

BRECKLAND COUNCIL

Report of the Head of Internal Audit to the JOINT CONSULTATIVE COMMITTEE – 3 February 2011 STANDARDS COMMITTEE – 15 February 2011 GENERAL PURPOSES COMMITTEE – 16 February 2011 AUDIT COMMITTEE – 25 March 2011

Whistleblowing Policy

1 Purpose of Report

- 1.1 The Whistleblowing Policy was last reviewed and approved by the Council in 2008. It has subsequently proved timely to revisit the arrangements in place, in conjunction with a review of the Counter Fraud Strategy and the formulation of a new Anti Money Laundering Policy to ensure that existing and new Policies/Strategies are fully aligned and appropriately support the ongoing development of the Council's anti fraud and corruption culture.
- 1.2 To aid the Committee's review of the attached policy, we have provided the Institute of Chartered Accountants' guidance to private sector Audit Committees on whistleblowing arrangements by way of a background paper. At **Appendix 1** to the report, we have also included additional information designed to give further clarity and guidance in a public sector context.
- 1.3 It has been determined that this policy should be reviewed by the Joint Consultative Committee, the Standards Committee and the General Purposes Committee prior to its submission to the Audit Committee for its approval. This is a similar route to the protocol followed when the previous Whistleblowing Policy was taken forward, albeit that since then, the Audit Committee has been formed, and charged with oversight of the Council's arrangements for Fraud and Corruption, of which this policy forms a core element.

2 Recommendations

- It is recommended that the Joint Consultative Committee, Standards Committee and General Purposes Committee:
- 2.1 Review the Content of the Whistleblowing Policy, putting forward any enhancements where appropriate, ahead of presentation of this policy to the Audit Committee for formal approval.

Note: In preparing this report, due regard has been had to equality of opportunity, human rights, prevention of crime and disorder, environmental and risk management considerations as appropriate. Relevant officers have been consulted in relation to any legal, financial or human resources implications and comments received are reflected in the report.

3 Information, Issues and Options

- 3.1 Background
 - 3.1.1 Following the Public Interest Disclosure Act, 1998 (PIDA), organisations were required to put in place appropriate arrangements to ensure that those who had concerns about matters that were in the public interest had safe avenues with which to raise these concerns. Although it is not compulsory, most organisations have elected to fulfil these obligations through introducing a Whistleblowing Policy.
 - 3.1.2 Breckland Council has had a Whistleblowing Policy for a number of years; this policy was last rewritten in 2007/08 and approved by Full Council in 2008. The policy sets out that the Council is keen to encourage staff, councillors, partner bodies and members of the public to raise concerns that they have, in the knowledge that the Council will aim to ensure they face no reprisal or victimisation as a result of taking such action.
 - 3.1.3 Subsequent to the last review of the Whistleblowing Policy, there have been a

number of developments in this area which have fed into the current Policy review. In particular, the British Standards Institute issued a “Whistleblowing Arrangements Code of Practice” in late 2008, which sets out practical guidance for organisations on how to manage whistleblowing arrangements in practice. In addition, the Deputy Audit Manager attended a workshop run by Public Concern at Work (a charity providing free and impartial advice on whistleblowing to those who have concerns), which provided some focus on a “model” whistleblowing policy and gave the opportunity to scrutinise Breckland Council’s existing arrangements in relation to whistleblowing. We have also made changes to the policy following research of other Councils’ arrangements, and in light of experience of other Councils in using their policies and processing whistleblowing concerns raised.

3.1.4 Historically, the Council has had few whistleblowing cases reported under the Whistleblowing Policy. However, the consequences of the failure to act should issues be reported can be very significant; the Council has a duty both to respond to matters that are in the public interest and to protect its employees.

3.1.5 To support the Committee in the review of the revised policy, we have provided a background paper produced by the Institute of Chartered Accountants on the Role of the Audit Committee in Whistleblowing Arrangements. As this is tailored to the private sector, we also provided further guidance and a public sector context in **Appendix 1**. Although it is recognised that the papers are orientated towards Audit Committees, this information is also included here as it serves as useful background and context to assist all relevant committees with their own review of the policy.

3.2 Issues

3.2.1 The revised policy is attached at **Appendix 2**. The policy overall has remained fairly similar in terms of scope, coverage and layout. However, the changes that have been made have been subject to careful consideration, and as such the supporting rationales for the significant changes are outlined below; these changes support the proposal raised to approve the policy.

- Previously, the policy highlighted 4 areas where concerns could be raised that were outside of the scope of the legal framework (i.e. abuse of position, unauthorised use of Council money, failing to meet professional standards and deliberately not keeping to a Council policy). The policy now only formally identifies those cases that are set out in the Public Interest Disclosure Act, but does include a paragraph which encourages people to raise any concerns they may have as soon as they are reasonably aware. Other aspects previously identified generally either fall within the scope of a different Council policy, or because they are outside of the scope of the PIDA legislation we are not bound to respond or react in the same manner.
- There is greater clarity on what is not covered by the policy, and in particular we identify that bullying and harassment is dealt with by the Harassment and Bullying Prevention Policy.
- The wording with regards malicious complainants has been altered, partly in regard to the fact that this is one of the most difficult elements of the law to interpret in practice. Previously, the policy included a paragraph that where an employee acts in a malicious way, the protection outlined above will not apply and the employee may be subject to disciplinary action. However, subsequent guidance by the British Standards Institute indicates that although an employee may be acting maliciously, it is not necessarily an untrue allegation, and as such a policy should restrict the scope of action to where a concern is found to be false and raised in bad faith. Further, in the examples previously cited in the policy, someone may leak information to the press because they feel the Council would not act appropriately to the incident – not out of maliciousness. As a result, paragraph 5.1 now defers to the wording used by Public Concern at Work in their model policy that we do not extend assurances to those who maliciously raise a matter they know is untrue, which is again consistent with paragraph 8.2 with regards “untrue allegations”.
- The assurances we provide to third parties has been clarified. We would want contractors and other stakeholders to raise issues they experience; however, we

cannot provide assurances that they would not be victimised by third parties as a result.

- We have now created clear and separate guidance to members of the public, contractors and councillors and partner organisations who have a concern.
- One of the major changes has been the removal of the section on how the Council will respond. This is being replaced with a formal procedure which will outline the Council's response in more detail than was previously feasible within the policy. Staff and members will be able to access the procedure via the intranet upon formal approval of the updated policy.
- The information on raising issues with third parties has been expanded to give more guidance to those who choose to undertake this route, and places more emphasis on using the internal avenues in the first instance.
- The responsibility of the policy has been changed in light of the recent corporate restructures and following research of other Council policies and best practice guidance; as such, the Deputy Chief Executive, as the Council's Monitoring Officer, has been identified as the Council's Whistleblowing Officer.
- A annual and triennial review structure for the policy has been formally established; this revisiting of the policy is in line with both the previous, and current routes utilised for policy development and approval.
- Finally, the contact details for all internal and external parties has been separately produced as an Appendix to the policy. This enables a more ready review and update of such details to ensure they remain current. Due to the ongoing changes in the Council's management structure at the time of presentation of this policy to this Committee, final details confirming all responsible officers will be updated when the policy is formally adopted.

3.3 Options

3.3.1 None presented, although the Committee may wish to suggest any changes ahead of Council adoption.

3.4 Reasons for Recommendation(s)

3.4.1 It is important to ensure that appropriate arrangements are in place to encourage those who have concerns to raise them in a confidential and safe manner. This policy fulfils that requirements, and ensures the Council is complying with good practice in line with the Public Interest Disclosure Act.

4. Risk and Financial Implications

4.1 Risk

4.1.1 There are significant risks posed to the Council if people cannot safely raise concerns, and if the Council fails to respond to those concerns in an appropriate manner.

4.2 Financial

4.2.1 None

5. Legal Implications

5.1 The Public Interest Disclosure Act 1998 does not require authorities to have a whistleblowing policy, however in doing so the Council is ensuring that it is discharging its duties under the legal framework.

6. Other Implications

a) Equalities: The Council's whistleblowing policy ensures that it does not victimise

or discriminate against any employee who raises a public interest concern within the organisation.

- b) Section 17, Crime & Disorder Act 1998: Having a whistleblowing policy encourages people to raise concerns that may be of a criminal nature. As such, by approving the policy, the Committee is supporting the Council in complying with the provisions of the Act in preventing crime in its area.
- c) Section 40, Natural Environment & Rural Communities Act 2006: Although the policy does not directly impact upon diversity, the Public Interest Disclosure Act 1998 includes a provision for people to raise protected disclosures in respect of unnecessary damage to the environment.
- d) Human Resources: Raising concerns can have several HR implications, including disciplinary procedures being required against wrongdoers, and providing support networks for those raising concerns.
- e) Human Rights: The Human Rights Act 1998 is inevitably considered whenever an investigation is undertaken into a whistleblowing concern, and in respect of the person raising the concern.
- f) Other: None.

7. Alignment to Council Priorities

- 7.1 Encouraging people to raise concerns of potential wrongdoing in a safe manner helps to support the Council create a culture that supports the achievement of corporate aims and objectives.

8. Ward/Community Affected

- 8.1 All

Background Papers

ICAEW: Guidance for Audit Committee members – Whistleblowing Arrangements

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Key Decision Status (Executive Decisions only):

Non-Key Decision

Appendices attached to this report:

Appendix 1: Guidance for the Committee on reviewing whistleblowing arrangements

Appendix 2: Whistleblowing Policy