



## Whistleblowing Policy

### STATEMENT

The Council believes that everyone should have the confidence to speak up and know that those raising a genuine concern will not suffer any detriment. Whistleblowing is viewed by the Council as a positive act that can make a valuable contribution to the Council's efficiency and long-term success. It is not disloyal to colleagues or the Council to speak up. The Council is committed to achieving the highest possible ethical standards in public life and all its practices and, to help achieve these standards, it encourages freedom of speech.

### POLICY

This Policy sets out the steps that can be taken to raise and resolve concerns about wrongdoing or malpractice within the Council without fear of victimisation, subsequent discrimination, disadvantage or dismissal. It is also intended to encourage and enable individuals to raise serious concerns within the Council rather than ignoring a problem or 'blowing the whistle' outside. The Policy has been produced to help:

- councillors;
- staff;
- other organisations who deal with the Council.

### AIMS

This Policy aims to:

- encourage individuals to feel confident in raising concerns at the earliest opportunity;
- provide ways by which individuals can raise those concerns and receive feedback on any action taken;
- ensure that individuals receive a response to concerns and are aware how to pursue them if not satisfied;
- reassure individuals that they will be protected from possible reprisals or victimisation if a disclosure has been made in good faith.

### SAFEGUARDS

The Public Interest Disclosure Act 1998 amended the Employment Rights Act 1996 to create a framework for whistleblowing across the private, public and voluntary sectors. The Act provides individuals in the workplace with protection from victimisation where they make a "protected disclosure" about malpractice or wrongdoing at work in accordance with the Act's provisions.



The definition of a “protected disclosure” is one which the individual reasonably believes is made in the public interest. Anyone who makes a “protected disclosure” has the right not to be dismissed, subjected to any other detriment, or victimised, because a “protected disclosure” has been made.

## **SCOPE**

The above Acts clearly define what types of disclosure qualify individuals for protection. These are known as “protected disclosures” regarding allegations about any of the following which have happened, are happening or may happen:

- conduct which is an offence or breach of the law;
- miscarriage of justice;
- serious health & safety risks;
- unauthorised use of public funds;
- possible fraud or corruption;
- sexual, physical or verbal abuse or bullying or intimidation of Members or staff;
- abuse of authority;
- other unethical conduct.

A disclosure will also be protected if the information disclosed is of a nature that shows any of the above is likely to be deliberately concealed.

A disclosure of such information is not a protected disclosure if the individual commits an offence by making it.

The Policy is intended to assist individuals who have discovered malpractice or serious wrongdoing, provided they make the disclosure in accordance with the Policy. Individuals who make disclosures outside the arrangements set out here will not be protected under this policy and may not be protected under the Act

The Council has a number of other Policies to address other matters, ie grievance, bullying and harassment.

The Policy is not designed to question financial or business decisions taken by the Council and may not be used to reconsider any matters that have already been addressed under another Policy.

## **HARASSMENT OR VICTIMISATION**

The Council will not tolerate harassment or victimisation by those involved with the matters of concern or from others. It will take action to protect staff when they raise a concern in the public interest.



The Council takes its responsibilities in this seriously as it is responsible as the employer for any detriment caused.

Due regard and sensitivity will be exercised by all involved in the process to ensure that staff do not suffer detrimental treatment as a result of whistle blowing;

If staff are already the subject of disciplinary or redundancy procedures, these procedures will not be halted as a result of whistle blowing.

## **ANONYMOUS ALLEGATIONS**

This policy encourages individuals to put their name to the allegation wherever possible. Concerns raised anonymously tend to be far less effective and if, for example, the Council does not have enough information, it may not be able to investigate the matter at all. Also, from a practical point of view, it is impossible to provide protection to a person whose identify is unknown and it is more difficult to judge whether the concern is made in good faith or maliciously.

If whistle blowers feel they cannot give their name, the Council will make a judgement on whether or not to consider the matter depending on such things as:

- the seriousness of the issues raised;
- the quality of any documentary evidence submitted with the allegation;
- the credibility of the concern;
- whether the Council can carry out a robust investigation based on the information provided to confirm the validity of the original allegation made.

## **ASSURANCES TO THIRD PARTIES**

The assurances provided to staff raising concerns cannot be given in the same way to third parties, for example, the Council cannot guarantee protection to staff of third party organisations.

## **FALSE ALLEGATIONS**

If a whistle blower makes an allegation in the public interest and reasonably believes it to be true, but it is not confirmed by the investigation, no action will be taken against the individual.

If a whistle blower makes a deliberately false, malicious or frivolous allegation, or repeated allegations which have no foundation, disciplinary action will be taken against the individual. Allegations of this nature are not protected by the Public Interest Disclosure Act 1998.



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## **CONFIDENTIALITY**

All allegations will be treated in confidence and every effort will be made not to reveal a whistle blower's identity unless the whistle blower otherwise requests.

Similarly, if the allegation results in court proceedings, then the whistle blower may have to give evidence in open court if the case is to be successful.

The Council will not, without the whistle blower's consent, disclose the identity of a whistle blower to anyone other than a person involved in the investigation/allegation.

## **PROCEDURE**

### **RAISING A CONCERN**

Whistle blowers are encouraged to raise concerns promptly, giving as much information as possible. Concerns should be raised in writing and include:

- the name of the individual making the allegation and a contact point, unless the concern is raised anonymously;
- the background and history of the allegation (giving relevant dates and names of those who may be in a position to have contributed to the allegation);
- the specific reason for the allegations;
- any evidence to support the concern.

Although the individual making an allegation will not be expected to prove the truth of any allegations, they will need to provide information to the person they have reported to in order to establish that there are reasonable grounds for the allegation. Any whistle blower will be asked to declare any personal interest they may have in the concern being raised.

It is preferable for allegations to be made to the Clerk in the first instance. However, this may depend on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice, ie, if the whistle blower believes the Clerk is involved, then it would be inappropriate to raise it directly with them and the whistle blower may then make an allegation direct to the Chair or to the Chair of Finance, Governance & Staffing.

If the alleged allegation is regarding a possible breach of the Councillor Code of Conduct, then concerns should be raised with the Chair or the Chair of the Finance, Monitoring & Staffing Committee. Concerns relating to an alleged breach of the councillor Code of Conduct will be referred to the Monitoring Officer for investigation. The procedure can be viewed via Derbyshire County Council's Website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk)

### **WITHDRAWING AN ALLEGATION**



An individual has the right to withdraw any allegation previously made under this policy but should think very carefully before taking this course of action, bearing in mind that an investigation may have started and a change in decision may need to be explained.

If it is considered appropriate, despite the individual withdrawing the allegation, the investigation may continue if it is deemed necessary.

## **HOW THE COUNCIL WILL RESPOND**

The action taken will depend on the nature of the alleged allegation. The matters raised may be:

- investigated internally;
- reported to Council;
- referred to any appropriate government department or regulatory agency;
- referred to the police;
- referred to the external auditor;
- the subject of an independent enquiry.

To protect individuals, those accused of misdeeds or possible malpractice and the Council, the person to whom the matter has been reported (Clerk, Mayor, Chair of FGS or a delegated officer), will make initial enquires so that it can be decided whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Most matters will, initially, be investigated internally. Concerns or allegations which fall within the scope of specific current policies, for example, disciplinary, safeguarding, harassment or discrimination issues) will normally be referred for consideration under these policies. All concerns will be investigated impartially.

Following initial investigations, the Council will respond to the whistle blower to establish whether or not:

- concerns should be considered under this Policy;
- concerns can be allayed satisfactorily without invoking a formal investigation;
- further investigation is necessary;
- concerns may be resolved by other mechanisms, ie mediation, training, review;
- there is sufficient substance behind the concern to trigger an investigation.

Where there is sufficient evidence to trigger an investigation, the concern will be:



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- investigated by the Clerk (or delegated officer);
- referred to an auditor;
- referred to the relevant agency;
- referred to the police.

Some concerns may be resolved by immediate action without the need for an investigation. If urgent action is required, this will be taken before an investigation is conducted.

Within ten working days of a concern being raised the Officer appointed to investigate will contact the whistle blower:

- acknowledging that the concern has been received;
- indicating how the matter will be dealt with;
- giving an estimate of how long it will take to provide a final response;
- indicating whether any initial enquiries have been made;
- giving information on support mechanisms;
- advising of entitlement to seek advice and representation from a trade union or professional body representative;
- confirming whether further investigations will take place and, if not, the reasons;
- agreeing how to proceed in the event of anonymity.

The amount of contact between the Council and the whistle blower will depend on the nature of matters raised the potential difficulties involves and the amount and clarity of the information provided. If necessary, further information will be sought.

An individual making an allegation may be accompanied by another person of their choosing during any meetings or interviews in connection with the allegation. However, that person will not have the right to speak during the meeting. If the matter is subsequently dealt with through another Policy, the right to be accompanied will, at that stage, be in accordance with the relevant Policy.

The Council will take steps to minimise any difficulties which may be experienced as a result of making an allegation, ie if a whistle blower is required to give evidence in criminal, civil or disciplinary proceedings, the Council will arrange for them to receive advice about the procedure and advise on the support mechanisms that are available.

The Council accepts that whistle blowers need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, the Council will inform those making allegations of the outcome of any investigation and also, where appropriate, reasons for no further action.



## **FURTHER CONCERNS**

This policy is intended to provide individuals with an avenue to raise concerns and to have them resolved by the Council.

If the whistle blower is concerned that the delegated office investigating the matter is involved in the wrongdoing, has failed to make a proper investigation or has failed to report the outcome of the investigations to the relevant person, the whistle blower should escalate the matter to the Chair who will arrange for a review of the investigation to be carried out, including making any additional enquires deemed necessary.

If the investigations and the action arising from them does not resolve the concern, the whistle blower may choose to take the matter outside of the Council. In such circumstances, the whistle blower should seek advice from the Clerk to ensure correct procedures are followed and that confidential information is not disclosed.

The full list of Prescribed Persons and Bodies can be found in The Public Interest Disclosure (Prescribed Persons) Order 2014 via the link:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/496899/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496899/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf)

Before consulting an external party, the Council recommends that the whistle blower seeks independent legal advice (disclosures to a legal advisor are protected by law)

## **MONITORING**

The Clerk has overall responsibility for the maintenance and operation of this policy and ensures that a record of concerns raised and the outcomes is kept in a form that does not endanger staff confidentiality).

Details of all concerns raised and subsequent information will be retained for five years, The purpose of this is to ensure that a record is kept which can be cross referenced with other complaints in order to monitor any patterns of concern.

## **DATA PROTECTION**

When an individual makes a disclosure, we will process any personal data collected in accordance with the data protection policy. Data collected from the point at which the individual makes the report is held securely and accessed by, and disclosed to, individuals only for the purposes of dealing with the disclosure.

This is a non-contractual procedure which will be reviewed from time to time.



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All references to Chair relate to the Chair of Council