

6 March 2018

Regulatory and Governance Committee

Review of the Council's Whistleblowing Policy

Report of: Head of Legal Services, Monitoring Officer

Wards Affected: All

This report is: Public

1. Executive Summary

- 1.1 This report provides a review of the effectiveness of the Council's current whistleblowing arrangements and sets out proposals arising from a review for ensuring that the Council's whistle blowing arrangements remains effective.

2. Recommendation(s)

- 2.1 **That the Committee consider the draft revised whistleblowing policy attached to this report (Appendix A) and to recommend to Policy, Projects and Resources Committee to approve:**

- (i) the revised Whistleblowing Policy**
- (ii) the details and on-going plans for raising awareness of the Council's whistleblowing arrangements**
- (iii) authority for the Monitoring Officer to make any minor changes to the whistleblowing policy**

3. Introduction and Background

- 3.1 Whistleblowing is the raising of a concern, either within the workplace or externally, about a suspected danger, risk, malpractice or wrongdoing which affects others, where people are encouraged to speak out in a confidential manner without adverse repercussions, confident that their concerns will be taken seriously, and that appropriate action will be taken.
- 3.2 The Public Interest Disclosure Act 1998 as amended encourages individuals to raise concerns about malpractice in the workplace, and provides protection, in certain circumstances, for whistle-blowers.

- 3.3 The Council has in place a whistle-blowing policy, its aim is to foster a culture of openness, probity and safety; and to provide an effective mechanism for council employees and others who work for the council, such as consultants, contractors, casual and agency workers to raise any genuine concerns they may have about alleged malpractice within the organisation.
- 3.4 The types of concerns that can be raised under the Whistleblowing Policy may include:
- conduct which is an offence or breach of a law
 - disclosures related to miscarriages of justice
 - health and safety risks, including risks to the public as well as other employees
 - damage to the environment
 - failure to comply with any legal obligation or regulatory requirements
 - the unauthorised use of public funds
 - breaches of policies, procedures and codes of conduct
 - possible fraud and or corruption
 - unauthorised disclosure of confidential information
 - sexual or physical abuse
 - other unethical conduct
 - the deliberate concealment of any of the above matters

This list is not intended to be exhaustive and merely illustrates the types of issue which can be the nature of concerns.

- 3.5 Under the terms of the Council Constitution the Head of Legal Services and Monitoring Officer is appointed as the Council's Whistleblowing Officer. He has day-to-day operational responsibility for the Council's whistle blowing arrangements and acts as a channel for whistle-blowers to raise their concerns.
- 3.6 During the municipal year 2017-2018 no whistleblowing concerns have been recorded as reported to the Council. There is no evidence to suggest that the Council's whistleblowing arrangements are not robust and effective. However, it is considered good practice for organisations to review the effectiveness of its whistleblowing policy and procedure on a regular basis, to ensure that their whistleblowing arrangements are robust and effective. Also, to assess whether any barriers to whistleblowing exist that may potentially prevent employees and others who work for the Council raising concerns.

4. Review

- 4.1 The Council's whistleblowing policy and procedure was last reviewed in 2013, when the policy was updated to reflect important changes in whistleblowing legislation introduced on 25 June 2013.
- 4.2 A review of the Council's whistleblowing has recently been undertaken, and it is considered that there is scope to improve the overall effectiveness of the Council's whistleblowing arrangements. A number of changes are proposed to the whistleblowing policy and procedure.
- 4.3 The draft whistleblowing policy appended to this report has been revised and updated from the policy and procedure which was adopted by the Council in 2013 as follows:
- a) the policy and procedure has been amalgamated into one document
 - b) details have been added in respect of types of concerns which fall outside the scope of the policy. Also, the HR helpdesk contact details have been updated
 - c) a paragraph has been added setting out the role and responsibilities of the Whistleblowing Officer
 - d) details have been added on how to contact the Whistleblowing Officer
- 4.4 Also a number of actions set out below have been identified:
- it is important to ensure that the reporting of concerns is not due to council employees and those who work for the council not being aware of the Council's whistleblowing policy and the process to be followed. It is recommended to raise awareness and ensure that levels of awareness are maintained across the Council, by regularly publicising on the front page of the staff intranet every six months the Council's whistleblowing arrangements on how to raise a concern.

- it needs to be easy as possible for employees and those who work for the council to raise concerns. The current mechanisms involve phone, paper-based reporting or employees speaking to their line manager or Head of Service. To enable staff and those who work for the Council to raise concerns at any time, it is recommended that a dedicated “whistle blowing” email inbox is established.
- All new council employees and agency workers to receive information on induction on how to raise concerns. The Managers induction checklist to be updated to ensure that the Council’s whistleblowing arrangements are covered as part of the induction process.
- Review of the Council’s e-induction programme with a view to giving greater prominence to the Council’s whistleblowing arrangements.

4.5 The Committee is asked to consider the Whistleblowing Policy, attached at Appendix A, and to recommend to Policy, Projects and Resources Committee to approve the proposed changes to the policy and procedures and also the actions set out in paragraph 4.3 above.

4.6 Following consideration and approval of the revised Policy by the Policy, Project and Resources Committee, the Policy will be made available on the Council’s website and staff interne.t

5 Issue, Options and Analysis of Options

5.1 The proposed changes to the policy and proposed actions can be revised to reflect any comments or recommendations of the Regulatory and Governance Committee.

5.2 The Council is not required by law to have a whistleblowing policy. The adoption of a whistleblowing policy is recognised as good practice. As the Council has such a policy in place, it is appropriate to review it from time to time to keep it up to date.

6 Reasons for Recommendation

6.1 Under the Council Constitution one the functions of the Regulatory Committee is to monitor the Council’s policies and strategies on Whistleblowing.

6.2 The whistleblowing policy is intended to assist Council employees, and others who work for the Council to raise concerns about the wrongdoing or malpractice within the council without fear of reprisal.

7 Consultation

7.1 No further consultation is planned.

8 References to Corporate Plan

8.1 The intention of the Council's whistleblowing arrangements is to assist in the achievement of all corporate and service objectives.

9 Implications

Financial Implications

Name & Title: Jacqueline Van Mellaerts, Interim Chief Finance

Tel & Email: 01277 312 829 / jacqueline.vanmellaerts@brentwood.gov.uk

9.1 No direct financial implications arising from this report.

Legal Implications

Name/Title: Gina Clarke, Corporate Governance Lawyer & Deputy Monitoring Officer

Tel/Email: 01277 312874/gina.clarke@brentwood.gov.uk

9.2 Although there is no legal requirement for the Council to have a whistleblowing policy, it is standard practice for local authorities to have such a policy. The adoption of a whistleblowing policy represents good practice as recommended by the charity Public Concern at Work. The policy is intended to help reduce risk for the Council by avoiding accidents, litigation and possible damage to the Council's reputation. Encouraging staff to raise concerns should enable the Council to take corrective or preventative action where needed.

9.3 There is no general legal duty on employees to disclose wrongdoing, although the courts have in a number of cases developed the implied term of fidelity so as to impose a duty on employees with a managerial or supervisory status to report the wrongdoing of others.

9.4 However, there are some specific statutory whistleblowing obligations: for example, the obligation for workers to notify management of any risk to health and safety under regulation 14 of the Management of Health and Safety at Work Regulations 1999.

9.5 The Council has in place a staff Code of Conduct which sets out standards of conduct that employees should adhere to when carrying out their work and duties. The Code provides that employees should not divulge confidential information obtained in their employment. However, the Code expressly states that this

provision is not intended to preclude or discourage employees from communicating to the Council's Whistleblowing Officer.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

9.6 None.

10 Background Papers (include their location and identify whether any are exempt or protected by copyright)

10.1 Audit Committee 13 January 2013 & 12 March 2013

11 Appendices to this report

Appendix A - Revised whistleblowing policy and procedure.

Report Author Contact Details:

Name/Title: Gina Clarke, Corporate Governance Lawyer & Deputy Monitoring Officer

Tel/Email: 01277 312874/gina.clarke@brentwood.gov.uk