



**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