

Corporate Policy and Strategy Committee

10.00am, Tuesday 11 June 2013

Revised Whistleblowing Policy

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| Item number | 7.2 |
| Report number | |
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Executive summary

Revised Whistleblowing Policy

Summary

This report sets out officer recommendations following a review of the “Public Interest Disclosure Policy” which was put in place in 2000 and seeks the approval of the Corporate Policy and Strategy Committee to replace this with the attached “Whistleblowing Policy.”

The Corporate Policy and Strategy Committee are asked to note that provisions in the current “Public Interest Disclosure Policy” are sound. The purpose behind replacement of the current arrangements is to build upon what presently exists with enhanced arrangements.

There is some disquiet at using the term “whistleblowing” because it may have negative connotations however we feel that this terminology is instantly recognisable given it is common parlance; does what it says on the tin; and also a survey of other local authorities confirms they too use this terminology.

Recommendations

The Corporate Policy and Strategy Committee is asked to:-

1. note the contents of this report including the Revised Whistleblowing Policy at Appendix 1 and the terms of the Petition at Appendix 2; and
2. approves the proposals for a Revised Whistleblowing Policy, and instruct the Director of Corporate Governance to implement its terms including:-
 - 2.1 a one year pilot “Helpline” at a cost of £5,130 per annum;
 - 2.2 to regularly provide a high level summary of the issues raised and the actions taken to the Corporate Policy and Strategy Committee; and
 - 2.3 the development of a joint implementation plan once approval is confirmed.

Measures of success

Employees report suspected wrongdoing as early as possible in the knowledge that (a) their concerns will be taken seriously and investigated appropriately, and (b) they will be protected from victimisation.

Financial impact

It is recommended that a pilot independent whistleblowing helpline is set up for one year at a cost of £5,130 per annum. The use and efficacy of this mechanism will be closely monitored during the first year and a report will be sent to the Corporate Management Team prior to the expiry of the pilot with proposed recommendations as to its continuance.

Equalities impact

There are no direct equalities implications arising from this report.

Sustainability impact

There are no sustainability implications arising from this report.

Consultation, engagement and implementation

The Whistleblowing Policy has been drafted by officers taking into account existing provisions for whistleblowing, the current legislative position, and with the intention of improving policy arrangements. An audit of other local authority policies has also taken place.

Following the Petitions Committee on 18 April 2013 the Director of Corporate Governance, in consultation with the Corporate Management Team, were asked to note the terms of the petition “A safer Mechanism for reporting Edinburgh Council Mismanagement” in final consideration of the draft policy on this subject. The terms of the petition can be found at Appendix 2 and its proposals are addressed further at paragraph 2.12 to 2.13 of the Report.

The CMT approved the draft policy on 1 May 2013.

Consultation with the Trade Unions has taken place to secure a local agreement.

A joint implementation plan will be developed which will include:

- Securing a helpline provider;
- Arrangements concerning Whistleblowing in induction programmes;
- An ‘e-learning’ package; and
- Communications planning for the launch and implementation of the policy and helpline.

Background reading / external references

There is no background reading or external references arising from this report.

Revised Whistleblowing Policy

1. Background

- 1.1 This report proposes the adoption of a Whistleblowing Policy which replaces the current Policy on Public Interest Disclosure in order to strengthen existing whistleblowing procedures and to meet the requirements of the Public Interest Disclosure Act 1998 (“the Act”).
- 1.2 The Corporate Policy and Strategy Committee are asked to note that provisions in the current “Public Interest Disclosure Policy” are sound. The purpose behind replacement of the current arrangements is to build upon what presently exists with enhanced arrangements.
- 1.3 Following recent high profile cases, officer and member initiatives and the petition for an independent whistleblowing hotline a number of changes are now proposed to the existing procedure to implement the revised Whistleblowing Policy.
- 1.4 The intention behind these revisions is to ensure the Council’s Whistleblowing Policy:-
 - 1.2.1 is more accessible for those employees who wish to make a qualifying disclosure;
 - 1.2.2 is aligned to those areas of malpractice that qualify for protection in terms of the Act;
 - 1.2.3 clarifies arrangements where employees also have a right of recourse to alternative Council policies and procedures;
 - 1.2.4 clearly delineates those with responsibilities under the policy, including the introduction of the role of the Whistleblowing Officer;
 - 1.2.5 provides clarification on the role of the Monitoring Officer and that of Employees to ensure that responsibilities are clearly explained;
 - 1.2.6 clarifies the timescales for action on the part of the Whistleblowing Officer;

- 1.2.7 simplifies the stages involved in dealing with a disclosure to ensure that those accountable for its operation know what is expected of them as matters progress; and
- 1.2.8 makes provision for a pilot external telephone support service known as a 'Whistleblowing Helpline'.

2. Main report

- 2.1 An initial risk assessment was undertaken by HR to determine the distinction between existing policies and procedures and the terms proposed in the draft Whistleblowing Policy.
- 2.2 This assessment has involved reviewing current policies and procedures, and assessing equivalent whistleblowing arrangements.
- 2.3 Of the 29 local authorities where equivalent whistleblowing policy arrangements are in place, only one has an arrangement for a confidential "helpline".
- 2.4 The Council already has in place a procedure to allow whistleblowing. It is recommended that the current policy on Public Interest Disclosure, drafted in 2000, is replaced by a new Whistleblowing Policy to ensure that the Council can continue to demonstrate compliance with the Act.
- 2.5 A draft Whistleblowing Policy is appended to this report at Appendix 1 to provide information and guidance on how the Council will prevent, recognise and deal with whistleblowing issues.
- 2.6 The Whistleblowing Policy confirms that overall corporate responsibility for ensuring compliance with the Act lies with the Council's Monitoring Officer.
- 2.7 The Whistleblowing Policy also introduces a confidential external helpline known as the "Whistleblowing Helpline" for employees to use when raising issues of malpractice.
- 2.8 It is intended to run a one year pilot of the "Whistleblowing Helpline" to determine if it increases the reporting frequency of protected disclosures and represents value for money. A report on the findings of the pilot will be reported to a future Council meeting and to the Policy and Strategy Committee after the pilot has concluded.
- 2.9 The cost of implementing a one year pilot of the "Whistleblowing Helpline" is £5,130 per annum and the intended provider of this service will be Public Concern at Work.
- 2.10 Public Concern at Work is a non-profit making charity and represents the best value for money from the providers contacted.

- 2.11 Public Concern at Work will, with the permission of the caller, pass on any information to a delegated Council officer. They will also actively encourage the caller to release this information to the Council.
- 2.12 The petition "A safer Mechanism for reporting Edinburgh Council Mismanagement" seeks "a hotline" to which only senior Councillors would be the recipient of information from the hotline provider. It is Officers' view that this would not be an appropriate mechanism as it is anticipated that reportable matters will be of an operational nature and the Scheme of Delegation makes it clear that corporate management and operational functions are delegated to the Chief Executive and Officers. Further the Scheme of Delegation requires that elected members are consulted with in respect of politically controversial matters and material decisions and Officers have a duty to keep elected members appropriately informed. Therefore Councillor notification and involvement is already adequately provided for by the Scheme of Delegation.
- 2.13 The setting up of the independent helpline does of course partially satisfy the terms of the petition and we are sure this will be welcomed by the petitioners.
- 2.14 The Whistleblowing Policy also seeks to promote a culture where employees can raise concerns without fear of victimisation or recrimination, but in the knowledge that complaints shown to be malicious or vexatious will lead to disciplinary action.
- 2.15 The Whistleblowing Policy also makes it clear that any attempt to thwart the Whistleblower by a fellow Employee will be treated as serious misconduct. This is particularly important for the Council as an employer can now be held vicariously liable for any acts of victimisation by an employee against the Whistleblower since April 2013.
- 2.16 The Act creates two levels of protection for whistleblowers. The dismissal of an employee will be automatically unfair if the reason, or principal reason, for their dismissal is that they have made a "protected disclosure".
- 2.17 The Act also protects workers from being subjected to any detriment on the ground that they have made a "protected disclosure".
- 2.18 Implementation of the Whistleblowing Policy will require considerable planning. As has been the case with previous policy or procedure implementation, it is recommended that a joint implementation plan is developed with the trade unions. Such a plan should include:
- Securing a helpline provider;
 - Arrangements concerning Whistleblowing in induction programmes;
 - An 'e-learning' package; and
 - Communications planning for the launch and implementation of the policy and helpline.

3. Recommendations

- 3.1 It is recommended that the Corporate Policy and Strategy Committee:-
- 3.1.1 notes the content of this report including the Revised Whistleblowing Policy at Appendix 1 and the terms of the Petition at Appendix 2; and
 - 3.1.2 approve the proposals for a Revised Whistleblowing Policy, and instruct the Director of Corporate Governance to implement its terms including:-
 - 3.1.2.1 a one year pilot “Helpline” at a cost of £5,130 per annum;
 - 3.1.2.2 to regularly provide a high level summary of the issues raised and the actions taken to the Corporate Policy and Strategy Committee; and
 - 3.1.2.3 the development of a joint implementation plan once approval is confirmed.

Alastair D Maclean

Director of Corporate Governance

Links

Coalition pledges

Council outcomes CO25 - The Council has efficient and effective services that deliver on objectives.
CO27 - The Council supports, invests in and develops our people.

Single Outcome Agreement

Appendices Appendix 1 Draft Revised Whistleblowing Policy
Appendix 2 Petition

WHISTLEBLOWING POLICY

(Covering all employees)

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WHISTLEBLOWING POLICY

(Covering all employees)

1. INTRODUCTION

- 1.1 The aims of this Policy are to uphold the highest standard of conduct and ethics in all areas of the Council's work. The purposes are as follows:-
- 1.1.1 if you have a concern, to report suspected wrongdoing as soon as possible, in the knowledge that your concerns will be taken seriously and investigated appropriately, and that your confidentiality will be respected;
 - 1.1.2 to provide you with guidance as to how to raise those concerns; and
 - 1.1.3 to reassure you that you will be able to raise genuine concerns in good faith without fear of reprisals, even if they turn out to be mistaken.

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2. MALPRACTICE

- 2.1 The following list illustrates those matters regarded as malpractice in relation to the Council's work under this Policy:-
- 2.1.1 criminal activity;
 - 2.1.2 a failure to comply with any legal obligation;
 - 2.1.3 miscarriages of justice;
 - 2.1.4 damage to health and safety;
 - 2.1.5 damage to the environment; and
 - 2.1.6 deliberate concealment of any of the above matters.
- 2.2 There are a number of other issues that can be dealt with under the Complaints Procedure, the Care Service Feedback Procedures, the Policy on Fair Treatment at Work, the Procedure for Hearing Grievances and the Equality and Rights in Employment Policy. Further action may also be considered under the terms of the Employee Code of Conduct, the Disciplinary Procedure, the Anti-Fraud Policy, and the Anti-Bribery Policy. Such issues are noted below but are not exhaustive including:-
- 2.2.1 the unauthorised use of public funds;
 - 2.2.2 possible fraud or corruption or mismanagement;

- 2.2.3 sexual or physical abuse of (or by) service users;
- 2.2.4 discriminatory conduct towards (or by) colleagues or service users;
- 2.2.5 conduct that may be illegal, improper or unethical;
- 2.2.6 breach of our internal policies and procedures (including those relating to conduct);
- 2.2.7 conduct likely to damage our reputation;
- 2.2.8 unauthorised disclosure of confidential information; and
- 2.2.9 bribery.

The HR and Payroll Service Centre is the dedicated point of contact. For initial advice call 0131 469 5555.

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3. RESPONSIBILITIES

3.1 Those with responsibilities under this Policy are the Council's nominated Whistleblowing Officer, the Council's Monitoring Officer and the Employee seeking recourse.

3.2 Whistleblowing Officer

In any service area the recipient of the disclosure by an Employee shall be known as the Whistleblowing Officer.

The Whistleblowing Officer shall either be the immediate line manager of the Employee making the disclosure or should they be unavailable or inappropriate, the manager occupying the level above the immediate line manager or should they be unavailable or inappropriate the manager occupying the level above that immediate line manager.

Where, an Employee feels unable to raise the matter for attention in their own department, the disclosure can be made to the Monitoring Officer who may perform the role of nominated Whistleblowing Officer.

The responsibilities of the Whistleblowing Officer are outlined at 6.7 to 6.9 below.

3.3 Monitoring Officer

The Monitoring Officer is the Council's Director of Corporate Governance. The Monitoring Officer has overall responsibility for this Policy which means periodic reviews to reflect organisational changes, best practice, operational experience or legislative updates.

The Monitoring Officer will have discretion to decide if it is reasonable for the disclosure to be dealt with under this Policy, if it is reasonable for the disclosure to be dealt with in the department of the Employee, or whether any other course of action is appropriate.

In exceptional circumstances the Monitoring Officer will have responsibility for responding to a disclosure where an Employee feels unable to raise a matter for attention in their own department. In such cases, the Monitoring Officer may perform the role of nominated Whistleblowing Officer.

Exceptional circumstances shall mean that the Monitoring Officer has considered, and ruled out, all other individuals who may be able to perform the role of Whistleblowing Officer due to the nature of the disclosure.

3.4 Employee

The Employee has a responsibility under this Policy to report any concern where they have a reasonable belief that malpractice has occurred (as set out in Clause 2.1 above) or that an issue (as set out in clause 2.2 above) has arisen.

The Employee should not use this Policy for complaints relating to their personal circumstances. Such complaints should be lodged using the Council's Grievance or Fair Treatment at Work procedures.

The Employee is reminded of their responsibility to act professionally if they have a concern about the work of their colleagues, including an expectation that they will report malpractice.

In the unlikely event that a reported concern or issue is found to be deliberately vexatious or malicious this will be considered as a serious disciplinary offence.

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4. PROTECTION AGAINST VICTIMISATION

- 4.1 An Employee must be given support and protection if they are to feel confident in making a disclosure.
- 4.2 Where an Employee makes a disclosure of malpractice, the Council will take appropriate action to ensure that the Employee is protected from any form of victimisation, bullying or harassment.
- 4.3 Victimisation, bullying or harassment of anyone making a disclosure will be regarded as a serious disciplinary offence/gross misconduct. It will also be regarded as a serious disciplinary offence to deter someone from making a disclosure.

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5. ANONYMOUS DISCLOSURES

- 5.1 If a disclosure is made anonymously this could make it difficult to deal with the disclosure effectively. An Employee is therefore strongly encouraged to make themselves known when making a disclosure under this Policy.
- 5.2 Disclosures which are made anonymously will still be considered by the Whistleblowing Officer.
- 5.3 If an anonymous disclosure cannot be progressed due to lack of information, it will be held on record by the Whistleblowing Officer and/or Monitoring Officer and may form part of a future investigation. The record of disclosure shall continue to be available for 6 years.

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6. MAKING A DISCLOSURE

- 6.1 A disclosure shall ordinarily be acted upon and concluded in good time. Good time shall normally mean no more than three months.
- 6.2 A disclosure made by an Employee will be treated with sensitivity and, as far as practicable, the identity of the Employee will not be revealed.
- 6.3 If it is necessary for the Whistleblowing Officer investigating the concern to reveal the identity of the Employee this will be discussed with the Employee in advance.
- 6.4 Employees must be made aware they may be required to come forward as witnesses. In such circumstances, the Whistleblowing Officer will arrange for the Employee to be given advice about the relevant procedures. The Employee will also be afforded the opportunity to be accompanied by a trade union representative or other person of his/her choice if he/she has any further active involvement in the process.
- 6.5 Disclosures may be made to the Whistleblowing Officer orally, or in writing. The disclosure should, wherever possible, contain all relevant details about the background and history of the matter being disclosed including names, dates and times as well as the grounds for concern. An Employee who is unsure about how to approach this situation may seek advice from the Whistleblowing Officer.
- 6.6 A disclosure shall be subject to three stages.
- 6.7 **Stage 1**

The Employee shall make a disclosure to the Whistleblowing Officer (see 3.2).

The Whistleblowing Officer shall acknowledge receipt of the disclosure within 5 working days.

The Whistleblowing Officer may receive the disclosure from an Employee within the same department or another department. Acknowledgement of the disclosure will be made in writing to the Employee. Where the disclosure is made orally, the acknowledgement will also be in writing and contain a record of this.

The Whistleblowing Officer should report in writing the disclosure to the Head of Department against which it has been directed.

6.8 **Stage 2**

The Whistleblowing Officer shall assess what further action is required concerning the disclosure, inform the Employee in writing of the further action to be taken and inform the Monitoring Officer of this proposed course of action.

The purpose of the Monitoring Officer being made aware of the proposed course of action is to allow them to be satisfied that action is being taken in respect of a disclosure and that this is appropriate. The role of the Monitoring Officer in this regard is not the same as reviewing the further action to be taken. This is a matter for the Whistleblowing Officer.

6.9 **Stage 3**

The Whistleblowing Officer shall determine a programme of action.

A programme of action as determined by the Whistleblowing Officer may include, but shall not be limited to, investigations, an internal audit, a recommendation that recourse be made to the Disciplinary Procedure or referral to the appropriate external agency.

The Whistleblowing Officer may also recommend urgent action to curtail alleged malpractice prior to investigation.

The Employee may be required as a witness in any investigatory or other process and in respect of any subsequent proceedings which may arise as a result.

The outcome of the programme of action shall be notified to the Employee in writing. The Monitoring Officer shall also be informed of the outcome in writing.

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7. EXTERNAL DISCLOSURES

7.1 While the purpose of this Policy is to create the conditions in which Employees feel confident to raise matters internally, it is recognised that there may be circumstances where matters may be properly reported to certain external bodies such as the Health and Safety Executive or the Police.

- 7.2 The Employee must seek advice prior to making an external disclosure to ensure that the disclosure to the external body is protected. Such advice may be sought from the HR Service Centre on 0131 469 5555, trade union representatives, an Employee's legal adviser or other specialist external bodies such as the Health and Safety Executive or the Police.
- 7.3 Certain external bodies to which matters may be properly reported are known as 'prescribed persons'. A list of prescribed persons is made available by the Secretary of State, who currently lists more than 50 regulatory bodies to whom protected disclosures may be made. It can be found at <https://www.gov.uk/whistleblowing/how-to-blow-the-whistle>
- 7.4 If an Employee is concerned about using the internal disclosure arrangements they can seek advice from Public Concern at Work, which provides a confidential helpline. Contact details for the helpline number are [TELEPHONE]. This service is not a substitute for raising matters covered by other procedures and where appropriate, callers may be referred to the appropriate procedure.

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8. CONTACT WITH THE MEDIA

- 8.1 This Policy has been developed to enable Employees to express concerns on the basis that it is in the public interest to make such matters known to the Council. However, reporting of a concern does not mean that such matters should be made available for public consumption through the media and/ or social media.
- 8.2 Disclosure to the media is prohibited during the course of, or after completion of an investigation either conducted internally or via those external bodies known as 'prescribed persons'. Disclosure to the media in these circumstances may lead to disciplinary action against the Employee.

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9. GENERAL

- 9.1 This Policy is not intended to replace any other statutory reporting procedures operated by the Council.
- 9.2 Matters of concern relating to an Employee's own situation which would normally be dealt with under the Council's Grievance Procedure should continue to be handled in that way.

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10. LOCAL AGREEMENT

- 10.1 This document is a local collective agreement between the Council and the recognised Trade Unions. Every effort will be made by both parties to ensure that this document will be maintained as a local collective agreement, and adjusted by agreement to meet changing future needs. In the event of failure to reach agreement, both parties reserve the right to terminate this local agreement by giving four months notice in writing. In such circumstances, the terms of the local agreement will cease to apply to existing and future employees.

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DRAFT

A safer mechanism for reporting Edinburgh Council mismanagement

I ask the Council to implement a whistleblowing hotline for Council staff with an organisation that exists outside the Council, to which only senior Councillors would have access. An independent body such as Expolink or the Edinburgh Voluntary Organisation Council (EVOOC) should run the hotline and every Council worker should learn about it as part of their induction training. The hotline should: i) Be completely inaccessible to Council staff apart from when a suggestion or complaint was lodged ii) Allow the staff complainant's name to be withheld by the body should they need to investigate any matter with relevant Council staff, but that the body might make the name available to elected members on condition of confidentiality iii) Be resourced by the Council through a revenue grant sufficient to administer the scheme. iv) Act as a deterrent against inappropriate and criminal behaviour by Council staff; giving elected members the information they need to take rapid, remedial action

The hotline could contribute to the re-building of confidence between Cllrs, ordinary staff and the rate-paying public after the property conservation and Mortonhall scandals, and help dissipate a culture of fear in speaking out at the Council- about either malpractice or the unintended consequences of Council management decisions. I believe that it would be to the clear advantage of the Council to have an improved whistleblowing system in place, which would assist both Councillors and employees to avoid future scandals that would bring the Council into disrepute.