

APPENDIX 1

CURRENT VERSION OF THE WHISTLEBLOWING POLICY

ADDITION TO THE CODE OF CONDUCT - WHISTLEBLOWING

THIS DOCUMENT EXPLAINS WHISTLEBLOWING, WHAT LEGAL PROTECTION IS GIVEN BY LAW, AND HOW CAERPHILLY COUNTY BOROUGH COUNCIL WILL DEAL WITH ISSUES RAISED BY EMPLOYEES.

1.0 INTRODUCTION

- 1.1 Sir Gordon Borrie QC defines whistleblowing as the disclosure by an employee (or professional) of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the workplace, be it of the employee or of his fellow employees.
- 1.2 Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not be prepared to 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 be a suspicion of malpractice.
- 1.3 It is recognised that to come forward and speak up can be difficult and place individuals in an awkward position. This policy recognises that some cases will have to proceed on a confidential basis. In addition, this policy makes it clear that employees can raise matters without fear of reprisals. The whole purpose of the policy is to provide a framework to enable staff to raise serious concerns within the Council rather than ignoring a problem.
- 1.4 The statutory protection for employees appears in the Public Interest Disclosure Act 1998. It protects employees against victimisation or dismissal provided that disclosure is made in accordance with the Act. It is important to stress that an employee can only make public disclosure in certain circumstances - there is no automatic right to "go public". What the Act says is set out in more detail later.

2. THE PUBLIC INTEREST DISCLOSURE ACT 1998

- 2.1 The Act gives protection for workers who make a "protected disclosure"
- a right not to be victimised because a protected disclosure has been made
 - a right not to be dismissed or selected for redundancy because of having made a protected disclosure
- 2.2 What is a protected disclosure? There are two things that have to be satisfied:-
- (a) the disclosure must be of a certain type of information (called a "qualifying disclosure") and
 - (b) the disclosure must be made in a way which is described in the Act.
- (a) A qualifying disclosure:

This is a disclosure of information which in the reasonable belief of the worker making the disclosure tends to show one or more of the following:-

- a criminal offence
- that there is a failure to comply with a legal obligation
- miscarriage of justice
- that the health or safety of any individual is endangered
- damage to the environment
- deliberate concealment of any of the above

(b) The manner of disclosure:

The Act says that a disclosure to one of the following persons is protected provided that it is made in good faith.

- to the employer (and a list is set out later in this document about how that can be done)
- if the complaint is about someone else not employed by the Council, to that person's employer
- if it is about an issue where another person or body (not the Council) is responsible for the issue then disclosure can be made to that other person or body
- to anybody else authorised by the Council (the list later in this document sets out who that is)
- for certain specific types of malpractice to an outside regulator. The appendix to this policy sets out that list and the matters which may be referred to them. (Here, you must also reasonably believe that the information you are disclosing is substantially true).

(c) Public disclosure:

The employee is protected in making a public disclosure if these things are satisfied:-

- the disclosure is made in good faith
- the employee believes that the information is substantially true
- the disclosure is not made for the purposes of personal gain
- that the employee believes that he or she will be subjected to victimisation by the employer if a disclosure is made to the employer **or** that evidence relating to the matter being complained about will be concealed or destroyed if a disclosure is made to the employer **or** that a previous disclosure has been made to the employer
- in all the circumstances of the case it is reasonable for the disclosure to be made (the legislation says that regard has to be had to the identify of the person to whom the disclosure is made, the seriousness of the failure, whether the failure is continuing, whether the disclosure is made in breach of a duty of confidentiality owed to a third party, any action which an employer has taken or might reasonably be expected to have taken, or whether the employee complied with any internal procedure for disclosures

3.0 AIMS AND SCOPE OF THIS POLICY

3.1 This policy is applicable to all employees and will:-

- * provide avenues for employees to raise concerns and receive feedback on any action taken;
- * allow employees to take matters further if they are dissatisfied with the Council's response;
- * reassure employees that they will be protected from reprisals or victimisation for whistleblowing in good faith.

3.2 This policy is intended to cover concerns that fall outside the scope of other existing procedures.

3.3 There are a few areas highlighted by the Public Interest Disclosure Act. These include:-

- * criminal offences or breach of any statutory requirement or legal obligation;
- * improper or unauthorised use of public or other funds;
- * abuse of authority;
- * miscarriage of justice;
- * maladministration;
- * action that is against that laid down in the appropriate professional codes of conduct;
- * danger to the health or safety of any individual or the environment.

This list is not exhaustive, but it is indicative of the 'kind' of misconduct or malpractice that would be covered and as regards the Council may include:-

- * is unlawful; or
- * is against the Council's Standing Orders or policies; or
- * falls below established standards or practices; or
- * amounts to improper conduct.

4.0 SAFEGUARDS

4.1 Harassment or Victimisation

4.1.1 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 employees when matters are raised in good faith. Anyone who victimises an employee as a result of their raising a concern under this policy, will be

dealt with under the Council's disciplinary procedure.

- 4.1.2 If an employee, who raises the concern, is already the subject of disciplinary or redundancy procedures, then that action will be reviewed to see if there is any link between the whistleblowing and the decisions in the disciplinary or redundancy procedures. This review may decide that the action taken should continue because there is no link, or that matters should be put 'on hold' whilst the concerns raised by the employee are investigated.

4.2 Confidentiality

- 4.2.1 The Council will do its utmost to protect the identity of employees when they raise a concern and do not want their name disclosed. If after investigation, the Council considers that the concern is justified, and if it is unable to proceed without the evidence of the employee it will discuss with you how it can best proceed.

4.3 Untrue Allegations

- 4.3.1 If an allegation is made in good faith, but it is not confirmed by the investigation, the matter will be closed and no further action taken. If, however, the investigation shows that untrue allegations were malicious and/or vexatious, then disciplinary action may be taken.

5.0 RAISING A CONCERN

- 5.1 As a first step, an employee should normally raise concerns with the immediate manager, their Supervisor or Director. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the malpractice. The earlier that concerns are expressed, the easier it is to take action. Alternately, employees may approach the Human Resources Service Manager (Customer Services) or Human Resources Service Manager (Strategy and Operations), in complete confidence, who will take the appropriate action.

- 5.2 However, if the concerns involve management or the employee chooses to they can approach, the most appropriate of:-

*	Chief Executive	Anthony O'Sullivan	OSULLA @Caerphilly.gov.uk	01443 864410
*	Deputy Chief Executive	Nigel Barnett	BARNEN @Caerphilly.gov.uk	01443 864419
*	Monitoring Officer	Daniel Perkins	PERKID @Caerphilly.gov.uk	01443 863142
*	Head of Corporate Finance (S151 Officer)	Nicole Scammell	SCAMMN @Caerphilly.gov.uk	01443 863022
*	Trade Union Representative			
*	Professional Association			

- 5.3 This policy encourages employees to put their name to any concerns raised. Concerns are better raised in writing and employees are invited to set out the background and history of the concern, giving names, dates and places where possible and the reasons why there are concerns. However, if an employee feels unable to put concerns in writing, they can telephone or seek an interview with the appropriate officer in the first instance.
- 5.4 Although an employee is not expected to prove the truth of any allegation, in determining what action to take, the person contacted will assess whether there are sufficient grounds for the Council to act. In doing so, the Council will take into account:-
- * the seriousness of the issues raised;
 - * the credibility of the concern; and
 - * the likelihood of confirming the allegation from attributable sources.

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

- * Head of Workforce and Organisation Development Gareth Hardacre HARDAG@Caerphilly.gov.uk 01443 864309
- * Trade Union representative
- * Public Concern at Work 020 7404 6609

This is a legal advice centre and independent charity which gives independent and practical advice on how to raise concerns in the most constructive way. The Council makes a contribution to the charity for the provision of this service, but the charity and its advice are entirely independent of the Council and are not influenced in any way by the Council.

6.0 HOW THE COUNCIL WILL RESPOND

- 6.1 The action taken by the Council will depend on the seriousness of the concern. The matters raised may:-
- * be investigated internally by the appropriate manager;
 - * be referred to the Police if there is evidence of a criminal offence;
 - * be referred to the External Auditor if there is evidence of financial impropriety;
 - * form the subject of an independent external or internal enquiry.
- 6.2 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 and allegations which fall within the scope of existing procedures will normally be referred for consideration under those procedures.

- 6.3 Some concerns may be resolved by agreed action without the need for investigation.
- 6.4 Within ten working days of a concern being received, the Council will respond by:-
- * acknowledging that the concern has been received;
 - * indicating how it intends to deal with the matter;
 - * giving an estimate of how long it will take to provide a final response;
 - * telling the employee whether any initial enquiries have been made; and
 - * telling employees whether further investigations will take place and if not, why not.
- 6.5 If necessary, further information will be sought from the employee. Where any meeting **is** arranged, employees have the right to be accompanied by a Trade Union or Professional Association representative or a friend who is not involved in the area of work to which the concern relates.
- 6.6 The Council will take steps to minimise any difficulties which employees may experience as a result of raising a concern. For example, if an employee is required to give evidence in criminal or disciplinary proceedings, the Council will provide support and advice on procedure, etc.
- 6.7 The Council accepts that employees need to be assured that the matter has been properly addressed. Therefore, subject to legal constraints and any necessary confidentiality issues, employees will receive information on the outcome of any investigations.
- 7.0 RESPONSIBLE OFFICER**
- 7.1 The Council's Standards Committee acting through the Monitoring Officer has overall responsibility for the maintenance and operation of this policy. All documentation relating to any concerns that have been raised will be lodged with the Monitoring Officer for safe keeping. That officer will maintain a record of concerns raised and the outcomes (but in a form which does not endanger confidentiality) and will report as necessary to the Council's Standards Committee in a confidential format.

July 2001 (revised June 2012)