

Title of report: Whistleblowing - Internal Audit Findings and Report

Meeting: Audit and Governance Committee

Meeting date: Tuesday 24 October 2023

Report by: Head of Legal Services and Deputy Monitoring Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose

A report to update the Committee on Internal Audit finds on the operation of the Whistleblowing Policy.

Recommendation(s)

That:

- a) **That the Committee note the findings of Internal Audit; and**
- b) **Notes the changes in the operation and reporting underpinning the Whistleblowing Policy.**

Alternative options

1. There are no alternatives. The Council has committed to operating a Whistleblowing process and correctly reviews and improves both the Policy and process as necessary.

Key considerations

2. The Audit and Governance Committee recently revised and adopted the Whistleblowing Policy (WP) on behalf of the Council. At the same meeting the Committee heard that the process was being audited by the Council's internal audit function and requested an update as to the outcome.

SWAP Audit

3. The audit was performed by the Council's internal audit partner SWAP between 09 May 2023 and 28 July 2023. The response to the audit was provided by the Council's Head of Legal Service and Governance solicitor.
4. The terms of the audit is included as Appendix 1 after discussion with previous chair/deputy chair of the Committee. This included:
 - a. Visibility and content of the policy;
 - b. Response procedures;
 - c. Staff training and compliance;
 - d. Security of case files; and
 - e. Corporate reporting requirements.
5. The quality of the Council's response was limited by:
 - the time period covered by the audit covered matters that were up to two years prior to the current financial year;
 - the limited role that the governance team plays in the process – only to ensure that complaints are received and investigated by the relevant parts of the Council;
 - there were no Council officers within the governance function that dealt with the matters for the period in questions; and
 - the high number of staff turnover and the record keeping were such that sometimes only incomplete information was available for disclosure to the auditors.
6. The outcome to the audit was issued on 10 July 2023. There were 4 findings as a result of the review:
 - a. Whistleblowing (WB) awareness: audit noted the training in WB but considered that there should be further communications to raise the awareness of the policy with officers. It was agreed that reminders would be issued in the CEO updates but this would be limited to at least an annual update so not to lessen its impact. This was done on 21 July 2023 and is scheduled for January 2024 (thereafter at 12 month intervals). This action was considered to be complete by audit close.
 - b. Corporate Tracker: audit noted that there was a tracking of cases but this was incomplete for the period in question. There was no indication that matters hadn't been completed but this was not registered in full on the tracking system. It was noted that the tracker was now fully completed since February 2023. This action was considered to be complete by audit close.

- c. Response Procedures: the previous WP did not provide guidance on process to the individual officers in reviewing a WB complaint. The new WP provides assistance but also guidance on how to obtain advice – no single policy could provide advice on every different type of complaint that could be received and as such the policy gives the officers guidance but also gives them a means to seek assistance should they need it. This action was considered to be complete by audit close.
- d. Access to the shared account: the access authorisations held by governance did not match the authorisations confirmed by IT. Further, individuals with authorised access were absent from the list provided by IT. Immediate action was taken to remove access to the lawyers whose current duties did not include management of the WB process and for IT to confirm that access was limited to those intended. This action was considered to be complete by audit close.

7. The Assurance Opinion to the Audit is considered to be reasonable. Changes have been made to the operation of the process and a new procedure that means that these Findings should not be repeated.

WB Update

8. The number of WB referrals made to the Council were 6 in 2020/21, 9 in 2021/22, 14 in 2022/23 and 3 in 2023/24.
9. As mentioned in the Audit findings, the tracker for April 2021 to March 2023 is incomplete as to its outcomes but there are no indications that any WB referrals remain outstanding. A number of referrals were refused under the WB policy as they appeared to be matters more properly considered under the grievance procedure (where WB applies in any event where the public interest disclosure is made).
10. In the current year, the current position on the referrals are:
- e. WB2023001 - Referral accepted on 01 June 2023 – investigated and upheld in part. Learning for the relevant team and WB has agreed with the outcomes on 24 August 2023.
 - f. WB2023002 - Referral accepted on 28 July 2023 – currently being investigated.
 - g. WB2023003 – referral received and refused 18 Sept 2023 – refused as does not relate to activities or functions of the Council. The referrer has been signposted to the correct agency and Council has offered to make referral.

Future Reporting

11. An annual report on the operation of the WP will be brought to the Committee (nearest to July meeting) to give members oversight of the operation of the policy.
12. The operation of the referral and monitoring process of the WP will be centralised in a single member of staff and it will be part of their duties to ensure that the process is as efficient as possible. The Head of Legal and a second governance lawyer will be involved to ensure oversight and that legal advice is available as part of any investigation process.

Community impact

13. 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

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

Equality duty

15. 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.
16. The WP is open to all employees. Many complaints are raised on an anonymous basis. Where a matter is raised and if it relates to an equality issue, then it would be investigated by the relevant department as part of the complaint.

Resource implications

17. There are no resource implications to this revised policy.

Legal implications

18. Legal implications are set out in the body of this report.

Risk management

19. 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

20. None.

Appendices

Appendix 1 - SWAP Terms of Reference for Whistleblowing Audit

Appendix 2 – SWAP Findings for Whistleblowing Audit

Background papers

None identified.

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published

Governance	Jen Preece	Date 26/09/2023
Finance	Click or tap here to enter text.	Date Click or tap to enter a date.
Legal	Sean O'Connor	Date 25/09/2023
Communications	Click or tap here to enter text.	Date Click or tap to enter a date.
Equality Duty	Click or tap here to enter text.	Date Click or tap to enter a date.
Procurement	Lee Robertson	Date 29/09/2023
Risk	Kevin Lloyd	Date 25/09/2023

Approved by Click or tap here to enter text. Date Click or tap to enter a date.

[Note: Please remember to overwrite or delete the guidance highlighted in grey]

Please include a glossary of terms, abbreviations and acronyms used in this report.