

EMPLOYMENT MATTERS COMMITTEE

2 DECEMBER 2020

SPEAK UP POLICY (WHISTLEBLOWING)

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Summary

The current Whistleblowing Policy has recently been reviewed, updated, and rebranded as the Speak Up Policy and the proposed revisions have been consulted upon. The consultation period ends on 25 November 2020, the results of which will be reported to the Committee.

1. Budget and policy framework

- 1.1 The consideration of policies for staff is a matter for the Employment Matters Committee. The Whistleblowing Policy forms part of the Council's Constitution, therefore, approval of any changes or approval of a new policy is a matter for Full Council.
- 1.2 Following consideration by the Audit Committee and the Employment Matters Committee, the draft Speak Up Policy will be submitted to Full Council for consideration and approval on 21 January 2021.

2. Background

- 2.1 As referenced in the Whistleblowing, Anti-Bribery and Anti-Money Laundering Policies: Report on Instances September 2019 - September 2020 elsewhere on this agenda, the Council's current Whistleblowing Policy is in need of a review. This report provides details of the review.
- 2.2 Whistleblowing is the confidential disclosure by an individual of any concerns relating to a perceived wrongdoing involving any aspect of the Council's work or in respect of those who work for or with the Council. The whistleblowing process assists individuals, who believe they have come across malpractice, impropriety, or wrongdoing to raise a concern in order that this can be investigated and addressed.
- 2.3 The Public Interest Disclosure Act 1998 (PIDA) as amended by The Enterprise and Regulatory Reform Act 2013 (ERRA) is commonly known as

the whistleblowing law and is designed to encourage and enable employees to “speak out” and report suspected wrongdoing at work. The legislation protects employees from suffering detriment from their employer or colleagues that arises as a result of making a protected disclosure.

- 2.4 The revised policy has been benchmarked against public sector organisations and other local authorities to establish good practice and consistency. The content was created in collaboration with the Chief Legal Officer to ensure that this complies with any recent developments regarding case law and legislation and considers best practice principles from academic sources (Appendix 1) which are applied throughout the revised policy.
- 2.5 Medway Council HR are committed to continuously reviewing HR policies to ensure that as an employer the Council is up to date with legislation and ACAS guidance and adopting best practice. The draft Speak Up Policy is set out in Appendix 2 to the report.

3. Key Changes

- 3.1. The current Whistleblowing Policy is attached at Appendix 3 for comparative purposes. Given the new policy represents a fundamental redrafting of the policy it was not practicable to merely make tracked changes to the current policy
- 3.2. The policy has been rebranded as the Speak Up Policy with the aim to make the policy more accessible, encouraging those with concerns to come forward. Some may identify with negative connotations which may surround being a ‘whistleblower’ and making the policy clear and open aims to dispel this and encourage those who have concerns to raise these with the appropriate person.
- 3.3. The policy has been reviewed in line with plain English principles with the aim of creating an accessible policy and procedure to follow for all.
- 3.4. The policy establishes a Response Group whose role is to act both as an initial point of contact (where it may not be appropriate to raise initial concerns through the standard procedure of line manager, assistant director etc) and as a group of senior officers who can review concerns which have not been resolved through the initial contacts. The group is made up of the Head of Human Resources, the Chief Finance Officer and the Chief Legal Officer who can all deputise their role where appropriate. The group can review, investigate, and make recommendations on concerns raised which have not been resolved. Another important aspect of the group is to provide specialist advice or escalate concerns further as appropriate.
- 3.5. Schools: This section has been reviewed and revised by the HR Schools Team Business Partner to align with current recommended practice.
- 3.6. External contact details and employee groups have been reviewed and updated where applicable.

- 3.7. A separate procedure section has been created within the policy making the process easier to access and understand if someone wishes to raise a concern. This is complemented by the creation of a process flow chart which will be published alongside the policy and procedure (Appendix 4).
- 3.8. Reference to the Nolan Principles, the seven principles of public life, has been included within the policy appendices.
- 3.9. A Diversity Impact Assessment has been undertaken in relation to the draft policy; this is set out in Appendix 5. It will be reviewed as part of the outcome of consultation.

4. Advice and analysis

- 4.1 The Chief Legal Officer and colleagues from Human Resources have undertaken a desk top review of the way other organisations structure their whistleblowing policies as a learning exercise for Medway.
- 4.2 The Chief Legal Officer has also been able to access examples of good practice from an academic source. The learning from this is summarised in Appendix 1 Whistleblowing Policy Review.
- 4.3 This collaborative work has enabled the drafting of the attached policy at Appendix 2 for Members to review and comment.
- 4.4 Although it is not a legal requirement under the Public Interest Disclosure Act 1998 (PIDA), there are many good reasons for having a policy which may help to prevent an issue escalating.
- 4.5 Reasons to have a clear and robust policy include the following:
 - A policy may enable employers to nip a problem in the bud before it escalates or is disclosed externally, thus reducing the risk of involvement by external regulators or adverse media publicity.
 - Without a policy, workers may fear comeback and doubt the employer will deal with the matter properly.
 - Costs of investigating any problems, such as fraud, will be reduced as problems can be caught quickly.
 - Management time and resources will be reduced if problems are dealt with quickly.
 - It can help create a workplace where employees understand their responsibilities and management can demonstrate their accountability.
 - An effective whistleblowing policy may enable corrective action to be taken.
 - A good policy will enable employers to follow due process to dismiss those who maliciously make untrue allegations.
 - It indicates to those outside the organisation, for example investors or customers, that good practice is being followed.
 - An open and honest culture is good for morale.

(Source: Chartered Institute of Personnel and Development (CIPD) - online)

4.6 The purpose of this policy is to:

- Detail what is covered by whistleblowing and signpost to seek advice on other areas which would not be covered, e.g. grievances, bullying and harassment which are covered under separate relevant policies.
- Establish what types of concerns can be raised which are aligned with the advice on GOV.UK.
- Confirm what protection is available to those raising concerns under the policy.
- Clarify who concerns can be raised about.
- Provide a clear process on how to raise a concern, including what should be included when making a disclosure where possible.
- Update the section regarding schools ensuring this is aligned with current practice.
- Advise on the circumstances where a concern may be raised with an external prescribed body.
- Provide guidance regarding contacting and disclosing concerns to the media. This includes the recommendation to seek guidance prior to contact to ensure that the disclosure conditions are met.
- Detail the position of the Council in relation to protecting confidentiality where possible.
- Confirm the correct procedure to follow in an accessible format.

5. Risk management

5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

5.2 Whilst there is no statutory requirement to have a whistleblowing policy the CIPD recommends employers should have a standalone policy that is supported and effectively promoted to the workforce. As a local authority it is good employment practice to have a clear and robust policy for raising concerns. Having this in place can help to mitigate risk to the organisation.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Leaving the policy as is could mean missing out on employee concerns	Malpractice occurs in the Council which is not dealt with.	Consider the good practice gleaned from elsewhere and the draft policy as a basis for a new policy. The new policy to be communicated and promoted	C3

Risk	Description	Action to avoid or mitigate risk	Risk rating
		effectively across the organisation.	

6. Consultation

6.1 This policy has been consulted upon with the following stakeholders:

- Trade Unions
- Chief Legal Officer
- Head of Internal Audit
- Chief Finance Officer
- BAME Workers Forum
- Gender Forum
- LGBTQI Workers Forum
- Disabled Workers Forum

6.2 As the consultation period ends on 25 November, the outcome will be reported to Members in advance of the meeting (Appendix 6 – to follow).

6.3 The proposed changes to the policy were also considered by the Audit Committee at its meeting held on 19 November and the comments from the Committee will follow (Appendix 6).

7. Financial implications

7.1 The cost of a communication campaign would be negligible and could be minimised by the use of digital media.

8. Legal implications

8.1 The legal implications of a whistleblowing policy are set out in the draft policy attached.

9. Recommendation

9.1 Members are asked to consider the revised draft (whistleblowing) Speak Up Policy and provide any comments to Full Council.

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Appendices

Appendix 1: Whistleblowing Policy Review.

Appendix 2: Speak up Policy.

Appendix 3: Current Whistleblowing Policy

Appendix 4: Speak Up Policy process flow.

Appendix 5: Diversity Impact Assessment

Appendix 6: Outcomes of consultation/comments from Audit Committee (to follow)

Background papers

None