

## Agenda Item 9

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<b>Date</b>	25 <sup>th</sup> October 2016
<b>Ward(s) affected</b>	The report covers the whole District

<b>Subject</b>	<b>Whistleblowing Policy</b>
<b>Recommendation</b>	
That the Executive consider and approve the revised and updated Whistleblowing Policy for Mole Valley District Council.	

1. Three of the Council's Counter Fraud policies have recently been reviewed and revised. Updated versions of the Council's Anti Fraud & Anti Corruption Policy and Prosecution and Sanctions Policy were presented, and approved by, the Executive in July 2016. The third policy, relating to Whistleblowing, is now presented for approval.
2. Each policy has been revised and updated to reflect latest developments. The previous versions were approved in 2011.
3. The draft policies have been considered by the Staff Consultative Forum, the Member & Officer Forum and been the subject of general consultation open to all staff. The policies have also been considered and approved by the Audit Committee.
4. The main changes to the previously approved version are summarised below.

Significant changes

- It clarifies the distinction between instances of whistleblowing and the Council's complaints and grievance procedures (para 1.5 and 1.6)
- It provides examples of wrongdoing (para 3.2) and incorporates actions by contractors, agency staff, suppliers and consultants (para 1.4).
- It includes actions to take by the officer receiving a whistleblowing referral (section 9) as well as a flowchart to illustrate the process

**5. CORPORATE IMPLICATIONS**

**Monitoring Officer commentary**

legal implications taken into account

**S151 Officer commentary**

The S151 Officer confirms that all financial implications have been taken into account.

**Risk**

The counter fraud activity is targeted at reducing the risk of fraud and corruption and protecting the Council's assets.

**Equalities Implications**

There are no equalities implications arising as a direct consequence of this report.

**Employment Issues**

The Council's HR Team has been fully involved in the staffing issues described in the report.

**Sustainability Issues**

None within the report.



# WHISTLEBLOWING POLICY

Last updated	September 2016
Responsible Officer	Financial Services Manager
Agreed by	Audit Committee, September 2016
Next update due	September 2018

## 1. INTRODUCTION

- 1.1 Every organisation faces the risk that something will go seriously wrong and ought to welcome the opportunity to address it as early as possible. Whenever such a situation arises, the first people to know of the risk will usually be those that work in, or for, the organisation. Yet while these are the people best placed to raise the concern before damage is done, they may feel that speaking up would be disloyal to their colleagues; they may fear harassment or victimisation; it may be easier to ignore the concern rather than report a suspicion or malpractice. This policy aims to encourage employees to report concerns, and to reassure that they will be protected as far as possible.

The term whistleblowing has a specific legal definition, i.e. a disclosure or allegation of serious wrongdoing made by an employee. For the purposes of this policy, the definition of employee is considered to include all permanent employees at MVDC, Members and any worker who carries out work for MVDC in any capacity (this includes agency workers and trainees)

- 1.2 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect employees, and others that we deal with, who have concerns about any serious wrongdoing or malpractice, to report it.
- 1.3 This policy document makes it clear that you can report the concern knowing that the Council will protect you as far as it is able from victimisation, subsequent discrimination or disadvantage. This Whistleblowing Policy is intended to encourage and enable employees to raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside. All employees that raise issues in good faith are covered by the protections afforded under the Public Interest Disclosure Act 1998.
- 1.4 The Policy applies to all employees and those contractors working for the Council, on Council premises, for example agency staff, builders and drivers. It also covers suppliers and those providing services under a contract with the Council on their own premises.
- 1.5 This policy does not cover reports made by members of the general public. Any concerns that a member of the general public has can be made through the Council Complaints Policy.
- 1.6 Whistleblowing concerns are distinct from employee grievances. Whistleblowing is where an employee has a concern about danger or illegality that has a public interest to it. A grievance or private complaint, is, by contrast, a dispute about the employees own employment position and is unlikely to have an additional public interest dimension. However, if the issue does have public interest dimension the matter can also be dealt with by way of this policy at the discretion of the Section 151 Officer. Therefore, this policy does not cover employee grievances, which should be made under the Council's Grievance Policy.

Managers are responsible for making service users aware of the existence of these procedures.

## **2. AIMS AND SCOPE OF THE POLICY**

2.1 This policy aims to

- Encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice.
- Provide avenues for you to raise those concerns and receive appropriate feedback on any action taken.
- Ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied.
- Reassure you that you will be protected as far as is possible from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in good faith.
- Give a clear message that allegations of serious wrongdoing or impropriety are taken seriously.
- Ensure that where the disclosure proves to be well founded, the individuals responsible for such serious wrongdoing will be held accountable for their actions.

2.2 Therefore, any serious concerns that you may have about any aspect of service provision, or the conduct of officers or members of the Council, or others acting on behalf of the Council, can be reported under the Whistleblowing Policy.

2.3 This may be about something that:

- You consider to be malpractice or wrongdoing in terms of known standards, your experience or the standards you believe the Council subscribes to
- Is against the Council's Constitution and policies,
- Falls below established standards of practice; or
- Amounts to improper conduct.

2.4 Employees are expected to report malpractice and wrongdoing. In certain circumstances there is an expectation that officers would have an obligation as part of their normal duties to report suspicions, and in these situations they may be liable to disciplinary action if they knowingly and deliberately do not disclose information relating to malpractice or wrongdoing.

### **3. WHAT IS MALPRACTICE OR WRONGDOING?**

3.1 Malpractice and wrongdoing may be something which:-

- is unlawful; or
- against the Council's Standing Orders or policies; or
- is not in accordance with established standards of practice; or
- amounts to improper conduct by an employee or a Member.

3.2 The overriding concern should be that it would be in the public interest for the malpractice/wrongdoing to be corrected and, if appropriate, sanctions to be applied.

The following are examples of issues which could be raised under this policy. It is not intended to be an exhaustive list and there may be other matters which could be dealt with under this policy:

- Any unlawful act or omission, whether criminal or a breach of civil law
- Maladministration, as defined by the Local Government Ombudsman
- Fraud in, or by the organisation
- Offering taking or soliciting bribes
- A miscarriage of justice
- Breach of statutory codes of practice
- Breach of, or failure to implement or comply with any policy determined by the Council, the Cabinet or any of the Council's Committees
- Serious failure to comply with appropriate professional standards or other established standards of practice
- Actions which are likely to cause physical danger to any person, or give rise to a risk of significant damage to property or the environment
- Failure to take reasonable steps to report and rectify any situation which is likely to give rise to a significant avoidable cost, or loss of income, to the Council or would otherwise seriously prejudice the Council
- Abuse of position, or the use of the Council's powers and authority for any unauthorised or ulterior purpose
- Unfair discrimination in the Council's employment or services
- Dangerous procedures risking health and safety
- Abuse of clients
- Other unethical conduct

## 4. SAFEGUARDS

- 4.1 The Council is committed to good practice and high standards and wants to be supportive of employees. The Council's organisational values promote ethical behaviours and expect employees to act in accordance. *[Link to organisational values page here: <http://molly.molevalley.gov.uk/index.cfm?articleid=17197>]*
- 4.2 The Council recognises that the decision to report a concern can be a difficult one to make. However, if what you are saying is true, you will be doing your duty to your employer and those for whom you are providing a service.

The Public Interest Disclosure Act 1998 makes it unlawful for the Authority to dismiss anyone (or carry out any other form of reprisal) on the basis that they have made a protected disclosure.

The Act has rules for making a protected disclosure:

- the disclosure must be in good faith (even if it later becomes clear that the disclosure was not accurate)
  - the Whistleblower must believe an allegation to be substantially true
  - the Whistleblower must not act maliciously or make false allegations
  - the Whistleblower must not seek any personal gain
- 4.3 The Council does not tolerate any reprisals, harassment or victimisation (including informal pressures) against an employee because he or she has raised a concern under the policy, and will treat any such activity as a disciplinary matter which may lead to a sanction up to and including dismissal.
- 4.4 This assurance to safeguard does not extend to those who maliciously raise a concern that they know is false.
- 4.5 Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you.

## 5. CONFIDENTIALITY

- 5.1 All concerns will be treated in strictest confidence and every effort will be made not to reveal your identity if you so wish. This means that your name will not be revealed without your consent, unless required by law, for example if you are required to come forward as a witness. However, you should be aware that it is possible that due to the nature of the allegation or referral, that colleagues may still be able to deduce the identity of the Whistleblower.

## **6. ANONYMOUS ALLEGATIONS**

- 6.1 This policy encourages you to put your name to your allegation whenever possible, and does not promote the use of anonymous referrals. This is because a named allegation makes it easier for the Council to work out how to investigate the matter, to get more information, and to understand whether any hidden agenda may exist.
- 6.2 Concerns expressed anonymously are much less powerful but will be considered at the discretion of the officer handling the complaint. Clearly in the case of anonymous disclosure the Council will not be able to advise the discloser of progress with any investigations.
- 6.3 In exercising this discretion the factors to be taken into account include an assessment of the following:
- The seriousness of the issues concerned
  - The credibility of the concern; and
  - The likelihood of confirming the allegation from attributable sources.

## **7. UNTRUE ALLEGATIONS**

- 7.1 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make an allegation frivolously, maliciously or for personal gain, action may be taken against you. For employees, this may include disciplinary action up to and including dismissal depending on all the circumstances of the case and dependant, as always, on reasonableness.

## **8. HOW TO RAISE A CONCERN**

- 8.1 As a first step you should normally raise concerns with your immediate manager or their superior. The Council would encourage you to raise your concern at the earliest stage. If you feel that you cannot approach management in your own area of work, you should approach one of the internal "Key Contacts" as listed in Part 14 of the document.
- 8.2 Complaints may be raised verbally or in writing. Employees who wish to make a written report are invited to use the following format:
- The background and history of the concern (giving relevant dates)
  - The reason why you are particularly concerned about the situation.

The earlier you express the concern, the easier it is to take action.

- 8.3 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern although you should not carry out any investigation yourself.
- 8.4 Advice, guidance or support on how matters of concern may be pursued can be obtained from:

- Deputy Chief Executive (Section 151 Officer)
- Financial Services Manager
- Fraud and Investigation Manager
- HR Team

Independent confidential advice and support can be obtained from

- Internal Audit, RSM Risk Assurance Services. (0117 945 2000)
- The charity “Public Concern at Work” (020 7404 6609).
- The Employee Assistance Programme (0800 243548)

8.5 You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns. You will, however, be expected to use tact and discretion in this approach as at this stage any concerns will not have had the opportunity to be further examined.

8.6 You may invite your trade union, staff side or another colleague within the organisation to be present during any meetings or interviews in connection with the concerns you have raised.

## **9. ACTION TO BE TAKEN BY A MANAGER RECEIVING A WHISTLEBLOWING ALLEGATION.**

9.1 Any manager who is informed of a potential problem through the Whistleblowing Policy or suspects any irregularity must record the details of the irregularity, including all relevant names, dates, nature of concern/incident, locations, etc.

9.2 Where any manager receives such a report, they must review the information received and decide whether the matter should be treated as a whistleblowing allegation, and assess how serious and urgent the risk is. The Manager is able to carry basic record checks, and hold informal discussions with other officers, in order to ascertain whether the allegation is founded. However, the Manager should not carry out conduct that could be viewed as an investigation, or formally interview suspects or witnesses. The Manager should follow the escalation flow chart attached as Appendix 1.

9.3 If the information is viewed as relatively low risk, and could be simply followed up during a routine audit, or a change to procedure, the matter will not require escalation. The Manager must record the allegation, the agreed outcome, and retain a record of action for scrutiny if further allegations received (option 1 on the flowchart).

9.4 If the allegation can be best dealt with under a different policy, the Manager should advise the individual making the referral of this, and either direct the referral to the responsible person for that policy, or deal with matter under that Policy (option 2 on the flowchart)

9.5 If the allegation is viewed as serious enough and satisfies criteria to be treated as whistleblowing referral, the Manager should cease making any further enquires and must not

carry out an investigation. The officer must immediately report details of the suspected irregularity to the Section 151 Officer who will convene a meeting to include the appropriate officers required to action the investigation. This could include or some of the following: Corporate Head of Service, Financial Services Manager, the Council Solicitor, Fraud and Investigation Manager and an appropriately qualified individual from the HR and Organisational Development Team. The Section 151 Officer will decide whether the allegation requires further investigation and direct the appropriate officer to conduct this investigation, or refer to outside agencies (such as the Police or Auditors). This is Option 3 on the flowchart.

9.6 The Fraud Response Plan sets out the actions the Council will follow when investigating allegations of Fraud and or corruption.

## **10. HOW THE COUNCIL WILL RESPOND**

10.1 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting them or rejecting them.

Where appropriate the matter raised may:

- be investigated by management, the fraud team, or through the disciplinary process;
- be referred to the police;
- be referred to the internal and / or external auditor;
- form the subject of an independent inquiry.

10.2 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquires will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.

10.3 Some concerns may be resolved by agreed action without the need for investigation. If this is the case you will notified that matter has not been escalated for a full investigation. If urgent action is required to prevent further loss or harm, this may be taken before any investigation is conducted.

10.4 If an allegation is escalated to Section 151 Officer stage normally, within 10 working days of a concern being raised, the Section 151 Officer will write to you:

- Acknowledging that the concern has been received
- Generally indicating how it is proposed to deal with the matter and advising whether any inquiries have been made (however information will be non-specific) in order to protect the subject of referral and integrity of investigation
- Giving an estimate of how long it will take to provide a final response
- Supplying you with information on staff support mechanisms and

- Telling you whether any further investigations will take place and if not, why not. However, due to legal obligations of confidentiality it owes other employees, it might not be able to provide information on the outcome of any disciplinary action taken against another employee.

10.5 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from you.

10.6 Where any meeting is arranged, off-site if you wish, you can be accompanied by a union, staff side or other colleague from within the organisation. Normally we would not allow an individual from outside the authority to attend unless there are extenuating circumstances such as a disability. This must be agreed before the meeting.

10.7 The Council will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Council will arrange for you to receive advice about the procedure.

10.8 The Council accepts that you need to be assured that the matter has been properly addressed. Thus we will provide feedback to you on the outcome of the concern. However although the Council will give as much feedback as it properly can, due to legal obligations of confidentiality it owes other employees, it might not be able to provide feedback on the outcome of any disciplinary action taken against another employee. Any feedback you receive needs to be kept confidential and not discussed with anyone.

## **11. TRAINING**

11.1 Any person designated to undertake an investigation will have received the appropriate Investigatory skills training, to ensure that they are aware of all relevant legislation and are able to carry out their role in a professional manner.

## **12. THE RESPONSIBLE OFFICER**

12.1 The Deputy Chief Executive, as the Councils Section 151 Officer, has overall responsibility for the maintenance and operation of the policy. Any responsibilities or actions defined to the Section 151 Officer within this policy will include any officer appointed to act in his absence. That officer maintains a record of concerns raised and outcomes (but in a form which does not endanger your confidentiality). The key details of each concern will be monitored and reported to the Council as necessary.

12.2 This information will be used to monitor the effects and application of the procedure, including meeting the legislative requirement to analyse impact with reference to the Equalities Act 2010 .

### **13. HOW THE MATTER CAN BE TAKEN FORWARD**

13.1 This policy is intended to provide you with an avenue within the Council to raise concerns. The Council hopes you will be satisfied with any action taken. If you are not, and if you feel that it is right to take the matter outside the Council, the following are possible contact points:

- The charity “Public Concern at Work” – (020 7404 6609)
- The Council’s internal or external auditor
- Your trade union;
- Your staff representative
- Your local Citizens Advice Bureau
- Relevant professional bodies or regulatory organisations
- A relevant voluntary organisation: or
- The police

13.2 If you do take the matter outside the Council, you should ensure that you do not disclose confidential information. Also, the protection provided by this policy would only apply if it was justifiable and reasonable to have taken the matter outside the Council. This could be in situations where the Whistleblower has been ignored on previous occasions, or not taken seriously.

### **14 Key Contacts**

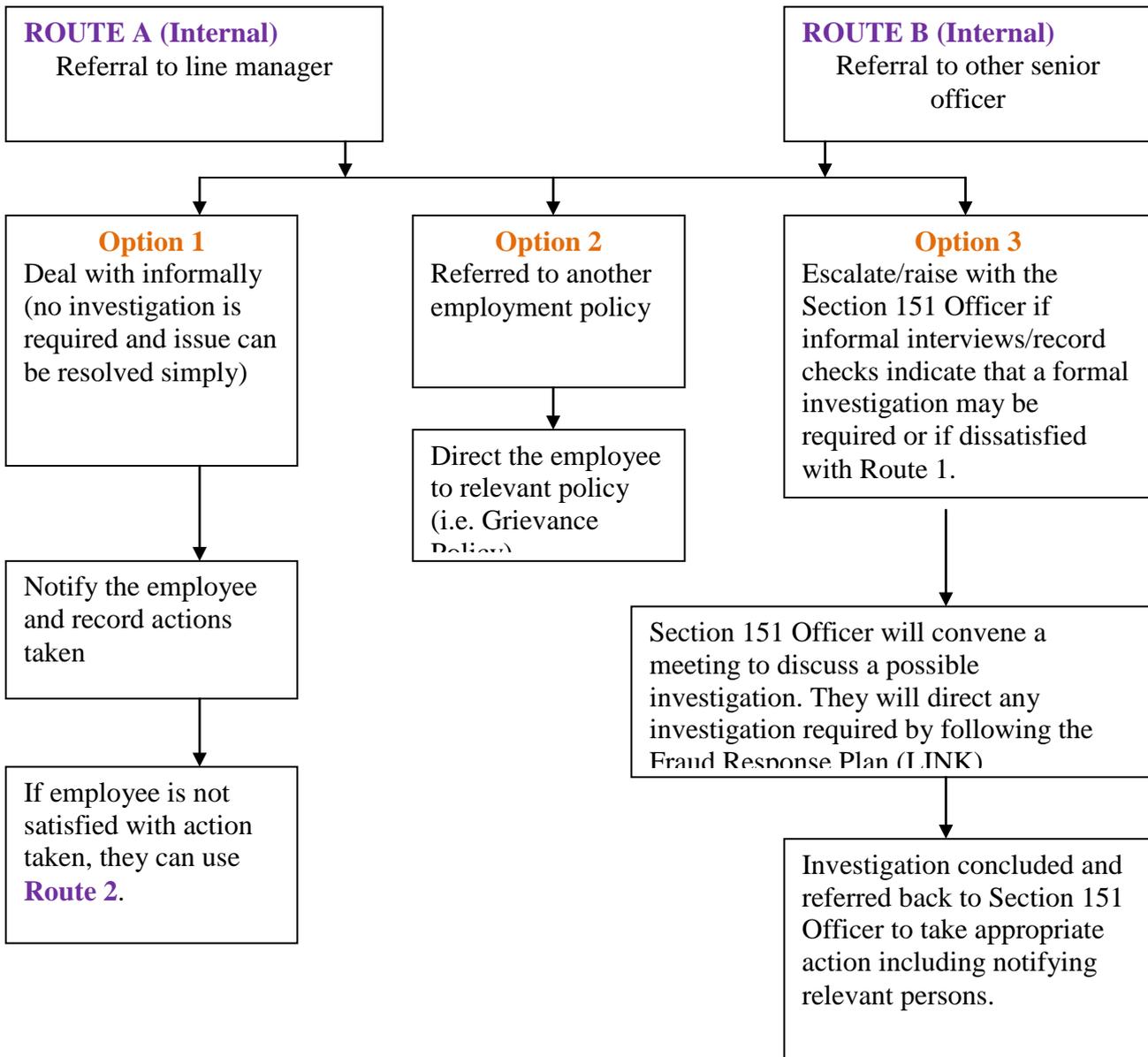
**14.1 Allegations should be made directly to the following:**

- *Deputy Chief Executive (Section 151 Officer)*
- *Corporate Heads of Service*
- *Fraud and Investigation Manager*
- *Financial Services Manager*
- *Internal Auditor RSM UK*
- *Human Resources Team*
- *Legal Team*

### **15. Review**

15.1 The Policy will be subject to bi-annual review by the Fraud and Investigation Manager, and Human Resources Team to ensure that it remains current and effective.

Whistleblowing Referral Process



**Route C** – Referral to an outside agency (i.e. Public Concern@ Work or your Trade Union)  
 This route can be taken if the employee has taken routes A and/or B and is not satisfied with the outcome or there is a justifiable cause for disclosing wider and it is reasonable to do so. See the policy for further guidance on outside agencies.

