

Whistleblowing Policy and Guidance for those wishing to report concerns

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Whistleblowing Policy

1. Introduction

- 1.1 Swindon Borough Council is committed to the highest possible standards of honesty, openness and accountability and will not tolerate malpractice or wrongdoing.
- 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 and/or members of the public to come forward and raise both disclosures and serious allegations of wrongdoing involving the actions of the Council's employees, its Councillors, contractors or any aspect of the Council's activities.
- 1.3 As such the Council is committed to a policy which seeks to protect those individuals who make certain disclosures with regard to any instance of malpractice or wrongdoing and to investigate them in the public interest.
- 1.4 Whistleblowing is generally the term used when someone who is employed in an organisation reports a concern about suspected wrongdoing, malpractice, illegality or risk in the workplace.

This can include:

- criminal offences;
 - failure to comply with a legal duty;
 - miscarriages of justice;
 - fraud or corruption;
 - abuse of authority;
 - serious breaches of Council policy or procedure;
 - unethical conduct and actions deemed unprofessional or inappropriate; This could include breaches of regulations requiring school governors to 'act with integrity, objectivity and honesty and in the best interests of the school' and breaches of the 'Nolan Principles' which are the basis of ethical standards expected of public office holders (Appendix B);
 - the health and safety of any individual has been, or is likely to be, endangered;
 - the environment has been, is being or is likely to be, damaged (as a result of the Council's actions or inactions); and
 - information about any of the above has been, is being, or is likely to be, deliberately concealed.
- 1.5 This policy seeks to set out how the Council will handle and respond to serious allegations of perceived wrongdoing irrespective of whether the

individual raising the concern is employed by Swindon Borough Council or not.

2. Aims and Scope

- 2.1 Our whistleblowing policy seeks to cover all disclosures and allegations made by employees of Swindon Borough Council, including temporary and agency staff and those employed in community schools, community special schools, voluntary controlled schools and maintained nursery schools.
- 2.2 It also extends to any other individual who wants to raise an allegation of perceived wrongdoing. This could include consultants, contractors, sub-contractors who are engaged in work for the Council or anyone who uses the Council's services or any member of the public.
- 2.3 This policy has specific sections to advise those employed by Swindon Borough Council, school based staff and members of the public of the process to be followed when raising a disclosure or allegation and how the Council will respond.
- 2.4 The policy seeks to:
- provide for a culture of zero tolerance toward fraud and corruption and deter wrongdoing;
 - 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;
 - raise concerns 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;
 - provide safeguards to reassure 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;
 - set out how the Council will respond to allegations made and enable them to get feedback on any action taken;
 - ensure that employees know what to do if they are not satisfied with actions taken.
- 2.5 The whistle-blowing policy is intended to be used where the concerns fall outside other existing Council procedures. There are existing Council procedures which enable employees to lodge a grievance relating to their conditions of employment, raise matters of harassment or to make a general complaint, which by contrast, generally have no additional public interest dimension.
- 2.6 This whistleblowing policy covers concerns that fall outside the scope of those existing internal procedures. Equally, where allegations are made through the

above procedures which raise serious concerns over wrongdoing, the Council will address these under the whistleblowing process. Further, where a whistleblowing disclosure overlaps with or includes HR/employment issues or policies, the Chief Legal Officer will determine during their initial assessment whether it is appropriate for the relevant part of the complaint to be referred to HR for investigation.

- 2.7 Any individuals who are raising concerns relating to money laundering offences or Proceeds of Crime Act 2002 are required to report these concerns directly to the Money Laundering Reporting Officer (MLRO) in line with the Anti Money Laundering Policy. The Council's MLRO is the s151 Officer.

3. What is Whistleblowing

- 3.1 Whistleblowing is the confidential disclosure 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. The whistleblowing process assists individuals, who believe they have discovered malpractice, impropriety or wrongdoing, to raise a concern, in order that this can be addressed.
- 3.2 The **Public Interest Disclosure Act 1998 (PIDA)** is known as the Whistleblowing law and 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".
- 3.3 PIDA legislation legally 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.
- 3.4 A qualifying disclosure means any disclosure of information made to the Council or other prescribed person, which in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following;
- (a) that a criminal offence has been committed, is being committed or is likely 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 or safety of any 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, is being or is likely to be deliberately concealed.

- 3.5 A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.
- 3.6 A prescribed person is someone who is independent of the employee's organisation, but usually has an authoritative relationship with the organisation, such as a regulatory or legislative body (see 5.3 below).
- 3.7 Whilst protection under PIDA covers most workers it is not extended to partners, contractors, non-executive directors, volunteers or the self-employed. However, the principles outlined in this policy, as far as they can be, will be applied to Whistleblowing allegations received from sources other than employees of the Council. As with internally reported cases, particular consideration needs to be given to matters of confidentiality.

4. Making a disclosure or raising a concern

- 4.1 Once an employee or other has decided to raise a concern, then wherever possible, it should be expressed either verbally or in writing. This should set out the background and history of the concern, giving names, dates and places where possible, and the reason why the individual is particularly concerned about the situation.
- 4.2 Although individuals raising concerns are not expected to have supporting evidence to prove the truth of an allegation before reporting, he or she must reasonably believe that the information is substantially true to enable the matter to be taken forward.
- 4.3 Details of all reports received by Managers should be logged and reported to Swindon Borough Council's Chief Legal Officer to allow a central record of whistleblowing cases to be maintained.
- 4.4 Any notifications that are received in relation to Foundation and Voluntary Aided Schools, Academy Schools, Sixth Form Colleges and Free Schools will be logged and monitored by the Internal Audit Section.

5. Whistleblowing by employees

- 5.1 It is the hope and intention of the Council that any employee with a concern about any aspect of the Council's operations or its conduct, feels able to first raise those concerns internally with line management or with one or more of the officers listed below. This includes where an employee wants to make a protected disclosure to their manager.

- The Chief Legal Officer (Monitoring Officer)
- The Head of Internal Audit & Corporate Fraud
- The Chief Officer of the relevant Directorate
- The Corporate Director – Finance and Assets
- The Chief Executive

5.2 However, under the terms of PIDA, if an employee does not feel comfortable making a disclosure internally within the Council they have the right to take their concerns outside the Council to certain 'prescribed regulators'.

5.3 Below is a list of other 'prescribed regulators' to whom you make a protected disclosure:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183340/11-641-blowing-the-whistle-to-a-prescribed-person.pdf

5.4 Before making a disclosure, an employee may first wish to discuss the concern on a confidential basis with a work colleague, trade union representative, solicitor or professional body and seek advice on how to proceed. These discussions may help assess how justified their concern is and, if they then wish to proceed, the most appropriate and effective way to report it. This is important because the report should be made so as to allow the most effective investigation, whilst affording the whistleblower protection under the PIDA.

5.5 Additional information about PIDA law can be obtained from the Whistleblowing Charity **Public Concern At Work (PCaW)**, which contributed to the formulation of the PIDA and is a legal advice centre designated as such by the Bar Council. For information visit www.pcaw.org.uk or telephone **their advice line 020 7404 6609**.

5.6 Employees are protected when they make a disclosure. In making a protected disclosure the employee must:

- reasonably believe that the disclosure they are making is in the public interest;
- reasonably believe that the information detailed and any allegation in it are substantially true; and
- the matter disclosed must fall within the matters prescribed for that regulator.

5.7 The earlier an employee expresses a concern, the easier it will be to take action. Employees should raise a concern as soon they have a reasonable suspicion and are not expected to investigate the concern themselves to prove their suspicions are well founded.

6. Whistleblowing by members of the public

6.1 If you are not a Council employee you can still contact the Council to report any concerns or disclosures over wrongdoing and these will be treated in the same way. Unlike disclosures made by employees, protection under PIDA law does not extend to disclosures made by members of the public.

7. Whistleblowing by individuals employed in Schools

- 7.1 Individuals employed in schools which fall under the Council's whistleblowing policy arrangements include those employed in schools maintained by the Council such as **community schools, community special schools, voluntary controlled or maintained nursery schools and pupil referral units**, where the Council is the legal employer.
- 7.2 Each of these schools should have their own whistleblowing policy and reporting arrangements which reflect the principles and requirements set out in the Council's policy. In most cases, school based staff are encouraged to raise their concerns in accordance with the schools' own reporting procedures, rather than directly to the Council.
- 7.3 However, if the employee has a concern which they feel they cannot discuss with the management of the school or have good reason to believe that their complaint or disclosure will not be properly handled, then they may report their concerns directly to Swindon Borough Council or prescribed regulator using the Council's whistleblowing reporting procedures contained in Section 4 of the Council's policy.
- 7.4 **Safeguarding concerns** - if the concern raised relates to a child protection issue, these should be reported to the Local Authority Designated Officer (LADO) and in line with the specific guidelines outlined in the school's safeguarding policy.
- 7.5 The whistleblowing policy is not to be used where other more appropriate reporting procedures are available within school, for example, in relation to any grievance relating to employment matters or to make a general complaint in relation to the school.
- 7.6 Employees who wish to raise concerns over practices in other schools should report these directly to the Council.
- 7.7 The Council expects these schools to respond to a disclosure or allegation in the same way as the Council would respond. The Headteacher or Chair of Governors would be expected to seek advice as necessary from the Council.
- 7.8 The Chief Legal Officer and the Head of Internal Audit can offer advice and support to schools on the approach to be taken to investigate whistleblowing allegations to ensure concerns are properly addressed.
- 7.9 The action taken by schools in response to allegations made will depend on the nature and seriousness of the concern. Where appropriate, the matters raised may be:
- investigated by school management, or Council's Internal Audit Service;
 - referred to the Police;
 - referred to the External Auditor;

subject of an independent enquiry.

- 7.10 For monitoring purposes the Headteacher or Chair of Governors must report at the earliest opportunity the details of all whistleblowing allegations or suspicions of fraud, theft or corruption made within school. These must be reported to the Council's Chief Legal Officer. The Chief Legal Officer will monitor the outcome of all cases, including action taken to reduce the risk of reoccurrence.
- 7.11 **Foundation and Voluntary Aided Schools.** This policy does not extend to staff employed in these schools as in these schools the governing body is the employer and not the Council. It is therefore the governing body who must decide how employees and workers may make a qualifying disclosure under PIDA or raise an allegation of wrongdoing.
- 7.12 The Council's ability to legally investigate disclosures of serious wrongdoing in foundation and voluntary aided schools is reduced unless the allegations relate to safeguarding matters, Special Educational Needs and/or financial mismanagement concerns. The Council should be notified of details of all concerns reported in relation to these matters.
- 7.13 As such each school should have their own whistleblowing policy and arrangements for reporting, logging and investigating concerns.
- 7.14 In respect of **Academy Schools, Sixth Form Colleges and Free Schools**, these institutions should adopt their own whistleblowing policy and procedures as the Council has no legal power to investigate, except for those concerns relating to safeguarding issues and Special Educational Needs.
- 7.15 If the Council receives any disclosures relating to these institutions, we will acknowledge these and seek to advise whistleblowers on an appropriate course of action on matters raised. If the disclosure relates to serious wrongdoing in respect of safeguarding issues involving Children or vulnerable adults the Council has a legal obligation to investigate and will do so irrespective of the status of the school.
- 7.16 In relation to schools that fall outside the scope of the Council's whistleblowing policy, Swindon Borough Council will, where notified by the whistleblower at the same time they raise their concern with the school, keep a record of the concern being raised. Swindon Borough Council may not be able to deal with the complaint as a whistleblowing under its own policy as this will have to be done by the school. However, logging this with the Borough Council will enable us to monitor the progress and where possible deal with the concerns having regard to any legal obligations or duty of care in relation to the school.
- 7.17 The Council will work with the Regional School Commissioner and Department for Education to review any matter referred to them in relation to Schools in Swindon.

- 7.18 Employees who have major concerns about other schools or about other Council services can report these matters to Swindon Borough Council as a member of the public, (see 3.12).
- 7.19 Where allegations are made against the Chief Legal Officer, in order to ensure impartiality and the integrity of the investigation, these allegations will be immediately referred to the Head of Internal Audit who will make appropriate arrangements for an independent investigation to take place. Where allegations are made which may relate to both the Chief Legal Officer and the Head of Internal Audit those allegations will immediately be referred to the Chief Executive, who will make arrangements for an independent investigation to take place.
- 7.20 To ensure transparency where any allegations are made in respect of Internal Audit, it may be appropriate that the Chair of Audit Committee and External Audit are made aware, on a confidential bases, that such allegations have been made and the arrangements that have been put in place to investigate them.
- 7.21 In addition to the above provisions, individuals can report concerns to the NSPCC helpline on 0808 800 5000 or via the Ofsted whistle-blowing hotline on 0300 1233155.

8. How to report a Whistleblowing concern

- 8.1 Anybody who has a whistleblowing concern relating to the Council can use our whistleblowing reporting procedure. A person who wishes to report a concern or suspected serious wrongdoing (a disclosure) should contact the Borough Council in one of the following ways:

- E-mail your concerns to the Chief Legal Officer at: lhall@swindon.gov.uk
- Contact us by telephone (confidentially): 01793 464603
- Concerns can also be reported in writing to any of the following:

<u>Confidential</u> The Chief Legal Officer Swindon Borough Council Civic Offices Euclid Street Swindon SN1 2JH	<u>Confidential</u> The Chief Executive Swindon Borough Council Civic Offices Euclid Street Swindon SN1 2JH	<u>Confidential</u> Head of Internal Audit Swindon Borough Council Civic Offices Euclid Street Swindon SN1 2JH
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- 8.2 Council employees can report a concern through their manager if they feel confident to do so. The manager must follow the obligation of confidentiality and reporting procedures in accordance with Section 5.
- 8.3 For monitoring purposes, all whistleblowing cases referred to managers must be reported on receipt to the Chief Legal Officer. This may be done by the

Whistleblower or the receiving manager. The Chief Legal Officer and the Head of Internal Audit may offer advice and support to the appointed investigator.

- 8.4 Any person reporting a concern should provide as much information as possible, including:
- who the allegations are against;
 - full details of the nature of the alleged wrongdoing;
 - any evidence they have in support of the allegation;
 - whether the person making the disclosure is an employee of Swindon Borough Council;
 - If not, whether the person works in a school
 - Whether the person is a service user or member of the public
 - name and contact details to allow clarification of information (unless they wish to remain anonymous).
- 8.5 Where a call is made to the Council's whistleblowing Hotline, the Chief Legal Officer or the Head of Internal Audit will gather as much information as possible about the concerns raised. If contact details are provided we may get in touch to seek further information.
- 8.6 In the event that an employee does not feel comfortable in making a disclosure to the Council then you are entitled to make a protected disclosure to one of the prescribed organisations listed:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183340/11-641-blowing-the-whistle-to-a-prescribed-person.pdf

9. How the Council will Respond

- 9.1 If the whistle blower has provided contact details, the Chief Legal Officer will aim to formally respond to you to acknowledge receipt of a disclosure within 5 working days of the concern being received.
- 9.2 A further acknowledgement will normally be sent within 10 working days to indicate:
- how the Council proposes to deal with the matter; and the policy under which it will be investigated;
 - whether the Council considers it to be a protected disclosure;
 - contact details for the officer handling the investigation;
 - arrangements for confidentiality;
 - an estimate of how long it will take to provide a response on the outcome;
 - any initial enquiries which may have been made;
 - if no action is planned, why not.

- 9.3 **All proposed actions should be decided upon by the Chief Legal Officer in consultation, where appropriate, with the Head of Internal Audit.**
- 9.4 All allegations will be handled confidentially and discreetly by those individuals who are directly involved in the investigating process. The ongoing point of contact for the whistleblower will be given in the acknowledgement letter.
- 9.5 If necessary, further information will be sought from the whistleblower. This will depend on the nature of the matters raised, the potential difficulties involved in conducting an investigation and the clarity of the information provided.
- 9.6 At any meeting arranged to discuss an employee's concerns the employee has the right, if they so wish, to be accompanied by their Trade Union representative or a friend who is not involved in the area to which the concern relates.
- 9.7 The Council will do what it lawfully can to minimise any difficulties that an employee 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 advise you about the procedures in terms of what will happen and what will be expected of you.

10. Anonymous allegations

- 10.1 The Council recognises that there may be circumstances where individuals are worried about being identified when they report concerns about their employer. If you have come to us anonymously and not provided your contact details we will treat your allegations just as seriously. 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.
- 10.2 Concerns expressed anonymously are more difficult to investigate, and harder to substantiate, and further liaison with the whistleblower is not possible. Nevertheless, anonymous allegations will always be individually considered and action taken at the discretion of the Chief Legal Officer depending upon:
- the seriousness of the issues raised;
 - the credibility of the concern; and
 - the likelihood of confirming the allegations from attributable sources.

11. Outcomes

- 11.1 The Council will, subject to legal constraints, seek to advise the whistleblower on the outcomes of the investigation in order to assure them that that the matter has been properly addressed. Some concerns raised may be resolved by agreed action, once the whistleblower's concerns have been explained, without the need for investigation. If urgent action is required, this will be taken before any investigation is concluded.
- 11.2 Reports will be required in all cases where an investigation has been directed by the Chief Legal Officer. These will usually be issued by the Investigating Officer to the Chief Legal Officer who will then share the same, where appropriate, with the Chief Executive, the Corporate Director – Finance and Assets, and the Corporate Director of the department involved. Where systems risks have been identified, Internal Audit will also require confirmation of the outcome of the work. Internal Audit may carry out follow up work as a result of any identified areas of risk.
- 12.3 The Chief Legal Officer will periodically report an overview of whistle-blowing complaint outcomes to the Standards Committee.

12. Safeguards

- 12.1 In order to ensure that allegations are investigated in the right spirit with the right outcome, the following safeguards or principles should be applied in all cases.
- 12.2 **Confidentiality and Anonymity** - The Council's Whistleblowing policy seeks to protect the identity of the individual making a disclosure, meaning that your name will not be revealed without your explicit consent, even if the disclosure is not considered to be a qualifying disclosure under the PIDA. Your name will initially be logged at the outset and will be visible at times when data monitoring is taking place.
- 12.3 However, in alleged cases of serious wrongdoing, it must be appreciated that the Council cannot guarantee that this will be maintained particularly if external legal action results from the disclosure. In some cases an employee's concern may require further action and they may have to act as a witness and/or provide evidence, for example serious criminal offences which are referred to the Police.
- 12.4 If your disclosure relates to a child at risk or abuse of a vulnerable adult then the Council is required to investigate this under separate procedures and this takes priority over any request for anonymity. If you have provided your contact details, the Council will of course advise you of the action being taking.
- 12.5 **Harassment and Victimisation** - The Council acknowledges that the decision to report a concern can be a difficult decision for an employee to take, not least because of the fear of reprisal from those responsible for the malpractice. Any employee who makes a 'qualifying disclosure' which meets

the requirements of the PIDA is legally protected against victimisation or harassment for whistleblowing.

- 12.6 The Council will not tolerate harassment or victimisation against an employee who has raised a genuine concern under the whistleblowing policy. Any employee who victimises a whistleblower will be subject to a disciplinary action which may lead to dismissal.
- 12.7 Where Directors and Heads of Service are aware of the identity of a whistleblower they should monitor how those individuals are subsequently treated after raising a matter of concern. They should ensure that any harassment or victimisation is dealt with under disciplinary arrangements.
- 12.8 Any employee who believes they have been victimised as a result of making a disclosure or blowing the whistle should report their concerns to the Chief Legal Officer.

13. False and malicious allegations

- 13.1 While encouraging employees to bring forward matters of concern, the Council must guard against claims which are untrue. This is because of the risk of claims made to deliberately damage the reputation of other employees or the Council as a whole and not least because the cost of investigation is high.
- 13.2 If an employee makes an allegation, but it is not confirmed by the investigation, then no action will be considered or taken against them. However, if an employee makes false, malicious or vexatious allegations this will be treated as a serious disciplinary matter and disciplinary action will be taken. The PIDA only offers protection from dismissal or detriment if the worker reasonably believes their disclosure was made in the public interest.

14. Misuse of the policy

- 14.1 This Whistleblowing policy is designed to promote and encourage reporting genuine concerns. The policy is not designed to allow:
- individuals who have acted inappropriately to escape punishment by highlighting any malpractices they were involved in;
 - employment protection in relation a redundancy situation or pre-existing disciplinary issues as a result of reporting a wrongdoing;
 - an individual to raise a concern for some private motive and not to prevent or correct the wrongdoing.

15. Data Protection and FOI

- 15.1 The Freedom of Information Act 2000 gives a general right of access to all types of recorded information held by public authorities. As such the Council often receives requests for information under the Freedom of Information Act.
- 15.2 The Council has a legal obligation to provide the information unless it falls under one of the exemptions of the Act.
- 15.3 The Freedom of Information Act contains exemptions which may be applicable to permit the withholding of information identifying the whistleblower, including:
- Section 40 Personal Data;
 - Section 41 Information which, if disclosed, would give rise to an actionable breach of confidence.
- 15.4 Many people making a disclosure to the Council will wish to protect their identity and the Council will always seek to protect the identity of individuals during the course of progressing an investigation. If the Council receives a request for information identifying a whistleblower, the Council will contact the whistleblower to seek their views beforehand and will, wherever possible, seek to comply with those views.
- 15.5 The principle of maintaining confidentiality should also be applied to the identity of any individual who may be the subject of a disclosure.
- 15.6 The Council will ensure that our handling of concerns meets the requirements of the Data Protection Act 1998 and the Freedom of Information Act 2000.

16. Monitoring of Whistleblowing Complaints

- 16.1 The Chief Legal Officer will maintain a central record of all whistleblowing referrals made under this policy and monitor the outcome of these cases. The collection, monitoring, review and storage of these records will at all times be carried out within the safeguarding principles set out at part 12 of this policy.
- 16.2 As such, details of any allegation should be reported to the Chief Legal Officer by the receiving manager on receipt. The Chief Legal Officer will log and allocate each case a reference number whether or not the matter is to be investigated. A report detailing the findings made during an investigation must be notified to the Chief Legal Officer by the Investigating officer.
- 16.3 Statistical information taken from the Chief Legal Officer's whistle blowing case records, and also from HR records where appropriate, will be used for monitoring purposes and for periodic assurance reports provided to the Standards Committee. This will enable the Chief Legal Officer and the Standards Committee to monitor the effectiveness of the whistle-blowing procedures and may help identify any trends in whistle blowing complaints received.

- 16.4 The Chief Legal Officer and the Chief Executive retain responsibility for monitoring the effectiveness of the Council's Whistleblowing policy and process. The Standards Committee has an overview of the Whistleblowing policy.
- 16.5 A Whistleblowing record sheet should be used by the Chief Legal Officer to record a summary for each case.

17. Training and Awareness

- 17.1 Chief Officers and Heads of Service are responsible for ensuring that their employees are aware of the whistleblowing policy and process and that any training needs are addressed which may arise from the application of the policy. Raising awareness of the Council's Whistleblowing Policy should form part of the induction training for all employees and should be addressed as refresher training for all employees.
- 17.2 Employees have a responsibility to ensure that they are aware of and understand the Council's policy in relation to Whistleblowing.

18. Frequently Asked Questions

What is the difference between whistleblowing and making a complaint or a grievance?

In general terms, whistleblowing occurs when an employee raises a concern about danger or illegality that affects others and which has a public interest dimension to it. The person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concerns. As a result, the whistleblower should not be expected to prove their case; rather he or she raises the concern so others can address it.

A grievance or private complaint is, by contrast, a dispute about the employee's own employment position and has no additional public interest dimension. When someone complains, they are saying that they have personally been poorly treated. This poor treatment could involve a breach of their individual employment rights or bullying and the complainant is seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint, and, for this reason, is expected to be able to prove their case.

For example – bullying and discrimination issues should be dealt with under the Council's existing HR policies.

Can concerns be raised confidentially or anonymously?

Individuals are able to raise concerns anonymously. However, the Council encourages whistleblowers to identify themselves and report matters openly. Openness makes it easier for the Council to assess the issue, work out how to investigate the matter, understand any motive and get more information. The effectiveness of any whistleblowing investigation may be limited where an individual chooses not to be identified.

An individual raises a concern confidentially if he or she gives his or her name on the condition that it is not revealed without their consent. An individual raises a concern anonymously if he or she does not give his or her name at all. Clearly, if the Council does not know who provided the information, it is not possible to reassure or protect them.

Does the Public Interest Disclosure Act (PIDA) require an employer to keep a whistleblower's identity secret?

The simple answer is no - PIDA contains no specific provision on confidentiality. The protections within the Act can be deemed to encourage employees to raise issues openly. A good whistleblowing policy will provide a confidential port of call for a worried employee and employers should respect any promise of confidentiality they make. However in some cases it will be impossible to take action on the concern without the open testimony of a whistleblower. Further it may later become necessary to waiver anonymity because of the course of the investigation for example if the matter has had to be referred to the police

Am I protected from dismissal if I blow the whistle?

A worker cannot be dismissed because they blow the whistle. If they are, they can claim unfair dismissal - they'll be protected by PIDA law as long as certain criteria are met.

Types of whistleblowing eligible for protection. These are called 'qualifying disclosures'. They include when someone reports:

- that someone's health and safety is in danger
- damage to the environment
- a criminal offence
- that the company is not obeying the law (like not having the right insurance)
- that someone's covering up wrongdoing
- there has been or is likely to be a miscarriage of justice.

Who is protected?

The following people are protected:

- employees
- agency workers
- people that are training with an employer, but not employed

- self-employed workers, if supervised or working off-site

A worker will be eligible for protection if:

- they honestly think what they're reporting is true
- they are telling the right person
- they believe that their disclosure is in the public interest

Who is not protected?

- individuals who break the law when they report something, for example because they signed the Official Secrets Act
 - they were part of the wrongdoing
 - they found out about the wrongdoing when someone wanted legal advice ('legal professional privilege'), for example if they are a solicitor
- Workers who are not employees cannot claim unfair dismissal because of whistleblowing, but they are protected and can claim 'detrimental treatment'.

What information should a whistleblower provide?

Supporting evidence for the allegations, if available, is clearly helpful. However, PIDA does not require individuals to have evidence before reporting the matter, but it does say that the individual must reasonably believe the information is substantially true.

Individuals should report concerns to Line Management or any of the officers listed at paragraph 8.1 at the earliest opportunity rather than wait to collate any evidence.

Whistleblowers are encouraged to provide their contact details to allow the Council to seek further information, where necessary and advise on outcomes.

Where can I get independent advice?

Individuals can contact the independent charity Public Concern at Work for free, independent and confidential advice, for example to find out what is protected by PIDA and how best to raise concerns. The charity runs a UK helpline on their advice line tel: 020 7404 6609 or visit their website www.pcaw.org.uk

Appendix A

CONFIDENTIAL
SWINDON BOROUGH COUNCIL
WHISTLEBLOWING CASE RECORD

The date the concern / allegation / disclosure was received by the Council	
Directorate Involved	
How the report was received (verbal or written)	
Name and job title of the person with whom the concerns were raised	
Name and job title of employee making complaint/allegation: (unless anonymity was requested).	
Was confidentiality requested / explained or promised?	
A summary of the concern / allegation raised:	
Details of any feedback given and any response from the employee	
Matter reported to Head of Internal Audit? If not report, please give reason(s)	YES/NO Date referred
Has formal acknowledgement been provided to employee in line with the policy? (Acknowledgement of receipt within 5 working days) (give date)	
Further acknowledgement on sent within 10 working days? (give date)	
Name of relevant Director	

Name of Investigator	
Date investigator was instructed	
Date investigator's report was provided to CLO	
Summary outcome of investigation: (Proved not proved, action plans and recommendations)	
Date notification of outcome given to whistleblower	
Date outcome reported to Standards Committee	
By whom is the file/paperwork to be retained	
Date the outcome/actions identified are to be reviewed and by whom	

Appendix B
THE NOLAN PRINCIPLES

The following are the Seven Nolan Principles underpinning standards for Public Life: The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public services. The principles also have application to all those in other sectors delivering public services.

1. **Selflessness:** Holders of public office should act solely in terms of the public interest.
2. **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. **Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. **Accountability:** Holders of public office are accountable to the public for their decisions and actions and must admit themselves to the scrutiny necessary to ensure this.
5. **Openness:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty:** Holders of public office should be truthful.
7. **Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.