

B) RECOMMENDATION OF THE STANDARDS COMMITTEE FROM ITS MEETING HELD ON 19TH JULY 2022 – CONFIDENTIAL WHISTLEBLOWING CODE

1. Summary and Recommendations

- 1.1 The purpose of this report is to consider and review the minor changes to the Confidential Whistleblowing Code.

Recommendation:

That Council resolves to approve the minor changes to the Confidential Whistleblowing Code as set out in the Appendix to the report.

Reason:

The Whistleblowing Code provides for the Monitoring Officer to review the Council's whistleblowing arrangements annually. It is considered best practice in many authorities for the relevant member committee to receive an annual report in relation to whistleblowing. The provision of an annual report to the committee increases the profile of whistleblowing across the Council and affords the opportunity to highlight areas of good practice and identify any requirements for improvement. This is particularly important based on the concerns raised in the DLUHC governance review and the findings of previous staff surveys around the culture of the Council being one where staff did not always feel able to raise concerns.

2. Report

Introduction

- 2.1 In response to an internal audit report, the Whistleblowing Code was reviewed by Audit and Corporate Governance Committee on 29 July 2021. The Code had been amended in response to recommendations in the internal audit report and it was agreed that the Code should be formally reviewed annually. The Committee was also given a reason why some other recommendations had not been taken forward, including the procurement of a case management system.
- 2.2 In 2021/22 the Council's internal audit conducted a review of the Council's whistleblowing arrangements. As part of this RSM, the appointed internal auditors, conducted a survey of staff, which was publicised to all staff in October 2021. The key results were that nearly half of the respondents had either not been informed about or knew where to find the whistleblowing code and the majority did not understand the procedure and a significant majority did not feel that the culture of the organisation encourages whistleblowing where necessary or were confident that a concern would be handled appropriately.
- 2.3 It should be noted that only a small number of employees completed the survey (35) compared with the 73% (1323) of assigned staff who had completed the mandatory training, therefore care should be taken before concluding that the above results represent a fair assessment across the Council. The training figure is an improvement on previous years and whilst there is a desire to have a higher percentage of staff complete the training, including agency staff, it should be noted

that the Council has had relatively high levels of turnover which will always affect the compliance level as there are high numbers of leavers and new starters.

- 2.4 In September 2021, a Government appointed reviewer published a governance review of the Council. Whilst this did not specifically refer to whistleblowing as a concern, it did raise significant concerns about the culture and leadership, including the lack of an annual governance statement for 2020/21 or an action plan for the previous statement, inadequate internal processes, signs of distrust among and between councillors and senior officers, the absence of scrutiny, transparency and public consultation and insufficient capacity to achieve the changes required. An effective whistleblowing code and procedures are important but must be seen as part of a much wider system to ensure ethical practices are understood and complied with and that the Council is a learning organisation, seeking continuous improvement and encouraging staff to raise concerns.
- 2.5 The above is reflected in the Council's corporate plan, which has flagged leadership and culture and governance as two of its seven recovery themes. This includes improvements related to refreshing and embedding values and behaviours and being an open and inclusive employer. Whilst work has been undertaken on strengthening the whistleblowing procedures, without the right culture, the rules and procedures along will make little difference.

Background

- 2.6 Whistleblowing is the term used when an employee passes on information concerning wrongdoing. An employee is protected in law from being subjected to detriment or dismissed on the basis of whistleblowing if they reasonably believe that they are acting in the public interest and they reasonably believe that the disclosure tends to show past, present or likely future wrongdoing falling into prescribed categories.
- 2.7 The DBEIS guidance recommends that employers should have clear policies and procedures for dealing with whistleblowing, which will help demonstrate that the organisation welcomes information being brought to the attention of management. This is demonstrated by the following:
- Recognising workers are valuable ears and eyes – getting information can prevent wrongdoing, which can negatively impact on performance and in extreme cases prevent people from harm and death
 - Getting the right culture – the lack of a supportive culture will be a barrier to disclosures, firstly because workers may fear reprisals and secondly that no action will be taken in response to the disclosure
 - Training and support – training, mentoring, advice and support systems should be in place to ensure workers can approach a range of people within the organisation
 - Being able to respond – prompt investigation and where appropriate feedback is in the interests of the organisation
 - Better control – embracing whistleblowing will ensure that managers have better information to make decisions and control risk
 - Resolving the wrongdoing quickly – the benefits of internal disclosures are that there is an opportunity to act promptly and put right any wrongdoing.

Review of current code

- 2.8 The Whistleblowing Code has been reviewed against the requirements of the Department for Business, Energy & Industrial Strategy's (DBEIS) guidance and code of practice.
- 2.9 The review has considered the best practice set out in the guidance regarding the need for a whistleblowing code of practice. The results of this are set out below:

➤ **Have a whistleblowing policy or appropriate written procedures in place**

The Council has a Whistleblowing Code, which is in its constitution and published on its website. In addition, it has codes of conduct for members and employees which provide guidance and create obligations in relation to the need to act in the public interest, a member officer relations code which sets out the different roles of elected members and officers and provides obligations on officers to raise concerns if they are subjected to improper pressure and an anti-fraud corruption strategy and policy which again provides an obligation on officers to report any suspicious activity. These documents collectively provide a strong ethical framework in which all elected members and officers should act.

➤ **Ensure the whistleblowing policy or procedures are easily accessible to all workers**

The Whistleblowing Code is part of the Council's Constitution, which is published online and has a separate part listing the documents that collectively provide the ethical framework. Since the audit the Council has updated the information setting out what Whistleblowing is, the process and key contacts to report issues or seek advice on the intranet (<http://insite/people/hrpolicies/whistleblowing/>). The Council has also signposted the policy & code on the intranet homepage to ensure that staff are aware of its location.

The Council is currently updating its financial procedure rules which refer to officers' obligation to report any suspicious activity and links to the Council's whistleblowing code as a process which should be used if the employee feels unable to report concerns via their line manager.

➤ **Raise awareness of the policy or procedures through all available means such as staff engagement, intranet sites, and other marketing communications.**

On a monthly basis, the Workforce Development team issue mandatory training compliance reports to all Directors and Associate Directors members to highlight both compliance and non-compliance in their directorates, requesting their support to cascade to the managers and drive up compliance. All line managers have also been given training reporting functionality to monitor their teams progress themselves. In addition the team have flagged the importance of compliance and impact of not doing so with all mandatory training, including Whistleblowing, via a communication message on the intranet and also directly emailing the message to all line managers calling them to action to ensure compliance in their teams.

➤ **Provide training to all workers on how disclosures should be raised and how they will be acted upon**

There is a mandatory training module on whistleblowing with 73% of assigned staff having completed this in the last year. The Council has reviewed its mandatory training approach. As a result, all mandatory training now needs to be refreshed/completed annually rather than every three years. We have recently reassigned training to all staff (on Agresso and temporary or contractor staff reported to us by line managers). In order to ensure that all staff are captured and allocate training a project has been initiated that will integrate the temporary/contractor staff data held on the Matrix (agency database) and feed this into the Council's Agresso system. As Agresso feeds into the Learning Management system, this will ensure there are records for all staff in relation to mandatory training.

➤ **Provide training to managers on how to deal with disclosures**

Mandatory in-person training was delivered to Associate Directors and Group Managers on the essentials of local-government decision-making. This included reference to the employee code of conduct and the member officer relations code, including emphasising the role of an employee and the obligation to raise concerns if officers were subjected to improper pressure or had concerns around decision-making.

➤ **Create an understanding that all staff at all levels of the organisation should demonstrate that they support and encourage whistleblowing**

This is part of a wider piece of work on the Council's values and behaviours and links to elected members and employees understanding their role in terms of creating a "learning organisation". This also links to understanding the Seven Principles of Public Life (Nolan Principles), which includes the principles around integrity, accountability, openness and honesty

Elected members who were newly or re-elected in 2022 attended a welcome induction evening which included an introduction to the Councillors' Code of Conduct, the role of a councillor, registering and declaring interests and member officer relations. This included guidance on how to raise concerns about officers and other elected members.

➤ **Confirm that any clauses in settlement agreements do not prevent workers from making disclosures in the public interest**

All settlement agreements are approved by the Council's HR department and HB Public Law, as the Council's shared legal practice. The template agreement specifically states that the confidentiality obligations in the agreement do not prevent the employee from making a protected disclosure, making a disclosure to a regulator, reporting a criminal offence to any law enforcement agency or assisting with a criminal investigation or prosecution.

- **Ensure the organisation's whistleblowing policy or procedures clearly identify who can be approached by workers that want to raise a disclosure. Organisations should ensure a range of alternative persons who a whistleblower can approach in the event a worker feels unable to approach their manager. If your organisation works with a recognised union, a representative from that union could be an appropriate contact for a worker to approach.**

The Code provides clear guidance on how to deal with a range of concerns. For instance:

(a) Councillors and officers are informed that a breach of either the councillor code of conduct or the local code of conduct for employees should be raised with the Council's Monitoring Officer. There is a generic monitoring officer email account for those councillors or staff who may be unaware of who the monitoring officer is or who prefer to use this official email account.

(b) Existing HR policies and procedures are referred to for resolving HR related concerns – the procedures are listed.

(c) A schedule is provided of the type of concern that should be raised under the whistleblowing code.

The Code advises individuals to raise concerns with colleagues, a line manager or their superior and if they feel unable to do so, to raise it with a chief officer. If the above has been exhausted or is not appropriate, the concern should be raised with the Monitoring Officer or if it relates to the Monitoring Officer or s.151 Officer, with the Chief Executive.

Recommended change: The Code currently lists landline numbers for the Monitoring Officer or the Chief Executive. It would be preferable for email addresses to be used, as this will ensure there is a written record of any complaint as well as ensuring it can be picked up by the individual at a convenient time.

- **Create an organisational culture where workers feel safe to raise a disclosure in the knowledge that they will not face any detriment from the organisation as a result of speaking up.**

This is part of a wider piece of work that is being undertaken as part of the Corporate Plan priorities and recovery themes.

Recommendation: It is also recommended that there is a regular staff survey undertaken which incorporates questions about whistleblowing, including whether staff feel confident that whistleblowing concerns will be dealt with appropriately and taken seriously. This is preferable to the internal audit undertaking a stand alone survey, as whistleblowing should be seen as part of a wider system.

- **Undertake that any detriment towards an individual who raises a disclosure is not acceptable**

The Code contains a section on support that is available for employees raising a concern and others affected. This includes reference to the Employee Assistance Programme, the use of trade unions or regulatory bodies, reference to the Employee Support Group and support that is available if the employee has to give evidence in subsequent proceedings.

- **Make a commitment that all disclosures raised will be dealt with appropriately, consistently, fairly and professionally**

The Code makes clear that managers are responsible for making their staff aware of the policy and procedures, should encourage a positive open working culture for staff and others working at the Council to express their concerns, to take concerns seriously and to guide staff to the most appropriate route.

3. Implications of the Recommendation

3.1 Financial implications

3.1.1 Accepting the recommendation will not involve any additional expenditure.

3.2 Legal implications

3.2.1 Employees and other certain types of workers are provided with protection when whistleblowing under the Employment Rights Act 1996. The protection is from being dismissed or subjected to a detriment because they have made a protected disclosure (blown the whistle). There are a number of conditions which an individual must fulfil in order to qualify for the protection. There must be a disclosure of information which the individual reasonably believes tends to show that one or more of six specified types of malpractice or failure has taken place. The individual must also have a reasonable belief that the disclosure is in the public interest. Further, the disclosure must be made to one of the categories of people listed in the Act, one of which is their employer.

3.3 Risk management implications

3.3.1 Having effective systems in place to allow councillors and officers to raise whistleblowing concerns is a critical part of the Council's risk management systems. By improving the policy, procedures and culture to allow for concerns to be raised and acted upon, the Council will reduce its risks of fraud, being the victim of criminal offending, permitting or allowing a criminal offence to be committed, failing to comply with the law, endangering someone's health and safety, damaging the environment and individuals or organisations deliberately concealing any wrongdoing.

3.4 Environmental implications

3.4.1 None, although damage to the environment is listed as a category of wrongdoing.

3.5 Equality implications

3.5.1 Section 149 of the Equality Act 2010 requires public bodies to pay due regard to the need to

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not;

- foster good relations between people who share a protected characteristic and those who do not.

3.5.2 Failing to comply with an obligation set out in law is covered as a category of wrongdoing. By having in place an effective system for whistleblowing, individuals can raise concern that the Council is not properly complying with its equality duties. In addition by undertaking a staff survey including questions on whistleblowing, the Council will be able to analysis the monitoring data to see if certain groups of staff feel less able to raise concerns than others and put in place an action plan to address this.

4. Comments of other Committees

The Confidential Whistleblowing Code will be considered by the Standards Committee at its meeting on 19th July 2022 and any amendments reported at the Council meeting.

5. Appendices

Appendix 1 – Draft Part 5.5 - Confidential Whistleblowing Code of the Constitution

6 Background Papers

None.