

**REPORT TO THE MEETING OF THE ETHICAL GOVERNANCE
COMMITTEE ON 6 FEBRUARY 2019**

Status: Recommendation
Title: Whistleblowing Policy
Originator: Verina Wenham, Head of Legal and Democratic Services and
Monitoring Officer
Where from: Ethical Governance Work plan
**Where to
next:** Governance and Audit Committee

1 Purpose Report

1.1 For members to consider the updated Whistleblowing Policy for referral to the Governance and Audit Committee for consideration.

2 **Recommendations:**

2.1 **To consider a revised Whistleblowing Policy which is attached as Appendix A and;**

2.2 **Refer any recommendations to the Governance and Audit Committee for consideration and subsequent referral to Council for adoption.**

3 Summary of Reasons for the Recommendations

3.1 The Council needs to have in place a robust whistleblowing policy which complies with current legislation.

4 Impact on Communities

4.1 It is important that members of the public have confidence in the Council's adopted procedures for dealing with the key risk areas of fraud or error.

5 Key Facts

5.1 The Ethical Governance Committee as part of its term of reference is required to review the Council's whistleblowing policy. The policy was last reviewed by Standards Committee on 28 September 2010, and was included in the 2017/18 audit on Counter Fraud and Ethical Governance. One of the recommendations was that the Whistleblowing Policy was reviewed to ensure that it was up to date and compliant with current legislation and to provide updated training to staff on the policy, both as part of the induction

programme and regular refresher training. Accordingly the Committee agreed that the Policy should be included on its work plan for 2018/19.

- 5.2 Since the last review was completed, the provisions of the Enterprise and Regulatory Reform Act 2013 have come into effect. These provisions made several key amendments to the legal position, including:
- Disclosures are no longer protected unless the worker has a “reasonable belief” that the disclosure is in the public interest, the worker is not required to know for certain it is in the public interest.
 - The requirement that disclosures must be made in “good faith” is removed, although disclosures made in bad faith may result in any compensation awarded by an Employment Tribunal being reduced by up to 25%.
 - The Council as an employer will now be vicariously liable for the actions of workers where they subject a colleague to a detriment as a result of whistleblowing, unless they can demonstrate that they took all reasonable steps to prevent this happening. It also opens up liability to workers where they subject a colleague to a detriment.
- 5.3 The updated policy attached at Appendix A addresses the changes made by the Act in relation to whistleblowing. The public interest is not defined in the Act and will be subject to interpretation and case law. The policy does not seek to define this, which is appropriate in the circumstances, as it is a judgement call for individual workers.
- 5.4 The amended Policy appended to this report has been produced in consultation with the Head of Internal Audit, following on from the recent audit of the Council’s ethical governance arrangements.
- 5.5 The Policy seeks to provide a clear process by which anyone can raise a concern about the Council in confidence. It sets out the aims of the Policy at paragraph 2 and emphasises that the policy should be used as part of the suite of existing procedures available to staff and customers to raise concerns. An example of the different routes available is detailed in paragraph 2.3.
- 5.4 The Policy anticipates that whistle blowing concerns from members of staff should ordinarily be raised with the immediate line manager, and similarly non employees such as agency staff and contractors should report their concerns to the person to whom they directly report. However, it is recognised that this may not always be appropriate and that it be helpful to have another route to raise a concern.
- 5.5 The Council will endeavour to treat concerns on a confidential basis, however, this cannot be absolutely guaranteed, for the reasons set out in 4.2 of the Policy.

6 Legal Issues

6.1 As set out in the body of this report.

7 Resource Issues

7.1 The Council will need to undertake training for both members and officers on the new arrangements. This will initially be covered out of the central training budget but there may be additional resources required on an on going basis.

8 Equality Implications

8.1 This policy supports the Council's Equality and Diversity policies and provides a forum whereby any genuine concern can be raised.

9 Impact on the Organisation

9.1 None as far as this report is concerned.

10 Community Safety Implications

10.1 None as far as this report is concerned.

11. Carbon Management Implications

11.1 None as far as this report is concerned.

12. Risk Management Implications

12.1 The adoption of revised arrangements should provide a legally compliant structure for management of risk with protected disclosures.

13 Consultation

13.1 Following consideration of the attached draft policy, further consultation will be carried out with Human Resources Manager and Corporate Management Team.

14. Options Considered

14.1 The Council's current arrangements need to be reviewed in line with the Act to ensure that the new legislative provisions are dealt with.

15 Background Papers

15.1 None

**Previous report(s): 9 December 2014
10 February 2010**

Information Issued Under Sensitive Issue Procedure: Y/N

Ward Members Notified: Y/N

Appendices: *list any appendices here including title and filename in brackets (e.g. Performance Data 2010 (perfddata.doc)).*

A. Whistleblowing Policy