

CAERPHILLY COUNTY BOROUGH COUNCIL

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
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* Trade Union representative

*	Public Concern at Work	020 7404 6609
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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)

PREScribed PERSONS UNDER THE PUBLIC INTEREST DISCLOSURE ACT

<i>Persons and descriptions of people</i>	<i>Descriptions of matters</i>
Accounts Commission for Scotland and auditors appointed by the Commission to audit the accounts of local government bodies.	The proper conduct of public business, value for money, fraud and corruption in local government bodies.
Audit Commission for England and Wales and auditors appointed by the Commission to audit the accounts of local government, and health service, bodies.	The proper conduct of public business, value for money, fraud and corruption in local government, and health service, bodies.
Certification Officer.	Fraud, and other irregularities, relating to the financial affairs of trade unions and employers' associations.
Charity Commissioners for England and Wales.	The proper administration of charities and of funds given or held for charitable purposes.
The Scottish Ministers.	The proper administration of charities and of funds given or held for charitable purposes.
Chief Executive of the Criminal Cases Review Commission.	Actual or potential miscarriages of justice.
Chief Executive of the Scottish Criminal Cases Review Commission.	Actual or potential miscarriages of justice.
Civil Aviation Authority.	Compliance with the requirements of civil aviation legislation, including aviation safety.
The competent authority under Part IV of the Financial Services and Markets Act 2000. [3]	The listing of securities on a stock exchange; prospectuses on offers of transferable securities to the public.
Commissioners of Customs and Excise.	Value added tax, insurance premium tax, excise duties and landfill tax. The import and export of prohibited or restricted goods.
Commissioners of the Inland Revenue.	Income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, stamp duties, national insurance contributions, statutory maternity pay, statutory sick pay, tax credits, child benefits, collection of student loans and the enforcement of the national minimum wage.
Comptroller and Auditor General of the National Audit Office.	The proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally-funded public services.
Auditor General for Wales.	The proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services.
Auditor General for Scotland and persons appointed by or on his behalf under the Public Finance and Accountability (Scotland) Act 2000 [4] to act as auditors or examiners for the purposes of sections 21 to 24 of that Act.	The proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services.

<i>Persons and descriptions of people</i>	<i>Descriptions of matters</i>
Audit Scotland.	The proper conduct of public business, value for money, fraud and corruption in public bodies.
Director General of Electricity Supply.	The generation, transmission, distribution and supply of electricity, and activities ancillary to these matters.
Director General of Gas Supply.	The transportation, shipping and supply of gas through pipes, and activities ancillary to these matters.
Director General of Telecommunications.	The provision and use of telecommunications systems, services and apparatus.
Director General of Water Services.	The supply of water and the provision of sewerage services.
Water Industry Commissioner for Scotland.	The supply of water and the provision of sewerage services.
Director of the Serious Fraud Office.	Serious or complex fraud.
Lord Advocate, Scotland.	Serious or complex fraud.
Environment Agency.	Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment, including those relating to pollution, abstraction of water, flooding, the flow in rivers, inland fisheries and migratory salmon or trout.
Scottish Environment Protection Agency.	Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment, including those relating to flood warning systems and pollution.
Food Standards Agency.	Matters which may affect the health of any member of the public in relation to the consumption of food and other matters concerning the protection of the interests of consumers in relation to food.
Financial Services Authority.	The carrying on of investment business or of insurance business; the operation of banks and building societies, deposit-taking businesses and wholesale money market regimes; the operation of friendly societies, benevolent societies, working men's clubs, specially authorised societies, and industrial and provident societies; the functioning of financial markets, investment exchanges and clearing houses; money laundering, financial crime, and other serious financial misconduct, in connection with activities regulated by the Financial Services Authority.

<i>Persons and descriptions of people</i>	<i>Descriptions of matters</i>
General Social Care Council.	Matters relating to the registration of social care workers under the Care Standards Act 2000[5].
Care Council for Wales.	Matters relating to the registration of social care workers under the Care Standards Act 2000.
Scottish Social Services Council.	Matters relating to the registration of the social services workforce by the Scottish Social Services Council.
Children's Commissioner for Wales.	Matters relating to the rights and welfare of children.
Health and Safety Executive.	Matters which may affect the health or safety of any individual at work; matters, which may affect the health and safety of any member of the public, arising out of or in connection with the activities of persons at work.
Housing Corporation.	The registration and operation of registered social landlords, including their administration of public and private funds and management of their housing stock.
Local authorities which are responsible for the enforcement of health and safety legislation.	Matters which may affect the health or safety of any individual at work; matters, which may affect the health and safety of any member of the public, arising out of or in connection with the activities of persons at work.
Information Commissioner.	Compliance with the requirements of legislation relating to data protection and to freedom of information.
Scottish Information Commissioner.	Compliance with the requirements of legislation relating to freedom of information.
National Care Standards Commission.	Matters relating to the provision of regulated care services, as defined in the Care Standards Act 2000.
National Assembly for Wales.	Matters relating to the provision of social care services liable to be registered or inspected under the Care Standards Act 2000 or the Children Act 1989[6]. The registration and operation of registered social landlords, including their administration of public and private funds and management of their housing stock.
Scottish Commission for the Regulation of Care.	Matters relating to the provision of care services, as defined in the Regulation of Care (Scotland) Act 2001[7].
Occupational Pensions Regulatory Authority.	Matters relating to occupational pension schemes and other private pension arrangements.

<i>Persons and descriptions of people</i>	<i>Descriptions of matters</i>
Office of Fair Trading.	Matters concerning the sale of goods or the supply of services, which adversely affect the interests of consumers. Competition affecting markets in the United Kingdom.
Rail Regulator.	The provision and supply of railway services.
Standards Board for England.	Breaches by a member or co-opted member of a relevant authority (as defined in section 49(6) of the Local Government Act 2000[8]) of that authority's code of conduct.
Local Commissioner in Wales.	Breaches by a member or co-opted member of a relevant authority (as defined in section 49(6) of the Local Government Act 2000) of that authority's code of conduct.
Standards Commission for Scotland and the Chief Investigating Officer.	Breaches by a councillor or a member of a devolved public body (as defined in section 28 of the Ethical Standards in Public Life etc. (Scotland) Act 2000[9]) of the code of conduct applicable to that councillor or member under that Act.
Treasury.	The carrying on of insurance business.
Secretary of State for Trade and Industry.	Fraud, and other misconduct, in relation to companies, investment business, insurance business, or multi-level marketing schemes (and similar trading schemes); insider dealing. Consumer safety.
Secretary of State for Transport.	Compliance with merchant shipping law, including maritime safety.
Local authorities which are responsible for the enforcement of consumer protection legislation.	Compliance with the requirements of consumer protection legislation.
Local authorities which are responsible for the enforcement of food standards.	Compliance with the requirements of food safety legislation.
A person ("person A") carrying out functions, by virtue of legislation, relating to relevant failures falling within one or more matters within a description of matters in respect of which another person ("person B") is prescribed by this Order, where person B was previously responsible for carrying out the same or substantially similar functions and has ceased to be so responsible.	Matters falling within the description of matters in respect of which person B is prescribed by this Order, to the extent that those matters relate to functions currently carried out by person A.