



ADUR & WORTHING
COUNCILS

Joint Governance Committee
31 May 2018
Agenda Item 15

Key Decision: No

Ward(s) Affected: All

Whistleblowing Protocol

Report by the Monitoring Officer

1. Purpose

- 1.1. Both Councils adopted a Whistleblowing Policy in 2014 which is overdue for review and revision. Legislation governing whistleblowing has been introduced since that time and this report introduces a new, up-to-date and legally compliant Whistleblowing Protocol.
- 1.2. Members are asked to consider the new Whistleblowing Protocol attached to this report, at Appendix 1, and approve its adoption by each Council and to recommend to each Council that it forms part of their Constitution, together with other Codes of Practice and Protocols.
- 1.3. The purpose of the Protocol is to encourage workers to raise concerns about wrongdoing in the organisation, internally, and to reassure them of the protection afforded them should they do so.
- 1.4. It is a Priority 2 Audit recommendation that the Council's Whistleblowing arrangements are updated and communicated to staff to ensure all staff are aware of the current arrangements.

2. Recommendations

The Joint Governance Committee is recommended:

- 2.1 To consider the attached Whistleblowing Protocol, and make any comments;
- 2.2 To grant to the Solicitor to the Council and Monitoring Officer a delegation to make minor and consequential amendments to the Protocol;
- 2.3 To recommend, subject to consultation with Unison, the adoption of the Whistleblowing Protocol by each Council as part of their Constitutions.

3. Background

- 3.1. Legislation exists in the form of the *Public Interest Disclosure Act 1998* (as amended) which seeks to provide protection against penalisation for workers who report wrongdoing. The legislation was initially introduced as part of employment legislation to provide a key employment right for individuals. However, it is also a valuable tool to promote good governance and openness in organisations. Encouraging whistleblowers to make disclosures can be of benefit to employers as they can assist in uncovering wrongdoing within an organisation, which could prevent accidents, financial scandals, criminal offences and regulatory breaches.
- 3.2. Since its launch under the chairmanship of Lord Nolan, the Committee on Standards in Public Life has continued to highlight the role whistleblowing plays *“both as an instrument of good governance and a manifestation of a more open culture”*. Emphasising the important role whistleblowing can play in deterring and detecting malpractice and in building public trust, the Committee explained:

“The essence of a whistleblowing system is that staff should be able to by-pass the direct management line, because that may well be the area about which their concerns arise, and that they should be able to go outside the organisation if they feel the overall management is engaged in an improper course”.

- 3.3. In making this work, the Committee has said that “leadership, in this area more than in any other, is paramount” and that the promotion of the whistleblowing arrangements is critically important.

4. Issues for consideration

- 4.1. The revised Council Protocol applies to workers raising genuine concerns about crimes, civil offences, miscarriages of justice, dangers to health and safety or the environment and the cover up of any of these.
- 4.2. The Protocol applies to all workers which includes Council employees, contractors, trainees, agency staff, homeworkers, consultants, casual staff, former employees and volunteers.
- 4.3. The Protocol provides an avenue for workers to report any concerns of wrongdoing in the workplace and to reassure them that their concerns will be taken seriously. Workers are encouraged to report their concerns internally, although if they are dissatisfied with the outcome, the legislation provides an avenue for concerns to be reported to external, independent prescribed regulators. It encourages staff not to raise concerns confidentially as they can better be investigated, but if a worker only feels able to raise a concern confidentially then it reassures workers that their confidentiality will be respected as far as possible. The Protocol provides that the Monitoring Officer, who has day-to-day responsibility for the Protocol, is advised of every reported case of whistleblowing.
- 4.4. The Protocol provides that a worker should initially raise their concern with their line manager or Director. However, it acknowledges that sometimes this may be an inappropriate route, and provides an alternative route to the Council’s Monitoring Officer, the Chief Financial Officer, the Chief Executive or the Chairmen of the Council’s Joint Governance Committee.
- 4.5. The Protocol does not form part of an employee’s contract of employment or their terms and conditions of employment; it should not be used to raise concerns about an individual’s own treatment in their employment relationship and such concerns are better dealt with under the Council’s Grievance Policy. The protocol is for workers to make disclosures of wrongdoing which they consider it would be in the public interest to disclose, as opposed to for personal gain or improper

motive. Disclosures should be made in good faith where an individual honestly and reasonably believes the wrongdoing is happening, has taken place, or is likely to happen. Where false disclosures are made deliberately and maliciously for personal gain, the Council may consider action against the worker under its Disciplinary Policy.

- 4.6. Where a worker makes a disclosure in accordance with the Protocol and the legislation, provided it is made in the public interest it will amount to a Qualifying Disclosure and be afforded the protection of the legislation which provides that the employer cannot treat the whistleblower detrimentally as a result of their whistleblowing. They are therefore protected from dismissal, redundancy, victimisation, suspension, demotion and other unfair treatment for reason of whistleblowing. A worker who makes a disclosure in bad faith or for improper reason is still protected under the legislation but any compensatory award would be reduced by an Employment Tribunal to reflect this.
- 4.7. Workers may have a cause of action in tort against a person who causes detriment to them because they have made a protected disclosure and the Council could be held to be vicariously liable for allowing another employee to penalise or threaten to penalise an employee for having made a protected disclosure.
- 4.8. The legislation does not oblige employers to set up whistleblowing policies, but guidance strongly recommends them to do so and it is clearly good practice for the Councils' to have a Whistleblowing Protocol, which is communicated to staff, which forms part of the Constitution and which is considered and reviewed by the Monitoring Officer and Members of the Joint Governance Committee (who have responsibility for maintaining high standards of conduct and ethics) at least every 3 years.

5. Engagement and communication

- 5.1. It is intended that the Constitutional Protocol will also become an Employment Policy for staff and to this end the Head of Human Resources will be undertaking consultation with Unison in due course over the adoption of the Employment Policy.

- 5.2. It is further proposed that should the Councils agree to adopt the Protocol as part of the Constitution it will be placed on the Council's website and be accessible to all staff.
- 5.3. The Monitoring Officer intends, following its adoption, to offer face to face training to all staff on the provisions of the Protocol.
- 5.4. The Monitoring Officer intends to continuously review the use of the Protocol and its effectiveness and to regularly (at least on a 3 yearly basis) bring a report back to the Joint Governance Committee to review the use and effectiveness of the Protocol and any revisions or amendments to be made.

6. Financial Implications

- 6.1. There are no financial implications associated with the adoption of this Protocol.

7. Legal Implications

- 7.1. The *Public Interest Disclosure Act 1998* provides employment protection for workers making disclosures of wrongdoing in the workplace.
- 7.2. The *Public Interest Disclosure Act 1998* was amended by the *Enterprise and Regulatory Reform Act 2013* which narrowed the definition of protected disclosures to those that are made in the 'public interest'.
- 7.3. It is no longer necessary to make a disclosure in good faith, although any compensatory award made be reduced if a worker does not do so.
- 7.4. The *Protected Disclosures Act 2014* provides enhanced protection for whistleblowers who may now seek interim relief and may be awarded up to 5 times annual remuneration for dismissal as a result of making a protected disclosure.
- 7.5. In the case of *Parsons v Airplus, 2018*, the Employment Appeals Tribunal held that whistleblowing law does not protect an employee who makes a disclosure purely out of self-interest and who does not believe their disclosures to be at all in the public interest.

Background Papers

- Whistleblowing Policy May 2014
- Legislation as referred to in the report

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Sustainability & Risk Assessment

1. Economic

- Matter considered and no issues identified.

2. Social

2.1 Social Value

- Matter considered and no issues identified.

2.2 Equality Issues

- Protection is given in the legislation and the Protocol from detrimental treatment including discrimination and victimisation as a result of a worker making a protected disclosure.

2.3 Community Safety Issues (Section 17)

- Matter considered and no issues identified.

2.4 Human Rights Issues

The Legislation relating to Whistleblowing is compliant with Human Rights legislation.

3. Environmental

- Matters considered and no issues identified.

4. Governance

- Having a Whistleblowing Protocol ensures the Council is upholding high principles of good governance and a culture of openness and honesty throughout the organisation.
- The upholding of high standards of conduct and ethics is a responsibility for the Monitoring Officer and for the Councils' Joint Governance Committee.

WHISTLEBLOWING PROTOCOL

1.0 INTRODUCTION

- 1.1 In this Protocol 'Whistleblowing' means the reporting by staff of suspected misconduct, illegal acts or failure to act within the Councils.
- 1.2 The aim of this Protocol is to encourage employees and others who have serious concerns about any aspects of the Council's work to come forward and voice those concerns.

This Protocol intends to:

- Encourage staff to report suspected wrongdoing as soon as possible, in the knowledge that their concerns will be taken seriously and investigated as appropriate, and that their confidentiality will be respected, as far as possible.
 - Encourage and enable staff to raise concerns within the Council rather than ignoring a problem or blowing the whistle externally.
 - Provide staff with guidance as to how to raise those concerns.
 - Reassure staff that they should be able to raise genuine concerns without fear of reprisals, victimisation, subsequent discrimination, disadvantage or dismissal, even if they turn out to be mistaken, provided the disclosure is made in the public interest.
- 1.3 The Councils are committed to conducting business with honesty and integrity, and we expect all staff to maintain high standards of conduct, in accordance with the Council's Officer Code of Conduct. However, all organisations face the risk of things going wrong from time to time, or of unknowingly harbouring illegal or unethical conduct. A culture of openness and accountability is essential in order to prevent such situations occurring or to address them when they do occur.

Staff are often the first to realise that there may be something seriously wrong within an organisation. '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 standards of service and the highest possible ethical standards in public life and in all of its practices. To help achieve these standards it encourages freedom of speech.

2.0 WHAT IS WHISTLEBLOWING?

2.1 Any serious concerns that staff have about service provision or the conduct of Officers of the Council, or others acting on behalf of the Council, that make them feel uncomfortable in terms of known standards, are not in keeping with the Constitution or Council policies, fall below established standards of practice or are improper behaviour, should be reported.

This may relate to:

- Criminal activity;
- Miscarriages of justice;
- Racial, sexual, disability or other discrimination;
- Danger to health and safety;
- Damage to the environment;
- Failure to comply with any legal, or professional, obligation or regulatory requirements;
- Unauthorised use of public funds or other assets;
- Bribery;
- Financial fraud or mismanagement;
- Negligence;
- Breach of our internal policies and procedures, including our Officer Code of Conduct;
- Conduct likely to damage our reputation;
- Unauthorised disclosure of confidential information;
- The deliberate concealment of any of the above matters.

2.2 A whistleblower is a person who raises a genuine concern relating to any of the above, where he/she honestly and reasonably believes it to be in the public interest to raise the concern.

2.3 This Protocol should not be used for complaints relating to an individual's own personal circumstances, such as the way they have been treated at work. In those cases the Grievance Procedure should be used.

2.4 If a staff member is uncertain whether something is within the scope of this Protocol they should seek advice from the Monitoring Officer, whose contact details are at the end of this Protocol.

2.5 This Protocol does not form part of any employee's contract of employment and it may be amended at any time.

2.6 If an individual has a concern about services provided to him/her, it should be raised through the Council's complaints procedure.

2.7 Complaints of misconduct by Councillors are dealt with under a separate procedure and should be referred to the Council's Monitoring Officer.

3.0 WHO CAN RAISE A CONCERN UNDER THIS PROTOCOL?

3.1 This Protocol applies to all individuals working at all levels of the organisation, including Senior Managers, Officers, Directors, employees, consultants, contractors, trainees, homeworkers, part-time and fixed-term workers, casual and agency staff and volunteers (collectively referred to as staff in this Protocol).

4.0 RAISING A WHISTLEBLOWING CONCERN

4.1 It is hoped that in many cases staff will be able to raise any concerns with their line manager or Director. Staff may tell them in person or put the matter in writing if preferred. They may be able to agree a way of resolving concerns quickly and effectively.

4.2 However, where the matter is more serious, or staff feel that their line manager or Director has not addressed the concern, or if they prefer not to raise it with them for any reason, they should contact one of the following:

- (a) The Monitoring Officer;
- (c) The Chief Executive;
- (d) The Chairmen of the Joint Governance Committee;
- (e) The Chief Financial Officer (S.151 Officer).

Contact details are set out at the end of this protocol.

4.3 The Council will arrange a meeting with the whistleblower as soon as possible to discuss their concern. The whistleblower may bring a colleague or Union representative to any meetings held under this Protocol. The companion must respect the confidentiality of the disclosure and any subsequent investigation.

4.4 The Council will take down a written summary of the whistleblower's concern and provide them with a copy after the meeting. The Council will also aim to give an indication of how it proposes to deal with the matter.

4.5 Whoever internally, within the Councils, receives a whistleblowing disclosure, they are obliged to notify the Monitoring Officer, in writing, within 2 working days of the nature of the disclosure made.

5.0 CONFIDENTIALITY

5.1 The Council hopes that staff will feel able to voice whistleblowing concerns openly under this Protocol. However, if a whistleblower wants to raise a concern confidentially, the Council will make every effort not to disclose their identity. If it is

necessary for anyone investigating the concern to know the whistleblower's identity, this will be discussed with the whistleblower in advance.

- 5.2 The Council does not encourage staff to make disclosures anonymously. Proper investigation may be more difficult or impossible if the Investigating Officer cannot obtain further information from the whistleblower. It is also more difficult to establish whether any allegations are credible. Whistleblowers who are concerned about possible reprisals if their identity is revealed should come forward to the Monitoring Officer or one of the other contact points listed in Annex 1 and appropriate measures can then be taken to preserve confidentiality.
- 5.3 If a whistleblower is in any doubt, they can seek independent advice from the independent charity, Public Concern at Work, who offer a confidential helpline. Their contact details are at the end of this Protocol.

6.0 EXTERNAL DISCLOSURES

- 6.1 The aim of this Protocol is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing in the workplace. In most cases a whistleblower should not find it necessary to alert anyone externally.
- 6.2 The law recognises that in some circumstances it may be appropriate for a whistleblower to report their concerns to an external body such as a regulator. It will very rarely, if ever, be appropriate to alert the media. The Council strongly encourages whistleblowers to seek advice before reporting a concern to anyone external. The independent whistleblowing charity, Public Concern at Work, operates a confidential helpline. They also have a list of prescribed regulators for reporting certain types of concern. Their contact details are at the end of this Protocol.
- 6.3 Whistleblowing concerns usually relate to the conduct of staff, but they may sometimes relate to the actions of a third party, such as a customer, supplier or service provider. In some circumstances the law will protect a whistleblower if they raise the matter with the third party directly. However, the Council encourages whistleblowers to report such concerns internally first.

7.0 INVESTIGATION AND OUTCOME

- 7.1 Once a whistleblower has raised a concern, the Council will carry out an initial assessment to determine the scope of any investigation. The Council will then inform the whistleblower of the outcome of the assessment. The whistleblower may be required to attend additional meetings in order to provide further information.
- 7.2 In some cases the Council may appoint an Investigating Officer or team of investigators including staff with relevant experience of investigations or specialist

knowledge of the subject matter. The investigator(s) may make recommendations for change to enable the Council to minimise the risk of future wrongdoing.

- 7.3 The Council will aim to keep the whistleblower informed of the progress of the investigation and its likely timescale. However, sometimes the need for confidentiality may prevent the giving of specific details of the investigation or any disciplinary action taken as a result. Any information given about the investigation should be treated as confidential.
- 7.4 If the Council concludes that a whistleblower has made false allegations maliciously or with a view to personal gain, the whistleblower may be subject to disciplinary action.

8.0 IF THE WHISTLEBLOWER IS NOT SATISFIED WITH THE OUTCOME

- 8.1 While the Council cannot always guarantee the outcome the whistleblower is seeking, it will deal with the concern raised fairly and in an appropriate way, and in compliance with Human Rights and Equalities legislation.
- 8.2 If a whistleblower is not satisfied with the way in which their disclosure has been handled, they can raise it with one of the other key contacts in paragraph 4.2 of this Protocol. Alternatively they may contact the Council's Auditors (contract details are set out at the end of this Protocol) or seek independent advice from Public Concern at Work.

9.0 PROTECTION AND SUPPORT FOR WHISTLEBLOWERS

- 9.1 It is understandable that whistleblowers are sometimes worried about possible repercussions. The Council aims to encourage openness and will support staff who raise genuine concerns under this Protocol, if they reasonably believe it to be in the public interest to do so, even if they turn out to be mistaken.
- 9.2 Staff must not suffer any detrimental treatment as a result of raising a concern or making a disclosure, provided it is made in the honest belief that it is in the public interest to do so. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. If you believe that you have suffered any such treatment, you should inform the Monitoring Officer immediately. If the matter is not remedied you should raise it formally using the Council's Grievance Procedure.
- 9.3 Staff must not threaten or retaliate whistleblowers in any way. Any staff member involved in such conduct is likely to be subject to disciplinary action. In some cases the whistleblower could have a right to sue them personally for compensation in an Employment Tribunal, and also for the Council to potentially be vicariously liable for their actions.

10.0 RESPONSIBILITY FOR THE SUCCESS OF THIS PROTOCOL

- 10.1 The Council's Corporate Leadership Team has overall responsibility for this Protocol, and for reviewing the effectiveness of actions taken in response to concerns raised under this Protocol.
- 10.2 The Monitoring Officer has day-to-day operational responsibility for this Protocol, and must ensure that all managers and other staff who may deal with concerns or investigations receive regular and appropriate training.
- 10.3 The Monitoring Officer should review this Protocol at least every 3 years in conjunction with the Councils' Joint Governance Committee and with the Strategic Head of Human Resources who shall consult with UNISON.
- 10.4 All staff are responsible for the success of this Protocol and should ensure that they use it to disclose any suspected danger or wrongdoing. Staff are invited to comment on this Protocol and suggest ways in which it might be improved. Comments, suggestions and queries should be addressed to the Monitoring Officer.

Contacts

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Public Concern at Work (Independent whistleblowing Charity)	Helpline: (020) 7404 6609 E-mail: whistle@pcaw.co.uk Website: www.pcaw.co.uk