

Whistleblowing Policy and procedure

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Created by	Operational Benefits & Corporate Fraud manager	Chris Corker	Adopted Date	1/11/2022	Version	3
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Whistleblowing Policy and Procedure

Introduction

1. This policy seeks to provide a process that gives anyone with a concern about the Council the confidence to bring that concern to our attention.
2. The Council operate within legal requirements and regulations and expects its employees to co-operate in this by adhering to all laws, regulations, policies and procedures. Any employee becoming aware of inappropriate conduct is obliged and encouraged to report this activity. This policy also applies to contractors, consultants, partners, agency staff, volunteers and other stakeholders including Councillors.
3. All Organisations face the risk of things going wrong or of unknowingly harbouring malpractice. We have a duty to identify and take measures to remedy malpractice. 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. Other stakeholders are also in a position to identify concerns that affect Council services that may need to be addressed.
4. By encouraging a culture of openness within our organisation we believe we can prevent malpractice before it happens. We want to encourage you to raise issues which concern you at work.
5. Individuals with a concern may fear that they will be victimised or harassed if they raise the concern. In these circumstances it may feel easier to ignore the concern rather than report what may be a suspicion of malpractice.
6. Such fears are understandable, this policy is therefore developed to provide you with the information about the protections offered by the Public Interest Disclosure Act 1998 (PIDA) as well as a process by which you may raise your concerns.
7. 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, when those disclosures are made in accordance with the Act's provisions and in the public interest. The Act 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.

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The areas Whistleblowing covers

8. There are existing procedures in place to enable staff to raise a grievance about their own employment, customers are able to use the complaints procedure and there is a member Code of Conduct for concerns over Councillors. The whistleblowing policy is intended to cover concerns that fall outside these issues and this policy should not be used for such matters however if you have any doubts about the use of this policy speak to either your line manager or officers listed in this policy.

Areas that will be of concern may be about:

- Conduct which is an offence or a breach of law
- Unauthorised use of public funds
- A miscarriage of justice has occurred,
- Health and safety risks including risks to the public as well as employees
- The environment has been, is being or is likely to be damaged
- Action that is against standing orders or procurement code
- Action that is contrary to the councils financial regulations

The Procedure

9. **Tell your line manager.** If you are concerned about any form of malpractice you should normally first raise the issue with your line manager. There is no special procedure for doing this, simply tell them about the problem or put it in writing if you prefer.
10. At whatever level you raise the issue, you should declare whether you have a personal interest in the issue at the outset. If your concern falls more properly within the grievance procedure your manger will tell you.
11. **If you feel unable to tell your line manager.** In this case you should raise the issue with a more senior manager or you can raise your concerns with one of the following:

Operational Benefits & Corporate Fraud Manager	Ext 8598
HR & OD Manager	Ext 8095
Head of Legal & Governance and HR (Monitoring officer)	Ext 8292
Head of Corporate Finance (Responsible Financial Officer)	Ext 8263

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12. If you are an elected member who have had concerns brought to their attention, then you should raise those concerns with the Monitoring Officer in the first instance.

Roles and Responsibilities

13. Investigations should be undertaken by appropriate officers with diligence and expertise and be appropriate. The corporate fraud team and HR & OD will jointly ensure that investigations are timely and effective, and by someone with the relevant skills and experience.

14. The monitoring officer will lead on allegations relating to councillors.

15. In all contracts of employment there is an implied understanding of mutual trust and confidence between employer and employee. All employees therefore have a responsibility to raise concerns about work and they may do so in accordance with this policy or through the grievance policy.

16. After you have raised your concern we will decide how to respond in a responsible and appropriate manner. Usually this will involve making internal enquiries first but it may be necessary to carry out an investigation at a later stage which may be formal or informal depending on the nature of the concern raised.

17. If you have raised a concern we will, as far as possible, keep you informed of the decisions taken and the outcome of any enquiries and investigations carried out. However, we will not be able to inform you of any matters which would infringe our duty of confidentiality to others.

Raising your concern externally

18. In all but the most exceptional of circumstances concerns about malpractice should be raised internally.

19. The purpose of this policy is to give you the opportunity and protection you need to raise your concerns internally without reporting the concern to external bodies. It is, therefore, expected that raising concerns internally will be the most appropriate action to be taken in almost all cases and so you must try to do so.

20. If, however, you feel you cannot raise your concerns internally the PIDA may afford you protection in relation to your disclosure but only if you are acting in the public interest. In such circumstances you may consider raising the

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matter with the police or appropriate regulator. If you take this route you may be required to demonstrate why you thought the normal internal procedure was not appropriate

21. You are strongly recommended to take advice before following this course of action as the PIDA only affords protection to whistleblowers in certain circumstances.
22. If you feel that the people within Crawley Borough Council with whom you could normally raise the issues with are parties to, or supportive of, the behaviour causing concern, you may report the matter to the chair Crawley Borough Council's Audit Committee or to representatives of our external auditors.
 - The chair of the Audit Committee
 - Our external auditors, Ernst & Young.
23. **Wider whistleblowing disclosures.** If you have good reason for not using the internal or regulatory disclosure procedures you might consider making a wider disclosure by reporting the matter to the media, or making a posting on the internet.

Please note, if you have not followed internal procedures, whistleblowing disclosures to the media or by other public disclosure will generally be considered to be an unreasonable course of action. Reporting your concerns for public circulation, even if you consider it to be in the public interest, before raising them in accordance with these procedures may result in disciplinary proceedings, which could lead to dismissal.

You are recommended to take legal advice before following this course of action though, as the PIDA only affords protection to whistleblowers in certain circumstances. In particular, no protection is given if the disclosure is made for personal gain.

Sources of advice. It is recommended that you obtain advice about whistleblowing and PIDA at an early stage if you intend to report malpractice. This is important so that you know the extent of the protection which will be provided to you under PIDA.

If you are a member of Unison (or other trade union) you may wish to seek advice about raising an issue from a trade union representative. You may wish to seek advice from Protect which is an independent charity set up to provide advice and guidance about whistleblowing issues.

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24. **Unproved or Untrue Allegations.** If an employee raises an allegation that is not subsequently confirmed by an investigation the whistleblower will have protection under this policy. If however you are found to have made allegations maliciously and/or not in the public interest, a disciplinary process may be instigated against you. This may result in your dismissal from Crawley Borough Council.

Supporting employees when an issue is raised

25. The Council is committed to this policy, if the policy is used to raise a concern in the public interest we give you our assurance that you will not suffer any form of retribution, victimisation or detriment as a result of your actions. In addition, the PIDA may provide you with legal protection in relation to your disclosures if you raise concerns in accordance with that Act.

26. Concerns will be treated seriously and actions taken in accordance with this policy. If you ask us to treat the matter in confidence we will do our utmost to respect your request. However, it is not possible to guarantee confidentiality. If we are in a position where we cannot maintain confidentiality and so have to make disclosures we will discuss this matter with you first.

Confidentiality

27. Employees are encouraged to raise concerns and to put their name to any allegation. The council will take appropriate action to protect an individual's identity when they do not want their name disclosed. However it must be appreciated there may be occasions when the investigation process may reveal the source of the information and a statement may be required as part of the evidence.

All concerns will be treated in confidence and every effort will be made not to reveal the identity of the person raising the concern.

If you not give your name we will not be able to give you any feedback. It may also prevent or stall an investigation if the information is limited and we are not able to ask further questions to progress the investigation.

Frequently asked questions

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28. Q I told my line manager a number of weeks ago that I believe that a colleague is misusing resources. Nothing seems to have happened since. What should I do?

A Speak with your line manager to ask how the investigation is progressing. If you feel that no or insufficient progress has been made you may consider speaking to the managers listed in section 4.

Q I believe that a colleague is stealing from Crawley Borough Council. How do I deal with this?

A This issue should be dealt with by using the whistleblowing procedure. You must, therefore, inform your line manager.

Q I believe that malpractice is happening within Crawley Borough Council and I am thinking of going to the press about it. What are the implications of this?

A You should try to exhaust all internal mechanisms for whistleblowing. You should be aware that going directly to the press may limit your protection under the Public Interest Disclosure Act (PIDA) and could be liable for dismissal. It is advised that you seek advice from your trade union, if you are a member, or contact Protect before taking this course of action.

Q What does PIDA do?

A PIDA protects workers who make a **protected disclosure** of information, concerning certain types of matters relating to their employment, from being dismissed or penalised by their employers as a result of the disclosure.

Q Who may claim the protection of PIDA?

A Members of staff (CBC staff, councillors & contractors) are **workers** within the definition contained in PIDA and may make a qualifying disclosure of information if they reasonably believe that the disclosure would tend to show that Crawley Borough Council is involved in a **relevant failure**.

Q What disclosures are protected?

A Not all disclosures of information are protected by PIDA. Protection only arises in relation to **protected disclosures**. **Protected disclosures** are:

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- **qualifying disclosures** (defined below) made to an appropriate party; and
- made in accordance with the differing conditions for disclosure applying to each different type of recipient of the information.

A qualifying disclosure is:

Any disclosure of information which, *in the reasonable belief of the worker making the disclosure is made in the public interest*, tends to show one or more of the following.

- (a) That a criminal offence has been committed, is being committed or is likely to be committed;
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- (c) That a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) That the health and safety of an individual has been, is being or is likely to be endangered;
- (e) That the environment has been, is being or is likely to be damaged; or
- (f) That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

PIDA refers to those matters covered by (a) to (f) above as **relevant failures**.

A disclosure will not be a qualifying disclosure if the person making it commits an offence in making the disclosure.

Q To whom may a disclosure be made?

A A protected disclosure may be made to one of five types of recipients, these are:

- the worker’s employer;
- a legal adviser;
- a minister of the Crown (in certain circumstances);
- a regulatory body
- a third party (e.g. the media)

The circumstances in which disclosures may be made vary depending upon the intended recipient of the information.

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To be protected by PIDA, a worker wishing to make a disclosure must make sure s/he reasonably believes that the disclosure tends to show a **relevant failure** and s/he must make the disclosure in the public interest.

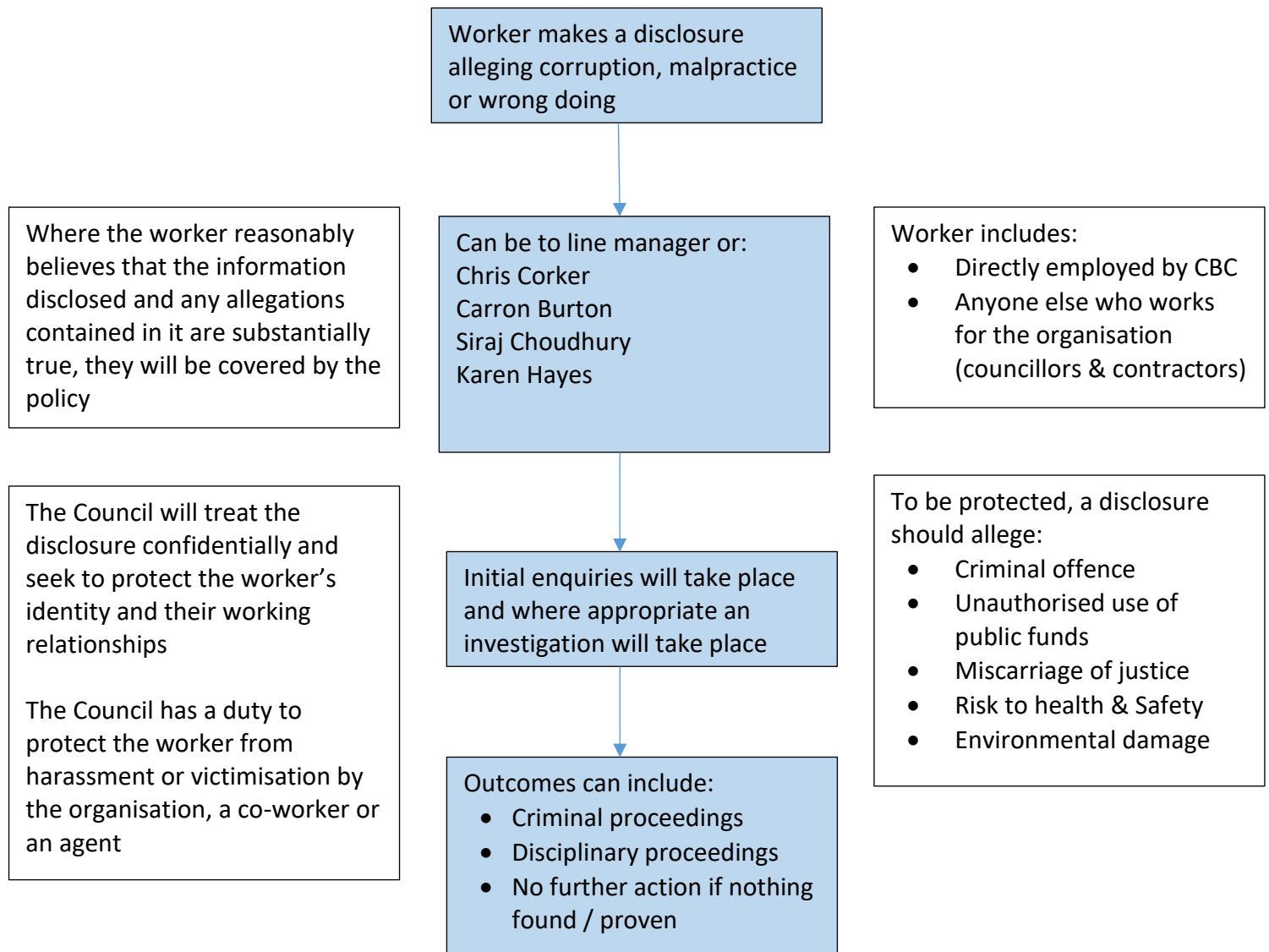
You may need independent legal advice to direct you in understanding this legislation.

Resources

29. For more information on whistleblowing and related legislation visit Protect: www.protect-advice.org.uk

If you need independent advice about whistleblowing issue you can telephone Protect on 020 3117 2520 or complete a call back form at www.protect-advice.org.uk/contact-protect-advice-line

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