

## **COUNCIL**

**21 JANUARY 2021**

### **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. This report sets out the outcome of consultation, together with the comments of the Audit Committee and the Employment Matters Committee and seeks Council approval to the Speak Up Policy.

#### **1. Budget and policy framework**

- 1.1. The consideration of policies for staff is a matter for the Employment Matters Committee. The reviewing of the effectiveness of the Whistleblowing Policy amongst others, is a matter for Audit 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 (19 November 2020) and the Employment Matters Committee (2 December 2020), the draft Speak Up Policy is now 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 which was considered by the Audit Committee and the Employment Matters Committee, 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.

#### 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.
- 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	Malpractice occurs in the Council which is not dealt with.	Consider the good practice gleaned from elsewhere and the draft policy	C3

Risk	Description	Action to avoid or mitigate risk	Risk rating
employee concerns		as a basis for a new policy. The new policy to be communicated and promoted 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. The consultation ended on 25 November 2020 and the outcome was reported to the Employment Matters Committee on 2 December and is set out in Appendix 6 – this document has also captured the comments of the Audit and Employment Matters Committees.

6.3. The proposed changes to the policy were initially reported to the Audit Committee on 19 November 2019.

6.4. At the Audit Committee meeting, the Chief Legal Officer informed the Committee that the draft Policy had been developed taking into account work that he had been undertaking as part of his MBA studies, as well as work with the HR team. The draft Policy reflected the findings set out in the review, as set out in Appendix 1 to the report and aimed to provide a Policy which would be easier to read and understand setting out the Policy and the process to be followed by anyone wishing to raise concerns. He also advised the Committee that it was proposed that concerns would initially be considered by the Chief Legal Officer, Chief Finance Officer and the Head of HR, the aim of which was to provide an assurance from the outset that any concerns would be treated seriously.

6.5. Members then raised a number of questions and comments which included:

6.6. **Number of concerns raised under the current Policy** – the Chief Legal Officer advised the Committee of the number of concerns raised in the last few years, including three in the last year.

- 6.7. **Terminology** – it was commented that the draft Policy represented a much clearer approach, in particular, the new name of the draft Policy. In response to a question about whether the draft Policy reflected the Council being at the forefront of new ways of thinking on this issue, the Chief Legal Officer stated that the Council was forward thinking and that the academic work that he had undertaken had resulted in the term Speak Up Policy being used to improve accessibility to the Policy.
- 6.8. **Use of electronic links** – it was commented that providing weblinks within the draft Policy ensured the document was user friendly.
- 6.9. **Current version of the Policy** – in response to a question about multiple versions of the current Policy being available online, the Chief Legal Officer confirmed that he had contacted the Digital Team following the last Committee meeting for investigation and that he would follow up on this matter.
- 6.10. **Relationship between the draft Policy and the Council’s complaints and compliments process** – in response to a question, the Chief Legal Officer confirmed that the draft Policy would allow members of the public to raise serious concerns which would not be covered by the complaints and compliments process.
- 6.11. **The likely impact of the Policy** – in response to a question as to whether the introduction of this Policy may result in increasing the number of concerns being raised, the Chief Legal Officer stated that whilst he did not know what the number may be, the intention was to make the Policy more understandable and ensure that the Council did not miss any concerns being made. He advised that it may take a couple of years to start to see the effect of the Policy. He hoped that the launch of the Policy may also help raise awareness, which in turn, may lead to an increase in the number of concerns being made.
- 6.12. **Wording** – Committee Members suggested the following amendments to the draft Policy:
  - 6.13. Paragraph 2.0 of the draft Policy - replace 5<sup>th</sup> bullet point “Company” with “Council”. It was also suggested whether matters relating to ethics and the public interest could be included in this section.
  - 6.14. Paragraph 1.0 of the draft Policy, fourth paragraph replace “will be subject...” to “could be subject...”
  - 6.15. References to whistleblowing in the draft Policy should be removed.
  - 6.16. Paragraph 4.0 – reference to “employees of the Council” should also include reference to subsidiaries.
  - 6.17. Paragraph 8.0 – it should be made clearer as to how members of the public could raise concerns.

- 6.18. The Chief Legal Officer thanked Committee Members for their comments and he confirmed that he would give consideration to updating the draft Policy as necessary. He undertook to include references to ethics and the public interest within the body of the draft Policy, details of which would be provided outside the meeting.
- 6.19. The Committee agreed to forward its comments on the draft Policy as set out above to the Employment Matters Committee.
- 6.20. The Employment Matters Committee considered the draft Policy and the outcome of consultation on 2 December 2020. Members considered a report which advised that the current Whistleblowing Policy had recently been reviewed, updated, and rebranded as the Speak Up Policy.
- 6.21. Set out in a supplementary agenda were some proposed amendments to the new policy following consultation and also a revised version of the policy which incorporated comments and suggestions made at the Audit Committee on 19 November.
- 6.22. The following issues were discussed:
- 6.23. **Change in name of policy** – the change in name was welcomed and avoided the stigma that could be attached to the concept of whistleblowing.
- 6.24. **Concerns which could be raised under the policy** – some of the wording of this section was queried, including what was meant by acts that “might” occur, what a miscarriage of justice might constitute and whether the reference to seeking confidential advice to determine whether a concern would be legally protected should be strengthened. It was also suggested that individuals should be able to raise concerns about a Council owned company under the policy. The Head of HR replied that the reference to “might” was to reflect situations where an intent to commit unethical or unprofessional conduct was present, but this had not yet been acted on. The reference to miscarriage of justice would be made clearer. Council owned companies had a separate whistleblowing process. Section 4 of the policy referred to employees of the Council’s companies being able to raise a concern under the policy, which would be considered by the Response Group and then referred to the company to be dealt with. The Head of HR commented that the policy would need to make that process clear. The support available when confidential advice was sought would be added.
- 6.25. **Schools** – it was agreed that Section 7 of the policy should make it clear that this did not apply to Academies so as to reflect the statement in Section 4 that staff in Academies could not raise concerns under the policy.
- 6.26. **Monitoring** – it was suggested that the reference to “whistleblowing” in this section be replaced with “speak up cases”.

- 6.27. The Committee agreed to:
- 6.28. Recommend to Full Council the revised version of the Policy, as set out in the Supplementary Agenda, subject to the incorporation of the further proposed amendments to the policy following the consultation, as also set out in the Supplementary Agenda.
- 6.29. Note that the Head of HR would look at how to incorporate the comments and suggestions made at the meeting and share an updated version of the policy before it was submitted to Council.
- 6.30. In accordance with Council Rule 12.6, Councillors Khan, Mahil and Prenter asked that their votes in favour be recorded.

## 7. Head of HR's comments

- 7.1. An excellent number of responses was received from the consultation on the Speak Up Policy. This is a significant increase in responses compared to the previous policy consultations, and HR is very grateful to everyone who took the time to respond.
- 7.2. The consultation set out the council's commitment to create an open, transparent, and safe working environment where workers feel comfortable and able to speak up.
- 7.3. We want to know if something is upsetting our colleagues, and we recognise it takes courage for someone to bring bad practices to light, and despite its uncomfortableness we must ensure our policies demonstrate that we welcome information to be brought to our attention, and furthermore that it will be dealt with appropriately.
- 7.4. The new policy has now considered all the helpful comments and contributions made by both the Audit Committee, Employer Matters Committee, Trade Union colleagues and our various staff reference groups.
- 7.5. We would like to thank everyone who took part in this consultation. Our HR policy reviews are crucial, and we are very grateful for all the time and effort people have taken to provide so many constructive comments.
- 7.6. Subject to Council approval of the Speak Up Policy, it will replace the current Whistleblowing Policy set out in Part 9 of Chapter 5 of the Council's Constitution.

## 8. Financial implications

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



## 9. Legal implications

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

## 10. Recommendation

10.1. Council is asked to approve the Speak Up Policy as set out at Appendix 2 to the report.

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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

### Background papers

None.