

Item No. 17.	Classification: Open	Date: 19 February 2018	Meeting Name: Audit, Governance and Standards Committee
Report title:		Updating of Whistleblowing policy and procedure	
Ward(s) or groups affected:		All	
From:		Director of Law and Democracy	

RECOMMENDATION

1. That the committee note the recent changes to the council's whistleblowing policy and procedure.

BACKGROUND INFORMATION

2. The council maintains a whistleblowing policy and procedure which outlines the legal obligations the council is under pursuant to the Employment Rights Act 1996, as amended. The policy and procedure provides information, guidance and a procedure by which a "worker" (a term that covers council employees and former employees, contractors and agency workers) can make a "protected disclosure" – a "whistleblow".
3. A "protected disclosure" is made where a worker raises concerns, which in the reasonable belief of the worker are in the public interest, and which tend to show:
 - That a crime has been committed, is being committed, or is likely to be committed.
 - That a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he or she is subject – including contractors providing goods and services on behalf of the council.
 - That a miscarriage of justice has occurred, is occurring, or is likely to occur.
 - That the health and safety of an 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 tending to show any of the above has been concealed or is likely to be deliberately concealed.
4. Workers who "blow the whistle" enjoy certain legal protections. A worker making a "protected disclosure" has the legal right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. An employer may also be vicariously liable for any mistreatment the worker receives from others as a result of having made a disclosure. An employer is also prevented from seeking to impose a contractual term that prevents a worker blowing a whistle, for example

in a “non-disclosure agreement”.

5. Not all disclosures will be protected. The worker has to have a reasonable belief that the disclosure is made “in the public interest”.

KEY ISSUES FOR CONSIDERATION

6. The council’s corporate governance panel, a panel of officers chaired by the strategic director of finance and governance, undertook a review of the whistleblowing policy and procedure in late 2017.
7. The panel proposed some updating changes to the content of the whistleblowing policy and procedure. These can be summarised as follows:
 - To update the list of people to whom disclosures can be made at stage 2, details of the council’s auditor, and to make other minor corrections;
 - To present the information about who is covered by the policy and its scope in a more concise, user-friendly way; and
 - To clarify when raising a concern will be in the public interest, following a judgment of the Court of Appeal which has helpfully provided both a list of factors the courts will consider when deciding whether disclosure was in the public interest, along with guidance about the approach the courts should take.

Policy implications

8. The changes are not considered to have a significant impact on how the policy and procedure works or is accessible in practice, as they are directed at either correcting out of date information or providing greater clarity to those who might use the policy. There are no substantive legal changes that have to be considered or reflected in the policy.
9. Corporate governance panel members have contributed to the review and the amended policy and procedure will be formally confirmed by the appropriate chief officer. However, the council’s constitution provides a role to Audit, Governance and Standards Committee to monitor the council’s policies on whistleblowing (a role it also undertakes by receiving reports on disclosures made in accordance with the policy), and it is considered appropriate for these changes to be brought to the committee for noting.

Community impact statement

10. This report is not considered to contain proposals that would have a significant impact on the community.

Resource implications

11. There are no anticipated resource implications.

Legal implications

12. These have been described in the background section, above.

Financial implications

13. There are no anticipated financial implications.

Consultation

14. Representatives of trade unions representing council staff have previously been consulted in the development and review of the whistleblowing policy and procedure. It has not been thought necessary to consult further on the minor changes made as a result of this most recent review.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

15. The relevant legal implications have been set out in the body of the report.

REASONS FOR LATENESS

16. The review of the whistleblowing policy and procedure concluded after the dispatch of the main agenda for the audit, governance and standards committee.

REASONS FOR URGENCY

17. The review of the whistleblowing policy and procedure has just concluded. It is considered timely for the committee to receive a report to note the recent changes that have been made now, rather than to receive a report for its next meeting which is not due to take place until July 2018.

APPENDICES

No.	Title
Appendix 1	Whistleblowing policy and procedure, February 2018

AUDIT TRAIL

Lead Officer	Doreen Forrester-Brown, Director of Law and Democracy	
Report Author	Tom Crisp, Senior Lawyer - Governance	
Version	Final	
Dated	12 February 2018	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Democracy	No	No
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	13 February 2017	