

## Guidance to the Audit Committee on Whistleblowing

### Introduction

1. In 2004, the Institute of Chartered Accountants (ICAEW) produced a paper titled “Guidance to Audit Committees: Whistleblowing Arrangements”. This paper is very much orientated towards Committees of commercial organisations and provides helpful background and guidance that public sector committees may equally find useful. We have therefore included the ICAEW paper as a background paper to this Committee report.
2. The CIPFA / SOLACE framework for governance in local government refers to the need for authorities to have suitable whistleblowing arrangements in place. “Arrangements” goes beyond having a policy; it entails the Council having suitable practices for the reporting of concerns and to investigate matters raised, as well as ensuring that those charged with Governance have a suitable awareness of the Council’s provisions for whistleblowing.
3. The Combined Code of Corporate Governance (used to guide private sector governance arrangements) succinctly outlines what the Audit Committee should contribute to the whistleblowing process:

*“The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee’s objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action”*

### Background to Whistleblowing

4. The legislative framework for Whistleblowing in England is the Public Interest Disclosure Act (1998). In effect, this is an extension of the Employment Rights Act. The purpose behind the act is to provide protection to those employees who raise concern, and ensures that they are not unfairly treated as a result of raising their concern.
5. This places a duty on the Council to ensure appropriate procedures are in place to allow people to raise concerns and appropriately handle these concerns. The Council therefore has to consider who should receive concerns raised, how it can maintain the confidentiality of a whistleblower, and how investigations can be effectively managed.
6. Whistleblowing can be a very traumatic process for all involved. In general, the raising of such concerns is only done by those who have a

genuine belief that there is untoward behaviour occurring – something that can be very difficult to do, particularly where it involves workplace colleagues or friends, or line management. There can also be the case where a malicious allegation has been raised, which can then place the accused under scrutiny and stress.

### **The Council's response**

7. The duty to protect whistleblowers extends to the whole Council, including Members who may receive concerns raised by staff or members of public and need to ensure they know how to proceed with these. Further, inappropriately reacting to whistleblowing concerns raised can lead to significant risks to the Council, for example:
  - Nothing is done about the concern – the Council could be exposed to fraud or inappropriate / untoward / corrupt behaviour etc
  - The whistleblower raises their concern with an outside party (e.g. Inspectorate or media) – this could lead to damage to the Council's reputation, fines being awarded etc
  - The whistleblower seeks damages as a result of unfair treatment / failure to investigate – the Public Interest Disclosure Act places no restriction on the level of damages that can be awarded to employees unfairly treating employees who raise concerns. An employee at Redcar and Cleveland Council was recently awarded £442,466 as a result of being sacked for expressing a concern that an internal appointment had not been properly advertised. Walsall Council have also paid a sum to a former employee of nearly £600,000.
8. The ICAEW believes that whistleblowing is an important part of the control environment, and can only be effective where two cultural obstacles can be overcome – where employees see the policy as a valuable contribution to the efficiency and success of the Council, as well as their own future; and secondly, where they believe their concerns will be fairly treated.
9. The Council has sought to overcome these obstacles in a number of ways. Staff are provided guidance in their induction on what to do if they have a concern; the Council has a long-established whistleblowing policy; ongoing training is provided to staff on corporate fraud and whistleblowing, and the Council is a subscriber to Public Concern at Work, who provide free and impartial advice to those who have concerns.

### **The Audit Committee's role**

10. Fundamentally, the Audit Committee should seek to gain assurance that proper arrangements are in place. The main function is high-level, however if you believe that there are inadequate / inappropriate arrangements in place more detailed review may be required (you may wish to refer to the checklist below to identify areas where you feel there

are inappropriate arrangements at present). As the ICAEW states, “it is not the duty of the Committee to be responsible for arrangements or their operation” – to do so would be to remove the independent oversight role that the Audit Committee so essentially provides.

11. The ICAEW have also set out a number of “key elements” to effective whistleblowing arrangements, along with a set of questions the Committee should be considering to ensure it has assurance over the Council’s arrangements. Management have sought to answer these questions, and thus provide assurances to the Committee that arrangements are effective, see below for more information.

**Key Questions for the Audit Committee to consider on effective whistleblowing arrangements**

| <b>Question</b>   | <b>Management Response</b>   |
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| <i>Does the board and senior management set the right tone through its policy statements, communications and general actions?</i>                                   | The Whistleblowing Policy encourages people to raise concerns without fear of reprisal. Through providing training at the induction stage, and ongoing training, the Council aims to make it clear to employees that it welcomes and supports concerns being raised. |
| <i>Have particularly serious allegations been brought to the attention of the entire Council?</i>   | No serious allegations have been raised, and thus these have not been raised to the Council.   |
| <i>Is there a mechanism to identify changes in legal and regulatory requirements?</i>   | The Council has professionally qualified legal staff, and a number of staff receive key public sector documents that would highlight changes in legislation. Further, the Council would be made aware through its subscription to Public Concern at Work.            |
| <i>Do there appear to be sensible written policies and procedures that are appropriate to the Council?</i>  | The Whistleblowing Policy has been prepared with due regard to the legislative framework, British Standards Institute Guidance, the Public Concern at Work model policy, and also benchmarked against good practice identified at other Councils.                    |
| <i>Is there evidence that these policies have been communicated to new and existing employees, consultants and temporary staff?</i>                                 | The Policy is published on the website and the intranet. Staff are made aware at induction, and ongoing training is provided.  |
| <i>Is there evidence that these policies have been communicated to staff of all levels?</i>   | See above.   |
| <i>Do the arrangements include the provision of timely and constructive feedback?</i>   | The Policy includes a requirement to provide feedback to whistleblowers on a timely and ongoing basis throughout the whistleblowing process.   |
| <i>Are staff aware of the availability of confidential advice either through a confidential internal adviser or an outside body such as Public Concern at Work?</i> | The Policy includes contact details for Public Concern at Work. Staff are also provided with these details in training, and in the past staff have been provided with whistleblowing   |

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|  | guidance cards which include sources of assistance and support.   |
| <i>Have wrongdoers been dealt with in an appropriate manner, in accordance with employment law and contracts of employment?</i>  | There have not been any whistleblowing concerns that have resulted in the wrongdoer requiring treatment. One fraud issue, recently identified outside of the whistleblowing framework, and proven after investigatory work, resulted in a staff member being dismissed.   |
| <i>Is there evidence that the Council regularly considers whistleblowing procedures as part of its review of the system of internal control?</i>   | The Whistleblowing arrangements were last scrutinised in 2008, and are being scrutinised again at present. The arrangements are viewed as sufficient, and therefore have not been raised as an issue within the Annual Governance Statement.  |
| <i>Are there issues or incidents which have otherwise come to attention which the Council would have expected to have been raised earlier under the company's whistleblowing procedures?</i>   | We would not have expected the other fraud issue raised to have ordinarily been identified through the whistleblowing process.  |
| <i>Where appropriate, has the internal audit function performed any work that provides additional assurance on the effectiveness of the whistleblowing procedures?</i>   | The Audit Management Team have received additional training in whistleblowing procedures. However, reviewing the effectiveness of these procedures is inherently limited by the fact that the Council has not had whistleblowing concerns raised; Internal Audit have thus reviewed the procedures now being drafted and are satisfied these are sufficiently robust. |
| <i>Are there adequate procedures to track the actions taken in relation to concerns made and to ensure appropriate follow-up action has been taken to investigate and, if necessary, resolve problems indicated by whistleblowing?</i> | The procedures now developed for whistleblowing should ensure that outcomes are appropriately followed-up and resolved.   |
| <i>Are there adequate procedures for retaining evidence in relation to each concern?</i>   | The Whistleblowing policy identifies the requirements for retaining such documentation.   |

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| <i>Have confidentiality issues been handled effectively?</i>  | This is a core consideration within the Whistleblowing policy.  |
| <i>Is there evidence of timely and constructive feedback?</i>   | There is an expectation this will be given as part of the Whistleblowing Policy.  |
| <i>Have any events come to the committee's or Management's attention that might indicate that a staff member has not been fairly treated as a result of their raising concerns?</i> | Management are not aware of any such concerns being raised.   |
| <i>Is a review of staff awareness of the procedures needed?</i>   | Staff have recently been provided with training in arrangements. Consideration could be given to this (e.g. through surveying staff) however it would be of greater use to undertake this when training has not recently been provided. |