



Date: 01 July 2014

Hinckley & Bosworth
Borough Council

A Borough to be proud of

To: **Members of the Ethical Governance and
Personnel Committee**

Mr DW Inman (Chairman)
Mrs WA Hall (Vice-Chairman)
Mr KWP Lynch

Mr JS Moore
Ms BM Witherford

Copy to all other Members of the Council

(other recipients for information)

Dear member,

There will be a meeting of the **ETHICAL GOVERNANCE AND PERSONNEL COMMITTEE** in the De Montfort Suite on **WEDNESDAY, 9 JULY 2014 at 10.30 am** and your attendance is required.

The agenda for the meeting is set out overleaf.

Yours sincerely

Rebecca Owen
Democratic Services Officer

A G E N D A

1. APOLOGIES AND SUBSTITUTIONS
2. MINUTES OF PREVIOUS MEETING (Pages 1 - 2)
To confirm the minutes of the previous meeting.
3. ADDITIONAL URGENT BUSINESS BY REASON OF SPECIAL CIRCUMSTANCES
To be advised of any additional items of business which the Chairman decides by reason of special circumstances shall be taken as matters of urgency at this meeting.
4. DECLARATIONS OF INTEREST
To receive verbally from members any disclosures which they are required to make in accordance with the Council's code of conduct or in pursuance of Section 106 of the Local Government Finance Act 1992. **This is in addition to the need for such disclosure to be also given when the relevant matter is reached on the agenda.**
5. QUESTIONS
To hear any questions received in accordance with Council Procedure Rule 10.
6. VICARIOUS LIABILITY POLICY (Pages 3 - 8)
Report of the Deputy Chief Executive (Corporate Direction) attached.
7. WHISTLE BLOWING POLICY (Pages 9 - 20)
Report of the Deputy Chief Executive (Corporate Direction).
8. ANY OTHER ITEMS OF BUSINESS WHICH THE CHAIRMAN DECIDES HAVE TO BE DEALT WITH AS MATTERS OF URGENCY
9. MATTERS FROM WHICH THE PUBLIC MAY BE EXCLUDED
To consider the passing of a resolution under Section 100A(4) of the Local Government Act 1972 excluding the public from the undermentioned item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 2 and 10 of Schedule 12A of the 1972 Act.
10. FACT FINDING REPORT 2014-15 (Pages 21 - 28)
Fact finding report 2014-15 attached.
11. FACT FINDING REPORT 2014-0016 (Pages 29 - 38)
Fact finding report 2014-0016 attached.

Agenda Item 2

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

ETHICAL GOVERNANCE AND PERSONNEL COMMITTEE

14 MAY 2014 AT 10.30 AM

PRESENT: Mr DW Inman - Chairman
Mr DS Cope (for Mr KWP Lynch), Mrs WA Hall, Mr JS Moore and Ms BM Witherford

Officers in attendance: Nigel Deacon and Rebecca Owen

530 APOLOGIES AND SUBSTITUTIONS

Apologies were submitted on behalf of Councillor Lynch, with Councillor Cope substituting in accordance with Council Procedure Rule 4.

531 MINUTES OF PREVIOUS MEETING

With regard to the minutes of the meeting held on 19 March 2014, it was noted that the Independent Person, Mr Grimes, was not listed as being present. It was agreed that this would be amended.

It was moved by Councillor Moore, seconded by Councillor Witherford, and

RESOLVED –

- (i) the minutes of the meeting held on 19 March 2014 be approved subject to the abovementioned amendment and signed by the Chairman;
- (ii) the minutes of the meeting held on 25 January 2013 be approved and signed by the Chairman.

532 ADDITIONAL URGENT BUSINESS BY REASON OF SPECIAL CIRCUMSTANCES

Councillor Inman explained that, due to his accident and subsequent hospitalisation and then problems with his PC, he had only recently drafted the letter to the opposition Leader as requested at the previous meeting. He committed to send the letter that same day.

533 DECLARATIONS OF INTEREST

No interests were declared.

534 PEOPLE STRATEGY 2014-2016

Members were presented with the draft People Strategy which set out the strategic priorities for 2014 – 2016.

Discussion ensued regarding pension reform and the move to a career average scheme and auto-enrolment but members queried the statement that the authority was deferring implementation. They were assured that the changes and auto-enrolment, whilst technically deferred, had not changed in practical terms. New starters continued to be automatically enrolled in the LGPS. It was requested that the point about which aspect was being deferred be stressed in the report to Council.

Concern was expressed regarding the ageing population and related ageing workforce, however the apprenticeship scheme was welcomed. A breakdown of vacancies by job level was requested to enable members to see if there was a pattern.

With regard to sickness absence members were reminded that a lot of work had been done on this a few years previously and had been very successful, yet the figures had increased again over the last two years. In response it was noted that the figures had been distorted by a few cases of long term sick leave, but reference was also made to the ageing workforce and the increased number of direct employees in physical jobs as a result of bringing housing repairs in-house. It was suggested that a breakdown of sickness absence by service area would be useful to back this up. However members recognised that work of this nature was under the remit of the Local Joint & Safety Panel.

It was further noted that the attendance management framework needed to be reviewed but that work to identify and reduce sickness absence was underway. It was requested that a report be brought back to the committee when the work was complete.

A member highlighted the absence from the report of anything about member-officer relationships and behaviour, and it was requested that reference be made in the Strategy to the Protocol on Member/Officer relationships in the Constitution, the Code of Conduct and the Member Development Strategy to show where the equivalent information relating to members could be found. Whilst acknowledging this information, a member asked what would happen if an officer was subject to bullying by a member, as if it were by an officer the officer could be disciplined. A member suggested that there were procedures for dealing with all bullying in the workplace, but officers confirmed that the only course of action when being bullied by non-employees was the Prevention of Harassment Act 1997.

Members requested an update on progress against the strategy later in the year.

On the motion of Councillor Witherford, seconded by Councillor Moore, it was

RESOLVED – Council be RECOMMENDED to approve the Strategy.

535 COUNCIL COMPLAINTS 2013-14

A report was presented to members which updated on formal Council Complaints processed during 2013-14. It was noted that there had been an increase in the number of complaints, yet members felt that this was fairly low compared to the number of residents in the Borough and officers were commended for this.

Members felt that it would be useful to see a comparison by service area for the previous year to help identify any patterns and any particular causes for the increase, and it was agreed that this would be sent to them after the meeting. It was also agreed that future reports would include a comparison with other authorities.

On the motion of Councillor Witherford, seconded by Councillor Moore, it was

RESOLVED –

- (i) the report be noted;
- (ii) a further report be brought in 12 months and annually thereafter.

(The Meeting closed at 11.37 am)

CHAIRMAN



**VICARIOUS LIABILITY POLICY
REPORT OF DEPUTY CHIEF EXECUTIVE (CORPORATE
DIRECTION)**

WARDS AFFECTED: ALL WARDS

1. PURPOSE OF REPORT

- 1.1 To present to members the draft Vicarious Liability Policy.

2. RECOMMENDATION

- 2.1 That members endorse the updated Vicarious Liability Policy for approval.

3. BACKGROUND TO THE REPORT

- 3.1 In some circumstances an employer may be held accountable for the acts and or omissions of those associated with the organisation. This also applies local authorities.
- 3.2 The introduction of this policy has the potential to protect the council from claims where it can show that those associated with the council have not complied with a policy and or published standards of behaviour.

4. FINANCIAL IMPLICATIONS [KP]

- 4.1 There are no financial implications arising directly from this report, though any claim made against the council may result in costs from legal support and settlement costs.

5. LEGAL IMPLICATIONS [EH]

- 5.1 In relation to vicarious liability the Council must ensure that it takes all reasonable steps to regulate and address the behaviour of officers in order to ensure it minimises its risk of being found vicariously liable. The area of law is wide and extensive and the legal implications within the report cannot be considered comprehensive, but must be seen as best practice.
- 5.2 Appropriate steps to be taken by the Council in order to minimise its risk of being found vicariously liable for officers actions include (but are not limited to):
- Clear policy statements as to acceptable and unacceptable behaviour and conduct supported by guidance
 - Regular training for all staff on relevant policies, updated in line with developments in the law
 - A system of distributing and advertising all such policies to all staff and ensuring the are reissued where updated.

- 5.3 The attached policy statement in relation to Vicarious liability assists the Council, when taken in conjunction with the other policies in place, such as the bullying and harassment policy. All such policies should be kept under review.

6. CORPORATE PLAN IMPLICATIONS

6.1 This policy has the potential to limit liability, provide guidance on what is expected and provides a defence against claims against the council for inappropriate and or damaging conduct by those associated with HBBC.

7. CONSULTATION

7.1 The trade unions have contributed to this policy and their recommendation have been incorporated.

8. RISK IMPLICATIONS

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

8.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
The impact of vicarious liability can be costly in terms of time, reputation and financial cost.	Implementing and communicating this policy will improve the management of any claims.	Julie Stay

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 This policy makes a positive contribution to those that are associated with the council and supports the existing equality and diversity policies.

9.2 Non required at this stage – should HR projects affect changes on policy/structure then the relevant impact assessment will be undertaken.

10. CORPORATE IMPLICATIONS

10.1 By submitting this report, the report author has taken the following into account:

- Human Resources implications

Background papers: Examples paper

Contact Officer: Julie Stay – HR and Transformation Manager, Ext 5688

Executive Member: Cllr B Witherford

Your responsibilities as an employee or person associated with Hinckley & Bosworth Borough Council

INTRODUCTION

The purpose of this document is set out the expectations Hinckley & Bosworth Borough Council (HBBC) has of its employees and those associated with HBBC.

HBBC believes in the values of equality and expects and encourages every employee or person associated with the council to play his or her part to ensure these values are consistently adhered to for the mutual benefit of all.

POLICY STATEMENT – VICARIOUS LIABILITY

Vicarious liability means HBBC can be held liable, in law, for the unlawful actions of its employees or people associated with the council such as Councillors. This applies whether or not HBBC knows or approves of those actions. In cases of sex and race discrimination, including harassment cases, the complaint may be brought against a named individual as well as HBBC.

However, where HBBC can show it has taken all reasonable steps to prevent unlawful discrimination in the work place, it may avoid liability. In other words, if an employee/person associated with the council's actions are contrary to HBBC's policies, values or behaviours, that individual could be held personally responsible for those actions, even if they take place while the employee/person associated with the council is not at work or representing the council.

HBBC expects and encourages all employees to respect the rights of others and adhere to the council's 'Values and Behaviours'. If any employee has received or receives in the future, a warning that their behaviour is unacceptable, they may be held personally responsible if they persist in discrimination against, harassing or bullying others.

An Employment Tribunal may decide the offending employee/person associated with the council should pay compensation to the complainant. In these cases HBBC will not pay compensation on that person's behalf.

RESPONSIBILITY

Everyone is responsible for his or her own behaviour. It is the responsibility of every employee and those associated with HBBC to make sure that they comply with HBBC's policies, values or behaviours. Failure to do so may lead to disciplinary action being taken against an employee.

By treating everyone with dignity and respect, and setting a good example every employee will be making a vital and significant contribution in ensuring that HBBC provides a working environment that values the qualities of individuals and teams that work within HBBC.

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Vicarious Liability Examples

The examples below demonstrate that the implications and impact of vicarious liability can be wide ranging and have significant consequence for organisations and individuals, even though they may not have been directly involved in unlawful actions.

The purpose of the policy statement is to inform all those who are involved in Hinckley and Bosworth Borough Council business how to identify and manage the risks associated with vicarious liability. Ignorance of the law is no defence if you have any questions please contact a member of the HR team.

Example One

A individual goes into the local fast food restaurant and places his order. He is wearing a uniform that clearly identified his place of work. During the time he was waiting for his order to be prepared he became impatient and shouted at the member of staff serving him saying "What's taking so long you 'F***ing paki' - I haven't got all day." A member of the public complained about the foul language and racist behaviour. The employing organisation took disciplinary action against their employee.

However this would not prevent the owner of the restaurant claiming damages for racial discrimination against the organisation.

Example Two

The BBC has experienced the full implication of vicarious liability following the revelations that relate to false allegations of abuse against Lord McAlpine. This resulted in 2 employees being disciplined and moved to different jobs. However this did not protect the BBC being held accountable and paying £185,000 in damages. Following on as it did, from the complaints and allegations against the BBC that related to the late Jimmy Savile, the director general George Entwistle resigned.

Example Three

In the case of *Teggart v TeleTech UK Ltd* the employer dismissed an employee for posting offensive comments about a colleague on his Facebook page. The tribunal found that when the employee posted the comments on Facebook they became public and therefore he could not rely on his right to respect for his private life or the fact that the comments were posted outside of work. His comments constituted harassment and therefore the employment tribunal dismissed his claim for unfair dismissal.

Example Four

In the case of *Otomewo v Carphone Warehouse Ltd* two members of staff posted a status update on the claimant's facebook page, without his permission or knowledge. The status update read: "*finally came out of the closet. I am gay and proud.*" It was posted in the course of employment, the employees' actions took place during working hours and it involved dealings between staff and a manager – therefore the employer was found vicariously liable for the conduct which amounted to harassment on the grounds of sexual orientation.

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**WHISTLE BLOWING POLICY
REPORT OF DEPUTY CHIEF EXECUTIVE (CORPORATE
DIRECTION)**

WARDS AFFECTED: ALL WARDS

1. **PURPOSE OF REPORT**

- 1.1 To present to members the draft updated Whistle Blowing Policy.

2. **RECOMMENDATION**

- 2.1 That members endorse the updated Whistle Blowing Policy for approval.

3. **BACKGROUND TO THE REPORT**

- 3.1 The existing policy was drafted in 2009 and has been updated to reflect the changes in legislation that took place in 2013. Specifically, the Enterprise and Regulatory Reform Act 2013 (the Act).

- 3.2 There has been a significant change in the type of disclosure that is protected under the Public Interest disclosures.

4. **FINANCIAL IMPLICATIONS [KP]**

- 4.1 There are no financial implications arising directly from this report, though any fraud identified and pursued as a result of Whistleblowing will inevitably have a financial impact for the Council.

5. **LEGAL IMPLICATIONS [EH]**

- 5.1 The new provisions contained within the Act came in to force on the 25 June 2013, making several key amendments to the law, including:

- Disclosures are no longer protected unless the worker has a “reasonable belief” that the disclosure is in the public interest, the worker is not required to know for certain it is in the public interest.
- Removed is the requirement that disclosures must be made in “good faith”, though disclosures is made in bad faith may result in compensation being reduced by up to 25%.
- The Council, as an employer, will now be vicariously liable for the actions of workers where they subject a colleague to a detriment as a result of whistleblowing, unless they can demonstrate they took all reasonable steps to prevent this happening. It also opens up liability to workers where they subject a colleague to a detriment.

- 5.2 The updated policy addresses the changes made by the Act in relation to whistleblowing. The public interest is not defined in the Act and will be subject to interpretation and case law. The policy does not seek to try and define this, which is appropriate in the circumstances, as it is a judgment call for individual workers.

- 5.3 In relation to point three above the Council, to avoid vicarious liability, needs to demonstrate it is taking reasonable steps to prevent colleagues treating whistleblowers in such a way. Initial guidance has indicated that the council must also ensure its policies make it clear that colleagues should not mistreat, bully or

harass a whistleblower and that such behavior may lead to disciplinary action. This is dealt with by the Vicarious Liability Policy Statement (also for approval on this agenda) the Council's Bullying and Harrassment policy and the Council's Disciplinary Policy.

- 5.4 The legal implications contained within the report on the agenda relating to Vicarious Liability are relevant to the above legislative changes but not directly to the policy which this report is seeking to approve. Members therefore may wish to read the two in conjunction.

6. CORPORATE PLAN IMPLICATIONS

- 6.1 Updating this policy has the potential to limit liability, provide up to date knowledge to those seeking to exercise their rights under the Act and encourage the resolution of any difficulties or misunderstanding at an early stage.

7. CONSULTATION

- 7.1 The trade unions have contributed to this policy and their recommendation have been incorporated.

8. RISK IMPLICATIONS

- 8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.
- 8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.
- 8.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
This policy provides a legally compliant structure for management of risk associated with protected disclosures. It does not remove the risks	Implementing and communicating this policy with improve the management of any potential claims	Julie Stay

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

- 9.1 This policy makes a positive contribution to those that are associated with the council and supports the existing equality and diversity policies.
- 9.2 Non required at this stage – should HR projects affect changes on policy/structure then the relevant impact assessment will be undertaken.

10. CORPORATE IMPLICATIONS

- 10.1 By submitting this report, the report author has taken the following into account:
 - Human Resources implication

Background papers: Briefing notes

Contact Officer: Julie Stay – HR and Transformation Manager, Ext 5688

Executive Member: Cllr B Witherford

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WHISTLEBLOWING POLICY

Aim of the Policy

1. The Council is committed to high standards of conduct and compliance with legal obligations and good practice. It expects malpractice to be pointed out and dealt with and expects its employees, and others who help to deliver its services, to help with that.

2. This policy encourages employees to raise genuine concerns and provides a procedure for doing so. It explains how those who make public interest disclosures when they have a reasonable belief of malpractice may be protected from detriment such as victimisation or discipline. Often, that involves treating the disclosure confidentially, including protecting the complainant's identity when it is legally possible to do so.

3. This policy may be used where there is no specific provision to raise a concern through any other policy. There are specific policies for reporting concerns that relate to Safeguarding (vulnerable adults or children), Corporate Anti fraud, Grievance and Bullying and Harassment. Anyone who has any concerns and is unsure of the appropriate policy should speak to their line manager or a member of the HR Team.

The policy has the support of the relevant trades unions.

Who is Protected by the Policy?

4. You are protected if you work for the Council as:

- An employee
- An agency employee
- A trainee
- A worker who provides services on behalf of the Council

The policy does NOT apply to raising grievances about an employee's personal situation and thus, does not replace existing procedures for personal differences or conflicts. If you have concerns in this area you should consult the Council's Grievance Policy or your immediate manager.

Individuals must raise the issue – 'whistle blow' - in a particular way and for a particular reason in order to gain the protection of the Public Interest Disclosure Act 1999 (PIDA). Protection is only granted if disclosure is a 'qualifying disclosure' and is a 'protected disclosure'.

What Kind of Disclosures are Covered?

5. To qualify the whistleblower must have a 'reasonable belief' that the information shows that one or more the following has or is likely to take place:

- That a criminal offence has been, is being or is likely to be committed.
- That a person has failed, is failing or is likely to fail to comply with any legal obligation.
- That a miscarriage of justice has occurred, is occurring or is likely to occur.
- That the health or safety of any 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 showing that any matter falling within any one of the above has been, is being or is likely to be deliberately concealed.

'Reasonable belief' means that an individual who bases their disclosure on unsubstantiated rumours, uncorroborated allegations or unfounded suspicions will not have made a qualifying disclosure. However there is no requirement that the individual has to prove the truth of the information disclosed. It is therefore irrelevant if the reasonable belief subsequently turns out to be mistaken. There is however a requirement that the 'reasonable belief' of the worker is made in the 'public interest'

What is Expected of the complainant?

6. If you make a disclosure to someone within the Council, you are expected to:

- Have a reasonable suspicion about the malpractice
- Reasonably believe that your information, and any allegation in it, is true
- Not make the disclosure for personal gain

7. The conditions for outside disclosures are one or more of the following to apply:

- You reasonably believe you would suffer detriment if you made the disclosure to the Council or to a regulator;

or

- None of the regulators covers the matter and you reasonably believe the evidence is likely to be concealed or destroyed;

or

- You have already made the disclosure to the Council or to a regulator

How is the complainant protected?

8. If you act in good faith and comply with the expectations of paragraph 6 & 7, you will be protected from any detriment as a result of making a disclosure. In particular, you will be protected from harassment or victimisation.

9. If you want your identity to remain confidential, this will be observed as far as possible within the law. Should it not be possible to resolve a concern without revealing your identity (for example, because your evidence is needed in court or in a subsequent internal disciplinary hearing), we will discuss with you whether we should take the matter forward at all and if so, how we will do so. We will also discuss with you how best to protect your interests.

10. Anonymous disclosures may be considered to the extent that it is reasonable and practicable to do so. Anonymous allegations are often difficult to consider due to the need to confirm or follow up evidence.

11. Failure to comply with the expectations of paragraph 6 & 7, including, making a frivolous or malicious disclosure may result in disciplinary action being taken.

Procedure for Dealing with a Disclosure

12. Disclosures will be dealt with under the following stages. Not all disclosures will follow the full sequence of Stages, subject to the particular circumstances of each case:

Stage 1 – Informal Resolution

13. If an individual is aware or concerned about misconduct taking place inside the organisation that he or she thinks may damage or undermine the interests of the wider public they are advised in the first instance to share the details with their line manager to see if it can be resolved without a formal procedure. This may be done orally or in writing.

When making a disclosure, give as much information as possible about:

- The nature of the problem
- The background (with dates if possible)
- Who is involved
- The reasons you are concerned

The Manager should decide on the basis of the information provided, whether the matter can be resolved informally and either:

- Explain how the matter can be resolved
- Refer the matter for formal consideration
- Advise the individual that they may raise it formally.

14. If the individual is unable to raise the matter with his or her line manager they are advised to speak to a Chief Officer or the Human Resources Manager who should consider whether the matter can be resolved informally as set out above or referred for formal consideration as detailed below.

Stage 2 – Formal Disclosure

15. If the individual feels unable to discuss their concerns with any of the above, or does not accept that the response at the informal stage is sufficient, they can make a formal disclosure by contacting the Monitoring Officer as follows:

Phone: 01455 255951

Write to: Louisa Horton, HBBC, Hinckley Hub, Rugby Road, Hinckley. LE10 0FR

Email: louisa.horton@hinckley-bosworth.gov.uk

16. At this stage, the person making the disclosure, will be asked whether he or she wishes their identity to be disclosed and the process for protecting the individual from possible reprisals or victimization will be explained.

17. He or she may also be asked to consider making a written or verbal statement. In such cases, a brief summary of the interview will be made which will be agreed by both parties.

18. Details of the disclosure will be considered by the Monitoring Officer, or representatives, who will make recommendations for any further action.

Stage 3 – Initial Response to a Formal Disclosure

19. The Monitoring Officer will take any necessary urgent action and then decide how to respond to the disclosure, having regard to all the circumstances, including the evidence available. Preliminary inquiries may be made to help decide how best to

respond in the public interest. Depending on the nature of the issue raised, the response may be one or more of the following:

- A management investigation
- An internal audit investigation
- A disciplinary investigation
- A referral for consideration under another Council procedure
- Referral to the police
- Referral to the District Auditor
- An independent investigation
- Amend procedures
- Take no action for lack of sufficient evidence

20. The complainant will be notified of the intended response to his or her disclosure and the reasons for it.

Stage 4 – Management Investigation

21. Where the decision has been made to carry out a Management Investigation, a senior manager will be appointed as an investigating officer. He or she will agree terms of reference with the Monitoring Officer or representative and identify a date by when the investigation will be completed.

22. The investigation may need to be carried out under the strictest confidentiality. The investigation is essentially a 'fact finding' exercise, to establish what further action may be necessary and make recommendations accordingly.

23. The Investigating Officer will have regard to the human rights of any individuals affected by the investigation. The investigation may serve as the information gathering part of the Council's disciplinary procedure. In such cases this will be made clear to any people who may be subject to such investigation and the usual right to be represented will be made clear.

Stage 5 – Responding to Management Investigation

24. The Monitoring Officer or representative will decide whether any further action is necessary as a result of the investigation report and recommendations. If the result of the investigation is that there is a case to be answered by any individual, the recognised procedure will be followed.

25. Where there is no case to answer, but the complainant held a genuine concern and acted in accordance with paragraphs 6 & 7 of this policy, the Council will ensure that they suffer no reprisals or victimisation, as far as is reasonably practicable.

26. Where it is established that false allegations have been made and the complainant has not acted in accordance with paragraphs 6 & 7 of this policy, disciplinary actions may be taken against the complainant.

Stage 6 – Confirmation of the Outcome

27. So far as legally possible and subject to rights of confidentiality, the complainant will be informed of the outcome of the investigation and how the matter has been resolved. If he or she is dissatisfied with this response the complainant may take the matter further with the prescribed persons or organisations where justified under this procedure.

Responsibility for this Policy

28. The Monitoring Officer is responsible for keeping this policy up-to-date and for overseeing how it is operated. This includes:

Confirming representatives who will be responsible for actions as outlined in the policy

Ensuring records of all disclosures are made and their outcomes recorded.

Reporting as appropriate and necessary to relevant Chief Officer, the Chair of Ethical Governance and Personnel Committee.

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Background

Since 1999 workers have been protected from dismissal or detriment when making protected disclosures ('whistleblowing'). However, for some time now it has been felt that whistleblowing legislation needed to be reformed as it failed to properly address the issues it was introduced to deal with.

In response to these concerns the government has, in the Enterprise and Regulatory Reform Act 2013 (Act), made a number of changes to the present 'whistleblowing' legislation.

Changes introduced from 25 June 2013 are set out below:

Disclosures must be in the 'public interest' but no longer in 'good faith'. Previously workers were able to pursue a 'whistleblowing' claim even if the disclosure relates to a breach of their own contract of employment. It has long been felt that this ran contrary to the primary purpose of 'whistleblowing' legislation and therefore, the Act now places a requirement that in order to gain protection, the disclosure must be made in the 'public interest'.

By removing the requirement that a disclosure must be made in 'good faith', the Act now requires that a whistleblower must hold a 'reasonable belief' that the complaint is true; that is, not just rumor or speculation.

Under the new regulations if an employer is able to show that the predominant reason for making a disclosure isn't one of the qualifying disclosures, then an Employment Tribunal will dismiss a worker's claim.

This change is intended to prevent workers seeking to pursue 'whistleblowing' claims where their motivation is for personal gain. However, the Act also provides that Employment Tribunals will have the power to dismiss the claim and or reduce any compensation awarded, where it finds that a worker has not held a reasonable belief.

Vicarious liability

Previously, the law only protects workers if they have been subjected to a detriment by their employer after making a disclosure. The Act now protects whistleblowers from any detriment, suffered at the hands of co-workers as well as their employer.

However, if an employer can show that it took reasonable steps to prevent the detrimental treatment then it will not be held liable for the actions of the co-workers.

Summary

The terminology has been updated to meet the new requirement of the Enterprise and Regulatory Reform Act 2013 but the process of raising concerns and or 'whistleblowing' remains unchanged.

Reference documentation

ACAS best practice guide

CIPD update on whistleblowing

Public concern at work (the whistleblowing charity -November 2013)

The Enterprise and Regulatory Reform Act 2013

Public Interest Disclosure Act 1999

The Human Rights Act; Specifically Articles 10,11 and 14

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By virtue of paragraph(s) 1, 2, 10 of Part 1 of Schedule 12A of the Local Government Act 1972.

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