

**HAMBLETON DISTRICT COUNCIL**

**Report To:** Cabinet  
5 November 2013

**Subject: POLICY FOR PROTECTED DISCLOSURES FOR FOOD AND HEALTH AND SAFETY ENFORCEMENT**

**All Wards**  
**Portfolio Holder for Leisure and Health: Councillor Mrs S Shepherd**

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**1.0 PURPOSE OF THE REPORT:**

- 1.1 Hambleton District Council has a legal responsibility to enforce food hygiene and health and safety legislation in the private sector. This is undertaken through a mix of inspection, investigation, intelligence gathering and education and promotion. The Service receives information about alleged non-compliance with legislation and sometimes those providing information rely on our confidentiality to protect their identity.
- 1.2 The purpose of this report is to set out a policy of the safeguards that the Council will put in place to protect workers at external organisations from detrimental treatment from their employer if, in the public interest, they blow the whistle on wrongdoing. The intention is to add this commitment to the existing commitment regarding the Council's own employees.

**2.0 BACKGROUND:**

- 2.1 The Public Interest Disclosure Act 1998 amended the Employers Rights Act 1996. The effect of this amendment is to grant workers the right to make a "protected disclosure" where, in the reasonable belief of the worker making the disclosure, information shows one or more of the following is either happening now, took place in the past or is likely to happen in the future:-
- 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 concealment of information tending to show any of the above five matters.
- 2.2 A "protected disclosure" qualifies under this legislation if the worker:-
- Makes the disclosure in good faith
  - Believes the allegation is *substantially true*
  - Believes the matter falls within the description of matters for which the person or body has been prescribed.
- 2.3 The effect of this legislation is that people are protected against unfair dismissal or being subjected to detriment e.g. denial of promotion, facilities or training opportunities.
- 2.4 Disclosures can be made to a person or body which has been prescribed by the Secretary of State for the purpose of receiving disclosures. These include Local Authorities in relation to food safety and health and safety and also a wide range of national bodies.
- 2.5 The Advisory, Conciliation and Arbitration Service (ACAS) is available to any individual or organisation free of charge. They can deal with issues, including rights and obligations, arising out of employment law.

- 2.6 "Public Concern at Work" is an independent organisation which can provide guidance and training to employers on protected disclosures and can offer free advice to employees unsure whether or how to raise a concern about workplace wrongdoing.
- 2.7 The Council adopted a Whistleblowing Policy in relation to its own employees in December 2011. That Policy enabled employees to raise issues where they may be concerned about what is happening at work.
- 2.8 This proposed addition is intended to offer safeguards that would apply to workers at external organisations where the Local Authority is the enforcing Authority in relation to food safety and health & safety. Employees and others at those establishments may then be protected if they raise concerns about what is happening in their workplaces.

### **3.0 LINK TO COUNCIL PRIORITIES:**

- 3.1 This policy will contribute to the Council's priority of encouraging our residents to become more involved in making decisions and delivering services which impact on their local communities. By enabling people to report situations or behaviour as a whistleblower, they can be assured that they will be protected under the provisions of the Public Interest Disclosure Act 1998.

### **4.0 RISK ASSESSMENT:**

- 4.1 There are no significant risks to the Council.

### **5.0 FINANCIAL IMPLICATIONS:**

- 5.1 There are no financial implications in the adoption of this Policy.

### **6.0 LEGAL IMPLICATIONS:**

- 6.1 Local Authorities are specifically prescribed as "Prescribed Persons" in Orders made under the Public Interest Disclosure Act 1998 and are likely to receive qualifying disclosures. The Council therefore has a responsibility to safeguard any information it receives and the people who provide that information.

### **7.0 RECOMMENDATION(S):**

- 7.1 That the attached Policy for Protected Disclosures for Food and Health and Safety Enforcement at Annex A be adopted by Hambleton District Council and added to the existing Whistleblowing Policy in relation to external organisations.

DAVID GOODWIN

#### **Background papers:**

Employment Rights Act 1996  
Public Interest Disclosure Act 1998  
Disclosures in the Public Interest: Protections for Workers who "Blow the Whistle". (PL502 Rev 3). Department for Trade and Industry (DTi) (now Department for Business, Innovation and Skills (BIS)).  
"Blowing the whistle to a prescribed person". List of prescribed people and bodies. BIS. February 2013.  
Anti-Fraud and Corruption Policy. Hambleton District Council. December 2011

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## HAMBLETON DISTRICT COUNCIL

### POLICY FOR PROTECTED DISCLOSURES FOR FOOD AND HEALTH AND SAFETY ENFORCEMENT

Policy on handling disclosures made under the Public Interest Disclosure Act 1998

#### **What disclosures qualify for protection under the Act?**

This Act protects workers from detrimental treatment or victimisation from their employer if, in the public interest, they blow the whistle on wrongdoing.

The legislation aims to increase the accountability of organisations in the public, private and voluntary sectors by enabling workers to bring to light wrongdoing confidentially and without detriment to them.

Workers who are aware of wrongdoing in premises where the Local Authority is responsible for enforcement of food safety and health and safety can disclose that wrongdoing with the benefit of the protections the Act affords, if they raise their concerns in accordance with the Act's provisions.

For a disclosure to be protected by the Act's provisions, it must relate to matters that "qualify" for protection under the Act. Qualifying disclosures are disclosures that the worker reasonably believes tend to show that one or more of the following matters is either happening now, took place in the past or is likely to happen in the future:-

- 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 concealment of information tending to show any of the above five matters.

A "qualifying disclosure" to Hambleton District Council will be a "protected" disclosure provided the worker:-

- Makes the disclosure in good faith
- Reasonably believes that the relevant failure relates to matters that may affect the health of any member of the public in relation to
  - a) the consumption of food and other matters concerning the protection of the interests of consumers in relation to food; and
  - b) matters which may affect the health or safety of any individual at work; matters which may affect the health and safety of any member of the public arising out of, or in connection with, the activities of persons at work.
- Reasonably believes that the information disclosed and any allegation contained in it are substantially true

This protection is invoked automatically if the qualifying criteria are satisfied.

## **How Hambleton District Council (the Council) will protect the interest of the whistleblower**

The Council will use best efforts to ensure that the whistleblower suffers no detriment as a result of making a public interest disclosure.

If the Council receives a “qualifying disclosure” then every effort will be made to protect the identity of the whistleblower and any information that may lead to the identity of the whistleblower being deduced by his/her employer or any other party.

Information regarding a “qualifying disclosure”, including the name of the whistleblower, would also be exempt from disclosure under the Freedom of Information Act.

In the event of a criminal prosecution ensuing, a defendant may make an application to the court to order the Council to disclose information relating to the identity of the whistleblower. The Council would resist disclosure of his/her identity by arguing that such an order would not be in the public interest.

## **How the Council will handle information received**

The Council is able to receive information, in person, by telephone, in writing or by email, from a whistleblower. The Council may contact the whistleblower in order to communicate our policy on handling any qualifying disclosure, for example to tell him/her that we are acting on the information he/she provided, provide assurances that we will protect his/her identity, and to refer him/her to sources of further information and advice.

The Council will not ask whistleblowers for any other information they have, or to collect any further information, as to do so may take the Council into the situation of operating an informant. This would be regulated under the Regulation of Investigatory Powers Act. If the Council wishes to use an informant the Council will consult its legal advisers in advance to ensure that relevant procedures are followed.