



<u>Committee and Date</u>	<u>Item</u>
Audit Committee 30 <sup>th</sup> July 2021	5

## **2020/2021 Review of Whistleblowing - ‘Speaking Up About Wrongdoing’**

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### **1.0 Summary**

The Whistleblowing process provides arrangements to enable employees, elected members, contractors and others to raise concerns about fraud, corruption, adult/child protection or harassment and bullying allegations.

This report provides an update to the Shropshire Council Audit Committee on the number of cases raised regarding Council employees over the last year (excluding school-based employees).

### **2.0 Recommendations**

The Audit Committee is asked to:

- a. Consider and approve, with appropriate comments on the contents of the report.

## **REPORT**

### **3.0 Risk Assessment and Opportunities Appraisal**

- 3.1 The Council has in place an effective Counter Fraud, Bribery and Anti-Corruption Strategy. The Council proactively encourages the detection of fraud and irregularities and the appropriate management of them. The Whistleblowing policies contribute to our zero tolerance of fraud, bribery and corruption.
- 3.2 The recommendations contained in this report are compatible with the provisions of the Human Rights Act 1998. There are no direct environmental, equalities, consultation or climate change consequences of this proposal.

## 4.0 Financial Implications

- 4.1 The management and investigation of issues raised in response to this policy are met from approved budgets.

## 5.0. Climate Change Appraisal

- 5.1. This report does not directly make decisions on energy and fuel consumption; renewable energy generation; carbon offsetting or mitigation; or on climate change adaptation. Therefore, no effect.

## 6.0 Background

- 6.1 This is an annual report to Audit Committee on whistleblowing arrangements.
- 6.2 The Whistleblowing Policy is available to all staff via the Intranet pages and is also available to them, along with members, contractors, partners and the public, via the [website](#); allowing it to be accessed from any computer. This is particularly important as it allows staff to access the policy outside of a work environment, where they may be reluctant to be seen accessing the Whistleblowing policy.
- 6.3 Whistleblowing is when a worker reports suspected wrongdoing at work. Officially this is called ‘making a disclosure in the public interest’. A worker can report things that aren’t right, are illegal or if anyone at work is neglecting their duties, including:
- someone’s health and safety is in danger
  - damage to the environment
  - a criminal offence
  - the company isn’t obeying the law (like not having the right insurance)
  - covering up wrongdoing.
- 6.4 The way a worker can ‘blow the whistle’ on wrongdoing depends on whether they feel they can tell their employer.
1. The worker should check their employment contract or ask Human Resources if their company has a whistleblowing procedure.
  2. If they feel they can, they should contact their employer about the issue they want to report.
  3. If they can’t tell their employer, they should contact a prescribed person or body.
- 6.5 A worker can only tell the prescribed person or body if they think their employer:
- will cover it up
  - would treat them unfairly if they complained
  - hasn’t sorted it out and they’ve already told them

## 6.6 Dismissals and whistleblowing

A worker can't be dismissed because of whistleblowing. If they are, they can claim unfair dismissal. They'll be protected by law as long as certain criteria are met.

## 6.7 Types of whistleblowing eligible for protection

These are called ‘qualifying disclosures’. They include when someone reports:

- that someone's health and safety is in danger
- damage to the environment
- a criminal offence
- that the company isn't obeying the law (like not having the right insurance)
- that someone's covering up wrongdoing
- a miscarriage of justice

## 6.8 Who is protected?

The following people are protected:

- employees
- agency workers
- people that are training with an employer, but not employed
- self-employed workers, if supervised or working off-site

An individual is also protected if they work in a school or sixth-form college, whether an employee or an agency worker. NHS workers who work under certain contractual arrangements, e.g. certain GPs and dentists, are also protected.

A worker will be eligible for protection if:

- they honestly think what they're reporting is true
- they think they're telling the right person
- they believe that their disclosure is in the public interest

## 6.9 Who isn't protected?

Workers aren't protected from dismissal if:

- they break the law when they report something, e.g. they signed the Official Secrets Act
- they found out about the wrongdoing when someone wanted legal advice ('legal professional privilege'), e.g. if they're a solicitor

Workers who aren't employees can't claim unfair dismissal because of whistleblowing, but they are protected and can claim 'detrimental treatment'.

## 6.10 Tribunals

Workers dismissed for whistleblowing can go to an employment tribunal. If the tribunal decides the employee has been unfairly dismissed, it will order that they are:

- reinstated (get their job back)
- paid compensation

A tribunal judge can reduce any compensation awarded by 25% if they find the person has acted dishonestly.

A whistleblower who is bullied at work will also be able to bring a claim to the employment tribunal against their employer or colleagues.

## 7.0 **2020/21 Whistleblowing Reports**

7.1 In 2020/21, there were thirty-five cases reported under the whistleblowing arrangements for Shropshire Council. Twenty-five of these were reported by email, seven by telephone, two were verbal reports and one was written. The most reported theme was grant fraud, with the outcome of the subsequent audit investigations resulting in four cases of grant recovery and other grant fraud reports finding no case to answer. Overall for the categories of grant fraud, financial and benefit fraud a total of seven cases were referred to a third party, including Department of Work and Pensions (DWP), Action Fraud and HM Revenue and Customs (HMRC).

## 7.2 **2020/21 Whistleblowing Reports**

<b>Theme</b>	<b>Number</b>
Grant Fraud	11
Financial inc. Theft, Tenancy and Tax Fraud	7
Benefit Fraud	4
Planning	2
Safeguarding	2
Highways	2
Data Protection	2
Other	5

<b>Outcomes for all themes</b>	<b>Number</b>
No case to answer	15
Referred to third party (DWP/Action Fraud)	7
Grant recovery	4
No further action	3
Managed via another policy/procedure	2
Management action	2
Other	2

## 8.0 Comparison to previous years

- 8.1 There has been a 43% increase in number of incidents reported than in the preceding year, with the preferred route of “blowing the whistle” being via email, which is a change to the last two years where the preferred route has been a verbal report. In 2019/20, there were twenty cases reported under the whistleblowing arrangements for Shropshire Council, the majority of these allegations were relating to fraud and property issues. In 2018/19 there were thirty three cases reported and most of those allegations were relating to finance abuse, planning, housing and fraud.
- 8.2 In May this year, there was a challenge to the Whistleblowing Policy and supporting process through an employment tribunal which took place over a two week period; Langenhoven v Shropshire Council and others. The claimant stated that the Council failed to instigate its whistleblowing policy. The tribunal found that the Council’s policy was commenced and there was no evidence at all to support the claim, the claimant did not suffer any detriment as a result of his protected disclosures. This result confirms that we follow our Whistleblowing Policy in practice. <https://www.gov.uk/employment-tribunal-decisions/mr-s-langenhoven-v-shropshire-council-and-others-1300229-slash-2020>

## 9.0 Conclusion

- 9.1 The ‘Speaking up about Wrongdoing’ process forms a key element of the Council’s Corporate Governance arrangements and is continuing to be a route employees use to raise concerns, as well as a route which is also open to elected members, contractors, partners and others.

<b>List of background papers (This MUST be completed for all reports but does not include items containing exempt or confidential information) – none</b>
<b>Cabinet Member (Portfolio Holder)</b> <b>Lezley Picton (Leader of the Council) and Brian Williams (Chair of Audit Committee)</b>
<b>Local Member-</b> N/A

