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## Public Disclosure – “Whistle Blowing” Procedure (Bribery Act (2010))

### 1. Introduction

Although the term "whistle-blowing" has no legal definition within EU or UK law it has been used to describe incidents where an employee provides information about (publicly discloses) alleged wrongdoing within an organisation. The Public Interest Disclosure Act 1998 promotes greater openness in the workplace and protects "whistle-blowers" from being unfairly treated, e.g. bullied or sacked, if they make people aware of matters in the public interest. In providing this protection the Act also strengthens the duty of all employees of Trowbridge Town Council (“the Council”) not to provide information to any outsiders about confidential matters gained at work, unless it comes within the “whistle blowing” procedure (see Section 3.2).

The definition of “employee” in this procedure is: *‘any individual who is paid by, or works as a volunteer for, the Town Council including full time, part time, temporary or casual work’*

This document:-

- provides advice to employees
- explains the procedure to follow should an employee have good reason to believe that there is serious wrong doing
- explains what do if an employee is unhappy with the way the Council deals with the matter

### 2. Responsibilities

**2.1 Employees** are expected to give honest and faithful service to the Council. This includes not providing confidential information to outsiders or doing anything which may make the Council doubt their integrity.

**2.2 The Council** encourages employees to highlight any actions which they consider a serious wrong doing within the organisation; however the concern must be raised without malice, i.e. not just to cause trouble.

### 3. The Procedure

**3.1** Areas not covered by the procedure;

- personal problems about an individual's terms and conditions of employment
- other aspects of the working relationship
- complaints of bullying or harassment
- disciplinary matters

**3.2** Areas covered by the procedure include;

- a criminal offence
- failure to comply with legal requirements, policies or procedures of the Council
- financial or non-financial maladministration or malpractice or impropriety or fraud
- professional malpractice
- a risk to the health or safety of any individual
- environmental damage
- a miscarriage of justice
- improper conduct or unethical behaviour
- attempts to suppress or conceal any information relating to any of the above

If issues raised are more concerned with grievance, bullying, harassment or discipline, then those procedures should be followed.

#### 4. Raising Matters Of Concern

Any employee who has good reason to believe that there is serious wrong doing or malpractice within the Council, (see Section 3.2) should raise the matter with Town Council officers. In all circumstances employees will be required to provide as much information as possible.

Any information put forward should normally be made to:

- **The Line Manager** for matters specific to the employee's team
- **The Head of Service** on matters of more general importance
- **The Town Clerk** on matters of high sensitivity
- **The Council Leader** on matters relating to the Town Clerk

The Council will make sure that any employee providing information will not be punished or be treated badly because of it. In view of this protection individuals should put their name to any information given. If requested, an individual's identity will be kept confidential, for as long as possible, provided that this makes a full investigation possible.

Anonymous complaints are not covered by this procedure, but may be reported, investigated or acted upon as the person receiving the complaint sees fit. The seriousness of the matter put forward, the credibility of the complaint, the chances of being able to undertake a full investigation and fairness to any person mentioned in the complaint must be taken into account

The raising of a concern must not be made:

- Without good reason to believe the information to be substantially true
- For personal gain
- To cause trouble
- Maliciously

Employees found to be making a claim for any of these reasons may be subject to disciplinary proceedings

#### 5. Advice On Raising A Concern

The Council realises the difficult choice an employee may have in deciding whether to raise a concern, as the issue is likely to be complicated and involve other employees.

The following advice is recommended:

- make any complaints about illegal, unsafe or unethical practices quickly so motives are clear
- focus on the problem and act tactfully to prevent causing unnecessary additional problems between individuals which might distract attention from solving the problem
- be accurate in observations and claims and keep proper written records of what happened

Employees may also wish to seek independent legal advice, but this must be done formally through a qualified lawyer, e.g. through free legal advice surgeries, and wherever possible a recommendation in writing obtained.

#### 6. What Happens When An Issue Is Raised

When an issue is raised the person receiving the information (see Section 4) will;

- decide whether the matter should be dealt with under this, or an alternative, Council procedure
- advise the employee raising the matter of their decision on which procedure should be followed
- decide whether there is a case to answer, whether an investigation should take place and, if so, how it should be done.

This will depend on the type of issue raised and could be:

- investigated within the Town Council (the Council Leader will establish an independent staffing panel of two Town Councillors)
- given to the internal auditor if it is a financial problem
- given to External Auditors (the publicly accountable Company employed independently to examine the Council's management systems and accounts and who make public those findings)
- investigated independently

The person receiving the information may decide not to investigate the matter, in which case they will explain their decision to the person providing the information.

The employee may then decide to give the details to another of those listed in Section 4 or to the Internal Auditor (the Company employed by the Town Council to examine its management systems and accounts and give guidance prior to public audit).

### **6.1 Investigations**

Investigations will take place diplomatically, carefully and as quickly as possible with the employee being advised of timetable. The person receiving the information may seek to check the facts before deciding the appropriate investigator.

When an investigation is instigated the employee or employees against whom the claim has been made will be advised as soon as possible and will be allowed to respond.

The investigator will explain their findings to the person who initially received the information. That person will then decide if the problem needs to be investigated further and how this should be done. (This may include a special independent investigation within the Council or going to an outside body for further investigation)

Investigations may result in;

- the decision that the matter is more appropriate to another procedure, e.g. grievance, bullying, harassment or discipline
- the employee/employees involved being subject to disciplinary action and/or civil or criminal proceedings
- information being passed onto an appropriate outside body, e.g. the Police

On completion of the investigation the employee who provided the information will be advised of the action being taken.

### **6.2 How information is recorded**

- An official written record will be kept of each stage of the procedure
- The person(s) investigating the matter will make a full report on the information given and their findings
- The report will be signed and dated by the investigating officer and the person who supplied the information
- It is not necessary for the supplier of the information to be identified. In such circumstances they must sign a document saying that the complaint has been investigated
- Reports will normally be kept for at least five years
- In all cases a report of the result will be made to the Town Council; which will, if necessary, pass the report on to an external body

**7. Who To Tell If There Is Any Comeback**

The Council realises it must ensure that staff who give information about a problem without malice and in good faith are protected, regardless of whether or not the problem raised is found to be correct.

An employee who has raised a concern and who feels that they have suffered as a result should make a formal complaint under the grievance procedure. If there are reasonable grounds for the complaint, the person against whom the complaint has been made must prove that their actions were not taken because of the information given against them.

Where it is decided that there is a case of an employee being treated badly, harassed, or bullied as a result of their providing information, a further investigation may take place and, in line with Council procedures, disciplinary action may be taken against the person causing ill-treatment.

**8. Providing Information To A Person/Organisation Outside Of The Town Council**

If, having followed and completed the procedure, an employee is not happy with the Council's handling of the situation and reasonably believes that the information they have given, and any allegation in it, are substantially true, they may take the matter further by taking it to certain outside bodies or persons such as:

- a legal adviser
- other bodies or persons (if any) listed by the Secretary of State under Section 43F of the Employment Protection Act 1996, as amended by Section 1 of the Public Interest Disclosure Act 1998
- a member of Parliament

Employees who, in good faith, make an outside complaint after following and completing the Council's procedure will be protected against bullying or other unpleasant treatment.

**9. The Bribery Act (2010)**

The above act makes it a criminal offence to give a promise or offer a bribe or request, or agree or receive a bribe. It also sets out a corporate offence of failing to prevent bribery by an organisation not having adequate preventative procedures in place. This includes operating through an "agent/subsidiary or other associated person".

For information only:

Staff are not required to categorise any concerns they have but may find it useful to know how the Bribery Act defines bribery. The Act defines three key offences with regard to bribery, which are:

- Active bribery (offering, promising or giving a bribe);
- Passive bribery (requesting, agreeing to receive or accepting a bribe); and
- Bribery of a foreign public official

It is also an offence for a corporate body not to have adequate preventative procedures in place to prevent bribery.

The reporting process outlined in this document (section 4) should be followed for all genuine suspicions of bribery.

**Lance Allan – Town Clerk & Proper Officer**

**Signed:..... Date:.....**

*This procedure was approved at a meeting of the Policy & Resources Committee on 6<sup>th</sup> November 2018 and will be amended and reviewed as and when the size and nature of the council changes or when new legislation is introduced. Otherwise date of next review is November 2022.*