
Decision maker:	Audit and governance committee
Decision date:	23 September 2015
Title of report:	Whistle blowing policy
Report by:	Head of law, governance and resilience

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Countywide

Purpose

The purpose of this report is to agree the proposed changes to the whistle blowing policy and procedure.

Recommendation(s)

THAT:

- (a) the revised whistle blowing policy at appendix A be approved, effective 1 October 2015.**

Alternative options

- 1 To defer changes to current policies to another time, or partially recommend. This is not recommended because we know that the current policy contain aspects that do not reflect legislative requirements or need clarity.

Reasons for recommendations

- 2 The council's audit and governance code within the constitution requires that the audit and governance committee review and approve the whistle blowing policy on a biennial basis.

Key considerations

- 3 The council's whistle blowing policy is intended to encourage and enable employees to raise concerns with the council without fear of victimisation, subsequent discrimination or embarrassment.
- 4 The policy plays an important part in meeting the council's commitment to openness, honesty and ethical propriety and compliments the objectives of a number of other council policies and supports the council's anti-fraud and bribery policy and the code of conduct for qualifying employees of the council.
- 5 It was therefore considered necessary that the council's existing whistle blowing policy was reviewed in order to ensure that it reflects recent legislative changes, up to date contact details.
- 6 The revised draft policy is attached at Appendix A. It reflects the changes implemented by the Enterprise and Regulatory Reform Act 2013. A summary of these changes is listed below:

Legislative changes	Revision made to draft policy
A change in the definition of Co-worker	Policy amended to include reference to temporary employees, trainees and those workers employed through an agency and "independent contractors".
<p>The implementation under the legislation of a "public interest test", the previous requirement that a "disclosure" clearly afforded legal protection if the worker made the qualifying disclosure in "good faith" is removed. The current test applicable on or after 25th June 2013 requires a concern reported by the worker in the public interest which in the reasonable belief of the worker tends to show one or more of the following:</p> <ul style="list-style-type: none"> - Illegal practices; - A failure to comply with the legal obligation; - The health and safety of an individual whether this is a member of public or staff being endangered; - Damage to the environment; - Miscarriage of justice; - Deliberate concealment of any of the above. 	All references to disclosures have been amended to comply with the legislation so that a qualifying or protected disclosure is a disclosure of information made in the public interest, the worker reasonably believing that the disclosure is made in the public interest.
Provisions implemented under the new legislation which introduces employer liability for victimisation of "Whistle Blows" by co-workers and / or an agent of the employer.	The new draft Policy has been revised to include the following co-employees who victimise whistle blowers can be made personally liable for their own conduct, and the Council could be held vicariously liable if it has not taken all reasonable steps to prevent victimisation.

7. The new draft policy includes additional provisions including guidance for workers and their line managers to assist them in reporting their concerns under the whistle blowing policy and progressing this within the council. The monitoring officer's annual report to audit & governance committee includes monitoring levels of whistle blowing and the effectiveness of this policy.
8. The whistle blowing policy will provide the means for all workers to raise suspicions of any concerns including potential criminal matters through an open and transparent process without fear of repercussions.

Community impact

9. The council, as a large local employer, has a significant role to play in the local community, for example policies such as flexible working provide flexibility to assist people with care and other responsibilities to be in employment.
10. The council continues to ensure that the resources available are used in the most effective way.

Equality duty

11. The council is committed to equality and diversity using the Public Sector Equality Duty (Equality Act 2010) to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.
12. The equality duty covers the following nine groups with protected characteristics: age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
13. The proposed review of these policies will have no impact on employees with protected characteristics.

Financial implications

14. There are no direct financial implications associated with the proposed policy changes contained in this report or the summary.

Legal implications

15. The law on whistle blowing was previously contained in the Employment Rights Act 1996 which was amended by the Public Interest Disclosure Act 1998 and affords employment protection to any worker who makes a "protected disclosure". The legislation provides protection to the worker against victimisation and additional protection for those workers who report their concerns outside of the authority where there is no existing whistle blowing policy or effective whistle blowing arrangements in existence within the authority.
16. The draft policy takes account of the changes necessary to respond to the requirements within the Enterprise and Regulatory Reform Act 2013.

Risk management

17. Failure to maintain a legally compliant whistle blowing policy could contravene employment law and leave the council open to challenge with associated financial penalties and bring the council into disrepute.

Consultees

18. Consultation has been conducted with the trade unions about the proposed policy changes. Comments have been considered and incorporated; there is not a requirement to gain agreement.
19. Management board, trade unions, managers and employees will continue to be engaged as appropriate on future thinking and associated plans to make any further changes to employment policies.

Appendices

Appendix A: Draft updated whistle blowing policy wording

Appendix B: Draft whistle blowing procedure

Background papers

None identified.