



**OPEN REPORT
GOVERNANCE AND RESOURCES COMMITTEE**

Governance and Resources Committee – 15 February 2024

REVIEW OF THE WHISTLEBLOWING POLICY

Report of Director of Corporate and Customer Services (Monitoring Officer)

Report Author and Contact Details

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Wards Affected

District-wide

Report Summary

This report provides an overview of the proposed implementation of a revised Whistleblowing Policy and seeks approval and adoption of the revised policy.

Recommendations

1. That the Whistleblowing Policy be approved
2. That authority be delegated to the Director of Corporate and Customer Services, in consultation with the Chair of the Governance and Resources Committee, to review and make minor amendments to the Whistleblowing Policy to reflect changes in legislation, statutory guidance or contact details when introduced.

List of Appendices

Appendix 1 Draft Whistleblowing Policy

Background Papers

Not applicable

Consideration of report by Council or other committee

No

Council Approval Required

Yes

Exempt from Press or Public

No

Review of the Whistleblowing Policy

1. Background

- 1.1 The council maintains a Whistleblowing Policy and Procedure which outlines the legal obligations the council is under pursuant to the Employment Rights Act 1996, as amended. The policy and procedure provides information, guidance and a procedure by which a “worker” (a term that covers council employees and former employees, contractors and agency workers) can make a “protected disclosure” – a “whistleblow”.
- 1.2 A “protected disclosure” is made where a worker raises concerns, which in the reasonable belief of the worker are in the public interest, and which tend to show:
- That a crime has been committed, is being committed, or is likely to be committed.
 - That a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he or she is subject – including contractors providing goods and services on behalf of the council.
 - That a miscarriage of justice has occurred, is occurring, or is likely to occur.
 - That the health and safety of an individual has been, is being, or is likely to be endangered.
 - That the environment has been, is being or is likely to be damaged.
 - That information tending to show any of the above has been concealed or is likely to be deliberately concealed.
- 1.3 Workers who “blow the whistle” enjoy certain legal protections. A worker making a “protected disclosure” has the legal right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. An employer may also be vicariously liable for any mistreatment the worker receives from others as a result of having made a disclosure. An employer is also prevented from seeking to impose a contractual term that prevents a worker blowing a whistle, for example in a “non-disclosure agreement”.
- 1.4 Not all disclosures will be protected. The worker has to have a reasonable belief that the disclosure is made “in the public interest”.

2. Key Issues

- 2.1 The Council’s existing Whistleblowing Policy was published in 2008. The last review of the policy was approved by this Committee in 2015. On this basis, the former Director of Corporate and Customer Services undertook a review of the policy and decided that an updated policy would be drafted based on that review.
- 2.2 The draft Whistleblowing Policy at Appendix 1 will, if adopted, replace the Council’s existing Whistleblowing Policy and would apply to all staff, members, consultants, partners, agency staff and contractors of Derbyshire Dales District Council.

- 2.3 The policy sets out how the Council will handle and respond to any such allegations and seeks to:
- (a) encourage employees and members of the public and/or their representatives to feel confident in raising concerns or allegations in the public interest about suspected serious wrongdoing in the Council and its services without fear of reprisals or victimisation even where the concern or allegations are not subsequently confirmed by the investigation;
 - (b) give a clear message that allegations of serious wrongdoing or impropriety are taken seriously;
 - (c) ensure that where the disclosure proves to be well founded, the individuals responsible for such serious wrongdoing will be held accountable for their actions;
 - (d) set out what employees and members of the public can expect by way of confidentiality and protection when making a whistleblowing disclosure; and
 - (e) identify independent support for employees who wish to make a whistleblowing disclosure.

3. Options Considered and Recommended Proposal

- 3.1 Do nothing – the Committee could choose to retain the current policy provisions and not to approve the revised Whistleblowing Policy. However it is recommended that this option is not pursued to ensure that the Council has an up to date policy in place that is clear and easily understood.
- 3.2 It is recommended that the draft Whistleblowing Policy is approved and adopted to ensure that Council's policy remains fit for purpose and compliant with the law and best practice. It also contributes to the overriding principle of demonstrating openness and transparency in the way that the authority responds to concerns raised.

4. Consultation

- 4.1 The Corporate Leadership Team has been consulted on the provisions of the policy and has considered it in view of whistleblowing concerns raised in recent years.
- 4.2 The Council's Employee Group and JCG have also received this report and support the Council's approach.

5. Timetable for Implementation

- 5.1 The proposed policy will be effective following approval by the Committee. In the event of such approval, the Policy and Process will be 'launched' via our internal communications processes to ensure it is accessible to all our employees

6. Policy Implications

- 6.1 In basing the Whistleblowing Policy within the strategic context of the Corporate Plan and as part of our culture it is intended to ensure that this

revised Policy (and associated Processes) are consistent with delivering the Council's overall vision.

7. Financial and Resource Implications

- 7.1 There are no specific financial or resources implications arising from the body of this report.

8. Legal Advice and Implications

- 8.1 The statutory basis for whistleblowing is contained in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998). It provides the right for a worker to take a case to an employment tribunal if they have been victimised at work or they have lost their job because they have 'blown the whistle'.

- 8.2 The legislation does not require an employer to adopt a Whistleblowing Policy. However, the Secretary of State has published best practice Guidance for Employers on Whistleblowing (Department for Business Innovation & Skills Whistleblowing Code of Practice) that provides that the existence of a policy shows an employer's commitment to listen to the concerns of its workers. Such concern is also demonstrated by responding to concerns when they are raised, and by monitoring and reporting on the operation of the policy as this report does.

- 8.3 The revised Whistleblowing Policy confirms the employee's statutory rights and aim to create an organisational culture where employees feel safe to raise a concern in the knowledge that they will not be victimised if raise their concerns.

9. Equalities Implications

- 9.1 The Council has to give due regard to its Equalities Duties, in particular with respect to general duties arising pursuant to the Equality Act 2010, section 149. Having due regards to the need to advance equality involves, in particular, the need to remove or minimise disadvantages suffered by persons who share a relevant characteristic that are connected to that characteristic. The protected characteristics are Age; Disability; Gender Reassignment; Pregnancy and maternity; Race; or Religion or belief; Sex and Sexual Orientation.

- 9.2 The Council has considered the relevance of the proposal to the provisions of the Equality Act 2010 and the Human Rights Act 1998 and concluded that Equalities Duties are not engaged by this proposal. The proposal is also compatible with Human Rights Articles and as the report does not have any significant bearing on the substantive equality duty it is not considered necessary to undertake an Equality Analysis.

10. Climate Change Implications

- 10.1 There are no climate change implications associated with the recommendations in this report.

11. Risk Management

- 11.1 A failure to maintain and monitor this process will expose the council to risk by having inadequate arrangements which offer necessary protection to employees or the council when disclosures are made.
- 11.2 The Whistleblowing Policy helps to defend against potential claims of vicarious liability which could be costly for the council.

Report Authorisation

Approvals obtained from Statutory Officers:-

	Named Officer	Date
Chief Executive	Paul Wilson	01/02/2024
Director of Resources/ S.151 Officer	Karen Henriksen	02/02/2024
Legal Services Manager	Kerry France	05/02/2024