

Subject: Whistleblowing Policy and Operation of the Council's Whistleblowing Function

Date of Meeting: 17 November 2009

Report of: Director of Strategy & Governance

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Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report has been produced at the request of members of the Governance Committee at the meeting held on 22 September 2009 when the issue of whistleblowing, to an external body, was discussed.
- 1.2 The purpose of the report is to brief the Governance Committee on the operation of the Whistleblowing function within the council and to consider whether, in the light of experience, there is a need to make any changes including the introduction of whistleblowing to an external body.

2. RECOMMENDATIONS:

- 2.1 That the Committee note the contents of the report and the operation of the Whistleblowing Policy.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

The Policy

- 3.1 The council introduced a Whistleblowing Policy in 1998 to encourage a culture of openness, probity and safety within the workplace. It was recommended that School Governing Bodies adopted this policy framework to ensure compliance with the Public Interest Disclosure Act 1998 within their schools and all have done so.
- 3.2 Since it was originally introduced, the Policy has been regularly reviewed and updated. The most recent review took place in November 2007.
- 3.3 The Whistleblowing Policy enables council employees and others who work on council premises, such as agency workers and contractors, to raise any genuine concerns they may have about alleged malpractice. They do this secure in the knowledge that questions will be asked and appropriate action taken, and that they will not suffer victimisation from having disclosed confidential information in the public interest.

3.4 The types of concern that are covered by the Whistleblowing Policy include:

- conduct which is an offence or a breach of 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
- the unauthorised use of council funds
- action that is contrary to the council's financial procedures or contract regulations
- possible fraud, corruption or financial irregularity
- practice which falls below established standards or practice
- sexual or physical abuse of clients
- other unethical conduct.

3.5 Considerable effort has been put in to making sure our employees are aware of the policy and that they know how they can raise a concern, if they have one.

3.6 In 2005, the policy was publicised through a widespread poster campaign within council workplaces. In addition, a letter was sent by the Chief Executive to all employees together with a small card giving details of how concerns of alleged malpractice could be raised.

3.7 Since then, employees have been made aware of the policy by:

- making detailed information available via the Wave, latterly through the intranet site dedicated to HR matters, called "People First"
- placing on line messages on the Wave at intervals during the year
- including a summary of the Whistleblowing Policy in the employee handbook that is issued to all new recruits on appointment
- asking managers to brief all new members of staff on the Whistleblowing Policy as part of the induction process
- including a section on whistleblowing and how to raise a concern in the e-induction package that is provided for new staff.

Procedure for raising and dealing with a concern

3.8 Normally an employee is expected to raise their concern with their line manager in the first instance. Agency workers, contractors etc should raise the matter in the first instance with their contact within the council, usually the person to whom they directly report.

3.9 If the employee prefers not to approach their line manager, for whatever reason, he/she may raise the matter with any of the following officers:

- Relevant Chief Officer/Headteacher/Chair of Governors
- Charlotte Thomas, AD Head of Human Resources
- Ian Withers, Head of Audit & Business Risk
- Catherine Vaughan, Director of Finance & Resources or
- Alex Bailey, Director of Strategy and Governance (The Monitoring Officer).

- 3.10 If these channels have been followed but the employee still has concerns, or if he/she feels that the matter is so serious that they cannot discuss it with any of the officers listed above, he/she may contact the Chief Executive.
- 3.11 The employee may raise their concern anonymously, either in writing or by telephone, and will need to provide sufficient information on the background and history of the situation and explain why he/she is particularly concerned about the matter.
- 3.12 Once a concern is raised, the appropriate council manager will make initial enquiries, taking advice from the AD, Head of HR if necessary, to decide whether an investigation is appropriate and if so, what form it should take. The Director of Strategy and Governance, as the City Council's Monitoring Officer, will also be notified that a concern has been raised.
- 3.13 As soon as possible, and in any case within 10 working days of the concern being raised, the employee will receive confirmation that their concern has been lodged and how, as far as possible, it is proposed to deal with it.
- 3.14 Some concerns may be resolved by agreeing action with the employee without the need for investigation. However, in other cases, and depending upon its nature, the matter may:
- be investigated by management, internal audit, the Monitoring Officer or through the disciplinary process
 - be referred for consideration under the relevant procedure e.g. child protection
 - be referred to the Police
 - be referred to the external auditor
 - form the subject of an independent inquiry or
 - be more appropriately dealt with under another council policy e.g. the Anti-fraud and Corruption Policy, the Grievance Procedure, Harassment Policy.
- 3.15 The individual will be kept informed of progress and will receive a full and final response, subject to any legal constraints.

Support available for an employee who wishes to raise a concern

- 3.16 It is important that any employee who has a concern about possible serious malpractice within the council, feels able to come forward and make their concern known. Apart from the internal support that can be provided by the employee's trade union representative or a work colleague, the employee can also access external, independent advice from the charity, Public Concern at Work. To ensure that cost is not a barrier to accessing advice, the council pays an annual fee to this independent charity so that our employees can obtain this free of charge. Alternatively, an employee can seek help by contacting their union lawyer or professional association.
- 3.17 The council will also take all reasonable steps to minimise any difficulties to employees or others raising concerns and provide advice and support should they be required to give evidence, for example at a disciplinary hearing by:
- providing extra support for witnesses or

- offering counselling services where they may be beneficial etc.

Recording and Monitoring

- 3.18 HR maintains a register of all whistleblowing cases. Historically, the number of cases received each year has been very low with numbers in single figures. In the last 12 months, for example, there has been only one concern raised. The matter is currently under investigation.
- 3.19 Although the number of cases is low, enquiries made of other local authorities has shown Brighton & Hove City Council not to be unusual in this respect.

Safeguards to ensure concerns are properly investigated

- 3.20 It is vital that anyone raising a complaint under the Whistleblowing Policy has confidence that their concerns will be taken seriously and rigorously investigated and that they will not be subjected to any victimisation or detrimental treatment as a result of whistleblowing.
- 3.21 The Policy makes provision for complaints, where the nature of the complaint makes it appropriate to do so, to be referred to an external body, for example, the Police or an external auditor.
- 3.22 There are also safeguards to ensure that those complaints investigated internally are properly handled.
- 3.22.1 Concerns relating to alleged fraud and corruption are referred to the Head of Audit & Business Risk for an internal audit investigation. Where possible, the outcome is communicated back to the Whistleblower, currently verbally. The internal audit team has a statutory requirement to comply with the professional standards set out in the Code of Practice for Internal Audit in Local Government. This Code requires the council's auditors to be independent of the activities they investigate and audit. In line with other local authorities, the council's audit function is reviewed every three years by the Audit Commission to ensure that it is performing effectively. As part of the review, an assessment is made of how independently the audit function operates within the organisation. The latest review has just been reported. It concluded, among other things, that the council's audit function has a strong profile within the council and it has a high degree of independence.
- 3.22.2 The Head of Law, Head of Audit & Business Risk and the Assistant Director, Head of Human Resources meet regularly to review concerns raised under the Whistleblowing Policy to ensure investigations are pursued appropriately. There is also an Officers' Governance Board consisting of the Director of Strategy & Governance, the Director of Finance & Resources, the Head of Law, the Head of Audit & Business Risk and the Risk Manager which is responsible for overseeing the operation of corporate governance systems, including the whistleblowing policy.

3.22.3 In addition, an employee who is not satisfied with the outcome to their complaint, or is unhappy about the way their concern has been investigated or otherwise handled, can take the matter direct to an external body such as:

- the Audit Commission
- relevant professional bodies or regulatory organisations
- the Ombudsman
- the Police.

3.23 In the light of the safeguards outlined above, and the provision within the existing Whistleblowing Policy for an individual to whistleblow to any one of a number of external bodies it is not considered necessary, or desirable, to have another distinct external body to deal with complaints.

3.24 This view appears to be shared by other local authorities. None of those in the South East region who were contacted had provision for whistleblowing complaints to be referred to an external body for investigation.

3.25 The Committee might wish to know that the Audit & Business Risk team will be carrying out a review of the operation of the Whistleblowing function in Quarter 3 as part of the agreed 2009/10 Audit Plan. It might be useful for the outcome of that review to be presented to the Committee.

4. CONSULTATION

4.1 The Head of Audit & Business Risk has been consulted on this report and his comments incorporated.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 There are no direct financial implications arising from the recommendations in the report.

Finance Officer Consulted: Peter Francis Date: 26/10/09

Legal Implications:

5.2 All organisations face the risk of things going wrong or of unknowingly harbouring malpractice. To encourage a culture of openness, probity and safety, the council has a Whistleblowing Policy in place which complies with the requirements of the Public Interest Disclosure Act 1998. An effective whistleblowing function is a vital component to ensuring good governance. The legal implications are incorporated within the report.

5.3 The Council must also take the Human Rights Act 1998 into account in respect of its actions but it is not considered that any individual's Human Rights Act rights would be adversely affected by the recommendations in this report.

Lawyer Consulted: Abraham Ghebre-Ghiorghis Date: 28/10/09

Equalities Implications:

- 5.4 The policy applies to all employees.

Sustainability Implications:

- 5.5 The policy and guidance is published on our intranet and hard copy information is only circulated to those staff not connected to the internet.

Crime & Disorder Implications:

- 5.6 The whistleblowing policy is designed to encourage reporting of allegations so that they can be properly investigated and, where they are founded, appropriate action can be taken.

Risk and Opportunity Management Implications:

- 5.7 An effective whistleblowing function will contribute to a climate of trust, probity and safety at work. It is also a safeguard against the council unknowingly harbouring malpractice.

Corporate / Citywide Implications:

- 5.8 It is vital that a public body has in place a mechanism for its staff and others who work on its premises such as contractors and agency workers to be able to raise concerns about alleged malpractice, secure in the knowledge that something will be done and that they will not suffer victimisation from having raised the issue.

SUPPORTING DOCUMENTATION

Appendices:

None

Documents In Members' Rooms

None

Background Documents

None