

WHISTLEBLOWING POLICY

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1.0	August 2021	Reviewed the previous Code and drafted new Policy	H. Barrington
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Review: November 2027

Derbyshire County Council

Whistleblowing Policy

1. Introduction

1.1 Derbyshire County Council is committed to the highest possible standards of honesty, openness and accountability and will not tolerate wrongdoing, malpractice or illegality in the workplace.

1.2 The Council's Whistleblowing Policy is a vital element of our governance arrangements and is designed to allow those employed by the Council, members of the public or organisations to come forward and disclose serious allegations of wrongdoing, malpractice or illegality involving the actions of the Council's employees, its Councillors, contractors or any aspect of the Council's activities. The Council is committed to treat all disclosures fairly and consistently.

1.3 It is intended that this Whistleblowing Policy enables individuals or organisations to disclose information about wrongdoing, malpractice or illegality internally and to provide them with protection from subsequent victimisation, discrimination or disadvantage. This will assist in detecting and deterring malpractice and, by demonstrating the Council's accountability, maintain public confidence and the Council's good reputation.

1.4 This Whistleblowing Policy should be read in conjunction with the Anti-Fraud Anti-Corruption Strategy.

2. Aim of the Policy

2.1 The aims of this Policy are to:

- create a culture of speaking up and confidence that concerns will be dealt with appropriately;
- deter wrongdoing and support the aims of the Anti-Fraud Anti-Corruption Strategy in creating a culture of zero tolerance towards fraud and corruption;
- encourage employees and others with serious concerns about any aspect of the Council's work to feel confident to come forward and voice those concerns within the Council rather than ignoring a problem or 'blowing the whistle' outside;
- ensure concerns are raised at an early stage and in the right way ensuring that critical information gets to the people who need to know

and who are able to take action so that the matter can be properly investigated;

- provide reassurance to those who raise concerns in the public interest and not maliciously or for personal gain, that they can do so without fear of reprisals or victimisation or disciplinary action, regardless of whether these are subsequently proven;
- ensure that a response is received when concerns are raised, and it is clear how to pursue the matter if not satisfied with the response.

3. Scope of the Policy

3.1 The Whistleblowing Policy seeks to cover all disclosures and allegations made by employees of Derbyshire County Council, including temporary and agency staff. This could include consultants, contractors, sub-contractors who are engaged in work for the Council, volunteers, Councillors, anyone who uses the Council's services or a member of the public. This Policy also extends to any other individual who wants to raise an allegation of wrongdoing, malpractice or illegality.

For those employed in maintained schools, the school must have whistleblowing procedures in place and a model Whistleblowing Policy is available which can be adopted by governing boards of Derbyshire schools. The Secretary of State for Education is the prescribed person for matters relating to education for individuals who wish to raise concerns but not direct with their employer.

3.2 The Whistleblowing Policy is not intended to replace existing procedures and it should not be used where other more appropriate reporting procedures are available.

- a) If the concern relates to treatment as an employee, it should be raised under the existing Grievance or Harassment procedures;
- b) If the concern is about services provided, it should be raised under the Complaints Procedure;
- c) If the concern is regarding the behaviour of a County Councillor, it should be raised under the Code of Conduct complaints process.

3.3 Employees are encouraged to "speak up" about anything which gets in the way of doing a great job for the people of Derbyshire. That means being able to raise something that doesn't feel right or an idea for improvement. Where this does not relate to wrongdoing, malpractice or illegality it will fall outside the scope of the Whistleblowing Policy, but employees are encouraged to raise such concerns under directly with their Line Manager, Director or Executive Director.

3.4 We wish to create a culture where it is normal everyday practice for employees to simply raise something which doesn't feel right with their line manager and a discussion takes place to find a way to resolve the matter quickly. By speaking up at work employees will be playing an important role in helping us improve our services and the working environment for our staff.

4. What is Whistleblowing?

4.1 In this policy 'whistleblowing' means the confidential reporting by an individual of any concerns relating to a perceived wrongdoing involving any aspect of the Council's work or those who work for the Council. This includes reporting of suspected wrongdoing, malpractice or illegality within the Council.

5. Whistleblowing by Employees

5.1 The Public Interest Disclosure Act 1998 (PIDA 1998), known as the whistleblowing law is designed to encourage and enable employees to "speak out" and to report suspected wrongdoing at work. This is commonly known as "blowing the whistle". The PIDA protects employees (including those employed in schools maintained by the Council, temporary workers and agency staff), from any detriment from their employer or colleagues that arises as a result of making a "protected disclosure" (a qualifying disclosure) in the public interest. This includes protection from harassment, victimisation or dismissal by their employer.

5.2 A qualifying disclosure means any disclosure which in the reasonable belief of the employee shows the following:

- that a criminal offence has been committed, is being committed or is likely to be committed (including fraud, bribery and corruption);
- that a person has failed, is failing or likely to fail to comply with a legal obligation to which he/she is subject (including failure to comply with the Council's Constitution, Financial Regulations and Contract Standing Orders);
- that a miscarriage of justice has occurred, is occurring or 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 any of the above matters are being or likely to be deliberately concealed.

5.3 Personal grievances are not covered by this Policy and instead should be dealt with under the Council's Grievance Procedure.

5.4 Who should concerns be raised with?

All employees should ensure that they remain aware of this Whistleblowing Policy and have a responsibility to use it where they have concerns about wrongdoing, malpractice or illegality internally.

Employees should raise their concerns through the Council's confidential reporting email cst.whistleblowing@derbyshire.gov.uk which is managed by the Council's Internal Audit. The Assistant Director of Finance (Audit) in conjunction with the Monitoring Officer will determine whether the concerns fall within scope of the Whistleblowing Policy and if so who the concerns should be referred to for consideration under this Policy. This may be:

- a) the employee's line manager;
- b) where this is inappropriate, (e.g. because it is believed the line manager is involved) their Executive Director, Director or other senior manager;
- c) where (a) and (b) are inappropriate (e.g. it is believed Elected Members or senior management are involved), the Monitoring Officer; or
- d) if the concern is regarding financial irregularities or fraud, the Assistant Director of Finance (Audit).

Where the concern is about Internal Audit, it should be raised with the Monitoring Officer or Chief Finance Officer and the above assessment will be carried out by the Monitoring Officer in conjunction with the Chief Financial Officer.

Further information on how to raise a concern is set out in paragraph 7.

5.5 If a whistleblowing concern is sent to another officer or an Elected Member there is an obligation on them to forward it to the Council's confidential reporting email cst.whistleblowing@derbyshire.gov.uk so that it can be dealt with in accordance with this Policy, unless it is about Internal Audit in which case it must be forwarded to the Monitoring Officer or Chief Finance Officer.

5.6 Protection for Employees

5.6.1 Under the PIDA 1998, employees are protected when they make a qualifying disclosure, as set out above. This applies where the employee:

- makes the disclosure in good faith;
- reasonably believes that the disclosure they are making is in the public interest; and

- reasonably believes that the information detailed and any allegation in it are substantially true.

5.6.2 The PIDA 1998 makes it unlawful for the Council to dismiss anyone or allow them to be victimised on the basis that they have made an appropriate lawful disclosure in accordance with the Act.

5.6.3 The Council recognises that the decision to report a concern can be a difficult one to make. If an employee honestly and reasonably believes what they are saying is true, they should have nothing to fear because they will be doing their duty to their employer, their colleagues and those for whom they are providing a service. Indeed, employees are encouraged to report concerns, particularly where a potential criminal offence has been committed.

5.6.4 The Council will not tolerate any harassment or victimisation of a whistleblower (including informal pressures) and will take appropriate action to protect an employee when they raise a concern in good faith. Any harassment or victimisation of a whistleblower will be treated as a serious disciplinary offence which will be dealt with under the Disciplinary Procedure.

5.7. Support to Employees

5.7.1 An employee may wish to consider discussing their concerns confidentially with a colleague first and may find it easier to raise the matter if there are two (or more) employees who have had the same experience or share the same concerns.

5.7.2 An employee may discuss their concerns confidentially with their trade union representative. They may also invite their trade union or other representative to be present during any meetings or interviews in connection with the concerns they have raised.

5.7.3 Any employee making a qualifying disclosure under this Policy:

- will be given full support from senior management, and
- the Council will do all it can to help them throughout the investigation. This may include consideration of temporary redeployment for the period of the investigation, if appropriate or offer of support through the Council's Employee Assistance Programme.

5.7.4 Any employee thinking about raising a concern can refer to the guidance from the Government or ACAS for further information and obtain confidential advice from Protect (formerly Public Concern at Work).

6. Whistleblowing by Contractors, service users, members of the public etc.

6.1 Who should concerns be raised with?

Under this Policy consultants, contractors, sub-contractors who are engaged in work for the Council, volunteers, Councillors, anyone who uses the Council's services or a member of the public can still contact the Council to report any concerns or disclosures of wrongdoing. They should raise concerns through the Council's confidential reporting email cst.whistleblowing@derbyshire.gov.uk which is managed by the Council's Internal Audit. The Assistant Director of Finance (Audit) in conjunction with the Monitoring Officer will determine who the concerns should be referred to for consideration under this Policy. This may be:

- a) the relevant Executive Director, Director or other senior manager;
- b) the Monitoring Officer (where (a) is inappropriate (e.g. it is believed Elected Members or senior management are involved); or
- c) if the concern is regarding financial irregularities or fraud, the Assistant Director of Finance (Audit).

6.2 Protection and Support

The protection under the PIDA 1998 does not extend to disclosures made by those who are not County Council employees. For those who are not County Council employees, the Council will endeavour to provide appropriate advice and support wherever possible.

7. How to raise a concern

7.1 Concerns should be raised in writing and an online form is available. The Council is committed to ensuring that its services are accessible to all and reasonable adjustments will be made to enable those with protected characteristics to utilise this process. If an individual wishes to have a confidential conversation prior to submitting their concern or requires support to do so, they can telephone Internal Audit on 01629 533334, when they can speak in confidence with a designated audit officer. The earlier a concern is raised, the easier it will be for the Council to take action. Any person reporting a concern should provide as much information as possible, including:

- their name and contact details;
- who the concerns relate to;
- full details on the nature of the alleged wrongdoing and why it is believed to be true;

- evidence in support (including copies of any documents, dates and information relating to relevant events);
- whether the concerns have already been raised and the outcome.

7.2 It is not expected that the individual proves their suspicions beyond doubt, however they will need to demonstrate that they have a genuine concern relating to suspected wrongdoing or malpractice within the Council and there are reasonable grounds for that concern.

8. Confidentiality

8.1 All concerns will be treated in confidence and every effort will be made not to reveal identity of the individual raising concerns, if that is their wish. However, in order to ensure an employee making a qualifying disclosure is given full support from senior management an appropriate senior manager will need to be notified they have raised a whistleblowing concern. In addition, it is recognised that if disciplinary or other proceedings follow the investigation, it may not be possible to take action without the individual who has raised concerns coming forward as a witness.

8.2 Whistleblowing concerns will be shared with the Head of Paid Service, Chief Finance Officer and Monitoring Officer (unless about them and it leads to a conflict of interest). This is to ensure they are able to perform their statutory functions.

9. Anonymous Allegations

9.1 The Council recognises that there may be circumstances where individuals are worried about being identified when they report concerns, particularly where they are an employee. However, this Policy encourages individuals to put their name to an allegation wherever possible as we believe that open or confidential whistleblowing is the best means of addressing the concerns and protecting individuals. Where an individual does not provide their name, it will be much more difficult for the Council to support and protect their position or to give them feedback. It will also be more difficult for the individual to qualify for protection under the PIDA 1998. This is because there would be no documentary evidence linking them to the disclosure for the Employment Tribunal to consider.

9.2 In addition concerns expressed anonymously are more difficult to investigate, and harder to substantiate. Anonymous allegations will be considered at the discretion of the Monitoring Officer in conjunction with the Assistant Director of Finance (Audit) taking into account the following factors:

- the seriousness of the issues raised;

- the credibility of the concern;
- the same or similar concerns being received; and
- the likelihood of confirming the allegations from other credible sources.

9.3 Where anonymous allegations are investigated, the individual may seek feedback through a telephone appointment or by using an anonymised email address. A reference will be provided to the individual reporting concerns to ensure safeguards are in place to ensure feedback is given to them and not a third party.

10. Untrue Allegations

10.1 If an allegation is made which is found to be frivolous, vexatious, malicious or for personal gain, the Council may take appropriate action that could include disciplinary action.

11. How the Council will respond

11.1 The Council will endeavour to respond to concerns raised as quickly as possible. If a name and contact details have been provided, an acknowledgement will be sent within 5 working days of the concerns being received.

11.2 In order to be fair to all employees, including those who may be wrongly or mistakenly accused, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The over-riding principle for the Council will be the public interest.

11.3 Where appropriate, the concerns raised may be:

- investigated by management, by Internal Audit, or through the disciplinary process;
- referred to the Police;
- referred to the external auditor;
- the subject of an independent inquiry;
- resolved by agreed action without the need for investigation; or
- deemed not to be sufficient to warrant an investigation.

11.4 Disclosures for which there are other specific procedures (for example, child protection, safeguarding or discrimination issues) will normally be referred for consideration under those procedures.

11.5 If a name and contact details have been provided, the person to whom the concerns are referred will within 20 working days of a concern being received, confirm in writing:

- what initial enquiries have been made;
- where there is to be no further investigation, the reasons why;
- whether the concerns needs to be dealt with under a different procedure and how they will be referred;
- where there is to be further action:
 - how the matter is going to be dealt with;
 - an estimate of how long it will take to provide a final response;
 - employee support mechanisms (where appropriate).

11.6 It is recognised that the individual who raised concerns will need to be assured that the matter has been properly addressed. Therefore, subject to legal and data protection constraints, they will be informed of the outcome of any investigation. However, the need for confidentiality may prevent the Council providing specific details such as any disciplinary action taken or in relation to an ongoing criminal investigation.

12. How the Matter Can Be Taken Further

12.1 This Policy is intended to provide an avenue within the Council to raise concerns. The Council hopes any individuals who raise concerns will be satisfied with any action taken. If they are not, and they feel it is right to take the matter outside the Council, the following may be contacted:

- the Council's External Auditor;
- the trade union;
- the police;
- the Local Government and Social Care Ombudsman;
- the independent charity Protect (formerly Public Concern at Work);
- other relevant bodies prescribed by the Public Interest Disclosure (Prescribed Persons) Order 2014 as amended.

12.2 If concerns are raised outside the Council it should be to one of these prescribed contacts. A public disclosure to anyone else could take an individual outside the protection of the PIDA 1998 and of this Policy.

12.3 Information that is confidential to the Council or to anyone else, such as a client or contractor of the Council, should only be shared with those included in the above list of prescribed contacts.

12.4 This Policy does not prevent an individual from taking their own independent legal advice.

13. The Responsible Officer

13.1 The Monitoring Officer has overall responsibility for the maintenance and operation of this Policy.

14. Corporate Recording and Monitoring

14.1 The Monitoring Officer will maintain a corporate register containing all concerns that are brought to his/her attention. All officers and Elected Members to whom concerns are raised under this Policy must forward them to the Council's confidential reporting email cst.whistleblowing@derbyshire.gov.uk to enable them to be not only dealt with in accordance with this Policy but also to ensure details can be included in the corporate register.

14.2 The Monitoring Officer will review the corporate register and produce an annual report for the Governance, Ethics and Standards Committee which is responsible for the overview of this Policy.