

TITLE	Legislative changes to the Whistleblowing Policy – 25 June 2013
FOR CONSIDERATION BY	Audit Committee on 24 July 2013
WARD	None Specific
STRATEGIC DIRECTOR	Julie Holland, Interim Head of Business Assurance and Democratic Services

<p>OUTCOME / BENEFITS TO THE COMMUNITY</p> <p>Wokingham Borough Council remains compliant with legislation.</p>
<p>RECOMMENDATION</p> <p>The Audit Committee is asked to consider proposed amendments to the Whistleblowing Policy and recommend these for approval and inclusion in the Council's Constitution to Council, via the Constitution Review Working Group.</p>
<p>SUMMARY OF REPORT</p> <p>Changes came into effect on 25 June 2013 to the legislation governing Whistleblowing (Public Interest Disclosure Act 1998) by the Enterprise and Regulatory Reform Act 2013 (the ERRA). The attached Whistleblowing policy reflects these changes.</p>
<p>Background</p> <p>Whistleblowing occurs when a worker makes a qualifying disclosure to an employer (or to a regulator, legal adviser, minister or other responsible or prescribed person) about a dangerous or illegal activity or omission. Subject to fulfilling certain criteria as set down by legislation, this will be considered a 'protected disclosure' under the Employment Rights Act 1996. The effect of which is that the worker is then protected from being dismissed or subjected to any detriment as a result of the disclosure.</p> <p>The legislative changes are attached in the amended policy, with changes highlighted in yellow as Appendix 1.</p>
<p>Analysis of Issues</p> <p>The key points are as follows:</p> <ul style="list-style-type: none"> • A qualifying disclosure is one that is made in the public interest. • Removal of the requirement for the disclosure to be made in good faith. • Employees and workers who make protected disclosures are protected from adverse treatment in relation to their employer's activity. In addition, whistleblowers are protected from suffering a detriment, bullying or harassment from another worker.

- A qualifying disclosure means any disclosure of information that, in the reasonable belief of the worker is made in the public interest. As a result of this employees will generally be precluded from being able to “blow the whistle” about breaches of his or her employment contract. Although an employee making such complaint can still use the Council’s grievance policy

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	N/A	N/A	N/A
Next Financial Year (Year 2)	N/A	N/A	N/A
Following Financial Year (Year 3)	N/A	N/A	N/A

Other financial information relevant to the Recommendation/Decision

N/A

Cross-Council Implications

The impact on the delivery of Council services and priorities is negligible as the policy change will not require any changes to service delivery or council priorities.

Reasons for considering the report in Part 2

N/A

List of Background Papers

Whistleblowing Policy

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Date 18 July 2013	Version No. V1

CHAPTER 9.5 – WHISTLEBLOWING POLICY AND GUIDANCE

9.5.1 Introduction

The Council is committed to delivering high quality services to its customers and expects high standards from its employees and contractors. In order to maintain those high standards a culture of openness and accountability is vitally important. The aims of this policy are:

- a) to encourage you to raise concerns about malpractice within the organisation without fear of reprisal;
- b) to reassure you that your concerns will be taken seriously; and
- c) to provide information about how to raise your concerns and explain how the council will respond.

This policy applies to all Council employees, former employees, agency staff and contractors engaged by the Council.

9.5.2 What is Whistleblowing?

In practical terms, whistleblowing occurs when a concern is raised about danger or illegality that affects others, e.g. clients, members of the public or the Council itself. As the person "blowing the whistle" you would not usually be directly affected by the danger or illegality. Consequently you would rarely have a personal interest in the outcome of any investigation into your concerns. This is different from a complaint or grievance. If you make a complaint or lodge a grievance, you are saying that you personally have been poorly treated. This poor treatment could involve a breach of your individual employment rights or bullying and you are entitled to seek redress for yourself. A qualifying disclosure means any disclosure of information that, in the reasonable belief of the worker is made in the public interest. As a result of this employees will generally be precluded from being able to "blow the whistle" about breaches of his or her employment contract. Although an employee making such a complaint can still use the Council's grievance policy.

Examples of whistleblowing concerns are:

- a) fraud in, on or by the Council;
- b) offering, taking or soliciting bribes;
- c) unauthorised use of public funds;
- d) financial maladministration
- e) the physical, emotional or sexual abuse of clients
- f) failure to comply with legal obligations
- g) endangering of an individual's health and safety

- h) damage to the environment
- i) a criminal offence
- j) failure to follow financial and contract procedure rules
- k) showing undue favour to a contractor or a job applicant
- l) misreporting performance data; or
- m) neglect of people in care.

This Policy does not replace the Council's complaints or grievance procedures.

9.5.3 Who should I contact?

Having considered this Policy, an employee of the Council, or any other person covered by the Act, who has serious concerns about any aspect of the Council's work, should in the first instance inform one of the following methods:

a) Inform Line Manager

In many cases, raising concerns with the immediate line manager is the most appropriate route for an employee. The line manager should inform the Head Director of Business Assurance and Democratic Services of the disclosure and an appropriate course of action will be agreed. If this is not a suitable option (for example because the issue may implicate the manager or if the concern has been raised but remains unaddressed) the concern should be raised using one of the other methods

b) Dedicated Whistleblowing Communication Channels

Business Assurance has established a dedicated 24 hour answer phone hotline for receiving disclosures. Hot line number - 0118 974 6550;
Email:- confidential.whistleblowing@wokingham.gov.uk;
By Post - Confidential Whistleblowing, Business Assurance, Shute End, Wokingham, RG40 1BN;
Or in person at Shute End by asking for Business Assurance at reception.

c) Head Director of Business Assurance and Democratic Services

Business Assurance can offer confidential independent advice on the use of the Whistleblowing Policy. If you suspect an employee, a member of the public or contractor (in their business dealings with the Council) of fraud or corruption you must contact Business Assurance who will discuss your concerns with you in complete confidence. If you are in receipt of any allegation involving possible corruption, fraud or malpractice you should notify the Head Director of Business Assurance and Democratic Services immediately on 0118 974 6630508.

d) Strategic Director Service Delivery for People

If you wish to raise a concern involving vulnerable children, you can contact the Strategic Director Children's Services on 0118 974 6055 or the Head of

Safeguarding Children 0118 974 6205 to seek guidance on how to proceed.

e) Strategic Director Commissioning

If you wish to raise a concern involving vulnerable adults, you should contact the Strategic Director Health and Wellbeing on 0118 974 6762 to seek guidance on how to proceed.

9.5.3.1

Advice and guidance on how matters of concern may be pursued can be obtained from: the Monitoring Officer (Director of Legal and Electoral Services) or the Head Director of Business Assurance and Democratic Services.

9.5.4 Legal Protection

The Public Interest Disclosure Act (PIDA) 1998 – sets out a framework of protection against victimisation or dismissal for workers who blow the whistle (“disclosure”) on criminal behaviour and other specified forms of malpractice.

9.5.4.1

It applies to making a ‘protected’ disclosure in respect of specific types of malpractice, which are:

- a) that a criminal offence has been committed, is being committed or is likely to be committed;
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- d) that the health or safety of any individual has been, is being or is likely to be endangered;
- e) that the environment has been, is being or is likely to be damaged; or
- f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

9.5.4.2

The Act covers internal disclosures to the Wokingham Borough Council as the employer, disclosures to prescribed ‘persons’ such as regulatory bodies (e.g. for health and safety issues, the Health and Safety Executive), and wider disclosures, for example to the police and the media.

9.5.5 Raising Concerns outside the Council

In certain circumstances it may be appropriate to raise concerns outside the Council to the appropriate ‘prescribed regulator’. This should only be done where any disclosure of information that is made in the public interest and where you believe

the information is true, i.e. more than just suspicion. You are advised to discuss your concerns with a legal advisor, trade union or Public Concern at Work before reporting them outside the Council. Examples of prescribed regulators are set out below:

- a) The Audit Commission;
- b) ~~The Standards Board for England;~~
- b) Information Commissioner;
- c) Environment Agency;
- d) Health and Safety Executive;
- e) Commissioner of the Inland Revenue;
- f) Ofsted;
- g) General Social Care Council;
- h) Care Quality Commission;
- i) The Commission for Social Care Inspection; and
- j) National Care Standards Commission.

9.5.5.1

As a last resort you may choose to raise your concern outside the Council to someone other than a prescribed regulator, e.g. to the police or your MP. You should only do this if, in addition to the conditions above, they meet one of three preconditions. Provided the disclosure is reasonable in all the circumstances and is not made for personal gain, the preconditions are that you:

- a) reasonably believed that you would be victimised if you raised the matter internally within the Council; or
- b) reasonably believed that the matter would be 'covered up' and there is no prescribed regulator; or
- c) have already raised the matter internally or with a prescribed regulator

9.5.5.2

It should be noted that wider disclosures (i.e. to the media) can only be protected where there is a justifiable cause for going wider and where the particular disclosure is reasonable. The Council therefore encourages concerns to be raised initially using one of the methods described in 9.5.2.

9.5.6 Making a Protected Disclosure

This policy is intended to allow the internal investigation and resolution of any concerns raised. In accordance with the PIDA 1998, to make a 'protected' disclosure the whistleblower has to meet certain conditions:

a) A qualifying disclosure means any disclosure of information that, in the reasonable belief of the worker is made in the public interest. Therefore, while the employer can seek a declaration from the whistleblower that he or she is not knowingly making false allegations, disciplinary action is likely to be appropriate only where there is clear evidence that the reporting worker has misused the whistleblowing policy.

~~b) Disclosure to the Council will be protected if it is made in good faith and the whistleblower has a reasonable suspicion that the alleged malpractice has occurred, is occurring or is likely to occur~~

b) Disclosure to a regulatory body will be protected where, in addition, the whistleblower honestly and reasonably believes that the information they provide and any allegation contained in it are substantially true.

c) Disclosure to other external bodies will be protected if, in addition, making it is in all respects reasonable. 'In all respects reasonable' means, in effect

- i) the disclosure is not made for personal gain;
- ii) the whistleblower reasonably believed that they would be victimised if they raised the matter internally;
- iii) there is no relevant regulatory body;
- iv) the whistleblower reasonably believed that evidence was likely to be concealed or destroyed;
- v) the concern has already been raised with the employer and/or relevant regulatory body; and
- vi) the concern is of an 'exceptionally serious' nature – which in a local government setting could include, say, the alleged abuse of children or vulnerable adults in an authority's care.

9.5.6.1

This may be done orally or in writing. If you are writing, remember to give details of how you can be contacted. Anonymous disclosures present difficulties for effective investigation. Your name will not be revealed without your consent, unless required by law. However the Council recognises that despite the dual safeguards of confidentiality and legal protection from recrimination that individuals may still feel unable to reveal their identity. In these situations individuals can report their concerns anonymously, but should be aware that these concerns carry less weight with the investigation teams and the disclosure may not be sufficiently detailed to provide a successful investigation.

9.5.6.2

Allegations that are malicious, or allegations made for personal gain, may result in action against the person making them. If an allegation is made in good faith in the public interest, but is not confirmed by an investigation, no action will be taken against the person who raised the concern.

9.5.6.3

It is preferable that a whistleblowing concern be raised as soon as there is reasonable suspicion. Employees are not expected to investigate the matter themselves or prove that their concern is well-founded.

9.5.6.4

The Council recognises that the decision to report a concern can be difficult. If you report the concern in good faith, the Council will not tolerate any harassment or victimisation against you. Any employee who is found to have victimised or harassed an employee who raised a concern will face disciplinary action. Employees and workers who make protected disclosures are protected from adverse treatment in relation to their employer's activity. In addition, whistleblowers are protected from suffering a detriment, bullying or harassment from another worker.

9.5.7 How will the Council respond?

The action taken by the Council will depend on the nature of the concern. The matters raised may:

- a) be investigated internally;
- b) be referred to the Police;
- c) be referred to the external auditors (the Audit Commission);
- d) form the subject of an independent inquiry; or
- e) be considered a service issue and referred to the service to respond by any combination of the above.

9.5.7.1

In all cases, where a concern is raised, the contacted officer shall notify the Monitoring Officer (Director of Legal and Electoral Services) and the Section 151 Officer (Strategic Director Resources). These officers will assess the nature of the concern in conjunction with the Director of Business Assurance and Democratic Services to decide the appropriate response. Some concerns may be resolved by agreed action without the need for investigation. Any investigation will be overseen by the Director of Business Assurance and Democratic Services.

9.5.7.2

Feedback on the outcome of the concern will be given to the person raising the concern. This feedback may be limited due to legal obligations of confidentiality (i.e. if disciplinary action is taken against a Council employee).

9.5.8 What if I am dissatisfied with the Council's response?

This policy is intended to provide you with an avenue to raise concerns within the Council. However, if at the end of the process an employee of the Council, or any other person covered by the Act, is not satisfied with how a disclosure has been dealt with and wishes to pursue matters by means of a wider disclosure, the following points of contact are available to you:

- a) your local Member (if you live in the area of the borough);
- b) the Audit Commission;
- c) relevant professional bodies or regulatory organisations;
- d) relevant inspection body;
- e) your solicitor; or
- f) the Police.

9.5.8.1

If you do decide to take the matter outside of the Council, you need to ensure that you do not disclose confidential information and that you are 'protected' in accordance with the PIDA 1998 (refer to 9.5.5).

9.5.9 Further information and advice

Independent advice on 'whistleblowing' can also be obtained from:

Public Concern at Work

Suite 306, 16 Baldwins Gardens, London EC1N 7RJ
Helpline: 020 7404 6609 Email: helpline@pcaw.co.uk

Audit Commission

1 Vincent Square, London SW1P 2PN
Telephone: 020 7828 1212 Email: enquiries@audit-commission.gov.uk

Professional Body or Trade Union

If you are a member of a professional body or trade union they should be able to advise you on Whistleblowing.