

AGENDA ITEM NO.

ISLE OF ANGLESEY COUNTY COUNCIL	
Report to	The Executive & Full Council
Date	Executive 17 February 2014 Full Council 27 February 2014
Subject	Whistleblowing Policy
Portfolio Holder(s)	Councillor Alwyn Rowlands
Lead Officer(s)	Head of Function (Council Business)/Monitoring Officer Lynn Ball
Contact Officer	Awena Parry (x2563)
Nature and reason for reporting	
<p>1.1 To seek approval to update the Whistleblowing Policy in accordance with the Enterprise and Regulatory Reform Act 2013 (“legislation”).</p> <p>1.2 The Executive is asked to make a recommendation for the full Council regarding the approval of the changes.</p>	

A – Introduction / Background / Issues
<p>The key changes made to whistleblowing as a result of the enactment are as follows:-</p> <p>2.1 Only qualifying disclosures made “in the public interest” will be protected. Employees will have to show that they “reasonably believe” that the disclosure they are making is in the “public interest”. It will be for the courts and tribunals to decide how this is to be interpreted.</p> <p>2.2 Removal of the requirement for the disclosure to be made “in good faith” in order to be protected.</p>

B – Other General Amendments Made
<p>3.1 Other than the statutory changes to the policy, we also suggest the following amendments:</p> <p>a) Clarification about what constitutes a “qualifying disclosure” i.e. when a legitimate whistleblower is entitled to the statutory protection.</p> <p>b) Clarification on when an individual would not be entitled to statutory protection, e.g. when raising a general grievance.</p>

c) Details on when the policy and procedures will be reviewed and by whom.

The changes are shown in the tracked version of the Whistleblowing Policy, attached to this Report.

C - Considerations

4.1 The amendments are required to bring the policy in line with updated legislation.

4.2 The other amendments, which clarify the definition of whistleblowing, will assist employees to understand when the policy applies and when it does not. This should help employees (and managers and advisors) in following the appropriate procedure.

C – Implications and Impacts

1	Finance / Section 151	
2	Legal / Monitoring Officer	The Monitoring Officer commissioned the Report and is co-author
3	Human Resources	
4	Property Services (see notes – separate document)	N/A
5	Information and Communications Technology (ICT)	N/A
6	Equality (see notes – separate document)	These changes will not have a differential impact on any of the groups protected under the Equality Act 2010.
7	Anti-poverty and Social (see notes – separate document)	N/A
8	Communication (see notes – separate document)	N/A
9	Consultation (see notes – separate document)	N/A
10	Economic	N/A
11	Environmental	N/A

C – Implications and Impacts		
	(see notes – separate document)	
12	Crime and Disorder (see notes – separate document)	N/A
13	Outcome Agreements	N/A

CH – Summary
To make the changes to the whistleblowing policy as shown on the appendix to this Report.

D - Recommendation
<p>To the Executive:-</p> <p>(i) We recommend that the Executive advise the Council on the proposed amendments to the Constitution.</p> <p>To the full Council:-</p> <p>(i) To make the changes in the policy as detailed in the Appendix to this report; and</p> <p>(ii) To authorise the Monitoring Officer to update the Constitution in accordance with the amendments.</p>

Name of author of report:

Job Title:

Date:

Appendices:
Amended version of Whistleblowing Policy

Background papers
No background papers.

5.5 Whistleblowing Policy

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5.5.1 Introduction

5.5.1.1 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.

5.5.1.2 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. It is recognised that certain cases will have to proceed on a confidential basis. This policy document makes it clear that staff can do so without fear of reprisals.

5.5.1.3 The policy has been discussed with the relevant trade unions and has their support.

5.5.2 Aims and Scope of this Policy

5.5.2.1 This policy aims to:

- provide avenues for you to raise concerns and where appropriate and subject to the advice of the Council's Monitoring Officer 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 the public interest.

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5.5.2.2 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.

5.5.2.3 That concern may be about something that:-

- is unlawful; or
- is against the Council's Constitution or policies; or
- falls below established standards or practice; or
- amounts to improper conduct

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5.5.3 Safeguards

5.5.3.1 Harassment or Victimization

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 take action to protect you when you raise a concern in the public interest.

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5.5.3.2 Confidentiality

The Council will do all that it is legally and practically able to do to protect your identity when you raise a concern and do not want your name to be disclosed. If, during the course of the investigation it becomes impossible for any legal or practical reason to continue to maintain your anonymity (for instance, if you are invited to give a statement to be used as evidence in proceedings), you will be informed of this, and the reasons, and you will be able to decide how you wish your complaint and your anonymity to continue to be treated. The Council will not compel you to do anything which would compromise your anonymity unless it has an absolute legal obligation to do so.

5.5.3.3 Anonymous Allegations

So that staff may receive protection from the Public Interest Disclosure Act 1998 employees are encouraged to put their name to allegations. (Further details of the protection that this Act provides to workers¹ making disclosures is set out in the Appendix to this Policy, and you are encouraged to read this document so that you understand the scope of this protection).

Concerns expressed anonymously are much less powerful, but they may be considered at the discretion of the Council's Monitoring Officer.

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

5.5.3.4 Untrue Allegations

If you make an allegation in the public interest, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make malicious or vexatious allegations, disciplinary action will be taken.

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5.5.4 How to raise a concern

¹ mirrors the terminology in the legislation

5.5.4.1 As a first step, you should normally raise concerns with your immediate manager or a more senior officer. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the alleged malpractice.

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5.5.4.2 In line with the recommendation of the Nolan Committee on Standards of Conduct in Local Government the Council has accepted that an officer should be entrusted with the duty of investigating staff concerns about propriety raised confidentially. If you feel that you do not wish to raise your concerns with your line manager, then you are encouraged to contact the Council's Monitoring Officer.

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5.5.4.3 Alternatively, you may wish to raise your concerns with the Chief Executive, or, in the case of financial impropriety, the Head of Function (Resources) or the Internal Audit Manager.

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5.5.4.4 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 reason 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.

5.5.4.5 The earlier you express the concern, the easier it is to take action.

5.5.4.6 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.

5.5.4.7 Advice and guidance on how matters of concern may be pursued can be obtained from :

The Monitoring Officer, Isle of Anglesey County Council, Council Offices, Llangefni, Ynys Môn LL77 7TW tel. 01248 752586; e.mail:lbxc@anglesey.gov.uk

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5.5.4.8 You may invite your trade union or professional association to raise a matter on your behalf.

5.5.5 How the Council will Respond

5.5.5.1 The action taken by the Council will depend on the nature of the concern. The matters raised may :

- be investigated internally
- be referred to the Police
- be referred to the external Auditor / Regulator
- form the subject of an independent inquiry

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5.5.5.2 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. 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.

5.5.5.3 Some concerns may be resolved by agreed action without the need for investigation.

5.5.5.4.1 Where you provide your name and address the Council will write to you as soon as possible and in any event within **3 working days**, to acknowledge that your concern has been received.

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5.5.5.4.2 Within **ten working days** of a concern being received, the Council will write to you:

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- indicating how it proposes to deal with the matter
- giving an estimate of how long it will take to provide a final response

5.5.5.5 Should you wish to raise concerns outside the Council, these are possible contact points –

- the Audit Commission Whistleblowing Hotline 020 7630 1019
- Unison Whistleblowing Hotline 0800 597 9750
- the Police, tel 01492 517171
- the independent charity "Public Concern at Work", tel 020 7404 6609
- T&G Union, 01248 672031
- T&G and GMB Unions, 01248 421762 Ext 22

5.5.5.6 If you are not satisfied with the Council's response and wish to take the matter further, you are advised to contact the [Auditor General, PIPA Officer, The Auditor General for Wales, 24 Cathedral Road, Cardiff CF11 9LJ, whistleblowing@wao.gov.uk](#), or The Local Government Ombudsman [for Wales, 1 Ffordd yr Hen Gae, Pencoed CF35 5LJ](#). You may also wish to seek independent legal advice on whether it is possible to seek [judicial review](#).

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5.5.5.7 Review and Monitoring

The policy and procedures will be reviewed jointly by the unions and management on an annual basis. Appropriate information about each investigated complaint will be forwarded to the relevant Service(s) immediately so that any remedial action can be undertaken.

Appendix to the Whistleblowing Policy

The Public Interest Disclosure Act 1998

When a worker discloses information relating to malpractice in their workplace, this is known as "whistleblowing".

The Public Interest Disclosure Act 1998 gives protection to whistleblowers and aims to encourage workers to disclose the information through appropriate internal channels first, rather than going directly to an outside person, such as a member of the media. The Act makes it relatively easy for a worker to disclose information to his or her employer and gain protection against dismissal or detriment and more difficult for a worker to disclose information externally, for example, to the media and gain the same protection.

The complex legal framework is based on six categories of malpractice, known as "qualifying disclosures" which must be disclosed in one of six specified ways in order to attract the protection of the Act. The definition of "worker" is unique to the Act and includes employees, certain independent contractors, agency workers, home workers, trainees and NHS workers but excludes non-executive directors, volunteers, police and the armed services.

Qualifying disclosures

A "qualifying disclosure" is the disclosure of any information which, in the reasonable belief of the worker, tends to show that one or more of the following "relevant failures" has occurred, is occurring, or is likely to occur:

- a criminal offence
- failure of a person's legal obligations
- miscarriage of justice
- danger to a person's health and safety
- damage to the environment
- concealment of any of the above

It is the reasonable belief of a worker that is important, rather than whether or not, for example, a criminal offence has actually occurred. The disclosure will only be a qualifying disclosure if the worker reasonably believed that the disclosure is "in the public interest".

What is a whistleblower?

A whistleblower is a person who raises a genuine concern relating to any of the above. If you have any genuine concerns related to suspected wrongdoing or danger affecting any of our activities (a whistleblowing concern) you should report it under this policy.

The policy does not apply in the following circumstances

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This policy should not be used for complaints relating to your own personal circumstances, such as the way you have been treated at work. In those cases you should use the grievance procedure or the anti-bullying and harassment policy, as appropriate. Concerns relating to the conduct of elected Members should be raised in accordance with the members' code of conduct. Further, this policy does not replace the Council's complaints procedure which is concerned with addressing complaints about council services.

If you are uncertain whether something is within the scope of this policy you should seek advice from the Monitoring Officer whose contact details are at the end of this policy.

If you have any concerns about a service provided by another organisation on behalf of the Council you should contact the service provider in the first instance.

Method of disclosure

A qualifying disclosure will only be protected by the Act if it is made in one of six ways. The first four are often termed "first level disclosures" as they give a whistleblower the highest level of protection under the Act:

- disclosures to the employer or other responsible person
- disclosures to a legal adviser
- disclosures to a Minister of the Crown
- disclosures to a person prescribed by the Secretary of State

The final two categories of disclosure set out the circumstances in which other disclosures, including those made to the media, may be protected:

- other disclosures which satisfy specific conditions listed in the Act
- disclosures of an exceptionally serious breach

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First level disclosures

Disclosure to employer or other responsible person

The only requirement is for the qualifying disclosure to be made to the employer in the public interest. "Employer" is given a wide scope and is likely to be any person having management responsibility over the worker.

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Disclosures to "other responsible persons" include those situations when a worker makes a disclosure which relates to a person other than the employer or to matters over which that other person has legal responsibility. For example, when a worker of an auditing firm raises a concern with the client in relation to a matter for which the client would be legally responsible.

Disclosure to a legal advisor

When a qualifying disclosure is made by a worker in the course of obtaining legal advice, it is covered by the Act.

Disclosure to a Minister of the Crown

Where a worker's employer is an individual or body appointed under any enactment by a Minister of the Crown, (e.g. NHS Trusts) then a disclosure will receive protection where it is made in good faith to a Minister of the Crown.

Disclosures to a person prescribed by the Secretary of State

The Act lists persons prescribed by the Secretary of State, and the purposes for which they are prescribed (e.g. the [Information Commissioner](#) or the Health and Safety Executive).

These persons will often be regulators of a particular industry.

Where a worker makes a qualifying disclosure in good faith to a prescribed person, in respect of a matter with which that person deals, and the worker reasonably believes that the information disclosed is substantially true, the worker will receive protection under the Act.

The test of whether or not a disclosure is "substantially true" remains one of a subjective nature. If the worker is mistaken, he or she will not lose this protection, provided it was a reasonable belief to hold.

This category of disclosure clearly forces a worker to meet a higher evidential burden than required for internal whistleblowing in the previous categories. However, this category still provides less restrictions than to other persons outside of the employing organisation, which are treated as second level disclosures.

The Act therefore encourages a worker who intends to make an external disclosure, to make it to a prescribed regulator rather than to an alternative external source such as the media. This is on the basis that the regulator has a statutory duty to investigate matters within its remit, confidentiality can be maintained and the regulator will not pay money for disclosures.

Second level external disclosures

Disclosures in other cases

This is a "catch all" category to cover other disclosures, including those to the media. These disclosures are protected if :

- the disclosure is made in [the public interest](#); and

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- the worker reasonably believes that the disclosure is substantially true; and
- the disclosure is not made for personal gain; and
- it is a reasonable disclosure to make; and
- one of the following preconditions is met.

the worker reasonably believes that she or he will be victimised if the concern were raised internally or to a prescribed regulator; or

where there is no suitable prescribed person, the worker reasonably believes that there will be a "cover up" if the concern is raised internally; or

the worker has previously raised the concern to his or her employer or to a prescribed person.

In summary, a disclosure must be made in the public interest and with a reasonable belief that the disclosure is one that falls within the public interest. Even then, one of the three preconditions must be met and the worker must have acted reasonably in making the disclosure.

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What is reasonable?

The test of reasonableness will only be satisfied if the worker has met one of the three preconditions. In deciding whether the worker has acted reasonably a Tribunal will have regard to the identity of the recipient, the seriousness of the concern, whether it is likely to continue or recur, confidentiality and the nature of the previous disclosure made. For example, if a serious concern had been raised internally beforehand and was met with an unsatisfactory response, a Tribunal is more likely to consider it reasonable that the worker took the further step of making a wider disclosure.

Disclosure of "exceptionally serious breaches"

The final type of protected disclosure covers situations where the subject matter is serious enough to merit bypassing one of the other procedures in the Act. In order to gain protection, the worker must show:

- that the disclosure is made in the public interest; and
- a reasonable belief that the information disclosed is substantially true; and
- the disclosure is not made for personal gain; and
- the matter disclosed is exceptionally serious in nature; and
- in all the circumstances, it is reasonable for him or her to make the disclosure

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The essential difference between this type of disclosure and the previous one is the absence of the 3 preconditions. It is sufficient for the worker to establish that the relevant failure is exceptionally serious in nature. "Reasonableness" in this category will depend on the identity of the person to whom the disclosure is made. The other factors listed for the previous type of disclosure may still be taken into account, but there is no expressed statutory requirement to do so.

Public Interest

A disclosure will not be a qualifying disclosure unless the worker reasonably believed that the disclosure was made in the public interest.

Complaints to Employment Tribunals

Complaints can be made to an Employment Tribunal for compensation for unfair dismissal or unlawful detriment based on a “protected disclosure” within three months of the dismissal or detriment, regardless of the age or length of service of the complainant.

A dismissal of a worker who has made a protected disclosure will be automatically unfair if the reason for the dismissal was that the worker made the protected disclosure. Examples of unlawful detriment might include refusing to promote the whistleblower or subjecting the whistleblower to disciplinary action. Threats of detrimental treatment are also unlawful.

There is no limit to the compensation that can be awarded for whistleblowing related to unfair dismissal or unlawful detriment. Compensation will be assessed on what is just and equitable in the circumstances having regard to the loss suffered by the worker. In addition, in the appropriate circumstances the Tribunal may provide interim relief such as reinstatement pending the hearing of the claim.

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A disclosure will be made in good faith if it is made honestly, even though it might be without due care. This requirement prevents disclosures which are made for an ulterior motive, such as blackmail, receiving protection under the Act.