

**North East Derbyshire District Council**

**Council**

**9 May 2016**

**Review of Whistleblowing Policy**

**Report No NB/06/15/16/SS of Councillor N Barker, Portfolio Holder with  
Responsibility for Human Resources, Training and Member Development**

This report is open

**Purpose of the Report**

- To recommend for approval an updated Whistleblowing Policy

**1 Report Details**

- 1.1 Whistleblowing is a report from an employee, member or other person about suspected wrongdoing within the organisation. The Public Interest Disclosure Act 1998 requires employers to refrain from dismissing workers and employees or subjecting them to any other detriment because they have made a protected disclosure.
- 1.2 Whistleblowing policies should foster a climate of openness and transparency in which individuals in the workplace do not feel that they will be victimised, harassed or suffer any reprisals if they raise concerns about wrongdoing within the organisation. The Government expects all public bodies to have adequate whistleblowing procedures in place.
- 1.3 North East Derbyshire District Council and Bolsover District Council currently have in place a Joint Whistleblowing Policy. The Councils are committed to updating Policies on a regular basis to ensure that they are fit for purpose.
- 1.4 The Organisation Scrutiny Committee considered the existing Whistleblowing Policy at its meeting on 6 January 2016. The Committee commented that there should be clear mechanisms in place for people to report issues and that the procedures in place should be easily understandable.
- 1.5 The main change proposed to the existing Policy is the addition of a flowchart to ensure that the process for dealing with whistleblowing reports is easy to follow. The amended policy also includes minor changes which seek to add clarification to the process.

- 1.6 The amended Whistleblowing Policy is attached to this report at **Appendix A**.
- 1.7 The Standards Committee considered the updated policy at its meeting on 20 April 2016 and recommended it to Council for approval.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 The Whistleblowing Policy was to ensure that it remains fit for purpose and was amended to include a flow chart to ensure the process for dealing with whistleblowing reports would be easy to follow.

## **3 Alternative Options and Reasons for Rejection**

- 3.1 None.

## **4 Implications**

## **5 Finance and Risk Implications**

- 5.1 None.

## **6 Consultation and Equality Impact**

- 6.1 The Standards Committee considered the updated policy at its meeting on 20 April 2016 and recommended it to Council for approval.
- 6.2 The Unison Branch Secretary, as Chair of the Council Joint Consultative Group, agreed that the updated policy need not be submitted to the group as the addition of the flowchart is a minor amendment.
- 6.3 Equality issues have been taken into account in the review of the policy.

## **7 Legal Implications including Data Protection**

- 7.1 The legal implications in relation to whistleblowing are contained within the policy. .

## **8 Human Resources Implications**

- 8.1 None.

## **9 Recommendations**

- 9.1 That the amended Whistleblowing Policy be approved.

## 10 Decision Information

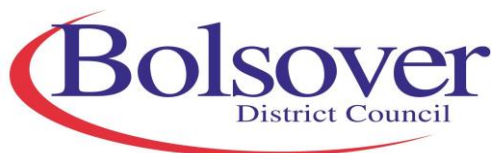
<b>Is the decision a Key Decision?</b> (A Key Decision is an executive decision which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
<b>District Wards Affected</b>	None directly
<b>Links to Corporate Plan priorities or Policy Framework</b>	All

## 11 Document Information

Appendix No	Title
A	Whistleblowing Policy
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
N/A	
Report Author	Contact Number
Adele Wylie - Principal Solicitor (BDC)	Ext 2477

# **Bolsover District and North East Derbyshire District Council**

## **Joint Whistleblowing Policy**



## CONTROL SHEET FOR JOINT WHISTLEBLOWING POLICY

Policy Details	Comments/Confirmation (to be updated as the document progresses)
Policy title	Joint Whistleblowing Policy
Current status – i.e. first draft, version ?? or final version	
Location of Policy –	
Member route for approval	Cabinet/Executive
Cabinet Member (if applicable)	
Equality Impact Assessment (approval date)	
Partnership Involvement (if applicable)	
Final Policy approval route (i.e. Executive/Council Committee)	Cabinet/Executive
Date Policy approved	
Date Policy due for review	
Date Policy forwarded to Strategy and Performance (to include on Intranet and Internet, if applicable to the public)	

## **JOINT WHISTLEBLOWING POLICY**

### **1. Introduction**

- 1.1 Employees are often the first to realise that there may be something seriously wrong within a local authority. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Councils. They may also fear harassment or victimisation. In these circumstances employees may feel that it is easier to ignore the concern, rather than report what may just be a suspicion of malpractice.
- 1.2 The Councils are committed to the highest possible standards of openness, probity and accountability. In line with that commitment the Councils encourage employees, Members and others with serious concerns about any aspect of the Councils work to come forward and voice those concerns. It is recognised that certain cases will have to proceed on a confidential basis.
- 1.3 Whistleblowing is the term used when someone who works in 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. For example instances of theft from the Councils, accepting or offering a bribe, and failure by colleagues to adhere to Health & Safety directives could all be the subject of a Whistleblow.
- 1.4 This policy document makes it clear that concerns can be raised without fear of victimisation, subsequent discrimination or disadvantage. This Whistleblowing Policy is intended to encourage and enable employees to raise concerns within either Council in person, rather than overlooking a problem or using other methods to report concerns.
- 1.5 This policy applies to Council employees and other workers, including freelance staff, temporary and agency staff, trainers, volunteers, consultants, contractors, employees of another Local Authority with whom the Councils have entered into joint working arrangements and Members.
- 1.6 This policy also applies to all employees in organisations who work in partnership with the Councils and suppliers who wish to raise a concern.
- 1.7 The Public Interest Disclosure Act 1998 protects Council employees who report concerns from subsequent harassment, victimisation and other unfair treatment. Potential informants should feel reassured that it is illegal for the Councils to consider any action against them should their concerns not prove to be verifiable.

## **2. Aims and Scope of this Policy**

### **2.1 This policy aims to:-**

- encourage persons to feel confident in raising serious concerns that they may have about practices and procedures
- provide avenues to raise those concerns and receive feedback on any action taken
- allow persons to take the matter further if they are dissatisfied with the Council's response
- reassure employees that they will be protected from possible reprisals or victimisation if they have made any disclosure

### **2.2 Areas covered by the Whistleblowing Policy include:-**

- criminal or other misconduct
- breaches of the Council's Standing Orders or Financial Regulations
- contravention of the Council's accepted standards, policies or procedures
- disclosures relating to miscarriages of justice
- health and safety risks
- damage to the environment
- unauthorised use of public funds
- fraud, bribery and corruption
- sexual, physical and/or verbal abuse of any person or group
- other unethical conduct
- the concealment of any of the above

### **2.3 Any concerns about any aspect of service provision or the conduct of officers or Elected Members of either Council, or others acting on behalf of either Council, can be reported under the Whistleblowing Policy. This may be about something that:-**

- Makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Council subscribes to; or
- Is against the Council's constitution and policies; or
- Falls below established standards of practice; or
- Amounts to improper conduct

## **3. When this Policy may not be appropriate**

### **3.1 This policy is not a substitute for the Council's other policies and procedures on such matters as personal grievances, bullying and harassment, health and safety, safeguarding issues (children and/or adults) or complaints. It should also not be used to raise matters relating to an employee's own terms and conditions of service.**

### **3.2 It is important to know the difference between a 'Whistleblow' and a 'grievance.' A Whistleblow has a public interest aspect to it, as it puts others at risk.**

- 3.3 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.
- 3.4 For example, a member of staff being formally interviewed on capability grounds, without previously having had any indication that their performance was not acceptable, may lead to a grievance complaint being made. Whilst a member of staff who observes colleagues sharing/selling confidential data to un-authorised others, should lead to a Whistleblow.
- 3.5 The policy is not to be used by members of the public to pursue complaints about services. These should be dealt with through the Councils Complaints Procedures.
- 3.6 This Policy is not to be used by members of the public to pursue complaints against councillors conduct. They should direct complaints in the first instance to the Monitoring Officer who will deal with their complaints under the Members Code of Conduct procedure.

#### **4. Safeguards against Harassment or Victimisation**

- 4.1 The Councils recognise that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. However, the Councils will not tolerate any form of harassment or victimisation, and will take appropriate action to protect persons who have made a disclosure.
- 4.2 The Councils are committed to good practice and high standards and endeavours to be supportive of persons who raise concerns under this Policy.
- 4.3 In all cases, the provisions of The Public Interest Disclosure 1998 (PIDA) will be adhered to.
- 4.4 The Enterprise & Regulatory Reform Act 2013 (ERRA) introduced a Public Interest test requirement on Whistleblowers. In order to receive the protection of PIDA, Whistleblowers will now have to show that they reasonably believe that the disclosure they are making is in the public Interest.

#### **5. Confidentiality**

- 5.1 All concerns will be treated in confidence and the identity of the person raising the concern will not be revealed without his or her consent (subject to any legal requirements or decisions). At the appropriate time, however, the person may be expected to come forward as a witness.

#### **6. Anonymous Allegations**

- 6.1 This policy encourages you to put your name to any allegation wherever possible and receive the protection of PIDA as anonymous complaints are likely to be difficult to deal with effectively.



6.2 Concerns expressed anonymously will be considered at the discretion of the Council. In exercising this discretion the factors to be taken into account would include:-

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

## **7. Untrue Allegations & Legal Protection**

7.1 If you are a Council employee you are given legal protection by the Public Interest Disclosure Act 1998. You will qualify for this protection if you reasonably believe that the disclosure is in the public interest.

7.2 If you make what is known as a “qualifying disclosure” under the 1998 Act to your employer or certain other persons/bodies, it will be unlawful for the Councils to subject you to any detriment (such as denial of promotion or withdrawal of a training opportunity), or to dismiss you, because of the disclosure.

7.3 Qualifying disclosures are disclosures of information where a Council employee reasonably believes (and it is in the public interest) that one or more of the following matters is either happening, has taken place, or is likely to happen in the future.

- A criminal offence
- The breach of a legal obligation
- A miscarriage of justice
- A danger to the health and safety of any individual
- Damage to the environment
- Deliberate attempt to conceal any of the above.

7.4 Compensation may be awarded to you by an Employment Tribunal if the Councils breach the 1998 Act, following a successful claim for ‘detrimental treatment’.

## **8. How to raise a Concern under this Policy**

8.1 Concerns may be raised normally in writing. Persons who wish to raise a concern should provide details of the nature of the concern or allegation in the following format:

- The background and history of the concern giving names, dates and places where possible.
- The reason why you are particularly concerned about the situation.
- Submit any relevant evidence or documentation.

8.2 The earlier you express the concern the easier it is to take action.

8.3 Although you are not expected to prove beyond reasonable doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.

8.4 Employees may choose to be represented by a colleague or Trade Union representative.

## Employees

8.5 Employees should normally raise concerns in the first instance with their Line Manager. Alternatively, dependent upon the nature, seriousness and sensitivity of the issues involved and the person suspected of malpractice you could approach;

- the Service Manager whom you feel would be the most appropriate
- Internal Audit
- the Joint Chief Executive Officer
- the Monitoring Officer
- The Joint Assistant Director of Human Resources and Payroll
- The Joint Executive Director of Corporate Resources and 151 Officer
- The Joint Executive Director of Transformation (responsible Officer for safeguarding)

8.6 You may choose to contact a Prescribed Person. Prescribed persons, as prescribed under the Public Interest Disclosure Act 1998, are independent bodies or individuals that can be approached by whistleblowers where an approach to their employers would not be appropriate. Prescribed persons, which usually have an authoritative relationship with the whistleblowers' organizations, can be regulatory or legislative bodies, central government departments, arm's length bodies or charities and include all Members of Parliament. You may also contact the "Public Concern at Work" helpline if you wish to remain anonymous. The telephone number for this service is: 020 7404 6609.

## Other Persons (including Elected Members)

8.7 Other persons can contact any of the following officers of the Councils directly:

- the Service Manager whom you feel would be the most appropriate
- Internal Audit
- the Joint Chief Executive Officer
- the Monitoring Officer
- The Joint Assistant Director of Human Resources and Payroll
- the Section 151 Officer
- The Joint Executive Director of Transformation (responsible Officer for safeguarding)

8.8 Officers of the Councils can be contacted in writing, by telephone or by going through one of the Contact Centres. You can contact the Councils through your elected Councillor if this is preferable or more convenient.

8.9 You may also choose to contact a body external to the Council such as the External Auditor or the Police or a Prescribed Person.

## **9 How the Council will respond to a concern raised under this Policy**

9.1 The Officer with whom the concern was initially raised will respond in writing within ten working days:

- acknowledging that the concern has been received

- indicating how it is proposed to deal with the matter
  - stating whether any initial enquiries have been made
  - supplying information on what support is available and stating whether further investigations will take place and if not, why not
- 9.2 Concerns raised under this Policy will be investigated by the investigating officer who will be appointed at the Council's discretion.
- 9.3 When conducting the investigation, the investigating officer may involve:-
- Internal Audit
  - Legal & Democratic Services
  - Human Resources
  - the Police (in some circumstances the Council will have no choice but to inform the Police if it believes a criminal offence has been committed and may do so without informing the whistle blower)
  - an external auditor
  - The Monitoring Officer
  - The S 151 Officer
  - The Joint Executive Director of Transformation (responsible Officer for safeguarding)
  - Any other person at the discretion of the investigating officer
- 9.4 The investigating officer should in the first instance inform any employee who is the subject of a Whistleblowing allegation of the allegation before a decision is taken as to what will happen with it. If the investigating officer determines that this would not be appropriate in the circumstances then he should seek guidance from the Monitoring Officer who may advise not to inform the employee at this stage of the process.
- 9.5 The investigating officer will make initial enquiries to decide whether an investigation is appropriate and if so what form it should take having regard to the law and the public interest.
- 9.6 If the investigating officer decides that a disciplinary investigation is the appropriate course of action to take, he/she will advise Human Resources who will instruct an appropriate person to conduct the disciplinary investigation and ensure that the investigation is carried out in accordance with the Councils' Disciplinary Policy.
- 9.7 Some concerns may be resolved by agreed action without the need for investigation.
- 9.8 It may be necessary to take urgent action before any investigation is completed.
- 9.9 The Council will take steps to minimise any difficulties that persons may experience as a result of raising a concern. For instance, if he or she is required to give evidence in criminal or disciplinary proceedings the Council will arrange for advice to be given about the procedure (but not about what answers to give).

9.10 The Councils accept that persons need to be assured that the matter has been properly addressed. Subject to legal constraints, the Council will inform the Whistleblower of the progress and outcome of any investigation.

9.11 It is important for persons to understand that making a Whistleblowing allegation doesn't give them anonymity, but does give them protection from harassment or victimisation.

## **10 The Responsible Officer**

10.1 The Monitoring Officer has overall responsibility for the maintenance and operation of this Policy, and will maintain a record of concerns raised and the outcomes. This record will be in a form which does not compromise confidentiality and substantially in the form attached.

10.2 The Monitoring Officer will report as necessary to the Councils.

10.3 The Investigating Officer must inform the Monitoring Officer of the receipt of a concern raised under this Policy, how they intend to deal with it and how the matter was concluded.

## **11. How the Matter Can Be Taken Further**

11.1 This Policy is intended to provide a process within the Councils, through which appropriate persons may raise concerns. If at the conclusion of this process the person is not satisfied with any action taken or feels that the action taken is inappropriate, the following are suggested as further referral points:

- the Councils external auditor
- Your Trade Union
- Your local Citizens Advice Bureau
- Relevant professional body or regulatory organisation
- A relevant voluntary organisation
- The Police
- Your Solicitor
- The Audit Commission

11.2 Advice should be taken before making an external disclosure and the internal procedure should normally have been followed first.

11.3 The Councils would not normally expect Whistleblowers to make disclosures to the press.

## **Whistleblowing Register 2015**

Kept by the Monitoring Officer in accordance with the Joint Whistle Blowing Policy of Bolsover District Council and North East Derbyshire District Council as follows:-

## 10 The Responsible Officer

“10.1 The Monitoring Officer has overall responsibility for the maintenance and operation of this Policy, and will maintain a record of concerns raised and the outcomes. This record will be in a form which does not compromise confidentiality and substantially in the form attached.”

Number	Council	Details	Outcome
1/20xx			

## WHISTLEBLOWING POLICY FLOWCHART

