



**AUDIT COMMITTEE – 22nd April 2015**

**REVIEW OF THE CORPORATE WHISTLEBLOWING POLICY**

**1. Purpose of the Report**

- 1.1 This report brings for the Audit Committee's information and comment the annual report of the Corporate Whistleblowing Officers in relation to the operation of the Corporate Whistleblowing Policy and procedures.
- 1.2 The current Whistleblowing Policy and supporting procedures and guidance are attached for information to this report as appendix 1.

**2. Recommendations**

**2.1 It is recommended that :-**

- i. The Audit Committee consider the report of the Corporate Whistleblowing Officers and the current Corporate Whistleblowing Policy to satisfy itself that the arrangements continue to provide a practical and effective means to encourage and facilitate the raising of concerns;**
- ii. The Audit Committee receives a report in approximately 6/9 months following the fundamental review of corporate arrangements.**

**3. Background**

- 3.1 The existence and publicising of a policy to encourage and facilitate the raising of concerns within the workforce is a key part of an organisations approach to minimising the risk of fraud, irregularity and wrongdoing.
- 3.2 The Council first approved the Corporate Whistleblowing Policy in October 2000. Since that time there have been a number of changes to keep the Policy up to date with terminology, new industry standards and legislation. The current Policy was approved in June 2014.
- 3.3 The latest Policy has been re-launched through new posters being issued for every Council building including all schools.
- 3.4 Whilst the general area of 'whistleblowing' or confidential reporting is not one that is subject to major changes, it is nevertheless an important part of an organisation's overall ethical framework and one that requires regular review and particularly regular publicity. A fundamental review of a suite of 'ethical framework' policies is proposed as part of the work of the new Corporate Anti-Fraud Team within Internal Audit. The Whistleblowing Policy will be included within this review.

3.5 It should be remembered however that the corporate whistleblowing arrangements are just one vehicle for employees to raise concerns through. Many issues are brought to management (and Internal Audit) attention through a range of ways, most from direct notification from employee to manager, or through Internal Audit. Some are also identified through specific Internal Audit work. Historically the fewest number of concerns actually come through the formal whistleblowing arrangements.

#### **4. Whistleblowing Activity 2014/15**

4.1 Interpreting the volume, degree and nature of whistleblowing activity is difficult. It could be viewed that a low level of activity through the Policy and arrangements is positive reflecting a situation of low levels of dishonest activity. However, a low use of the whistleblowing arrangements could represent a lack of awareness and/or mistrust in the arrangements themselves. Conversely, a high level of dishonest or irregular activity reported could naturally be viewed as negative for obvious reasons but equally also have a positive interpretation in that employees feel able to speak out and have trust in the corporate arrangements. No benchmarking information is readily available in this area.

4.2 For a few years there have been fewer than 10 referrals to the Corporate Whistleblowing Officers either directly by phone, email or correspondence. In all cases the matters have been directed to the appropriate management for investigation. In several instances messages left on the whistleblowing voicemail facility have related to allegations of benefit fraud or tenancy issues and have been referred to the appropriate Service.

4.3 Only 1 specific referral directly through the whistleblowing arrangements was received during 2014/15. This matter remains the subject of continuing investigation by Internal Audit and management.

#### **5. Risk Management Considerations**

5.1 Having effective arrangements for whistleblowing is a key element to any organisation's attempts to minimise the risk and incidence of fraud, corruption and other wrongdoing. Whilst fraud risk cannot be reduced to nil, having good policies and procedures supported by proactive awareness and regular reviews can contribute considerably to minimising this risk.

5.2 Fraud and corruption risks feature within the Strategic Risk Register (SRR) and as such are recognised as a major Authority-wide threat.

#### **6. Consultations**

6.1 It is essential that there is comprehensive ownership and understanding of the whistleblowing arrangements and so it is important that the Trade Unions are able to contribute to the development of the policy and procedures. The last review of the Policy was considered and approved by the Trade Unions.

## **7. Financial Implications**

- 7.1 There are no financial implications arising directly from this report. The very modest annual costs associated with publicity materials, the telephone 'hotlines' and dedicated P.O. box number are met within the Internal Audit budget.
- 7.2 There are however indeterminate but potentially significant financial implications arising from whistleblowing in terms of the issues raised and their specific consequences.

## **8. Employee Implications**

- 8.1 As with the financial implications, there are no employee implications arising directly from this report.
- 8.2 There are of course major implications for employees, elected and co-opted members and all those likely to utilise the Policy and arrangements in fulfilling their duty to report concerns. In raising a concern in the public interest through this Policy, or in the other ways identified in the Policy, employees are afforded employment protection provided by the Public Interest Disclosure Act. Those individuals who become the subject of concerns raised will be themselves subject to the normal procedures around investigations and any subsequent disciplinary procedures.

## **9. Background Papers**

Previous Audit Committee and Cabinet reports regarding the development and subsequent review of the corporate whistleblowing policy;  
The Enterprise and Regulatory Reform Act 2013.

### **Appendix 1 - Corporate Whistleblowing Policy (April 2014) and Supporting Guidance (April 2014)**

Contact Officers : Director or Legal and Governance and the Head of Internal Audit as the Corporate Whistleblowing Officers  
Telephone : 01226 773001 / 01226 773241  
Date : 13<sup>th</sup> April 2015

**Barnsley Metropolitan Borough Council****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 employees, elected members or other individuals described in 2.1 above are involved in actual or

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

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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, Telephone No. 775788
- Andrew Frosdick, Director of Legal and Governance, Telephone 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 Head of Internal Audit. 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.

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

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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 - Telephone (01226) 775788
  - \* Andrew Frosdick, Director of 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 Director, Finance, Property and Information Services as necessary.

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

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

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



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- 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.
- 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.

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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.

### 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

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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:
  - \* Leeds Office: - 1 The Embankment, Neville Street, Leeds, LS1 4DW  
Telephone 0113 231 3000; or
  - \* John Cornett (KPMG Director), St Nicholas House, Park Row,  
Nottingham, NG16FQ - Telephone 0115 935 3535;
- 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.

WB Policy FINAL  
April 2014

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## **GUIDANCE**

### **1. Purpose of this Guidance**

- 1.1 This guidance supports the Authority's Corporate Whistleblowing Policy (hereafter referred to as the Policy). It provides senior and middle / line management, all employees, elected members, contractors and partner organisations, trade unions and human resources with guidance as to their roles and obligations in applying the Policy.
- 1.2 A number of frequently asked questions (FAQs) are included as an annexe to this guidance. These have been obtained from Public Concern at Work, an independent charity to provide guidance and assistance in relation to raising concerns.

### **2. The Corporate Whistleblowing Policy**

- 2.1 The Policy has been in place since 2000. It aims to provide a safe route through which any Barnsley MBC employee or elected member, or an employee of a contractor or partner organisation can raise a concern outside of their normal management reporting hierarchy.
- 2.2 As the Policy itself advocates, concerns are best raised within normal management reporting structures. However it is acknowledged that for a variety of reasons someone with a concern may feel unable to report a matter in this way and therefore an alternative vehicle to use to instigate an investigation is required.
- 2.3 Two senior Council officers have been designated as Corporate Whistleblowing Officers to receive concerns through a number of secure means from employees.
- 2.4 All employees, elected members, contractors and partner organisations are encouraged to read the Policy in full. The Policy is available electronically through the Council's intranet site (at various locations including the Human Resources and Internal Audit Intranet sites). Advice can also be obtained from either of the Corporate Whistleblowing Officers, Human Resources or the Trade Unions.
- 2.5 The guidance below relates to the specific roles and responsibilities of the various levels and types of employee / person who fall within the remit of the Policy.
- 2.6 Regardless of position, all employees and elected members have a duty to remain vigilant as to potential or actual instances of bad practice (as outlined in the Policy) and report any concerns.

### **3. Executive and Assistant Directors**

- 3.1 Within the Authority's Internal Control and Governance Framework, all EDs and ADs have a responsibility to ensure all employees are made aware of and periodically reminded as to the existence, source and main provisions of the Policy. Prompts to do this exist within the Authority's Annual Governance Review arrangements.
- 3.2 EDs and ADs should also be in a position to give advice and guide employees to utilise the Policy should they feel unable to raise the concern in detail within their normal reporting lines.

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- 3.3 This level of officer is likely to receive concerns raised direct through the normal and recommended channels of management. It is important that EDs and ADs recognise the process to adopt following the receipt of a concern. This includes notifying the Director of Legal and Governance where a potential legal irregularity is alleged and the Head of Internal Audit where a financial irregularity is concerned. Subject to the seriousness of the matter, the Chief Executive should also be informed.
- 3.4 Further advice is available in the Fraud Response Plan, also available on the intranet.
- 3.5 Care should be taken before undertaking any investigatory action and the advice of Internal Audit and Human Resources should always be sought.
- 3.6 Particular care should be taken before any surveillance is undertaken as formal authorisations may be necessary under the Regulatory of Investigatory Powers Act (RIPA). Advice on surveillance is available from Internal Audit and the Assistant Director (Litigation).

### **4. Senior Managers / Line Managers**

- 4.1 These managers have a key role in helping ensure all employees are aware of and have access to the Policy. Provision should be made to ensure those employees who do not have ready and easy access to the Council's intranet are aware of and can obtain the Policy, e.g. through the distribution of the published leaflet and/or team briefings. Posters should also be placed on staff notice boards.
- 4.2 Senior and line managers should also be in a position to advise and guide employees to utilise the Policy should they feel unable to raise the concern in detail within their normal reporting lines.
- 4.3 These managers may also receive concerns direct and should therefore follow the same principles as for EDs and ADs described above. It is likely that it will be appropriate to inform the ED or AD of the concern raised.
- 4.4 Further advice is available from the Fraud Response Plan, available on the intranet.
- 4.5 Care should be taken before undertaking any investigatory action and the advice of Internal Audit and Human Resources should always be sought.
- 4.6 Particular care should be taken before any surveillance is undertaken as formal authorisations may be necessary under the Regulatory of Investigatory Powers Act (RIPA). Advice on when surveillance is appropriate is available from Internal Audit and the Assistant Director (Litigation).

### **5. All Employees**

- 5.1 All new employees should be directed to the Policy as part of the induction and shown where to access the leaflet outlining the provisions of the Policy on the intranet.

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- 5.2 All employees should check that they know how to access the Policy and periodically remind themselves of its provisions, seeking advice and guidance as necessary.
- 5.3 An employee who has a concern should in the first instance consider raising it with an appropriate manager within their own service. Where this is not appropriate, the concern should be directed to one of the Corporate Whistleblowing Officers through one of the means highlighted in the Policy.
- 5.4 Under no circumstances should an employee undertake their own investigation. As the Policy states (paragraphs 5.5 and 5.6), what is important is that the concern is raised, and not necessarily to provide every bit of detail possible. Specialist officers will be appointed to undertake the investigation to ensure objectivity, independence and that proper processes are followed.
- 6. Elected Members**
- 6.1 In many ways elected members are no different to employees in relation to the Policy.
- 6.2 Where an elected member has a concern themselves, in most cases it will be appropriate to raise it directly with one of the statutory officers Director of Legal and Governance or Director of Finance, Property and Information Services, an ED or AD, or the Head of Internal Audit.
- 6.3 Under no circumstances should an elected member undertake their own investigation. As the Policy states (paragraphs 5.5 and 5.6), what is important is that the concern is raised, and not necessarily to provide every bit of detail possible. Specialist officers will be appointed to undertake the investigation to ensure objectivity, independence and that proper processes are followed.
- 7. Contractors and Partner Organisations**
- 7.1 Whilst it is not a formal requirement for the Authority's main contractors and partner organisations to adopt the Council's Policy, there is an expectation that similar provisions are made within their organisations.
- 7.2 It is the responsibility of the appropriate ED or AD (or other senior manager) at the time the contract or partnership is being considered, to ensure that adequate provision exists for employees of external organisations to utilise a formal whistleblowing policy. It is also a requirement for external employees to be aware of and have access to the Council's Policy.
- 8. Trade Unions**
- 8.1 The Trade Unions are specifically named as a vehicle through which an employee may feel more comfortable raising a concern. Where this is the case the trade union representative should make a referral to the employee's line manager or one of the Corporate Whistleblowing Officers.
- 8.2 Under no circumstances should a trade union representative undertake their own investigation. As the Policy states (paragraphs 5.5 and 5.6), what is important is that the concern is raised, and not necessarily to provide every bit of detail

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possible. Specialist officers will be appointed to undertake the investigation to ensure objectivity, independence and that proper processes are followed.

8.3 The Policy and advice is available from the Trade Unions.

### 9. Human Resources (HR)

9.1 HR officers are a further source of advice in relation to the provisions of the Policy and are frequently involved in matters raised that result in an investigation. This extends to being present at formal disciplinary hearings.

9.2 A protocol exists between HR and Internal Audit to ensure all matters raised are dealt with jointly.

WB Guidance April 2014

# CORPORATE WHISTLEBLOWING POLICY

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### Frequently Asked Questions (FAQs)

1. What is whistleblowing?
2. What is the difference between making a complaint and blowing the whistle?
3. Isn't a whistleblower a snitch / grass / tattler-tale / rat / clype?
4. How do I blow the whistle?
5. How can Public Concern at Work help me blow the whistle?
6. Will Public Concern at Work tell my employer anything about my concerns or reveal my identity to my employer?
7. Should I blow the whistle anonymously?
8. What is the difference between anonymity and confidentiality?
9. Does the Public Interest Disclosure Act require an employer to keep a whistleblower's identity secret?
10. Don't all whistleblowers get fired?
11. Do whistleblowers have legal protection?
12. Does the Public Interest Disclosure Act say that a worker must raise a concern about possible wrongdoing with their employer in the first instance?
13. Does a gagging clause in my contract of employment prevent me from blowing the whistle?
14. Does the Public Interest Disclosure Act require an employer to have a whistleblowing policy?

#### 1. **What is whistleblowing?**

Someone blows the whistle when they tell their employer, a regulator, customers, the police or the media about a dangerous or illegal activity that they are aware of through their work.

Whistleblowing can inform those who need to know about health and safety risks, potential environmental problems, fraud, corruption, deficiencies in the care of vulnerable people, cover-ups and many other problems. Often it is only through whistleblowing that this information comes to light and can be addressed before real damage is done.

Whistleblowing is a valuable activity which can positively influence all of our lives.

#### 2. **What is the difference between making a complaint and blowing the whistle?**

When someone blows the whistle they are raising a concern about danger or illegality that affects others (e.g. customers, members of the public, or their employer). The person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern - they are simply trying to alert others. For this reason, the whistleblower should not be expected to prove the malpractice. He or she is a messenger raising a concern so that others can address it.



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This is very different from a complaint. When someone complains, they are saying that they have personally been poorly treated. This poor treatment could involve a breach of their individual employment rights or bullying and the complainant is seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint and, for this reason, is expected to be able to prove their case.

For these reasons, it is not in anyone's interests if an organisation's whistleblowing policy is used to pursue a personal grievance. Most organisations have a grievance or complaints procedure and this will be more appropriate for making a complaint.

#### **3. Isn't a whistleblower a snitch / grass / tattler / rat?**

No. Whistleblowers provide an early warning system that can alert their colleagues, employers or the public to danger or illegality before it is too late. They can be among the most loyal and public-spirited employees. Unfortunately, there are still some people who believe that "whistleblower" is a dirty word and don't realise how whistleblowing can save lives, jobs, money and reputations. Thankfully, more and more people are beginning to realise how invaluable responsible whistleblowing can be.

If you are unsure whether blowing the whistle is doing the right thing, you may want to ask yourself these questions:

- If my elderly parent was in care, would I want a carer to tell someone if they thought another carer at the home was incompetent and dangerous?
- If I was that carer, should I tell my managers that I thought another carer was not up to the job and might be harming clients? Wouldn't this normally be a quicker and better way to address the actual problem than going to a regulator or the media?
- If I was the manager at this care home, would I want someone to tell me about this carer before more clients were harmed and the Home's reputation was damaged?

#### **4. How do I blow the whistle?**

Follow the Authority's Corporate Whistleblowing Policy, remembering that it is often best to raise a concern with your line manager and only resort to one of the Corporate Whistleblowing Officers if you feel this is the best way to raise your concern.

You may feel you would like to seek independent advice from your Trade Union or from Public Concern at Work who can be contacted on 020 7404 6609 or by e-mailing [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk).

While every situation is different, and so it is sensible to seek advice before blowing the whistle, there are some general points to keep in mind when raising a concern.

- Stay calm.
- Remember that you are a witness, and not a complainant (see above).
- Think about the risks and outcomes before you act.
- Let the facts speak for themselves - don't make ill-considered allegations.

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- Remember that you may be mistaken or that there may be an innocent or good explanation.
- Do not become a private detective.
- Recognise that you may not be thanked.

### 5. How can Public Concern at Work help me blow the whistle?

Public Concern at Work's helpline can provide you with free, confidential and practical advice if you are unsure of whether or how to raise a concern about danger or illegality that you have witnessed at work. If you are in this position, they aim to help you identify how best you can raise the concern while minimising any risk to you and maximising the opportunity for any wrongdoing to be addressed. They do not investigate cases.

They can also provide you with general information about the Public Interest Disclosure Act (the UK's whistleblower law). However, they do not have the expertise to provide employment law advice (e.g. on terms and conditions of employment) or to represent anyone. If you are looking for help in taking a claim, they will tell you how to find a lawyer or adviser. However, it is not their policy to recommend individual lawyers or law firms.

Their helpline can be contacted on 020 7404 6609 or [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk).

### 6. Will Public Concern at Work tell my employer about my concern or reveal my identity to my employer without my consent?

As a registered legal advice centre, advice given by Public Concern at Work is covered by legal professional privilege. This strict duty of confidentiality means that they can not - save in exceptional cases set out in law - disclose the identity of a client to their employer or anyone else without the consent of the client.

### 7. Should I blow the whistle anonymously?

There are additional risks when workers raise their concerns anonymously. These are:

- being anonymous does not stop others from successfully guessing who raised the concern;
- it is harder to investigate the concern if people can not ask follow-up questions;
- it is easier to get protection under the UK Public Interest Disclosure Act if the concerns are raised openly; and
- it can lead people to focus on the whistleblower, maybe suspecting that he or she is raising the concern maliciously.

### 8. What is the difference between anonymity and confidentiality?

A worker raises a concern confidentially if he or she gives his or her name only on condition that it is not revealed without their consent. A worker raises a concern

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anonymously if he or she does not give his or her name. Usually, the best way to raise a concern is to do so openly.

**9. Does the Public Interest Disclosure Act require an employer to keep a whistleblower's identity secret?**

The simple answer is no - PIDA contains no specific provision on confidentiality. In fact it encourages workers to raise their concern openly. A good whistleblowing policy will provide a confidential port of call for a worried employee and employers should respect any promise of confidentiality they make. However in some cases it will be impossible to take action on the concern without the open testimony of a whistleblower.

**10. Don't all whistleblowers get fired?**

Not at all. Most cases of successful whistleblowing go unreported - so the popular perception that often the messenger is shot is not challenged. Many people blow the whistle without thinking of themselves as whistleblowers and their concerns are properly addressed. These people feel that they are just doing their job or being good workers when they warn others that something is going wrong. When their employer recognises the value of the information they are being given and takes action to deal with the concern, often it does not occur to the people involved that this is a case of whistleblowing.

**11. Do whistleblowers have legal protection?**

Almost all workers (save the armed forces, intelligence officers, volunteers and the self-employed) in the United Kingdom are protected by the Public Interest Disclosure Act 1998 (PIDA). PIDA provides workers in the UK with a safe alternative to silence. It enables workers to raise concerns about wrongdoing responsibly. PIDA protects them if they raise a concern about wrongdoing internally and, in most cases, with a regulator. It also protects workers who make wider disclosures where there is a valid reason to go wider, and the particular disclosure is reasonable.

The purpose of PIDA's protection is that a concern is raised so that it can be addressed, and any wrongdoing corrected. If the sole or main reason a worker blows the whistle is to pursue a personal vendetta (or has some other ulterior motive) then this protection may well be lost.

For information on PIDA, including a copy of the Act, refer to the Public Concern at Work website.

**12. Does the Public Interest Disclosure Act say that a worker must raise a concern about possible wrongdoing with their employer in the first instance?**

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PIDA does not require a worker to raise a concern about wrongdoing with their employer before they speak to anyone else. Rather, PIDA encourages workers to approach their employer first by:

- making this the easiest way to obtain legal protection; and
- making it more likely that a subsequent disclosure of the same information to an outside body will be protected.

However, it is not mandatory to go to your employer first. As there can be legitimate reasons why a worker in a particular organisation would need or want to raise their concern first outside their workplace (either before or after going to their employer), PIDA protects such disclosures providing the worker acts in the responsible ways set out in the Act.

This approach of PIDA promotes accountability and good internal governance by:

- encouraging employers to solicit and be open to whistleblowing concerns;
- reassuring employees there is a safe alternative to silence; and
- helping employers to address any wrongdoing properly, in the knowledge that if they do not the concern can readily be raised outside in an appropriate way.

### **13. Does a gagging clause prevent me from blowing the whistle?**

In the UK, gagging clauses in employment contracts and severance agreements are void insofar as they conflict with PIDA protection. If in doubt seek employment law advice.

### **14. Does the Public Interest Disclosure Act require an employer to have a whistleblowing policy?**

PIDA does not require an employer to have a whistleblowing policy. However, PIDA does encourage employers to have such a policy. In the absence of an effective policy, workers may have reason to fear reprisal and may not know the employer will deal with the matter properly – two triggers for protection for wider disclosures.

Additionally, whether an employer has an effective whistleblowing policy is one of several factors that an Employment Tribunal will consider when deciding if a wider disclosure (e.g. to the media, the police or an MP) is reasonable and so protected by the Act.

*Adapted from the Public Concern at Work website.*