



Report to: Audit Governance and Improvement Review Committee
Date: 29th January 2009
Subject: Whistleblowing Policy
Report of: Executive Director of Business Support Services
Contact officer: Martyn Kenyon 01942 827550

Purpose / summary: To recommend the adoption of the updated Whistleblowing Policy for the Council

Alternative options considered and reason for selecting the one recommended: None – this follows the recommendations from Public Concern At Work

Recommendation / decision: To note this report and approve the updated Whistleblowing Strategy for the Council.

Key Decision: This report does not involve a key decision.

Risks / Implications:

Financial:	None directly.
Staffing:	None
Policy:	Confirms the Council's commitment to high standards of openness, probity and accountability
Equal Opportunities - Has a Diversity Impact Assessment been conducted?	No impact
Wards affected:	None

Property – Does the proposal involve a reduction, addition or change to the Council’s asset base or its occupation?

No

Does this proposal have significant implications for the Council and the local population?

A diversity impact assessment is not necessary at this stage, however, equality and diversity implications have been considered when producing this report.

Does this proposal involve a new policy or procedure or significant changes to an existing policy or procedure?

A diversity impact assessment is not necessary at this stage, however, equality and diversity implications have been considered when producing this report.

Has the Service Director - Legal Services confirmed that the recommendations within this report are lawful and comply with the Council’s Constitution? **N/A**

Has the Service Director – Corporate Services confirmed that any expenditure referred to within this report is consistent with the Council’s budget? **N/A**

Are any of the recommendations within this report contrary to the Policy Framework of the Council? **No**

* delete which applicable

For Cabinet reports only :

Categorisation of the report:	X
Discussion leading to a decision	
Monitoring	
Sharing for corporate understanding	

	X
Discussion	
Decision	
Information	

Tracking/Process:

	Consultation	Ward Members	Partners
Panel	Overview & Scrutiny	Cabinet	Council

There are no Background Papers to this Report within the meaning of Section 100D of the Local Government Act 1972.

Proper Officer David Smith, Executive Director of Business Support Services

Date 19th January 2009

Whistleblowing Policy – A Good Practice Review

Introduction

Whistleblowing is the term used when someone who works in, or for an organisation, raises a concern about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, shareholders, the public or the organisation's own reputation. All organisations face the risk that something will go badly wrong. Whenever such a situation arises, the first people to know about the risk will usually be those who work in or for the organisation. However without clear arrangements which offer employees safe ways to raise a whistleblowing concern they are likely to stay silent. This denies the organisation the opportunity to address the problem and the cost of this can be high in terms of fines, compensation, higher insurance premiums, regulatory investigation, lost jobs or even lives and the organisation's reputation can be seriously damaged.

The Government expects public bodies to have a whistleblowing policy in place and the effectiveness of these arrangements is reviewed regularly by external audit. In particular the existence of effective whistleblowing arrangements and the ability to demonstrate staff confidence in these arrangements is a key requirement under Use of Resources. The Council's Whistleblowing policy is well established and has been in operation for a number of years. The application of the policy is reviewed regularly to ensure it remains current and complies with best practice.

How the Council's Whistleblowing Policy Measures Up Against Best Practice

Public Concern At Work in collaboration with BSI (British Standards Institute) has recently produced a good practice guide for the introduction, revision, operation and review of effective whistleblowing arrangements. This guidance includes a checklist against which whistleblowing arrangements can be assessed to determine the degree of compliance with best practice. A comparison of the Council's existing policy against this good practice checklist is included at Appendix 1. Whilst compliance with this guidance is not obligatory an assessment against its requirements provides a useful indicator as to the effectiveness of the Council's arrangements.

The Council's policy compares favourably with this guidance and is fully compliant with twelve of the sixteen issues recommended and partially compliant in a further two. In particular the policy addresses the key issues of how to raise concerns, the policy has been widely communicated and managers and designated officers have been briefed as to their roles under the policy.

Action to further develop the Council's whistleblowing arrangements and ensure it complies fully with the Code of Practice recommended by Public Concern at Work is outlined in Appendix 1 against the relevant issue in the checklist. These proposals are discussed below.

- The code of practice checklist recommends that the whistleblowing policy should give examples of the types of concerns to be raised, so distinguishing whistleblowing from grievances. Whilst the existing policy does, at paragraph 2.3, distinguish whistleblowing from grievances this has been strengthened in the updated policy by including at paragraph 2.1 definitions as to what constitutes whistleblowing and what is considered to be more appropriately a grievance.
- Organisations should tell employees how to obtain free confidential advice from an independent helpline on whether and how to raise a concern. The council's current policy does list alternative helplines at paragraph 6.1 but this specifically references "how to take the matter forward" rather than an opportunity to confidentially discuss whether and how best to raise a whistleblowing concern. The policy has been updated at paragraph 4.6 to include two external contacts from whom independent confidential advice can be obtained.
- The Committee on Standards in Public Life recommends that organisations should review their whistleblowing arrangements to ensure they work effectively and that staff have confidence in them. No formal assessment of either the effectiveness of the current arrangements or employee confidence, knowledge and experience in these arrangements has been undertaken to date. This requirement will be addressed by a review of the effectiveness of the Council's whistleblowing arrangements in the 2009/10 Internal Audit Plan. This will include a high level assessment conducted via an interactive fraud awareness questionnaire. In addition employees awareness of and confidence in the Council's whistleblowing policy could be assessed more widely by including a section on this when the Council wide Employee Survey is next conducted.

Updated Whistleblowing Policy

The Council's Whistleblowing Policy has been re-drafted to take into account this good practice guidance and this is attached at Appendix 2. The revisions are highlighted in red type for ease of reference. It is not simply restricted to fraud or corruption issues and so would provide an avenue to raise concerns eg in relation to professional standards and so may assist an individual with concerns similar to those in the recent tragic case of baby P.

The updated policy will be communicated to all staff and contractors and will be posted on the Councils website.

Recommendation

The Audit, Governance & Improvement Committee are requested to endorse the above recommendations and formally approve the revised Whistleblowing Policy attached at Appendix 2.

WHISTLEBLOWING CODE OF PRACTICE CHECKLIST ANALYSIS

Issue	Yes	In Part	No	Explanation
<p>The Policy</p> <p>1. The organisation's policy conforms to good practice and a) gives examples of the types of concerns to be raised, so distinguishing whistleblowing from grievances;</p>		√		<p>There is a reference at para 2.3 of the Whistleblowing policy to distinguish whistleblowing from grievances. However this could be strengthened by the insertion of the following statement at 2.1</p> <p><i>Whistleblowing is where an employee has concerns about a danger or illegality that has a public interest to it usually because it threatens others. A grievance or private complaint is by contrast a dispute about the employee's own employment position and has no additional public interest.</i></p>
b) gives the option to raise concerns outside of line management;	√			Alternative contacts to line managers are listed at paras 4.1 and 4.5 of the Whistleblowing policy.
c) provides access to an independent helpline offering confidential advice;		√		<p>Alternative helpline numbers are listed at 6.1 of the Whistleblowing policy but this specifically references 'how to take the matter forward'. These external references should also be included at either 4.5 with the internal contacts or separately as a reference to an alternative source of help.</p> <p>Also see 6.3 which states that if the matter is raised externally no confidential information should be disclosed. This paragraph is not appropriate – if a matter is raised externally this restriction could reduce the effectiveness of this action. This paragraph should be removed.</p>
d) offers option to raise concerns in confidence;	√			At paras 3.2 and 3.3 the policy promotes openness and allows confidentiality but states the limits which apply to this. Also although it doesn't actively encourage anonymity it does advise that any concerns raised anonymously will not be automatically ignored. This is consistent with the PAS Code of Practice.

Issue	Yes	In Part	No	Explanation
e) explain when concerns may safely be raised outside (e.g. with a regulator); and	√			This is covered in the policy at Section 6, 'How the matter can be taken further'.
f) prohibits [i] reprisals against a bona fide whistleblower, and [ii] the making of a false allegation maliciously.	√			These requirements are covered at 3.1 [i] and 3.4 [ii] of the policy.
Buy-in				
2. Those in charge have been briefed on the role of management and openness, confidentiality, anonymity and trust	√			The Whistleblowing policy is supported by an additional guidance document 'Guidance for Managers' which specifically addresses how managers should respond to any whistleblowing concerns reported to them.
The right start	√			
3. Practicalities, feedback, safeguards and misuse are consulted on				The Whistleblowing policy was introduced after consultation was undertaken by Internal Audit with Legal, Personnel and Unison.
4. The role of subcontractors is considered	√			The policy states clearly at para 1.4 that it applies to contractors and suppliers providing services under contract to the Council. A mailing of the policy to all contractors is also scheduled for the current financial year.
5. Line managers brief employees on the arrangements when rolled out and updated	√			When the policy was first introduced leaflets, one for employees and one for managers, produced by the Audit Commission, were circulated to all staff.
Communication and confidence				
6. The organisation undertakes activity to promote staff awareness of the arrangements	√			The policy is available to view on the intranet and updates require formal acknowledgment by staff under the Council's NETconsent procedure.
7. Employee confidence, knowledge and experience of the arrangements are assessed			√	No formal assessment has been undertaken to date. This could be addressed via the Employee Survey see 11 below 'Reviewing the arrangements'..
Briefing/Training				
8. Line and senior managers are briefed on their roles under the policy	√			As noted at 2 above, the Whistleblowing policy is supported by an additional guidance document 'Guidance for Managers' which specifically addresses how managers should respond to any whistleblowing concerns reported to them.

Issue	Yes	In Part	No	Explanation
9. Designated officers with a role in handling concerns are briefed and trained	√			<p>Whilst designated officers were briefed initially when the policy was first introduced no dedicated training was undertaken.</p> <p>The Council's EDNR scheme should ensure that newly appointed designated officers receive appropriate training as and when required.</p>
Logging concerns 10. Concerns raised formally through the whistle-blowing arrangements are recorded and logged centrally	√			A central record is maintained by the Monitoring Officer in the Legal Services Division.
Reviewing the arrangements 11. The effectiveness of the arrangements is reviewed by those charged with governance e.g. the Audit Committee			√	<p>To date there has been no formal review of the effectiveness of the Councils Whistleblowing arrangements.</p> <p>This could be addressed by including a review of Whistleblowing arrangements in the Audit Plan and including a section in the Employee Survey to assess employees awareness and confidence in the Council's Whistleblowing arrangements.</p>



WIGAN COUNCIL

WHISTLEBLOWING POLICY

1 Introduction

- 1.1 Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.2 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we encourage employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns without fear of reprisals. This policy document makes it clear that you can do so without the fear of victimisation, subsequent discrimination or disadvantage.
- 1.3 This Whistleblowing Policy is intended to encourage and enable staff to raise serious concerns within the Council rather than overlooking a problem or blowing the whistle outside.
- 1.4 The policy applies to all employees and those contractors working for the Council on Council premises, for example, agency staff, builders, and drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example, care homes.
- 1.5 These procedures are in addition to the Council's complaints procedures and other statutory reporting procedures applying to some departments. We are responsible for making service users aware of the existence of these procedures.

2 Aims and scope of this policy

- Whistleblowing is where an employee has concerns about a danger or illegality that has a public interest to it, usually because it threatens others. A grievance or private complaint is by contrast a dispute about the employee's own employment position and has no additional public interest.

- This Whistleblowing Policy aims to:
 - encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice
 - provide avenues for you to raise concerns and receive feedback on any action taken
 - allow you to take the matter further if you are dissatisfied with the Council's response; and
 - reassure you that you will be protected from reprisals or victimisation for whistleblowing in good faith.

- 2.3 There are existing procedures in place to enable you to lodge a grievance relating to your own employment. This Whistleblowing Policy is intended to cover concerns that fall outside the scope of other procedures.

- 2.4 That concern may be about something that:
 - is unlawful; or
 - makes you feel uncomfortable in terms of **professional** standards, your experience or the standards you believe the Council subscribes to; or
 - is against the Council's Contract Procedure Rules or policies; or
 - falls below established standards or practice; or
 - amounts to improper conduct.

3 Safeguards

3.1 Harassment or Victimisation

The Council is committed to good practice and high standards and wants to be supportive of employees.

The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment or victimisation and will do what it lawfully can to protect you when you raise a concern in good faith.

This does not mean that if you are already the subject of disciplinary or redundancy procedures, that those procedures will be halted as a result of your whistleblowing.

3.2 Confidentiality

The Council will do its best to protect your identity when you raise a concern and do not want your name to be disclosed. It must be appreciated that the investigation process may reveal the source of the information and a statement by you may be required as part of the evidence, particularly if the Police or External Auditors become involved. In order to take effective action, the Council will need proper evidence which may be required to stand up to examination in Courts or Tribunals.

3.3 Anonymous Allegations

This policy encourages you to put your name to your allegation. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council.

In exercising the discretion, the factors to be taken into account would include:

- the seriousness of the issues raised
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

3.4 Untrue Allegations

If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make malicious or vexatious allegations, that is for no other purpose than to cause trouble or annoyance or without good reason to discredit the Council, any member or officer, an investigation will take place to determine whether disciplinary action is taken.

4 How to raise a concern

- 4.1 As a first step, you should normally raise concerns with your immediate manager or their superior. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the malpractice. For example, if you believe that management is involved, you should approach your Chief Officer or alternatively the Chief Executive, the **Executive Director of Business Support Services or the Service Director - Borough Solicitor**.
- 4.2 Concerns are better raised in writing. You are invited to set out the background and history of the concern, giving names, dates and places where possible, and the reasons why you are particularly concerned about the situation. If you do not feel able to put your concern in writing, you can telephone or meet the appropriate officer.
- 4.3 The earlier you express the concern, the easier it is to take action.
- 4.4 Although you are not expected to prove the truth of an allegation, you will need to demonstrate to the person contacted that there are sufficient grounds for your concern.
- 4.5 Advice and guidance on how matters of concern may be pursued can be obtained from the following :

Mrs Joyce Redfearn-Chief Executive on 01942 827001 (Internal 2001)

E-mail: J.Redfearn@wigan.gov.uk

Dr David Smith-Executive Director - Business Support Services on 01942 827232 (Internal 2232)
E-mail: D.Smith@wigan.gov.uk

Mr Paul McKevitt-Service Director – Corporate Services on 01942 827237 (Internal 2237)
E-mail: P.McKevitt@wigan.gov.uk

Mr Kevin Lawson-Service Director – Service Director - Borough Solicitor on 01942 827026 (Internal 2026)
E-mail: K.Lawson@wigan.gov.uk

Mrs Alison McKenzie-Folan-Head of Peoples Services on 01942 827132 (Internal 2132)
E-mail: A.Mckenzie-Folan@wigan.gov.uk

Mr Martyn Kenyon-Head of Audit & Risk Management on 01942 827550 (internal 2550)
E-mail martyn.kenyon@wigan.gov.uk

Peter Williams-External Audit Manager on 01942 827460 (internal 2460)
e-mail pg-williams@audit-commission.gov.uk

4.6 If you wish to discuss confidentially whether and how best to raise a whistleblowing concern then independent advice can be obtained from the following

- UNISON whistleblowing hotline 0800 597 9750
- the independent charity Public Concern at Work 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.

4.7 You may invite a companion, who may be from your trade union or professional association, or a friend or a legal representative to raise a matter on your behalf. You may also have such a companion to represent you at any meeting which is held relating to your concern.

5 How the council will respond

5.1 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.

- 5.2 The action taken by the Council will depend on the nature of the concern as determined by the **Service Director - Borough Solicitor** (Monitoring Officer). The Council could decide that the matters raised may:
- be investigated internally
 - be referred to the Police
 - be referred to the External Auditor
 - form the subject of an independent inquiry
- 5.3 In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle, which the Council will have in mind, is the public interest. Concerns or allegations, which fall within the scope of specific procedures (for example, child protection or discrimination issues), will normally be referred for consideration under those procedures.
- 5.4 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.
- 5.5 Within ten working days of a concern being received, your immediate manager, Chief Officer, the Chief Executive or relevant Director, depending upon who you have approached, will write to you:
- acknowledging that the concern has been received
 - indicating how it proposes to deal with the matter if possible at such an early stage
 - giving an estimate of how long it will take to provide a final response if possible at such an early stage
 - telling you whether any initial enquiries have been made, and
 - telling you whether further investigations will take place, and if not, why not.
- 5.6 The amount of contact between the officers considering the issues and you, will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from you.
- 5.7 When any meeting is arranged, off-site if you so wish, you have the right to be accompanied by your chosen companion. This may be a union or professional association representative or a friend but cannot be involved in the area of work to which the concern relates.
- 5.8 The Council will do what it lawfully can to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the Council will advise you about the procedure. The Council cannot provide legal representation for you. Where appropriate, counselling may be provided by **Peoples Services**.

5.9 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, you will receive information about the outcomes of any investigations.

6 How the matter can be taken further

6.1 This policy is intended to provide you with an avenue to raise concerns within the Council. The Council hopes you will be satisfied. If you are not, and if you feel it is right to take the matter outside the Council, the following are possible contact points:

- the External Auditor (Audit Commission) 01204 877300
- UNISON whistleblowing hotline 0800 597 9750
- Audit Commission whistleblowers' hotline 0845 052 2646
- the Police 0161 872 5050
- the independent charity Public Concern at Work 020 7404 6609

6.2 It is stressed that this list is not exhaustive and you are free to contact any organisation which you feel will be able to deal properly with your concerns. This may include:

- your local Councillor
- your solicitor
- other relevant professional/regulatory bodies.

6.3 It will be safe to raise a concern with any of the above provided that:-

- (a) You make the disclosure in good faith
- (b) You reasonably believe that the information disclosed, and any allegation contained in it, are substantially true
- (c) You do not make the disclosure for the purposes of personal gain.

6.4 If you make allegations which you have no grounds to believe are true, or maliciously or for personal gain then you could face defamation proceedings or a prosecution for wasting Police time. If you decide to address your concerns by going to the Press or the media then you may face defamation proceedings if your allegations are unfounded.

7 The responsible officer

7.1 The **Service Director - Borough Solicitor** (as Monitoring Officer) has overall responsibility for the maintenance and operation of this policy. That officer maintains a record of concerns raised and the outcomes and will report as necessary to the Council. If you request it the **Service Director - Borough Solicitor** will do what he lawfully can to protect your identity but you should realise that he may be obliged to disclose it to the Police or the External Auditor or the Courts.

8 The law

- 8.1 This policy has been written to take account of the Public Interest Disclosure Act 1998, which protects workers making disclosures about certain matters of concern, where those disclosures are made in accordance with the Act's provisions. The Act is incorporated into the Employment Rights Act 1996, which already protects employees who take action over, or raise concerns about, health and safety at work.