

STANDARDS & ETHICS COMMITTEE

10 JANUARY 2007

Present: Independent Members: Akmal Hanuk (Chairperson), Paul Stockton, Anne Morgan, Maureen Hedley-Clarke and Deirdre Jones

Community Councillor David Suthers

County Councillors Griffiths, James and Owens

S77 : MINUTES

The minutes of the meeting held on 5 October 2006 were approved as a correct record and signed by the Chairperson.

S78 : WHISTLEBLOWING – INTERNAL AUDIT REVIEW

The Standards & Ethics Committee, as part of its terms of reference has a responsibility to oversee and monitor the Council's Whistleblowing Policy. In order to fulfil this responsibility, the Committee asked Internal Audit to undertake a review of the Policy to determine the level of staff awareness and understanding.

Whistleblowing has been defined as "the disclosure by an employee or professionals confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the workplace, be it of the employee or his/her fellow employees".

The Committee had requested a review of the Council's Whistleblowing Policy to be undertaken by Internal Audit to determine the level of staff awareness throughout the Authority.

The findings of the recently completed review were reported to the Committee for consideration.

The Chairperson welcomed Derek King, Audit & Risk Manager and Hilary Holland, Senior Auditor, who had been invited to the meeting to outline the details of the findings of the recently completed Whistleblowing Review.

Derek King outlined the main objectives of the review as follows and gave a summary of the findings and the recommendations contained in the report:-

Objective 1: To ascertain the level of staff awareness and understanding

The Committee was advised that in order to assess staff awareness and understanding of the Policy, two questionnaires were issued via e-mail to Council staff in September 2006 as follows:

- (i) to a sample of 34 Operational Managers (two from each Service area);
- (ii) to a sample of 51 staff below Operational Manager level (three from each Service area);

An outline was given of the main results based on returned questionnaires, in conclusion the review found that:-

- although the majority of staff surveyed were generally aware of the Policy, a number did not appear to know its main aims, or to whom it applied. There appeared to be a lack of understanding of the principles of the Policy by some staff, as a result there was a risk that staff may not use the Policy;
- there was evidence that some staff felt that the Policy was not particularly user friendly 'in terms of language and content';
- some staff did not feel confident that the County Council Policy would protect them if they made a disclosure;
- there was scope to improve staff awareness and publicity of the Policy;
- when improving staff awareness, it needs to be remembered that staff that do not have access to the Intranet System may not be able to view a copy of the Policy.

Objective 2 – To ascertain whether Cardiff's Schools had adopted the Council's Whistleblowing Policy, or had created their own

In the 'Clywch' report of 2004, the Children's Commissioner for Wales recommended that all Schools should have a Whistleblowing Policy in place and also highlighted the need for 'Child Friendly' Policies. The

3.

Commissioner recommended that Councils should publish their Whistleblowing Policies so that children and young people are made aware of them.

The Committee were advised that the Council are not able to insist that Schools adopt a Whistleblowing Policy and there is no formal requirement for Schools to have such a policy in place. However the Council can recommend as best practice that School Governing Bodies adopt an appropriate Whistleblowing Policy, to date, no such recommendation had been made.

The Committee was advised that 13 out of 20 Schools responded to the questionnaire advising that there was no such Policy in place. Therefore, within those Schools, there is no formal mechanism for staff and governors to raise concerns that fall within the whistleblowing criteria.

From the information provided it was concluded that:-

- it is generally regarded to be best practice for Schools to have a Whistleblowing Policy in place;
- School Policies should be 'Child Friendly' and well publicised to both staff and children;
- all the Cardiff Schools who responded to the survey had not adopted a Whistleblowing Policy.

Objective 3 – Scope of the Policy and to whom it applies

The Committee were advised that the review had looked at the appropriateness of the Council's Policy and had sought clarification from Legal Services regarding the scope and the application of the Policy in respect of:-

- (i) Workers (employees, contractors, suppliers and agency staff);
- (ii) Members of the public; and
- (iii) Council Members.

From the information provided it was concluded that:-

- there was lack of clarity to the scope of the current Policy;
- the Policy does not appear to be used at present by members of the

public;

Council Members appear to be unclear as to the scope of the Policy, and it is unclear as to whether it should apply to them. There is no reference to the Policy in the Members' Handbook, and Members do not appear to have been made aware of the Policy during their induction training.

Objective 4 – To undertake a comparison of the Council's Whistleblowing Policy with a sample of other Local Authorities

Samples of other Local Authorities' Whistleblowing Policies were obtained during the review and compared with Cardiff Council's. The findings of the comparison concluded that:-

- the Council's Policy is much longer and does not appear to be as user friendly as some of the other Local Authority Whistleblowing Policies examined during the review;
- other Policies often gave timescales to deal with a disclosure, which the Council does not;
- it was clearer in some of the other Local Authority Policies as to who could use the Policy;
- statements were often included in other Local Authority Policies to the effect that any victimisation of a whistleblower or an attempt to prevent concerns being raised may result in disciplinary action where appropriate. This is not included in Cardiff's Policy.

Objective 5 – To ascertain how the Council ensure that agency staff, suppliers, contractors and sub-contractors used by the Council are made aware of the Policy

Agency staff, suppliers, contractors and sub-contractors working for the Council are all included in the definition of the term 'worker', according to the Public Interest Disclosure Act 1998 and are, therefore, legally protected should they wish to make a 'qualified disclosure' under the Council's Whistleblowing Policy.

5.

Following enquiries it was ascertained that:-

- (i) none of the Operational Managers who had used sub-contractors and consultants had made them aware of the Policy;
- (ii) only 60% of Operational Managers had made their temporary staff aware of the Policy;
- (iii) Human Resources had confirmed they do not make agency staff employed by the Council, or Cardiff Works staff aware of the Policy;
- (iv) Procurement and Supplies had not made suppliers, contractors and sub-contractors aware of the Policy.

It was therefore concluded that agency staff, suppliers, contractors and sub-contractors used by the Council need to be made more aware of the Council's Whistleblowing Policy.

Objective 6 – To ascertain whether there is any overlap of Council Policies available to people, in particular the Whistleblowing, Disciplinary and Complaints Policies, and Anti-Fraud and Anti-Corruption Strategy

An examination of the above Policies was undertaken during the review, along with relevant Policies created by Children's Services, to determine whether there was any crossover of the processes. It was found that there does appear to be an overlap of processes within Council Policies, which may lead to confusion over which Policies should be applied, particularly in relation to matters concerning financial irregularities and child protection issues.

Other observations were that:-

- there is no central record of whistleblowing allegations and action taken within the Council. This makes it difficult to assess the level of usage of the Policy and for the Standards & Ethics Committee to ensure that the requirements of the Policy have been complied with;
- the Council's Whistleblowing Policy does not place a duty on employees to report mal-practice.

- the Council's 'Code of Conduct for Employees' imposes an obligation upon employees to report any matter which is illegal, improper, unethical or otherwise inconsistent with the Code, this obligation should be replicated in the Council's Whistleblowing Policy.

In conclusion the review found that:-

- there is some 'crossover' of Policies within the Council in respect of whistleblowing issues, particularly:-
 - the Anti-Fraud and Anti-Corruption Strategy;
 - the allegations of abuse against the professional staff member or volunteer in contact with Children's Policy; and
 - the Whistleblowing Policy;
- there may be confusion as to which policy should be applied.

The Chairperson thanked the Officers for presenting the report and the outcome of the review of the Whistleblowing Policy.

The Committee made a number of observations:-

- More work was needed to increase awareness of the Policy in particular by placing on the Internet and providing leaflets to advise those staff not on e-mail.

In response, the Committee was advised that it was intended that the Whistleblowing Policy would become more focused to increase awareness.

- Reference was made to the recommendation that a central record of whistleblowing referrals should be maintained; it was confirmed that the Council needed to be mindful of data protection when placing details on a central record, it was anticipated that only anonymised records would be held on a central records database.
- In respect of whistleblowing in Schools it was suggested that it may be better if the governing bodies were urged to take steps for the introduction of the Policy.

In response to the suggestion it was explained that although governors

7.

were autonomous; the Council were still responsible for any claims made.

- It was suggested that the Schools be advised they should have a Policy in place.
- It was suggested that it may be more effective if this were recommended through Governors Wales or Cardiff Governors Association that Schools should adopt a Whistleblowing Policy as a matter of urgency.

The Committee requested that a letter be sent to the appropriate Governors Association on behalf of the Committee recommending that action be taken by the Schools to introduce a Whistleblowing Policy as a matter of urgency.

- It was recommended that the Whistleblowing Policy should be re-written to include the comments of the Standards & Ethics Committee and that it be brought back to the next meeting of the Committee prior to submission to the Executive.

The Committee was asked whether it wished to be consulted on the Anti-Fraud and Anti-Corruption Policies, the Committee confirmed it does wish to be consulted and agreed to place the item on the agenda for consideration at their meeting in March.

RESOLVED – That

- (1) the results of the review of the Whistleblowing Policy be noted;
- (2) the Policy be re-drafted to make it more 'user friendly' and to address the recommendations of the review as set out in the report of the Audit and Risk manager and the comments of the Standards & Ethics Committee;
- (3) staff awareness be increased by regularly reminding staff of the Policy's existence and its main principles. This process should take into account the fact that not all staff have access to e-mail and so should include:
 - placing leaflets summarising the main aspects of the Policy periodically with payslips;
 - displaying posters advertising the Policy at all Council buildings;

- (4) a letter be sent on behalf of the Committee to bodies such as Governors Wales and the Cardiff Governors Association recommending they urge School Governing Bodies to adopt a Whistleblowing Policy as a matter of urgency, which policy should take account of the guidance issued by the WAG; be consistent (where applicable) with the 'principles' of the main Council Policy (after the suggested review of its format has been undertaken); and be written in a 'child friendly' manner to enable children to easily understand its content.
- (5) The Main Policy be publicised at Council locations attended by children and young people (outside the school environment) so that they are aware of it.
- (6) Steps be taken within the Council to ensure that Agency Staff, Suppliers, Contractors and Sub-Contractors used by the Council are made aware of the Council's Whistleblowing Policy in the future;
- (7) the wording of the Whistleblowing Policy be revised to say that it is a duty of the employee to report malpractice, or any other issue of concern, in accordance with the Council's 'Code of Conduct for Employees'.

S79 : WELSH AUDIT OFFICE REVIEW OF PLANNING PROCEDURES

The Committee received a report which detailed the findings of an inspection of the Council's Planning Service in the period 2005/06. The Wales Audit Report highlighted a number of issues and specifically highlighted the issue of whether the Planning Service in Cardiff was being delivered in a fair and transparent way, including the following issues:-

- the Council's Constitution is not a user friendly document;
- the Council has no Code of Practice for Councillors and Officers involved in the planning process as recommended by the Nolan Committee;
- the Committee does not have a permanent home thus making it difficult to arrange conveniently for members of the public and Members of the Committee;

9.

- the schedule of the Committee's report is lengthy and the Committee can sit for many hours;
- public speaking is not permitted at the Committee;
- the way that the business is conducted may give the impression to members of the public that matters have been previously discussed;
- some training has been provided, but not all Councillors have attended.

The report concluded that overall, the Council is not providing a good Planning Service because planning policy is not properly integrated with other Council policies and there are issues relating to the operation of the Planning Committee and the management of the Service that need to be addressed.

The Chairperson welcomed Councillor Bird, Chairperson of the Planning Committee and Sean Hannaby, Chief Officer, Strategic Planning & Environment, who had been invited to the meeting to outline the planning process and the issues of concern that were highlighted in the Wales Audit Office Report.

Councillor Bird advised the Committee that she welcomed the opportunity to meet with the Committee to discuss the issues highlighted in the Wales Audit Office Report and advised that the report had reinforced some of the views of the Planning Committee by highlighting some issues that the Committee had been aware of for some time.

Councillor Bird gave a brief outline of the work of the Planning Committee who deal with a large number of all types of planning applications. The Committee was advised that 30% of applications were determined by the Planning Committee and that 70% of non contentious planning applications were determined by Officers under delegated powers. The Committee deal with a number of contentious applications where there is often a lengthy debate and this adds to the length of time the Committee sits.

Councillor Bird agreed with the findings that the Service is not as good as it could be, but added that budget restraints had an impact and there were insufficient resources to monitor compliance with conditions attached to planning consent. The Committee are able to defer applications for site visits, members of the public are able to attend the site visits but are then advised

they are not permitted to speak to the Committee during the site visit. There was lack of public information about the operation of the Planning Service leading to poor public perception. It was recognised there was a need to address the issue of public perception in the code but there must be a balance between public perception and fairness. It was emphasised that no decisions on applications are made at the site visit. Following the site visit the application is deliberated at the next meeting of the Committee and members of the public are able to attend.

- Accommodation of the Committee – the inspection had highlighted that there was no proper accommodation allocated to the Planning Committee and the Committee shared the view that there should be more consistent accommodation that had easy access for disabled persons, appropriate room size to accommodate large numbers and more user friendly reception areas.

Sean Hannaby advised the Committee that a number of the recommendations in the Audit Report were achievable and that since the report was published in September 2006, there had been a number of changes made to improve the Service. To achieve this, the Council has decided to bring all the Planning Services together under one Chief Officer, and to build on the strengths to deliver effective responses and to address the weaknesses highlighted in the report.

- Probity and Transparency – the Audit Inspection assessed the Service in terms of probity and transparency and their examination focussed on the lack of planning policies and also management and leadership, it was suggested that this may be a topic that the Standards & Ethics Committee could consider.
- Funding Implications – the Committee were advised that preparation work was being undertaken in respect of budgetary implications and of the necessity to put funding in place to improve the Service provided.

An action plan has been drawn up to deal with this issue.

- Workload of the Committee – the Committee were advised that the Planning Committee in Cardiff had a much larger workload compared to other Authorities and dealt with over 3,000 applications per year.
- Public Inclusion – the Committee were advised that public speaking is not permitted unless there is a petition with 50 or more signatures. In

11.

respect of site visits, no other Authorities invite the public to site visits, and by inviting the public it raises their expectations.

In conclusion the Committee were advised that there was potential to improve the Service but that any changes in protocol may require a change to the Constitution.

The Chairperson thanked Councillor Bird and Sean Hannaby for their detailed presentations, following which, the Committee made a number of observations and sought clarification on a number of the points raised.

- It was noted that some training had been given to Members but that this was not attended by all Members. The Committee suggested that this training should be compulsory. Councillor Bird confirmed that all Members of the Planning Committee had now received training.
- In response to a query relating to the composition of the Committee, it was confirmed that there was proportional representation for the seats on the Committee, however, the decision making process was non-political. It was also clarified that any decisions relating to planning applications must be defensible in law, if not the decision could be challenged.
- In response to a query relating to Members interests, it was confirmed that Members on the Planning Committee must declare an interest and leave the room in circumstances where they knew the appellant in their capacity as a ward Member, this avoids the perception of the public that the Member has an improper influence on the decision.
- There was concern that lengthy planning papers were only sent out three days before the meeting, it was felt that this was unacceptable in that there was insufficient time for Members to fully prepare for the meeting.
- It was important that the Planning Committee should be allocated appropriate, consistent accommodation.
- The Committee noted the quorum for the meeting was three, but were of the opinion that this should be increased, especially in the case of large contentious applications.
- In response to the suggestion that community Councillors should be given the opportunity to speak at Planning Committee, the Committee

were advised that the relationship between Planning and the Community Councils would form part of the interface with the public. The Community Councils are currently permitted to make representations to the Planning Committee but these must be in writing, these are then included in the report for consideration.

In summary the Monitoring Officer referred to the recommendations in the Audit Report that a protocol should be developed in partnership with the Planning Committee, and should take on board issues including:

- Site visits.
- Consultation with Community Councils.
- Proper accommodation for Planning.
- Quorum of meetings.
- Scheme of delegations.
- Under-funding of the Service.
- Notification issues and transparency.

It was suggested that an independent member of the Standards & Ethics Committee be requested to join the group for discussion of the draft action plan and protocol.

RESOLVED – That

- (1) the recommendations set out in paragraph 87 of the Welsh Audit Officer Report be endorsed;
- (2) the Monitoring Officer and the Chief Planning Officer draft a code of practice for Councillors and Members involved in the planning process for approval by Council by April 2007;
- (3) the Monitoring Officer and Chief Planning Officer develop a training programme for all Councillors, particularly with regard to assisting Member to deal with conflict arising from their roles as ward Members and as Members of the Planning Committee;
- (4) all Members of the Council be recommended to attend training and in particular that no Member shall be entitled to sit on the Planning Committee unless they had attended the training programme;
- (5) an independent member of the Standards & Ethics Committee be requested

13.

to join the group for discussion of the draft action plan and protocol.

S80 : WORK PROGRAMME

- (1) That discussions on the work programme be deferred to the next meeting of the Standards & Ethics Committee in March 2007.
- (2) The Monitoring Officer advised the Committee that informal training sessions would be arranged to brief Members of the Committee on the operation of the Council and the code of conduct.
- (3) Invitation to Party Whips

A letter be sent to all Party Whips advising them that the Committee would like to meet with them on a regular basis, dates to be arranged in due course.

The next meeting of the Committee was scheduled to take place on 20 March 2007.

- (4) That expressions of interest for the position of Vice Chair of the Standards & Ethics Committee be forwarded to Committee Services and included on the agenda for appointment at the March meeting.