the Audit Committee on 19 November and appears elsewhere on the agenda for this meeting. 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 The Audit Committee 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 the 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 has been considered	C2

Risk	Description	Action to avoid or mitigate risk	Risk rating
		by Audit Committee and will also be reported to the Employment Matters Committee.	
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	C2
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. Audit Committee – 24 September 2020

This report was considered at the meeting of the Audit Committee held on 24 September 2020 and the discussion from that meeting is set out below:

Discussion:

This report provided details of the nature of concerns raised between September 2019-September 2020, under the Council's Whistleblowing, Anti-Bribery and Anti-Money Laundering Policies. The report also provided details of proposals for an updated Whistleblowing Policy.

The Chief Legal Officer advised the Committee that there had been two instances of whistleblowing in the last year and no instances reported under the Anti-Bribery and Anti-Money Laundering Policies. He also reported information in respect of Medway Commercial Group Ltd (MCG), Medway Development Company Ltd (MDC) and Medway Norse, none of whom had any reported instances.

He advised the Committee that he had been in touch with Protect, the Country's leading national experts on whistleblowing to ascertain whether was any benchmarking, however, no comparative information was available.

He also advised the Committee on the work that had been undertaken in the development of a new Whistleblowing Policy, including research on the matter so that the Policy would reflect best practice.

Members discussed a number of matters including:

Number of instances reported – it was suggested that the balance was right because whilst there was a low number of instances, staff clearly had the confidence to report instances under the Whistleblowing Policy.

Name and nature of the new Policy – Committee Members made a number of points regarding the new Policy such as the need to ensure that the new Policy encouraged openness and transparency, a new name for the Policy (Ethics Policy), the need for a step-by-step guide for employees to ensure the process was clear and to ensure that there were appropriate contact points to raise whistleblowing concerns. In addition to ensuring that whistleblowing was being dealt with in an appropriate manner, there were also a number of other matters of concerns that staff may wish to report and it was important for the Council to recognise and deal with this additional layer of concerns.

The Chief Legal Officer confirmed that there would be a clear Policy and Procedure in the new document. He also informed the Committee that the new Policy may include a triage approach rather than the current advice which was for staff to raise instances with their line manager.

MCG, MDC and Medway Norse – In response to a question as to whether the new Policy could be applied to these organisations and whether employees working for those organisations could report under the Council's Policy, the Chief Legal Officer advised that he would look into this.

Current Whistleblowing Policy – in response to a question about different versions of the Policy being available on the Council's website, the Chief Legal Officer undertook to look into this matter.

Decision:

The Committee noted the contents of the report.

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 whistle-blowers.
- 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 whistle-blowers, but without identifying the workers or employers concerned. This new section 43FA came into force on 1 January 2016.
- 7.6 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.

8. Recommendation

8.1 Members are recommended to note the contents of this report.

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Appendices

None

Background papers

None