



AUDIT COMMITTEE – 30th April 2014

## CORPORATE WHISTLEBLOWING POLICY - ANNUAL REPORT

### 1. Purpose of the Report

- 1.1 The Audit Committee considers the Council's Corporate Whistleblowing Policy on an annual basis as part of the general review of governance arrangements in support of the Annual Governance Statement process.

### 2. Recommendations

- 2.1 It is recommended that the Audit Committee note the report, commit to continuing the support towards a strong counter fraud culture and receive further review and progress reports as required and an annual report.

### 3. Background

- 3.1 The Committee will recall that it endorsed a fundamental review of the Whistleblowing Policy and supporting guidance in 2010. The revised Policy was approved by Council in March 2010 and was widely re-launched through new posters being issued for every Council building including all schools. Reference to the Policy continues to be made in every Fraud Bulletin.
- 3.2 That review also ensured the Policy and supporting arrangements met the recommended standards as set out in a new British Standard for whistleblowing.
- 3.3 The Committee will also recall that a number of the Council's anti-fraud related policies and guidance were also updated to incorporate the provisions of the Bribery Act. This included minor amendments to the WB Policy that were endorsed by the Committee.
- 3.4 At its meeting in January the Audit Committee considered and approved a further update of the Policy document to take into account the provisions of the Enterprise and Regulatory Reform Act 2013.
- 3.5 As a consequence of these recent reviews of the Policy itself it is not necessary to consider the Policy again at this time. However, the revised Policy is attached as Appendix 1 for the Audit Committee's information.

### 4. Usage of the Corporate Whistleblowing Policy Arrangements

- 4.1 As has been highlighted in previous reports it is difficult to interpret statistics regarding the usage of a whistleblowing policy. Low usage could be regarded negatively as possibly indicating employees having very little trust in the arrangements or in management to deal with issues raised. However, and positively, it could be an indication that there are few issues to raise, a

measure of there being good controls and low levels of fraud, or that any issues are in fact raised through line management and without the need to use the corporate arrangements.

- 4.2 High usage of course could reflect the opposite views where there are a high number of issues being raised indicating very poor controls and high levels of fraud. However, as above, this could also be positive in that the arrangements are regarded by employees as trustworthy.
- 4.3 Whatever the volume of referrals what is of greatest importance is that the issues raised are appropriately investigated and a positive outcome is achieved, both for the whistleblower but also corporately in the identification of poor controls that can be improved.
- 4.4 It should also be pointed out that by raising an issue through the whistleblowing arrangements ensures that an appropriate investigation is undertaken. It does not necessarily mean that either of the two Corporate Whistleblowing Officers will undertake the investigation personally nor indeed that it's a matter requiring Internal Audit involvement. This is very much a case of 'horses for courses' where every referral is considered in its details and circumstances.
- 4.5 Since the last report there have been 8 specific referrals using the whistleblowing provisions. In all cases an investigation has been undertaken or is progress.
- 4.6 In summary:
- 3 cases received through the WB telephone number were referred for investigation to the Benefits Fraud Team  
4 cases investigated and closed  
1 case remains in progress
- 4.7 Although not every referral results in the identification of wrongdoing of some kind there are nevertheless important control issues identified and subsequently acted upon by management. All issues raised were deemed having been raised in 'good faith' and therefore none were deemed vexatious or malicious.
- 4.8 It should be pointed out that Internal Audit undertake investigations emanating from both whistleblowing referrals and, more commonly, referrals from management. Internal Audit activity in this area is reported to the Committee through the Internal Audit quarterly reports. The annual Fraud Report also being considered by the Audit Committee provides further details of issues raised and the investigations undertaken.

#### **Appendix - Corporate Whistleblowing Policy and Guidance (March 2014)**

Contact Officers : Director (Legal & Governance) and Head of Internal Audit & Risk Management acting as Corporate Whistleblowing Officers  
Telephone : 01226 773001 / 01226 773241  
Date : 16<sup>th</sup> April 2014

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**CORPORATE WHISTLEBLOWING POLICY****1. Introduction**

- 1.1 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, employees and others with concerns about any aspect of the Council's work have a duty to come forward and voice those concerns. This policy intends to support that duty and seeks to encourage and enable employees to raise concerns so that the Council can take prompt action.
- 1.2 Employees and others who work with the Council are often the first to realise that there may be something wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. Indeed it may also be the case that someone with a concern is not aware how best to raise concerns. It is important to stress that any concern raised through this Policy will be treated confidentially and with the utmost seriousness.
- 1.3 This Policy also makes it clear that legitimate concerns can be raised without fear of reprisals. It is human nature to be apprehensive about raising a concern and consequently someone may also fear harassment or victimisation for doing so. In these circumstances, despite their concern, someone may find it easier to ignore it rather than report what may be just a suspicion of wrongdoing. The Council is committed, as part of its overall ethical framework, to provide a process and procedure that encourages freedom of speech so that this does not happen.
- 1.4 To ensure an effective framework for receiving and dealing with concerns, this policy aims to:-
  - show who the policy applies to ;
  - describe what kind of activity should be reported through this mechanism ;
  - explain how an employee should raise a concern within the Council ;
  - provide safeguards to protect and support individuals raising concerns and those the subject of concerns ;
  - describe how the Council will respond to concerns brought to its attention ;
  - describe how employees will receive feedback on the action the Council has taken ;
  - describe how an employee can take the matter further if they are dissatisfied with the Council's response.
- 1.5 Guidance has been prepared to assist in the use and application of this Policy and should read in conjunction with the Policy.

**2. Who this Policy applies to**

- 2.1 The policy applies to all employees and elected and co-opted members of the Council including those employees employed in locally managed schools. Employees of Council-owned companies, contractors employed by the Council, partner organisations and organisations receiving grant aid from the Council may also make use of the Council's arrangements where they wish to raise concerns relating to the Council, its elected members or officers.
- 2.2 This Policy should be read in conjunction with the Council's Code of Conduct for Employees. The Council's Code of Conduct for Employees states that there is a duty on individuals to report any suspicion or concern they may have that Council

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employees, elected members or other individuals described in 2.1 above are involved in actual or potential fraudulent or corrupt activities (see Section 3). Once a concern has been raised the procedure within this policy must be followed. Failure to report a concern may also lead to further action being taken in exceptional circumstances.

2.3 The provisions of this Policy are for those individuals referred to above. These arrangements are not directly available to members of the public. The Authority's complaints procedure should be used where a member of the public wishes to raise a concern.

2.4 For the benefit of brevity, the terms 'employee' and/or 'elected member' are subsequently used to include anyone defined in paragraph 2.1 above.

### **3. What sort of activity should be reported ?**

3.1 It is impossible and inappropriate to try to provide an exhaustive list of activities that would constitute misconduct or malpractice, but broadly speaking, the Council would expect to receive concerns surrounding :-

- a criminal offence, actual or potential;
- a failure to comply with a legal obligation;
- a miscarriage of justice;
- a misuse or theft of Council money, physical assets or the abuse of working arrangements, time recording or other human resources policies, e.g. recruitment procedures;
- a misuse or abuse of the Council's computers, its systems, data or information;
- an act that breaches the Council's financial regulations, contract standing orders or policies;
- the malpractice in dealing with or mistreatment of a client of the Council;
- actions which endanger the health and safety of staff or the public;
- an abuse of power or position;
- actions which cause damage to the environment;
- suspicions of bribery i.e. an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage;
- improper conduct by an officer or elected member; or
- any action intended to conceal any of the above.

3.2 The Enterprise and Regulatory Reform Act 2013 introduces a public interest test in relation to whistleblowing. This ensures that, in order to benefit from protection, whistleblowing claims must satisfy a public interest test and disclosures which can be characterised as being of a personal rather than a public interest will not be protected. For example, if an employee does not receive the correct amount of holiday pay (which may be a breach of contract of employment), this is a matter of personal rather than wider interest. The whistleblower must also show that the belief that the disclosure was in the public interest was reasonable in the circumstances.

3.3 In the event of a dispute concerning an individual's own employment, employees should use the provisions of other Council policies covering disciplinary, grievance, harassment and recruitment and selection procedures. Where the matter does not relate to your own employment position, it may be appropriate to use the provisions of the Whistleblowing Policy. Equally, where the actions of one employee is impacting on a number of others and directly or indirectly affecting the service being

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provided, it may be appropriate to address the concern adopting the Whistleblowing procedures.

- 3.4 This Policy is not intended for disagreements with Council policy. However if you reasonably believe that in following a Council policy an action, as listed in paragraph 3.1 above, is likely to occur, you should of course report it.
- 3.5 Although it is likely and often appropriate to start a formal investigation into matters raised, it is also possible that a more informal approach is recommended subject to the nature of the allegations made.
- 3.6 It is important to note that all concerns raised are considered on an individual basis and it is therefore not appropriate to set out any firm or suggested rules for how a particular type of concern is best dealt with.

4. **Whistleblowing Officers**

- 4.1 In order to provide employees with a recognised and consistent contact point, two Whistleblowing Officers have been designated. These are :-
- Rob Winter, Head of Internal Audit and Risk Management), Tel. No. 775788
  - Andrew Frosdick, Director (Legal and Governance), Tel. No. 775799
- 4.2 These officers will, as described in subsequent sections of this Policy, be the initial points of contact for employees who wish to use the Whistleblowing procedures. The Whistleblowing Officers will seek to assist an employee to raise a concern effectively.
- 4.3 Subsequent changes in officers will be communicated accordingly.

5. **How to Raise a Concern**

- 5.1 The Council through the provisions of this Policy encourages employees to raise concerns as early as possible to make it easier to take effective action. Normally and preferably, employees should raise concerns within their own section or department. This could be with the employees own line manager, another senior officer or Assistant or Executive Director. In certain instances this may not be appropriate because of the seriousness or sensitivity of the issues involved or indeed the involvement of certain persons in the alleged wrongdoing.
- 5.2 Where an employee feels it is appropriate to raise a concern outside their normal management arrangements, one of the Whistleblowing Officers (see paragraph 4.1 above) should be contacted. Should an employee wish to speak to a female officer in detail, this can be arranged through the Whistleblowing Officers (clearly where both Whistleblowing Officers are male).
- 5.3 Notwithstanding the provisions of this Policy, the Council's Financial Regulations require actual or potential breaches to be reported to the Assistant Executive Director of Finance (Audit and Risk Management). However this requirement should not prevent or deter employees from raising concerns through the whistleblowing procedures.
- 5.4 When reporting a concern, employees are urged to carefully consider who, given the nature of the concern, they should report it to.

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- 5.5 When raising a concern employees are also encouraged to set out the background and history of the concern, giving names, dates, places and amounts where possible, and the reason for their concern. Absolute proof is not required as long as you can demonstrate reasonable grounds for the allegation. It is more important that concerns are raised than seeking to provide all the available evidence at the outset. If further information is needed this can be obtained if necessary by further investigation through the Council's normal procedures. Specialist officers will be appointed to undertake the investigation to ensure objectivity, independence and that the proper processes are followed.
- 5.6 Employees and elected members who are raising a concern are therefore not permitted to undertake their own investigations, surveillance or to interview or visit any 'witnesses' as this could jeopardise a formal investigation.
- 5.7 There are a number of ways and facilities through which employees can raise a concern if they feel it is not appropriate to inform a manager within their section or department :-
- contacting one of the Whistleblowing Officers by telephone (there is a voicemail facility if unanswered) :-
    - \* Rob Winter, Head of Internal Audit and Risk Management) Telephone (01226) 775788
    - \* Andrew Frosdick, Director (Legal and Governance) - Telephone (01226) 775799
  - using the dedicated 24 hour Whistleblowing hotline - 0800 138 2939
  - writing in to the Whistleblowing Officers using a dedicated P.O. Box :-
    - \* Barnsley Metropolitan Borough Council  
P.O. Box 320,  
Barnsley,  
S70 2YL
  - e-mailing one of the Whistleblowing Officers :-
 

* WBO1RWinter	(internal)
* WBO1RWinter@barnsley.gov.uk	(external)
* WBO2AFrosdick	(internal)
* WBO2AFrosdick@barnsley.gov.uk	(external)
- 5.8 The Council recognises that employees may wish to seek advice from their trade union and indeed may invite their trade union (or professional association) to raise a matter on their behalf.
- 5.9 **Anonymous Allegations**  
Employees are encouraged to give their name when raising a concern. If an employee chooses to raise a concern anonymously it will be taken further at the discretion of the designated Whistleblowing Officers in liaison with the appropriate senior officers and the Chief Executive and Assistant Chief Executive (Finance, Property and Information Services) as necessary.

In exercising this discretion, certain factors will be taken into account. These are:-

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- the seriousness of the issues raised ;
- the credibility of the concern ; and
- the likelihood of confirming the allegation from attributable sources.

**6. Safeguards****6.1 *Harassment or Victimisation***

The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal. The Council will not tolerate any form of harassment or victimisation, and will take the appropriate action to attempt to protect employees who raise a concern. However, this does not mean that if an employee raising a concern is already the subject of other employment procedures e.g. disciplinary or redundancy, that those procedures will be halted or suspended.

- 6.2 The Council will take steps to minimise any difficulties that the employee(s) may experience as a result of raising a concern. An employee might, as a last resort, be required to give evidence in Court or in disciplinary hearings. The Council will advise and support the employee about this, if necessary, to reduce any anxiety they may have.

**6.3 *Confidentiality***

The Council will do its best to protect the identity of an employee who raises a concern and does not want his or her name to be disclosed to colleagues and / or the person(s) under investigation. Where an investigation takes place, the investigating officers will not disclose your identity unless they are required to do so by law. This might happen if a formal, written statement is needed as evidence for example or where the matter is referred to a third party such as the Police for investigation. In no circumstances will the employee's identity be revealed before he or she is consulted.

**6.4 *Untrue or Malicious Allegations***

The Council's intention in having a Whistleblowing Policy is to encourage employees to raise legitimate concerns. Consequently if an employee makes an allegation with a reasonable belief that the disclosure was in the public interest, but it is not confirmed by the investigation, no action will be taken against them. Where, however, an employee is shown to have made malicious, frivolous or vexatious allegations, or indeed undertaken their own investigations, surveillance or interviewed or visited witnesses or for their own personal gain, disciplinary action may be taken.

**7. How the Council will Respond**

- 7.1 The action taken by the Council will depend on the nature of the concern. In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations that fall within the scope of specific procedures (for example, child protection, disciplinary or discrimination issues) will normally be referred for consideration under those procedures. The matters raised will be investigated internally to establish basic facts. At that stage a decision will be made on whether:-

- to complete the investigation internally ; or
- to refer the matter to the Authority's External Auditor ; or
- to refer the matter directly to the Police ; or

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- to organise an independent inquiry ; or
- take no action.

7.2 Some concerns may be resolved by agreed action without the need for a formal investigation.

**7.3 *Feedback to Employees raising a concern***

The Council will inform the employee who raised the concern where possible, practical and appropriate within ten working days of a concern being received, and as appropriate:-

- acknowledging that the concern has been received ;
- indicating how it proposes to deal with the matter ;
- stating whether any initial enquiries have been made ; and
- stating if further investigations will take place, and if not, giving reasons.

7.4 The amount of contact between the officers considering the issues and the employee(s) who raised the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. Initial contact with the employee(s) may be outside of the work place to protect their identity and, if necessary and mutually acceptable, subsequent meetings may be held away from work and / or outside normal working hours.

7.5 When any meeting is arranged, the employee(s) who raised the concern may be accompanied by a Trade Union or professional association representative, colleague or other representative of their choice as long as that person is not involved in the concern being discussed.

7.6 The Council accepts an employee who raised a concern may need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, he / she will receive information about the outcomes of any investigations.

7.7 It is recognised that instances may arise where a concern has been raised but not proven, that results in the whistleblower and accused resuming a working relationship together. This in turn may give rise to concerns of potential victimisation or harassment. Where this is the case, reference should be made to the Council's existing personnel procedures.

**8. The Public Interest Disclosure Act 1998 (PIDA) and Enterprise and Regulatory Reform Act 2013 (ERRA)**

8.1 The PIDA became Law on 2<sup>nd</sup> July 1999. Its purpose is to protect employees from victimisation as a result of raising a concern 'in good faith'. However, the ERRA has now removed the requirement that a disclosure be made 'in good faith' in order to be a protected disclosure and benefit from whistleblowing protections.

8.2 Both Acts afford protection to employees who raise concerns in accordance with certain criteria and describe where protection will not be available when a disclosure is made in certain ways.



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**CORPORATE WHISTLEBLOWING POLICY****8.3 Protected Disclosures**

Protection will be afforded to an employee where the concern is made in the public interest and has been raised in the first instance within the Council or to a Solicitor in the process of obtaining legal advice.

Any concern raised in the public interest to one of the Whistleblowing Officers or to an employee's own management will, all things being equal, qualify as a protected disclosure.

Other circumstances where protection through the Act is applicable are where a disclosure is made:-

- to a prescribed Regulatory Body (i.e. Health and Safety Executive) ; or
- to a wider audience (press, MP etc.) if made internally first or to a prescribed Regulatory Body.

Protection would also be afforded albeit in exceptional circumstances, where the employee raised a concern outside the Authority where they have a real and reasonable fear that they would suffer victimisation or that the information would be concealed or indeed the matter is exceptionally serious.

Section 19 of the ERRA introduces a vicarious liability provision so that where the employee making the protected disclosure is subjected to a detriment by a co-worker and the detriment is done in the course of the co-worker's employment with the Authority then the detriment is a legal wrong and is actionable against both the Council and the co-worker. However, the Council will not be liable for the actions of a co-worker if they have taken all reasonable steps to prevent the co-worker from subjecting the Whistleblower to a detriment. In these circumstances the co-worker will still be liable and the Whistleblower could bring a claim against the co-worker.

In the event of an employee being dismissed or victimised, the Act allows that employee the right to compensation at an employment tribunal although the ERRA provides employment tribunals with the power to reduce an award of compensation by upto 25% where a protected disclosure has not been made 'in good faith'.

**8.4 Unprotected Disclosures**

Simply speaking, any disclosure not meeting the criteria for protection will be unprotected. This means for example that an employee making a malicious disclosure or one made hastily to the media will not be protected.

8.5 Both Acts are complicated pieces of legislation. General advice is available from the Authority's Legal and Governance Section of the Corporate Services Department. Employees are however encouraged to seek specific advice from their Trade Union or own solicitor.

8.6 The provisions of the Acts address the implications that an employee may otherwise face under their contract of employment from making a disclosure. Employees should also be aware that any person about whom a disclosure is made may have rights under the common law of defamation if that disclosure contains anything that is not accurate. However the common law defence of defamation will normally apply where any person in making a disclosure that is not accurate acts with reasonable belief that the disclosure is in the public interest and without malice. Again, any specific legal advice as to an employee's own position should be obtained independently.

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**CORPORATE WHISTLEBLOWING POLICY****9. How The Matter Can Be Taken Further**

- 9.1 This policy is intended to provide employees with an avenue to raise concerns within the Council and be satisfied with the Council's response. However, should an employee feel dissatisfied with the Council's response, and feels it is right to take the matter outside the Council, they can do so. Contact can be made through one of the following contact points:-

- the Authority's External Auditors, KPMG, 1 The Embankment, Neville Street, Leeds, LS1 4DW – Telephone 0113 231 3510;
- the relevant professional bodies or regulatory organisation ;
- Public Concern at Work (who can be contacted on 020 7404 6609) ;
- Trade Union ;
- a Solicitor, or
- the Police.

**Note** – Public Concern at Work can also be contacted should someone wish to seek independent advice about how best to raise a concern. Seeking this independent advice would not constitute legal notification to the Council.

- 9.2 It should be remembered that failing to raise the matter within the Council first may result in the disclosure being unprotected within the provisions of the Public Interest Disclosure Act 1998.
- 9.3 Employees who are in any doubt regarding the provisions of the Policy should contact Human Resources. Advice as to whether or how a matter should be raised should be sought by contacting one of the Whistleblowing Officers.

**10. Trade Unions**

- 10.1 This Policy has been endorsed by the Trade Unions.

**11. The Responsible Officer**

- 11.1 The Chief Executive has overall responsibility for the maintenance and operation of this policy.

**12. The Audit Committee**

- 12.1 In accordance with its Terms of Reference for the oversight of the internal control and governance framework of the Authority, the Audit Committee will review this Policy and consider its effectiveness through a process of annual review.