

North East Derbyshire District Council

Standards Committee

28 May 2014

Whistleblowing Policy

Report No ADGMO/12/14/MK/SS of the Assistant Director – Governance and Monitoring Officer

This report is public

Purpose of the Report

- To provide information to enable the Standards Committee to consider the Whistleblowing Policy as drafted.

1 Report Details

- 1.1 The Whistleblowing legislation under 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 ("whistleblowing"). Whistleblowing occurs when an employee or worker 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.
- 1.2 Whistleblowing policies are aimed at fostering a climate of openness and transparency in which individuals in the workplace do not feel that they will be victimised if they raise concerns about wrongdoing in their organisation to an appropriate officer within the organisation.
- 1.3 Key changes have recently been brought about by the Enterprise and Regulatory Reform Act 2013 and therefore the Policy has been updated to include the following:
- 1.4 Firstly, there is now an express requirement that whistleblowing by employees or workers is made in the public interest. Although the ERRA does not define the meaning of public interest it is implicit that disclosure of any wrongdoing by an employee must exclude those which can be characterised as being purely of a personal nature.
- 1.5 A disclosure no longer has to be made "in good faith" to be protected. Therefore, disclosures made purely out of malice or with the intention of personal gain will be protected as long as they are made with the reasonable belief that they are in the public interest.

- 1.6 Whistleblowers are now protected from suffering detriment, bullying or harassment from another employee. Previously, employees were protected from adverse treatment only in relation to their employer's activity. Employment tribunals will be able to hold employees or workers personally liable for victimising a whistleblower.
- 1.7 An employer can be held liable for any detriment inflicted on the whistleblowing employee or worker by his or her colleagues. The employer would have a defence if it can demonstrate that it took all reasonable steps such as compliance with its whistle blowing policy to prevent such detriment being inflicted on the whistleblower.

2 Conclusions and Reasons for Recommendation

- 2.1 As part of best practice, the government expects all public bodies to have written whistleblowing policies. It is therefore necessary that the Council's Whistleblowing policy is up to date and fit for purpose.

3 Consultation and Equality Impact

- 3.1 The Policy has been approved by SAMT and UECC.

4 Alternative Options and Reasons for Rejection

- 4.1 N/A

5 Implications

None.

6 Recommendations

- 6.1 That the Whistleblowing Policy be recommended to Cabinet.

7 Decision Information

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| Is the decision a Key Decision? (A Key Decision is one 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 |
| District Wards Affected | N/A |
| Links to Corporate Plan priorities or Policy Framework | |

8 **Document Information**

| Appendix No | Title |
|--|-----------------------|
| 1 | Whistleblowing Policy |
| Background Papers (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 |
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NORTH EAST DERBYSHIRE DISTRICT COUNCIL
Whistleblowing Policy

December 2013

North East Derbyshire District Council Equalities Statement

North East Derbyshire District Council is committed to equalities as an employer and in all the services provided to all sections of the community.

The Council believes that no person should be treated unfairly and is committed to eliminate all forms of discrimination.

The Council also has due regard to eliminate racial discrimination and to proactively promote equality of opportunity and good relations between persons of different racial groups when performing its functions.

This document is available in large print and other formats from any of the Council offices or by contacting the Governance Team on 01246 217753. Please bear in mind we will need a few days to arrange this facility.

If you need help to read this document please do not hesitate to contact us.

December 2013

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 Council. 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 Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment the Council encourages employees, Members and others with serious concerns about any aspect of the Council's 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 Council, 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 Council has entered into joint working arrangements and Members.
- 1.6 This policy also applies to all employees in organisations who work in partnership with the Council 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 Council 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 in good faith

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
- 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 that they have access to, to un-authorized 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 Council's Complaints Procedure.

4 Safeguards against Harassment or Victimisation

- 4.1 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 from those responsible for the malpractice. However, the Council will not tolerate any form of harassment or victimisation, and will take appropriate action to protect persons who raise a concern in good faith.
- 4.2 The Council is committed to good practice and high standards and endeavors 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 an allegation is made in good faith, but it is not confirmed by the investigation, no action will be taken against the employee making the allegation. If, however, an allegation is made that is frivolous, malicious or for personal gain, action may be taken against the employee in accordance with the Council's Disciplinary Procedure.
- 7.2 As an employee of the Council you are also 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.
- 7.3 If you make what is known as a "qualifying disclosure" under the 1998 Act to your employer or certain other persons/bodies, and you act reasonably and in good faith, it will be unlawful for either Council 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.
- 7.4 Compensation may be awarded to you by an Employment Tribunal if the Council breaches 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 verbally or 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 You 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
 - the Head of Internal Audit
 - the Chief Executive Officer
 - the Monitoring Officer
 - the Director of Corporate Resources

8.6 You may choose to contact a body external to the Council such as the External Auditor or the Police if this is your preference. 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 Council direct:

- the Service Manager whom you feel would be the most appropriate
- the Head of Internal Audit
- the Chief Executive Officer
- the Monitoring Officer
- the Director of Corporate Resources

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

8.9 You may choose to contact a body external to the Council such as the External Auditor or the Police if this is your preference.

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 Investigation Manager (IM) who will be appointed at the Council's discretion.

9.3 When conducting the investigation, the IM may involve:-

- Internal Audit
- Legal & Democratic Services
- Human Resources
- the Police
- an external auditor
- Any other person at the discretion of the IM

9.4 In order to protect individuals and those accused of misconduct or malpractice, the IM 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.

9.5 If the IM decides that a disciplinary investigation may be the more appropriate course of action to take, the IM will advise Human Resources.

- 9.6 Some concerns may be resolved by agreed action without the need for investigation.
- 9.7 It may be necessary to take urgent action before any investigation is completed.
- 9.8 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).
- 9.9 The Council accepts that persons need to be assured that the matter has been properly addressed. Subject to legal constraints, the Council will inform the persons of the progress and outcome of any investigation.
- 9.10 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. The Monitoring Officer will report as necessary to the Council.

11 How the Matter Can Be Taken Further

- 11.1 This Policy is intended to provide a process within North East Derbyshire District Council, 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 Council's 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 Council would not expect Whistleblowers to make disclosures to the press.