

AUDIT COMMITTEE: 26 January 2021

DRAFT MONITORING EMPLOYEES AT WORK POLICY

REPORT OF THE CORPORATE DIRECTOR RESOURCES

AGENDA ITEM: 10.3

Reason for this Report

1. The Audit Committee's Terms of Reference requires Members to:
 - Monitor the counter-fraud strategy, actions and resources;
 - Review the assessment of fraud risks and potential harm to the council from fraud and corruption.
2. This report has been prepared to provide Audit Committee with an opportunity to comment on and consider the draft Monitoring Employees at Work Policy. The policy is due to be considered for Cabinet approval in March 2021.

Background

3. The Council has adopted an Employees' Code of Conduct, embedded in the Constitution and incorporated into the contract of employment of all Council employees. All employees have a duty to be honest, to act with propriety and integrity at all times, and to adhere to legal requirements, rules, procedures and practices.
4. From time to time managers may receive an allegation or suspicion that the conduct of an employee they manage has fallen short of the expected standards, and requires investigation. The policy is designed to support a consistent and disciplined assessment of the purpose and impact of considerations for monitoring, in such circumstances.
5. The policy sets out the decision-making process and governance requirements when considering any monitoring at work in respect of a suspicion or allegation of misconduct. It is aligned to upholding the principles of the Council's Counter-Fraud and Corruption Strategy, and to the Council's Disciplinary Policy.
6. The draft policy has been prepared through consultation with colleagues in Internal Audit, Information Governance, HR People Services and Legal Services, and subject to consideration and comment from the portfolio Cabinet Member, Senior Management Team and the Equalities Team. Engagement with Trade Union has commenced, and a process of consideration and comment is ongoing. Comments have, and will continue to be incorporated into the attached draft policy, in Appendix A.

Issues

7. The policy is designed to help to ensure that when a suspicion or allegation of misconduct by an employee comes to the attention of the Council, an adequate investigation, conforming to the rules of natural justice, is carried out as quickly as possible.
8. Whilst it would be rare for covert monitoring (surveillance) of workers to be justified, in such cases, the Authorising Officer, graded Assistant Director / Chief Officer or above, would need to be satisfied that there are grounds for suspecting criminal activity or equivalent malpractice, and that notifying individuals about the monitoring would prejudice its prevention or detection.
9. This policy would apply to all Council officers, and is commended to all Schools for consideration and adoption by their respective Governing Bodies. In respect of Schools, the authorising officer for monitoring activities should be the relevant Chair of Governors, in consultation with the Audit Manager.
10. The policy requires that before monitoring is undertaken, a preliminary investigation is completed, and if monitoring is considered appropriate, a monitoring at work impact assessment would be completed. The impact assessment pro forma is contained within the policy, to ensure that the relevant factors are taken into account when deciding if monitoring is justified, and to ensure that the exercise is properly authorised.
11. The draft policy requires an Impact Assessment Form (Appendix A) to be completed by the relevant officer in respect of each monitoring exercise, which requires:
 - Professional advice from the Audit Manager and the Information Governance OM, for consideration by the Authorising Officer;
 - Technical advice and guidance from the ICT Security and Compliance Manager, where the monitoring relates to ICT systems;
 - Authorising Officer approval (graded Assistant Director / Chief Officer or above);
 - Agreement and counter-signatory from the OM Principal Solicitor (Litigation) or an equivalent representative, as assigned by the Monitoring Officer in order to proceed with the monitoring exercise.

Legal Implications

12. Article 8(1) of the European Convention on Human Rights, incorporated into UK law by the Human Rights Act 1998, provides that everyone has a right to respect for his private and family life, his home and his correspondence, which may only be interfered with in accordance with the law and as necessary in a democratic society. Under Article 8, public authorities must guarantee workers some degree of privacy in the workplace.
13. Electronic forms of workplace surveillance involve the processing of personal data which is regulated by data protection law. The Employment Practices Code issued by the Information Commissioner's Office provides guidance for employers on their data protection obligations. Part 3 of the Code contains guidance on monitoring employees at work, core principles of which include the following points:
 - i. Workers' private lives usually extend into the workplace and employees have an expectation of privacy, even where they have been informed monitoring may take place.
 - ii. If monitoring is to be carried out, an impact assessment should be undertaken.

- iii. For monitoring to be justified, a proportionality test must be met (the employer must consider whether the reason for monitoring is sufficient to justify intrusion into an employee's private life; and whether the means of monitoring chosen is proportionate to meet that need).
 - iv. Employees should be given information if monitoring is to take place.
 - v. A limited number of staff should have access to information obtained through monitoring and they should have received appropriate training.
 - vi. Data obtained through monitoring should be secure.
14. In considering this matter, the Council must have regard to its public sector equality duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The Protected characteristics are: age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief. An Equalities Impact Assessment has been carried out to identify the equalities implications of the proposed policy and due regard should be given to the outcomes of the Equalities Impact Assessment.

Financial Implications

15. There are no direct financial implications arising from this report but if additional financial resources are required in order to undertake these duties then there is a need to identify financial resources prior to proceeding

HR Implications

16. The policy that this report refers to has been consulted on with Trade Unions. There will be a requirement for the details of the policy, if agreed by Cabinet, to be communicated to staff and the requisite training undertaken by the appropriate employees. There will also need to be a detailed briefing to HR Officers in order that they can advise as required and links can be made with HR policies.

RECOMMENDATIONS

17. That the Committee notes and considers the draft Monitoring Employees at Work Policy, prior to a request for Cabinet approval in March 2021.

Christopher Lee
Corporate Director Resources

The following appendices are attached:

Appendix A: Draft Monitoring Employees at Work Policy
Appendix B: Equality Impact Assessment