

Title of report: Whistleblowing policy review

Meeting: Audit and Governance Committee

Meeting date: 21 November 2022

Report by: Monitoring Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards)

Purpose

To consider the operation of the Council's current Whistleblowing Policy and to seek approval for a further review of the policy to be brought to the committee's next meeting on 30 January 2023.

Recommendation(s)

That the committee:

- (a) Considers the Whistleblowing Complaints to date;**
- (b) Approves a further review of the current Whistleblowing Policy and that the outcome of this review and the new policy is presented for approval by the committee at its meeting on 30 January 2023;**
- (c) Makes any relevant recommendations to Officers arising from this report.**

Alternative options

1. To not review the policy, this is not recommended as it is a function of the committee to maintain an overview of this policy.

Key considerations

2. The Council's Whistleblowing Policy was last reviewed and approved by this committee on 24 November 2021 ([minute 58 of 2021/22 refers](#)). It is generally good practice to periodically review important policies to reflect learning from the practical operation of the policy and to align the policy to national and organisational changes and context. The key aim is to have a

Whistleblowing Policy that staff and the Council have confidence in and one which improves the way the Council operates from an ethical and legal perspective.

3. Having undertaken an internal review of the operation of the Whistleblowing Policy, the Monitoring Officer, through the Legal Department, identified the need for a review of the policy. Subsequently, an external expert Investigator, formally engaged to investigate a Whistleblowing disclosure, separately recommended a review of the policy.
4. The current Whistleblowing Policy has numerous strengths. The Council's intent in supporting Whistleblowing is clear and explicit and the processes that underpin the policy are established and have been operated fairly consistently. However, there is some room for improvement. Further, the policy was developed with Member engagement and support and has been actively used by Whistleblowers to raise issues of concern to them. However, like most policies there is a need to regularly nuance, improve and develop the policy and supporting processes to better serve those that make disclosures and for those administering, investigating and monitoring disclosures.
5. It should be recognised and acknowledged that Whistleblowing can be very stressful for those people making disclosures because power relationships between managers and those managed can raise concerns about victimisation and potentially job losses as a result. An effective Whistleblowing Policy should therefore be supportive, protect staff against unfair retribution and allow and facilitate Whistleblowing disclosures anonymously and/or to an independent body outside the council. One facility supported in the 2021 review was the ability for staff to make disclosures to a senior officer at Buckinghamshire Council. Such disclosures could be anonymous and in this financial year 2 disclosures have come via this route.
6. The other way the Council could support independence in the disclosure process is for the Council to enter a contract with an external specialist Whistleblowing facility, colloquially known as a "Whistleblowing hotline". This facility would support and allow anonymous disclosure, but with the additional advantage that it would be seen as being more independent than reporting matters to another Council. Also these facilities deal with this specialist area on a day to day basis and as such are better placed to support Whistleblowers at the time of the disclosure and in relation to the tracking and monitoring processes going forwards. These services do however come at a cost to the Council. An analysis of the costs will form part of the review proposal. An alternative to the paid provider approach could be a hotline to our internal auditors who are also well placed to structure a response and investigative processes. This option will also be considered as an option for Committee to consider.
7. Any policy review will also consider the supporting processes to ensure that the whole area is dealt with effectively, efficiently and proportionally end to end. The review will consider how best to present lean processes, which are simple to understand, effective and supported by clear and practical guidance including flow charts. The policy review will take into account data available to the Council such as relevant comments from the recent employee survey, together with the type of training and compliance processes with regard to mandatory training.
8. It is important to acknowledge that employee grievances follow separate processes as they deal with the employer/employee relationship. This is a separate matter, involving different legal rights and obligations and should not be conflated with Whistleblowing processes.
9. The committee is being asked to support the Monitoring Officer undertaking a review of the current Whistleblowing Policy and to report options for the committee to consider and approve at its meeting on 30 January 2023. The review will be holistic and will consider support processes, including administration of the process and training.
10. The Whistleblowing figures to 19/20 were reported to the Committee at its meeting on 23 November 2021 A review of the use of the policy since 2017 and trends are set out below:

Municipal year	Total number of complaints	Risk identified				
		Make you feel uncomfortable in terms of known standards	In breach of the officer or councillor code of conduct	Fall below established standards of practice that the council subscribes	Are not in keeping with the council's constitution and policies	Improper
17/18	5	1	1	1	1	1
18/19	11	3	3	3	2	0
19/20	8	2	0	0	3	3
20/21	6	3	0	2	1	0
21/22	8	4	1	2	1	0
22/23	6	0	0	6	0	

11. The data for 22/23, in terms of the category of risk identified, arises from an Officer assessment. This is because the disclosures do not clearly categorise the complaints on the face of the Council's complaints form, which contains the categories, but which came through other routes, for example an anonymous route or via the Ofsted Whistleblowing hot line where forms were not completed.
12. Of the complaints for 22/23, 3 went out to external investigators, 2 of which have been concluded with no finding of breach and Officers are considering the investigation report in relation to the third one. Any recommendations coming out to the Investigations, even where there is no finding of breach, will after careful consideration be accepted and implemented unless there are very good reasons not to do so.

Conclusion

13. It is recommended that the current policy is reviewed by Officers and a revised policy is presented to this committee for consideration at its meeting on 30 January 2023.

Community impact

14. Herefordshire Council is accountable for how it uses the resources under its stewardship, including accountability for outputs and outcomes achieved. In addition the council has an overarching responsibility to serve the public interest in adhering to the requirements of legislation and government policies. It is essential that, as a whole, we can demonstrate the appropriateness of all our actions across all our activities and have mechanisms in place to encourage and enforce adherence to ethical values and respect the rule of law. The confidential reporting code is part of the council's governance arrangements and helps safeguard public funds. Periodic reviews to ensure the code remains current, fit for purpose and effective helps the council to meet the principles within its code of corporate governance

Environmental impact

15. There are minimal environmental impacts in the Whistleblowing Policy though of course any environmental concerns can be raised under the policy.

Equality duty

16. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

17. The review of the code will seek to ensure that, the council fully complies with the public sector equality duty.

Resource implications

18. The role for the senior Officer from Buckinghamshire Council, required a service level agreement detailing the support to be provided payable on an hourly rate. The proposed review will consider whether this provision continues or whether it should be replaced by an external Whistleblowing Hotline. The costs related to both options will be presented with the proposed review in January 2023.

Legal implications

19. None specifically arising from the recommendations.

Risk management

20. Failure to maintain a legally compliant whistle blowing policy could contravene employment law and leave the council open to challenge with associated financial penalties and bring the council into disrepute.

Consultees

21. As set out in the report.

Appendices

None.

Background papers

Confidential Whistleblowing Disclosure files.