

# **BROMSGROVE DISTRICT COUNCIL**

## **Audit, Standards and Governance Committee**

**15<sup>th</sup> July 2024**

### **Whistleblowing Report**

Relevant Portfolio Holder	Councillor Karen May Leader and Cabinet Member for Strategic Partnerships and Enabling
Portfolio Holder Consulted	No – this is an update paper
Relevant Head of Service	Pete Carpenter
Report Author: Becky Talbot	Job Title: Human Resources and Organisational Development Manager Contact email: Becky.Talbot@bromsgroveandredditch.gov.uk Contact Tel: 01527 64252 (extension 3385)
Wards Affected	All
Ward Councillor(s) consulted	No
Relevant Strategic Purpose(s)	All
Key Decision / Non-Key Decision	
If you have any questions about this report, please contact the report author in advance of the meeting.	

#### **1. RECOMMENDATIONS**

**The Audit, Standards and Governance and Committee note and comment on:**

- 1) The updated Whistleblowing Policy.**
- 2) Where this Whistleblowing Policy can be accessed.**

#### **2. BACKGROUND**

- 2.1 The Chair of the Audit, Standards and Governance Committee requested that Council's Whistleblowing be brought to the Committee for Review. The Chair queried where the present Whistleblowing Policy was located in order for Staff, Members and the Public to access.
- 2.2 Whistleblowing Policies are part of the wider Council Human Resources Policies. Browne Jacobson were commissioned by the Council to review these policies in 2024 and initial drafts have been received by the Council.
- 2.3 Attached at Appendix A is the latest version of the Whistleblowing Policy after internal review. This policy:
  - Sets out what Whistleblowing and a Whistleblower is/are.
  - How this links to equalities legislation.
  - How to raise concerns.
  - Protections for Whistleblowers.
  - Other Whistleblowing Reporting routes.
  - How the overall process works.

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2.4 This Policy will be located on the ORB under the “working for us” section (this is a title at the top of the page) and also on the Webpage (still being finalised as the Website has been significantly upgraded over the past month).

### **3. FINANCIAL IMPLICATIONS**

3.1 This paper sets out the financial frameworks within which the Council works.

### **4. LEGAL IMPLICATIONS**

4.1 There are no direct legal implications arising as a result of this report, however the frameworks are generally linked to statute or the Council’s Constitution.

### **5. STRATEGIC PURPOSES - IMPLICATIONS**

#### **Relevant Strategic Purpose**

5.1 The Strategic purposes are included in the Council’s Corporate Plan and guides the Council’s approach to ensuring we focus on the issues and what are most important for the District, and our communities. Our strategies/policies are integrated within all our Strategic Purposes.

#### **Climate Change Implications**

5.2 There are no direct climate change implications arising as a result of this report.

### **6. OTHER IMPLICATIONS**

#### **Equalities and Diversity Implications**

6.1 There are no direct equalities implications arising as a result of this report.

#### **Operational Implications**

6.2 This is a Governance Policy and impacts every operational service area.

### **7. RISK MANAGEMENT**

7.1 The Governance of the Council is a core underlying theme of the Council’s Risk Management Strategy.

### **8. BACKGROUND PAPERS**

Previous Whistleblowing Policies

### **9. Appendices**

**Appendix A – Present Whistleblowing Policy**

## **Whistleblowing Policy**

### **1. Introduction**

- 1.1 Staff may come across instances whilst they are working, where they have concerns about something that is happening within the Council. This Whistleblowing Policy (the “**Policy**”) has been put in place to enable staff to bring attention to those concerns as soon as possible whilst at the same time ensuring they are protected from any victimisation or harassment.
- 1.2 This Policy applies to all employees of the Council, officers, consultants, self-employed contractors, casual workers, agency workers, volunteers, and interns (collectively referred to as **staff** in this Policy).
- 1.3 The Public Interest Disclosure Act 1998 gives statutory protection to persons who raise concerns in good faith about possible wrongdoing. Additional provisions are inserted into the Employment Rights Act 1996 related to “protected disclosures” and the rights of employees not to suffer detriment through making such disclosures. This protection applies provided that the disclosure is itself classed as a “protected disclosure” and that the individual choosing to ‘blow the whistle’ does so in accordance with the requirements set out.
- 1.4 Staff of the Council are expected to follow the Council’s Code of Official Conduct which sets out the Council’s requirements on personal conduct (this code forms part of the Council’s Staff Handbook, a copy of which is held by all staff) and abide by any Code of Conduct issued by their Professional Institute or body.
- 1.5 Staff are often the first to realise that there may be something seriously wrong within the Council, but may not express their concerns because they feel that speaking out would be disloyal to their colleagues or the Council. Staff may also fear harassment or victimisation and may feel that it would be easier to ignore the concern rather than report what may be just a suspicion of malpractice. However this is not a culture that the Council wishes to encourage. This Policy document makes it clear that anyone wishing to highlight wrongdoings can do so without fear of reprisals.
- 1.6 **Whistleblowing** is the disclosure of information which relates to suspected wrongdoing or dangers at work. The law provides protection for workers who raise legitimate concerns about specified matters or “qualifying disclosures”. A qualifying disclosure is one made in the public interest by a worker who has a reasonable belief that there are wrongdoing or dangers at work. This may include:
- criminal activity;  
e.g. failure to comply with any legal or professional obligation or regulatory requirements;
  
  - breaches of the Council’s Standing Orders or Financial Regulations;

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- miscarriages of justice;  
e.g. false reporting or perjury;
- danger to health and safety;  
e.g. failure to carry out risk assessments or mishandling of hazardous materials such as asbestos;
- damage to the environment;  
e.g. inappropriate disposal or treatment of hazardous waste;
- bribery;  
e.g. offering or receiving something of value to influence someone's actions
- financial fraud or mis-management;  
e.g. mismanagement of accounts for personal financial gain.
- negligence;  
e.g. knowingly leaving a resident to live in a property that is unsafe.
- conduct likely to damage our reputation or financial wellbeing;  
e.g. behaviour that would have a negative impact on the Council's reputation.
- unauthorised disclosure of confidential information;  
e.g. sharing resident information with another Council resident.
- unethical behaviour; or  
e.g. inappropriate receipt of gifts and hospitalities.
- the deliberate concealment of any of the above matters.

- 1.7 A “**whistleblower**” is a person who raises a genuine concern relating to any of the above. If staff have any genuine concerns related to suspected wrongdoing or danger affecting any of the Council's activities (a “**whistleblowing concern**”) they should report it under this Policy.
- 1.8 This Policy should not be used for complaints relating to an employee's own personal circumstances, such as the way they have been treated at work. In those cases, the employee should use the Grievance Procedure or the Dignity at Work Policy.
- 1.9 If a complaint relates to an employee's own personal circumstances but they also have wider concerns regarding one of the areas set out above (for example, a breach of our internal policies), the employee should discuss with a member of the Council's leadership team which route is the most appropriate.

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- 1.10 If staff are uncertain whether something is within the scope of this Policy, they should seek advice from a member of the Council's leadership team.
- 1.11 However in order for the staff to be protected by the Public Interest and Disclosure Act, the disclosure needs to fall under one (or more) of the following:
- A criminal offence has been committed, is being committed or is likely to be committed;
  - A person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject;
  - A miscarriage of justice has occurred, is occurring, or is likely to occur;
  - The health and safety of an individual has been, or is being, or is likely to be endangered;
  - The environment has been, is being, or is likely to be damaged; or
  - 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.
- 1.12 This Policy has been implemented following discussion with the recognised trade unions. It has been formally adopted by the Council.
- 1.13 This Policy does not form part of any employee's contract of employment or other contract to provide services and the Council may amend it at any time with consultation where appropriate.

## **2. Equalities Statement**

- 2.1 This Policy is intended to operate within the Council's commitment to equalities and diversity including:
- Equal treatment regardless of race, sex, gender, age, disability, sexual orientation, being married or in a civil partnership, pregnancy and maternity, gender reassignment, disability, and/or religion or belief, with reasonable adjustments where necessary in line with the Disability Discrimination Act and the Equality Act 2010;
  - Working to eliminate ***unlawful*** discrimination;
  - ***Promoting equal opportunities;***

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- Promoting community cohesion, *including good relations between people from different racial groups*
- Providing reasonable access to interpretation or support on request; and
- Responding to the needs of all, and working to engage all sections of the community.

2.2 This Policy will be assessed as part of a rolling programme of reviews to ensure that it does not have a detrimental or disproportionate effect on any group.

2.3 Any concerns that the Policy is operating in a way that could be construed as discriminatory should be passed to an appropriate Manager and will be dealt with as part of the official Complaints Procedure, in line with the Council's Equality Schemes.

### **3. Raising a whistleblowing concern**

4.1 The Council is determined that the culture and tone of the organisation is one of honesty and opposition to all forms of wrongdoing.

4.2 The Council's staff are central to achieving this aim and staff are positively encouraged to raise any concerns they may have on any issues associated with the Council's activity. They can do this in the knowledge that such concerns will be treated in confidence and will be fully investigated. Concerns should be reported as soon as possible as it is then easier to investigate any allegations made.

4.3 This does not mean that, if staff are already the subject of disciplinary or redundancy procedures, or if staff have raised a separate grievance, that those procedures will be halted as a result of an employee's whistleblowing.

4.4 The Council recognises that the decision to report a concern is a difficult one to make, not least because of the fear of reprisal from those committing the wrongdoing. Therefore, the Council will not tolerate harassment or victimisation and will take action to protect staff when they raise a concern in good faith.

4.5 This Policy encourages staff to put their name to any allegation they make as concerns expressed anonymously are much less powerful. Staff should be aware that proper investigation may be more difficult or impossible if the Council cannot obtain further information from a whistleblower. It is also more difficult to establish whether any allegations are credible. However, anonymous allegations will be considered at the discretion of the Council depending on the seriousness of the issue, the credibility of the concern and the likelihood of confirming the allegation.

4.6 Allegations of abuse of children and vulnerable adults will always be referred to Social Services via a safeguarding lead.

**5. Reporting**

- 5.1 If staff discover or have any other concerns regarding wrongdoing that may be taking place within the Council, they should raise concerns with their immediate manager or superior. If an allegation is reported to a manager and treated as a confidential report under this code that manager should contact the Monitoring Officer.
- 5.2 Staff are welcome to raise concerns by telephone or through a direct meeting with the person set out in section 5.1. If they wish to set out the background to their concern in writing and provide documents in support, this would be helpful. Alternatively, they may choose to explain the reasons for their concern verbally. A written (contemporaneous) record will be taken when staff express their concern and this note may be used as evidence and a copy of the written record will be provided to the whistleblower. We will also aim to give you an indication of how we propose to deal with the matter.
- 5.3 Although staff are not expected to prove the truth of an allegation, they will need to demonstrate to the person set out in section 5.1 concerned that there are sufficient grounds for their concern. Staff should remember that the earlier they express their concern, the easier it may be for action to be taken. If in doubt, staff should contact one of the persons set out in section 5.1 and talk to them about the situation.

**Confidentiality and Support**

- 5.5 The Council hope that staff will feel able to voice whistleblowing concerns openly under this Policy. However, if staff do not want their name to be disclosed, the Council will do its best to protect the identity of staff who raise a concern. It must be appreciated that the investigation process may reveal the source of the information and a statement by the whistleblower may be required as part of the evidence (albeit that it may be presented anonymously). If it is necessary for anyone investigating a whistleblower's concern to know the whistleblower's identity, the Council will discuss this with the whistleblower.
- 5.6 The Council recognises that the type and level of support offered will depend upon the person concerned. They are, therefore, encouraged to talk to the person that they raised the concern with, and/or can contact the confidential Employee Assistant Programme (EAP) found on the Orb.

**Protection for whistleblowers**

- 5.7 Whistleblowers must not suffer any detrimental treatment as a result of raising a concern. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. Victimising whistleblowers or deterring them from raising a concern about fraud, corruption or any other matter will not be tolerated and will be considered as a disciplinary offence. If staff believe that they have suffered any such treatment, or if they are not happy with how their concerns has been handled, they should inform those persons referred to in section 5.1 immediately. If the matter is not remedied staff should raise it formally using the Council's Grievance Procedure.

- 5.10 Staff must not threaten or retaliate against whistleblowers in any way. If staff are involved in such conduct then staff may be subject to disciplinary action. In some cases, the whistleblower could have a right to sue an individual personally for compensation in an employment tribunal.

**Untrue allegations**

- 5.11 There is a need to ensure that any investigation process is not misused and therefore any abuse such as raising unfounded, false or malicious allegations will be dealt with as a disciplinary matter.

**Further Reporting Routes**

- 5.12 This Policy is intended to provide staff with an internal route for reporting their concerns within the Council. In most circumstances, you should not find it necessary to alert anyone externally. However if staff feel unable to report concerns internally or in circumstances where it may be appropriate for staff to report concerns to an external body then staff should contact.

“Protect” / National Whistleblowing Helpline for advice.

- The Green House, 244-254 Cambridge Heath Road, London, E2 9DA
- Telephone: 020 3117 2520
- Website: <https://protect-advice.org.uk/>

**However, staff must remember that if the matter is taken outside the Council they must have reasonable grounds for suspicion and should not disclose confidential information unless it can be shown to be in the public interest.** Therefore, the Council strongly encourages staff to seek advice before reporting a concern to anyone external and the Council encourages staff to report such concerns internally first in line with this Policy.

- 5.13 Senior Management are responsible for following up any allegation of wrongdoing received and will do so through clearly defined procedures.
- 5.14 It will very rarely if ever be appropriate to alert the media so staff are strongly advised not to refer any concerns they may have to the media TV, radio, press, websites or social media.
- 5.15 Adverse publicity may damage the reputation of the Council and by going to the media staff may be in breach of their contract of employment and subject to disciplinary action. Staff may also lose their right to statutory protection against whistleblowing. In addition, it could leave the whistleblower more exposed to publicity and to counter allegations/actions by those accused.
- 5.16 However, disclosures made outside the Council are protected provided they are not made for personal gain and they were not raised internally because there was a



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reasonable belief of victimisation or that there would be a cover up, and the matter was exceptionally serious.

- 5.17 Whistleblowing concerns may sometimes relate to the actions of a third party such as a customer, supplier or service provider. In some circumstances the law will protect staff if they raise the matter with the third party directly. However, staff are encouraged to report such concerns internally first, in line with this Policy and should contact the persons set out in section 5.1 for guidance.

### **6. Detection and Investigation**

- 6.1 It is often the alertness of staff and members of the public that first identifies where cases of possible wrongdoing are occurring.

- 6.2 Reporting is an essential element of the Whistleblowing Strategy and all allegations of wrongdoing will be forwarded to the Council's Monitoring Officer for investigation. This will ensure that:

- incidents are correctly collated;
- there is consistent treatment;
- evidence is collected properly and as early as possible; and
- experienced Officers are available to investigate the claim.

Once a concern is raised, initial assessment and enquiries will be made to decide whether an investigation is appropriate (this will depend on nature and scale of alleged wrongdoing and the evidence that is available) and, if so, what form it will take. Some concerns may be resolved by agreed action without the need for investigation.

- 6.3 Within ten (10) working days of a concern being raised (if raised with one of the internal contacts), the Officer contacted will write to the whistleblower:

- acknowledging that the concern has been received;
- indicating how the matter is likely to be dealt with;
- supplying the whistleblower with information on staff support mechanisms in place; and
- giving an estimate of how long the investigations will take.

- 6.4 The matters raised may:

- be investigated internally;
- be referred to the Police;

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- be referred to the Council's External Auditor
- form the subject of an independent inquiry;

or any combination of all four of the above avenues.

- 6.7 The amount of contact between the Officers considering the issues and the whistleblower will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from the whistleblower and the whistleblower will be informed of the progress of the investigation and its likely timescale. Depending on the circumstances, the whistleblower may be asked to maintain confidentiality and should treat any information about the investigation as confidential.
- 6.8 Whistleblowers may be required to attend additional meetings in order to provide further information. When any meeting is arranged with the whistleblower, if they so wish, they may be accompanied by a trade union or a colleague, such a person must respect any confidentiality that applies including the confidentiality of any disclosure and any subsequent investigation.
- 6.9 The Council will take steps to minimise any difficulties which staff may experience as a result of raising a concern. For instance, if staff are required to give evidence in criminal or disciplinary proceedings, the Council will advise the whistleblower about the procedure.
- 6.10 The Council's Disciplinary Procedures will be used where the outcome of the investigation indicates improper behaviour.
- 6.11 The Council will inform the Police to be made aware of and to independently prosecute offenders where financial impropriety is discovered or a criminal offence has been committed.
- 6.12 Arrangements will be put in place to ensure that if requested and subject to legal constraints a report back to the whistleblower indicating the outcome of the investigation and on any proposed action will be made. However, sometimes the need for confidentiality may prevent information being shared which may include specific details of the investigation, an outcome or any disciplinary action taken as a result.

## **8. What happens when an employee is the subject of a concern in accordance with the Public Interest Disclosure Act?**

- 8.1 The Council believes that everyone has the right to be treated fairly and in accordance with the principles of natural justice, and will therefore apply these principles to staff if they are the subject of someone voicing their concern.
- 8.2 The following steps will be taken by the Council if staff are the subject of such a concern:
- When appropriate staff will be informed both verbally and in writing of the concern, and will be advised to seek the advice of their trade union, solicitor or professional association.

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- There will be nominated people available for support who will be responsible for advising staff at regular intervals on how the investigation is proceeding.
- Staff may be suspended from work on full pay during the investigative process but this will not be regarded as a punitive measure. It will be used in circumstances, where for example, public interest is likely to be high or where, it may aid the investigation itself.
- Staff will be advised of the outcome of the investigation and how this may impact their employment with the Council as soon as possible, once the investigation has been concluded.

***FOR FURTHER INFORMATION ON THIS POLICY, PLEASE CONTACT YOUR HUMAN RESOURCES ADVISOR.***

***NOTE: We reserve the right to vary the content of this document where appropriate.***