

Cabinet

10 October 2017

Whistleblowing Policy

Recommendation

That the Cabinet approves the revised Whistleblowing Policy (Appendix D) and the Essentials document (Appendix A).

1.0 Key Issues

- 1.1 The Policy has been updated to reflect the changes to the law on protected disclosures and the statutory Duty of Candour which applies to the County Council as a provider of care services.
- 1.2 The revised Policy was endorsed by the Audit and Standards Committee on 6 September 2017 and is now recommended to Cabinet for approval.

2.0 Proposal

- 2.1 The County Council's Whistleblowing Policy was last reviewed in October 2014. The revised full Policy is set out in Appendix D.
- 2.2 The "Whistleblowing Essentials" document (Appendix A) is intended to give people a quick guide to the Policy to make it more accessible. A simplified flowchart is also attached as Appendix C.
- 2.3 The Duty of Candour is intended to ensure that providers are open and transparent with people who use services, in relation to care and treatment. The law sets out specific requirements that providers must follow when things go wrong with care and treatment, including informing people about the incident, providing reasonable support, providing truthful information and an apology. The County Council's Whistleblowing Policy has been revised to take account of this legislative change so that it fulfils the County Council's obligation to encourage candour, openness and honesty in those involved in the provision of care.
- 2.4 The revised Policy continues to encourage the use of internal procedures to make disclosures and identifies a list of Whistleblowing Advisers from each Group of the County Council to whom staff can turn for advice or to make a disclosure if they do not feel able to discuss with their own managers. This list has recently been updated and is attached as Appendix B. The Policy also indicates that advice can be sought from Public Concern at Work.

2.5 The law on protected disclosures is governed by the Employment Rights Act 1996. This gives protection to employees from victimisation by their employer or from losing their job where they have “blown the whistle.” It also provides a list of prescribed persons (external people/organisations) to whom referrals may be made by the whistle-blower without loss of their statutory protections.

3.0 Timescales associated with the decision and next steps

3.1 The most effective way of publicising and promoting the revised code is by maximising the usage of existing channels of communication within and across Groups. At a corporate level this would include the intranet, Working for Warwickshire and the Core Brief, as well as raising awareness through Heads of Service meetings. We would aim to include publicity about the Code in our ‘Do the right thing’ intranet week in November 2017.

Background papers

None

Supporting Documents

1. CQC Regulation 20: Duty of Candour – guidance dated March 2015
2. Department for Business, Innovation and Skills: Whistleblowing Guidance for Employers and Code of Practice – March 2015

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The report was circulated to the following members prior to publication:

Local Member(s): n/a

Other members: n/a

Whistleblowing: The Essentials

1. What is whistleblowing?

- Whistleblowing is the reporting of suspected wrongdoing or dangers (e.g. to someone's health and safety) in relation to our activities.
- If you are an employee or other worker, such as an agency worker, and you have a serious and reasonably held concern about wrongdoing within the Council you are encouraged to come forward and voice your concern.
- The Council will not tolerate harassment or victimisation against you because you have raised a concern.
- You will be supported when you raise a concern and you can be assured that where you raise a genuine and reasonably held concern it will not affect your future career progression.
- The law gives protection against victimisation and reprisals for workers who "blow the whistle" provided they reasonably believe that the disclosure is in the public interest. More information about the types of disclosure which are protected can be found in the Council's Whistleblowing policy.
- The policy also applies to disclosures made in relation to the providers of health and adult social care under the duty of candour.
- The Whistleblowing Policy is not intended for raising concerns about your personal circumstances such as complaints about a breach of your contract of employment.

2. How to raise a concern

- Advice about how to raise a concern is available on a confidential basis from the HR Advisory Service, Whistleblowing Advisers or Public Concern at Work (an independent charity 020740 46609).
- You should normally raise your concern with your line manager (or with their line manager). If you do not feel able to do this, there are Whistleblowing Advisors within the Council you can contact directly. Their details are on the intranet.
- If your concern involves County Councillors or senior managers you can raise your concern directly with the Joint Managing Director (Resources) or the Head of Law and Governance. If you suspect fraud you can raise your concern with the Head of Finance or through the fraud hotline.

3. How the Council will respond

- We will ask you to put your concerns in writing and provide as much detail as possible so that we can decide whether there should be an investigation. Some cases may be resolved without an investigation.
- You should normally get a response from the Council within 10 working days to let you know the next steps.

- In some cases, specific procedures will apply – such as concerns related to child protection matters or cases which require investigation by Internal Audit or the Police. Cases of suspected financial impropriety should be referred to Internal Audit.
- There may be a need to seek further information from you and you might need to attend a meeting. If you do, you can bring a representative with you.
- You will be kept informed about the procedure to be followed, for example if you need to give evidence in disciplinary proceedings.
- Unless there are legal restrictions, you will generally receive feedback on the investigation of your complaint.

4. Points to note

- The Council will try to keep matters confidential, however, we cannot guarantee this and you may need to make a statement if there is a disciplinary or police investigation.
- We may consider anonymous complaints but these are far more difficult to investigate and prove. We would therefore encourage you to put your name to your concerns.
- Your concern may or may not be substantiated by an investigation. No action will be taken against you just because a concern has not been substantiated.
- If malicious or vexatious allegations are made against you, appropriate disciplinary action will be taken against the person making such allegations. Similarly if you make malicious or vexatious allegations against others you may face disciplinary action

5. Reporting Concerns to External Agencies

- If you do not feel able to raise your concern through one of our internal routes then provided you reasonably believe that your concerns are true there is a list of government approved external agencies which you can contact depending on the nature of your concern.

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>
- You will generally lose your right to protection if you disclose to a person or body not on the list.
- If you disclose your concerns outside of the Council, you should not disclose confidential information or make disclosures to the press. If you are not sure about where you can report your concern, you should take advice.

Warwickshire County Council

**WHISTLEBLOWING POLICY - LIST OF WHISTLEBLOWING
ADVISERS**

Please note that you can speak to a whistleblowing advisor who is not in your Group:

Communities Group

Mark Ryder, Head of Transport and Economy
Tel : 01926 412811
e-mail: markryder@warwickshire.gov.uk

John Linnane, Director of Public Health
Tel: 01926 413705
Email: johnlinnane@warwickshire.gov.uk

Fire and Rescue

Rob Moyney, Deputy Chief Fire Officer

Tel : 01926 423231
(75 3201 if dialling from Shire Hall)
e-mail: robmoyney@warwickshire.gov.uk

People Group

Jenny Butlin-Moran, Service Development and Assurance (Children's) PPA Business Unit

Tel: Internal 58 2514 External 01926 7421514
e-mail: jennybutlinmoran@warwickshire.gov.uk

Mike J Wood, Service Development and Assurance (Adults) PPA Business Unit

Tel: Internal 58 2177 External 01926 742177
e-mail: mikejwood@warwickshire.gov.uk

Christine Lewington, Head of Strategic Commissioning
Internal: 585101, External: 01926 745101
Email: chrislewington@warwickshire.gov.uk

Resources Group

Steve M. Smith,

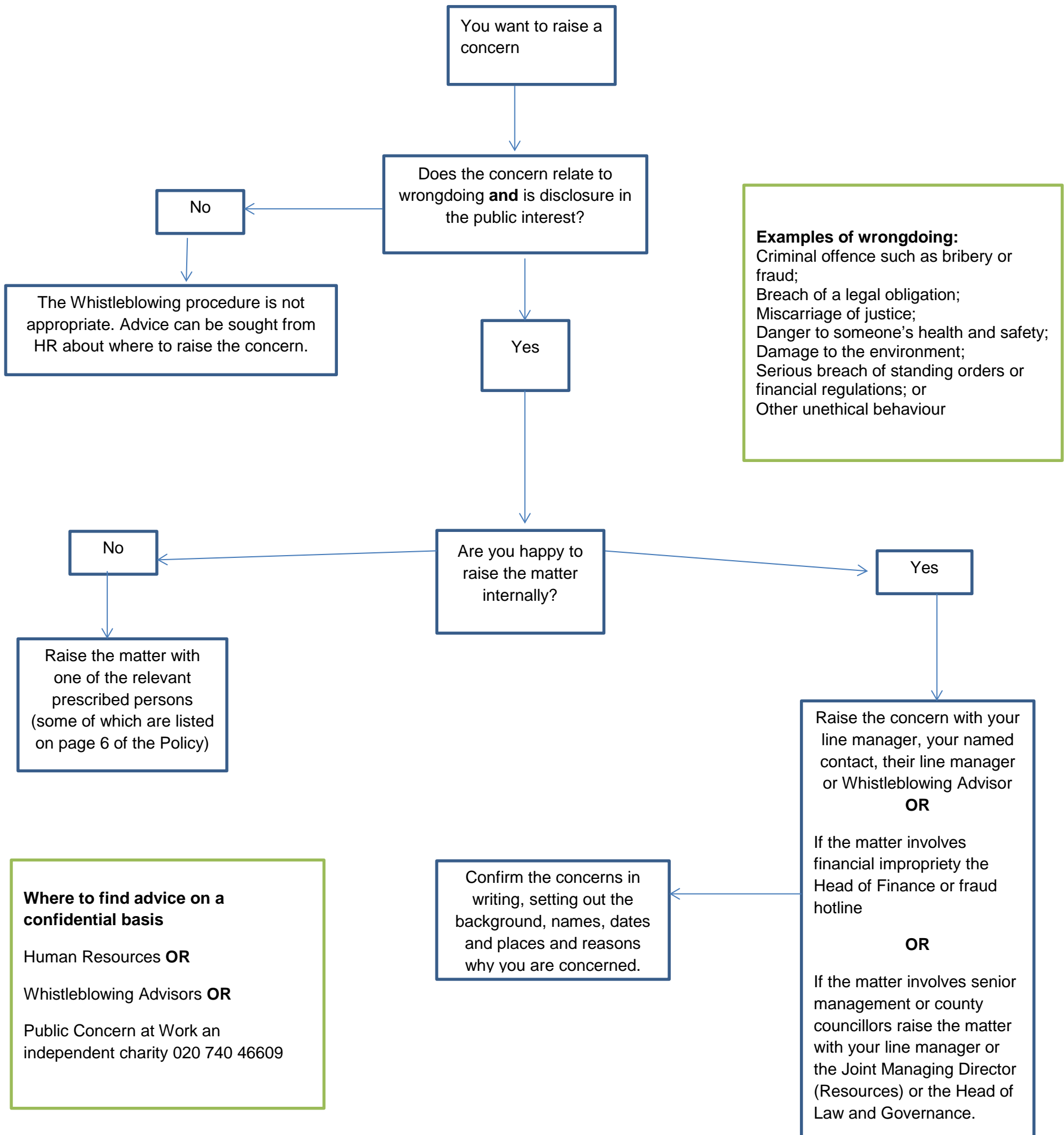
Head of Physical Assets

Tel : 01926 412352

Internal Email : Steve M Smith/Project Manager/PS/WarksCC External Email :

stevesmithps@warwickshire.gov.uk

Appendix C - Whistleblowing Flowchart



Warwickshire County Council **Whistleblowing Policy**

- **KEY POINTS**
- **Employees and other workers are assured of protection from suffering victimisation or harassment in the workplace if they raise serious concerns about wrongdoing where this is in the public interest and they act in accordance with this policy**

1. About this policy

- 1.1 Warwickshire County Council is committed to the highest possible standards of openness, integrity and accountability. In line with that commitment we encourage employees and others with reasonably held concerns about wrongdoing within the Council to come forward and voice these concerns at an early stage.
- 1.2 We would hope that in most cases employees and others would feel confident in raising serious concerns through their normal line management arrangements or other reporting arrangements. However we recognise that in a small number of cases there may be genuine concerns about possible reprisals or victimisation.
- 1.3 Although this policy is written for employees, the County Council recognises that it may also be applicable to other individuals such as consultants, contractors, volunteers, interns, casual workers, agency workers and secondees from other organisations. Whilst the County Council will endeavour to ensure that such workers are afforded a similar level of protection to that afforded by this policy, it must be recognised that in such cases the County Council will not have direct control over the actions of other employers.
- 1.4 This policy aims to:
 - provide an opportunity for you to raise serious concerns and receive feedback on any action taken
 - allow you to take the matter further if you are dissatisfied with the County Council's response,
 - reassure you that you will be protected from reprisals or victimisation for whistleblowing where you have a reasonable belief in the accuracy of the allegations (and where raising them is in the public interest) and you otherwise follow this policy.
 - put in place relevant support measures for you as an individual during the process

- 1.5 Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 introduced a Duty of Candour on providers of health and adult social care who are registered with the Care Quality Commission (CQC) to be open with patients and other service users when things go wrong. Providers must promote a culture that encourages candour, openness and honesty at all levels. Individual members of staff who are professionally registered have a separate duty of professional candour which is regulated by their respective professional regulatory bodies.
- 1.6 This policy is intended to promote a culture of openness and transparency and staff are encouraged to report concerns which might trigger obligations under Regulation 20, which include notifying service users, providing support and an apology where a safety incident occurs which causes harm to a service user.
- 1.7 This policy applies to employees disclosing information under the duty of candour who fear reprisals or victimisation in the same way as it applies to any other employees.
- 1.8 Disclosures which relate to the employee's personal circumstances or where there is a suspected breach of an employee's contract of employment do not fall within this policy and should be raised under the Council's Grievance Procedure, Dignity at Work Policy or Equalities Policies, as appropriate.
- 1.9 This policy does not form part of any employee's contract of employment and we may amend it at any time.

2. What is whistleblowing?

- 2.1 Whistleblowing is the reporting of suspected wrongdoing or dangers in relation to our activities.
- 2.2 A worker who "blows the whistle" will be entitled to the protection of the law under the Employment Rights Act 1996 ("the ERA") where he or she makes a "qualifying disclosure." The provisions cover employees, contractors, agency workers, homeworkers, some work experience students and police officers and apply where the worker discloses information in the reasonable belief that the disclosure is in the public interest and the information tends to show that any of the following has occurred or is likely to occur:
 - i. A criminal offence, [for example bribery or fraud];
 - ii. A breach of a legal obligation
 - iii. A miscarriage of justice
 - iv. A danger to someone's health and safety
 - v. Damage to the environment
 - vi. The covering up of wrongdoing in the above categories
- 2.3 In addition to the above, the Council has extended protection under this Policy to disclosures of serious wrongdoing that do not fall within the above categories,

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but which the Council nevertheless accepts are in the public interest. An employee who makes such a disclosure may not be entitled to the protection of the law under the ERA but the Council will approach their disclosure as if it did. This would apply to disclosures about serious misconduct which:

- vii. Is against the Council’s Standing Orders, Policies or Financial Regulations
- viii. Is in breach of professional obligations
- ix. Amounts to improper or unethical conduct

2.4 The above list is not exhaustive but the key requirement is that the worker must reasonably believe that the disclosure is in the public interest.

2.5 Further advice can be taken from the HR Advisory Service if you are unclear as to whether the policy is appropriate for your particular circumstances.

3. How to raise a concern

3.1 You should normally raise concerns with your immediate manager or their line manager if you feel uncomfortable in discussing the issue with someone working in close proximity to you.

3.2 Additionally, a network of Whistleblowing Advisers has been established and these Advisers are listed in a separate document, available from the HR Advisory Service or on the intranet. If you do not feel able to raise your concern with your manager or their line manager, you should approach the Whistleblowing Adviser direct.

3.3 You may choose to raise the concern in writing, but it is helpful to all concerned if an initial and informal discussion can take place in the first instance. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the wrongdoing. For example, if you believe that any county councillors or member(s) of senior management are involved, you should approach the Chief Executive or the Strategic Director of the Resources Group. In cases of financial impropriety you should approach the Head of Finance, Resources Group. If you do not feel comfortable to approach senior managers, you can approach a Whistleblowing Adviser who may escalate the matter on your behalf.

3.4 Once initial concerns have been raised, it will be important to translate these into writing. You will be invited to set out the background and history of the concern, giving names, dates and places where possible, and the reason why you are particularly concerned about the situation.

3.5 The earlier you express the concern the easier it is to take action.

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- 3.6 Although you are not expected to prove the truth of an allegation, you will need to give sufficient detail to show there are grounds for your concern.
- 3.7 You can get advice and guidance in confidence on how matters of concern may be pursued from:-
- the HR Advisory Service (if you are an employee)
<http://intranet.warwickshire.gov.uk/helpingyouwork/HR/AbouttheHRService/Pages/HRAdvisoryService.aspx>
 - the appropriate Whistleblowing Adviser (as shown at Appendix A)
 - Public Concern at work (this is an independent charity which offers a confidential helpline on 0207404 6609 www.pcaw.org.uk)
- 3.8 You may invite your trade union or professional association to raise a matter on your behalf and they can be invited to participate in any future discussions between yourself and the Investigating Officer.

4. Confidentiality

- 4.1 The Council will do its best to protect your identity when you raise a concern and do not want your name to be disclosed. However, it must be appreciated that the investigation process may reveal the source of the information and a statement by you may be required as part of the evidence, especially if the next step is a police investigation and prosecution.

5. Anonymous Allegations

- 5.1 The Council accepts that employees will raise genuine concerns that are based on factual evidence or direct observation. With this in mind you are encouraged to put your name to your allegation. Concerns expressed anonymously are much less powerful and far more difficult to investigate and prove. However, they will be considered at the discretion of the County Council.
- 5.2 In exercising the discretion, the factors to be taken into account would include:-
- the seriousness of the issues raised
 - the credibility of the concern; and
 - the likelihood of confirming the allegation from other sources in the face of a flat denial from the accused person.

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6. Unsubstantiated Allegations

- 6.1 If you make an allegation that you reasonably believe and which is based on evidence, observation or a series of unexplainable instances, but it is not confirmed by the investigation, no action will be taken against you and you will be fully supported after the event. If, however, you make malicious or vexatious allegations, then disciplinary action may be taken against you.
- 6.2 Equally, if malicious or vexatious allegations are made against you, the County Council will ensure that you are fully supported and that appropriate disciplinary action is taken against the person making such allegations.

7. Protection and Support for Whistle blowers

- 7.1 The Council recognises that the decision to report a concern can be a difficult one to make, not least because of fear of reprisal from those responsible for the wrongdoing. The Council will not tolerate harassment or victimisation in any form and will take action and put in place support measures to protect you when you raise a concern. Disciplinary procedures are already in place to address any potential attempts at harassment or victimisation.
- 7.2 It is accepted by the Council that staff may feel concerned that by raising areas of concern, their future careers may be detrimentally affected. This is **not** the case, and those raising genuine and reasonably held concerns may be assured that concerns will be treated with the utmost respect and play no part in future decisions related to progress or promotion.
- 7.3 If you are personally already the subject of disciplinary or redundancy procedures for other reasons, whistleblowing will not usually halt these procedures but the investigating officer will take steps to satisfy themselves that the issues are not inter-related or connected in any way.

8. How the Council will respond

- 8.1 The action taken by the Council will depend on the nature of the concern. Initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.
- 8.2 Some concerns may be resolved by agreed action without the need for investigation.
- 8.3 Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues, or concerns which trigger the County Council's obligations towards service users under the Duty of Candour) will normally be referred for consideration under those procedures.

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8.4 Other matters raised may :-

- be referred to the Internal Auditor (in the cases of financial impropriety)
- be referred to the Police immediately where allegations of criminal conduct such as fraud are apparent
- be referred to the External Auditor
- form the subject of an independent inquiry by a nominated person or body outside of the County Council

8.5 The County Council will aim to write to you within ten working days of a concern being formalised in writing:

- acknowledging that the concern has been received
- indicating how it proposes to deal with the matter and where possible who the investigating officer(s) will be
- giving an estimate of how long it will take to provide a final response
- telling you whether any initial enquiries have been made; and
- 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, further information will be sought from you.

8.7 When any meeting is arranged with you, you have the right if you so wish to be accompanied by a representative from your trade union or professional association, or a workplace colleague. Your companion must respect the confidentiality of your disclosure and any subsequent investigation.

8.8 The Council will take steps to minimise any difficulties which you may experience as a result of raising a reasonably held concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the Council will advise you about the procedure to be followed and make arrangements for you to be released from your normal duties.

8.9 The Council accepts that you need to be assured that the matter has been properly addressed. Unless there are legal constraints, you will receive feedback and information about the progress and outcomes of any investigations. You should recognise, however, that during the course of an

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investigation the Council may have a duty of confidentiality which will override your legitimate interest in knowing how matters are progressing.

9. How the Matter can be taken Further

9.1 This policy is intended to provide you with an opportunity to raise concerns within the Council. The Council hopes you will have confidence in using the internal procedure and do not find it necessary to approach anyone externally. If you are not satisfied, and if you feel it is right to take the matter outside the Council, then provided you reasonably believe that your allegations are true, you can make a disclosure to prescribed persons without losing your rights under whistleblowing law or this policy. The relevant prescribed person depends on the subject matter of the disclosure and the following is not an exhaustive list:

- Auditors appointed under the Local Audit and Accountability Act 2014 to audit the County Council's accounts - the proper conduct of public business, value for money, fraud and corruption. Details of the Council's auditors can be found on the County Council website at <http://www.warwickshire.gov.uk/accounts>
- Care Quality Commission - matters relating to the registration and provision of regulated health and social care services as defined in the Health and Social Care Act 2008.
- The Children's Commissioner – matters relating to the rights, welfare and interests of children
- Comptroller and Auditor General - The proper conduct of public business; value for money, fraud and corruption in relation to the provision of public services
- Environment Agency – matters affecting the environment or the management or regulation of the environment, including pollution and flooding.
- Health and Safety Executive or local authorities which are responsible for the enforcement of health and safety legislation - matters which may affect the health of safety of any individual at work or member of the public in connection with the activities of persons at work.
- Information Commissioner's Office - compliance with the requirements of legislation relating to data protection, freedom of information and environmental information law.
- Ofsted – matters relating to the registration of children's homes and care homes and the inspection of education and children's services

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- A Member of Parliament

A complete list of prescribed persons under the Employment Rights Act and the types of matters which may be disclosed to them can be found at <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>

9.2 If you choose to disclose to an external contact (other than a prescribed person) without first having raised your concerns internally, you will lose your right to protection under the law or under this Policy unless you can meet the following conditions:-

- o You reasonably believe the information or allegation is true
- o You are not motivated by personal gain
- o In all the circumstances, it is reasonable for you to make the disclosure and either:
 - a. You reasonably believe that if you disclose the information to the Council you will be subject to victimisation; OR
 - b. You reasonably believe that if you disclose the information to the Council, it will be covered up and there is no internal person to whom you can make the disclosure; OR
 - c. The relevant failure is of an exceptionally serious nature.

9.3 If you do take the matter outside the Council, you need to ensure that you do not disclose information which is either confidential or exempt from disclosure. This means that you must not, for example, disclose confidential committee reports, other confidential documents or confidential information that relates to clients and customers. If you are not sure whether information is considered to be confidential, you should check with one of the contact points listed at 3.7.

9.4 The Council will have regard to the identity of the person to whom you make the disclosure in determining whether it is reasonable for you to take the matter outside the Council. A disclosure to the media is unlikely to be regarded as reasonable.

10. The Responsible Officer

10.1 The Joint Managing Director (Resources Group) has overall responsibility for the maintenance and operation of this policy and will report as necessary to the County Council. A record of concerns raised within the County Council and the outcomes (in a form which does not endanger your confidentiality) is being created as a single register incorporating whistleblowing complaints made to Whistleblowing Advisers and managers in accordance with this policy and it will be maintained within Law and Governance. In schools, Governing Bodies are responsible for their own whistleblowing policies and for maintaining their own register of whistleblowing concerns.

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