



DERBY CITY COUNCIL

## AUDIT & ACCOUNTS COMMITTEE 2 December 2010

Report of the Interim Strategic Director -  
Resources

# ITEM 11

## CONFIDENTIAL REPORTING CODE

### SUMMARY

- 1.1 The Public Interest Disclosure Act 1998 sets out a framework for public interest whistleblowing, which protects workers from reprisal because they have raised a concern about malpractice. The Confidential Reporting Code outlines the Council's arrangements in response to this legislation. This report seeks the approval of the revised Confidential Reporting Code.

### RECOMMENDATIONS

- 2.1 To approve the revised Confidential Reporting Code.
- 2.2 To request that the Committee receives a report annually on the issues notified under the Code.

### REASONS FOR RECOMMENDATIONS

- 3.1 The Audit and Accounts Committee is responsible for monitoring council policies on whistleblowing (Confidential Reporting Code), counter fraud measures and the council's complaints process.

### SUPPORTING INFORMATION

- 4.1 The Public Interest Disclosure Act 1998 ("PIDA") protects workers who 'blow the whistle' about wrongdoing. It applies where a worker has a reasonable belief that their disclosure tends to show one or more of the following offences or breaches:
- A criminal offence.
  - The breach of a legal obligation.
  - A miscarriage of justice.
  - A danger to the health and safety of any individual.
  - Damage to the environment.
  - Deliberate covering up of information tending to show any of the above.
- 4.2 The Council responded to the legislation by implementing a Confidential Reporting Code. The Code makes it clear to the Council's employees what to do if they come across malpractice in the workplace. It encourages employees to inform someone with the ability to do something about the problem. The existence of the Code

demonstrates that the Council is concerned to deal effectively with any malpractice. The existence of such a Code helps to forestall the serious damage to the Council's business or reputation that can occur as a result of public disclosures. The Code forms part of the Council's Anti-Fraud and Corruption policies and procedures. The Code was last reviewed in September 2006.

- 4.3 Whistleblowing is the popular term used when someone who works in or for an organisation raises a concern about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, shareholders, the public or the organization's own reputation. As an early warning system, whistleblowing can help alert employers to risks such as:
- a danger in the workplace;
  - fraud in, on or by the organisation;
  - offering, taking or soliciting bribes;
  - misreporting performance data;
  - professional negligence; or
  - wanton neglect of people in care.
- 4.4 For the Confidential Reporting Code to be effective, it is important that the Council's management culture supports the procedures and ensures that the message that it is accepted and acceptable to raise a whistle-blowing concern is promoted regularly. Without clear arrangements which offer employees safe ways to raise a whistleblowing concern, it is difficult for the Council to effectively manage the risks it faces.
- 4.5 Whistleblowing is where an employee has a concern ("Protected Disclosure") about danger or illegality that has a public interest aspect to it: usually because it threatens others (e.g. customers, stakeholders or the public). A grievance or private complaint is, by contrast, a dispute about the employee's own employment position and has no additional public interest dimension. However, PIDA has been interpreted widely by the courts. The concept of 'legal obligation' is so wide that it even covers legal obligations under the worker's own contract of employment. This means that a grievance raised by a worker about his/her own contract of employment may also be a protected disclosure for the purposes of PIDA. . For these reasons, it is important that the Council is clear on what a protected disclosure is, and deals with such disclosures under the Confidential Reporting Code, even when they have originated elsewhere, e.g. under its grievance procedure.
- 4.6 When the "whistleblowing arrangements" are reviewed, it is seen as good practice that this Committee considers where responsibility for the Code lies within the Council. Traditionally, overall responsibility for the Code was with the Monitoring Officer, with maintenance of the Code, recording of disclosures and investigation of concerns being the responsibility of the Head of Audit and Risk Management.
- 4.7 As part of the review of the Code, a good practice checklist drawn up by the British Standards Institute (BSi) was used (see Appendix 2). This highlighted a number of areas where the Council did not meet good practice. The Code itself conforms to good practice and is consistent with the Whistleblowing Policies adopted by many other local authorities, it was how the Code is communicated to staff where improvements can be made. The Governance Working Group will be reviewing those areas of the checklist where we are not currently achieving good practice.

- 4.8 The Code has been updated to reflect the changes brought about by the recent restructuring of the Council. The amended Code is attached as Appendix 3.
- 4.9 Following Committee's approval of the Anti-Fraud Policy and the Fraud Response Plan and the subsequent reviews of the Confidential Reporting Code and the Anti-Money Laundering Policy and guidelines, the Head of Audit and Risk Management will be delivering awareness sessions to all Directorates which will cover all of these important documents. Managers will be expected to cascade the information to their staff.
- 4.10 The Council contracts out significant parts of its business activities but the Code does not consider how best to approach the work of subcontractors. The simplest options are (a) to establish that the subcontractor has its own effective whistleblowing arrangements or (b) that the subcontractor agrees to promote the Council's whistleblowing contacts to its own staff where the concern relates to a threat or risk to the Council. While the UK legislation covers such a disclosure to an organisation from an employee of a subcontractor, legal advice should be taken on how the Council can best achieve this within the contractual arrangements with the subcontractor. Such legal advice can also clarify that if an employee of the subcontractor were to be victimized as a result of such a disclosure, any legal claim s/he has would be against the subcontractor.
- 4.11 There is no statutory requirement in the Public Interest Disclosure Act for the Council to have a whistleblowing policy. The Government expects public bodies to have a policy in place and the whistleblowing schemes in local authorities and NHS bodies in England are assessed regularly as part of their external audit.
- 4.12 This Code will be reviewed as required, and every 3 years in any event.

## OTHER OPTIONS CONSIDERED

5.1 N/A

**This report has been approved by the following officers:**

|                                |                         |
|--------------------------------|-------------------------|
| <b>Legal officer</b>           | Paul McMahon, Solicitor |
| <b>Financial officer</b>       | n/a                     |
| <b>Human Resources officer</b> | n/a                     |
| <b>Service Director(s)</b>     | n/a                     |
| <b>Other(s)</b>                | Chief Officer Group     |

|                                      |   |
|--------------------------------------|---|
| <b>For more information contact:</b> | Richard Boneham, Head of Audit & Risk Management 01332 643280<br>e-mail richard.boneham@derby.gov.uk                  |
| <b>Background papers:</b>            | None  |
| <b>List of appendices:</b>           | Appendix 1 – Implications<br>Appendix 2 – Good Practice Checklist<br>Appendix 3 – Revised Confidential Reporting Code |

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|---------------------|
| <b>IMPLICATIONS</b> |
|---------------------|

**Financial**

- 1.1 None directly arising.

**Legal**

- 2.1 Adherence to the Code should prevent workers who make protected disclosures being subjected to a detriment (which could expose the council to claims), thus reducing the likelihood of successful claims being made.

**Personnel**

- 3.1 None directly arising.

**Equalities Impact**

- 4.1 None directly arising.

**Health and Safety**

- 5.1 None directly arising.

**Carbon commitment**

- 6.1 None directly arising.

**Value for money**

- 7.1 None directly arising.

**Corporate objectives and priorities for change**

- 8.1 The functions of the Committee have been established to support delivery of corporate objectives by enhancing scrutiny of various aspects of the Council's controls and governance arrangements.

## Good Practice Checklist

| Issue   | Yes                        | In Part | No     | Comments  |
|---|----------------------------|---------|--------|---|
| <b>The Policy</b><br>1. The organisation's policy conforms to good practice and: <ul style="list-style-type: none"> <li>a) gives examples of the types of concerns to be raised, so distinguishing whistleblowing from grievances;</li> <li>b) gives the option to raise concerns outside of line management;</li> <li>c) provides access to an independent helpline offering confidential advice;</li> <li>d) offers option to raise concerns in confidence;</li> <li>e) explain when concerns may safely be raised outside (e.g. with a regulator); and</li> <li>f) prohibits [i] reprisals against a bona fide whistle blower, and [ii] the making of a false allegation maliciously.</li> </ul> | ✓<br><br><br><br><br><br>✓ |         |        |   |
| <b>Buy-in</b><br>2. Those in charge have been briefed on the role of management and openness, confidentiality, anonymity and trust.   |                            | ✓       |        |   |
| <b>The right start</b><br>3. Practicalities, feedback, safeguards and misuse are consulted on<br>4. The role of subcontractors is considered<br>5. Line managers brief employees on the arrangements when rolled out and updated  |                            | ✓       | ✓<br>✓ |   |
| <b>Communication and confidence</b><br>6. The organisation undertakes activity to promote staff awareness of the arrangements<br>7. Employee confidence, knowledge and experience of the arrangements are assessed  |                            | ✓       | ✓      | This is not regularly done  |
| <b>Briefing/Training</b><br>8. Line and senior managers are briefed on their roles under the policy<br>9. Designated officers with a role in handling concerns are briefed and trained  |                            | ✓       | ✓      |   |
| <b>Logging concerns</b><br>10. Concerns raised formally through the whistle-blowing arrangements are recorded and logged centrally  | ✓                          |         |        | The Head of Audit &RM has a log off all concerns raised under the Code.                   |
| <b>Reviewing the arrangements</b><br>11. The effectiveness of the arrangements is reviewed by those charged with governance e.g. the Audit Committee  |                            | ✓       |        | This is not regularly done – no reports on concerns raised are reported through to Cttee. |



DERBY CITY COUNCIL

# Confidential Reporting Code

December 2010

## INTRODUCTION

- 1.1 The Public Interest Disclosure Act 1998 protects workers who speak out in the public interest about fraudulent, criminal or dangerous activities, wrong doings or malpractice at work.
- 1.2 Employees are often the first to realise that there may be something seriously wrong within an organisation. However, they may not express their concerns because they fear harassment or victimisation. They may also feel that speaking up would be disloyal to their colleagues or to the organisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.3 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, we expect employees, and others that we deal with, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis.
- 1.4 This Code makes it clear that you can do so without fear of victimisation, subsequent discrimination or disadvantage. This Confidential Reporting Code is intended to encourage and enable employees to raise serious concerns **within** the Council rather than overlooking a problem or "blowing the whistle" outside. It is also designed to protect employees from malicious allegations.
- 1.5 The Code applies to all employees, partnering organisations and those contractors working for the Council on Council premises, for example, agency staff, builders, drivers and cleaners. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example, care homes, as well as volunteer workers working within the Council. The Code does not apply to ex-employees.
- 1.6 This Code links with the Council's Anti Fraud and Corruption Strategy, and makes it clear that concerns can be raised without fear of reprisals.
- 1.7 These procedures are in addition to the Council's Complaints Procedures and other statutory reporting procedures applying to some departments. You are responsible for making service users aware of the existence of these procedures.

## AIMS AND SCOPE OF THIS CODE

### 2.1 This Code aims to:

- Encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice.
- Provide an avenue for you to raise those concerns and receive feedback on any action taken.
- Make sure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied.
- Reassure you that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in good faith.

### 2.2 There are existing procedures in place to enable you to lodge a grievance relating to your own employment. The Confidential Reporting Code is intended to cover major concerns that fall outside the scope of other procedures. These include:

- Conduct which is an offence or a breach of law.
- Disclosures related to miscarriages of justice.
- Health and safety risks, including risks to the public as well as other employees.
- Damage to the environment.
- The unauthorised use of public funds.
- Possible fraud and corruption.
- Sexual or physical abuse of clients.
- Other unethical conduct.

### 2.3 Therefore, you can report any serious concerns that you have about any aspect of service provision or the conduct of officers or members of the Council or others acting on behalf of the Council under the Confidential Reporting Code. This may be about something that:

- Makes you feel uncomfortable in terms of known standards you experience or the standards you believe the Council subscribes to.
- Is against the Council's Constitution and policies.
- Falls below established standards of practice.
- Amounts to improper conduct.

### 2.4 This Code does **not** replace the Corporate Complaints Procedure or the Grievance Procedure.

## HARASSMENT OR VICTIMISATION

### 3.1 The Council is committed to good practice and high standards and wants to be supportive of employees.

- 3.2 The Council recognises that the decision to report a concern can be a difficult one to make. If what you are saying is true, you should have nothing to fear because you will be doing your duty to your employer and those for whom you are providing a service.
- 3.3 The Council will not tolerate any harassment or victimisation, including informal pressures, and will take appropriate action to protect you when you raise a concern in good faith.
- 3.4 Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you.

## **CONFIDENTIALITY**

- 4.1 All concerns will be treated in confidence and we will make every effort not to reveal your identity if you so wish. However, confidentiality cannot be guaranteed, as courts, tribunals and other bodies can order the council to disclose documents and other information provided to it. At the appropriate time you may be asked to come forward as a witness.

## **ANONYMOUS ALLEGATIONS**

- 5.1 This Code encourages you to put your name to your allegation whenever possible.
- 5.2 Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.
- 5.3 In exercising this discretion, the factors to be taken into account would include the:
- Seriousness of the issues raised.
  - Credibility of the concern.
  - Likelihood of confirming the allegation from attributable sources.

**Do note, however, that if you make an allegation anonymously you will not have the protection of paragraphs 3.1 – 3.4 above and, if we do not know who has made the allegation, certain steps outlined below (8.5, for example) will not be possible.**

## **UNTRUE ALLEGATIONS**

- 6.1 If you voice suspicion in good faith but it is not confirmed by the investigation, no action will be taken against you.
- 6.2 If the investigation concludes that you
- did not have a reasonable belief that your allegations tended to show the wrongdoing at 2.2, or
  - did not make your allegations (whether they are true or not) in good faith

the allegations may not be pursued and/or disciplinary action may be taken against you.



## **HOW TO RAISE A CONCERN**

- 7.1 As a first step, you should normally raise concerns with your immediate manager, Headteacher or their superior. This depends however on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if you believe that management is involved, you should approach the Chief Executive, the Monitoring Officer, the Strategic Director – Resources or the Head of Audit and Risk Management.
- 7.2 If you are in any doubt about how to raise a concern, you should consult your trade union who will be able to advise you how to proceed.
- 7.3 Concerns may be raised orally or in writing. If you wish to make a written report you should use the following format:
- The background and history of the concern (giving relevant dates if possible).
  - The reason why you are particularly concerned about the situation.
- 7.4 The earlier you express the concern, the easier it is to take action.
- 7.5 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.
- 7.6 You can get advice/guidance on how to pursue matters of concern from:
- Chief Executive: Tel. 643546
  - Strategic Director – Resources: Tel. 643552
  - Director of Legal and Democratic Services (Monitoring Officer): Tel 643616
  - Head of Audit and Risk Management: Tel. 643280
- 7.7 You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two, or more, of you who have had the same experience or concerns.
- 7.8 You may invite your trade union, professional association representative or a friend to be present during any meetings or interviews in connection with the concerns you have raised.
- 7.9 Whichever officer you decide to approach, the officer responsible for this Code is the Council's Monitoring Officer, the Director of Legal and Democratic Services.

## **HOW THE COUNCIL WILL RESPOND**

- 8.1 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.
- 8.2 Where appropriate, the matters raised may:

- Be investigated by management, internal audit, or through the disciplinary process.
  - Be referred to the Police.
  - Be referred to the external auditor.
  - Form the subject of an independent inquiry.
  - Be referred to the Standards Board if a member is the subject of the allegation.
- 8.3 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures, such as child protection or discrimination issues, will normally be referred for consideration under those procedures.
- 8.4 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required, this will be taken before any investigation is conducted.
- 8.5 Within ten working days of a concern being raised, the Director of Legal and Democratic Services, or one of the other officers mentioned in paragraph 7.6 where appropriate, will write to you:
- Acknowledging that the concern has been received.
  - Indicating how he proposes to deal with the matter.
  - Giving an estimate of how long it will take to provide a final response.
  - Telling you whether any initial enquiries have been made.
  - Supplying you with information on staff support mechanisms.
  - Telling you whether further investigations will take place and, if not, why not.
- 8.6 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from you.
- 8.7 Where any meeting is arranged, off-site if you so wish, you can be accompanied by a union, or professional association representative, or a friend.
- 8.8 The Council will take all practical steps to minimise any difficulties which you may experience either at the time, or in the future as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the Council will arrange for you to receive advice about the procedure and will arrange for someone to attend for support if you have not arranged your own support.
- 8.9 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform you of the outcome of any investigation.

## THE RESPONSIBLE OFFICER

- 9.1 The Monitoring Officer has delegated responsibility for the maintenance and operation of this Code to the Head of Audit and Risk Management. The Head of Audit and Risk Management maintains a record of concerns raised and the outcomes, in a form which does not endanger your confidentiality, and will report as necessary to the Audit and Accounts Committee, and where necessary Full Council.
- 9.2 The Monitoring Officer has a statutory duty to take action where the Council is involved in maladministration or illegality. The Head of Legal (General) is the Deputy Monitoring Officer.

## HOW THE MATTER CAN BE TAKEN FURTHER

- 10.1 This policy is intended to provide you with an avenue **within** the Council to raise concerns. The Council hopes you will be satisfied with any action taken. If you are not, and if you feel it is right to take the matter outside the Council, the following are possible contact points:
- The external auditor (Grant Thornton).
  - Your trade union.
  - Your local Citizens Advice Bureau.
  - Relevant professional bodies or regulatory organisations (including the Ombudsman).
  - A relevant voluntary organisation (including the Public Concern At Work Helpline, tel: 020 7404 6609).
  - The Police.

This does not prevent you from taking your own legal advice.

- 10.2 If you do take the matter outside the Council, you should make sure that you do not disclose confidential information. Check with the contact point about that.
- 10.3 This Code will be reviewed as required, and every 3 years in any event by the Audit and Accounts Committee.