

# WHISTLEBLOWING POLICY

<b>Version history</b>			
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1.0	August 2021	Reviewed the previous Code and drafted new Policy	H. Barrington
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1.1	18/11/2021	Cabinet. Final version incorporating Committee comments	H. Barrington

Review: November 2024

## Derbyshire County Council

### Whistleblowing Policy

#### 1. Introduction

1.1 Derbyshire County Council is committed to the highest possible standards of honesty, openness and accountability and will not tolerate wrongdoing, malpractice or illegality in the workplace.

1.2 The Council's Whistleblowing Policy is a vital element of our governance arrangements and is designed to allow those employed by the Council, members of the public or organisations to come forward and disclose serious allegations of wrongdoing, malpractice or illegality involving the actions of the Council's employees, its Councillors, contractors or any aspect of the Council's activities. The Council is committed to treat all disclosures fairly and consistently.

1.3 It is intended that this Whistleblowing Policy enables individuals or organisations to disclose information about wrongdoing, malpractice or illegality internally and to provide them with protection from subsequent victimisation, discrimination or disadvantage. This will assist in detecting and deterring malpractice and, by demonstrating the Council's accountability, maintain public confidence and the Council's good reputation.

1.4 This Whistleblowing Policy should be read in conjunction with the Anti-Fraud Anti-Corruption Strategy and Fraud Response Plan.

#### 2. Aim of the Policy

2.1 The aims of this Policy are to:

- create a culture of zero tolerance toward fraud and corruption and deter wrongdoing;
- encourage employees and others with serious concerns about any aspect of the Council's work to feel confident to come forward and voice those concerns within the Council rather than ignoring a problem or 'blowing the whistle' outside;
- ensure concerns are raised at an early stage and in the right way ensuring that critical information gets to the people who need to know and who are able to take action so that the matter can be properly investigated;

- provide reassurance to those who raise concerns in the public interest and not maliciously or for personal gain, that they can do so without fear of reprisals or victimisation or disciplinary action, regardless of whether these are subsequently proven;
- ensure that a response is received when concerns are raised, and it is clear how to pursue the matter if not satisfied with the response.

### **3. Scope of the Policy**

3.1 The Whistleblowing Policy seeks to cover all disclosures and allegations made by employees of Derbyshire County Council, including temporary and agency staff. For those employed in maintained schools, the school must have whistleblowing procedures in place and a model Whistleblowing Policy is available which can be adopted by governing boards of Derbyshire schools. The Secretary of State for Education is the prescribed person for matters relating to education for individuals who wish to raise concerns but not direct with their employer. This Policy also extends to any other individual who wants to raise an allegation of wrongdoing, malpractice or illegality. This could include consultants, contractors, sub-contractors who are engaged in work for the Council, volunteers, Councillors, anyone who uses the Council's services or a member of the public.

3.2 The Whistleblowing Policy is not intended to replace existing procedures and it should not be used where other more appropriate reporting procedures are available.

- a) If the concern relates to treatment as an employee, it should be raised under the existing Grievance or Harassment procedures;
- b) If the concern is about services provided, it should be raised under the Complaints Procedure;
- c) If the concern is regarding the behaviour of a County Councillor, it should be raised under the Code of Conduct complaints process.

### **4. What is Whistleblowing?**

4.1 In this policy 'whistleblowing' means the confidential reporting by an individual of any concerns relating to a perceived wrongdoing involving any aspect of the Council's work or those who work for the Council. This includes reporting of suspected wrongdoing, malpractice or illegality within the Council.

4.2 The Public Interest Disclosure Act 1998 (PIDA 1998), known as the whistleblowing law is designed to encourage and enable employees to "speak out" and to report suspected wrongdoing at work. This is commonly known as "blowing the whistle". The PIDA protects employees (including those

employed in schools maintained by the Council, temporary workers and agency staff), from any detriment from their employer or colleagues that arises as a result of making a “protected disclosure” (a qualifying disclosure) in the public interest. This includes protection from harassment, victimisation or dismissal by their employer.

4.3 A qualifying disclosure means any disclosure which in the reasonable belief of the employee shows the following:

- that a criminal offence has been committed, is being committed or is likely to be committed;
- that a person has failed, is failing or likely to fail to comply with a legal obligation to which he/she is subject;
- that a miscarriage of justice has occurred, is occurring or 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 any of the above matters are being or likely to be deliberately concealed.

4.4 Personal grievances are not covered by this Policy and instead should be dealt with under the Council’s Grievance Procedure.

## **5. Whistleblowing by Employees**

### **5.1 Who should concerns be raised with?**

All employees should ensure that they remain aware of this Whistleblowing Policy and use it where they have concerns about wrongdoing, malpractice or illegality internally.

Under this Policy employees should raise their concerns with:

- a) their line manager;
- b) where this is inappropriate, (e.g. because it is believed the line manager is involved) their Executive Director, Director or other senior manager;
- c) where (a) and (b) are inappropriate (e.g. Members or it is believed senior management are involved), the Monitoring Officer; or
- d) if the concern is regarding financial irregularities or fraud, the Assistant Director of Finance (Audit).

### **5.2 Protection for Employees**

5.2.1 Under the PIDA 1998, employees are protected when they make a qualifying disclosure. This applies where the employee:

- makes the disclosure in good faith;
- reasonably believes that the disclosure they are making is in the public interest; and
- reasonably believes that the information detailed and any allegation in it are substantially true.

5.2.2 The PIDA 1998 makes it unlawful for the Council to dismiss anyone or allow them to be victimised on the basis that they have made an appropriate lawful disclosure in accordance with the Act.

5.2.3 The Council recognises that the decision to report a concern can be a difficult one to make. If an employee honestly and reasonably believes what they are saying is true, they should have nothing to fear because they will be doing their duty to their employer, their colleagues and those for whom they are providing a service. Indeed, employees are encouraged to report concerns, particularly where a potential criminal offence has been committed.

5.2.4 The Council will not tolerate any harassment or victimisation of a whistleblower (including informal pressures) and will take appropriate action to protect an employee when they raise a concern in good faith. Any harassment or victimisation of a whistleblower will be treated as a serious disciplinary offence which will be dealt with under the Disciplinary Procedure.

### 5.3. Support to Employees

5.3.1 An employee may wish to consider discussing their concerns confidentially with a colleague first and may find it easier to raise the matter if there are two (or more) employees who have had the same experience or concerns.

5.3.2 An employee may discuss their concerns confidentially with their trade union representative. They may also invite their trade union or other representative to be present during any meetings or interviews in connection with the concerns they have raised.

5.3.3 Any employee making a qualifying disclosure under this Policy:

- will be given full support from senior management, and
- the Council will do all it can to help them throughout the investigation. This may include consideration of temporary redeployment for the period of the investigation, if appropriate.

5.3.4 Any employee thinking about raising a concern can refer to the guidance from the Government or ACAS for further information and obtain confidential advice from Protect (formerly Public Concern at Work).

## **6. Whistleblowing by Contractors, service users, members of the public etc.**

### **6.1 Who should concerns be raised with?**

Under this Policy consultants, contractors, sub-contractors who are engaged in work for the Council, volunteers, Councillors, anyone who uses the Council's services or a member of the public can still contact the Council to report any concerns or disclosures of wrongdoing. They should raise concerns with:

- a) the Monitoring Officer; or
- b) if the concern is regarding financial irregularities or fraud, the Assistant Director of Finance (Audit).

### **6.2 Protection and Support**

The protection under the PIDA 1998 does not extend to disclosures made by those who are not County Council employees. For those who are not County Council employees, the Council will endeavour to provide appropriate advice and support wherever possible.

## **7. How to raise a concern**

7.1 Concerns may be raised verbally or in writing, although it is better if it is provided in writing and an online form is available. The earlier a concern is raised, the easier it will be for the Council to take action. Any person reporting a concern should provide as much information as possible, including:

- their name and contact details;
- who the concerns relate to;
- full details on the nature of the alleged wrongdoing and why it is believed to be true; and
- evidence in support (including copies of any documents, dates and information relating to relevant events).

7.2 It is not expected that the individual proves their suspicions beyond doubt, however they will need to demonstrate that they have a genuine

concern relating to suspected wrongdoing or malpractice within the Council and there are reasonable grounds for that concern.

## **8. Confidentiality**

8.1 All concerns will be treated in confidence and every effort will be made not to reveal identity of the individual raising concerns, if that is their wish. However, it is recognised that if disciplinary or other proceedings follow the investigation, it may not be possible to take action without the individual who has raised concerns coming forward as a witness.

## **9. Anonymous Allegations**

9.1 The Council recognises that there may be circumstances where individuals are worried about being identified when they report concerns, particularly where they are an employee. However, this Policy encourages individuals to put their name to an allegation wherever possible as we believe that open or confidential whistleblowing is the best means of addressing the concerns and protecting individuals. Where an individual does not provide their name, it will be much more difficult for the Council to support and protect their position or to give them feedback. It will also be more difficult for the individual to qualify for protection under the PIDA 1998. This is because there would be no documentary evidence linking them to the disclosure for the Employment Tribunal to consider.

9.2 In addition concerns expressed anonymously are more difficult to investigate, and harder to substantiate. Anonymous allegations will be considered at the discretion of the Monitoring Officer in conjunction with the Assistant Director of Finance (Audit) taking into account the following factors:

- the seriousness of the issues raised;
- the credibility of the concern;
- the same or similar concerns being received; and
- the likelihood of confirming the allegations from other credible sources.

9.3 Where anonymous allegations are investigated, the individual may seek feedback through a telephone appointment or by using an anonymised email address. A reference will be provided to the individual reporting concerns to ensure safeguards are in place to ensure feedback is given to them and not a third party.

## **10. Untrue Allegations**

10.1 If an allegation is made which is frivolous, vexatious, malicious or for personal gain, the Council may take appropriate action that could include disciplinary action.

## **11. How the Council will respond**

11.1 The Council will endeavour to respond to concerns raised as quickly as possible. If a name and contact details have been provided, the person with whom the concerns are raised will formally acknowledge receipt within 5 working days of the concerns being received.

11.2 In order to be fair to all employees, including those who may be wrongly or mistakenly accused, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The over-riding principle for the Council will be the public interest.

11.3 Where appropriate, the concerns raised may be:

- investigated by management, by Audit Services, or through the disciplinary process;
- referred to the Police;
- referred to the external auditor;
- the subject of an independent inquiry;
- resolved by agreed action without the need for investigation; or
- deemed not to be sufficient to warrant an investigation.

11.4 Disclosures for which there are other specific procedures (for example, child protection, safeguarding or discrimination issues) will normally be referred for consideration under those procedures.

11.5 If a name and contact details have been provided, the person with whom the concerns are raised will within 10 working days of a concern being received, confirm in writing:

- what initial enquiries have been made;
- how the matter is going to be dealt with;
- an estimate of how long it will take to provide a final response;
- employee support mechanisms (where appropriate);
- why there is to be no further investigation, if appropriate.

11.6 It is recognised that the individual who raised concerns will need to be assured that the matter has been properly addressed. Therefore, subject to legal and data protection constraints, they will be informed of the outcome of any investigation.



## **12. How the Matter Can Be Taken Further**

12.1 This Policy is intended to provide an avenue within the Council to raise concerns. The Council hopes any individuals who raise concerns will be satisfied with any action taken. If they are not, and they feel it is right to take the matter outside the Council, the following may be contacted:

- the Council's External Auditor;
- the trade union;
- the police;
- the Local Government and Social Care Ombudsman;
- the independent charity Protect (formerly Public Concern at Work);
- other relevant bodies prescribed by legislation.

12.2 If concerns are raised outside the Council it should be to one of these prescribed contacts. A public disclosure to anyone else could take an individual outside the protection of the PIDA 1998 and of this Policy.

12.3 Information that is confidential to the Council or to anyone else, such as a client or contractor of the Council, should only be shared with those included in the above list of prescribed contacts.

12.4 This Policy does not prevent an individual from taking their own independent legal advice.

## **13. The Responsible Officer**

13.1 The Monitoring Officer has overall responsibility for the maintenance and operation of this Policy.

## **14. Corporate Recording and Monitoring**

14.1 The Monitoring Officer will maintain a corporate register containing all concerns that are brought to his/her attention. All officers to whom concerns are raised under this Policy must notify the Monitoring Officer and provide sufficient details for the corporate register.

14.2 The Monitoring Officer will review the corporate register and produce an annual report for the Governance, Ethics and Standards Committee which is responsible for the overview of this Policy.