



Regulatory and Other Committee

Open Report on behalf of Pete Moore, Executive Director Resources and Community Safety

Report to:	Audit Committee
Date:	23 September 2013
Subject:	Whistleblowing Annual Report 2012/13

Summary:

This report provides an overview of the Council's whistleblowing arrangements throughout the year 2012/13 and presents proposed changes to the Whistleblowing Policy.

Recommendation(s):

Items to note:

- a) whistleblowing activity for 2012/13
- b) ongoing work to raise awareness and provide assurance on the effectiveness of the Council's arrangements

Item to consider and approve: proposed changes to the Council's Whistleblowing Policy

Background

- 1 This report provides a summary of:
 - analysis of contacts (disclosures) April 2012 to March 2013
 - comparison of whistleblowing activity / emerging trends
 - on-going activity to raise awareness and maximise knowledge and understanding
 - updated whistleblowing legislation and impact on the Council's Whistleblowing Policy
- 2 The Public Interest Disclosure Act requires all Councils to have appropriate arrangements to provide a safe and effective way of reporting concerns and to protect those who make disclosures in the public interest.
- 3 The Council's Whistleblowing Policy was substantially re-written in 2010 and is due for review this year – the process, reporting arrangements and policy

content have changed little over the last 12 years. Recent changes to employment law have affected the qualifying “protected status” for whistleblowers and this needs to be accurately reflected in the Council’s updated policy.

- 4 Whistleblowing activity throughout 2012/13 increased by 55% from the previous year and is more consistent with the number of disclosures received in earlier years. Experience shows that the number of disclosures fluctuates each year and so far we have not been able to establish any specific reason for significant peaks or troughs.
- 5 We traditionally receive that largest number of whistleblowing disclosures from the school environment – 2012/13 was no different with 47% of all contacts relating to concerns within schools. We provide advice, guidance, model policies and the confidential reporting facility to those Lincolnshire schools still under Local Government control. We are also extending this service to academies.
- 6 We will continue to raise awareness, where possible and will use the Policy update as a vehicle for reminding staff, contractors, key partners, suppliers and service users of our arrangements. We have developed a new poster and leaflet and intend to coordinate their distribution with the re-launch of the Whistleblowing Policy, following approval.

Whistleblowing disclosures 2012/13

- 7 We received 17 whistleblowing disclosures throughout the year compared with 11 in the previous year. All of these disclosures came via the Council’s dedicated whistleblowing hotline – 13 of which were reported anonymously. The analysis below shows the type of disclosures received this year compared with the last two years:

Type of concern	Number of concerns raised 10/11	Number of concerns raised 11/12	Number of concerns raised 12/13
Dignity at Work – bullying & harassment	4	3	4
Grievance	0	2	0
Financial (including fraud)	8	6	8
Alleged breach of policy/procedure and/or poor practice	5	0	3
Alleged misconduct	1	0	2
Safeguarding	1	0	0
TOTAL	19	11	17

8 Out of the 17 disclosures, 5 resulted in independent investigation by the Council's Investigation Team. 3 of the formal investigations related to suspected fraud, the other two cases involved dignity at work concerns.

9 Investigation outcomes:

We dealt with four disciplinary investigations resulting in: 1 dismissal, 2 resignations and 1 management action. We investigated one grievance – the grievance was upheld.

10 Analysis of contacts by directorate:

Directorate	Number of concerns raised
Children's Services (mostly schools)	9
Adult Care	1
Communities	1
Resources	6
External	0
TOTAL	17

11 The highest number of whistleblowing disclosures relate to Children's Services – all involved schools, with the exception of one. This is consistent with previous years. The Resources directorate had the next highest number of whistleblowing contacts – all but one involved suspected fraud or other financial irregularities.

12 The table below shows how we dealt with the concerns raised throughout 2012/13:

Action taken	Concerns dealt with
Counter Fraud & Investigations Team – Advice	3
Counter Fraud & Investigations Team – Independent investigation	5
Preliminary enquiries by Investigations Team – no further action	5
Preliminary enquiries and resolution by directorate management	2
No further action (unable to pursue due to lack of detail and anonymity of whistleblower)	1
Internal Audit / System Improvements	1

Action taken	Concerns dealt with
Investigation by external body	0
TOTAL	17

Note: We do not officially close the case until we receive satisfactory feedback regarding resolution.

Organisational Learning

- 13 The common themes arising from the investigation of the 2012/13 whistleblowing disclosures were the need for improved awareness and understanding of key policy and procedures (particularly around procurement and recruitment) and more effective routine monitoring of compliance. We have produced action plans to assist managers in these and other areas and will monitor implementation of agreed actions in the same way as audit recommendations.

On-going work to continuously improve the whistleblowing arrangements

- 14 We have developed what we hope is an eye catching whistleblowing poster and leaflet which we aim to distribute within the next few months to coincide with the update and re-launch of the policy.
- 15 We will work with colleagues in Human Resources, Communications, Procurement, Business Support and contracting teams to ensure that our policy and promotional material reaches as wide an audience as possible, including the Council's providers, contractors and key partners.
- 16 The Whistleblowing Policy and other promotional material will also be incorporated into an e-learning tool which we hope to have operational within the next few months. We will further boost awareness and understanding via a number of targeted training sessions over the remainder of the year and articles in the Council's internal and external publications.

Changes to the law – impact on Council's Whistleblowing Policy

- 17 Recent changes in employment law have affected the Public Interest Disclosure Act in four areas but only three impact on the Council's policy:
- a qualifying disclosure (for protection purposes) must be one made in the reasonable belief that it is **"in the public interest"**
 - the requirement for a disclosure to be made "in good faith" for a whistleblower to qualify for protected status has been removed – an ulterior motive (i.e. personal gain) does not affect the protection, provided it is in the public interest to address the concern (it would reduce the compensation)

- a vicarious liability on the employer to protect whistleblowers from bullying and harassment as a result of making a disclosure from **all employees** (not just the organisation, which was previously the case). Employers must therefore take “reasonable steps” to prevent this. The changes also make individual employees **personally liable** if they victimise, bully or harass a whistleblower.

18 We conclude, from our review of the Council’s Whistleblowing Policy, that our existing policy is generally compliant and little affected by these recent changes. We also believe that the structure, content and readability are fit for purpose and we do not, therefore, propose significant change. However, we have inserted a small number of changes to address the latest legislation – all proposed policy changes are highlighted in the document at appendix A.

Conclusion

- 19 Last year we reported the declining number of whistleblowing disclosures – we had seen a drop in contacts in two consecutive years. We believe the level of usage over 2012/13 provides some assurance that the low whistleblowing activity in the previous year was not due to poor awareness or reduced confidence in the process.
- 20 A small number of disclosures resulted in formal investigation – these cases were particularly sensitive, contentious and complex but demonstrated the Council’s commitment to tackling suspected fraud or poor practice and to putting things right.
- 21 Whistleblowers and their representatives may not always know the specifics of an investigation outcome or corrective action taken by the Council (due to confidentiality reasons) but we believe that the Council’s response is robust, which itself promotes confidence. We also monitor action plans to ensure recommendations are implemented, providing assurance that the organisation learns and implements improvement, where necessary.
- 22 Plans to re-launch the Council’s Whistleblowing Policy (following approval), together with the publication of promotional material and training sessions over the next few months, should reinforce the Council’s commitment to “doing the right thing” and help keep awareness levels as high as possible.

Consultation

a) Policy Proofing Actions Required

n/a

Appendices

These are listed below and attached at the back of the report	
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Appendix A	Draft Whistleblowing Policy 2013
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Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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