

REPORT TO: Business Efficiency Board

DATE: 24th September 2014

REPORTING OFFICER: Strategic Director – Policy & Resources

PORTFOLIO: Resources

SUBJECT: Whistle-Blowing Policy

WARDS: All

1.0 PURPOSE OF THE REPORT

1.1 To seek Business Efficiency Board approval for the roll out of the Councils Whistle-blowing Policy and to approve the reporting of whistle-blowing incidents as part of the annual report from Internal Audit on Fraud and Anti-Corruption Strategy. This policy has already been approved by Council as part of the Constitution.

2.0 RECOMMENDATION: That

1. Business Efficiency Board notes the Policy and attached documentation;
2. Business Efficiency Board approves the proposed methods of raising awareness of the Policy throughout the organisation;
3. That Business Efficiency Board receives an update on Whistle-blowing activity as part of the annual report on the Fraud and Anti-Corruption Strategy.

3.0 SUPPORTING INFORMATION

- 3.1 Individuals working within or for an organisation are often the first to realise that there may be something seriously wrong within it. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the organisation. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 3.2 Whistle-blowing is the term used when someone who works within or for an organisation raises a concern about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, the public or the organisation's own reputation. Blowing the whistle is more formally known as 'making a disclosure in the public interest'.
- 3.3 The Whistle-blowing policy sets out the ways in which individuals may raise concerns that they have and explains how those concerns will be dealt with. It also gives protection to the person raising concerns.

- 3.4 The policy applies to all employees and those contractors working for the Council on Council premises, for example, agency staff, builders and drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example, care homes.
- 3.5 This policy has been discussed with HR, Internal Audit and the relevant trade unions and has their support.
- 3.6 Changes to the whistle-blowing regime came into effect following the enactment of the Enterprise and Regulatory Reform Act 2013 (“ERRA 2013”) and ss.17 to 20 of the Enterprise and Regulatory Reform Act 2013 amend the relevant provisions of the Employment Rights Act 1996 to provide that:
- a disclosure will not be protected unless it is, in the reasonable belief of the worker making the disclosure, "in the public interest";
 - a disclosure no longer has to be made "in good faith" to be protected, but an employment tribunal may reduce a worker's compensation by up to 25% if it appears to the tribunal that a protected disclosure was not made in good faith;
 - a worker has the right not to be subjected to a detriment by any act or deliberate omission by another worker employed by his or her employer on the ground that he or she has made a protected disclosure; and
 - A worker has the right not to be subjected to a detriment by any act or deliberate omission by an agent of his or her employer acting with the employer's authority.
- 3.7 The ERRA has also introduced liability for employers for the harassment or victimisation of employee whistle-blowers by their colleagues. An employer will be vicariously liable for any such acts or omissions committed by another worker or an agent. Employees who victimise whistle-blowers may also be personally liable, which means they may become parties to a claim along with the employer and have tribunal awards made against them personally.
- 3.8 The amendment includes a defence for employers in tribunal proceedings if they are able to show they took “all reasonable steps” to prevent the detrimental treatment.

4.0 POLICY OPTIONS

- 4.1 The changes in the law reflect the importance of having well-drafted and whistle-blowing policies and, as we have done, policies should be amended to encompass these changes. This will also help to show that there is a healthy and open environment at work and one in which the employer actively encourages employees to raise issues informally in the first instance.
- 4.2 In addition to revising whistle-blowing policies to reflect changes relating to ERRA 2013; there are several practical steps employers can also take to protect their organisations against the fallout from whistle-blowing and any consequences arising from it;

- train line managers regarding the operation of the policy, making it clear that harassing or victimising a whistle-blower will lead to disciplinary action;
- ensure that the policy is widely communicated and easily accessible;
- investigate disclosures promptly, keeping whistle-blowers informed as to the progress of the investigation (failing to do so may also lead whistle-blowers to make external disclosures)
- ensure that processes are regularly reviewed and any incidents logged and reported on.

4.3 Ensuring clear communication and awareness of the council's whistleblowing policy, which states explicitly that victimisation and harassment will not be tolerated and will be dealt with under disciplinary procedures, is one way of demonstrating that reasonable steps have been taken by the Council in the event of tribunals and issues relating to vicarious liability for both the Council and its staff.

4.4 It is therefore recommended that Business Efficiency Board approve the wider dissemination of this Policy. This could include:

- Promotion on the Intranet
- Awareness raising through pay slips etc.
- Dissemination together with guidance, to members and managers
- Developing appropriate training around whistleblowing

Business Efficiency Board is asked to approve that Internal Audit and Corporate Policy Team implement the above methods as appropriate.

4.5 It is recommended that all incidents of whistle-blowing (whether leading to formal investigation or not) be recorded by Internal Audit in an appropriate and secure format and that these are reported on to Business Efficiency Board (BEB) as part of the annual report on the Fraud and Anti-Corruption Strategy.

4.6 During 2013/14 there were 3 whistleblowing incidents recorded by Internal Audit (two relating to breaches of confidentiality and one relating to purchasing from an unregistered supplier). However, until now there has not been a centralised system or policy for recording all whistleblowing incidents, meaning that this number is likely to be higher across the authority. This policy seeks to address that deficit by ensuring that all incidents are recorded centrally thereby increasing transparency, improving our data and enabling us to address any issues in a more coordinated way.

4.6 It is also important that use of the policy is reviewed regularly. It is suggested that this takes place on an annual basis by the Corporate Policy Team, in consultation with Legal Services and Internal Audit and in line with the process of refresh the Council Constitution.

5.0 POLICY IMPLICATIONS

- 5.1 This policy has been developed taking into account of **The Public Interest Disclosure Act 1998**, which protects whistle- blowers who report concerns, from subsequent harassment, victimisation and other unfair treatment arising out of the disclosure. The Act is incorporated into the **Employment Rights Act 1996**, which already protects employees who take action over, or raise concern about, health and safety at work. It has also taken account of sections of the **Enterprise and Regulatory Reform Act 2013** relating to changes and provisions around protected disclosures.
- 5.2 It is important to know the difference between a 'Whistle-blow' and a 'grievance.' A Whistle-blow has a public interest aspect to it, as it puts at risk others. A grievance by contrast has no public interest factors, as it is a complaint about a particular employment situation. A grievance should be reported using the Grievance Policy, not this policy and this is made clear within the document.
- 5.3 This policy is not a substitute for and does not replace other relevant policies within the Council. Where the concerns raised relate to a breach of one of those policies they will be investigated under that policy. This policy is not intended to be used where other more appropriate procedures are available, for example:
- Disciplinary Procedure
 - Child and Adult Safeguarding Policies and Procedures
 - Dignity at Work Policy
 - Grievance Procedure
 - Single Equalities Scheme
 - Corporate Complaints Policy
- 5.4 This policy forms part of the Council Constitution.

6.0 FINANCIAL IMPLICATIONS

- 6.1 Whilst there are no direct implications under the development and implementation of this policy, other than officer time, there may be financial implications arising under any investigations or tribunals arising as a result of a whistle-blow taking place or any compensation awarded.

7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

- 7.1 Whistle-blowing may potentially arise relating to any area of Council activity or across any of the Council's priorities. However, there are no specific implications relating directly to an individual priority.

8.0 RISK ANALYSIS

- 8.1 There are issues arising relating to an organisation or individual being held vicariously liable for acts of employees in relation to whistle- blowing. Where

any detriment may be said to have arisen as a result of a whistle-blow, employees may be able to bring a claim against fellow employees and their employer for victimisation. There is a defence available to employers where they have taken reasonable steps to prevent the worker from doing ‘that thing’ (detriment) or from ‘doing anything of that description’. The latter part of the defence is vague but it is similar to discrimination claims and it replicates s.109(4) of the Equality Act 2010.

9.0 EQUALITY AND DIVERSITY ISSUES

- 9.1 Section 19 of the ERRA 2013 inserts sections 47B(1A) to (1E) into the Employment Rights Act 1996 which provide a right for employees not to be subject to detriment at the hands of a co-worker. Although the statement is vague it is similar to that used within discrimination claims and replicates s.109(4) of the Equality Act 2010

10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Title	Place of Inspection	Officer
Enterprise and Regulatory Reform Act 2013	Municipal Building	Lisa Driscoll
Public Interest Disclosure Act 1998	Municipal Building	Lisa Driscoll
Employment Rights Act 1996	Municipal Building	Lisa Driscoll
Equality Act 2010	Municipal Building	Lisa Driscoll
Council Constitution	Municipal Building	Mark Reaney