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Review of Whistleblowing and Fairness at Work (Grievance) arrangements – **Monmouthshire County Council**

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This document is also available in Welsh.

The team who delivered the work comprised Gareth W. Lewis, Allison Rees and Dave Wilson, programmed managed by Non Jenkins, under the direction of Huw Rees.

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The Council has responded positively to our 2014 Whistleblowing review to strengthen its Whistleblowing and Fairness at Work arrangements, and seeking feedback from those involved could lead to further improvements

The Council has strengthened its arrangements to make staff aware of the policies 7

There is a collective decision-making process to determine which policy to use while ensuring the employees raising concerns are at the forefront of the decision 8

The Council has effective arrangements to respond to and manage whistleblowing disclosures and employee grievances, and has strengthened its whistleblowing arrangements since our 2014 work 9

Managers demonstrated a clear understanding of the policies and procedures, with HR maintaining close contact to ensure concerns are handled effectively, stored securely and dealt with confidentially 10

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Summary

What we reviewed and why

- 1 It is important for organisations to have an enabling, open culture which includes clear policies and procedures for dealing with whistleblowing concerns and employee grievances as part of good governance, each having a specific purpose and relating to differing legislation ([Appendix 1](#)).
- 2 We completed a review of the Council's whistleblowing arrangements in 2014 and found that overall, whistleblowing arrangements were generally sound, but there were some weaknesses in policy, process and training that need addressing¹. We made nine proposals ([Appendix 2](#)).
- 3 In May 2019 we:
 - a. examined the Council's arrangements for dealing with whistleblowing concerns;
 - b. examined the arrangements for dealing with employee grievances (these arrangements are dealt with under the Council's Fairness at Work Policy);
 - c. assessed the decision-making arrangements the Council uses for determining whether concerns are dealt with under Whistleblowing or Fairness at Work (Grievance) procedures; and
 - d. assessed the Council's progress in addressing our 2014 Whistleblowing proposals for improvement.

What we found

- 4 Our review sought to answer the question: **Can the Council assure itself that it has robust and effective arrangements for dealing with whistleblowing disclosures and employee grievances?**
- 5 Overall we found that: **The Council has responded positively to our 2014 Whistleblowing review to strengthen its Whistleblowing and Fairness at Work arrangements, and seeking feedback from those involved could lead to further improvements.** We reached this conclusion because:
 - The Council has strengthened its arrangements to make staff aware of the policies;
 - There is a collective decision-making process to determine which policy to use while ensuring the employees raising concerns are at the forefront of the decision;

¹ Wales Audit Office Review of Whistleblowing presented to Audit Committee – 4 December 2014

- The Council has effective arrangements to respond to and manage whistleblowing disclosures and employee grievances, and has strengthened its whistleblowing arrangements since our 2014 work;
- Managers demonstrated a clear understanding of the policies and procedures, with HR maintaining close contact to ensure concerns are handled effectively, stored securely and dealt with confidentially; and
- The Council has a clear process for the ongoing review of the policies but does not actively seek feedback from those involved, and members' oversight of arrangements is limited.

Proposals for improvement

Exhibit 1: proposals for improvement

The table below sets out the proposals for improvement that we have identified following this review.

2019 Proposals for improvement	
P1	Strengthen the arrangements to monitor and review the effectiveness of the Council's arrangements for dealing with whistleblowing concerns and employee grievances by actively seeking feedback from all those involved.
P2	Clarify the implementation and monitoring arrangements for the following action within the People Strategy: 'monitor the implementation of recommendations from grievances to ensure organisational learning and development'.
P3	Clarify with the Standards Committee, how it will assess the effectiveness of the Whistleblowing policy.

- 6 The Council has fully addressed seven of our nine 2014 Whistleblowing proposals for improvement. Of the remaining two, the Council is continuing to address one and one is no longer applicable. **Exhibit 2** sets out the one proposal for improvement that remains in progress and **Exhibit 3** sets out the one proposal for improvement that is no longer applicable. This is no longer applicable because the Council considers it more accessible to use a wider variety of learning and development techniques to engage staff.

Exhibit 2: 2014 whistleblowing proposal for improvement in progress to be addressed

2014 Proposal for improvement	
P7	Identify methods of checking staff awareness and include the Whistleblowing Policy in the employee survey planned for summer 2014 and subsequent surveys.

Exhibit 3: 2014 whistleblowing proposal for improvement no longer applicable

2014 Proposal for improvement

P5 Complete the development of the e-learning module and establish it within a learning and development programme.

Detailed report

The Council has responded positively to our 2014 Whistleblowing review to strengthen its Whistleblowing and Fairness at Work arrangements, and seeking feedback from those involved could lead to further improvements

The Council has strengthened its arrangements to make staff aware of the policies

- 7 In 2017, the Council revised its Whistleblowing and Fairness at Work (Grievance) policies. Both policies are clear, easy to follow and contain supportive and re-assuring language.
- 8 At that time, the Council sent an all staff e-mail containing the revised policies and clearly asked managers to share the policies with all staff. During our fieldwork, managers commented that in addition to receiving the e-mails with the revised policies, it would be helpful to have a summary of the changes to each policy. Managers also noted this would be helpful for any future HR policy change.
- 9 All new Council employees receive an information pack containing the two policies alongside the contract of employment. The code of conduct sent to all new starters also includes the Whistleblowing Policy.
- 10 The Council has a managers' checklist to support managers in undertaking new employees' induction. At induction, employees are signposted to the People Services team and People Services section on the Council's intranet (the Hub), where the Whistleblowing and Fairness at Work (Grievance) policies and supporting workflows are available. The workflows are easily accessible and provide a step by step guide for employees wanting to raise a concern, and for managers on responding to and dealing with concerns. Managers told us the workflows were particularly helpful.
- 11 To gain assurance that staff would use the policies, the Council's 2018 staff survey asked, 'As an employee, how confident would you feel to be able to raise concerns about potential malpractice within your work environment (1 being 'not confident', 10 being 'confident')'.
- 12 The Council also assessed its staff confidence levels in using the policies. 53% of the respondents had high confidence levels, scoring 8, 9 or 10, and 80% scored at 5 or above. The response rate to the staff survey was 20% (of a workforce of approximately 3,600).
- 13 In April 2019 Internal Audit's follow-up report on HR policies noted a minor risk in relation to staff awareness of Council HR policies. The report states 'there was no requirement for staff to indicate whether they had viewed/ understood HR policies.'

A risk is that staff may inadvertently contravene policies through lack of awareness or understanding'. The Internal Audit report commented that, 'Whilst staff were receiving copies of all new and updated policies, there was no mechanism in place to ensure that staff members had read and understood the content of the documents. The development of a tool to facilitate the recording of staff members' acknowledgement of their understanding of new or updated policies could help ensure greater compliance with policies and would provide clear evidence for use in disciplinary cases where policy requirements were subsequently not adhered to. A potential digital solution to this issue is being considered as part of the 'visioning' work for the potential new HR system.'

- 14 Not all staff have regular access to a Council PC or laptop and therefore do not have access to the Hub. Managers told us they understood that it is their responsibility to distribute the policies to staff and for hard copies of the policies to be available in those work locations where there is limited access to the Hub.
- 15 Our review of case files showed the Council has received grievance concerns and whistleblowing disclosures from employees working in the more remote service areas (those areas furthest away from the corporate centre where staff have limited access to a PC). Council managers believed, therefore, this showed that staff without regular access to PCs were aware of the policies and would use them.

There is a collective decision-making process to determine which policy to use while ensuring the employees raising concerns are at the forefront of the decision

- 16 All people we spoke to clearly articulated the difference between Whistleblowing disclosures and Fairness at Work (Grievance) concerns.
- 17 Managers receive training via the corporate managers induction programme on the difference between whistleblowing concerns and grievances, as well as dignity at work, handling complaints and disciplinary issues.
- 18 The Whistleblowing Policy and accompanying workflow state that whomever receives notification of a potential whistleblowing disclosure becomes the Designated Officer. The Designated Officer decides if the disclosure requires investigating. The people we spoke to told us that, in practice, Designated Officers approach the HR team for advice to determine if a concern raised is a whistleblowing disclosure, Fairness at Work (Grievance) or formal complaint and whether an investigation is necessary. The HR team responds quickly to these requests for assistance and is involved in deciding on the next steps in dealing with the concern. The HR team also gives support to Designated Officers in planning any investigation. All managers we spoke to stated they would contact the HR team immediately if they received what they believed was a whistleblowing disclosure or grievance.
- 19 The Council is committed to ensuring that whistle-blowers or employees going through a grievance process are well-supported. Managers described an

empowering culture with the focus on the resolution of issues and employee wellbeing at the centre of dealing with grievance and whistleblowing concerns.

- 20 The Council offers a range of support to employees, including counselling and/or a referral to Occupational Health. Mediation is available, and employees are encouraged to contact a Trade Union representative. There is also HR support and line management support (depending on the cause of the disclosure or grievance).
- 21 Formal meetings to decide whether concerns raised fall within the whistleblowing or Fairness at Work (Grievance) policy are held if the nature of the concern means that it is unclear which Council policy applies. The HR team convenes these with the relevant manager/Designated Officer.
- 22 The Council ensures the welfare of employees raising concerns is paramount. Many people we spoke to during the fieldwork stated that some whistleblowing cases may have been a grievance or dignity at work issue instead. The Council did not contradict the employees to protect their welfare and well-being if employees were vulnerable.
- 23 Officers told us that staff in the education directorate sometimes use the Whistleblowing policy to report a concern as this is the only way they can escalate concerns to the corporate centre. This is because a School Governing Body would only deal with a school-based complaint and school complaints cannot be escalated to the Ombudsman.
- 24 The Council respects employees' wishes to remain anonymous. It dealt with some cases under its whistleblowing policy as anonymity cannot be maintained under the Fairness at Work (Grievance) policy. With all concerns, the Council's focus was on resolving issues by supporting individuals and thoroughly investigating the matter no matter which policy was used.

The Council has effective arrangements to respond to and manage whistleblowing disclosures and employee grievances, and has strengthened its whistleblowing arrangements since our 2014 work

- 25 The Council has a pool of managers who undertake investigations for grievance and whistleblowing concerns (as well as corporate complaints, disciplinary cases and dignity at work matters). In 2018, the Council appointed a temporary investigations officer for an initial 12-month contract. It extended this for a further 12 months in 2019. This officer brings additional capacity, expertise and knowledge.
- 26 We understand that it has been several years since the Council formally trained managers on delivering investigations. In early 2019, the Council developed a 'conducting investigation' training course. The focus of this training is to improve interviewers questioning techniques, improve investigation timescales, help investigators prioritise interviewees and help investigators to report their findings.

- 27 During the first quarter of 2019-20, one service area piloted the training. At the time of our fieldwork, the Council told us it was planning the further development and roll-out of this training.
- 28 We were told that seeking the views of current investigating officers could usefully inform and add valuable insight to the Council's new conducting investigations training.
- 29 The Council has decided not to mandate training for all managers on Whistleblowing and Fairness at Work (Grievance) policies and procedures. Managers told us they would contact the HR team for 'just in time training' if they received a grievance concern or a whistleblowing disclosure. The HR team told us that, as soon as they hear about a concern from managers, they arrange to support and coach the manager or Designated Officer on the relevant policy and process to follow.

Managers demonstrated a clear understanding of the policies and procedures, with HR maintaining close contact to ensure concerns are handled effectively, stored securely and dealt with confidentially

- 30 Managers and officers we spoke to:
- a. had differing levels of familiarity with both policies, but they knew where to locate the policies on the Hub;
 - b. feel confident and positive in dealing with a whistleblowing disclosure or grievance as the policies and workflows are easily accessible and well-written with excellent support available from the HR team;
 - c. were from different Council service areas and all spoke about a consistent corporate approach for handling grievances and whistleblowing concerns;
 - d. told us that HR Business Partners are visible within the organisation. HR Business Partners attend departmental team meetings on a regular basis and meet each term with head teachers. All interviewees spoke highly of the support and guidance from the HR business partners and their quick response to emerging employee HR issues.
- 31 In the last two years, the Council has dealt with five whistleblowing disclosures and 20 formal employee grievances. As part of the fieldwork, we reviewed six grievance and three whistleblowing case files.
- 32 All case files are stored securely on electronic files with limited staff access. Only three senior employees have access to the whistleblowing case files and the HR Business Partners can access the grievance case files.
- 33 The Whistleblowing and Fairness at Work (Grievance) policies clearly state timescales for the Council to acknowledge any concerns raised. Generally, the case files indicated that the Council adheres to the timescales. In most grievance

case files reviewed, the Council acknowledged receipt of a grievance within one working day.

- 34 In all reviewed case files, employees received communication with details of the meeting with the Council to discuss their grievance or whistleblowing disclosure (if not an anonymous disclosure). If it was not possible to meet an employee or commence an investigation within the stated policy timescales, the case files included correspondence to the employees with an explanation for a potential delay, for example, officers' annual leave commitments, school holidays or the availability of Trades Union representatives.
- 35 In all the case files reviewed, the employees' right to be accompanied to any meetings with the Council to discuss their concern was clearly stated. Overall, our review of case files showed that whistleblowing and Fairness at Work (Grievance) records were up to date and well maintained.
- 36 The Council's Whistleblowing policy does not explicitly state that Designated Officers must inform the HR team of any whistleblowing disclosure. However, Designated Officers told us they would immediately inform the HR team. The HR team told us they are confident that they are aware of all disclosures despite Designated Officers not being required to do so. There is however a risk that Designated Officers referring to the policy and workflow for guidance may not contact the HR team. Therefore, the Designated Officer and Whistle-blower may not receive HR support and whistleblowing disclosures may not reach the corporate centre.

The Council has a clear process for the ongoing review of the policies but does not actively seek feedback from those involved, and members' oversight of arrangements is limited

- 37 In June 2017, Cabinet approved a revised version of the Council's Whistleblowing Policy. The current version of the policy is version 3. The next review date for this policy is 2020.
- 38 In September 2017, Cabinet approved a revised version of the Council's Fairness at Work (Grievance) Policy. The current version of the policy is version 3. The next review date for this policy is 2020.
- 39 On 18 March 2019, the Standards Committee received a short report on the number of whistleblowing cases. This was the first formal report on whistleblowing cases presented to members. The report did not include themes and a summary of concerns raised, or the directorate/school as required by the Whistleblowing Policy.
- 40 The Committee requested more information on the whistleblowing cases (without compromising employees' personal information and confidentiality) so they could scrutinise in more detail. The Committee requested a work programme to include further work on whistleblowing disclosures. This is an agenda item on the Standards Committee for September 2019.

- 41 Members of the Standards Committee asked for training or a briefing on the Whistleblowing Policy, as they currently did not have an opportunity for this.
- 42 The Constitution states that the role of the Standards Committee is to ensure that the Council's Whistleblowing Policy operates effectively. Members of the Committee asked officers how the Committee fulfils this role and assesses whether the policy is working effectively. The Council's expectations on how the Standards Committee will effectively assess the policy will be discussed at the committee meeting scheduled for September 2019 as part of committee's agenda item on their annual work programme.
- 43 In 2017, Internal Audit reviewed HR policies and in March 2018 reported 'Limited Assurance' to Audit Committee, meaning 'poorly controlled with unacceptable levels of risk'. Audit Committee received Internal Audit's follow-up report on HR policies in April 2019. The report noted good progress with an overall audit opinion of 'considerable assurance'².
- 44 HR Business Partners informally capture lessons learnt, themes and/or trends in all the cases through the weekly 'weekly operational updates (the 'HR Huddle') and monthly in-depth team meetings. There is no formal procedure to review each case and ask the people who have been through the whistleblowing or grievance process for feedback. Seeking feedback to understand how the policies and procedures work from their perspective could be a useful source of information (if the whistle-blower is not anonymous) when reviewing the policies' supporting arrangements.
- 45 Investigating officers are not asked for feedback on the investigation process or how the policies and procedures work in practice. Investigating officers told us they would value feedback on how they performed in undertaking the investigations.
- 46 The Council's People Strategy approved by Cabinet in July 2018 contains the action 'monitor the implementation of recommendations from grievances to ensure organisational learning and development'. It is unclear what recommendations this 'action' refers to or how the Council monitors their implementation.
- 47 Most people we spoke to are not asked for feedback or given the opportunity to suggest recommendations to improve arrangements and inform future learning and training. This is a missed opportunity to further enhance the arrangements supporting whistleblowing and grievance concerns and currently, this action stated in the People Strategy is not being delivered.

² The Council's Internal Audit function defines 'considerable assurance' as 'the financial and administrative systems reviewed were found to be generally well controlled although some risks were identified which should be addressed'. (Internal Audit Report, 'HR Policies Follow-Up', April 2019).

Appendix 1

Whistleblowing and Grievance definitions

Whistleblowing

Under the Public Interest Disclosure Act 1998 (PIDA), an employee may make a disclosure to his/her employer – this is called whistleblowing. Whistleblowing enables an employee to pass on information concerning wrongdoing, risk or malpractice in the workplace that they are aware of, and to be protected by PIDA. For protection, an employee who makes a disclosure must reasonably believe two things. The first is that they are acting in the public interest. The second is that the disclosure tends to show past, present or likely future wrongdoing falling into one or more of the following categories:

- criminal offences (this may include, for example, types of financial impropriety such as fraud);
- failure to comply with an obligation set out in law;
- miscarriages of justice;
- endangering of someone's health and safety;
- damage to the environment; and
- covering up wrongdoing in the above categories.

As an employer it is good practice to create an open, transparent and safe working environment where employees feel able to speak up. Although the law does not require employers to have a whistleblowing policy in place, the existence of a whistleblowing policy shows an employer's commitment to listen to the concerns of workers.

The Council is also a 'prescribed person' under PIDA i.e. disclosures can be made to the Council in the following circumstances when the Council is not the employer:

- compliance with the requirement of consumer protection legislation;
- compliance with the requirements of food safety legislation;
- matters which may affect the health and safety of any individual at work; and
- matters which may affect the health and safety of any member of the public arising out of or in connection with the activities of persons at work.

Grievance

There is a difference between a grievance and making a whistleblowing disclosure. A grievance is solely a personal matter rather than one of wider concern, or one that affects the interests of others.

A grievance is a concern, problem or issue pertaining to their employment that an employee raises with their employer. Anybody working in an organisation may, at any time, have a problem, issue or concern about their work which they want addressed and resolved. A grievance may be about:

- the things an employee is being asked to do as part of their job;
- the terms and conditions of the employment contract;
- the way an employee is being treated at work;
- health and safety;
- discrimination at work;
- disagreements with colleagues; and
- harassment, bullying or victimisation.

The Employment Act (2008) came into force in April 2009 and removed the former statutory processes for disciplinary, grievance and dismissal procedures. They were replaced with the Advisory, Conciliation and Arbitration Service (ACAS) voluntary code of practice on Disciplinary and Grievance Procedures (the 'ACAS Code') which was subsequently updated in March 2015.

The Code sets out the principles for handling disciplinary and grievance situations in the workplace. A failure to follow the Code does not, in itself, make a person or organisation liable to legal proceedings. However, employers and employees should follow the Code to ensure a reasonable standard of behaviour, and employment tribunals are legally required to take the Code into account when considering relevant cases.

The ACAS Code sets out the following steps for employers once the employee has let them know the nature of the grievance:

- try to resolve the grievance informally;
- if it is not possible to resolve a grievance informally employees should raise the matter formally and without unreasonable delay;
- hold a formal meeting with the employee to discuss the grievance as soon as possible;
- allow the employee to be accompanied to the meeting;
- decide on appropriate action and communicate the outcome in writing to the employee; and
- allow the employee to take the grievance further through an impartial appeal process.

It is important that an organisation has clear grievance or dispute resolution procedures that are communicated to all employees. Line managers and anyone involved in managing and hearing grievances must be trained appropriately and have access to guidance. The organisation is responsible for ensuring that all disputes and grievances must be handled in a fair and consistent manner across the organisation.

Appendix 2

2014 Whistleblowing Policy and arrangements proposals for improvement

1. Strengthen the Whistleblowing Policy further to:
 - simplify and provide greater clarity on who disclosures can be made to;
 - clarify the role of the responsible officer in relation to conducting investigations;
 - clarify if the policy includes school-based employees;
 - clarify that receiving anonymous disclosures is preferable to not receiving them at all;
 - add telephone numbers; and
 - expand the list of external contacts.
2. Formalise the role of elected members in the oversight arrangements.
3. Review the storage and security arrangements of caseload information.
4. Develop, through training, the knowledge to distinguish the difference between whistleblowing and other HR policies.
5. Complete the development of the e-learning module and establish it within a learning and development programme.
6. Include paragraphs 3.5 and 5.6 from 2004 version into 2013 version.
7. Identify methods of checking staff awareness and include the whistleblowing policy in the employee survey planned for summer 2014 and subsequent surveys.
8. Identify the most effective means of raising awareness of this policy and implement within the Council.
9. Review the effectiveness of the policy and arrangements.

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