

<b>Subject:</b>	<b>Whistleblowing Policy</b>		
<b>Date of Meeting:</b>	<b>24 September 2013</b>		
<b>Report of:</b>	<b>Executive Director Finance &amp; Resources and the Head of Law &amp; Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Sue Moorman</b>	<b>Tel: 29-3629</b>
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 This report has been produced at the request of members of the Audit and Standards Committee who, at their meeting on 25 June 2013, asked for a report on the council's whistleblowing arrangements to be presented at a future meeting.
- 1.2 The purpose of this report is to brief the Audit & Standards Committee on the council's Whistleblowing Policy and the review that is being undertaken to look at how well the current whistleblowing arrangements are working in practice.

**2. RECOMMENDATIONS:**

- 2.1 That the Committee note the council's current Whistleblowing Policy (attached as Appendix 1).
- 2.2 That the Committee instruct the Executive Director Finance & Resources to bring a further report to the meeting of Audit & Standards Committee in March 2014, detailing the findings of the Whistleblowing Policy review currently underway.

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The council has had a Whistleblowing Policy since 1998. It was originally introduced to ensure the council complied with the provisions of the Public Interest Disclosure Act 1998 which amended the Employment Rights Act 1996 to provide protection, in certain circumstances, for whistleblowers.
- 3.2 In line with many other local authorities, the council's policy was based on a model produced at that time by the independent charity, Public Concern at Work. School governing bodies were also recommended to adopt this new policy framework to ensure compliance within their schools.

- 3.3 Since its introduction, the Policy has been regularly reviewed and updated to ensure it continues to meet legislative requirements and provides an effective mechanism for council employees and others who work on council premises (such as casual/agency workers and contractors) to raise any genuine concerns they may have about alleged malpractice within the organisation.
- 3.4 The types of concern that are covered by the Whistleblowing Policy include:
- conduct which is a criminal offence
  - breaches of legal obligation
  - disclosures related to miscarriages of justice
  - health and safety risks, including risks to the public as well as other employees
  - damage to the environment
  - the unauthorised use of Council funds
  - action that is contrary to the Council's financial procedures or contract regulations
  - possible fraud, corruption or financial irregularity
  - practice which falls below established standards or practice
  - sexual or physical abuse of clients
  - other unethical conduct.
- 3.5 The Policy enables individuals to raise concerns secure in the knowledge that questions will be asked and appropriate action taken and that they will not suffer victimisation from having made a "qualifying disclosure".
- 3.6 On 25 June 2013, the Employment Rights Act 1996 was further amended by the Enterprise and Regulatory Reform Act 2013 which introduced several important changes to whistleblowing arrangements, and these are summarised below.
- (i) In order for individuals to be protected against detrimental treatment for disclosing what would otherwise be confidential information, they must now reasonably believe it to be in the public interest to do so. Previously, individuals only had to make the disclosure "in good faith" to receive legal protection. This amendment makes it much clearer that concerns relating to alleged breaches of an individual's own contract of employment are unlikely to meet the "public interest" requirement and so would not constitute a "whistleblowing" matter. Complaints of this nature would therefore need to be raised under the council's Grievance Procedure.
  - (ii) It is now unlawful for anyone working for, or on behalf of, the council to subject an individual to detrimental treatment such as bullying, harassment or victimisation on the grounds that they have made a "qualifying disclosure". Previously, "whistleblowers" were protected only from the actions of their employer. This brings whistleblowing legislation in line with the law on discrimination.
  - (iii) The council will now be vicariously liable for the actions of its workers, or anyone acting on its behalf, who subject a "whistleblower" to any

detrimental treatment for raising a concern. However, the council would have a defence if it could show that it had taken all reasonable steps to prevent the victimisation. Again this provision is consistent with current discrimination legislation.

- 3.7 The council’s Whistleblowing Policy has recently been updated to reflect these legislative changes. A copy of the revised Policy is attached as Appendix 1.
- 3.8 Although there are a number of instances every year where employees raise concerns that they consider constitute “whistleblowing”, virtually all of these cases are found on closer scrutiny to relate to personal, employment-related issues that should have been raised under the council’s Grievance Procedure rather than under the Whistleblowing Policy.
- 3.9 This means that the actual number of “qualifying disclosures” made under the Whistleblowing Policy each year are very low – single figures. A breakdown of the cases recorded in the last two year years on the Register held by the Head of Internal Audit & Business Risk is set out below:

Financial Year	Number of cases
2011/2012	3
2012/2013	0
2013/2014 to date	1

- 3.10 These cases broadly fall under the following categories:

Fraud 1  
 Financial irregularity 1  
 Health & Safety 1  
 Conflict of interest 1

- 3.11 Although it is not uncommon for local authorities to have low numbers of whistleblowing cases reported, it is important that the council can be confident that these figures accurately reflect the “health” of the organisation and are not artificially low because staff are failing to report concerns due to a lack of awareness of the policy and the process to be followed.
- 3.12 Although there is no evidence to suggest that this is the case and that the council’s whistleblowing arrangements are not effective and robust, a review is currently underway to ensure they remain fit for purpose. An important part of the review will be to assess how familiar staff are with the council’s whistleblowing arrangements and to see whether there are any barriers that may potentially prevent staff raising concerns.
- 3.13 It is proposed to bring a report on the review’s findings to the meeting of the Committee in March 2014.

#### **4. COMMUNITY ENGAGEMENT AND CONSULTATION**

- 4.1 Internal Audit has been consulted on the report.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 It is expected that the Whistleblowing Policy review outlined in the report will be carried out by in-house staff and absorbed within current workload levels. Any costs which may arise from the review will be met from within existing resources.

Finance Officer Consulted: Peter Francis      Date: 28 August 2013

### Legal Implications:

- 5.2 To encourage a culture of openness, probity and safety, the council has a Whistleblowing Policy which complies with the requirements of Part 4A of the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998 and, more recently, the Enterprise & Regulatory Reform Act 2013 (sections 17-20). An effective whistleblowing function is a vital component of good governance.
- 5.3 Whilst the report is for noting, the Committee may, if it considers appropriate, make one or more recommendations relating to the content to another committee, Full Council, or an officer.

Lawyer Consulted: Oliver Dixon      Date: 20 August 2013

### Equalities Implications:

- 5.4 The policy applies to all employees.

### Sustainability Implications:

- 5.5 The policy and guidance is published on our intranet.

### Crime & Disorder Implications:

- 5.6 The whistleblowing policy is designed to encourage reporting of allegations so that they can be properly investigated and, where they are founded, appropriate action can be taken.

### Risk and Opportunity Management Implications:

- 5.7 An effective whistleblowing function will contribute to a climate of trust, probity and safety at work. It is also a safeguard against the council unknowingly harbouring malpractice.

### Public Health Implications:

- 5.8 None.

Corporate / Citywide Implications:

- 5.9 It is vital that a public body has in place a mechanism for its staff and others who work on its premises such as contractors and casual/agency workers to be able to raise concerns about alleged malpractice, secure in the knowledge that something will be done and that they will not suffer victimisation from having raised the issue.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Current Whistleblowing Policy

### **Background Documents:**

None

## **Whistleblowing Policy**

### **A Confidential Reporting Policy for All Employees**

#### **1 Independent Advice**

- 1.1 If you are unsure whether to use this policy you should seek advice either from Human Resources or Internal Audit.
- 1.2 If you would like independent advice at any stage, you may contact:
  - your trade union representative;
  - professional associations;
  - the independent charity Public Concern at Work [www.whistleblowing.org.uk](http://www.whistleblowing.org.uk) on 020 7404 6609. Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

#### **2 Introduction**

- 2.1 Brighton & Hove City Council operates within legal requirements and regulations and is committed to the highest standards of openness, honesty and accountability. The Council therefore expects its employees to behave appropriately by adhering to all relevant laws, regulations, policies and procedures. In line with that commitment, the Council expects and encourages any employee becoming aware of another employee acting inappropriately, corruptly or illegally to come forward and voice those concerns.
- 2.2 The Policy incorporates the provisions that are required from the Public Interest Disclosure Act 1998 (as amended by the Enterprise & Regulatory Reform Act 2013), which protects members of staff against detrimental treatment or dismissal for disclosing normally confidential information because they reasonably believe it is in the public interest to do so. This is known as a “qualifying disclosure”.
- 2.3 It is unlawful for anyone working for, or on the behalf of, the council to subject an individual to detrimental treatment on the grounds that they have made a “qualifying disclosure”. The council would also be liable for such acts committed by those working for it or acting on its behalf.

#### **3 Benefits of this policy**

- 3.1 The Whistleblowing Policy aims to:
  - encourage and enable individuals to feel confident in raising concerns and to question and act upon any concerns;

- provide avenues for individuals to raise concerns and receive feedback on any action taken;
- ensure that individuals receive a response to their concerns and that they are aware of how to pursue them if they are not satisfied
- reassure individuals that they will be protected from reprisals or victimisation for raising concerns that they reasonably believe to be in the public interest
- ensure that all those working for, or on behalf of, the council are aware that it is unlawful for them to treat individual(s) detrimentally because they have made a “qualifying disclosure” under the Act (see also paragraph 2.3 above)

## **4 Scope**

- 4.1 This policy applies to all employees, casual and agency workers, apprentices, contractors and self-employed consultants working on the Council's premises.
- 4.2 School Governing Bodies are recommended to adopt this policy as a framework for introducing the requirements of this policy in their schools.
- 4.3 This procedure outlines a separate route through which employees can raise concerns that fall outside the scope of the Council's other complaints procedures. The types of concern covered by the Whistleblowing Policy include:
- conduct which is an offence or a breach of law
  - disclosures related to miscarriages of justice
  - individual(s) covering up wrongdoing
  - health and safety risks, including risks to the public as well as other employees
  - damage to the environment
  - the unauthorised use of Council funds
  - action that is contrary to the Council's financial procedures or contract regulations
  - possible fraud, corruption or financial irregularity
  - practice which falls below established standards or practice
  - sexual or physical abuse of clients
  - other unethical conduct.
- 4.4 If you work for a company that has a contract with the Council then you can also raise concerns under this policy.
- 4.5 Employees will not be able to raise concerns relating to alleged breaches of their own contracts of employment under this Policy as such concerns are unlikely to meet the “public interest” requirement. Therefore, complaints of this nature should be raised using the council's Grievance Procedure. The Council will respond to concerns relating to bullying or harassment using the Council's Disciplinary Procedure.



## 5 Supporting you to raise a concern

- 5.1 **Harassment or Victimisation:** The Council will not tolerate harassment or victimisation and will take action to protect individuals who raise concerns that they reasonably believe to be in the public interest. This protection is in addition to the legal protection provided by the Public Interest Disclosure Act 1998 (as amended by the Enterprise & Regulatory Reform Act 2013).
- 5.2 **Confidentiality:** Individuals are encouraged to put their name to any allegation. However, if you ask us not to reveal your identity by keeping your confidence, we will not disclose it without your consent. If the situation arises where we are not able to resolve the concern without revealing your identity (for instance because your evidence is needed in court), we will discuss with you whether and how we can proceed.
- 5.3 **Untrue Allegations:** The City Council is committed to this policy. If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any form of retribution as a result provided that:
- you reasonably believe the disclosure to be in the public interest, it does not matter if you are mistaken;
  - you reasonably believe that information, and any allegations contained in it, are substantially true and
  - you raised your concerns through one of the channels named in this policy.
- 5.4 However, we cannot give such assurance if you raise a concern maliciously or the information you have used to trigger a concern has been obtained unlawfully, for example:
- legal requirements have not been followed, e.g. the Data Protection Act has been breached or
  - through unauthorised access to records, e.g. computer hacking.

## 6 How to raise a concern

- 6.1 As soon as you become reasonably concerned, we hope you will feel able to raise it first with your line manager. Similarly, non-employees (e.g. agency workers or contractors) should raise a concern in the first instance with their contact within the Council, usually the person to whom they directly report.
- 6.2 If you want to raise the matter with someone other than your immediate manager, for whatever reason, please raise the matter with:

*Head of Service/Headteacher/Chair of Governors*

*Sue Moorman, Head of Human Resources & Organisational Development, ext. 3629*

*Ian Withers, Head of Internal Audit & Business Risk ext. 1323*

*Catherine Vaughan, Executive Director of Finance & Resources ext. 1333 or*

*Abraham Ghebre-Ghiorghis, Head of Law (The Monitoring Officer) ext. 1500.*

These people will also be able to advise on confidentiality and further action required.

- 6.3 If these channels have been followed but you still have concerns or if you feel that the matter is so serious that you cannot discuss it with any of the above, you may, as a last resort, contact:

*Penny Thompson, Chief Executive ext.1132.*

- 6.4 Concerns may be raised orally or in writing. Members of staff who wish to raise the concern in writing should use the following format:

- the background and history of the concern (giving relevant dates)
- the reason why they are particularly concerned about the situation.

- 6.5 When raising the concern you may wish to be assisted, or accompanied by either your trade union representative or a colleague who works for the City Council.

- 6.6 Although the individual raising the concern is not expected to prove the truth of an allegation, you will need to demonstrate to the person contacted that there are sufficient grounds for the concern.

## **7 How the Council will respond**

- 7.1 Once a concern is raised, the appropriate Council manager will make initial enquiries, taking advice from the Head of HR & Organisational Development if necessary, to help decide if an investigation is appropriate and if so, what form it should take. The person receiving the concern will ensure the Head of Law, as the City Council's Monitoring Officer, is provided with sufficient details to be aware of the concern raised. As soon as possible, and in any case within 10 working days of a concern being raised, the person handling the matter will write to the individual raising the concern acknowledging that it has been raised and indicating how, as far as possible, it will be dealt with. The individual will be kept informed of progress and will receive a full and final response, subject to any legal constraints.

- 7.2 When you raise the concern(s) you may be asked how you think the matter might best be resolved. If you have any personal interest in the matter, we ask that you tell us this at the outset. If your concerns would be more appropriately dealt with under another policy of the City Council (for example, the Anti Fraud & Corruption Strategy or Grievance Procedure we will tell you.

- 7.3 While the purpose of this policy is to enable us to investigate possible malpractice and take appropriate steps to deal with it, we will give you as much feedback as we properly can.

- 7.4 Concerns or allegations that fall within the scope of specific procedures (for example child protection) will normally be referred for consideration under the relevant procedure. Some concerns may be resolved by agreeing action

with you without the need for investigation. If urgent action is required, this will be taken before any investigation is conducted.

7.5 Where appropriate, the matters raised may:

- be investigated by management, internal audit, the Monitoring Officer or through the disciplinary process;
- be referred to the Police;
- be referred to the external auditor or
- form the subject of an independent inquiry.

Subject to any legal constraints, you will normally be informed of the final outcome of any investigation.

7.6 The Council will take all reasonable steps to minimise any difficulties to employees or others raising concerns and provide advice and support should they be required to give evidence, e.g. at a disciplinary hearing by:

- providing extra support for witnesses or
- offering counselling services where they may be beneficial etc.

## **8 How the matter can be taken further**

8.1 This policy is intended to provide individuals with an avenue to raise concerns within the Council. The Council hopes that those using this process will be satisfied with the way their concerns are treated and any investigations that may be carried out. However, if you are not satisfied and feel it is right to take the matter outside the Council, the Head of HR & Organisational Development can provide advice as to other options. Alternatively, you may contact an outside body to take the matter further. The following are examples of some of the possible contact points:

- the Audit Commission
- relevant professional bodies or regulatory organisations
- a solicitor
- the Police.

8.2 If you do take the matter outside the Council, you need to ensure that confidential information is not disclosed.

## **9 Corporate recording, monitoring and reviewing**

9.1 The Head of Law has overall responsibility for the maintenance and operation of this policy and for ensuring it is reviewed every two years by involving key stakeholders in the process.

9.2 A record of all concerns raised and the outcomes (in a form which respects the individual's confidentiality) will be kept by the Head of Internal Audit & Business Risk.

## **10 If you are dissatisfied**

- 10.1 If you are unhappy with our response, remember you can go to the other levels and bodies detailed in this policy.
- 10.2 While we cannot guarantee that we will respond to all matters in the way that you might wish, we will try to handle the matter fairly and properly.