

**For General Release**

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>20 NOVEMBER 2013</b>
<b>AGENDA ITEM:</b>	<b>7</b>
<b>SUBJECT:</b>	<b>Review of the Whistle Blowing Policy and Procedure</b>
<b>LEAD OFFICER:</b>	<b>Julie Belvir, Director of Democratic and Legal Services and Monitoring Officer</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The Council is keen to ensure that the it's whistle blowing policy is up to date in light of statutory changes brought about under the Enterprise and Regulatory Reform Act 2013.	
<b>FINANCIAL IMPACT</b> The recommendation contained in this report has no financial implications	
<b>KEY DECISION REFERENCE NO.:</b>	

<b>1. RECOMMENDATION</b> <b>1.1 That the Committee approve the updated whistle blowing policy contained in Annex A.</b>
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**2. EXECUTIVE SUMMARY**

- 2.1 The purpose of this report is to seek approval for the updated whistle blowing policy. The amendments reflect recent changes to whistle blowing legislation introduced by the Enterprise and Regulatory Reform Act 2013 (ERRA) and details of a new provider of the confidential reporting facility for whistle blowers.

**3. DETAIL**

- 3.1 The whistle blowing 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 ("whistle blowing"). Whistle blowing occurs when an employee or worker draws attention to a concern or concerns of wrongdoing in their organisation. In the context of the Council the types of concerns a worker or an employee may wish to raise are set out in paragraph 2 of the policy in Annex A.

- 3.2 Whistle blowing 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. As part of best practice, the government expects all public bodies to have written whistle blowing policies. It is therefore necessary that the Council's whistle blowing policy is up to date and fit for purpose.
- 3.3 The policy will be communicated to all relevant officers and published on the Council's public website following the Committee's approval.

### **KEY LEGISLATIVE CHANGES**

- 3.4 The key changes to the Public Interest Disclosure Act 1998 which has been brought about by the ERRA are as follows:
- 3.5 Firstly, there is now an express requirement that whistle blowing by employees or workers is made in the public interest (section 17 of the ERRA). Although the ERRA does not define the meaning of public interest however 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. For example a grievance by an employee concerning their terms and conditions of employment will not be considered to be in the public interest.
- 3.6 Secondly, under section 19 of the ERRA an employer can be held liable (vicarious liability) for any detriment inflicted on the whistle blowing 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 whistle blower. Compensation for a successful whistle blowing claim against an employer is unlimited and could therefore in some instances be quite substantial.
- 3.7 The whistle blowing policy in Annex A has been amended to reflect the change set out in 3.4; no amendment to the policy is required in consequence of the legislative amendment referred to in 3.5.

### **WHISTLE BLOWING CONFIDENTIAL REPORTING FACILITY**

- 3.8 The whistle blowing confidential reporting facility is an advice line for employees and others to call for confidential advice on whistle blowing issues and to forward the Council any information as appropriate.
- 3.9 The Council's contract for a whistle blowing service was due for renewal and the provider of the service has changed to Public Concern at Work, a third sector provider, in order to secure best value for money. The Policy has been updated to reflect the new contact details.

## **4 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

### **4.1 The effect of the decision**

There are no direct financial implications from this report.

4.2 (Approved by: Helen Sach, Head of Corporate Finance, on behalf of Richard Simpson, Director of Finance and Assets and S151 Officer)

## **5. HUMAN RESOURCES IMPACT**

5.1 Council employees who wish to raise a grievance or a complaint of bullying and/or harassment may do so under the Employee Complaints Procedure. Given the law has changed so that a protected disclosure must be one which is made in the public interest, it is likely that the appropriate route for some complaints which may in the past have been raised under the whistle blowing procedure, will now be the Employee Complaints Procedure. An increase, if any, in the number of employee complaints arising from these changes is unlikely to be significant and will be managed within existing resources. No amendments are considered necessary to the Employee Complaints procedure as a result of the changes mentioned in the report.

(Approved by: Colin Chadwick on behalf of the Acting Director of Workforce)

## **6. CRIME AND DISORDER REDUCTION IMPACT**

6.1 The policy will assist in identifying improper conduct and enable the Council to deal with the issues raised appropriately.

## **7. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

7.1 To ensure that the Council's whistle blowing policy is up to date including statutory changes that have been brought about under the ERRA.

## **8. OPTIONS CONSIDERED AND REJECTED**

8.1 To leave the current whistle blowing policy as it is. The current policy will not be compatible with the legislation relating to whistle blowing following the coming into force of the relevant provisions of the ERRA. It would also not reflect the current arrangements the Council has for dealing with whistle blowing effectively.

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### **CONTACT OFFICER:**

Julie Belvir, Council Solicitor and  
Monitoring Officer, Director of Democratic  
& Legal Services

### **BACKGROUND PAPERS**

None